

**SECOND AMENDMENT TO
OPERATIONS AND MANAGEMENT AGREEMENT**

by and between

THE CITY OF SEATTLE

and the

SEATTLE AQUARIUM SOCIETY

regarding the Ocean Pavilion

dated as of _____, 2023

SECOND AMENDMENT TO OPERATIONS AND MANAGEMENT AGREEMENT

This SECOND AMENDMENT TO OPERATIONS AND MANAGEMENT AGREEMENT regarding the Ocean Pavilion ("Second OMA Amendment"), dated as of _____, 2023, amends that certain Operations and Management Agreement, dated January 26, 2010, as first amended by that Amendment to Operations and Maintenance Agreement, dated as of October 1, 2022 (as amended, the "OMA"), 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 nonprofit corporation (together, the "Parties").

The City and SEAS enter into this Second OMA Amendment in connection with SEAS' capital financing of its obligation under that certain Funding Agreement (defined below) regarding the Ocean Pavilion expansion of the City's Aquarium Facility. The Parties acknowledge that the amendments set forth herein are intended solely as an accommodation to SEAS in order to enable it to accept certain financing terms and conditions necessary in order to complete construction of the Ocean Pavilion in furtherance of SEAS' obligations under the Funding Agreement and the Construction Agreement (defined below).

This Second OMA Amendment is authorized by resolution of the SEAS Board of Directors adopted on _____, 2023, and by Ordinance _____ of the City passed by the City Council on _____, 2023, and shall become effective only upon satisfaction of the conditions set forth in Section 11 of this Second OMA Amendment. If the conditions set forth herein have not been satisfied on or before [December 31, 2023], this Second Amendment shall be of no force and effect.

RECITALS

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

(a) In 2019, the City Council passed Ordinance 126015, authorizing a funding agreement and a construction agreement between the City and SEAS to provide for public and private funding for a new aquarium facility to be known as the Ocean Pavilion (the "Ocean Pavilion Project"), as more fully described in the Ocean Pavilion Funding Agreement, dated June 30, 2020, by and between the Parties, as amended by the Amendment to Ocean Pavilion Funding Agreement, dated as of October 1, 2022 (as amended, the "Funding Agreement"), and the Ocean Pavilion Construction Agreement, dated as of February 11, 2021, by and between the Parties (the "Construction Agreement").

(b) The Project furthers the purposes of SEAS by providing an enhanced facility to be utilized in fulfilling its mission in education, conservation and recreation. The Project serves the interests of the City and is in the public interest by enhancing the Aquarium facility and other central waterfront improvements (the "Central Waterfront Program"), which facilities and improvements are to be owned by the City and will provide benefits to residents of and visitors to the City and the region, and continues the City's history of developing the Aquarium and

Central Waterfront Program improvements as an important civic asset, cultural resource, and public amenity, and as a focal point of a revitalized and redeveloped waterfront.

(c) On August 16, 2022, the City Council passed Ordinance 126655, approving amendments to the original Funding Agreement and authorizing an additional \$20,000,000 of capital investments in the Project by the City, representing an Increased Funding Commitment of the City. The intent of the parties in increasing the City’s Funding Commitment was to continue construction of the Ocean Pavilion Project on pace with the City’s Central Waterfront Program, while allowing SEAS additional time to advance their philanthropic campaign, in recognition of the negative economic effects of the COVID-19 pandemic. In recognition of SEAS’ use of a facility that is enhanced beyond what SEAS’ resource would otherwise permit, SEAS agreed to pay an Enhanced Facility Fee to the City (“EF Fee”) during the remaining term of the OMA.

(d) As of the date hereof, SEAS has expended [\$19,176,478], which amount (together with amounts necessary to pay interest on the City’s interfund loan and legal fees) was made available pursuant to the City’s Increased Funding Commitment, and has begun payment of EF Fees, which are scheduled to be collected through the remaining term of the OMA Agreement. Pursuant to Section 6.8(e) of the OMA, SEAS may prepay all or a portion of the EF Fees due through the end of the OMA term by providing the City with 30 days’ notice of such prepayment, and upon such prepayment, the City is required to reduce the EF Fee Payment Schedule to reflect the prepayment.

(e) SEAS has the opportunity to secure private financing to pay costs of the Ocean Pavilion Project and has proposed to utilize this private financing to prepay the EF Fees currently due under the OMA (with respect to the \$20,000,000 referenced above) and to secure financing for the final remaining costs of the Project. To ensure financing remains readily available and avoid Project delays, SEAS has requested certain additional amendments to the OMA necessary to accommodate SEAS obtaining financing from non-City sources for the satisfaction of its obligations under the Funding Agreement.

(f) Under Section 6.7 of the OMA, SEAS may incur aggregate debt in excess of \$1,000,000 only upon consent of the City Finance Director. SEAS has proposed to issue not to exceed \$67,000,000 aggregate principal amount of debt (the “SEAS Bonds”), which will include the funding of a prepayment of the EF Fees currently due under the OMA and will provide additional capital to fulfill SEAS obligations under the Funding Agreement and the Construction Agreement. The OMA Amendments set forth in this Second Amendment are necessary to accommodate the terms of the SEAS Bonds. The SEAS Bonds are expected to be issued through the Washington State Housing Finance Commission, upon receipt of consent of the City Finance Director and satisfaction of the conditions set forth in Section 11 hereof.

(g) As required for the issuance of the SEAS Bonds, SEAS proposes to establish an account with U.S. Bank Trust Company, National Association, as fiscal agent to the State of Washington (the “Fiscal Agent”) and to deposit into this account SEAS funds restricted to serve as a reserve fund for the capital needs of the Ocean Pavilion Project and other Aquarium

facilities and to serve as a debt service reserve for the SEAS Bonds. Pursuant to the terms of the SEAS Bonds, SEAS will be obligated to replenish and maintain this Reserve Fund over the life of the SEAS Bonds, pursuant to the [Financing Documents]. Pursuant to this Second OMA Amendment, SEAS has requested that it be permitted to submit an Increased Funding Commitment Request in accordance with Section 5 hereof (adding a new Section 7.2.6 to the OMA), if necessary to ensure that the capital and maintenance needs of the Aquarium facilities are met.

(h) The City and SEAS have determined to execute this Second OMA Amendment solely to accommodate SEAS' ability to secure financing to fulfill its obligations under the Funding Agreement and the Construction Agreement through the issuance of the SEAS Bonds. If the SEAS Bonds are not issued on or before December 31, 2023, this Second OMA Amendment shall be of no force and effect.

AMENDMENT TERMS

The Parties agree as follows:

1. Definitions; Extension of Termination Date.

(a) The definition of Termination Date set forth in Section 1.26 of the OMA is amended as shown below (additions are double underlined and deletions are struck):

1.26 "Termination Date" means ~~June 30, 2030~~ the close of business on December 31, 2040, unless terminated earlier as provided herein.

(b) The following new definitions are added to Section 1 of the OMA, to be inserted in alphabetical order and renumbered in accordance with the section numbering in Section 1 of the Agreement:

1.[xx] "**Bank Loan Agreement**" means that certain Loan Agreement between SEAS and PNC Bank, National Association, relating to the Washington State Housing Finance Commission's Nonprofit Revenue Bond (Seattle Aquarium Ocean Pavilion Project), Series 2023A and its Taxable Nonprofit Revenue Bond (Seattle Aquarium Ocean Pavilion Project), Series 2023B, to provide not to exceed \$67,000,000 to finance the Ocean Pavilion Project, including all appendices, schedules, and exhibits thereto.

1.[xx] "**Increased Funding Commitment Request**" means any request provided to the Superintendent for additional funding, pursuant to Section 7.2.6(b)(ii).

1.[xx] "**Minimum Reserve Level**" means an amount equal to \$7,000,000. As of [March] 1, 2025, the Minimum Reserve Level shall be adjusted to the greater of \$7,000,000 or the Maximum Annual Debt Service for the SEAS Bonds once they begin the amortization period beginning March 1, 2025. For purposes of calculating the Maximum Annual Debt Service, the

interest rate shall be the greater of 12% or the then current variable interest rate on the SEAS Bonds.

1.[xx] “**Reserve Deficiency Notice**” means a notice provided to SEAS and the City pursuant to Section 7.2.6(b) if the amount on deposit in the Reserve Fund is less than the Minimum Reserve Level for any reason.

1.[xx] “**Reserve Fund**” means the Reserve Fund established and maintained by SEAS pursuant to Section 7.2.6.

1.[xx] “**SEAS Bonds**” means the not to exceed \$67,000,000 aggregate principal amount of nonrecourse revenue bonds issued by the Washington State Housing Finance Commission for the sole purpose of acquiring SEAS’ debt repayment obligations under the Bank Loan Agreement.

(c) Unless otherwise defined, all other capitalized terms used herein have the meanings given in the OMA.

2. Extension of Term. Section 3 of the OMA is amended as shown below (additions are double underlined and deletions are struck):

3. Term of Agreement.

3.1 Term. The term of this Agreement ("Term") shall commence on the Effective Date and expire ~~on June 30, 2030~~ at the close of business on December 31, 2040 (the "Termination Date"), unless this Agreement is terminated earlier as provided herein.

3.2 Option to Terminate; Termination Fee. ~~If the Superintendent of the Department of Parks and Recreation (the "Superintendent") determines that there is no reasonable likelihood of SEAS' expending at least \$5,000,000 on new or updated Exhibits prior to June 30, 2020, as further described in Section 4.2 below, the City may terminate this Agreement upon 12 months' prior written notice to SEAS, which notice shall be delivered to SEAS between January 1, 2019, and June 30, 2019. During the 12-month notice period, SEAS and the City shall cooperate to provide for an efficient and coordinated transition of operations and management from SEAS to the City or to a City designated successor operator. Without limiting any and all remedies set forth herein, for so long as the SEAS Bonds are outstanding, the City may not terminate this Agreement except in accordance with Section 21.1.4, including payment to SEAS of a Termination Fee. Notwithstanding the foregoing, such portion of the Termination Fee as is necessary to pay amounts due and owing by SEAS under the Bank Loan Agreement shall be deemed paid only when received into the accounts of the Fiscal Agent on behalf of SEAS.~~

3. Borrowing by SEAS. Section 6.7 of the OMA is amended as shown below (additions are double underlined):

6.7 City Approval of Finance Director Consent to SEAS Debt.

6.7.1. Additional Debt. SEAS shall not incur aggregate debt in excess of \$1 Million without the ~~approval~~ written consent of the City’s Finance Director, which ~~approval~~ consent shall not be unreasonably withheld, conditioned or delayed.

6.7.2 Consent to SEAS Bonds. The City Finance Director is authorized to provide written consent to the issuance of the SEAS Bonds only upon the satisfaction of the conditions set forth in Section 11 of the Second OMA Amendment.

6.7.3 Prepayment of SEAS Bonds. The capitalized terms used in this subsection but not defined in this Agreement shall have the meanings assigned to them in the Bank Loan Agreement. Failure to comply with this subsection shall be a Corrective Action Event under this Agreement. SEAS covenants that, so long as any obligation under this Agreement remains in effect, during each year, if and to the extent that funds are available in the Capital Campaign Account or from Excess Cash Flow, SEAS shall withdraw from the Capital Campaign Account or from Excess Cash Flow, such amounts as may be necessary to prepay and redeem principal of the SEAS Bonds so that the total aggregate outstanding Loan Amount (as defined in the Bank Loan Agreement) will be no greater than the Maximum Outstanding SEAS Loan Amount set forth in the table below:

<u>As of January 1</u>	<u>Maximum Outstanding SEAS Loan Amount¹</u>
2024	\$67,000,000
2025	[TBD]
2026	[TBD]
2027	[TBD]
2028	[TBD]
2029	[TBD]
2030	[TBD]

4. EF Fee. Section 6.8(d) of the OMA is amended as shown below (additions are double underlined):

[6.8] (d) Upon issuance of the Project Bonds (if the City determines to issue such bonds) or upon approval by the City Council of an appropriation in respect of an Increased Funding Commitment Request, the City shall adjust the EF Fee Payment Schedule to reflect the City’s actual rather than estimated financing costs (including actual principal amount issued, actual interest rates

¹ In determining the amount of SEAS Bonds that SEAS is required to prepay, SEAS shall be permitted to take into account all SEAS Bonds previously redeemed, whether pursuant to this table, the Bank Loan Agreement, or from any funds received by SEAS from any donation, gift, contribution or bequest made subject to donor restrictions or instructions that require the use of such funds to redeem, cause the redemption of, or otherwise prepay SEAS Bonds.

and terms of the borrowing, and allocable fees and costs) associated with ~~the Project Bonds. If the City determines to fund the Increased Funding Commitment through sources other than the issuance of the Project Bonds, the EF Fee Payment Schedule will be adjusted to reflect the City's actual cost of funds. Future adjustments to the EF Fee Payment Schedule (i) are required upon a partial prepayment by SEAS of EF Fees consistent with subsection (e), below, and (ii) are permitted in the City's reasonable discretion to reflect changes in the City's financing costs resulting from any refinancing of the Project Bonds, consistent with subsection (f), below. In respect of funding provided pursuant to an Increased Funding Commitment Request submitted pursuant to Section 5 of this Second OMA Amendment [Section 7.2.6 of this Agreement], the EF Fee shall be deferred until first day of the first full month after the SEAS Bonds are no longer outstanding, and shall thereafter be paid in installments according to an EF Fee Schedule established by the City prior to the disbursement of any funds appropriated pursuant to the Increased Funding Commitment Request. For so long as the SEAS Bonds are outstanding [and no Event of Default has occurred and is continuing], the EF Fee Schedule shall accommodate the deferral described in this subsection.~~

Upon redemption of the SEAS Bonds, if any amounts remain in the Reserve Fund or the Capital Campaign Account (as defined in the Bank Loan Agreement), SEAS shall apply those amounts to prepayment of any EF Fees then outstanding. The obligations of SEAS to pay all EF Fees shall survive termination of this Agreement, whether at the end of its term or otherwise.

5. Maintenance and Operations; Capital Improvements. A new subsection 7.2.6 is added to the OMA to read as follows:

7.2.6 Maintenance of the Minimum Reserve Level.

(a) Pursuant to the terms of the SEAS Bonds, SEAS is required to covenant to establish, fund, and maintain the Reserve Fund in an account that is held by the Fiscal Agent (as defined in the Second Amendment to the OMA) in relation to the SEAS Bonds. To facilitate the City's oversight of SEAS as the operator of the Aquarium pursuant to this Agreement, SEAS agrees to provide to the City (directly or through the Fiscal Agent):

(i) monthly reports to the City showing Reserve Fund balances, investments, and earnings (if any), and deposits and withdrawals and a copy of each Reserve Report provided pursuant to the Bank Loan Agreement;

(ii) notice to the City of any change in the Minimum Reserve Level pursuant to the definition of Minimum Reserve Level;

(iii) a copy of each Capital Campaign Report and each Capital Campaign Monthly Contribution Report provided pursuant to the Bank

Loan Agreement and a copy of each request to withdraw funds from the Capital Campaign Account (as defined in the Bank Loan Agreement) for construction costs of the Project or for deposit into the Reserve Fund;

(iv) A copy of any Reserve Deficiency Notice provided to SEAS if, for any reason, the amount on deposit in the Reserve Fund is less than the Minimum Reserve Level then applicable. The Reserve Deficiency Notice shall identify the amount required to be deposited by SEAS to satisfy its obligation to maintain the Minimum Reserve Level.

(b) Upon receipt of a Reserve Deficiency Notice, if SEAS is unable to deposit funds to the Reserve Fund in the time and manner required under the SEAS Bonds covenants, it shall submit, or instruct the Fiscal Agent to submit, to the Superintendent, with a copy to the Director of Finance, the Office of the Mayor, and the President of the City Council, a written Increased Funding Commitment Request, as follows:

(i) demonstrating that SEAS will have insufficient funds available after paying necessary operating and maintenance expenses of the Aquarium from SEAS Revenue (as defined in Section 6.2 of this Agreement), Capital Campaign Contributions, or other sources (including amounts in the Capital Campaign Account available for this purpose) to satisfy its obligation in respect of the SEAS Bonds to replenish the Reserve Fund to the Minimum Reserve Level;

(ii) requesting an Increased Funding Commitment from the City in an amount that shall not exceed the amount of the deficiency in the Reserve Fund; and

(iii) identifying the capital and maintenance purposes to which the proceeds of the Increased Funding Commitment are proposed to be applied, which may include reimbursement of prior capital expenditures.

(c) If an Increased Funding Commitment Request is received by the Superintendent on or prior to the 5th business day of April in any year, the Superintendent shall either: (i) include the amount requested in the Parks Department annual budget request for the next upcoming annual budget cycle, or (ii) transmit the Increased Funding Commitment Request to the Office of the Mayor as a separate request submitted simultaneously with the budget request. If received by the Superintendent at any time after the 5th business day of April, the Superintendent shall forward the request to the Office of the Mayor. No action taken by any City official pursuant to this subsection shall imply or require a recommendation with respect to any Increased Funding Commitment Request.

(d) The Office of the Mayor, upon receipt of an Increased Funding Commitment Request from the Superintendent, shall either (i) include a request for an appropriation in the Mayor's proposed budget, or (ii)

forward the Increased Funding Commitment Request to the City Council for their appropriation consideration. It is understood that the Increased Funding Commitment Request will be submitted to the City Council for their appropriation consideration under either (i) or (ii).

(e) Any funding decision in connection with an Increased Funding Commitment Request shall be expressly subject to appropriation by the City Council and approval by the Mayor in accordance with the City Charter and applicable law. If the City determines to provide funding to SEAS in response to an Increased Funding Commitment Request, such additional amount shall result in the imposition of an EF Fee payable to the City under Section 6.8 of this Agreement.

(f) Receipt of a Reserve Deficiency Notice shall constitute a Corrective Action Event pursuant to Section 21.3 of this Agreement if SEAS fails to fulfill its obligation to fund such deficiency within 5 business days. So long as the SEAS Bonds are outstanding, if any Corrective Action Event has occurred under this Agreement, the Parties shall develop and implement a Corrective Action Plan as set forth in Section 5.2 of Exhibit 9 (which Section is hereby incorporated by reference). If any Corrective Action Event occurs under this Agreement prior to the date that the Ocean Pavilion Project has been transferred to the City under Sections 14 and 15 of the Construction Agreement, the City may require in its sole discretion and without limiting any other remedy available under this Agreement, the Construction Agreement, or the Funding Agreement, that SEAS immediately transfer to the City title to all Ocean Pavilion Project improvements and facilities free and clear of liens and encumbrances. It shall be an Event of Default, not susceptible of cure, if SEAS permits the holder of the SEAS Bonds or the Fiscal Agent to assert any interest in or control over the Ocean Pavilion Project or any City property.

(g) On the later of the date of termination of this Agreement or the date the SEAS Bonds are no longer outstanding, amounts remaining in the Reserve Fund, if any, must be used solely to pay or prepay any EF Fees then unpaid, or for capital improvements or major maintenance of the Aquarium facilities (including the improvements comprising the Ocean Pavilion Project).

6. Ocean Pavilion Amendments to OMA.

(a) A new subsection 8.4 is added to the OMA to read as follows:

8.4 Amendment to Address Ocean Pavilion Project. In the Construction Agreement, SEAS and the City agreed to use good faith efforts to negotiate and complete necessary amendment to this Agreement reflecting terms set out in Exhibit I to the Construction Agreement (the "OP Term Sheet"). The Parties reaffirm their commitment to negotiate, before issuance of the Certificate of Occupancy for the Ocean Pavilion, updated terms to this

Agreement necessary and desirable for continued Aquarium operations in the enhanced facility and in coordination with operations of the adjacent Central Waterfront Program projects. If the City and SEAS are unable to agree to such updates to this Agreement within six (6) months of issuance of the Certificate of Occupancy, the Mayor’s Office and delegees may submit to City Council for consideration pursuant to RCW 35.64.010 (as may be amended or recodified) a draft amendment to this OMA setting out the updated terms and conditions under which the City proposes to contract with SEAS that the City believes to be reasonable and consistent with the OP Term Sheet.

(b) This Second OMA Amendment is not intended to, and does not, address the future revisions described in the term sheet, which are to be addressed in a future amendment, conditioned upon a future authorizing ordinance of the City Council. Furthermore, the Parties agree that execution of such future amendments is not a condition precedent to the transfer of ownership of the improvements comprising the Ocean Pavilion Project to the City.

7. Default: Termination of Agreement: Remedies. Section 21.1 of the OMA is hereby amended to read as follows (additions are double underlined; technical correction from Amendment form available on City’s Office of the Waterfront webpage is printed in red and will be incorporated on approval by Council):

21.1 Termination by City. The City shall have the right to terminate this Agreement following an Event of Default; provided that, so long as the SEAS Bonds remain outstanding, the City shall not exercise its right to terminate this Agreement except in accordance with Section 21.1.4. Upon termination by the City, all payment obligations of SEAS to the City under this Agreement shall become immediately due and payable.

21.1.1 The following shall constitute “**Events of Default**” under this Agreement:

(a) failure of SEAS to perform or comply with any covenant or condition made under this Agreement, or failure of any representation or warranty made by SEAS in this Agreement to have been or to continue to be true and correct. In the event of a monetary default, the City may terminate this Agreement after ten (10) days’ prior written notice to SEAS; for all other defaults SEAS shall have a period of sixty (60) days from the date of written notice from the City within which to cure such default or, if such default is not legally capable of cure within such 60-day period, SEAS shall have a reasonable period to complete such cure if SEAS promptly undertakes action to cure such default within such 60-day period and thereafter diligently prosecutes the same to completion; provided that the City shall not terminate this Agreement so long as the SEAS Bonds are outstanding except in accordance with Section 21.1.4;

(b) abandonment, assignment, encumbrance, or transfer of this Agreement or of the Property by SEAS without the prior written consent of City;

(c) the appointment of a receiver to take possession of all or substantially all of the assets of SEAS, or an assignment by SEAS for the benefit of creditors, or any action taken or suffered by SEAS under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted, if any such receiver, assignment or action is not released, discharged, dismissed or vacated within sixty (60) days;

(d) any event of default on the SEAS Bonds; and

(e) an assertion in writing, through demand to the City or SEAS, court filing, notice or otherwise, of any interest in or control over the Ocean Pavilion Project or any City Aquarium or Central Waterfront Program property by the holder of the SEAS Bonds or the Fiscal Agent.

21.1.2 The foregoing Events of Default are in addition to any other right to terminate explicitly given to the City elsewhere in this Agreement.

21.1.3 If SEAS is in default of its payment obligations under ~~Section 6.1~~ of this Agreement, then SEAS agrees that during the period that such default remains uncured, all rents, issues, income and profits due and to become due from any lease, license or other use of any room or space in the Premises or from any concession therein shall be deemed to have been assigned to the City effective as of the date of default, without the need for further action by either party, and SEAS shall immediately instruct its tenants and licensees to thereafter remit their payments to the City. The City shall apply all assigned revenues it receives to amounts in default and owed by SEAS. For the purpose of accommodating the issuance of the SEAS Bonds and the financing of the Project, the City agrees, authorizes, and directs the City Finance Director to execute the estoppel certificate attached as Exhibit hereto, subordinating the City's interest in the rents, issues, income and profits described in this subsection to the interests granted as security under the Bank Loan Agreement.

21.1.4 For so long as the SEAS Bonds remain outstanding, following an Event of Default that remains uncured after notice and reasonable opportunity to cure, the City may exercise its right to terminate only as follows:

(a) Either (i) a Corrective Action Plan must have been imposed that has failed to cure the default after a period of [six (6)] months, or (ii) the City Finance Director must reasonably determine that the default is incapable of cure through imposition of a Corrective Action Plan; and

(b) The City must pay to SEAS a Termination Fee calculated to recognize the lost value to SEAS of operating the Aquarium for the remainder of the term. The amount of the Termination Fee shall be equal to the amount necessary, after taking into account all of SEAS' legally immediately available revenues, resources, and assets, including the Reserve Fund, to pay the principal of and interest on and all reasonable legal expenses incurred with respect to the termination of the SEAS Bonds and to discharge all liens, encumbrances, and claims with respect to the Aquarium facilities and all revenues of any type generated therefrom, including, without limitation, payment of all EF Fees and other payment obligations owed by ~~the City to SEAS to the City~~ under this Agreement. The City shall deposit the portion of the Termination Fee necessary to pay the amounts required in connection with the SEAS Bonds into an escrow or trust account held by the Fiscal Agent to ensure the application of such funds only to these purposes.

8. Notices. Section 26 of the OMA is hereby amended to read as follows (additions are double underlined and deletions are struck):

26. Notices. All notices required to be given hereunder shall be in writing and either delivered personally or sent by certified mail or express overnight courier service to the appropriate address listed below, or at such other address as shall be provided by written notice. Notice shall be deemed communicated two Business Days from the time of mailing if mailed as provided in this section. For convenience of the Parties, copies of notices may also be given by other means; however, neither party may give official or binding notice except by personal delivery or by certified mail.

If to SEAS:

Seattle Aquarium Society
1483 Alaskan Way
Pier 59
Seattle, Washington 98101
Attn: CEO

If to The City of Seattle:

City of Seattle
Department of Parks and Recreation
100 Dexter Avenue North
Seattle, Washington 98109
Attn: Superintendent of Parks and Recreation

and

[insert notice address for City Department of Finance]

And, in addition to the above, for any Increased Funding Commitment Request:

[insert notice address for Office of the Mayor]

[insert notice address for President of the City Council]

So long as the SEAS Bonds are outstanding, a copy of any notice to either SEAS or the City shall also be sent to:

Fiscal Agent

[insert contact information for U.S. Bank as Fiscal Agent for the SEAS Bonds]

9. Compliance. SEAS agrees to cooperate, fully and promptly, with the City or any of its designees in providing relevant information to enable the City to monitor SEAS's compliance with this Second OMA Amendment.

10. No Other Changes to OMA; Other Agreements Not Affected. Except as otherwise expressly provided in this Second OMA Amendment, all of the terms and conditions of the OMA remain unchanged and in full force and effect. Furthermore, SEAS and the City acknowledge that the City and SEAS have entered into, and may in the future enter into, additional amendments or restatements of the OMA or other separate agreements relating to the Facility, the Project, or related facilities, including without limitation those agreements contemplated pursuant to Section 5.6 of the Funding Agreement. Notwithstanding the foregoing, Sections 1.26, 3.1, 7.2.6, and 21.1 as amended by this Second OMA Amendment shall not be amended so long as the SEAS Bonds remain outstanding. Nothing in this Second OMA Amendment shall be construed as altering or limiting the terms or conditions of any other OMA amendments or 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 Second OMA Amendment. The OMA, as amended by this Second OMA Amendment, shall supersede any prior agreements, discussions, commitments, representations, correspondence, memos, or agreements, written or oral, between the parties hereto with respect to the subject matter hereof. Nothing in this Second OMA Amendment in any way limits or alters the City's right to implement any Corrective Action Plan as set forth in Exhibit 9 to this Agreement. Nothing herein alters the Parties' obligations, rights, or remedies under the Construction Agreement and the Funding Agreement

11. Conditions Precedent; Effective Date.

(a) This Second OMA Amendment will become effective only on the date of issuance of the SEAS Bonds. In the event that the SEAS Bonds are not issued, this Second OMA Amendment will not become effective.

(b) The City Finance Director, acting in the Director's sole discretion and without requiring additional authorization from the City Council, is authorized to provide consent on behalf of the City to the issuance of the SEAS Bonds, in accordance with Section 6.7, only upon satisfaction of the conditions set forth below. Unless and until all conditions set out herein are

satisfied and the City Finance Director so notifies SEAS, SEAS may not issue the SEAS Bonds and this Second OMA Amendment does not take force.

1. The representations and warranties of SEAS set forth in the Bank Loan Agreement shall be true, correct and complete in all material respects as of the date of the closing for the SEAS Bonds.

2. SEAS shall pay, or cause to be paid, in full, the prepayment amount with respect to all EF Fees owing under the OMA as of the closing date for the SEAS Bonds, together with all transactional costs incurred by the City in connection with the Ocean Pavilion Project financing under both the 2022 amendment to the OMA and this Second OMA Amendment, which amount is to be wired to the City on or prior to the SEAS Bonds closing date. The City Finance Director's consent may not be released until receipt of such funds is confirmed by the City.

3. At least 5 days prior to the date of the closing on the SEAS Bonds, the following documents shall have been delivered to the City Finance Director. All of the documents referred to in this subsection must be certified by SEAS as being accurate and complete as of their respective dates and must be in form and substance acceptable to the City Finance Director:

- i. SEAS Bonds Documents ([to define: Loan Agreement, Security Agreement, Funding Agreement, other?])
- ii. Amendment to Ocean Pavilion Funding Agreement [if necessary];
- iii. Amendment to Construction Agreement [if necessary];
- iv. A copy, as of the closing date, of an updated pro forma budget and operating reserves for the Ocean Pavilion Project;
- v. A copy of an updated Sources/Uses of funds for the Ocean Pavilion Project;
- vi. A copy of the Ocean Pavilion Project Fundraising Plan [Capital Campaign Report?] and a progress report regarding pledges received and donations expected to be received, as of the SEAS Bonds closing date; and
- vii. Such other documents as may be reasonably requested by the City Director of Finance.

12. Miscellaneous.

(a) No Remedy Exclusive. No remedy conferred upon or reserved to any party by this Second OMA Amendment is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Second OMA Amendment, the OMA, the Funding Agreement, the Construction Agreement, or any other written agreement between the Parties relating to the Ocean Pavilion Project now or hereafter existing at law or in equity or by statute. Either

party hereto shall be free to pursue, at the same time, each and every remedy, at law or in equity, which it may have under this Agreement, under any of the other abovementioned agreements, or otherwise.

(b) Binding Effect. The OMA, as amended by this Second OMA Amendment and any future amendments, shall inure to the benefit of and shall be binding upon the City and SEAS and may not be assigned, except upon written consent of the City approved by the City Council and in accordance with RCW 35.64.010.

(c) Survival of Rights Upon Termination of Agreement. All payment obligations of SEAS under the OMA, as amended by this Second OMA Amendment and any future amendments, shall survive termination of the OMA, whether at the end of its Term or otherwise.

(d) Waivers and Consents.

1. No delay or omission to exercise any right or power accruing upon any default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. For the exercise of any remedy, it shall not be necessary to give any notice, other than such notice as may be expressly required herein.

2. No waiver of any breach of any covenant or agreement contained herein shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by either party of any covenant, agreement or undertaking, the nondefaulting party may nevertheless accept from the other any payment or payments or performance hereunder without in any way waiving its right to exercise any of its rights and remedies provided for herein or otherwise with respect to any such default or defaults that were in existence at the time such payment or payments or performance were accepted by it.

3. City waivers and consents under this Agreement are effective only if given in the manner described in, and in all other respects consistent with, City ordinances authorizing this Second OMA Amendment or any subsequent amendment to the OMA.

(e) No Rights Created in Third Parties. The terms of this Second OMA Amendment are not intended to establish nor to create any rights in any persons or entities other than the City and SEAS and the respective successors and assigns of each.

(f) Time of Essence. Time and all terms and conditions shall be of the essence of this Second OMA Amendment.

[Signature page follows]

13. Counterparts. This Second OMA 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 Second OMA 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 Second OMA Amendment to be executed in their respective names by their duly authorized officers and have caused this Second OMA Amendment to be dated as of the date set forth on the first page hereof.

THE CITY OF SEATTLE, a Washington municipal corporation

Pursuant to Ordinance _____

SEATTLE AQUARIUM SOCIETY, a Washington non-profit corporation

Pursuant to Board Resolution _____

By _____
Its Director of the Office of the Waterfront
and

By _____
Its President and CEO

By _____
Its Superintendent of Parks and Recreation
and

By _____
Its Director of Finance