

Ordinance No. 121974

Council Bill No. 115399

AN ORDINANCE relating to the Olympic Sculpture Park; authorizing the execution of a Construction and Finance Agreement and an Operation and Maintenance Agreement between the Seattle Department of Parks and Recreation and the Seattle Art Museum, concerning their roles in development, construction, and operation, and maintenance of portions of Alaskan Way Boulevard that will be operated as part of the Olympic Sculpture Park.

CF No. \_\_\_\_\_

Date Introduced:	9-19-05	
Date 1st Referred:	To: (committee)	Government Affairs & Labor
Date Re - Referred:	To: (committee)	
Date Re - Referred:	To: (committee)	
Date of Final Passage:	Full Council Vote: 9-0	
Date Presented to Mayor:	Date Approved: 11/7/05	
Date Returned to City Clerk:	Date Published:	T.O. <input checked="" type="checkbox"/> F.T. <input checked="" type="checkbox"/> D.K. <input checked="" type="checkbox"/>
Date Vetoed by Mayor:	Date Veto Published:	
Date Passed Over Veto:	Veto Sustained:	

# The City of Seattle - Legislative Department Council Bill/Ordinance sponsored by:

## Committee A

popper 3-0 (u) TRRM, etc  
 10-17-05 Amended & Held to 10  
 10-24-05 Hold to 10-31-05  
 10-31-05 Passed AS Amended 9-0 (u)

This file is complete and ready for presentation to Full Council

*Law Department*

Law Dept. Review

OMP Review

City Clerk Review



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ORDINANCE 121974

AN ORDINANCE relating to the Olympic Sculpture Park; authorizing the execution of a Construction and Finance Agreement and an Operation and Maintenance Agreement between the Seattle Department of Parks and Recreation and the Seattle Art Museum, concerning their roles in development, construction, and operation, and maintenance of portions of Alaskan Way Boulevard that will be operated as part of the Olympic Sculpture Park.

WHEREAS, On June 12, 2000, the Seattle Department of Parks and Recreation (DPR) and Seattle Art Museum (SAM) entered into a Design Agreement, beginning a cooperative design effort that resulted in a final design concept for the Olympic Sculpture Park (OSP), including the use of portions of Alaskan Way Boulevard and improvements to Myrtle Edwards Park; and

WHEREAS, DPR and SAM have acknowledged the public benefits from a consistent design philosophy being applied to the OSP and portions of Alaskan Way; and

WHEREAS, the OSP will be free of charge and open to the public; and

WHEREAS, the OSP will create a seamless connection from Belltown to Myrtle Edwards Park; and

WHEREAS, the Construction and Finance Agreement will give SAM the authority to make improvements to Alaskan Way Boulevard and certain areas within Myrtle Edwards Park; and

WHEREAS, the Operations and Maintenance Agreement defines DPR's and SAM's roles in operating and maintaining the public property to Alaskan Way Boulevard and certain areas within Myrtle Edwards Park, which will be improved as part of the OSP project;  
NOW, THEREFORE,



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**BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

Section 1. The Superintendent of Parks and Recreation, or his designee, is authorized to execute an Agreement, substantially in the form of Attachment A, to this ordinance, to delineate the relative roles and responsibilities of the Seattle Art Museum and the Department of Parks and Recreation with respect to construction on the Alaskan Way Boulevard and certain areas within Myrtle Edwards Park, and regarding the dispersal of funds allocated through the Pro Parks Levy program.

Section 2. The Superintendent of Parks and Recreation, or his designee, is authorized to execute an Agreement, substantially in the form of Attachment B, to this ordinance to delineate the relative roles and responsibilities of the Seattle Art Museum and the Department of Parks and Recreation with respect to operation and maintenance of the public property within the Olympic Sculpture Park.

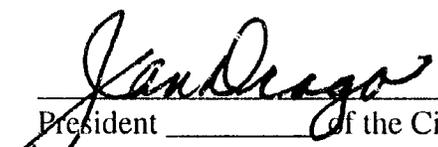
Section 3. Any act consistent with the authority granted by and prior to the effective date of this ordinance is hereby ratified and confirmed.



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Section 4. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

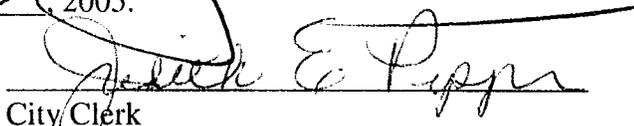
Passed by the City Council the 31<sup>st</sup> day of October, 2005, and signed by me in open session in authentication of its passage this 31<sup>st</sup> day of October, 2005.

  
\_\_\_\_\_  
President \_\_\_\_\_ of the City Council

Approved by me this 7<sup>th</sup> day of November

  
\_\_\_\_\_  
Gregory J. Nickels, Mayor

Filed by me this 9<sup>th</sup> day of Nov., 2005.

  
\_\_\_\_\_  
City Clerk

(Seal)

Attachment A: Construction and Finance Agreement

Attachment B: Operations and Maintenance Agreement



**CONSTRUCTION AND FINANCE AGREEMENT  
BETWEEN THE CITY OF SEATTLE  
AND  
SEATTLE ART MUSEUM FOR WORK ON PUBLIC PARK PROPERTY  
ASSOCIATED WITH OLYMPIC SCULPTURE PARK**

This Agreement is entered into between The CITY OF SEATTLE, a Washington municipality ("City"), and the SEATTLE ART MUSEUM, a Washington nonprofit corporation ("SAM"), and is consented to by the MUSEUM DEVELOPMENT AUTHORITY OF SEATTLE, a public corporation chartered by the City of Seattle ("MDA"), regarding the construction and financing of certain improvements associated with the Olympic Sculpture Park (OSP) on public park property known as Myrtle Edwards Park and Alaskan Way Boulevard.

**RECITALS**

- A. The City approved a tax levy known as The 2000 Neighborhood Parks, Green Spaces, Trails, and Zoo Levy as proposed by Ordinance 120024 and approved by Seattle voters on November 7, 2000. One of the provisions of the 2000 Neighborhood Parks, Green Spaces, Trails, and Zoo Levy was funding for a waterfront connection from Myrtle Edwards Park to the Belltown Area. The design of the Olympic Sculpture Park together with the Grant of Access realizes that objective by incorporating a public connection from Belltown to Elliott Bay via pedestrian pathways (at grade and above grade) and skybridges over public rights of way.
- B. On October 24, 2005, the City of Seattle enacted Ordinance #115429, which granted a Skybridge Permit ("Permit") to SAM to construct and maintain for a period of twenty-five (25) years, and renewable for an additional twenty-five (25) years upon the conditions specified in the aforesaid Permit, two skybridges; one across Elliott Avenue and one across Alaskan Way. As a condition of that Permit, SAM must execute and deliver to the City a Grant of Access, which grants certain rights of public access over and upon the skybridges and pathways within a Public Access Area as defined in the Grant of Access; and
- C. In addition to the above referenced legislation, Grant of Access, and this Construction and Finance Agreement, the City and SAM intend to enter into an agreement regarding the operation and maintenance of certain elements of the OSP, the aforementioned skybridges and pathways, and the City-owned Boulevard.
- D. The City adopted Ordinance No. 121721 on February 2, 2005 designating Alaskan Way to be Alaskan Way Boulevard (a park boulevard) north of Broad Street and south of the northern edge of Bay Street as a "park boulevard" and transferring jurisdiction for the designated area from Seattle Department of Transportation to the Department of Parks and Recreation (DPR) providing for transportation, trail and utility purposes to continue.



E. The above-described Alaskan Way Boulevard shall hereafter, be referred to as "the Boulevard.

F. The Boulevard, as well as portions of Myrtle Edwards Park are supported by a seawall which is a significant structural element supporting lands to its east.

G. The City and SAM have acknowledged the public benefits to be derived from a consistent design philosophy, applied to the Olympic Sculpture Park, the connection to the Boulevard and other improvements including a salmon habitat restoration project at the juncture of the shoreline between the Olympic Sculpture Park and Myrtle Edwards Park by installation of a natural beach, each of which is described in that agreement titled "Design Agreement" executed by the City and SAM in accordance with Ordinance No. 119982 approved June 12, 2000,.

H. Although it will consist of both privately owned and publicly owned property, both the privately owned land and the publicly owned land will be operated by SAM as the Olympic Sculpture Park as provided in the Skybridge Ordinance, the Operation and Maintenance Agreement and the Grant of Access.

I. SAM has committed to contributing \$2 million towards public improvements within the Olympic Sculpture Park as depicted in the 100% Construction Drawings for the OSP.

J. The Museum Development Authority of Seattle, a public corporation chartered by the City of Seattle ("MDA"), is owner of the real property legally described on Exhibit 3, attached to the Grant of Access and incorporated herein ("Parcel D" or "MDA Property"). For general reference only, that parcel is indicated with the letter D on Exhibit 2 to the Grant of Access. MDA acquired the MDA Property from the City subject to use and development restrictions including the requirement that the MDA Property be used and developed only as a sculpture garden, park or other open space as part of the SAM Olympic Sculpture Park ("OSP"), with public access free of charge in perpetuity. MDA also is lessee of the SAM Property under a lease from SAM for the purpose of conducting certain environmental work, subject to a sublease and operating agreement back to SAM. SAM is developing the OSP on the SAM Property and, pursuant to a ground lease from MDA, the MDA Property.

NOW, THEREFORE, in consideration of the Recitals and the mutual promises and provisions hereinafter set forth, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### AGREEMENT

Pursuant to the terms of this Agreement, which is subject to approval by appropriate Ordinance, the delivery of a fully executed Operation and Maintenance Agreement, and conditioned upon delivery by SAM of the Grant of Access called for



under the Skybridge Permit and the completion of those improvements to the OSP set forth in Section 5 of this Agreement, including installation of the Broad Street pathway, the City agrees to pay SAM the sum of \$2.1 as provided herein.

**1. IDENTIFICATION OF PARTIES AND PROPERTY AFFECTED BY THIS AGREEMENT**

A. **Property.** This Agreement pertains to the Olympic Sculpture Park (OSP) consisting of both privately owned and publicly owned lands including portions of Alaskan Way ("the Boulevard"), as described in Ordinance No. 121721, together with portions of Myrtle Edwards Park, all more specifically described in Exhibit A attached hereto and as shown on the Map designated as Exhibit B, also attached.

B. **Parties.** The parties to this Agreement are the City of Seattle, the Seattle Art Museum, which is developing the Olympic Sculpture Park. The MDA is signing the Consent attached hereto.

**2. EXHIBITS TO AGREEMENT**

- A. Exhibit A - Property Description
- B. Exhibit B - Site Map
- C. Exhibit C - Plans and Specifications for construction within Alaskan Way and Myrtle Edwards Park as submitted and permitted for construction by Seattle Department of Planning and Development
- D. Exhibit D – Embayment Plan/ Seawall Buttressing Plan
- E. Exhibit E – Skybridge Ordinance 115429 ("the Permit") including form of Grant of Access
- F. Exhibit G – Operation & Maintenance Agreement

**3. DEFINITIONS**

- A. "City" means The City of Seattle.
- B. "SAM" means Seattle Art Museum.
- C. "OSP" generally means the Olympic Sculpture Park, including both SAM-owned parcels and the city-owed Alaskan Way Boulevard ("the Boulevard").
- D. "DPR" means Seattle Department of Parks and Recreation.
- E. "SDOT" means Seattle Department of Transportation.
- F. "Skybridges" means the two elevated pedestrian and wheelchair accessible walkways which are the subject of the Permit.
- G. "Elliott Avenue Skybridge" means the elevated pedestrian walkway above Elliott Avenue.



- H. "Alaskan Way Skybridge" means the elevated pedestrian walkway above the Burlington Northern Santa Fe Railway (or lower-case railroad) franchise area connecting Broad Street to the Boulevard. The Alaskan Way Skybridge includes the ramp, stairs and abutment where it connects with Broad Street and the Boulevard
- I. "BNSF" means the Burlington Northern Santa Fe Railway franchise area in the Alaskan Way park boulevard.
- J. "ProParks Levy" means The 2000 Neighborhood Parks, Green Spaces, Trails, and Zoo Levy.
- K. "Embayment" means the beach, which will be installed by SAM pursuant to the terms of this Agreement, at the juncture of the shoreline between the Olympic Sculpture Park and Myrtle Edwards Park.
- L. "Boulevard" means that portion of Alaskan Way north of Broad Street and south of the northern edge of Bay Street designated as park Boulevard by Ordinance 121721. The term "the Boulevard" excludes the ramp, stairs, abutment and any other component that are part of the Alaskan Way Skybridge, as defined above
- M. "Seawall Buttress" means the buttressing for the seawall adjoining that portion of the Boulevard to be constructed pursuant to the terms of this Agreement.
- N. "Grant of Access" means an at and above grade pedestrian and wheelchair accessible access area as provided in the Skybridge Ordinance and Grant of Access.
- O. "VEE" means the at and above grade structure stretching between Western Avenue and Alaskan Way, upon which is located the pedestrian and wheelchair accessible pathway traversing the OSP.
- P. "Connection Work" means the work which is the subject of this Agreement to make the Belltown to Waterfront pedestrian connection.

#### 4. TERM

The term of this Agreement shall be five (5) years and shall terminate upon completion of the construction activities called for under its terms. The termination date may be extended by the City for an additional period not to exceed two (2) years, to allow SAM to complete the work called for herein, unless otherwise modified in writing upon mutual agreement of the parties.



## 5. PAYMENT

The work to provide the Belltown to Waterfront connection and the Boulevard improvements consists of all of the following as depicted on the 100% Construction Drawings: the paths (including the Broad Street path) and skybridges linking Western Avenue to the Boulevard and the improvements to the Boulevard, to be constructed on both land owned by SAM and on public property, to create the Belltown to Waterfront connection envisioned in the Pro-Parks 2000 Levy; referred to collectively as the "Connection Work".

- A. Prerequisites to Payment. Upon completion of the construction by SAM of the Connection Work, the City shall pay SAM an amount not to exceed \$2,100,000 for the completed improvements. Payment of the City funds is conditioned upon (a) the execution of and compliance with the material terms of this Agreement, (b) SAM's execution and delivery to the City of the Grant of Access, in the form contained in Exhibit E hereto, (c) the execution of the Operating and Maintenance Agreement attached as Exhibit F hereto; (d) Seattle City Council adoption of ordinances approving each of these Agreements.
- B. Pursuant to the terms of this Agreement, SAM represents and warrants to the City that prior to the commencement of construction of the improvements called for herein, SAM shall have secured all of the funds, financing or other firm commitments and shall have obtained all permits necessary to execute all of the work depicted on the 100% construction drawings as described in this Agreement.
- C. Upon substantial completion of the Connection Work SAM shall within 30 days, submit to the DPR, a detailed written pay request (or invoice) together with such supporting documentation as DPR shall request, demonstrating to the satisfaction of the City that SAM has incurred the expenses identified therein and has completed the Connection Work. Upon Physical Completion of the Connection Work, SAM shall certify to the City that all of the Connection Work of the project has been completed, all payment requests have been delivered to the City and all of the contractors, subcontractors and material men of the project have been paid and all taxes, wages and benefits have been paid or discharged. In the event that the pay request is not complete or is lacking in necessary supporting documentation, DPR shall return the same to SAM identifying the deficiencies in writing and requesting that SAM resubmit the pay request. If the pay request is deemed by DPR to be sufficient, DPR shall inspect the Connection Work, and either accept or reject the Connection Work. In the event that DPR rejects the Connection Work, it shall notify SAM in writing of any deficiency and SAM shall undertake to remedy the deficiency before re-submitting the pay request. The City will make every effort to review and reimburse SAM promptly upon receipt of a fully supported pay request. DPR approval and or payment of any payment request or of any series or all such payment requests shall not relieve SAM or its contractors or subcontractors of any obligation under this Agreement.



6. PUBLIC WORKS

- A. All project components to be constructed or installed on public property shall be constructed as Public Works, except to the extent any work may be exempted by law. Public Works are defined in, and subject to, the laws of the State of Washington and the Seattle Municipal Code. SAM shall cooperate with the City's Department of Executive Administration (DEA) Contract Services to prepare or direct the preparation of all bid packages and manage the bid process. SAM shall be responsible for the generation and management of all documentation necessary to the administration of the project as a Public Work and shall submit the same for approval.
- B. Any and all bids, documentation and processes shall be subject to review and approval by the City's Department of Executive Services Administration (DEA), Contracting Services Division.
- C. Prior to commencement of construction of any portion of the work described in this Agreement that are to be constructed or installed on public property, SAM shall furnish in a form and amount acceptable to the City such surety bonds and proof of insurance as described below in Section 16 of this Agreement ("Insurance and Bonds").
- D. DEA Contracting Services together with project management through DPR shall administer all contract payments made by the City.

7. RIGHT OF ENTRY FOR CONSTRUCTION PURPOSES

This Agreement shall constitute the City's permission to SAM to enter upon and construct the improvements as shown on the attached Exhibits B and C, and to enter Alaskan Way to construct the improvements relating to the new streetcar trolley tracks, station and related facilities. All such work shall be constructed in accordance with the above mentioned "Exhibits" and subject to the conditions noted below. Provided, however, this right of entry and consent to construction shall not relieve SAM of the obligation to obtain any building or construction permit, shoreline permit, or other permit, license or permission otherwise required for the construction of the improvements called for herein.

8. FINAL PLAN REVIEW AND COMMENT

Prior to commencing any construction work, SAM shall provide DPR 100% Construction Drawings (CDs) for final review and comment to assure that final Plans and Specifications conform to City Standards as noted below and to assure that they conform to the agreed upon design. The form and format (including both paper and electronic versions) of the CDs shall be as directed by DPR and SAM shall bear all expenses associated therewith. Within 10 working days, DPR shall either approve the same or



return them for correction. Upon approval, SAM shall submit the approved 100% Construction Drawings to DEA, Contracting Services, for advertising any contract for public bid, to the extent bidding is required. SAM will assign to the City a non-exclusive right, along with SAM, to use the drawings and designs to build the improvements within the Boulevard and the Skybridges, subject to SAM's architects approval. The review and comment supplied by DPR shall not relieve SAM of the obligation to obtain any necessary permits or relieve it of the obligation to conform to applicable design and building codes.

## 9. CONSTRUCTION PHASE

- A. SAM shall not commence construction within the Boulevard or the Alaskan Way Skybridge, until it has been given written Notice to Proceed by DPR. DPR will not issue the Notice to Proceed until all of the conditions of this Agreement have been met and all permits necessary for the construction of the work within Alaskan Way and for the Alaskan Way Skybridge have been issued.
- B. In administering any construction contract relating to the Boulevard and the Alaskan Way Skybridge, SAM shall adhere to the following City processes:
- 1). Reject any work that does not conform to the Contract Documents submitted to DPR. Reject and halt any work that is deemed to be hazardous, in violation of code, or otherwise involve a health or safety issue that jeopardizes a worker or the public at large.
  - 2). Prepare Modification Proposals and Change Orders for approval by DPR. A Modification Proposal is a written proposal originated by SAM, and is required in each instance where SAM intends to alter the appearance, usage or durability, product or feature of the agreed design of any aspect of the work whether or not the same will result in an increase in cost to the City and if so the full amount of such increase, exclusive of taxes. A Change Order is a written directive originated by the City directing SAM to execute additional work and specifying the amount to be allowed therefore, exclusive of taxes. Neither Modification Proposals nor Change Orders shall be deemed to have any effect unless and until they are signed by both DPR and SAM.
  - 3). At the conclusion of the work and prior to the City's Final Acceptance SAM shall furnish DPR with two (2) original complete sets of: Mylar drawings ("record" drawings), reflecting the final "as-built" condition of the Project. When originals are submitted, they shall be on City-approved Mylar. The "record" drawings shall also be provided to DPR in electronic format (Auto CAD 2000 or



later version) on compact discs as vector diagrams and delivered with Mylar drawings. Black background prints are not acceptable. The electronic media shall be compatible with City of Seattle CAD Line Weight and Symbols and additionally SAM shall furnish one CD with all files in PDF format. SAM will assign to the City a non-exclusive right, along with SAM, to use the drawings and designs to build the improvements within the Boulevard and the Skybridges, subject to SAM's architects approval.

- 4). SAM shall review for accuracy and provide to DPR, contractor copies of all maintenance manuals, which may include operating manuals, equipment brochures, paint schedules and material brochures, to DPR, bound in loose leaf binders, appropriately labeled, indexed and tabbed. SAM shall develop and provide, at physical completion, and shall upon completion, furnish the Management Plan as provided in the Operation and Maintenance Agreement.

## 10. PLACEMENT OF ARTWORK

- A. For any work contracted for by SAM after the date of this Agreement that will be located within the Boulevard, the Elliott Avenue Skybridge, the Alaskan Way Skybridge, the Embayment, or Seawall buttress, SAM shall not contract for, nor shall it place any artwork including any works of visual art including any painting, mural, drawing, print, sculpture, mosaic or still photograph, as the same are defined in the Visual Artists Rights Act (VARA) 17 U.S.C. § 101, as now enacted or hereafter modified, , without first having either (i) determined that VARA will allow removal or relocation of the artwork or (ii) obtained from the artist a written waiver and agreement in a form approved by the City, waiving any right to the permanent emplacement of said artwork, and which written waiver and agreement grants to SAM and to the City the right of, removal or relocation of said work. In contracting for any maps, visitor guides or directories, SAM shall require that the contract therefore specifically exclude the same from the defined coverage's afforded artwork by VARA.
- B. The existing agreements for the creation and placement of the fountain entitled, Father and Son, by artist Louise Bourgeois, at the entry plaza with the Boulevard, allow SAM to relocate the work, subject to consultation with the artist and concurrence with the oversight committee. For any other work acquired or contracted for by SAM before the date of this Agreement, SAM will not place any work covered by VARA on the Boulevard, the Elliott Avenue Skybridge, the Alaskan Way Skybridge, the Embayment, or Seawall buttress that cannot be removed or relocated pursuant to VARA or pursuant to the terms of any agreement or waiver with the artist.



- C. SAM will indemnify, defend and hold harmless the City from any claims, actions, suits, liability, loss, costs, expenses or damages of every kind and description arising under VARA for any work placed by or with the permission of SAM on the Boulevard, the Elliott Avenue Skybridge, the Alaskan Way Skybridge, the Embayment, or Seawall buttress.

THIS NEXT SECTION 11 NOW COMBINED WITH SECTION 5

11. EQUAL OPPORTUNITY AND OUTREACH

As it pertains to any portions of the work executed on publicly owned land,

- A. As it pertains to activity governed by this Agreement, SAM shall not discriminate against any employee or applicant for employment because of race, religion, creed, age, color, sex, marital status, sexual orientation, gender identity, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap unless based upon a bona fide occupational qualification. SAM shall take affirmative action to ensure that applicants are employed, and the employees are treated during employment, without regard to their creed, religion, race, age, color, sex, national origin, marital status, political ideology, ancestry, sexual orientation, gender identity, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training, including apprenticeship. SAM shall post in conspicuous places, available to employees and applicants for employment, notices as provided by the City of Seattle setting forth the provisions of this nondiscrimination clause.
- B. SAM shall encourage the use of women and minority employees and apprentices on this project and encourage outreach efforts in employment opportunities. Outreach efforts may include use of targeted solicitation lists, advertisements in publications directed to underrepresented communities, providing student internships or apprentice opportunities, noting SAM's Equal Employment Opportunity (EEO) policy in solicitations, emphasizing EEO and outreach policies within SAM and using the services of available minority community and public organizations to perform outreach



12. NONDISCRIMINATION IN EMPLOYEE BENEFITS

To the extent SMC Ch. 20.45 is applicable to this Agreement on any portions of the work to be executed on publicly owned land; SAM shall have the following obligations:

- A. Compliance With SMC Ch. 20.45: SAM, as it pertains to any construction activity governed by this Agreement, shall comply with the requirements of SMC Ch. 20.45 and Equal Benefits Program Rules implementing such requirements, under which the SAM is obligated to provide the same or equivalent benefits ("equal benefits") to its employees that are involved in the construction activity governed by this Agreement with domestic partners as the SAM provides to its employees with spouses. At the City's request, the SAM shall provide complete information and verification of the SAM's compliance with SMC Ch. 20.45. To the extent SMC Ch. 20.45 is applicable to this Agreement, then failure to cooperate with such a request shall constitute a material breach of this Agreement, after delivering a written notice and expiration of the time for under Section 25 (Default) below. *(For further information about SMC Ch. 20.45 and the Equal Benefits Program Rules call (206) 684-0430 or review information at <http://cityofseattle.net/contract/equalbenefits>.)*
  
- B. Remedies for Violations of SMC Ch. 20.45: : If and to the extent SMC Ch. 20.45 is applicable to this Agreement, then any violation of this Section 13 shall be a material breach of this Agreement for which the City, after delivering a written notice and expiration of the time for under Section 25 (Default) below, may:
  - 1). Require SAM to pay actual damages for each day that SAM is in violation of SMC Ch. 20.45 during the term of the Agreement; or
  - 2). Terminate the Agreement; or
  - 3). Impose such other remedies as specifically provided for in SMC Ch. 20.45 and the Equal Benefits Program Rules promulgated there under.

13. OTHER LEGAL REQUIREMENTS

- A. General Requirement: SAM, at no expense to City shall comply with all applicable laws of the United States and the State of Washington, the Charter and ordinances of City; and rules, regulations, orders, and directives of their administrative agencies and the officers thereof. Without limiting the generality of this paragraph, SAM shall specifically comply with the following requirements of this section.



IT IS DONE TO THE QUANTITY OF THE DOCUMENT.

- B. Licenses and Similar Authorizations: SAM at no expense to City, shall secure and maintain in full force and effect during the term of this Agreement all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof.
- C. Use of Recycled Content Paper: SAM shall use, whenever commercially reasonable and practicable, recycled content paper on all documents submitted to City in accordance with SMC 20.60.218.
- D. Americans With Disabilities Act: SAM shall comply with all applicable provisions of the Americans With Disabilities Act of 1990 (ADA) in performing its obligations under this Agreement. Failure to comply with the provisions of the ADA shall be a default subject to the notice and cure provisions of Section 25 below.
- E. Fair Contracting Practices Ordinance: SAM shall comply with the Fair Contracting Practices Ordinance of the City of Seattle (Ordinance 119601), as amended. Conduct made unlawful by that ordinance constitutes a breach of contract. Engaging in an unfair contracting practice may also result in the imposition of a civil fine or forfeiture under the Seattle Criminal Code as well as various civil remedies.

14. INDEMNIFICATION

- A. SAM, by entering into this Agreement, hereby releases the City from any and all claims resulting from damage or loss to its own property and does covenant and agree for itself, its successors and assigns, The City of Seattle, to at all times indemnify, defend and save harmless The City of Seattle from all claims, actions, suits, liability, loss, costs, expenses or damages of every kind and description (excepting only such damages that may result from the sole negligence of the City), which may accrue to, or be suffered by, any person or persons and/or property or properties, including without limitation, damage or injury to SAM, its officers, agents, employees, contractors, invitees, tenants and tenants' invitees, licensees or its successors and assigns, by reason of the maintenance operation or use of improvements or any portion thereof made pursuant to this or any other agreement between the parties hereto regarding the OSP.
- B. In any action against the City of Seattle, by any employee of SAM, its contractor, subcontractors, sub-subcontractors, agents, or anyone directly or indirectly employed by any of them, the indemnification obligation of this Section shall not be limited by a limit on the amount or type of damages, compensation, or benefits payable by or for SAM, its contractor or any subcontractor under RCW Title 51, the Industrial Insurance Act, or any other employee benefit acts. Likewise, any City indemnification in the event of concurrent negligence shall not be limited by RCW Title 51.



In addition, SAM and the City each waives immunity as to the City of Seattle only or SAM only, as applicable, in accordance with RCW Title 51 and shall require that in any construction contract, that it shall require its contractor to waive such immunity.

- C. If it is determined by a court of competent jurisdiction, that RCW 4.24.115 applies to this ordinance or that other concurrent negligence has occurred, then in the event claims or damages are caused by or result from the concurrent negligence of:
- 1). The City, its agents, contractors or employees; or
  - 2). SAM, its agents, contractors, or employees.

Then each party shall indemnify the other to extent of that party's negligence.

15. **INSURANCE AND BONDS**

- A. **INSURANCE.** The following minimum insurance requirements shall apply to this Agreement.
- 1). **Coverage's and Limits of Liability**
    - a). **SAM Liability Insurance.** SAM, at no expense to the City, shall maintain continuously throughout the Term of this Agreement Commercial General Liability (CGL) and Automobile Liability insurance with a limit of liability of not less than \$10,000,000 each occurrence of combined single limit bodily injury and property damage for claims occurring on, in or about the OSP property.
    - b). **SAM Property Insurance.** During the course of construction, SAM shall maintain all builders risk property insurance on the improvements within the Boulevard with a limit of liability of not less than the sum of the total construction contract values, the total design consultant contract values and sales tax. SAM shall cause its property insurer(s) to provide an insurer's waiver of subrogation in favor of the City.
  - 2). **Consultant and Contractor Insurance.**
    - a). SAM shall require that all design team members, construction management consultants, program management consultants and environmental consultants on the project with whom it contracts that render professional



services on the OSP project maintain professional liability insurance with a minimum limit of liability of \$1,000,000 each claim or any greater limit that SAM deems prudent.

- b). During the course of construction, SAM shall cause all contractors to maintain CGL and Automobile Liability and Umbrella/Excess insurance as required with a limit of liability of not less than \$5,000,000 each occurrence of combined single limit bodily injury and property damage for claims occurring on, in, or about the OSP property. CGL insurance shall include Premises/Operations, Products/Completed Operations, Contractual Liability, Independent Contractors and Stop Gap/Employers Liability. SAM shall, in addition, incorporate subparagraph B. herein ("Terms and Conditions") in all contractor agreements.
- c). During the course of construction, SAM shall cause all contractors to maintain Worker's Compensation insurance in accordance with the provisions of Title 51 of the Revised Code of Washington (RCW) and contractors shall be responsible for ensuring that workers compensation insurance is in force for any subcontractor. Additionally, if the scope of work requires working in, on or around a navigable waterway, the contractor and any subcontractor, if legally required to do so, shall maintain United States Longshore and Harbor Workers Act (USL&H) coverage and Jones Act in compliance with Federal Statutes. If the contractor is qualified as a self-insurer in accordance with chapter 51 RCW, it shall so certify to the SAM and to the City.

3). Terms and Conditions

- a). As respects SAM and contractor liability insurance, the City shall be an additional insured for primary and noncontributory limits of liability as documented by a copy of an additional insured endorsement or a copy of blanket additional insured policy wording.
- b). Limits of liability referenced herein are minimum limits only and shall not be construed as limiting neither the liability of SAM or any SAM contractor nor the liability of any insurer of SAM or any SAM contractor.



- c). Insurers shall have a minimum A- VII A.M. Best's rating unless procured under the provisions of chapter 48.15 RCW or otherwise approved by the City.
- d). Insurers shall provide 45 day written notice of cancellation to the City in accordance with chapter 48.18.290 RCW, except 30 days for insurance policies procured under the provisions of chapter 48.15 RCW and 10 days for non-payment of premium.
- e). Current certification of insurance, including a copy of an additional insured endorsement or a copy of blanket additional insured policy wording, shall be maintained on file with the City at the address specified in Section 15. ("Notices") of this Agreement.

**B. BONDS**

Prior to the commencement of any work under the provisions of this Agreement, SAM shall furnish the following:

- 1). Payment and performance bonds for 100% of the estimated construction cost of the work to be performed for the Alaskan Way Skybridge, including all Change Orders and state sales tax, in a form acceptable to the City. No payment or performance bond is required if the Contract Amount is \$25,000 or less and Contractor agrees that the City may, in lieu of the bond, retain 50% of the Contract Amount for the period allowed by RCW 39.08.010.

**C. ADDITIONAL BOND SECURITY**

In addition to the foregoing, and upon notice from the City, SAM shall require any contractor to promptly furnish additional security required to protect the City and persons supplying labor or materials required by the Contract Documents if:

- 1). The City has a reasonable objection to the surety; or
- 2). Any surety fails to furnish reports on its financial condition if requested by the City.

**16. ENVIRONMENTAL INDEMNITY**

The parties acknowledge the existing Environment Agreement between the City and SAM dated December 7, 1999 ("Environmental Agreement"). No change of rights, obligations, or responsibilities under the existing Environmental Agreement shall occur as a result of this Agreement, except as expressly provided in this section. SAM shall be responsible for any and all costs that arise from or are related to soil removal, if required,



and recapping of soil, if required, to the extent required to complete SAM's construction of the OSP. Such costs include, but are not limited to, disposal of contaminated soil or groundwater that is removed during construction replacement of material that is capping contaminated soil and is disturbed during construction mitigation measures required by permitting authorities, and worker safety measures required for construction on a contaminated site. The Consent Decree means the "Prospective Purchaser Consent Decree Re: The Former Unocal Seattle Marketing Terminal Property, Seattle, WA, entered under King County Superior Court No. 99-2-50226-4 SEA on December 7, 1999. The Consent Decree as stipulated above will be held in place until such time the project is complete, at which time the restrictive covenants will remain in perpetuity.

17. EQUALITY IN CONTRACTING:

SAM shall comply with the requirements of the City's "Equality in Contracting Ordinance" (SMC 20.42.010 et seq). In addition to the other requirement of that act, prior to advertising to bid any portion of the Connection Work executed on publicly owned property, SAM and the Director of DPR shall adopt a plan, developed in consultation with the Director, to afford Women and Minority Businesses the maximum practicable opportunity to directly and meaningfully participate on City Contracts. The plan shall include specific measures the Contract awarding authority will undertake to increase the participation of Women and Minority Businesses. Each Contract awarding authority shall make efforts to comply with any goals established in the plan for that Contract awarding authority under these provisions for public works, consultant services and procuring goods or services. The Contract awarding authority may also establish aspiration goals for the participation of Women and Minority Businesses in a particular City Contract on a case-by-case basis.

18. GOVERNING LAW

Except as provided in the preceding sentence, the City and SAM retain all rights and obligations as set forth in the Environmental Agreement. This Agreement shall be governed by the laws of the State of Washington. Venue of any action brought by one party against the other under this Agreement shall be in King County Superior Court.

19. NOTICES

All notices required to be given under this Agreement shall be in writing and either delivered personally or sent by United States Certified Mail, postage prepaid, return receipt requested, to the appropriate addresses listed below or at such other address as shall be provided by written notice. Notice shall be deemed communicated to the parties 3 business days from the time of mailing if mailed as provided in this section. For



convenience purposes only, and not to satisfy the requirement to give written notice, copies of notices also may be given by other means.

If to SAM:                   Seattle Art Museum  
                                  P O BOX 22000  
                                  Seattle, WA 98122  
                                  Telephone: 206 654-3100  
                                  FAX: 206 654-3135  
                                  Attn: Director

If to City:                   City of Seattle  
                                  Department of Parks and Recreation  
                                  100 Dexter Avenue N.  
                                  Seattle, WA 98109  
                                  Attn: Superintendent of Parks and Recreation

20.                   **CONTRACTUAL RELATIONSHIP**

The relationship of SAM to the City by reason of this Agreement shall be that of an independent contractor. This Agreement does not authorize SAM to act as the agent or legal representative of the City for any purpose whatsoever. SAM is not granted any 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.

21.                   **NO CONFLICT OF INTEREST**

SAM confirms that SAM does not have a business interest or a close family relationship with any City officer or employee who was, is, or will be involved in the consultant selection, negotiation, drafting, signing, administration, or evaluating SAM's performance. As used in this section, the term "SAM" shall include any employee of SAM who was, is, or will be involved in the negotiation, drafting, signing, administration, or performance of the Agreement. As used in this section, the term "close family relationship" refers to the following: spouse or domestic partner; any dependent parent, parent-in-law, child, son-in-law, or daughter-in-law; or any parent, parent-in-law, sibling, uncle, aunt, cousin, niece or nephew residing in the household of a City officer or employee described above.

22.                   **ERRORS AND OMISSIONS; CORRECTIONS**

SAM shall be responsible for the professional quality, technical accuracy, and coordination of all designs, drawings, specifications, and other services furnished by or on the behalf of SAM under this Agreement. SAM, without additional compensation, shall correct or revise any errors or omissions in the designs, drawings, specifications, and/or other work immediately upon notification by the City at a level commensurate with the professional quality, technical accuracy and coordination maintained on similar



projects in the State of Washington. The obligation provided for in this section with respect to any acts or omissions during the term of this Agreement shall survive any termination or expiration of this Agreement.

23. INTENTIONALLY OMITTED

24. DEFAULT, CURE, REMEDIES, DISPUTE RESOLUTION

- A. **Default and Cure.** Upon being given written notice of failure to perform or comply with a term or condition of this Agreement, the notified party shall promptly undertake such reasonable steps as shall be necessary to cure the specified failure. If that party fails to promptly undertake reasonable steps to perform or comply, or fails to cure the specified failure within 60 days after written notice is given, that party shall be deemed to be in default of this Agreement. Provided, however, that in the event that the parties agree that cure cannot reasonably occur within such 60-day period, then the Parties shall agree upon a reasonable period of time for the defaulting party to affect a cure. If at the end of that additional period of time cure has not been made, that party shall be deemed in default of this Agreement. Failure to cure after the applicable time period shall be an "Event of Default." If the parties are participating in dispute resolution under Section 25(D), then the time period for cure shall not commence until completion of the dispute resolution.
- B. **Receiver.** The appointment of a receiver to take possession of all or substantially all of the assets of SAM or other action taken or suffered by SAM under any bankruptcy, reorganization, or other statute of similar nature, if such receiver or action has not been released, discharged, dismissed, or vacated within 60 days, shall constitute a breach of this Agreement, and the breaching party shall be in default of this Agreement.
- C. **Remedies.** If there is an uncured Event of Default of this Agreement, then the non-defaulting party shall have all rights and remedies at law or in equity. If the uncured Event of Default relates to a fundamental obligation under this Agreement, then the non-defaulting party shall have the right to terminate this Agreement. Any proposed termination due to an uncured Event of Default by SAM shall require compliance with Ordinance No. 118477 (Initiative 42). Upon any termination by the City for an uncured SAM Event of Default, the City in its discretion may retain the park improvements as constructed within the Boulevard and Alaskan Way Skybridge, but not any artwork, for the use of the public, or may require SAM to demolish said improvements



and restore the site to its condition at the time of the execution of this Agreement. SAM shall remove all art works from public property within 60 days of the termination of the Agreement and shall indemnify the City against any and all losses related to such art works during the removal period and shall, in addition to the obligations arising under the indemnity provisions of this Agreement, indemnify, defend save and hold the City harmless from any claim, defense or other legal action arising under the Visual Artists Rights Act (VARA) 17 U.S.C. § 101, as now enacted or hereafter modified.

- D. **Dispute Resolution.** In the event that any dispute or misunderstanding arising under this Agreement concerning SAM's or the City's performance cannot be resolved through amicable negotiations, between SAM's Project Manager and the City's Project Manager, the matter shall be referred to the Superintendent, Seattle Parks & Recreation Department and SAM's senior executive(s). If such officials do not agree upon a decision, the parties shall then submit the matter to a non-binding alternate dispute resolution process.

#### DELETED SECTION 26 TO ELIMINATE REDUNDANCY

##### 25. PUBLIC SAFETY

During construction within the Boulevard, SAM, its contractor or agent shall provide such security measures as deemed appropriate to protect public safety, including, but not limited to, vehicle or pedestrian barricades, fencing, flaggers or other traffic controls, as necessary.

##### 26. PUBLIC ACCESS DURING CONSTRUCTION

- A. SAM shall ensure safe and continuous public access over the Boulevard to all trail users including, but not limited to pedestrians, bicyclists and others at all times during the construction of the improvements described herein, but subject to temporary closure in coordination with DPR, by SAM when prudent for safety during construction activities. Adequate, safe detours throughout the Boulevard and Myrtle Edwards Park, or temporary closures, will be provided as circumstances merit. SAM will provide project signage and public notice along all trails at least one (1) month prior to the start of any construction activity. Signs shall be erected facing the traveled portions of the Boulevard providing information concerning the work and the use of the Boulevard. Signs will contain information regarding any notices of detour or other relevant information. Signs shall be no smaller than 24 by 36 inches, weather resistant, constructed of ½ inch MDO (plywood) painted white with black lettering.



- B. During construction, SAM shall also ensure safe public access over the Boulevard to "Special Events," including but not limited to the Fourth of July celebration, City approved festivals and such other events that may be approved by the City's Special Events Committee.

27. LOCKS, CITY MAINTENANCE ACCESS, AND EMERGENCY ACCESS

SAM shall provide keys to gates and other barriers that may be installed throughout the Boulevard portion of the OSP to the DPR Engineer for the purpose of providing easy access to Myrtle Edwards Park and other adjacent properties for maintenance purposes and for any inspection or testing that may be required. Further, SAM shall provide Master Keys to Seattle Police and Fire Departments to allow emergency access during hours that the OSP may be closed to public access.

28. HAZARDOUS MATERIALS STORAGE AND USE

SAM shall not store any hazardous materials such as, but not limited to, pesticides, herbicides, paints, thinners, rodenticides, gasoline or other fuels on, or in, any area accessible to the public. No hazardous materials shall be stored on the Alaskan Way portion of the OSP. Any and all uses of hazardous materials within the Boulevard shall be consistent with Seattle Parks and Recreation Department's Best Management Practices.

29. EMERGENCIES

SAM shall respond to emergencies by contacting the appropriate emergency service providers such as Police, Fire, etc. The City shall provide SAM with appropriate contact names and telephone numbers for response to emergencies involving damage to City property, reports of incidents of criminal activity or other emergencies occurring during normal working hours. Incidents occurring after normal working hours (5:00 p.m. through 8:00 a.m.) affecting City property, except the Skybridges, should be reported to the DPR Duty Officer at (206) 915-6249 or (206) 982-4583. Incidents related to the Skybridges should be reported to Seattle Department of Transportation at 684-0391 between the hours of 8:30 a.m. and 4:30 p.m., and to 684-ROAD (7623) after hours, weekends and holidays. Incidents involving hazardous materials or other environmental conditions posing a threat to human life or health should immediately be reported by telephone to the 911 dispatcher.

30. STANDARDS, SPECIFICATIONS AND PLANS

All construction related activities undertaken pursuant to this Agreement will be consistent with the approved 100% Construction Drawings.



31. PUBLIC INVOLVEMENT

During construction, SAM shall provide effective and ongoing public notice of events related to the construction project contemplated in this Agreement.

32. 30. UTILITIES

The Boulevard and Myrtle Edwards Park are underlain or otherwise burdened with various public utilities including but not limited to electric utility lines, gas lines, storm drainage, combined sewer outflows, sewers and possibly others. SAM, its contractors and sub-contractors shall be solely responsible for the protection of underground utilities from damage caused by SAM's construction activities and shall comply with all applicable laws and rules relating to the protection of underground utilities, including without limitation RCW 19.122.010, et. seq. SAM agrees to have its contractors and subcontractors take such steps as are necessary to protect the public's safety and use of the utilities during and after the time of construction. In the event that any underground utilities are damaged by SAM's construction activities, SAM shall be responsible for the cost of any repair. To the extent that utilities are required to be relocated to accommodate the construction project contemplated in this Agreement, SAM shall bear full responsibility for all expenses and liabilities related to said relocations. Further, SAM shall require its contractors, subcontractors, employees and others engaged in excavation at the site to call "dial a dig" (1-800-424-5555) at least 24 hours prior to any required excavation. Provided, however, that reliance on a locate service shall not relieve SAM and its contractors and subcontractors of liability for any damage caused to any such utilities.

33. INSPECTION

- A. City will undertake such quality assurance inspections as it deems necessary to confirm compliance with this agreement.
- B. SAM will be responsible for assuring free and regular access to all City inspectors responsible for assuring the quality of all improvements and compliance with all applicable regulations, codes, ordinances or other effective instruments of law. SAM will assure that the Plans and Specifications attached hereto as Exhibit C are implemented and inspected consistent with City Inspection. Further SAM will be responsible for any and all materials-testing and laboratory work necessary to ensure the quality and safety of the improvements as installed and all such testing and analysis shall be carried out consistent with applicable City standards for such testing and analysis.



34. PLANT SELECTION, INSTALLATION, AND ESTABLISHMENT

Notwithstanding the Plans and Specifications attached as Exhibit C, SAM shall also ensure that the installation of all landscaping within the Boulevard will be accomplished consistent with the following: All plants will be selected from healthy stock, free of diseases and defects; all plants will be appropriately sized at planting to realize maximum coverage and proper plant health in the minimum amount of time reasonable for the species; soil will be appropriate to the species selected and amended accordingly; and irrigation will be adequate and appropriate to the species and planting objectives defined in the landscaping plans. Any and all contracts entered into by SAM for planting within Alaskan Way shall include a three (3) year plant establishment warranty. SAM's plant maintenance obligations after acceptance of the Connection Work by the City are set forth in the Operations and Maintenance Agreement.

35. AUDIT

Upon request, SAM shall permit the City, and any other governmental agency involved in the funding of the project ("Agency"), to inspect and audit all pertinent books and records of SAM, any SAM contractor, or any other person or entity that performed work in connection with or related to the OSP, at any and all times deemed necessary by the City or Agency, including up to six years after the final payment or release of withheld amounts has been made under this Agreement. Such inspection and audit shall occur in King County, Washington or other such reasonable location as the City or Agency selects. SAM shall supply the City with, or shall permit the City and/or Agency to make, a copy of any books and records and any portion thereof. SAM shall ensure that such inspection, audit and copying right of the City and Agency is a condition of any subcontract, agreement or other arrangement under which any other person or entity is permitted to perform work under this Agreement.

36. PROJECT COMPLETION

Upon completion of construction of the Boulevard and the Alaskan Way Skybridge, SAM will notify the City's project manager at DPR in writing, and DPR shall make its final inspection. If there are deficiencies in either the work or other performance required of SAM under this Agreement, DPR shall prepare and deliver to SAM, "punch lists" defining such items as it may deem incomplete or unsatisfactory, whereupon SAM shall undertake to remedy all noted deficiencies, whereupon it shall re-notify DPR that the work is completed. At such time as all of the Connection Work and other performance required of SAM under this Agreement is determined by DPR to be completed, the City shall prepare and deliver a written notice of completion to SAM.



## MISCELLANEOUS PROVISIONS

- A. **Amendments:** No modification of this Agreement shall be effective unless in writing and signed by an authorized representative of each of the parties hereto.
- B. **Binding Agreement:** This Agreement shall not be binding until signed by both parties. The provisions, covenants and conditions in this Agreement shall bind the parties, their legal heirs, representatives, successors, and assigns.
- C. **Applicable Law/Venue:** This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any action brought hereunder shall be in the Superior Court for King County.
- D. **Remedies Cumulative:** Rights under this Agreement are cumulative and nonexclusive of any other remedy at law or in equity.
- E. **Captions:** The titles of sections or other divisions of this Agreement are for convenience only and do not define or limit the contents.
- F. **Severability:** If any term or provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- G. **Waiver:** No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Neither the acceptance by the City of any performance by the Consultant after the time the same shall have become due nor payment to the Consultant for any portion of the Connection Work shall constitute a waiver by the City of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by the City, in writing.
- H. **Entire Agreement:** This document, along with any exhibits and attachments, constitutes the entire agreement between the parties with respect to the financing and construction of the OSP Park improvements; separate agreements have been prepared related to Skybridges, and Maintenance and Operations. No verbal agreement or conversation between any officer, agent, associate or employee of the City and any officer, agency, employee or associate of the Consultant prior to the



execution of this Agreement shall affect or modify any of the terms or obligations contained in this Agreement.

- I. **Negotiated Agreement:** The parties acknowledge that this is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.
  
- J. **Time of Essence; Force Majeure:** Time is of the essence of this Agreement. Any delay, stoppage, or prevention of a party's performance ("Delay") under this Agreement due to Force Majeure shall excuse the performance of the party affected for a period of time equal to the Delay. However, the parties shall take reasonable steps to minimize the length of Delay. "Force Majeure" shall mean a Delay attributable to any strike or other labor or industrial disturbance, civil disturbance, inability to secure customers, materials, supplies, or labor through ordinary sources, any changes in applicable laws or the interpretation thereof, or any lightening, earthquake, fire, or other cause beyond the reasonable control of the party for whom performance is required or its contractors or representatives.
  
- K. **Third Party Beneficiaries:** There are no third-party beneficiaries to this Agreement

IN WITNESS WHEREOF, in consideration of the terms, conditions, and covenants contained herein, or attached and incorporated and made a part hereof, the parties have executed this Agreement by having their representative's affix their signatures below.

Dated: \_\_\_\_\_, 2005

**CITY: THE CITY OF SEATTLE**

By: \_\_\_\_\_  
Name: Greg Nickels  
Title: Mayor, signing by authority of Ordinance No. \_\_\_\_\_  
Date: \_\_\_\_\_

**SAM: SEATTLE ART MUSEUM, A Washington nonprofit corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Chairperson of Board of Trustees  
Date: \_\_\_\_\_



DEVELOPMENT AUTHORITY

the title owner of the MDA Property (Parcel  
the SAM Property (Parcels A and B), as  
of consenting to the terms and conditions  
SAM. In addition to SAM's rights under the  
MDA hereby consents to SAM's entry upon,  
movements upon the MDA Property and the  
rights to SAM's acting on its behalf in all  
implementation of the terms of this Agreement.  
provisions under this Agreement to SAM or to  
execute the Grant of Access.

CITY OF SEATTLE,  
City of Seattle

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THE ORIGINAL, IT IS DUE TO THE QUALITY OF THE DOCUMENT.

IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THE ORIGINAL, IT IS DUE TO THE QUALITY OF THE DOCUMENT.



**CONSENT BY MUSEUM DEVELOPMENT AUTHORITY**

The MDA is signing this Consent as the fee title owner of the MDA Property (Parcel D) and as lessee of that certain lease for the SAM Property (Parcels A and B), as described in Recital J, for the sole purpose of consenting to the terms and conditions of this Agreement between the City and SAM. In addition to SAM's rights under the ground lease for the MDA Property, the MDA hereby consents to SAM's entry upon, construction of and operation of the improvements upon the MDA Property and the SAM Property. The MDA hereby consents to SAM's acting on its behalf in all matters related to the execution and implementation of the terms of this Agreement. The MDA shall have no liability or obligations under this Agreement to SAM or to the City, except for MDA's agreement to execute the Grant of Access.

**MUSEUM DEVELOPMENT AUTHORITY OF SEATTLE,**  
a public corporation chartered by the City of Seattle

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Print Title: \_\_\_\_\_

October 31, 2005



# **Construction and Finance Agreement Exhibits**



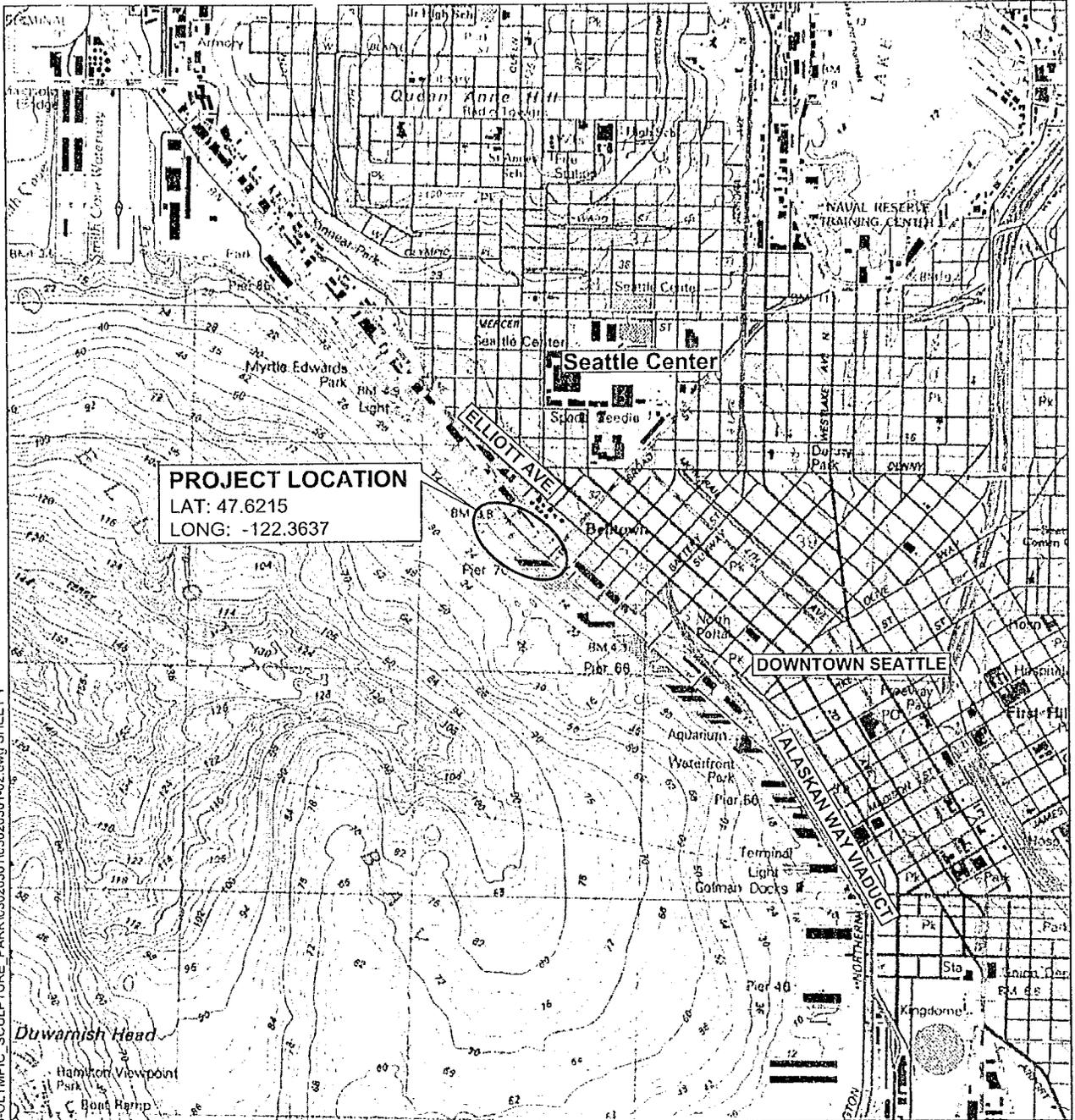
# EXHIBIT A

All that portion of Alaskan Way northerly of a line following the production of the northern boundary of Broad Street as it crosses the intersection of Broad Street and Alaskan Way, as shown on Supplemental Sheet Nos. 25 & 26 of Vol. 1 Plat of Seattle Tidelands as submitted by the City Council of the City of Seattle pursuant to Resolution No. 67, adopted February 1, 1897, on file in the office of the Commissioner of Public Lands at Olympia, Washington and southerly of southerly of a line following the production of the northerly line of Bay Street across the intersection of Bay Street and Alaskan Way and also shown on said map of Seattle Tidelands. Together with that portion of Myrtle Edwards Park described as Lots 8 - 11 inclusive, Block 167, Supplemental Sheet No.25 of Vol. 1 Plat of Seattle Tidelands in King County, Washington as shown on the official maps submitted by the City Council of the City of Seattle pursuant to Resolution No. 67, adopted February 1, 1897, on file in the office of the Commissioner of Public Lands at Olympia, Washington.

Containing 29865 sf



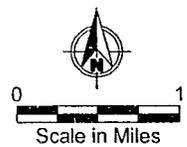
# EXHIBIT B



K:\Jobs\030203-OLYMPIC SCULPTURE PARK\0302030103020301-02.dwg SHEET 1

Sep 29, 2004 11:23am cdaavidson

VICINITY MAP



PURPOSE: CREATE NEARSHORE HABITAT  
 DATUM: MLLW = 0.0  
 ADJACENT PROPERTY OWNERS:  
 CITY OF SEATTLE

NAME: OLYMPIC SCULPTURE PARK  
 REFERENCE #:

IN: SEATTLE/ELLIOTT BAY  
 AT: MYRTLE EDWARDS PARK  
 COUNTY OF: KING STATE: WA  
 APPLICANT: SEATTLE ART MUSEUM  
 SHEET: 1 OF 20 DATE: SEPT 2004



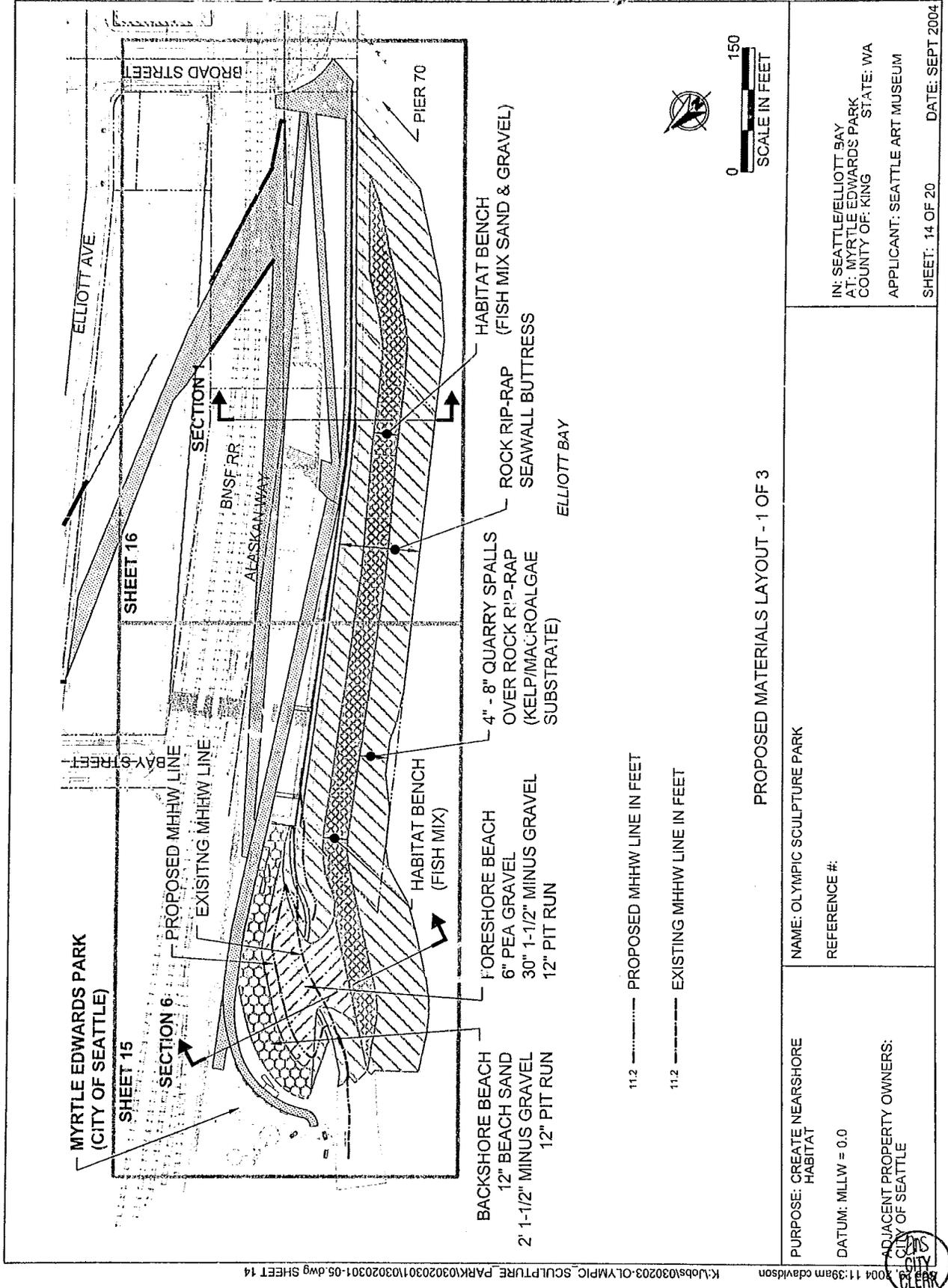
Ordinance 121974

14 sheets **EXHIBIT C**  
**OVERSIZED MAPS**

for 35 mm filming

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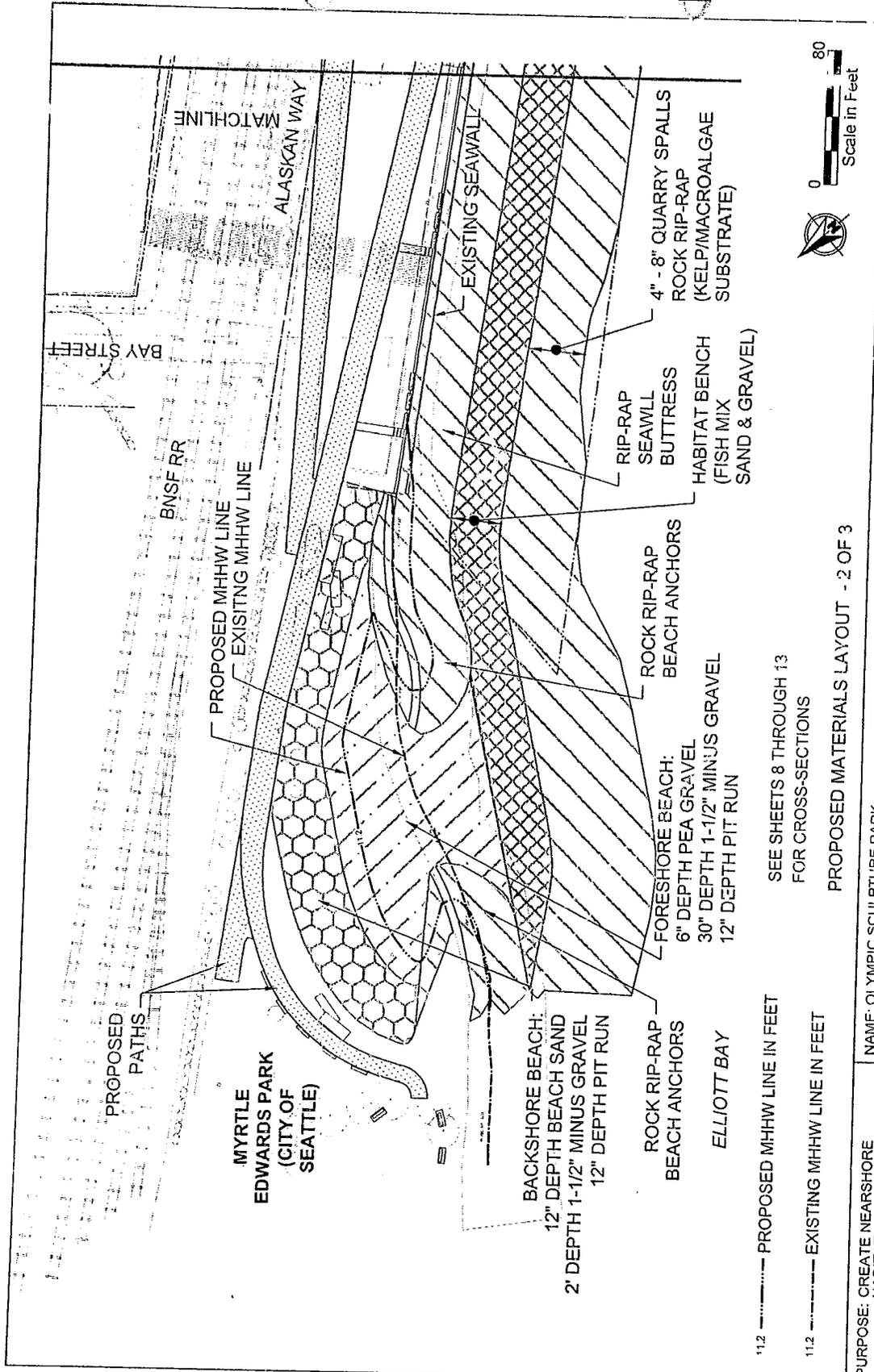
# Seawall Buttressing Plan



PROPOSED MATERIALS LAYOUT - 1 OF 3

<p>PURPOSE: CREATE NEARSHORE HABITAT</p> <p>DATUM: MLLW = 0.0</p> <p>ADJACENT PROPERTY OWNERS: CITY OF SEATTLE</p>	<p>NAME: OLYMPIC SCULPTURE PARK</p> <p>REFERENCE #:</p>	<p>IN: SEATTLE/ELLIOTT BAY AT: MYRTLE EDWARDS PARK COUNTY OF: KING STATE: WA</p> <p>APPLICANT: SEATTLE ART MUSEUM</p> <p>SHEET: 14 OF 20 DATE: SEPT 2004</p>
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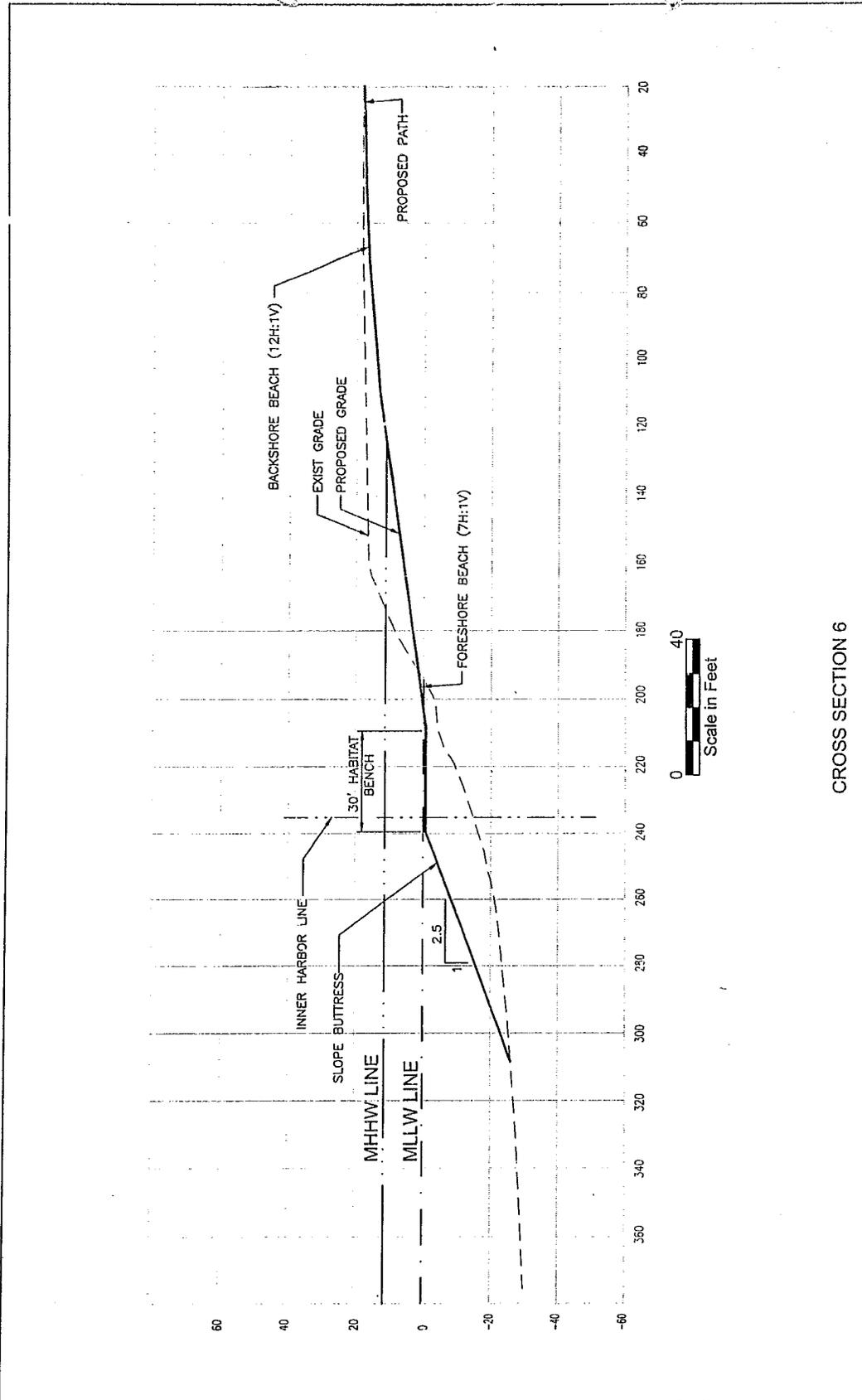


SEE SHEETS 8 THROUGH 13 FOR CROSS-SECTIONS

PROPOSED MATERIALS LAYOUT - 2 OF 3

PURPOSE: CREATE NEARSHORE HABITAT DATUM: MLLW = 0.0	NAME: OLYMPIC SCULPTURE PARK REFERENCE #:	IN: SEATTLE/ELLIOTT BAY AT: MYRTLE EDWARDS PARK COUNTY OF: KING STATE: WA APPLICANT: SEATTLE ART MUSEUM
ADJACENT PROPERTY OWNERS: CITY OF SEATTLE		SHEET: 15 OF 20 DATE: SEPT 2004

CLERK



CROSS SECTION 6

<p>PURPOSE: CREATE NEARSHORE HABITAT</p> <p>DATUM: MLLW = 0.0</p> <p>ADJACENT PROPERTY OWNERS: CITY OF SEATTLE</p>	<p>NAME: OLYMPIC SCULPTURE PARK</p> <p>REFERENCE #:</p>	<p>IN: SEATTLE/ELLIOTT BAY NEAR: MYRTLE EDWARDS PARK COUNTY OF: KING STATE: WA</p> <p>APPLICANT: SEATTLE ART MUSEUM</p> <p>SHEET: 13 OF 20 DATE: SEPT 2004</p>
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ORDINANCE 121970

AN ORDINANCE relating to the Olympic Sculpture Park, granting to the Seattle Art Museum permission to construct, maintain and operate two (2) skybridges for pedestrian access over and across: 1) Elliott Avenue between Bay Street and Broad Street, and 2) Alaskan Way between Bay Street and Broad Street, for a twenty-five -year term, renewable for one additional twenty-five-year term, specifying the conditions under which this permit is granted, providing for acceptance of the permit and conditions, and authorizing acceptance of a Grant of Access and Maintenance Rights over the skybridges and adjacent property.

WHEREAS, the Seattle Art Museum ("SAM") proposes to develop the Olympic Sculpture Park ("OSP") on the two city blocks bounded by Bay Street, Western Avenue, Broad Street and Alaskan Way, and on the waterfront parcel owned by the City of Seattle ("City") to the west of Alaskan Way next to Myrtle Edwards Park; and

WHEREAS, by Resolution 30760 the City Council, with the Mayor concurring, approved the design of the OSP; and

WHEREAS, by Resolution 30771 the City Council, with the Mayor concurring, granted conceptual approval of two pedestrian skybridges, one crossing over Elliott Avenue between Bay and Broad Streets and the other crossing over Alaskan Way between Bay and Broad Streets, as proposed by SAM as part of its development of the OSP; and

WHEREAS, pursuant to Seattle Municipal Code ("SMC") Chapter 15.64, SAM has submitted the information required for the Director of Transportation ("Director") to make a recommendation to the Council on whether to grant or deny conceptual approval, and the Director has circulated the information to the Seattle Design Commission, and to the City departments and public and private utilities interested in or affected by the proposed skybridges, and compiled the responses (C.F. 307255); and

WHEREAS, the departments and utilities have no objections to the conceptual design of the skybridges, and the Design Commission supports the two proposed skybridges as a core element of the OSP design and recommends that the Council approve the final application; and

WHEREAS, in making her recommendation, the Director considered the 12 elements set forth at SMC 15.64.050.B, and recommended that conceptual approval be granted; and



IT IS DUE TO THE QUALITY OF THE DOCUMENT.

1 WHEREAS, the adoption of this ordinance is the culmination of the approval process for the  
skybridges and will allow SAM to move forward with construction of the skybridges;  
2 NOW, THEREFORE,

3 BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

4  
5 Section 1. Permit. Subject to the terms and conditions of this ordinance (otherwise  
6 known as the "Permit"), permission is hereby granted to the Seattle Art Museum ("SAM")  
7 (referred to, together with any transferee allowed by the City pursuant to this ordinance, as  
8 "Permittee") to construct, maintain and operate, in conjunction with the Olympic Sculpture Park  
9 ("OSP" or "Park") a skybridge over and across Elliott Avenue between Bay Street and Broad  
10 Street ("Elliott Avenue Bridge"), and a skybridge over and across a portion of Alaskan Way  
11 between Bay Street and Broad Street, including the Burlington Northern Santa Fe Railway  
12 franchise area ("Alaskan Way Bridge") (together the "skybridges"). The Elliott Avenue Bridge  
13 will support the Park's central pathway, seating areas, sculpture and landscaping on a vee-shaped  
14 structure with an average width of 72 feet, located approximately 20 feet above street grade, and  
15 will connect Western Avenue and Broad Street and the eastern-most OSP parcel, lying between  
16 Western Avenue and Elliott Avenue, with the parcel lying between Elliott Avenue and Alaskan  
17 Way, as shown on Exhibit 2 to Attachment A hereto. The Alaskan Way Bridge will also support  
18 the central pathway, seating areas, sculpture and landscaping on a structure with an average  
19 width of 75 feet, located approximately 24 feet above the surface of the right-of-way, and will  
20 connect the eastern OSP parcels with that portion of Alaskan Way designated as a park boulevard  
21 by Ordinance 121721 ("the Boulevard") and provide access to SAM's tideland parcel and Myrtle  
22 Edwards Park's southern entrance, as shown on Exhibit 2 to Attachment A hereto. The Alaskan  
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1 Way Bridge also includes the ramp, stairs and abutment where it connects with the Boulevard.  
2 SAM's use of the Boulevard as part of the OSP is to be governed by a separate Operation and  
3 Maintenance Agreement, to be approved by ordinance, between the City and SAM.

4 Section 2. Use of Skybridges, Duration and Renewal of Permit. For as long as the  
5 Permit remains in effect as to at least one skybridge and that skybridge remains in place, the  
6 property described on Attachment B hereto shall be used by SAM or its assignee of this Permit as  
7 a sculpture park that is open and free to the public, subject to the terms of any operations and  
8 management agreement approved by ordinance, which park may include accessory uses such as  
9 exhibition, special events and retail uses in the pavilion and underground parking. The Permit  
10 hereby granted is for a term of twenty-five (25) years, commencing when the conditions in  
11 Sections 1 and 16 have been met and terminating at 11:59 p.m. on the last day of the twenty-fifth  
12 year; provided, however, that upon written application of the Permittee at least thirty (30) days  
13 before the expiration of the term, the Director may renew the Permit for one additional term, for  
14 a total term of fifty (50) years. The Permit is granted subject to the right of the City by ordinance  
15 to revise any of the terms and conditions contained herein. Notwithstanding the foregoing, in the  
16 event that the Permittee has made timely application for renewal of the Permit in accordance with  
17 this section, or for a new permit if and when this Permit expires in 50 years, and the City has not  
18 taken the necessary action to renew or grant, or to deny the renewal or grant of, a permit prior to  
19 the expiration of the term or the renewal term, the Permit shall be deemed extended until such  
20 time as the City takes action on such permit application, and in the case of an appeal to the  
21 Mayor or Director as described in Section 4 of this ordinance, shall be deemed extended until the  
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1 Mayor or Director makes a decision and for any further period in which the City has the option to  
2 revise permit conditions in light of such decision as described in Section 4 of this ordinance.

3 Section 3. Termination of Permit; Removal of Skybridges. The Permit hereby granted to  
4 use portions of Elliott Avenue and Alaskan Way for skybridges is subordinate to the public's use  
5 for transportation purposes, and the City expressly reserves the right to terminate this Permit as  
6 to one or both skybridges and/or to require the Permittee to remove the skybridges or any portion  
7 thereof at the Permittee's sole cost and expense if one more of the following occur:  
8

- 9 (a) The City Council determines, by ordinance, that the space occupied by a  
10 skybridge is necessary for any non-pedestrian public travel or transportation use,  
11 or that a skybridge interferes with any public transportation use. Such a City  
12 Council determination shall be conclusive and final.  
13  
14 (b) The Director determines that any term or condition of this Permit has been  
15 violated, and the Permittee does not correct such violation within thirty (30) days  
16 of written notification from the City, or within such longer period of time that the  
17 Director determines is necessary for Permittee to correct the violation.  
18  
19 (c) The Permittee does not apply for a renewal of this Permit in a timely manner or its  
20 renewal application is denied.  
21  
22 (d) The Permittee does not apply for a new permit, if this Permit is renewed and  
23 expires in fifty (50) years, before such expiration, or its new permit application is  
24 denied.  
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1 Subject to the City's right to assume ownership and operation of a skybridge under Section  
2 4 of this ordinance, the Permittee shall, within ninety (90) days after the expiration of this Permit,  
3 its termination (including any termination resulting from failure of the Permittee to accept renewal  
4 or satisfy the conditions of renewal), or the date of a City order of removal, or prior to the date  
5 stated in an "Order to Remove," as the case may be, the Permittee shall remove the skybridge(s)  
6 and shall place all portions of Elliott Avenue and/or Alaskan Way that may have been disturbed for  
7 any part of a skybridge in as good condition for public use as they were prior to construction, and in  
8 at least as good condition in all respects as the abutting portions thereof at the time of such removal.  
9

10 If the Permittee becomes obligated to remove a skybridge, then the Permittee shall remove all  
11 sculpture and other art installations from the Boulevard and the skybridges. Upon removal of the  
12 skybridges and completion by the Permittee of all required restoration, the Director shall issue a  
13 certificate discharging the Permittee from responsibility under this ordinance for occurrences after  
14 the date of such discharge.  
15

16 Section 4. City Ownership and Operation of Skybridges. Because the skybridges will  
17 constitute a transportation use and benefit to the public by providing a pedestrian walkway above  
18 the Burlington Northern Santa Fe Railway and Elliott Avenue connecting the Boulevard to the OSP  
19 and adjacent public streets, upon termination of the permission granted by this ordinance as to such  
20 skybridge(s) the City may elect to assume ownership and operation of one or both of the skybridges  
21 as a City facility, for a period ending fifty (50) years after the commencement of the term of this  
22 Permit, but only in any of the following cases:  
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1 (A) if the Permittee does not seek renewal of the Permit at least thirty (30) days before the  
2 expiration of the initial term;

3 (B) if the City terminates the Permit as to such skybridge(s) pursuant to Section 3(b) of this  
4 ordinance or the permit terminates in the circumstances set forth in Section 3(c) of this  
5 ordinance; or

6 (C) if the Permittee seeks renewal of the Permit in a timely manner but does not accept in a  
7 timely manner, or does not comply in a timely manner with, the conditions of such renewal,  
8 but if SAM is the Permittee and is operating the property described in Attachment B as the  
9 OSP at the time renewal is timely sought and SAM contends any new Permit provision or  
10 any new condition established by the City for renewal of the Permit is unduly burdensome  
11 on SAM, then SAM within 20 days notice of the conditions for renewal may appeal in  
12 writing to the Director and to the Mayor, and if either of those officers determines the new  
13 provision(s) or condition(s) to be unduly burdensome he or she shall, within 20 days of  
14 receiving the appeal, state in writing in what respect it is so, and the City shall thereafter  
15 have an additional 60 days to revise the provision(s) or condition(s) for renewal; and if the  
16 City does not within such period revise the provision(s) or condition(s) so as to eliminate all  
17 aspects the Director or Mayor determined to be unduly burdensome, the City shall thereby  
18 forfeit its option to assume ownership and operation under this Subsection 4(C) for SAM's  
19 failure to accept or to timely comply with a provision or condition so determined to be  
20 unduly burdensome. Both parties retain their rights to seek judicial review of the rights and  
21 obligations created by this Permit, including whether a permit provision or condition  
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1 included a future renewal is unduly burdensome, in addition to the administrative and  
2 executive appeal remedies stated in this subsection.

3 Upon the City's election to assume ownership and operation, ownership of the skybridge  
4 structure(s) shall vest in the City, subject to reversion, at the end of such fifty (50) year period, to  
5 SAM or its successors and assigns as owners of the parcel(s) abutting the skybridge. Upon such  
6 reversion, SAM and any such other owners each shall be obligated promptly and at their own  
7 expense to remove such skybridge(s) and restore the right of way as described in Section 3,  
8 provided that if the then owner(s) of such parcels shall apply to the City for a new permit to  
9 maintain such skybridge(s) within fifteen (15) days after such reversion, the obligation to remove  
10 shall be deferred until thirty (30) days after denial of such application, or if such application shall be  
11 granted, until such time as the skybridge(s) must be removed pursuant to the terms of the new  
12 permit. At the City's election, at the time when the City shall assume ownership of a skybridge, all  
13 additions, fixtures and improvements made to or constructed upon the skybridges shall remain  
14 without compensation to the Permittee, except that the Permittee may elect to remove, within  
15 fifteen (15) days after the City shall assume ownership, any sculptures and other art installations, on  
16 the following conditions: (i) that if any sculpture or installation serves as a structural or safety  
17 feature of the skybridge or as a feature required by any applicable law or regulation, the Permittee  
18 shall cause a replacement feature to be installed satisfactory to the Director immediately after such  
19 removal; and (ii) that the Permittee forthwith repair any damage to the skybridge caused in the  
20 course of any removals. In the discretion of the Director, the Permittee may be required to post a  
21 bond for the costs of replacement or restoration prior to undertaking any removals. While the City  
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owns a skybridge, the City may at its own expense repair, maintain, alter, reconstruct, replace, or  
remove that skybridge as it determines appropriate from time to time, and the reversionary rights of  
SAM or its successors and assigns as owners of the parcel(s) abutting the skybridge pertain only to  
whatever structure, if any, is in place at the end of the 50-year period.

Section 5. Grant of Access and Maintenance Rights. As a precondition to the grant of  
this Permit, SAM shall deliver to the City a document ("Grant") granting to the City rights of  
public access along the central vee-shaped pathway that originates on Western Avenue at the  
intersection of Western Avenue and Broad Street and extends across both skybridges to the  
waterfront parcel and Myrtle Edwards Park, and with public access to Broad Street across SAM  
land and Museum Development Authority land per Section 5C of the Grant, all as described in  
the form of the required Grant. The form of the required Grant, including the maps and other  
exhibits to the Grant, is Attachment A hereto. At the time the Grant required herein is delivered  
to the City, the property described in Attachment B hereto shall not be encumbered in any way  
other than what is shown in Attachment C. The Museum Development Authority must join in  
the Grant as provided in Section 16, both as lessee/sublessor and to provide public access  
according to subsection 5C of the Grant. The Director is authorized to accept the Grant, and to  
enforce and administer the rights of the City thereunder. The Superintendent of Parks and  
Recreation is authorized to participate in dispute resolution proceedings regarding the respective  
rights and obligations of the parties to the Grant, and their agents and successors, as specified in  
the form of the Grant.



1           Section 6. Reconstruction, Relocation, Readjustment and Repair. The Permittee shall not  
2 commence reconstruction, relocation, readjustment or repair, other than routine repair and  
3 maintenance, of the skybridges except under the supervision of, and in strict accordance with plans  
4 and specifications approved by the Director. After notice to and consultation with Permittee, the  
5 Director in his/her judgment may order reconstruction, relocation, readjustment or repair of the  
6 skybridges at the Permittee's own cost and expense because of the deterioration or unsafe condition  
7 of the skybridges.  
8

9           Section 7. Closure. After notice to the Permittee, and failure of the Permittee to correct any  
10 condition that is inconsistent with the Permit or the Grant within the time stated in such notice, the  
11 Director may order a skybridge closed if the Director deems that it has become unsafe or creates a  
12 risk of injury to the public. In a situation in which there is an immediate threat to the health or  
13 safety of the public, notice is not required.  
14

15           Section 8. Discharge of Permittee's Obligations. Notwithstanding termination or  
16 expiration of the permission granted, or removal of the skybridges, the Permittee shall remain  
17 bound by its obligations under this ordinance until:  
18

19           (a)     The bridges and all related equipment and property are removed from the streets, the  
20 Boulevard or any other boulevard;

21           (b)     The area is cleared and restored in a manner and to a condition satisfactory to the  
22 Director; and  
23

24           (c)     The Director certifies that the Permittee has discharged its obligations herein.  
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1 Section 9. Release; Indemnification; Duty to Defend. Except as otherwise provided herein,  
2 the skybridges shall remain the exclusive responsibility of the Permittee. The Permittee, by  
3 acceptance of this ordinance and the Permit hereby granted, does release the City from any and all  
4 claims resulting from damage or loss to Permittee's own property, and covenants and agrees with  
5 the City, to at all times indemnify, defend and save harmless the City from all claims, actions, suits,  
6 liability, loss, costs, expense or damages of every kind and description (excepting only such  
7 damages that may result from the sole negligence of the City), that may accrue to, or be suffered by,  
8 any person or persons and/or property or properties, including without limitation, damage or injury  
9 to the Permittee, its officers, agents, employees, contractors, invitees, tenants and tenants' invitees,  
10 or licensees, by reason of the Permittee's maintenance, operation or use of said skybridges, or any  
11 portion thereof, or by reason of anything that has been done or omitted, or may at any time be done  
12 or omitted, by the Permittee by reason of this ordinance, or by reason of the Permittee's failure or  
13 refusal to strictly comply with each and every provision of this ordinance (collectively  
14 "Indemnified Actions"); and if any such suit, action or claim be filed, instituted or begun against  
15 the City for an Indemnified Action, the Permittee shall, upon notice thereof from the City, defend  
16 the Indemnified Action at its sole cost and expense with counsel acceptable to the City, and in case  
17 judgment shall be rendered against the City in any suit or action for an Indemnified Action, the  
18 Permittee shall fully satisfy said judgment within ninety (90) days after such action or suit shall  
19 have been finally determined, if determined adversely to the City. Provided that if it is determined  
20 by a court of competent jurisdiction, that RCW 4.24.115 applies to this ordinance or that other  
21 concurrent negligence has occurred for which the City is liable to a third party other than in regard  
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1 to any condition caused by the failure of the Permittee to comply with any obligation under this  
2 Permit, the Grant or another agreement with the City, then in the event claims or damages are  
3 caused by or result from the concurrent negligence of:

- 4 (a) The City, its agents, contractors or employees; and  
5 (b) The Permittee, its agents, contractors, or employees,  
6

7 then the Permittee's obligation shall be limited to the extent of the Permittee's negligence and, to  
8 the extent consistent with applicable law, the negligence of the Permittee's agents, contractors or  
9 employees.

10 The City shall indemnify SAM for any claims for loss or damage by third parties to the  
11 extent they result from the negligent or otherwise wrongful act of the City or its employees,  
12 agents or contractors in the exercise of rights under this Permit on the SAM Property, MDA  
13 Property or the skybridges, but only if and to the extent that all of the following apply: (a) the  
14 claim is one for which the City would be liable under applicable law, if brought directly against  
15 the City by the third party; and (b) the claim is not one for which the City would have a right to  
16 indemnity from the Permittee under this Section; and (c) the claim is not covered by insurance  
17 maintained by the Permittee; and (d) the claim was not required to have been covered by  
18 insurance maintained by the Permittee under the terms of this Permit or by SAM under any  
19 contract between SAM and the City.  
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21

22 Section 10. Environmental Agreement. The parties acknowledge the existing  
23 Environmental Agreement between the City and SAM dated December 7, 1999 ("Environmental  
24 Agreement"), deals with the parties' respective obligations relating to contamination and  
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1 environmental conditions in the City rights-of-way. No change of rights, obligations, or  
2 responsibilities under the existing Environmental Agreement shall occur as a result of this  
3 Ordinance or Permit, except as expressly provided in this section. Permittee shall be responsible  
4 for any and all costs that arise from or are related to soil removal, if required, and recapping of  
5 soil, if required, to the extent required to complete Permittee's construction of the skybridges.  
6 Such costs include, but are not limited to, disposal of contaminated soil or groundwater that is  
7 removed during construction, replacement of material that is capping contaminated soil and is  
8 disturbed during construction, mitigation measures required by permitting authorities, and  
9 worker safety measures required for construction on a contaminated site.  
10

11       Section 11. Insurance. For as long as the Permittee shall exercise any permission granted  
12 by this ordinance or until the skybridges are entirely removed from their location as described in  
13 Section 3, whichever is longer, but not including any period during which both skybridges or the  
14 sole remaining skybridge shall be owned by the City pursuant to the terms of this ordinance, and  
15 unless discharged by order of the Director as provided in Section 8 of this ordinance, the Permittee  
16 shall obtain and maintain in full force and effect, at its own expense, insurance policies that protect  
17 the City from any and all loss, damages, suits, liability, claims, demands or costs resulting from  
18 injury or harm to persons or property.  
19

20       Minimum insurance requirements shall be an occurrence form policy of commercial general  
21 liability, placed with a company admitted and licensed to conduct business in Washington State.  
22       Minimum policy limits shall be \$2,000,000 per occurrence, \$4,000,000 annual aggregate. Coverage  
23 shall specifically name the skybridge exposure. Coverage shall add by endorsement The City of  
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1 Seattle, its elected and appointed officers, officials, employees and agents as additional insured.  
2 Coverage shall contain a Separation of Insured's Clause indicating essentially that "except with  
3 respect to the limits of insurance, and any rights or duties specifically assigned in this coverage part  
4 to the first named insured, this insurance applies as if each named insured were the only named  
5 insured, and separately to each insured against whom claim is made or suit is brought." Evidence  
6 of current coverage shall be submitted to the City in the form of a copy of the full insurance policy  
7 with all endorsements attached thereto, and is a condition to the validity of this Permit.  
8

9 Whenever in the judgment of the City's Risk Manager, such insurance filed pursuant to the  
10 provisions hereof shall be deemed insufficient to fully protect the City, the Permittee shall, upon  
11 demand by the Risk Manager, furnish additional insurance in such amount as may be specified by  
12 the Risk Manager.  
13

14 Section 12. Additional Insured. The Permittee shall require that all of its contractors  
15 performing construction work on the premises as contemplated by this Permit, name the City as an  
16 additional insured on all policies of public liability insurance, and shall include in all pertinent  
17 contract documents a provision extending construction indemnities and warranties granted to SAM  
18 to the City as well.  
19

20 Section 13. Bond. Within sixty (60) days after the effective date of this ordinance the  
21 Permittee shall deliver to the Director for filing with the City Clerk a good and sufficient bond in  
22 the sum of Fifty Thousand Dollars (\$50,000.00) for each skybridge executed by a surety company  
23 authorized and qualified to do business in the State of Washington conditioned that the Permittee  
24 will comply with each and every provision of this ordinance and with each and every order of the  
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1 Director pursuant thereto; provided, that if the Mayor of the City in his/her judgment shall deem  
2 any bond or bonds filed to be insufficient and demand a new or additional bond, the Permittee shall  
3 furnish a new or additional bond in such amount as the Director may specify to be necessary to fully  
4 protect the City. Said bond shall remain in effect until such time as the skybridges are entirely  
5 removed as described in Section 3, or until discharged by order of the Director as provided in  
6 Section 8 of this ordinance.  
7

8 Section 14. Transfers. Permittee shall not assign, transfer, mortgage, pledge or encumber  
9 any privileges conferred by this ordinance without the consent of the City Council by resolution,  
10 except that after the Grant described in Section 5 above has been granted to the City, SAM may  
11 grant a security interest to Allied Irish Banks, p.l.c., New York Branch pursuant to that springing  
12 deed of trust dated as of October 6, 2005. If consent is granted, the assignee or transferee shall be  
13 bound by all terms and conditions of this ordinance. The Permit conferred by this ordinance shall  
14 not be assignable or transferable by operation of law.  
15

16 Section 15. Inspections/Payments. The Permittee shall pay to the City such amounts as  
17 may be justly chargeable by said City as costs of inspection of the subject skybridges during  
18 construction, reconstruction, or repair, and at other times deemed necessary by the Director. In  
19 recognition of the public benefits of the OSP, including the Grant, no annual fee is charged for this  
20 Permit. All payments shall be made to the City Director of Executive Administration or his  
21 successor as custodian of the City Treasury for credit to the Seattle Department of Transportation  
22 subfund for Street Use. No inspection or approval by the City shall be construed as a  
23 representation, warranty or assurance to the Permittee or any other person as to the safety or  
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1 soundness of any structure or condition, nor as to compliance with the Permit or any agreement or  
2 standard. Any failure by the City to require correction of any defect or condition shall not in any  
3 way limit the responsibility or liability of the Permittee.

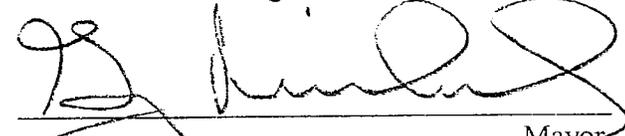
4 Section 16. Acceptance. The Permittee shall deliver its written acceptance of the Permit  
5 conferred by this ordinance and the Permittee's agreement to its terms and conditions, and the Grant  
6 required in Section 5 above, to the Director within thirty (30) days after the effective date of this  
7 ordinance. The Director shall record the Grant with the King County Recorder's Office and file the  
8 recorded Grant and the Permittee's acceptance with the City Clerk. If the Grant and acceptance are  
9 not timely received, the privileges provided by this ordinance shall be deemed declined or  
10 abandoned; and the Permit deemed lapsed and forfeited.

11  
12  
13 Section 17. Effective Date. This ordinance shall take effect and be in force thirty (30)  
14 days from and after its approval by the Mayor, but if not approved and returned by the Mayor  
15 within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section  
16 1.04.020.

17  
18 PASSED by the City Council of the City of Seattle the 24<sup>th</sup> day of October, and signed by  
19 me in open session in authentication of its passage this 24<sup>th</sup> day of October.

20  
21   
22 President \_\_\_\_\_ of the City Council

23 Approved by me this 31<sup>st</sup> day of October, 2005

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26 Mayor \_\_\_\_\_  
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Filed by me this 31<sup>st</sup> day of October 2005

\_\_\_\_\_  
City Clerk

(Seal)

- Attachment A: Form of Grant of Access and Maintenance Rights including exhibits:
  - Exhibit 1 Legal description of SAM Property
  - Exhibit 2 Schematic design showing Skybridges and "Vee"
  - Exhibit 3 Legal description of MDA Property
  - Exhibit 4 Schematic design showing Broad Street Access
- Attachment B: Legal description of SAM's two upland blocks.
- Attachment C: Permitted Encumbrances



**ORDINANCE ATTACHMENT A**  
**FORM OF GRANT**



[Version 10/24/05]

After Recording Return to:

Seattle Transportation Dept.

[insert]

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## GRANT OF ACCESS AND MAINTENANCE RIGHTS

THIS GRANT OF ACCESS AND MAINTENANCE RIGHTS ("Grant") is made effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2005 by the SEATTLE ART MUSEUM, a Washington nonprofit corporation ("SAM") and the MUSEUM DEVELOPMENT AUTHORITY OF SEATTLE, a public corporation chartered by the City of Seattle ("MDA") (collectively, SAM and MDA are "Grantor") to the CITY OF SEATTLE, a Washington municipal corporation ("City").

### RECITALS

- A. SAM is the owner of two parcels of real property legally described on Exhibit 1, attached hereto and incorporated herein (referred to as "Parcel A" and "Parcel B" or collectively as "SAM Property"). For general reference only, those parcels are indicated with corresponding letters on Exhibit 2, attached hereto and incorporated herein.
- B. MDA is the owner of the real property legally described on Exhibit 3, attached hereto and incorporated herein ("Parcel D" or "MDA Property"). For general reference only, that parcel is indicated with the letter D on Exhibit 2. MDA acquired the MDA Property from the City subject to use and development restrictions, including the requirement that the MDA Property be used and developed only as a sculpture garden, park or other open space as part of the SAM Olympic Sculpture Park ("OSP"), with public access free of charge in perpetuity. MDA also is lessee of the SAM Property under a lease from SAM for the purpose of conducting certain environmental work, subject to a sublease and operating agreement back to SAM.
- C. SAM is developing the OSP on the SAM Property and, pursuant to a ground lease from MDA, the MDA Property.

**Attachment A to Ordinance: Form of Grant of Access and Maintenance Rights - 1**



D. The OSP design will provide a public connection from Belltown to Elliott Bay via pedestrian pathways (at grade and above grade) and skybridges over public rights of way, as generally indicated on Exhibit 2.

E. Pursuant to Ordinance \_\_\_\_\_ (the "Permit," which term shall include any modification thereof or replacement therefor), the City has granted to SAM a permit to construct, operate and maintain two skybridge structures over public rights of way in conjunction with the OSP: one over and across a portion of Elliott Avenue between Bay Street and Broad Street ("Elliott Avenue Bridge") and one over and across a portion of Alaskan Way between Bay Street and Broad Street, including the Burlington Northern and Santa Fe Railway franchise area, and including the ramp, stairs and abutment where the skybridge structure connects with the Boulevard ("Alaskan Way Bridge"). They are collectively referred to as the "Skybridges." Capitalized terms used and not defined herein shall have the meanings set forth in the Permit unless the context otherwise requires.

F. The City's grant of the Permit is subject to certain terms and conditions, including, without limitation, the grant of the rights set forth in this Grant.

#### GRANT OF RIGHTS AND COVENANTS

For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, SAM and MDA grant and agree as follows:

##### 1. Grant and Purpose.

A. Public Access Rights. SAM hereby grants and conveys to the City with respect to the Skybridges and Parcels A and B, rights to public access limited to pedestrian and wheelchair travel (for purposes of this Grant, "wheelchair" shall include any device for mobility of persons with disabilities that is allowed from time to time on public sidewalks in the City of Seattle) on, across and over the Skybridges and the pathways and elevated structures located and to be located on Parcels A and B, throughout the entire "Vee" shown by hatch marks on Exhibit 2. Such rights are referred to as the "Public Access Rights." SAM may locate and relocate from time to time obstructions to pedestrian or wheelchair travel or both (for example, artwork, planters, and other amenities or items related to the OSP) in the Vee but shall always provide an unobstructed and improved pathway suitable for pedestrian and wheelchair travel at least eleven (11) feet in width, measured perpendicular to the centerline of the path of travel, at all points from Western Avenue to the western touch-downs of the Alaskan Way Bridge in the Park Boulevard. The portions of the "Vee" that are not at a given time obstructed to both pedestrian and wheelchair travel as allowed by the preceding sentence are referred to as the "Public Access Area." The Public Access Area must always extend



continuously from Western Avenue to the western touch-downs of the Alaskan Way Bridge in the Park Boulevard. The public shall have free, open and continuous pedestrian and wheelchair access to and through the Public Access Area free of charge every day of the year, except that so long as the SAM Property is operated by SAM as the OSP, SAM may close the Public Access Area for up to five calendar days per calendar year when the OSP is closed to the public consistent with the terms of an Operation and Maintenance Agreement between SAM and the City. Except on days when SAM has closed the Public Access Area to the public pursuant to the preceding sentence, the public shall have access to the entire Public Access Area at least during the period beginning at 9:00 AM and ending at 5:00 PM local time seven days a week and during all additional hours as the OSP is open to the public, but at all times subject to compliance with rules of conduct pursuant to paragraph 4 below, and subject to the right of the City to close the Skybridges or any part of the Public Access Area, or to impose further restrictions on use and access from time to time, consistent with the following sentence. So long as the SAM Property is operated by SAM as the OSP, the City shall not close a Skybridge for which a Permit remains in effect, or that the City owns and has not elected to remove, nor restrict access to and from the OSP over such a Skybridge or the Public Access Area during the period from 9:00 AM to 5:00 PM each day and during all additional hours as the OSP is open to the public, without the consent of SAM, except as the City may deem necessary temporarily for reasons of public safety. In addition, City employees in the performance of their official duties related to public safety shall be entitled to use the Public Access Area at all times. SAM reserves the right to undertake measures to prevent public access onto SAM's property outside of the Public Access Area.

**B. Structure and Pathway Maintenance Rights.**

The provisions of this Subsection 1B for inspection and monitoring, and for emergencies, shall apply to each Parcel of the SAM Property so long as the Public Access Rights remain in effect as to any portion of that Parcel. Except with respect to inspection, monitoring and emergencies, this Subsection 1B shall apply only in each of the following circumstances:

(1) If the City is entitled to and elects to assume ownership and operation of one or both Skybridges under Section 4 of the Permit, then for so long as a Skybridge remains in place and is owned by the City, this Subsection 1B shall apply to the Parcel or Parcels of the SAM Property for which SAM has no obligation to maintain the Public Access Area pursuant to Section 5, and, if the portion of the Public Access Area on Parcel B shall be replaced by the 7-foot wide path described in Subsection 5C of this Grant, then this Subsection 1B shall also apply to the MDA Property during the City's ownership of the Alaskan Way Bridge.



NOTICE: IF THE DOCUMENT IN THIS FOLDER IS LESS CLEAR THAN THIS NOTICE, IT IS DUE TO THE QUALITY OF THE DOCUMENT.

(2) If SAM shall fail to comply in a timely manner with its obligation to maintain any portion of the Public Access Area located on a Parcel of the SAM Property, then if and when the City shall have the right under the terms of Section 3 of this Grant to take such actions as the City deems necessary to maintain, repair, reconstruct, or alter the Public Access Area, this Subsection 1B shall apply to such Parcel for the period, and to the extent, that the City requires access thereto in order to exercise its rights under Section 3.

SAM hereby grants and conveys to the City the non-exclusive rights to access on, across, over, under and through such portions of the SAM Property as are reasonably necessary, for all purposes necessary, incidental, or related to construction, operation, repair, replacement, alteration, inspection, monitoring, and maintenance of the elevated and grade level pathways (including the entire area shown on Exhibit 2 as the "Vee," less the Skybridges) that connect the Alaskan Way Bridge and the Elliott Avenue Bridge, and that connect the Elliott Avenue Bridge with Western Avenue ("Structure and Pathway Maintenance Rights"). If a "fixed specific Public Access Area" is designated under Subsection 5B, then thereafter the Structure and Pathway Maintenance Rights shall be only for purposes necessary, incidental, or related to construction, operation, repair, replacement, alteration, inspection, monitoring, and maintenance of that fixed and specific Public Access Area. The City shall not modify the design or location of the pathways without SAM's consent. Air rights, and the right to maintain, repair and replace all necessary supports, foundations and structural elements supporting the elevated pathway are expressly included in the foregoing grant. Such grant also includes the right of the City to install measures to prevent use or access during any times when public access is not permitted. The City, its contractors, agents, officers and employees, after 24 hours advance notice to SAM for inspection and thirty (30) days advance notice to SAM for other activities (except that for inspections or other activities notice shall not be required in the event of emergency), which notice period may run concurrently with the period of any applicable notice of default and opportunity for cure and appeal period provided in Section 3 of this Grant, shall have free, open and continuous access on, across, over, under and through such portions of the SAM Property as are reasonably necessary for the purposes described above, which shall include the right to operate any necessary motorized and non-motorized equipment and vehicles for such purposes. The City shall cause any portion of the SAM Property that is disturbed by activities of the City, its contractors, agents, officers and employees pursuant to the previous sentence to be restored as nearly as practicable to its condition prior to such activities, but shall not be liable for loss or damage to fixtures or installations that could not reasonably be avoided, despite reasonable efforts by the City to avoid damage, consistent with accomplishment of the purposes for which the City exercised its rights thereunder without undue delay or cost. SAM shall ensure that neither it nor its contractors impair the rights granted in this Subsection 1B in any way.



C. Skybridge Maintenance Rights.

The provisions of this Subsection 1C for inspection and monitoring, and for emergencies, shall apply to each Skybridge and to each Parcel of the SAM Property so long as there is a Skybridge abutting that Parcel. Except with respect to inspection, monitoring and emergencies, this Subsection 1C shall apply only in each of the following circumstances:

(1) If the City is entitled to and elects to assume ownership and operation of one or both Skybridges under Section 4 of the Permit, then for so long as a Skybridge remains in place and is owned by the City, this Subsection 1C shall apply to the Parcel or Parcels of the SAM Property abutting a City-owned Skybridge and, if the City owns the Alaskan Way Bridge, then this Subsection 1C shall also apply to the MDA Property during the City's ownership of the Alaskan Way Bridge.

(2) If SAM shall fail to comply in a timely manner with its obligation to maintain any portion of a Skybridge abutting a Parcel of the SAM Property, then if and when the City shall have the right under the terms of Section 3 of this Grant to take such actions as the City deems necessary to maintain, repair, reconstruct or alter the Skybridge, this Subsection 1C shall apply to such Parcel for the period, and to the extent, that the City requires access thereto in order to exercise its rights under Section 3.

(3) If the City is entitled to replace or remove a Skybridge, then this Subsection 1C shall apply to the SAM Property and MDA Property to the extent that the City requires access thereto in order to do so.

SAM hereby grants and conveys to the City with respect to each Skybridge and to Parcels A and B, rights on, across, over, under and through such portions of the Skybridges and Parcels A and B as are reasonably necessary, for access to the Skybridges and for construction, operation, repair, replacement, alteration, inspection, monitoring, maintenance, and removal of the Skybridges ("Skybridge Maintenance Rights"). Air rights, and the right to maintain, repair and replace all necessary supports, foundations and structural elements supporting the Skybridges are expressly included in the foregoing grant. The Skybridges are depicted on Exhibit 2 attached hereto. The City, its contractors, agents, officers and employees, after 24 hours advance notice to SAM for inspection and thirty (30) days advance notice to SAM for other activities (except that for inspections or other activities notice shall not be required in the event of emergency), which notice period may run concurrently with the period of any notice of default and opportunity for cure and appeal period provided in Section 3 of this Grant, shall have free, open and continuous access on, across, over, under and through such portions of the Skybridges and the SAM Property as are reasonably necessary for the purposes described above, which shall include the right to operate any necessary motorized and non-



motorized equipment and vehicles for such purposes. The City shall cause any portion of the SAM Property that is disturbed by activities of the City, its contractors, agents, officers and employees pursuant to the previous sentence to be restored as nearly as practicable to its condition prior to such activities; but shall not be liable for loss or damage to fixtures or installations that could not reasonably be avoided, despite reasonable efforts by the City to avoid damage, consistent with accomplishment of the purposes for which the City exercised its rights thereunder without undue delay or cost. SAM shall ensure that neither it nor its contractors impair the rights granted in this Subsection 1C in any way.

D. MDA Joinder; Grant of Rights in Broad Street Access

To the extent of any interest the MDA may have as lessee or otherwise in Parcel A or B, the MDA joins in the grants and conveyances in this Grant. To the extent that the Public Access Area shall hereafter include a portion of MDA Property pursuant to Subsection 5C, SAM and the MDA hereby grant the City over the portions of Parcels B and D that become part of the Public Access Area, and the MDA hereby grants the City over Parcel D, all the rights described in this Grant, as though those portions of Parcels B and D had been included in Subsections 1A, 1B, and 1C.

2. **Rights and Remedies.** The City shall have the right without prior institution of any suit or proceeding of law, at such times as may be necessary, to exercise the rights at such times and to the extent provided in this Grant. In addition, the City shall have all remedies that may be available at law or in equity. This instrument is not intended to confer any right of action or remedies on any member of the general public or any other person that is not a party hereto. The rights granted to the City are not obligations of the City and may be exercised at the City's discretion. The City shall not be liable or responsible for any injury, loss or damage caused by members of the public in the exercise of the rights of access granted hereunder, except to the extent, if any, that such injury, loss or damage is caused by the negligence of the City for which it has liability under applicable law, not including any City negligence in regard to any condition that SAM or MDA shall have caused or permitted contrary to the terms of this Grant, the Permit or any agreement with the City. The City shall not be subject to any obligation pursuant to any security instrument or other agreement executed by SAM or MDA with respect to any part of the SAM Property. The rights of the City and obligations of the Grantor herein are in addition to, and not in substitution for, the rights and obligations under the Permit or any other agreement.

3. **Grantor to Construct and Maintain.** Grantor, at its sole expense, shall construct the pathways in the "Vee" as shown in Exhibit 2, consistent with plans approved by the City and in full compliance with all applicable laws, codes and regulations as they apply to public facilities, including without limitation standards under the Americans with

**Attachment A to Ordinance: Form of Grant of Access and Maintenance Rights - 6**



Disabilities Act ("ADA"). For so long as the Permit is in effect, Grantor, at its sole expense, shall maintain the Skybridges and the Public Access Area in safe, clean, and sanitary condition; shall promptly make any necessary repairs; shall not allow obstructions or debris to remain in the Public Access Area; and shall not cause or permit any structure or condition adjacent to the Public Access Area that could be hazardous to persons using the Public Access Area. If Grantor shall default in its obligations under this paragraph, the City shall have the right, but not the obligation, after at least thirty (30) days' notice to SAM and SAM's failure to cure such default or to commence cure (except that notice and opportunity to cure shall not be required in case of emergency), or after SAM's failure diligently to prosecute cure of default after commencing cure, to take such actions as the City deems necessary to maintain, repair, reconstruct, or alter the Skybridges or Public Access Area, all at the expense of the Grantor, and Grantor shall reimburse the City promptly on demand for the costs of such actions. So long as SAM is the Permittee under the Permit, SAM may contest the City's notice of default under this Section 3 or contest the City's decision that SAM has not diligently prosecuted cure of default by appealing in writing, within 10 days after notice of default or within 5 business days after being informed of the City's decision that SAM has failed diligently to prosecute cure, to the Superintendent of Parks and Recreation and to the Mayor, and the notice shall be withdrawn or more time allowed for cure, as applicable, if either of those officers so determines. Upon request by SAM, the Superintendent of Parks and Recreation shall provide an opportunity for the Executive Director of SAM to meet by phone or in person with the Superintendent to attempt to resolve any disagreement as to notices or decisions appealable under this Section 3. The City shall cause any portion of the SAM Property that is disturbed by activities of the City, its contractors, agents, officers and employees pursuant to the previous sentence to be restored as nearly as practicable to its condition prior to such activities, but shall not be liable for loss or damage to fixtures or installations that could not reasonably be avoided, despite reasonable efforts by the City to avoid damage, consistent with accomplishment of the purposes for which the City exercised its rights thereunder without undue delay or cost. SAM shall ensure that neither it nor its contractors impair the rights granted in this Section 3 in any way.

#### **4. Rules of Conduct.**

A. Grantor shall adopt and enforce reasonable rules of conduct in the Public Access Area for the safety and convenience of pedestrian and wheelchair travel through the Public Access Area. Such rules shall be consistent with applicable law. To the extent that such rules are the same as rules applicable in City of Seattle parks, Grantor may adopt them without City approval, but shall provide written notice to the City before they take effect.

(1) So long as SAM owns Parcels A and B of the SAM Property and operates those Parcels as the OSP, SAM (but not SAM's successors or assigns) may



adopt additional rules without City approval, but shall provide written notice to the City before they take effect.

(2) If SAM no longer owns Parcels A and B of the SAM Property or no longer operates those Parcels as the OSP, Grantor may adopt additional rules only with the advance written consent of the City.

Grantor shall have the right to require any person who does not comply with rules that are in effect in accordance with this Section 4 to leave the Public Access Area.

B. If the obligation of the Grantor to maintain and control any portion of the Public Access Area shall terminate under Section 5 below, then for so long as the right of public access hereunder continues as to such portion, the City shall have the sole right to make, modify, and enforce rules and regulations for the portion of the Public Access Area that is serving the Skybridge(s) owned by the City, provided that so long as the parcel adjacent to such portion remains in use by SAM as the OSP, the City shall provide SAM with thirty (30) days notice and opportunity to comment on changes in rules and regulations, and shall not adopt changes that would materially impair the use by pedestrians for access to the OSP during hours when the OSP is open to the general public, or for access to allowed special events sponsored by SAM.

C. The parties acknowledge that the Public Access Area is not being dedicated as a public street or sidewalk, and that the nature of the OSP and limited purpose of the Public Access Rights are such that various activities traditionally permitted in public streets and sidewalks would not be appropriate for the Public Access Area. Compliance with rules that are in effect in accordance with this Section 4 is a condition of the right of any person to use the Public Access Area, except City employees and agents in the performance of their activities related to public safety.

5. **Duration; Termination in Whole or in Part on Certain Events; City Ownership of Skybridges.**

A. The Public Access Rights, the Structure and Pathway Maintenance Rights, and the Skybridge Maintenance Rights, and the covenants and servitudes contained in this Grant, shall inure to the benefit of the City, shall be binding upon SAM and MDA and each of their successors, transferees and assigns, including, without limitation, tenants, and shall run with the land described in Exhibits 1 and 3, but the benefit thereof shall not run with any land owned by the City. All such rights, covenants and servitudes shall extend for so long as SAM or any successor in interest or assignee shall hold the Permit to maintain one or both of the Skybridges, and, except to the extent otherwise provided below, shall also remain in effect:



(1) if SAM, or its successor in interest or assignee as holder of the Permit, shall not seek renewal of the Permit for an additional term, or if the Permit shall be terminated as to one or both Skybridges based on the City's determination that there has been default by the Permittee under the Permit, then in each case for so long as the Skybridges, or either of them, remain in place, but not to exceed fifty (50) years from the effective date of the original Permit plus the time until both Skybridges are removed by the Permittee as required by the terms of the Permit ;  
or

(2) if the Permit shall be renewed and shall then terminate after 50 years, at the expiration of its renewal term, then for so long thereafter as one or both Skybridges remains in place pending City action on an application for a new permit or pending removal of both Skybridges by the Permittee as required by the terms of the Permit. If the City issues a new permit after the Permit terminates after 50 years, at the expiration of its renewal term, then public access rights, if any, shall be according to the terms of that new permit.

Consistent with the foregoing, this Grant shall terminate automatically if the City  
(a) denies SAM's application to renew the Permit after the initial 25-year term or  
(b) terminates the Permit for both Skybridges under Subsection 3(a) of the Permit for another transportation use.

B. If the Permit shall be terminated or expire as to either or both Skybridges, and the City shall elect to assume full ownership and control of one or both Skybridge(s) pursuant to the terms of the Permit, then upon the City's acceptance of a quitclaim deed for the Skybridge structure from the Grantor, (i) all obligations of Grantor with respect to the maintenance and operation of such Skybridge(s) hereunder shall terminate, (ii) at either the City's or SAM's option, all obligations of the Grantor to maintain, control and repair the part of the Public Access Area on any Parcel adjacent to a Skybridge so accepted by the City, shall terminate, (iii) if either the City or SAM does elect to terminate the Grantor's obligations to maintain, control and repair part or all of the Public Access Area pursuant to (ii) above, then Grantor will within 60 days after notice of that election designate in writing a fixed and specific Public Access Area across the affected Parcel or Parcels of SAM Property, within the Vee, satisfactory to the Director that will be an unobstructed and improved pathway suitable for pedestrian and wheelchair travel at least eleven (11) feet in width, measured perpendicular to the centerline of the path of travel, at all points on the affected Parcel or Parcels of SAM Property from Western Avenue to the western touch-downs of the Alaskan Way Bridge in the Park, and that designated Public Access Area will thereafter be subject to all the Public Access Rights; but if Grantor fails timely to make such a designation the City may do so with like effect, and (iv) SAM (but not any successors or assigns) shall be entitled to the non-exclusive use of the City-owned Skybridge(s) and the Public Access Area for temporary access to

**Attachment A to Ordinance: Form of Grant of Access and Maintenance Rights - 9**



move sculptures and artwork between Parcel A and Parcel B so long as such activity leaves accessible for public access a minimum 11-foot wide travel area. However, nothing herein shall relieve the Grantor of the obligation to remove such Skybridge(s) at the end of the period of City ownership pursuant to the Permit. Further, if at the end of the period of the City's ownership of one or both Skybridge(s) Grantor shall obtain a new permit to maintain one or both such Skybridge(s), then for so long as such permit remains in effect the Grantor shall have the same obligations as were in effect prior to the City's ownership of such Skybridge(s). For so long as the City has ownership of one or both Skybridges, the rights of the City to maintain and repair the Skybridges and such portions of the Public Access Area, and the public's access thereto, shall remain in full force and effect to the extent provided under the terms of this Grant, except that if the Elliott Avenue Bridge shall have been removed, other than for reconstruction thereof, then such City rights shall not continue with respect to the portion of the SAM Property East of Elliott Avenue. For so long as the Grantor shall not have the obligation to maintain a portion of the Public Access Area, the City shall have the right to install in such portion any directional signage that the City deems appropriate for the convenience of the public using the same, with thirty (30) days advance notice to SAM.

C. Not later than the sooner of the day the OSP opens to the public or 450 days after the acceptance of the Permit, Grantor shall construct and shall thereafter maintain open for free public passage a pedestrian and wheelchair access to the east end of the Alaskan Way Bridge from Broad Street (the "Broad Street Access"), on a route no less than seven (7) feet wide in the location shown on Exhibit 4, and in accordance with the City-approved design. If the Elliott Avenue Bridge shall be removed and either a permit then remains in effect for the Alaskan Way Bridge or the City is entitled to and elects to assume ownership of the Alaskan Way Bridge pursuant to the Permit, then Grantor shall ensure that the Broad Street Access meets all then applicable access and other legal requirements and the Broad Street Access shall become part of the Public Access Area, and shall be subject to all Public Access Rights, replacing the portion of the Vee located on Parcel B that is not part of the Broad Street Access. Upon the Grantor's failure to perform construction or other work necessary to provide the Broad Street Access in compliance with the terms of this Subsection 5C in a timely manner, the City shall have the right, but not the obligation, to construct or perform other necessary work on the Broad Street Access at the expense of the Grantor, in the location shown on Exhibit 4; if the City does so, the Broad Street Access shall become part of the Public Access Area and be subject to all Public Access Rights only under the same circumstances as it would if Grantor had performed the construction or other work.

D. If both Skybridges shall be removed as required or permitted in accordance with the terms of the Permit, other than for reconstruction thereof, then this Grant shall terminate. If only the Elliott Avenue Bridge shall be removed, other than for reconstruction thereof, then the Grant shall terminate with respect to the portion of the



SAM Property located east of Elliott Avenue and, conditioned upon provision of the Broad Street Access if required under Subsection 5C above, the Grant shall also then terminate as to the portion of the Vee located on Parcel B that is not part of the Broad Street Access.

**6. Modification or Release.** The terms herein may be modified by a written instrument signed by an authorized officer of the City and by SAM and MDA, or their respective successors and assigns, and not otherwise, provided that if the interests of either SAM or MDA, or its respective successors or assigns, are not affected, then the signature of such party shall not be required. The City shall have the right to release in whole or in part the rights granted herein by recording an instrument executed by an authorized officer of the City.

**7. Representations and Warranties of Grantor.** SAM represents and warrants that it holds fee simple title to the SAM Property, and holds a subleasehold interest therein from the MDA pursuant to the sublease dated October 1, 2002, which is in full force and effect, in each case subject to no liens, encumbrances, defects, leases, options or other interests except as expressly set forth in Exhibit C to the Permit ("Permitted Encumbrances"), and that the rights granted hereunder are not and shall not be subject to any lien, encumbrance, defect, lease, option or other interest except for the Permitted Encumbrances. MDA represents and warrants that it holds fee simple title to the MDA Property, subject only to a ground lease to SAM, to the reversionary rights of the City, and to Permitted Encumbrances (to the extent applicable), and that MDA holds a leasehold interest in the SAM Property under a lease dated October 1, 2002, from SAM, which is in full force and effect, and such leasehold interest is subject to no liens, encumbrances, defects, leases, options or other interests except the Permitted Encumbrances and the interests of SAM.

**8. Limited Purpose of Execution by MDA.** Any other provision herein notwithstanding:  
The MDA does not claim or warrant any title or interest in the SAM Property except to the extent of the leasehold interest described herein. MDA is executing this instrument solely in order to ensure that (a) this Grant encumbers such leasehold and any other interest that the MDA may have now or hereafter in the SAM Property; and (b) in the limited circumstances set forth in Subsection 5.C above, alternate access shall be provided from Broad Street to the Alaskan Way Bridge. So long as the MDA has no right to possession of the SAM Property, all obligations of "Grantor" for any performance hereunder shall be the sole obligations of SAM, and its successors in interest (not including MDA as such lessee), except that if at any time the Broad Street Access is required pursuant to Subsection 5C and if SAM shall not then be the ground lessee of the MDA Property, any obligations of "Grantor" with respect to the MDA Property then shall be those of the MDA.



SEATTLE ART MUSEUM,  
a Washington nonprofit corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Print Title: \_\_\_\_\_

MUSEUM DEVELOPMENT AUTHORITY OF SEATTLE,  
a public corporation chartered by the City of Seattle

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Print Title: \_\_\_\_\_

**NOTICE:** MUSEUM DEVELOPMENT AUTHORITY OF SEATTLE is organized pursuant to Seattle Municipal Code (SMC) Chapter 3.110 and RCW 35.21.730-.755. RCW 35.21.750 provides as follows:

“All liabilities incurred by such public corporation, commission or authority shall be satisfied exclusively from the assets and properties of such public corporation, commission or authority and no creditor or other person shall have any right of action against the city, town or county creating such public corporation, commission or authority on account of any debts, obligations or liabilities of such public corporation, commission or authority.”

Accepted:  
THE CITY OF SEATTLE

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

**EXHIBITS:**

- Exhibit 1 Legal description of SAM Property
- Exhibit 2 Schematic design showing Skybridges and “Vee”
- Exhibit 3 Legal description of MDA Property
- Exhibit 4 Schematic design showing location of Broad Street Access

**Attachment A to Ordinance: Form of Grant of Access and Maintenance Rights - 12**



STATE OF WASHINGTON )  
 )ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that s/he signed this instrument, on oath stated that s/he was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of THE SEATTLE ART MUSEUM, a Washington nonprofit corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

(Seal or stamp)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

Notary Public

My appointment expires \_\_\_\_\_

STATE OF WASHINGTON )  
 )ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that s/he signed this instrument, on oath stated that s/he was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of THE MUSEUM DEVELOPMENT AUTHORITY OF SEATTLE, a public corporation chartered by the City of Seattle Washington, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

(Seal or stamp)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

Notary Public

My appointment expires \_\_\_\_\_



**GRANT EXHIBIT 1**

**LEGAL DESCRIPTION  
of SAM Property**

**PARCEL A:**

THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 25 NORTH, RANGE 3 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON; OF SECTION 31, TOWNSHIP 25 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON; OF WILLIAM N. BELL'S SEVENTH ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 2 OF PLATS, PAGE 82, IN KING COUNTY, WASHINGTON; AND OF THE VACATED ALLEY THEREIN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST EASTERLY CORNER OF BLOCK 4 IN SAID ADDITION;

THENCE NORTH 48 DEGREES 54'05" WEST ALONG THE SOUTHWEST MARGIN OF WESTERN AVENUE 720.68 FEET TO THE NORTHWEST LINE OF THAT PARCEL CONVEYED TO UNION OIL BY DEED FROM IGNATZ STEINHART, DATED DECEMBER 4, 1909;

THENCE SOUTH 41 DEGREES 05'55" WEST ALONG SAID NORTHWEST LINE 193.88 FEET TO THE NORTHEAST MARGIN OF ELLIOTT AVENUE, AS ESTABLISHED BY THE CITY OF SEATTLE ORDINANCE NUMBER 12502;

THENCE SOUTH 42 DEGREES 59'09" EAST ALONG SAID NORTHEAST MARGIN 603.76 FEET TO THE MOST WESTERLY CORNER OF SAID BLOCK 4;

THENCE SOUTH 48 DEGREES 54'59" EAST ALONG THE SOUTHWEST LINE THEREOF 120 FEET TO THE MOST SOUTHERLY CORNER OF SAID BLOCK 4;

THENCE NORTH 41 DEGREES 07'49" EAST ALONG THE SOUTHEAST LINE THEREOF 256.08 FEET TO THE POINT OF BEGINNING.



**PARCEL B:**

THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 25 NORTH, RANGE 3 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON; OF SECTION 31, TOWNSHIP 25 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON; OF BLOCKS 168A AND 168B, SUPPLEMENTAL PLAT OF SEATTLE TIDELANDS AND OF VACATED EAGLE STREET, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF BLOCK 5, WILLIAM N. BELL'S SEVENTH ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 2 OF PLATS, PAGE 82, IN KING COUNTY, WASHINGTON;

THENCE SOUTH 41 DEGREES 07'49" WEST ALONG THE NORTHWEST LINE THEREOF, 27.58 FEET TO THE MOST EASTERLY CORNER OF LOT 4 IN SAID BLOCK 168B, SEATTLE TIDELANDS;

THENCE SOUTH 41 DEGREES 10'09" WEST ALONG THE SOUTHEAST LINE OF SAID LOT 4, A DISTANCE OF 91.78 FEET TO THE SOUTHWEST LINE OF SAID BLOCK 168B;

THENCE NORTH 48 DEGREES 49'51" WEST ALONG SAID SOUTHWEST LINE AND ITS EXTENSION 280.55 FEET TO ITS INTERSECTION WITH THE SOUTHEASTERLY EXTENSION OF THE SOUTHWEST LINE OF SAID BLOCK 168A, SEATTLE TIDELANDS;

THENCE NORTH 41 DEGREES 10'23" WEST ALONG SAID EXTENSION AND SOUTHWEST LINE 389.58 FEET TO THE SOUTHEAST MARGIN OF BAY STREET;

THENCE NORTH 41 DEGREES 10'09" EAST ALONG SAID SOUTHEAST MARGIN 135.36 FEET TO THE SOUTHWEST MARGIN OF ELLIOTT AVENUE AS ESTABLISHED BY CITY OF SEATTLE ORDINANCE NUMBER 12502;

THENCE SOUTH 43 DEGREES 00'51" EAST ALONG SAID SOUTHWEST MARGIN 670.08 FEET TO THE POINT OF BEGINNING.



**GRANT EXHIBIT 2**

[Please see next page for schematic design showing Skybridges and "Vee"]





**GRANT EXHIBIT 3**

**LEGAL DESCRIPTION OF MDA Property**

**PARCEL D:**

LOTS 3 AND 4, BLOCK 5, WILLIAM N. BELL'S SEVENTH ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 2 OF PLATS, PAGE 82, RECORDS OF KING COUNTY, WASHINGTON;

EXCEPTING THEREFROM THAT PORTION PLATTED AS SEATTLE TIDELANDS;

ALSO EXCEPTING THEREFROM, THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF SAID LOT 3, DISTANT 14.408 FEET SOUTHWESTERLY OF THE MOST EASTERLY CORNER OF SAID LOT;

THENCE NORTHERLY AND WESTERLY ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 24

FEET, AN ARC DISTANCE OF 27.83 FEET TO A POINT ON THE NORTHEASTERLY LINE OF SAID LOT 3, DISTANT 22

FEET NORTHWESTERLY OF SAID MOST EASTERLY CORNER;

THENCE SOUTHEASTERLY ALONG SAID NORTHEASTERLY LINE TO SAID MOST EASTERLY CORNER;

THENCE SOUTHWESTERLY ALONG THE SOUTHEASTERLY LINE OF SAID LOT TO THE POINT OF BEGINNING.

TOGETHER WITH

LOTS 5 AND 6, BLOCK 168-B, SUPPLEMENTAL PLAT OF SEATTLE TIDELANDS, AS SHOWN ON THE OFFICIAL MAPS

OF SEATTLE TIDELANDS ON FILE IN THE OFFICE OF THE COMMISSIONER OF PUBLIC LANDS AT OLYMPIA, IN

WASHINGTON.

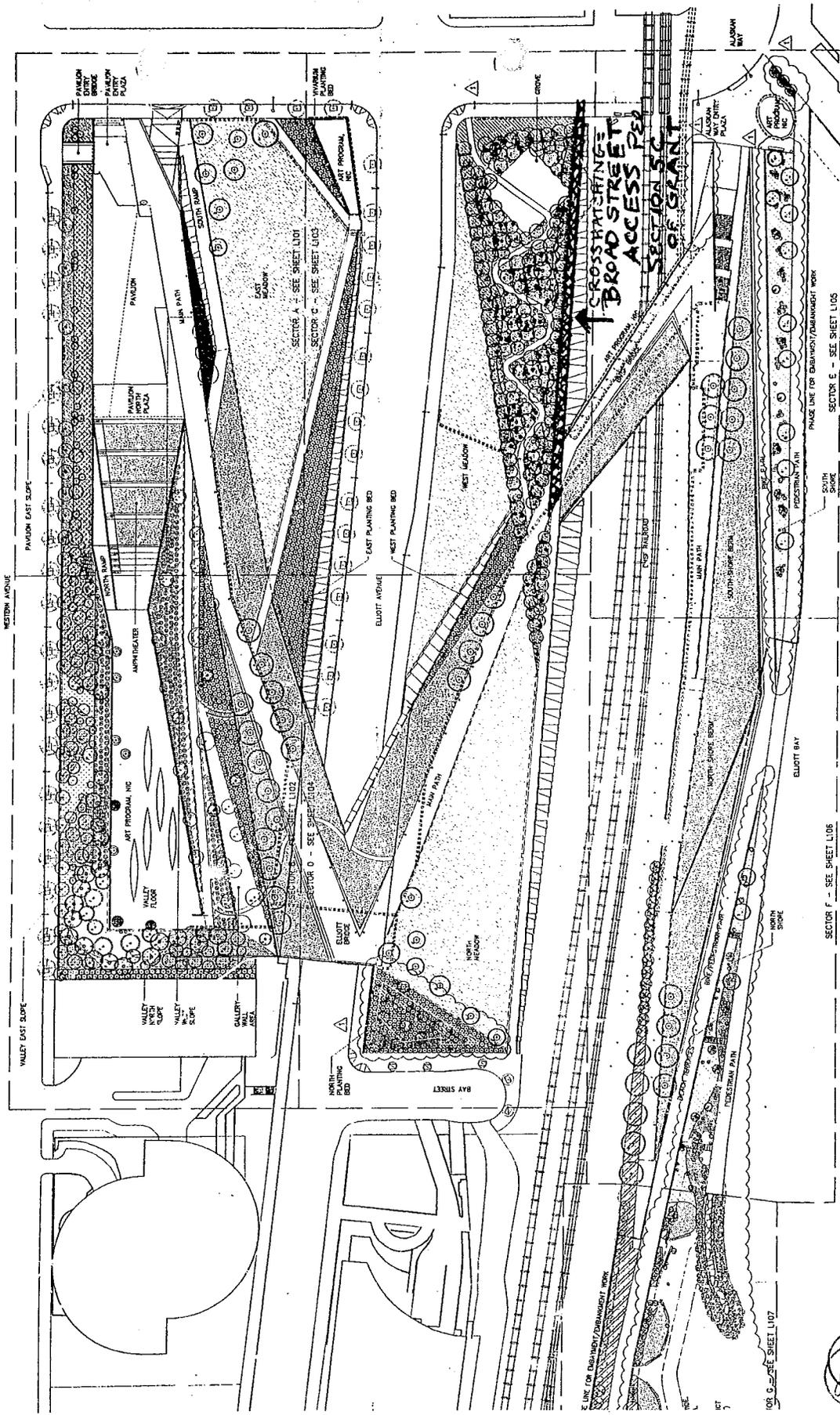
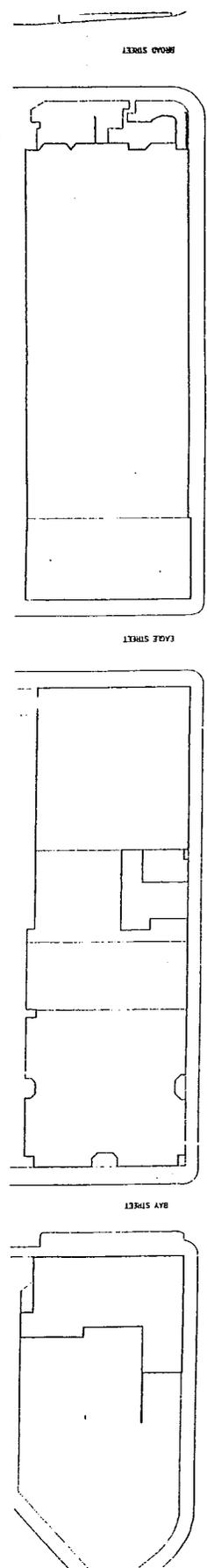


**GRANT EXHIBIT 4**

[Please see next page for schematic design showing Broad Street Access]

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE  
IT IS DUE TO THE QUALITY OF THE DOCUMENT.





**GRANT EXHIBIT A**

PHASE ONE FOR DESIGN/CONSTRUCTION WORK  
SECTION E - SEE SHEET L105

SECTION F - SEE SHEET L106

FOR C - SEE SHEET L107



## ORDINANCE ATTACHMENT B

### LEGAL DESCRIPTION of SAM's Two Upland Blocks

**PARCEL A:**

THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 25 NORTH, RANGE 3 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON; OF SECTION 31, TOWNSHIP 25 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON; OF WILLIAM N. BELL'S SEVENTH ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 2 OF PLATS, PAGE 82, IN KING COUNTY, WASHINGTON; AND OF THE VACATED ALLEY THEREIN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST EASTERLY CORNER OF BLOCK 4 IN SAID ADDITION;

THENCE NORTH 48 DEGREES 54'05" WEST ALONG THE SOUTHWEST MARGIN OF WESTERN AVENUE 720.68 FEET TO THE NORTHWEST LINE OF THAT PARCEL CONVEYED TO UNION OIL BY DEED FROM IGNATZ STEINHART, DATED DECEMBER 4, 1909;

THENCE SOUTH 41 DEGREES 05'55" WEST ALONG SAID NORTHWEST LINE 193.88 FEET TO THE NORTHEAST MARGIN OF ELLIOTT AVENUE, AS ESTABLISHED BY THE CITY OF SEATTLE ORDINANCE NUMBER 12502;

THENCE SOUTH 42 DEGREES 59'09" EAST ALONG SAID NORTHEAST MARGIN 603.76 FEET TO THE MOST WESTERLY CORNER OF SAID BLOCK 4;

THENCE SOUTH 48 DEGREES 54'59" EAST ALONG THE SOUTHWEST LINE THEREOF 120 FEET TO THE MOST SOUTHERLY CORNER OF SAID BLOCK 4;

THENCE NORTH 41 DEGREES 07'49" EAST ALONG THE SOUTHEAST LINE THEREOF 256.08 FEET TO THE POINT OF BEGINNING.



**PARCEL B:**

THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 25 NORTH, RANGE 3 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON; OF SECTION 31, TOWNSHIP 25 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON; OF BLOCKS 168A AND 168B, SUPPLEMENTAL PLAT OF SEATTLE TIDELANDS AND OF VACATED EAGLE STREET, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF BLOCK 5, WILLIAM N. BELL'S SEVENTH ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 2 OF PLATS, PAGE 82, IN KING COUNTY, WASHINGTON;

THENCE SOUTH 41 DEGREES 07'49" WEST ALONG THE NORTHWEST LINE THEREOF, 27.58 FEET TO THE MOST EASTERLY CORNER OF LOT 4 IN SAID BLOCK 168B, SEATTLE TIDELANDS;

THENCE SOUTH 41 DEGREES 10'09" WEST ALONG THE SOUTHEAST LINE OF SAID LOT 4, A DISTANCE OF 91.78 FEET TO THE SOUTHWEST LINE OF SAID BLOCK 168B;

THENCE NORTH 48 DEGREES 49'51" WEST ALONG SAID SOUTHWEST LINE AND ITS EXTENSION 280.55 FEET TO ITS INTERSECTION WITH THE SOUTHEASTERLY EXTENSION OF THE SOUTHWEST LINE OF SAID BLOCK 168A, SEATTLE TIDELANDS;

THENCE NORTH 41 DEGREES 10'23" WEST ALONG SAID EXTENSION AND SOUTHWEST LINE 389.58 FEET TO THE SOUTHEAST MARGIN OF BAY STREET;

THENCE NORTH 41 DEGREES 10'09" EAST ALONG SAID SOUTHEAST MARGIN 135.36 FEET TO THE SOUTHWEST MARGIN OF ELLIOTT AVENUE AS ESTABLISHED BY CITY OF SEATTLE ORDINANCE NUMBER 12502;

THENCE SOUTH 43 DEGREES 00'51" EAST ALONG SAID SOUTHWEST MARGIN 670.08 FEET TO THE POINT OF BEGINNING.



**OPERATION AND MAINTENANCE AGREEMENT  
BETWEEN THE CITY OF SEATTLE  
SEATTLE ART MUSEUM  
AND  
MUSEUM DEVELOPMENT AUTHORITY**

This Agreement is entered into between The CITY OF SEATTLE, a Washington municipality ("City"), and the SEATTLE ART MUSEUM, a Washington nonprofit corporation ("SAM"), and is consented to by the MUSEUM DEVELOPMENT AUTHORITY OF SEATTLE, a public corporation chartered by the City of Seattle ("MDA"), regarding the operation and maintenance of both the Alaskan Way Boulevard lying adjacent to the City's Myrtle Edwards Park and SAM's planned Olympic Sculpture Park.

**RECITALS**

- A. The City approved a tax levy known as The 2000 Neighborhood Parks, Green Spaces, Trails, and Zoo Levy as proposed by Ordinance 120024 and approved by Seattle voters on November 7, 2000. One of the provisions of the 2000 Neighborhood Parks, Green Spaces, Trails, and Zoo Levy was funding for a waterfront connection from Myrtle Edwards Park to the Belltown Area. The design of the Olympic Sculpture Park together with the Grant of Access realizes that objective by incorporating a public connection from Belltown to Elliott Bay via pedestrian pathways (at grade and above grade) and skybridges over public rights of way.
- B. On October 24, 2005, the City of Seattle enacted Ordinance 115429, which granted a Skybridge Permit ("Permit") to SAM to construct and maintain for a period of twenty-five (25) years, and renewable for an additional twenty-five (25) years upon the conditions specified in the aforesaid Permit, two skybridges; one across Elliott Avenue and one across Alaskan Way. As a condition of that Permit, SAM must execute and deliver to the City a Grant of Access, which grants certain rights of public access over and upon the skybridges and pathways within a Public Access Area as defined in the Grant of Access; and
- C. This agreement is intended to govern the operation and maintenance of City-owned property adjacent to and within the Olympic Sculpture Park which is described in that agreement entitled "Design Agreement" executed by the City and SAM in accordance with Ordinance No. 119982 approved June 12, 2000.
- D. The City adopted Ordinance No. 121721 on February 2, 2005, designating Alaskan Way to be Alaskan Way Boulevard (a park boulevard) north of Broad Street and south of the northern edge of Bay Street and transferring jurisdiction for the designated area from Seattle Department of Transportation to the Department of Parks and Recreation (DPR) providing for



transportation, trail and utility purposes to continue.

- E. The above-described Alaskan Way Boulevard shall hereafter be referred to as "the Boulevard."
- F. The Boulevard is supported by a seawall which is a significant structural element supporting lands to its east.
- G. The City and SAM have acknowledged the public benefits from a consistent design philosophy being applied to the Olympic Sculpture Park and the portion of the Boulevard. The improvements to the Boulevard and the proposed elevated pedestrian walkway are the subject of separate Construction and Finance Agreement and Skybridge Permits, respectively, all as approved by the City Council.
- H. Although most of the Olympic Sculpture Park will be privately owned and operated by SAM, it will generally be open daily to the public free of charge, except on the 5 calendar days per year on which SAM shall be entitled to close the SAM owned portions of the OSP for private events. The use of the OSP shall be subject to rules of conduct as set forth below. The Alaskan Way Skybridge and Boulevard will have the appearance of being incorporated into the OSP. While SAM shall set the hours for the OSP as provided below, the Boulevard will be open to the public at the same times as the adjacent Myrtle Edwards Park.
- I. As a condition to the City passing the Skybridge Ordinance 115429, entering into the Construction and Finance Agreement and this Operation and Maintenance Agreement, SAM will grant certain public access to the City of Seattle as provided in the Skybridge Ordinance Grant of Public Access.
- J. In addition to the pathways and skybridges described above, and as depicted in the 100% Construction Drawings for the OSP, SAM will also construct a salmon habitat restoration project at the juncture of the shoreline between the Olympic Sculpture Park and Myrtle Edwards Park by installation of a natural beach.
- K. As depicted in the 100% Construction Drawings for the OSP, SAM will also construct buttressing for the seawall and salmon restoration adjoining the Boulevard at the time of development of the OSP (Seawall Buttressing). The parties wish to provide for the maintenance and operation of the OSP, the Boulevard, the Seawall Buttress and Embayment and Alaskan Way Skybridge in this agreement.
- L. SAM has committed to contributing \$2 million towards public improvements within the Olympic Sculpture Park as depicted in the 100% Construction Drawings for the OSP.



- M. The Museum Development Authority of Seattle, a public corporation chartered by the City of Seattle ("MDA"), is owner of the real property legally described on Exhibit 3, attached to the Grant of Access and incorporated herein ("Parcel D" or "MDA Property"). For general reference only, that parcel is indicated with the letter D on Exhibit 2 to the Grant of Access. MDA acquired the MDA Property from the City subject to use and development restrictions, including the requirement that the MDA Property be used and developed only as a sculpture garden, park or other open space as part of the SAM Olympic Sculpture Park ("OSP"), with public access free of charge in perpetuity. MDA also is lessee of the SAM Property under a lease from SAM for the purpose of conducting certain environmental work, subject to a sublease and operating agreement back to SAM. SAM is developing the OSP on the SAM Property and, pursuant to a ground lease from MDA, the MDA Property.

NOW, THEREFORE, in consideration of the Recitals and the mutual promises and provisions hereinafter set forth, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

#### AGREEMENT

1. IDENTIFICATION OF PARTIES AND PROPERTY AFFECTED BY THIS AGREEMENT

A. Property. This Agreement pertains to the Olympic Sculpture Park (OSP), the Boulevard as described in Ordinance No. 121721 and portions of Myrtle Edwards Park, all more specifically described in Exhibit A attached hereto and as shown on the Map designated as Exhibit B, also attached.

B. Parties. The parties to this Agreement are the City of Seattle, the Seattle Art Museum, which is developing the Olympic Sculpture Park. The MDA is signing the Consent attached hereto.

2. EXHIBITS TO AGREEMENT

Exhibits attached to and made a part of this Agreement include:

- A. Exhibit A – Property description and survey
- B. Exhibit B – Site Map
- C. Exhibit C – Plans and Specifications for construction within Alaskan Way and Myrtle Edwards Park as submitted and permitted for construction by Seattle Department of Planning and Development.
- D. Exhibit D – Embayment Plan/ Seawall Buttressing Plan
- E. Exhibit E – Ordinance No. 121721, passed January 24, 2005
- F. Exhibit F – Skybridge Ordinance No. 115429 passed October 24, 2005



IT IS DONE TO THE QUALITY OF THE DOCUMENT.

- G. Exhibit G – Grant of Access (Attachment A to Ord 115429) with attachments
- H. Exhibit H – Construction and Finance Agreement

3. TERM.

The initial term of this Agreement shall be twenty-five (25) years from the date of execution, unless otherwise modified in writing upon mutual agreement of the parties. At the end of the initial term, SAM may elect to extend this Agreement for an is for a term of twenty-five (25) years, commencing when construction to the OSP shall have been completed, the Grant of Access shall have been delivered by SAM to the City, and the OSP shall ready to open to the public, and terminating at 11:59 p.m. on the last day of the twenty-fifth year thereafter; provided, however, that upon written application of SAM at least thirty (30) days before the expiration of the term, the Superintendent may renew the Permit for one additional twenty-five (25) year term, for a total term of fifty (50) years, , and provided SAM is not then in default. Provided, however, that this Agreement shall not be renewed or extended if the Skybridge Permit granted under City of Seattle Ordinance 115429, is not renewed or is terminated.

4. DEFINITIONS

- A. "City" means The City of Seattle.
- B. "SAM" means Seattle Art Museum.
- C. "OSP" means the Olympic Sculpture Park, both SAM-owned parcels, SAM-leased parcels and Alaskan Way Boulevard.
- D. "DPR" means Seattle Department of Parks and Recreation.
- E. "SDOT" means Seattle Department of Transportation.
- F. "Skybridges" means the two elevated pedestrian and non-motorized vehicle walkways in the Olympic Sculpture Park, one over Elliott Avenue, connecting SAM-owned land parcels and one over the Burlington Northern Santa Fe Railroad franchise area, connecting the SAM-owned parcel to the Boulevard.
- G. "Elliott Avenue Skybridge" means the elevated pedestrian walkway above Elliott Avenue.
- H. "Alaskan Way Skybridge" means the elevated pedestrian walkway above the Burlington Northern Santa Fe Railway franchise area and the Boulevard. The Alaskan Way Skybridge includes the ramp, stairs and abutment where it connects with the Boulevard.
- I. "BNSF" means the Burlington Northern Santa Fe Railway franchise area in Alaskan Way.
- J. "ProParks Levy" means The 2000 Neighborhood Parks, Green Spaces, Trails, and Zoo Levy.
- K. "Embayment" means the natural beach, installed by SAM, at the juncture of the shoreline between the Olympic Sculpture Park and Myrtle Edwards Park.



- L. "The Boulevard" means that portion of Alaskan Way north of Broad Street and south of the northern edge of Bay Street designated as a park Boulevard by Ordinance No. 121721 (or, west of the BNSF franchise area). The term "the Boulevard" excludes the ramp, stairs, abutment and any other component that are part of the Alaskan Way Skybridge, as defined above.
- M. "Seawall Buttress" means buttressing for the seawall adjoining that portion of Alaskan Way north of Broad Street and south of the northern edge of Bay Street.
- N. "Grant of Access" means the at and above grade pedestrian and wheelchair accessible access area as provided in the Grant of Access.
- O. "Permit" means the Skybridge Permit granted under Seattle City Ordinance 115429.

5. PARK OPERATIONS

- A. Overall Operation and Programs: SAM will operate the OSP consistent with park and open space purposes in a clean, safe and inviting condition for the public. SAM will curate and manage artistic programs throughout the OSP, subject to part (D) below. SAM recognizes that the Boulevard will retain its status as a public park and will manage it in a way that is consistent with that status.
- B. Hours of Operation and Public Access: The Boulevard will be open at the same times as Myrtle Edwards Park, subject to temporary closure for repairs or maintenance, security or other similar circumstances. The City will coordinate with SAM regarding vehicular access or other special access across the Boulevard by the City, vendors or other persons involved in conducting Special Events (as defined in subsection (H) below). The Boulevard shall not be closed for private or public events, but access over the Boulevard may be modified during Special Events by mutual written agreement of the DPR and SAM.
  - 1). Except for the five (5) calendar days per year on which SAM may close the SAM owned portions of the OSP, as provided below, the OSP (including the Skybridges) shall be open daily to the public and shall at all such times be free of charge. SAM (a) will determine the hours of operation, and as provided in the Grant of Access, the Public Access Area shall be open at least during the period beginning at 9:00 AM and ending at 5:00 PM local time seven days a week and during all additional hours as the OSP is open to the public, but at all times subject to compliance with the rules of conduct.



- 2) SAM may limit access to SAM owned portions of the OSP and Skybridges for SAM events up to a maximum of five (5) days per year, (provided that the same shall be on an approved schedule as provided in Section 5(F) below), each event to be no longer than one day in duration. On the five days, SAM shall close the Alaskan Way Skybridge at the point where it touches down on the Boulevard and shall erect appropriate signage indicating that the Skybridge and OSP is closed to the public and directing the public toward other exits from the Boulevard. On the five days, SAM may charge an admission fee for entrance.
  - 3). Public access throughout the OSP will be from marked entrances along street frontages. Walls and/or security fencing will separate the Boulevard from the railroad tracks.
  - 4). The City, King County and other governmental agencies will have 24-hour emergency access, as well as access for maintenance vehicles, to Myrtle Edwards Park across the Boulevard. The Boulevard will be available for pedestrian , bicycle and wheelchair use, viewing, seating, and for all other purposes accommodated in a public boulevard.
- B. Rules and Hours of Operation: SAM shall adopt, subject to review by DPR, reasonable rules and regulations governing conduct within the Boulevard. The rules governing public conduct on the Boulevard 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 the OSP, including SAM's right but not obligation to enforce rules and regulations on the Boulevard, in addition to the City's enforcement.
- C. Art Curation: SAM shall exclusively control and decide the content, selection, display, timing, arrangement, and all other aspects of all artwork and sculptures within the entire OSP. The location of art work in the Park Boulevard must provide for access for maintenance and utility vehicles. Should any inquiries, disputes or complaints arise regarding: a) the content; b)selection; c) display; d) timing; e) arrangement; and f) all other aspects of all artwork and sculptures, including educational, temporary and performance-based work (collectively referred to as "SAM's art curation", it shall be the sole responsibility of SAM to respond and redress and SAM shall defend, indemnify, save and hold harmless, the City and its officials and employees from any claim for monetary damage or other relief that shall arise from or be related to SAM's art curation.



D. VARA and Placement of Artwork Upon and Within the Boulevard:

- 1.) For any work contracted for by SAM after the date of this Agreement that will be located within the Boulevard or upon the Elliott Avenue Skybridge or Alaskan Way Skybridge, SAM shall not contract for, nor shall it place or permit the placement of any artwork including any works of visual art including any painting, mural, drawing, print, sculpture, mosaic or still photograph, as the same are defined in the Visual Artists Rights Act (VARA) 17 U.S.C. § 101, as now enacted or hereafter modified, without first having either (i) determined that VARA will allow removal or relocation of the artwork or (ii) obtained from the artist a written waiver and agreement in a form approved by the City, waiving any right to the permanent emplacement of said artwork upon or within the Boulevard or the Elliott Avenue Skybridge or the Alaskan Way Skybridge, and which grants to SAM and to the City the right of removal or relocation of said work.
- 2.) The existing agreements for the creation and placement of the fountain entitled, Father and Son, by artist Louise Bourgeois, at the entry plaza with the Boulevard, allow SAM to relocate the work, subject to consultation with the artist and concurrence with the oversight committee. For any other work acquired or contracted for by SAM before the date of this Agreement, SAM will not place any work covered by VARA on the Boulevard, the Elliott Avenue Skybridge, the Alaskan Way Skybridge, the Embayment, or Seawall Buttress that cannot be removed or relocated pursuant to VARA or pursuant to the terms of any agreement or waiver with the artist.
- 3.) SAM will indemnify, defend and hold harmless the City from any claims, actions, suits, liability, loss, costs, expenses or damages of every kind and description arising under VARA for any work placed by or with the permission of SAM on the Boulevard, the Elliott Avenue Skybridge, the Alaskan Way Skybridge, the Embayment, or Seawall Buttress.

E. Fees and Concessions: SAM may charge admission fees for use of the pavilion building, garage or other structures such as temporary buildings, tents or others as may be erected from time to time (not including bridges) within the OSP, provided the same shall not encroach on the 11 foot pedestrian and wheelchair public access set forth in the Grant of Access; except that SAM shall not charge for admission to, or for use of, Park Boulevard. SAM shall have the exclusive right to operate and retain revenues from any concessions, gift shop, Special Events, services or



group admissions within COP, including Park Boulevard and the Skybridges.

- F. Annual Report and Calendar: SAM shall produce and deliver an "Annual Report and Calendar" to DPR each calendar year no later than March 1. The Annual Report and Calendar shall include, but not be limited to, the following:
- 1). A statement attesting to the status of outstanding permits, operating agreements, warranties or other matters pertaining to improvements or activities occurring or having occurred during the prior 12 months for the Park Boulevard.
  - 2). Descriptions of any and all proposed operational or maintenance changes proposed to be instituted within the forthcoming 12 months including but not limited to changes in hours, SAM private events not to exceed 5 calendar days per year, security arrangements, fees, new concessionaires or any other changes which may create or change obligations of the City or differ from the agreement herein.
- G. Emergencies: SAM shall respond to incidents involving injury to any person or damage to the subject property by contacting the appropriate emergency service providers such as Police, Fire, etc. as necessary. The City shall provide SAM appropriate contact names and telephone numbers for response to emergencies involving damage to City property, reports of incidents of criminal activity or other emergencies. In addition to reporting to emergency services, SAM shall also report all such incidents to DPR within 24 hours of the occurrence. Incidents involving hazardous materials or other environmental conditions posing a threat to human life or health should be immediately reported by telephone to the 911 dispatcher.
- H. Special Events: "Special Events" shall include the Fourth of July celebration, Hemp Fest, and any other festivals, holidays or events sponsored or permitted by the City for Myrtle Edwards Park. The City will require event sponsors utilizing Myrtle Edwards Park, to adequately protect sensitive vegetation, artwork and other improvements in the Boulevard, Skybridges and Embayment Areas. Furthermore, the City will require a trash and debris removal plan. Additionally, SAM may undertake special security precautions for artwork, landscaping or other improvements in the Boulevard and the Skybridges during Special Events such as but not limited to temporary fencing.



6. MAINTENANCE:

SAM and the City shall have the following maintenance responsibilities, respectively. These responsibilities cover the Boulevard, the Embayment, and the Seawall Buttressing (maintenance and repair of the sky bridges is covered in the Skybridge Permit, and this Agreement does not cover the OSP portions owned by SAM).

- A. Custodial Responsibilities: SAM shall perform all grounds custodial work throughout the Boulevard, including but not limited to litter pick up, garbage collection and disposal, cleaning of hard surfaces, sweeping of trails, keeping drainage structures clean and free of debris and disposing of materials collected in such activities; and performing all trail and sidewalk maintenance.
- B. Turf Maintenance: SAM shall maintain all turf within the Boulevard including but not limited to grass mowing, lawn irrigating, trimming, edging, and fertilizing and all other turf cultural practices.
- C. Planting Bed and Tree Maintenance: SAM shall maintain all planting beds and trees within the Boulevard including but not limited to weeding, pruning, fertilizing and irrigating to at least a standard consistent with the DPR publication "Landscape, Horticulture and Urban Forestry Best Management Practices" published in September 2004 and periodically revised and updated.
- D. Utility Services: SAM shall be responsible for all utility services and utility costs associated with maintaining the Boulevard, including but not limited to, electricity, gas, water, sewage, waste water and such other utilities as may be necessary. The City and SAM shall install, at SAM's expense, separate meters or methods to identify those utility costs to be paid by SAM. SAM shall be responsible for notifying affected utility providers of their (SAM's) responsibility for all utility accounts affecting the site. The City shall have no responsibility for utilities to serve any portion of OSP.



- E. Irrigation: SAM shall perform all normal maintenance of the irrigation system within the Boulevard, such as winter shut down, replacement of heads and risers and all other general maintenance and repairs necessary to keep the system operationally functional and in good order. SAM shall also be responsible within the Boulevard for the maintenance of the irrigation controls, training of staff regarding use and repair of irrigation equipment, and operating any and all computer systems (including telephone lines if any) controlling the irrigation systems. Any and all changes to computer software programs controlling the irrigation system shall be reviewed and approved by the DPR prior to installation. Such approval shall be reasonably granted and approved in writing.
- F. Graffiti Removal: SAM shall be responsible for all graffiti removal within the Boulevard. All graffiti shall be removed within 24 hours to the extent reasonably possible.
- G. Trail and Pathway Maintenance: SAM shall be responsible for all regular trail and pathway maintenance within the Boulevard, including but not limited to, patches, repairs and seal coats or overlays. The timing and necessity of repaving or other structural repairs to differential settlement, cracks, potholes and dips in trails or pathways greater than .5 inches in thickness and greater than 1 square foot, will be jointly determined by SAM and DPR and will be scheduled to limit disruptions to public use within the Boulevard.
- H. Accessibility: To the extent applicable, SAM will comply with the Americans with Disabilities Act.
- I. Signs: SAM shall be responsible for maintenance and replacement of all signs within the Boulevard including, but not limited to, direction signs, regulation notices, descriptive signs associated with art work and any and all other signs that are necessary for the orderly operation of the site. Trail and pathway signs throughout the Boulevard will be consistent in design, size and appearance with trail and pathway signs within OSP. SAM will replace the sign at the entrance to Myrtle Edwards Park.
- J. Hazardous Material Storage and Use: SAM shall not store any hazardous materials such as, but not limited to, pesticides, herbicides, paints, thinners, rodenticides, gasoline or other fuels, on or in any area accessible to the public. No hazardous materials shall be stored on the Boulevard. Any and all uses of hazardous materials within the Boulevard shall be consistent with DPR's Best Management Practices.
- K. Water Bills: SAM shall be responsible for all water bills incurred within the Boulevard. In the event that the water source for this area is within Myrtle Edwards Park, SAM shall be responsible for installing sub-meters



to measure the usage for Alaskan Way. Upon receipt of any invoices for said sub-meters, City shall promptly forward them and SAM shall promptly pay them. City shall be responsible for all water bills incurred for Myrtle Edwards Park including the Embayment area.

#### 7. CONTRACT MAINTENANCE

All construction or repair work, including maintenance performed under contract within the Boulevard shall be conducted as a "public work" as defined in RCW 39.04 and SAM shall adhere to all applicable State and City of Seattle Public Works laws including those imposed under RCW 39.12.020, except to the extent any work may be exempted by law. The City will consult with SAM on the appropriate means by which to procure and contract for such work and SAM shall not advertise for or undertake any such public work without City approval. All work completed pursuant to this section shall be inspected and approved by DPR prior to being deemed complete.

#### 8. MANAGEMENT PLAN

Upon the opening of the Boulevard as part of OSP, SAM shall produce and deliver to the City four copies of a written Management Plan outlining the proposed maintenance activities including custodial activity and proposed replacements of turf, pavement, signage or other facility components. The Management Plan shall be updated by SAM when in the opinion of the City it is reasonably necessary to do so. SAM will submit to the City any proposed significant changes to its Management Plan. The City shall review the Management Plan or any revised Management Plan, thirty (30) days of receipt and request revisions or acknowledge acceptance. If the City does not submit comments within that thirty (30) day period, it shall be deemed to have accepted the plan.

#### 9. SEAWALL BUTTRESS

The City shall maintain the Seawall Buttress constructed by SAM as agreed to in the separate OSP Construction and Finance Agreement. The City shall undertake annual inspections of the Seawall Buttress and such additional inspections as conditions may warrant. A copy of any reports of said inspections shall be submitted to SAM for review and comment and the City and SAM may discuss any planned repairs. For a period of three (3) years after installation, SAM shall guarantee installation on the Seawall Buttress, with a warranty on all materials, save for a catastrophic collapse due to an act of god.

#### 10. SHORELINE EMBAYMENT

- A. During the plant establishment period, but no longer than three (3) years after plant installation, SAM shall be responsible for routine maintenance of the upland vegetation and intertidal plantings related to Embayment located in Myrtle Edwards Park, and thereafter the City shall maintain and replace such plantings. All other maintenance within the confines of



Myrtle Edwards Park shall be the responsibility of the City including but not limited to "beach replenishment" as needed.

- B. 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, SAM (during plant establishment) and the City (after plant establishment) shall maintain and replace any dead or diseased plants with the same type and size and in the same location, unless mutually approved by SAM and DPR.

#### 11. LOCKS, CITY MAINTENANCE ACCESS, AND EMERGENCY ACCESS

SAM shall provide keys to gates and other barriers that may be installed throughout the Boulevard to the Parks Engineer for the purpose of providing easy access to Myrtle Edwards Park and other adjacent properties for maintenance purposes. Further, SAM shall provide Master Keys to Seattle Police and Fire Departments to allow emergency access during hours that the OSP may be closed to public access.

#### 12. EQUAL OPPORTUNITY AND OUTREACH

- A. SAM shall not discriminate against any employee or applicant for employment because of race, religion, creed, age, color, sex, marital status, sexual orientation, gender identity, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap unless based upon a bona fide occupational qualification. SAM shall take affirmative action to ensure that applicants are employed, and the employees are treated during employment, without regard to their creed, religion, race, age, color, sex, national origin, marital status, political ideology, ancestry, sexual orientation, gender identity, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training, including apprenticeship. SAM shall post in conspicuous places, available to employees and applicants for employment, notices as provided by the City of Seattle setting forth the provisions of this nondiscrimination clause.
- B. SAM shall encourage the use of women and minority employees and apprentices on this project and encourage outreach efforts in employment opportunities. Outreach efforts may include use of targeted solicitation lists, advertisements in publications directed to underrepresented communities, providing student internships or apprentice opportunities, noting SAM's Equal Employment Opportunity (EEO) policy in solicitations, emphasizing EEO and outreach policies within SAM and



using the services of available minority community and public organizations to perform outreach.

### 13. NONDISCRIMINATION IN EMPLOYEE BENEFITS

- A. Compliance With SMC Ch. 20.45: To the extent SMC Ch. 20.45 is applicable to this Agreement; SAM shall have the following obligations. SAM, as it pertains only to any activity governed by this Agreement, shall comply with the requirements of SMC Ch. 20.45 and Equal Benefits Program Rules implementing such requirements, under which SAM is obligated to provide the same or equivalent benefits ("equal benefits") to its employees that are directly involved in the activity governed by this Agreement with domestic partners as SAM provides to its employees with spouses. At the City's request, SAM shall provide complete information and verification of SAM's compliance with SMC Ch. 20.45. *(For further information about SMC Ch. 20.45 and the Equal Benefits Program Rules call (206) 684-0430 or review information at <http://cityofseattle.net/contract/equalbenefits/>.)*
- B. Remedies for Violations of SMC Ch. 20.45: If and to the extent SMC Ch. 20.45 is applicable to this Agreement, then any violation of this Section 13 shall be a material breach of this Agreement for which the City, after delivering a written notice and expiration of the time for under Section 19 (Default) below, may:
- 1). Require SAM to pay actual damages for each day that SAM is in violation of SMC Ch. 20.45 during the term of the Agreement; or
  - 2). Terminate the Agreement; or
  - 3). Impose such other remedies as specifically provided for in SMC Ch. 20.45 and the Equal Benefits Program Rules promulgated thereunder.

### 14. EQUALITY IN CONTRACTING

SAM shall comply with the requirements of the City's "Equality in Contracting Ordinance" (SMC 20.42.010 et seq). In addition to the other requirements of that act, prior to advertising to bid any portion of the Work, SAM and the Director of DPR shall adopt a plan, developed in consultation with the Director, to afford Women and Minority Businesses the maximum practicable opportunity to directly and meaningfully participate on City Contracts. The plan shall include specific measures the Contract awarding authority will undertake to increase the participation of Women and Minority Businesses. Each Contract awarding authority shall make efforts to comply with any goals established in the plan for that Contract awarding authority under these provisions for public works, consultant services and procuring goods or services. The Contract awarding authority may also establish aspirational goals for the participation of Women and Minority Businesses in a particular City Contract on a case-by-case basis.



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15. OTHER LEGAL REQUIREMENTS

- A. General Requirement: SAM at no expense to the City shall comply with all applicable laws of the United States and the State of Washington, the Charter and ordinances of City; and rules, regulations, orders, and directives of their administrative agencies and the officers thereof. Without limiting the generality of this paragraph, SAM shall specifically comply with the following requirements of this section.
- B. Licenses and Similar Authorizations: SAM at no expense to the City, shall secure and maintain in full force and effect during the term of this Agreement all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof.
- C. Use of Recycled Content Paper: SAM shall use, whenever commercially reasonable and practicable, recycled content paper on all documents submitted to City, in accordance with SMC 20.60.218.
- D. Americans With Disabilities Act: SAM shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) in performing its obligations under this Agreement. Failure to comply with the provisions of the ADA shall be default subject to the notice and cure provisions of Section 18 below.
- E. Fair Contracting Practices Ordinance: SAM shall comply with the Fair Contracting Practices Ordinance of the City of Seattle (Ordinance 119601), as amended. Conduct made unlawful by that ordinance constitutes a breach of contract after notice and expiration of the cure period in Section 18. Engaging in an unfair contracting practice may also result in the imposition of a civil fine or forfeiture under the Seattle Criminal Code as well as various civil remedies.

16. INDEMNIFICATION

- A. SAM, by entering into this Agreement, hereby releases the City from any and all claims resulting from damage or loss to its own property and does covenant and agree for itself, its successors and assigns, The City of Seattle, to at all times indemnify, defend and save harmless The City of Seattle from all claims, actions, suits, liability, loss, costs, expenses or damages of every kind and description (excepting only such damages that may result from the sole negligence of the City), which may accrue to, or be suffered by, any person or persons and/or property or properties, including without limitation, damage or injury to SAM, its officers, agents, employees, contractors, invitees, tenants and tenants' invitees,



licensees or its successors and assigns, by reason of the maintenance operation or use of improvements or any portion thereof made pursuant to this or any other agreement between the parties hereto regarding the OSP.

- B. In any action against the City of Seattle, by any employee of SAM, its contractor, subcontractors, sub-subcontractors, agents, or anyone directly or indirectly employed by any of them, the indemnification obligation of this Section shall not be limited by a limit on the amount or type of damages, compensation, or benefits payable by or for SAM, its contractor or any subcontractor under RCW Title 51, the Industrial Insurance Act, or any other employee benefit acts. Likewise, any City indemnification in the event of concurrent negligence shall not be limited by RCW Title 51. In addition, SAM and the City each waives immunity as to the City of Seattle only or SAM only, as applicable, in accordance with RCW Title 51 and shall require that in any construction contract, that it shall require its contractor to waive such immunity.
- C. If it is determined by a court of competent jurisdiction, that RCW 4.24.115 applies to this ordinance or that other concurrent negligence has occurred, then in the event claims or damages are caused by or result from the concurrent negligence of:
- 1). The City, its agents, contractors or employees; or
  - 2). SAM, its agents, contractors, or employees.

Then each party shall indemnify the other to extent of that party's negligence.

## 17. INSURANCE

### A. Coverage's and Limits of Liability:

- 1). SAM Liability Insurance. SAM, at no expense to the City, shall maintain continuously throughout the Term of this Agreement Commercial General Liability (CGL) and Automobile Liability insurance with a limit of liability of not less than \$10,000,000 each occurrence combined single limit bodily injury and property damage for claims occurring on, in or about the OSP property.
- 2). SAM Property Insurance. SAM shall maintain all risks property insurance on the improvements within the Boulevard with a limit of liability of not less than the replacement cost of the property. SAM shall cause its property insurer(s) to provide an insurer's waiver of subrogation in favor of the City.



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- 3). Contractor Insurance.
  - a). During the course of any construction, SAM shall cause all contractors to maintain CGL and Automobile Liability and Umbrella/Excess insurance as required with a limit of liability of not less than \$5,000,000 each occurrence combined single limit bodily injury and property damage for claims occurring on, in, or about the OSP property. CGL insurance shall include Premises/Operations, Products/Completed Operations, Contractual Liability, Independent Contractors and Stop Gap/Employers Liability. SAM shall, in addition, incorporate subparagraph B. herein ("Terms and Conditions") in all contractor agreements.
  - b). During the course of construction, SAM shall cause all contractors to maintain Worker's Compensation insurance in accordance with the provisions of Title 51 of the Revised Code of Washington (RCW) and contractors shall be responsible for ensuring that workers compensation insurance is in force for any subcontractor. Additionally, if the scope of work requires working in, on, or around a navigable waterway, the contractor and any subcontractor, if legally required to do so, shall maintain United States Longshore and Harbor Workers Act (USL&H) coverage and Jones Act in compliance with Federal Statutes. If the contractor is qualified as a self-insurer in accordance with chapter 51 RCW, it shall so certify to the City.
- 4) Terms and Conditions:
  - a). As respects SAM and contractor liability insurance, the City shall be an additional insured for primary and noncontributory limits of liability as documented by a copy of an additional insured endorsement or a copy of blanket additional insured policy wording.
  - b). Limits of liability referenced herein are minimum limits only and shall not be construed as limiting either the liability of SAM or any SAM contractor nor the liability of any insurer of SAM or any SAM contractor.
  - c). Insurers shall have a minimum A- VII A.M. Best's rating unless procured under the provisions of chapter 48.15 RCW or otherwise approved by the City.



- d). Insurers shall provide 45 day written notice of cancellation to the City in accordance with chapter 48.18.290 RCW, except 30 days for insurance policies procured under the provisions of chapter 48.15 RCW and 10 days for non-payment of premium.
  - e). Current certification of insurance, including a copy of an additional insured endorsement or a copy of blanket additional insured policy wording, shall be maintained on file with the City at the address specified in Section 5. ("Notices") of this Agreement.
- 5) Changes: Beginning on the fifth anniversary of this Agreement and annually thereafter, the City shall evaluate the appropriate coverages and limits of liability and may require a change in insurance coverages and limits. In the event of a dispute over such change, the parties shall utilize dispute resolution under Section 18c below.

18. DEFAULT, CURE, REMEDIES, DISPUTE RESOLUTION

- A. Default and Cure. Upon being given written notice of failure to perform or comply with a term or condition of this Agreement, the notified party shall promptly undertake such reasonable steps as shall be necessary to cure the specified failure. If that party fails to promptly undertake reasonable steps to perform or comply, or fails to cure the specified failure within 60 days after written notice is given, that party shall be deemed to be in default of this Agreement. Provided, however, that in the event that the parties agree that cure cannot reasonably occur within such 60-day period, then the Parties shall agree upon a reasonable period of time for the defaulting party to affect a cure. If at the end of that additional period of time cure has not been made, that party shall be deemed in default of this Agreement. Failure to cure after the applicable time period shall be an "Event of Default." If the parties are participating in dispute resolution under Section 18(D), then the time period for cure shall not commence until completion of the dispute resolution.
- B. Receiver: The appointment of a receiver to take possession of all or substantially all of the assets of SAM or other action taken or suffered by SAM under any bankruptcy, reorganization, or other statute of similar nature, if such receiver or action has not been released, discharged, dismissed, or vacated within 60 days, shall constitute a breach of this Agreement, and the breaching party shall be in default of this Agreement.
- C. Remedies: If there is an uncured Event of Default of this Agreement, then the non-defaulting party shall have all rights and remedies at law or in



equity. If the uncured Event of Default relates to a fundamental obligation under this Agreement, then the non-defaulting party shall have the right to terminate this Agreement. Any proposed termination due to an uncured Event of Default by SAM shall require compliance with Ordinance No. 118477 (Initiative 42). Upon any termination by the City for an uncured SAM Event of Default, the City in its discretion may retain the park improvements as constructed within the Boulevard and Alaskan Way Skybridge, but not any artwork, for the use of the public, or may require SAM to demolish said improvements and restore the site to its condition at the time of the execution of this Agreement. Sam shall remove all art works from public property within 60 days of the termination of the Agreement and shall indemnify the City against any and all losses related to such art works during the removal period and shall, in addition to the obligations arising under the indemnity provisions of this Agreement, indemnify, defend save and hold the City harmless from any claim, defense or other legal action arising under the Visual Artists Rights Act (VARA) 17 U.S.C. § 101, as now enacted or hereafter modified.

- D. Dispute Resolution: In the event that any dispute or misunderstanding arising under this Agreement concerning SAM's or the City's performance cannot be resolved through amicable negotiations, between SAM's Project Manager and the City's Project Manager, the matter shall be referred to the Superintendent, Seattle Parks & Recreation Department and SAM's senior executive(s). If such officials do not agree upon a decision, the parties shall then submit the matter to a non-binding alternate dispute resolution process.
  
- E. No Implied Waiver. No failure by either party to insist upon strict performance of any obligation of the other party or the failure to exercise any right or remedy arising out of a breach, irrespective of the length of time which such failure continues (except in cases where this agreement expressly limits the time for exercising the rights and remedies arising out of a breach), shall constitute a waiver of such breach or a waiver of that party's right to demand strict compliance of such term. No waiver of any default or the performance of any provision shall affect any other default or performance. A written waiver of default or the performance of a provision shall not be deemed to be a waiver of subsequent default or performance.

## 20. ASSIGNMENT; SUBCONTRACTING

Neither party shall assign, transfer, or encumber its interest in this Agreement without the prior written approval of the other party which approval shall not be unreasonably withheld, delayed, or conditioned. Notwithstanding the foregoing, SAM shall have the right to enter into contracts or other arrangements with other persons or



entities for operation and maintenance of OSP or to contract for any other service required or allowed to be performed by SAM under this agreement.

## 21. NOTICES

All notices required to be given under this Agreement shall be in writing and either delivered personally or sent by United States Certified Mail, postage prepaid, return receipt requested, to the appropriate addresses listed below or at such other address as shall be provided by written notice. Notice shall be deemed communicated to the parties 3 business days from the time of mailing if mailed as provided in this section. For convenience purposes only, and not to satisfy the requirement to give written notice, copies of notices also may be given by other means.

If to SAM: Seattle Art Museum  
P O BOX 22000  
Seattle, WA 98122  
Telephone: 206 654-3100  
FAX: 206 654-3135  
Attn: Director

If to City: City of Seattle  
Department of Parks and Recreation  
100 Dexter Avenue N.  
Seattle, WA 98109  
Attn: Superintendent of Parks and Recreation

## 22. ENVIRONMENTAL INDEMNITY

The parties acknowledge the existing Environment Agreement between the City and SAM dated December 7, 1999 ("Environmental Agreement"). No change of rights, obligations, or responsibilities under the existing Environmental Agreement shall occur as a result of this Agreement, except as expressly provided in this section. SAM shall be responsible for any and all costs that arise from or are related to soil removal, if required, and recapping of soil, if required, to the extent required to complete SAM's construction of the OSP. Such costs include, but are not limited to, disposal of contaminated soil or groundwater that is removed during construction replacement of material that is capping contaminated soil and is disturbed during construction mitigation measures required by permitting authorities, and worker safety measures required for construction on a contaminated site. The Consent Decree means the "Prospective Purchaser Consent Decree Re: The Former Unocal Seattle Marketing Terminal Property, Seattle, WA, entered under King County Superior Court No. 99-2-50226-4 SEA on December 7, 1999. The Consent Decree as stipulated above will be held in place until such time the project is complete, at which time the restrictive covenants will remain in perpetuity.



23. GOVERNING LAW

Except as provided in the preceding sentence, the City and SAM retain all rights and obligations as set forth in the Environmental Agreement. This Agreement shall be governed by the laws of the State of Washington. Venue of any action brought by one party against the other under this Agreement shall be in King County Superior Court.

24. SUCCESSORS AND ASSIGNS

The terms and conditions in this Agreement shall bind and inure to the benefit of the City and SAM, and except as otherwise provided herein, their successors and assigns.

25. NO THIRD-PARTY BENEFICIARIES

There are no third-party beneficiaries to this Agreement.

26. RELATIONSHIP OF PARTIES

Nothing in the Agreement shall be construed to create a partnership, joint venture, or relationship of employment or agency between the parties. The services to be rendered by SAM pursuant to this Agreement are as an independent contractor only.

27. INTEGRATION; AMENDMENT

This Agreement, together with its referenced Exhibits, 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.

28. TIME OF ESSENCE; FORCE MAJEURE

Time is of the essence of this Agreement. Any delay, stoppage, or prevention of a party's performance ("Delay") under this Agreement due to Force Majeure shall excuse the performance of the party affected for a period of time equal to the Delay. However, the parties shall take reasonable steps to minimize the length of Delay. "Force Majeure" shall mean a Delay attributable to any strike or other labor or industrial disturbance, civil disturbance, inability to secure customers, materials, supplies, or labor through ordinary sources, any changes in applicable laws or the interpretation thereof, or any lightning, earthquake, fire, or other cause beyond the reasonable control of the party for whom performance is required or its contractors or representatives.

29. NON-LIABILITY OF CITY OFFICIALS, EMPLOYEES, AND AGENTS

No elected or appointed board, commission, member, officer, employee or other agent of the City shall be personally liable to SAM, its successors, or assigns, in the event of any default or breach by the City or for any amount which may become due to SAM,

its successors, and assigns, under this Agreement, or for any obligation of the City under this Agreement.

30. SURVIVAL OF INDEMNITIES

The indemnities under this Agreement shall survive termination or expiration for a period of 3 years after termination or expiration of this Agreement, and no action based on any indemnity under this Agreement may be commenced thereafter.

31. ATTORNEYS' FEES

If legal proceedings are initiated to enforce any term of this Agreement, then the substantially prevailing party shall be entitled to recover, as an element of its cost of suit and not as damages, reasonable attorneys' fees and costs to be fixed by the court, including those incurred on appeal.

32. CONSTRUCTION

The titles of sections, captions or other divisions of this Agreement, are solely for the convenience of the parties and do not define or limit its contents or meaning. This Agreement is a negotiated instrument and shall not be construed as if it had been prepared by one of the parties but rather as if both parties had prepared it.

33. AUTHORITY

Each party represents to the other that the person signing this agreement on its behalf is authorized to do so and that each party has taken all such actions that are required of that party in order to enter into a binding agreement.

34. EXHIBITS

The exhibits attached hereto are incorporated herein by this reference.

35. COUNTERPARTS

This Agreement may be executed in two 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 agreement.



Dated: \_\_\_\_\_, 2005

**CITY: THE CITY OF SEATTLE**

By: \_\_\_\_\_  
Name: Greg Nickels  
Title: Mayor, signing by authority of Ordinance No. \_\_\_\_\_  
Date: \_\_\_\_\_

**SAM: SEATTLE ART MUSEUM, A Washington nonprofit corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Chairperson of Board of Trustees  
Date: \_\_\_\_\_



CONSENT BY MUSEUM DEVELOPMENT AUTHORITY

The MDA is signing this Consent as the fee title owner of the MDA Property (Parcel D) and as lessee of that certain lease for the SAM Property (Parcels A and B), as described in Recital J, for the sole purpose of consenting to the terms and conditions of this Agreement between the City and SAM. In addition to SAM's rights under the ground lease for the MDA Property, the MDA hereby consents to SAM's entry upon, construction of and operation of the improvements upon the MDA Property and the SAM Property. The MDA hereby consents to SAM's acting on its behalf in all matters related to the execution and implementation of the terms of this Agreement. The MDA shall have no liability or obligations under this Agreement to SAM or to the City, except for MDA's agreement to execute the Grant of Access.

**MUSEUM DEVELOPMENT AUTHORITY OF SEATTLE,**  
a public corporation chartered by the City of Seattle

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Print Title: \_\_\_\_\_

October 31, 2005



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**ORDINANCE ATTACHMENT C**

**PERMITTED ENCUMBRANCES**

1. RIGHT TO MAKE SLOPES FOR CUTS OR FILLS UPON PROPERTY HEREIN DESCRIBED AS PROVIDED FOR IN CITY OF SEATTLE ORDINANCE NOS. 18109 AND 28000.

2. AGREEMENT AND THE TERMS AND CONDITIONS THEREOF.

BETWEEN: UNION OIL COMPANY OF CALIFORNIA  
AND: CITY OF SEATTLE  
RECORDED: NOVEMBER 20, 1980  
RECORDING NUMBER: 8011200455  
REGARDING: PROPERTY USE AND DEVELOPMENT

SAID AGREEMENT IS A RE-RECORDING OF INSTRUMENT RECORDED UNDER RECORDING NUMBER 8010290676.

3. AGREEMENT AND THE TERMS AND CONDITIONS THEREOF:

BETWEEN: UNION OIL COMPANY OF CALIFORNIA  
AND: CITY OF SEATTLE  
RECORDED: NOVEMBER 20, 1980  
RECORDING NUMBER: 8011200456  
REGARDING: PROPERTY USE AND DEVELOPMENT

SAID AGREEMENT IS A RE-RECORDING OF INSTRUMENT RECORDED UNDER RECORDING NUMBER 8010290677.

4. TERMS AND PROVISIONS OF CITY OF SEATTLE ORDINANCE NO. 40057 RELATING TO CONSTRUCTION, MAINTENANCE AND OPERATION OF A CONDUIT OR SUBWAY UNDERNEATH AND ACROSS ELLIOTT AVENUE BETWEEN PARCELS A AND B, NOT EXCEEDING 14 FEET IN WIDTH, THE NORTHERLY MARGIN OF WHICH IS TO BE 86 FEET SOUTHERLY OF AND PARALLEL WITH THE SOUTHERLY MARGIN OF BAY STREET.

5. TERMS AND PROVISIONS OF CITY OF SEATTLE ORDINANCE NOS. 98301 AND 118042 RELATING TO CONSTRUCTION, MAINTENANCE AND OPERATION OF A SYSTEM OF PIPELINES AND APPURTENANCES IN, UNDER, ALONG AND ACROSS ALASKAN WAY BETWEEN PARCELS B AND C WITHIN A STRIP OF LAND 30 FEET IN WIDTH, APPROXIMATELY 40 FEET SOUTHERLY OF BAY STREET.

6. COVENANTS, CONDITIONS AND RESTRICTIONS CONTAINED IN INSTRUMENT, BUT OMITTING ANY COVENANTS OR RESTRICTIONS, IF ANY,



BASED UPON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, HANDICAP, NATIONAL ORIGIN, ANCESTRY, OR SOURCE OF INCOME, AS SET FORTH IN APPLICABLE STATE OR FEDERAL LAWS, EXCEPT TO THE EXTENT THAT SAID COVENANT OR RESTRICTION IS PERMITTED BY APPLICABLE LAW:

RECORDED: DECEMBER 7, 1999  
RECORDING NUMBER: 19991207001745

7. COVENANTS, CONDITIONS AND RESTRICTIONS CONTAINED IN INSTRUMENT, BUT OMITTING ANY COVENANTS OR RESTRICTIONS, IF ANY, BASED UPON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, HANDICAP, NATIONAL ORIGIN, ANCESTRY, OR SOURCE OF INCOME, AS SET FORTH IN APPLICABLE STATE OR FEDERAL LAWS, EXCEPT TO THE EXTENT THAT SAID COVENANT OR RESTRICTION IS PERMITTED BY APPLICABLE LAW:

RECORDED: DECEMBER 7, 1999  
RECORDING NUMBER: 19991207001746

8. PROPERTY USE AND DEVELOPMENT AGREEMENT, INCLUDING THE TERMS AND PROVISIONS THEREOF:

RECORDED: FEBRUARY 21, 2003  
RECORDING NUMBER: 20030221002536

9. MEMORANDUM OF DRAINAGE CONTROL, INCLUDING THE TERMS AND PROVISIONS THEREOF:

RECORDED: JULY 12, 2004  
RECORDING NUMBER: 20040712001525

10. COVENANT GEOLOGIC HAZARD AREA, INCLUDING THE TERMS AND PROVISIONS THEREOF:

RECORDED: JULY 18, 2005  
RECORDING NUMBER: 20050718002400

11. NON-DELINQUENT TAXES AND ASSESSMENTS.

12. GROUND LEASE DATED OCTOBER 1, 2002, BETWEEN BORROWER, AS GROUND LESSOR, AND THE MUSEUM DEVELOPMENT AUTHORITY; AS TENANT.

13. SUBLEASE DATED OCTOBER 1, 2002, BETWEEN BORROWER AS SUBTENANT AND THE MUSEUM DEVELOPMENT AUTHORITY AS SUBLANDLORD.

IT IS DUE TO THE QUALITY OF THE DOCUMENT.



**OPERATION AND MAINTENANCE AGREEMENT  
BETWEEN THE CITY OF SEATTLE  
SEATTLE ART MUSEUM  
AND  
MUSEUM DEVELOPMENT AUTHORITY**

This Agreement is entered into between The CITY OF SEATTLE, a Washington municipality ("City"), and the SEATTLE ART MUSEUM, a Washington nonprofit corporation ("SAM"), and is consented to by the MUSEUM DEVELOPMENT AUTHORITY OF SEATTLE, a public corporation chartered by the City of Seattle ("MDA"), regarding the operation and maintenance of both the Alaskan Way Boulevard lying adjacent to the City's Myrtle Edwards Park and SAM's planned Olympic Sculpture Park.

**RECITALS**

- A. The City approved a tax levy known as The 2000 Neighborhood Parks, Green Spaces, Trails, and Zoo Levy as proposed by Ordinance 120024 and approved by Seattle voters on November 7, 2000. One of the provisions of the 2000 Neighborhood Parks, Green Spaces, Trails, and Zoo Levy was funding for a waterfront connection from Myrtle Edwards Park to the Belltown Area. The design of the Olympic Sculpture Park together with the Grant of Access realizes that objective by incorporating a public connection from Belltown to Elliott Bay via pedestrian pathways (at grade and above grade) and skybridges over public rights of way.
- B. On October 24, 2005, the City of Seattle enacted Ordinance 115429, which granted a Skybridge Permit ("Permit") to SAM to construct and maintain for a period of twenty-five (25) years, and renewable for an additional twenty-five (25) years upon the conditions specified in the aforesaid Permit, two skybridges; one across Elliott Avenue and one across Alaskan Way. As a condition of that Permit, SAM must execute and deliver to the City a Grant of Access, which grants certain rights of public access over and upon the skybridges and pathways within a Public Access Area as defined in the Grant of Access; and
- C. This agreement is intended to govern the operation and maintenance of City-owned property adjacent to and within the Olympic Sculpture Park which is described in that agreement entitled "Design Agreement" executed by the City and SAM in accordance with Ordinance No. 119982 approved June 12, 2000.
- D. The City adopted Ordinance No. 121721 on February 2, 2005, designating Alaskan Way to be Alaskan Way Boulevard (a park boulevard) north of Broad Street and south of the northern edge of Bay Street and transferring jurisdiction for the designated area from Seattle Department of Transportation to the Department of Parks and Recreation (DPR) providing for

Exhibit 4 to AM. 

THIS IS ONE OF THE COPIES OF THE DOCUMENT.

transportation, trail and utility purposes to continue.

- E. The above-described Alaskan Way Boulevard shall hereafter be referred to as "the Boulevard."
- F. The Boulevard is supported by a seawall which is a significant structural element supporting lands to its east.
- G. The City and SAM have acknowledged the public benefits from a consistent design philosophy being applied to the Olympic Sculpture Park and the portion of the Boulevard. The improvements to the Boulevard and the proposed elevated pedestrian walkway are the subject of separate Construction and Finance Agreement and Skybridge Permits, respectively, all as approved by the City Council.
- H. Although most of the Olympic Sculpture Park will be privately owned and operated by SAM, it will generally be open daily to the public free of charge, except on the 5 calendar days per year on which SAM shall be entitled to close the SAM owned portions of the OSP for private events. The use of the OSP shall be subject to rules of conduct as set forth below. The Alaskan Way Skybridge and Boulevard will have the appearance of being incorporated into the OSP. While SAM shall set the hours for the OSP as provided below, the Boulevard will be open to the public at the same times as the adjacent Myrtle Edwards Park.
- I. As a condition to the City passing the Skybridge Ordinance 115429, entering into the Construction and Finance Agreement and this Operation and Maintenance Agreement, SAM will grant certain public access to the City of Seattle as provided in the Skybridge Ordinance Grant of Public Access.
- J. In addition to the pathways and skybridges described above, and as depicted in the 100% Construction Drawings for the OSP, SAM will also construct a salmon habitat restoration project at the juncture of the shoreline between the Olympic Sculpture Park and Myrtle Edwards Park by installation of a natural beach.
- K. As depicted in the 100% Construction Drawings for the OSP, SAM will also construct buttressing for the seawall and salmon restoration adjoining the Boulevard at the time of development of the OSP (Seawall Buttressing). The parties wish to provide for the maintenance and operation of the OSP, the Boulevard, the Seawall Buttress and Embayment and Alaskan Way Skybridge in this agreement.
- L. SAM has committed to contributing \$2 million towards public improvements within the Olympic Sculpture Park as depicted in the 100% Construction Drawings for the OSP.



M. The Museum Development Authority of Seattle, a public corporation chartered by the City of Seattle ("MDA"), is owner of the real property legally described on Exhibit 3, attached to the Grant of Access and incorporated herein ("Parcel D" or "MDA Property"). For general reference only, that parcel is indicated with the letter D on Exhibit 2 to the Grant of Access. MDA acquired the MDA Property from the City subject to use and development restrictions, including the requirement that the MDA Property be used and developed only as a sculpture garden, park or other open space as part of the SAM Olympic Sculpture Park ("OSP"), with public access free of charge in perpetuity. MDA also is lessee of the SAM Property under a lease from SAM for the purpose of conducting certain environmental work, subject to a sublease and operating agreement back to SAM. SAM is developing the OSP on the SAM Property and, pursuant to a ground lease from MDA, the MDA Property.

NOW, THEREFORE, in consideration of the Recitals and the mutual promises and provisions hereinafter set forth, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

#### AGREEMENT

##### 1. IDENTIFICATION OF PARTIES AND PROPERTY AFFECTED BY THIS AGREEMENT

A. Property. This Agreement pertains to the Olympic Sculpture Park (OSP), the Boulevard as described in Ordinance No. 121721 and portions of Myrtle Edwards Park, all more specifically described in Exhibit A attached hereto and as shown on the Map designated as Exhibit B, also attached.

B. Parties. The parties to this Agreement are the City of Seattle, the Seattle Art Museum, which is developing the Olympic Sculpture Park. The MDA is signing the Consent attached hereto.

##### 2. EXHIBITS TO AGREEMENT

Exhibits attached to and made a part of this Agreement include:

- A. Exhibit A – Property description and survey
- B. Exhibit B – Site Map
- C. Exhibit C – Plans and Specifications for construction within Alaskan Way and Myrtle Edwards Park as submitted and permitted for construction by Seattle Department of Planning and Development.
- D. Exhibit D – Embayment Plan/ Seawall Buttressing Plan
- E. Exhibit E – Ordinance No. 121721, passed January 24, 2005
- F. Exhibit F – Skybridge Ordinance No. 115429 passed October 24, 2005



- G. Exhibit G – Grant of Access (Attachment A to Ord 115429) with attachments
- H. Exhibit H – Construction and Finance Agreement

3. TERM.

The initial term of this Agreement shall be twenty-five (25) years from the date of execution, unless otherwise modified in writing upon mutual agreement of the parties. At the end of the initial term, SAM may elect to extend this Agreement for an is for a term of twenty-five (25) years, commencing when construction to the OSP shall have been completed, the Grant of Access shall have been delivered by SAM to the City, and the OSP shall ready to open to the public, and terminating at 11:59 p.m. on the last day of the twenty-fifth year thereafter; provided, however, that upon written application of SAM at least thirty (30) days before the expiration of the term, the Superintendent may renew the Permit for one additional twenty-five (25) year term, for a total term of fifty (50) years, , and provided SAM is not then in default. Provided, however, that this Agreement shall not be renewed or extended if the Skybridge Permit granted under City of Seattle Ordinance 115429, is not renewed or is terminated.

4. DEFINITIONS

- A. "City" means The City of Seattle.
- B. "SAM" means Seattle Art Museum.
- C. "OSP" means the Olympic Sculpture Park, both SAM-owned parcels, SAM-leased parcels and Alaskan Way Boulevard.
- D. "DPR" means Seattle Department of Parks and Recreation.
- E. "SDOT" means Seattle Department of Transportation.
- F. "Skybridges" means the two elevated pedestrian and non-motorized vehicle walkways in the Olympic Sculpture Park, one over Elliott Avenue, connecting SAM-owned land parcels and one over the Burlington Northern Santa Fe Railroad franchise area, connecting the SAM-owned parcel to the Boulevard.
- G. "Elliott Avenue Skybridge" means the elevated pedestrian walkway above Elliott Avenue.
- H. "Alaskan Way Skybridge" means the elevated pedestrian walkway above the Burlington Northern Santa Fe Railway franchise area and the Boulevard. The Alaskan Way Skybridge includes the ramp, stairs and abutment where it connects with the Boulevard.
- I. "BNSF" means the Burlington Northern Santa Fe Railway franchise area in Alaskan Way.
- J. "ProParks Levy" means The 2000 Neighborhood Parks, Green Spaces, Trails, and Zoo Levy.
- K. "Embayment" means the natural beach, installed by SAM, at the juncture of the shoreline between the Olympic Sculpture Park and Myrtle Edwards Park.



- L. "The Boulevard" means that portion of Alaskan Way north of Broad Street and south of the northern edge of Bay Street designated as a park Boulevard by Ordinance No. 121721 (or, west of the BNSF franchise area). The term "the Boulevard" excludes the ramp, stairs, abutment and any other component that are part of the Alaskan Way Skybridge, as defined above.
- M. "Seawall Buttress" means buttressing for the seawall adjoining that portion of Alaskan Way north of Broad Street and south of the northern edge of Bay Street.
- N. "Grant of Access" means the at and above grade pedestrian and wheelchair accessible access area as provided in the Grant of Access.
- O. "Permit" means the Skybridge Permit granted under Seattle City Ordinance 115429.

5. PARK OPERATIONS

- A. Overall Operation and Programs: SAM will operate the OSP consistent with park and open space purposes in a clean, safe and inviting condition for the public. SAM will curate and manage artistic programs throughout the OSP, subject to part (D) below. SAM recognizes that the Boulevard will retain its status as a public park and will manage it in a way that is consistent with that status.
- B. Hours of Operation and Public Access: The Boulevard will be open at the same times as Myrtle Edwards Park, subject to temporary closure for repairs or maintenance, security or other similar circumstances. The City will coordinate with SAM regarding vehicular access or other special access across the Boulevard by the City, vendors or other persons involved in conducting Special Events (as defined in subsection (H) below). The Boulevard shall not be closed for private or public events, but access over the Boulevard may be modified during Special Events by mutual written agreement of the DPR and SAM.
  - 1). Except for the five (5) calendar days per year on which SAM may close the SAM owned portions of the OSP, as provided below, the OSP (including the Skybridges) shall be open daily to the public and shall at all such times be free of charge. SAM (a) will determine the hours of operation, and as provided in the Grant of Access, the Public Access Area shall be open at least during the period beginning at 9:00 AM and ending at 5:00 PM local time seven days a week and during all additional hours as the OSP is open to the public, but at all times subject to compliance with the rules of conduct.



- 2) SAM may limit access to SAM owned portions of the OSP and Skybridges for SAM events up to a maximum of five (5) days per year, (provided that the same shall be on an approved schedule as provided in Section 5(F) below), each event to be no longer than one day in duration. On the five days, SAM shall close the Alaskan Way Skybridge at the point where it touches down on the Boulevard and shall erect appropriate signage indicating that the Skybridge and OSP is closed to the public and directing the public toward other exits from the Boulevard. On the five days, SAM may charge an admission fee for entrance.
  - 3). Public access throughout the OSP will be from marked entrances along street frontages. Walls and/or security fencing will separate the Boulevard from the railroad tracks.
  - 4). The City, King County and other governmental agencies will have 24-hour emergency access, as well as access for maintenance vehicles, to Myrtle Edwards Park across the Boulevard. The Boulevard will be available for pedestrian, bicycle and wheelchair use, viewing, seating, and for all other purposes accommodated in a public boulevard.
- B. Rules and Hours of Operation: SAM shall adopt, subject to review by DPR, reasonable rules and regulations governing conduct within the Boulevard. The rules governing public conduct on the Boulevard 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 the OSP, including SAM's right but not obligation to enforce rules and regulations on the Boulevard, in addition to the City's enforcement.
- C. Art Curation: SAM shall exclusively control and decide the content, selection, display, timing, arrangement, and all other aspects of all artwork and sculptures within the entire OSP. The location of art work in the Park Boulevard must provide for access for maintenance and utility vehicles. Should any inquiries, disputes or complaints arise regarding: a) the content; b)selection; c) display; d) timing; e) arrangement; and f) all other aspects of all artwork and sculptures, including educational, temporary and performance-based work (collectively referred to as "SAM's art curation", it shall be the sole responsibility of SAM to respond and redress and SAM shall defend, indemnify, save and hold harmless, the City and its officials and employees from any claim for monetary damage or other relief that shall arise from or be related to SAM's art curation.



D. VARA and Placement of Artwork Upon and Within the Boulevard:

- 1.) For any work contracted for by SAM after the date of this Agreement that will be located within the Boulevard or upon the Elliott Avenue Skybridge or Alaskan Way Skybridge, SAM shall not contract for, nor shall it place or permit the placement of any artwork including any works of visual art including any painting, mural, drawing, print, sculpture, mosaic or still photograph, as the same are defined in the Visual Artists Rights Act (VARA) 17 U.S.C. § 101, as now enacted or hereafter modified, without first having either (i) determined that VARA will allow removal or relocation of the artwork or (ii) obtained from the artist a written waiver and agreement in a form approved by the City, waiving any right to the permanent emplacement of said artwork upon or within the Boulevard or the Elliott Avenue Skybridge or the Alaskan Way Skybridge, and which grants to SAM and to the City the right of removal or relocation of said work.
- 2.) The existing agreements for the creation and placement of the fountain entitled, Father and Son, by artist Louise Bourgeois, at the entry plaza with the Boulevard, allow SAM to relocate the work, subject to consultation with the artist and concurrence with the oversight committee. For any other work acquired or contracted for by SAM before the date of this Agreement, SAM will not place any work covered by VARA on the Boulevard, the Elliott Avenue Skybridge, the Alaskan Way Skybridge, the Embayment, or Seawall Buttress that cannot be removed or relocated pursuant to VARA or pursuant to the terms of any agreement or waiver with the artist.
- 3.) SAM will indemnify, defend and hold harmless the City from any claims, actions, suits, liability, loss, costs, expenses or damages of every kind and description arising under VARA for any work placed by or with the permission of SAM on the Boulevard, the Elliott Avenue Skybridge, the Alaskan Way Skybridge, the Embayment, or Seawall Buttress.

E. Fees and Concessions: SAM may charge admission fees for use of the pavilion building, garage or other structures such as temporary buildings, tents or others as may be erected from time to time (not including bridges) within the OSP, provided the same shall not encroach on the 11 foot pedestrian and wheelchair public access set forth in the Grant of Access; except that SAM shall not charge for admission to, or for use of, Park Boulevard. SAM shall have the exclusive right to operate and retain revenues from any concessions, gift shop, Special Events, services or



group admissions within OSP, including Park Boulevard and the Skybridges.

- F. Annual Report and Calendar: SAM shall produce and deliver an "Annual Report and Calendar" to DPR each calendar year no later than March 1. The Annual Report and Calendar shall include, but not be limited to, the following:
- 1). A statement attesting to the status of outstanding permits, operating agreements, warranties or other matters pertaining to improvements or activities occurring or having occurred during the prior 12 months for the Park Boulevard.
  - 2). Descriptions of any and all proposed operational or maintenance changes proposed to be instituted within the forthcoming 12 months including but not limited to changes in hours, SAM private events not to exceed 5 calendar days per year, security arrangements, fees, new concessionaires or any other changes which may create or change obligations of the City or differ from the agreement herein.
- G. Emergencies: SAM shall respond to incidents involving injury to any person or damage to the subject property by contacting the appropriate emergency service providers such as Police, Fire, etc. as necessary. The City shall provide SAM appropriate contact names and telephone numbers for response to emergencies involving damage to City property, reports of incidents of criminal activity or other emergencies. In addition to reporting to emergency services, SAM shall also report all such incidents to DPR within 24 hours of the occurrence. Incidents involving hazardous materials or other environmental conditions posing a threat to human life or health should be immediately reported by telephone to the 911 dispatcher.
- H. Special Events: "Special Events" shall include the Fourth of July celebration, Hemp Fest, and any other festivals, holidays or events sponsored or permitted by the City for Myrtle Edwards Park. The City will require event sponsors utilizing Myrtle Edwards Park, to adequately protect sensitive vegetation, artwork and other improvements in the Boulevard, Skybridges and Embayment Areas. Furthermore, the City will require a trash and debris removal plan. Additionally, SAM may undertake special security precautions for artwork, landscaping or other improvements in the Boulevard and the Skybridges during Special Events such as but not limited to temporary fencing.



6. MAINTENANCE:

SAM and the City shall have the following maintenance responsibilities, respectively. These responsibilities cover the Boulevard, the Embayment, and the Seawall Buttressing (maintenance and repair of the sky bridges is covered in the Skybridge Permit, and this Agreement does not cover the OSP portions owned by SAM).

- A. Custodial Responsibilities: SAM shall perform all grounds custodial work throughout the Boulevard, including but not limited to litter pick up, garbage collection and disposal, cleaning of hard surfaces, sweeping of trails, keeping drainage structures clean and free of debris and disposing of materials collected in such activities; and performing all trail and sidewalk maintenance.
- B. Turf Maintenance: SAM shall maintain all turf within the Boulevard including but not limited to grass mowing, lawn irrigating, trimming, edging, and fertilizing and all other turf cultural practices.
- C. Planting Bed and Tree Maintenance: SAM shall maintain all planting beds and trees within the Boulevard including but not limited to weeding, pruning, fertilizing and irrigating to at least a standard consistent with the DPR publication "Landscape, Horticulture and Urban Forestry Best Management Practices" published in September 2004 and periodically revised and updated.
- D. Utility Services: SAM shall be responsible for all utility services and utility costs associated with maintaining the Boulevard, including but not limited to, electricity, gas, water, sewage, waste water and such other utilities as may be necessary. The City and SAM shall install, at SAM's expense, separate meters or methods to identify those utility costs to be paid by SAM. SAM shall be responsible for notifying affected utility providers of their (SAM's) responsibility for all utility accounts affecting the site. The City shall have no responsibility for utilities to serve any portion of OSP.



- E. Irrigation: SAM shall perform all normal maintenance of the irrigation system within the Boulevard, such as winter shut down, replacement of heads and risers and all other general maintenance and repairs necessary to keep the system operationally functional and in good order. SAM shall also be responsible within the Boulevard for the maintenance of the irrigation controls, training of staff regarding use and repair of irrigation equipment, and operating any and all computer systems (including telephone lines if any) controlling the irrigation systems. Any and all changes to computer software programs controlling the irrigation system shall be reviewed and approved by the DPR prior to installation. Such approval shall be reasonably granted and approved in writing.
- F. Graffiti Removal: SAM shall be responsible for all graffiti removal within the Boulevard. All graffiti shall be removed within 24 hours to the extent reasonably possible.
- G. Trail and Pathway Maintenance: SAM shall be responsible for all regular trail and pathway maintenance within the Boulevard, including but not limited to, patches, repairs and seal coats or overlays. The timing and necessity of repaving or other structural repairs to differential settlement, cracks, potholes and dips in trails or pathways greater than .5 inches in thickness and greater than 1 square foot, will be jointly determined by SAM and DPR and will be scheduled to limit disruptions to public use within the Boulevard.
- H. Accessibility: To the extent applicable, SAM will comply with the Americans with Disabilities Act.
- I. Signs: SAM shall be responsible for maintenance and replacement of all signs within the Boulevard including, but not limited to, direction signs, regulation notices, descriptive signs associated with art work and any and all other signs that are necessary for the orderly operation of the site. Trail and pathway signs throughout the Boulevard will be consistent in design, size and appearance with trail and pathway signs within OSP. SAM will replace the sign at the entrance to Myrtle Edwards Park.
- J. Hazardous Material Storage and Use: SAM shall not store any hazardous materials such as, but not limited to, pesticides, herbicides, paints, thinners, rodenticides, gasoline or other fuels, on or in any area accessible to the public. No hazardous materials shall be stored on the Boulevard. Any and all uses of hazardous materials within the Boulevard shall be consistent with DPR's Best Management Practices.
- K. Water Bills: SAM shall be responsible for all water bills incurred within the Boulevard. In the event that the water source for this area is within Myrtle Edwards Park, SAM shall be responsible for installing sub-meters



to measure the usage for Alaskan Way. Upon receipt of any invoices for said sub-meters, City shall promptly forward them and SAM shall promptly pay them. City shall be responsible for all water bills incurred for Myrtle Edwards Park including the Embayment area.

7. CONTRACT MAINTENANCE

All construction or repair work, including maintenance performed under contract within the Boulevard shall be conducted as a "public work" as defined in RCW 39.04 and SAM shall adhere to all applicable State and City of Seattle Public Works laws including those imposed under RCW 39.12.020, except to the extent any work may be exempted by law. The City will consult with SAM on the appropriate means by which to procure and contract for such work and SAM shall not advertise for or undertake any such public work without City approval. All work completed pursuant to this section shall be inspected and approved by DPR prior to being deemed complete.

8. MANAGEMENT PLAN

Upon the opening of the Boulevard as part of OSP, SAM shall produce and deliver to the City four copies of a written Management Plan outlining the proposed maintenance activities including custodial activity and proposed replacements of turf, pavement, signage or other facility components. The Management Plan shall be updated by SAM when in the opinion of the City it is reasonably necessary to do so. SAM will submit to the City any proposed significant changes to its Management Plan. The City shall review the Management Plan or any revised Management Plan, thirty (30) days of receipt and request revisions or acknowledge acceptance. If the City does not submit comments within that thirty (30) day period, it shall be deemed to have accepted the plan.

9. SEAWALL BUTTRESS

The City shall maintain the Seawall Buttress constructed by SAM as agreed to in the separate OSP Construction and Finance Agreement. The City shall undertake annual inspections of the Seawall Buttress and such additional inspections as conditions may warrant. A copy of any reports of said inspections shall be submitted to SAM for review and comment and the City and SAM may discuss any planned repairs. For a period of three (3) years after installation, SAM shall guarantee installation on the Seawall Buttress, with a warranty on all materials, save for a catastrophic collapse due to an act of god.

10. SHORELINE EMBAYMENT

- A. During the plant establishment period, but no longer than three (3) years after plant installation, SAM shall be responsible for routine maintenance of the upland vegetation and intertidal plantings related to Embayment located in Myrtle Edwards Park, and thereafter the City shall maintain and replace such plantings. All other maintenance within the confines of



Myrtle Edwards Park shall be the responsibility of the City including but not limited to "beach replenishment" as needed.

- B. 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, SAM (during plant establishment) and the City (after plant establishment) shall maintain and replace any dead or diseased plants with the same type and size and in the same location, unless mutually approved by SAM and DPR.

#### 11. LOCKS, CITY MAINTENANCE ACCESS, AND EMERGENCY ACCESS

SAM shall provide keys to gates and other barriers that may be installed throughout the Boulevard to the Parks Engineer for the purpose of providing easy access to Myrtle Edwards Park and other adjacent properties for maintenance purposes. Further, SAM shall provide Master Keys to Seattle Police and Fire Departments to allow emergency access during hours that the OSP may be closed to public access.

#### 12. EQUAL OPPORTUNITY AND OUTREACH

- A. SAM shall not discriminate against any employee or applicant for employment because of race, religion, creed, age, color, sex, marital status, sexual orientation, gender identity, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap unless based upon a bona fide occupational qualification. SAM shall take affirmative action to ensure that applicants are employed, and the employees are treated during employment, without regard to their creed, religion, race, age, color, sex, national origin, marital status, political ideology, ancestry, sexual orientation, gender identity, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training, including apprenticeship. SAM shall post in conspicuous places, available to employees and applicants for employment, notices as provided by the City of Seattle setting forth the provisions of this nondiscrimination clause.
- B. SAM shall encourage the use of women and minority employees and apprentices on this project and encourage outreach efforts in employment opportunities. Outreach efforts may include use of targeted solicitation lists, advertisements in publications directed to underrepresented communities, providing student internships or apprentice opportunities, noting SAM's Equal Employment Opportunity (EEO) policy in solicitations, emphasizing EEO and outreach policies within SAM and



using the services of available minority community and public organizations to perform outreach.

13. NONDISCRIMINATION IN EMPLOYEE BENEFITS

- A. Compliance With SMC Ch. 20.45: To the extent SMC Ch. 20.45 is applicable to this Agreement; SAM shall have the following obligations. SAM, as it pertains only to any activity governed by this Agreement, shall comply with the requirements of SMC Ch. 20.45 and Equal Benefits Program Rules implementing such requirements, under which SAM is obligated to provide the same or equivalent benefits ("equal benefits") to its employees that are directly involved in the activity governed by this Agreement with domestic partners as SAM provides to its employees with spouses. At the City's request, SAM shall provide complete information and verification of SAM's compliance with SMC Ch. 20.45. *(For further information about SMC Ch. 20.45 and the Equal Benefits Program Rules call (206) 684-0430 or review information at <http://cityofseattle.net/contract/equalbenefits/>.)*
- B. Remedies for Violations of SMC Ch. 20.45: If and to the extent SMC Ch. 20.45 is applicable to this Agreement, then any violation of this Section 13 shall be a material breach of this Agreement for which the City, after delivering a written notice and expiration of the time for under Section 19 (Default) below, may:
- 1). Require SAM to pay actual damages for each day that SAM is in violation of SMC Ch. 20.45 during the term of the Agreement; or
  - 2). Terminate the Agreement; or
  - 3). Impose such other remedies as specifically provided for in SMC Ch 20.45 and the Equal Benefits Program Rules promulgated thereunder.

14. EQUALITY IN CONTRACTING

SAM shall comply with the requirements of the City's "Equality in Contracting Ordinance" (SMC 20.42.010 et seq). In addition to the other requirements of that act, prior to advertising to bid any portion of the Work, SAM and the Director of DPR shall adopt a plan, developed in consultation with the Director, to afford Women and Minority Businesses the maximum practicable opportunity to directly and meaningfully participate on City Contracts. The plan shall include specific measures the Contract awarding authority will undertake to increase the participation of Women and Minority Businesses. Each Contract awarding authority shall make efforts to comply with any goals established in the plan for that Contract awarding authority under these provisions for public works, consultant services and procuring goods or services. The Contract awarding authority may also establish aspirational goals for the participation of Women and Minority Businesses in a particular City Contract on a case-by-case basis.



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

15. OTHER LEGAL REQUIREMENTS

- A. General Requirement: SAM at no expense to the City shall comply with all applicable laws of the United States and the State of Washington, the Charter and ordinances of City; and rules, regulations, orders, and directives of their administrative agencies and the officers thereof. Without limiting the generality of this paragraph, SAM shall specifically comply with the following requirements of this section.
- B. Licenses and Similar Authorizations: SAM at no expense to the City, shall secure and maintain in full force and effect during the term of this Agreement all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof.
- C. Use of Recycled Content Paper: SAM shall use whenever commercially reasonable and practicable, recycled content paper on all documents submitted to City, in accordance with SMC 20.60.218.
- D. Americans With Disabilities Act: SAM shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) in performing its obligations under this Agreement. Failure to comply with the provisions of the ADA shall be default subject to the notice and cure provisions of Section 18 below.
- E. Fair Contracting Practices Ordinance: SAM shall comply with the Fair Contracting Practices Ordinance of the City of Seattle (Ordinance 119601), as amended. Conduct made unlawful by that ordinance constitutes a breach of contract after notice and expiration of the cure period in Section 18. Engaging in an unfair contracting practice may also result in the imposition of a civil fine or forfeiture under the Seattle Criminal Code as well as various civil remedies.

16. INDEMNIFICATION

- A. SAM, by entering into this Agreement, hereby releases the City from any and all claims resulting from damage or loss to its own property and does covenant and agree for itself, its successors and assigns, The City of Seattle, to at all times indemnify, defend and save harmless The City of Seattle from all claims, actions, suits, liability, loss, costs, expenses or damages of every kind and description (excepting only such damages that may result from the sole negligence of the City), which may accrue to, or be suffered by, any person or persons and/or property or properties, including without limitation, damage or injury to SAM, its officers, agents, employees, contractors, invitees, tenants and tenants' invitees,



licensees or its successors and assigns, by reason of the maintenance operation or use of improvements or any portion thereof made pursuant to this or any other agreement between the parties hereto regarding the OSP.

- B. In any action against the City of Seattle, by any employee of SAM, its contractor, subcontractors, sub-subcontractors, agents, or anyone directly or indirectly employed by any of them, the indemnification obligation of this Section shall not be limited by a limit on the amount or type of damages, compensation, or benefits payable by or for SAM, its contractor or any subcontractor under RCW Title 51, the Industrial Insurance Act, or any other employee benefit acts. Likewise, any City indemnification in the event of concurrent negligence shall not be limited by RCW Title 51. In addition, SAM and the City each waives immunity as to the City of Seattle only or SAM only, as applicable, in accordance with RCW Title 51 and shall require that in any construction contract, that it shall require its contractor to waive such immunity.
- C. If it is determined by a court of competent jurisdiction, that RCW 4.24.115 applies to this ordinance or that other concurrent negligence has occurred, then in the event claims or damages are caused by or result from the concurrent negligence of:
- 1). The City, its agents, contractors or employees; or
  - 2). SAM, its agents, contractors, or employees.

Then each party shall indemnify the other to extent of that party's negligence.

## 17. INSURANCE

### A. Coverage's and Limits of Liability:

- 1). SAM Liability Insurance. SAM, at no expense to the City, shall maintain continuously throughout the Term of this Agreement Commercial General Liability (CGL) and Automobile Liability insurance with a limit of liability of not less than \$10,000,000 each occurrence combined single limit bodily injury and property damage for claims occurring on, in or about the OSP property.
- 2). SAM Property Insurance. SAM shall maintain all risks property insurance on the improvements within the Boulevard with a limit of liability of not less than the replacement cost of the property. SAM shall cause its property insurer(s) to provide an insurer's waiver of subrogation in favor of the City.



3). Contractor Insurance.

- a). During the course of any construction, SAM shall cause all contractors to maintain CGL and Automobile Liability and Umbrella/Excess insurance as required with a limit of liability of not less than \$5,000,000 each occurrence combined single limit bodily injury and property damage for claims occurring on, in, or about the OSP property. CGL insurance shall include Premises/Operations, Products/Completed Operations, Contractual Liability, Independent Contractors and Stop Gap/Employers Liability. SAM shall, in addition, incorporate subparagraph B. herein ("Terms and Conditions") in all contractor agreements.
- b). During the course of construction, SAM shall cause all contractors to maintain Worker's Compensation insurance in accordance with the provisions of Title 51 of the Revised Code of Washington (RCW) and contractors shall be responsible for ensuring that workers compensation insurance is in force for any subcontractor. Additionally, if the scope of work requires working in, on, or around a navigable waterway, the contractor and any subcontractor, if legally required to do so, shall maintain United States Longshore and Harbor Workers Act (USL&H) coverage and Jones Act in compliance with Federal Statutes. If the contractor is qualified as a self-insurer in accordance with chapter 51 RCW, it shall so certify to the City.

4) Terms and Conditions:

- a). As respects SAM and contractor liability insurance, the City shall be an additional insured for primary and noncontributory limits of liability as documented by a copy of an additional insured endorsement or a copy of blanket additional insured policy wording.
- b). Limits of liability referenced herein are minimum limits only and shall not be construed as limiting either the liability of SAM or any SAM contractor nor the liability of any insurer of SAM or any SAM contractor.
- c). Insurers shall have a minimum A- VII A.M. Best's rating unless procured under the provisions of chapter 48.15 RCW or otherwise approved by the City.



IN ISSUE IN THE QUALITY OF THE DOCUMENT.

- d). Insurers shall provide 45 day written notice of cancellation to the City in accordance with chapter 48.18.290 RCW, except 30 days for insurance policies procured under the provisions of chapter 48.15 RCW and 10 days for non-payment of premium.
  - e). Current certification of insurance, including a copy of an additional insured endorsement or a copy of blanket additional insured policy wording, shall be maintained on file with the City at the address specified in Section 5. ("Notices") of this Agreement.
- 5) Changes: Beginning on the fifth anniversary of this Agreement and annually thereafter, the City shall evaluate the appropriate coverages and limits of liability and may require a change in insurance coverages and limits. In the event of a dispute over such change, the parties shall utilize dispute resolution under Section 18c below.

18. DEFAULT, CURE, REMEDIES, DISPUTE RESOLUTION

- A. Default and Cure. Upon being given written notice of failure to perform or comply with a term or condition of this Agreement, the notified party shall promptly undertake such reasonable steps as shall be necessary to cure the specified failure. If that party fails to promptly undertake reasonable steps to perform or comply, or fails to cure the specified failure within 60 days after written notice is given, that party shall be deemed to be in default of this Agreement. Provided, however, that in the event that the parties agree that cure cannot reasonably occur within such 60-day period, then the Parties shall agree upon a reasonable period of time for the defaulting party to affect a cure. If at the end of that additional period of time cure has not been made, that party shall be deemed in default of this Agreement. Failure to cure after the applicable time period shall be an "Event of Default." If the parties are participating in dispute resolution under Section 18(D), then the time period for cure shall not commence until completion of the dispute resolution.
- B. Receiver: The appointment of a receiver to take possession of all or substantially all of the assets of SAM or other action taken or suffered by SAM under any bankruptcy, reorganization, or other statute of similar nature, if such receiver or action has not been released, discharged, dismissed, or vacated within 60 days, shall constitute a breach of this Agreement, and the breaching party shall be in default of this Agreement.
- C. Remedies: If there is an uncured Event of Default of this Agreement, then the non-defaulting party shall have all rights and remedies at law or in



equity. If the uncured Event of Default relates to a fundamental obligation under this Agreement, then the non-defaulting party shall have the right to terminate this Agreement. Any proposed termination due to an uncured Event of Default by SAM shall require compliance with Ordinance No. 118477 (Initiative 42). Upon any termination by the City for an uncured SAM Event of Default, the City in its discretion may retain the park improvements as constructed within the Boulevard and Alaskan Way Skybridge, but not any artwork, for the use of the public, or may require SAM to demolish said improvements and restore the site to its condition at the time of the execution of this Agreement. Sam shall remove all art works from public property within 60 days of the termination of the Agreement and shall indemnify the City against any and all losses related to such art works during the removal period and shall, in addition to the obligations arising under the indemnity provisions of this Agreement, indemnify, defend save and hold the City harmless from any claim, defense or other legal action arising under the Visual Artists Rights Act (VARA) 17 U.S.C. § 101, as now enacted or hereafter modified.

- D. **Dispute Resolution:** In the event that any dispute or misunderstanding arising under this Agreement concerning SAM's or the City's performance cannot be resolved through amicable negotiations, between SAM's Project Manager and the City's Project Manager, the matter shall be referred to the Superintendent, Seattle Parks & Recreation Department and SAM's senior executive(s). If such officials do not agree upon a decision, the parties shall then submit the matter to a non-binding alternate dispute resolution process.
  
- E. **No Implied Waiver.** No failure by either party to insist upon strict performance of any obligation of the other party or the failure to exercise any right or remedy arising out of a breach, irrespective of the length of time which such failure continues (except in cases where this agreement expressly limits the time for exercising the rights and remedies arising out of a breach), shall constitute a waiver of such breach or a waiver of that party's right to demand strict compliance of such term. No waiver of any default or the performance of any provision shall affect any other default or performance. A written waiver of default or the performance of a provision shall not be deemed to be a waiver of subsequent default or performance.

## 20. ASSIGNMENT; SUBCONTRACTING

Neither party shall assign, transfer, or encumber its interest in this Agreement without the prior written approval of the other party which approval shall not be unreasonably withheld, delayed, or conditioned. Notwithstanding the foregoing, SAM shall have the right to enter into contracts or other arrangements with other persons or



entities for operation and maintenance of OSP or to contract for any other service required or allowed to be performed by SAM under this agreement.

## 21. NOTICES

All notices required to be given under this Agreement shall be in writing and either delivered personally or sent by United States Certified Mail, postage prepaid, return receipt requested, to the appropriate addresses listed below or at such other address as shall be provided by written notice. Notice shall be deemed communicated to the parties 3 business days from the time of mailing if mailed as provided in this section. For convenience purposes only, and not to satisfy the requirement to give written notice, copies of notices also may be given by other means.

If to SAM: Seattle Art Museum  
P O BOX 22000  
Seattle, WA 98122  
Telephone: 206 654-3100  
FAX: 206 654-3135  
Attn: Director

If to City: City of Seattle  
Department of Parks and Recreation  
100 Dexter Avenue N.  
Seattle, WA 98109  
Attn: Superintendent of Parks and Recreation

## 22. ENVIRONMENTAL INDEMNITY

The parties acknowledge the existing Environment Agreement between the City and SAM dated December 7, 1999 ("Environmental Agreement"). No change of rights, obligations, or responsibilities under the existing Environmental Agreement shall occur as a result of this Agreement, except as expressly provided in this section. SAM shall be responsible for any and all costs that arise from or are related to soil removal, if required, and recapping of soil, if required, to the extent required to complete SAM's construction of the OSP. Such costs include, but are not limited to, disposal of contaminated soil or groundwater that is removed during construction replacement of material that is capping contaminated soil and is disturbed during construction mitigation measures required by permitting authorities, and worker safety measures required for construction on a contaminated site. The Consent Decree means the "Prospective Purchaser Consent Decree Re: The Former Unocal Seattle Marketing Terminal Property, Seattle, WA, entered under King County Superior Court No. 99-2-50226-4 SEA on December 7, 1999. The Consent Decree as stipulated above will be held in place until such time the project is complete, at which time the restrictive covenants will remain in perpetuity.



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

23. GOVERNING LAW

Except as provided in the preceding sentence, the City and SAM retain all rights and obligations as set forth in the Environmental Agreement. This Agreement shall be governed by the laws of the State of Washington. Venue of any action brought by one party against the other under this Agreement shall be in King County Superior Court.

24. SUCCESSORS AND ASSIGNS

The terms and conditions in this Agreement shall bind and inure to the benefit of the City and SAM, and except as otherwise provided herein, their successors and assigns.

25. NO THIRD-PARTY BENEFICIARIES

There are no third-party beneficiaries to this Agreement.

26. RELATIONSHIP OF PARTIES

Nothing in the Agreement shall be construed to create a partnership, joint venture, or relationship of employment or agency between the parties. The services to be rendered by SAM pursuant to this Agreement are as an independent contractor only.

27. INTEGRATION; AMENDMENT

This Agreement, together with its referenced Exhibits, 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.

28. TIME OF ESSENCE; FORCE MAJEURE

Time is of the essence of this Agreement. Any delay, stoppage, or prevention of a party's performance ("Delay") under this Agreement due to Force Majeure shall excuse the performance of the party affected for a period of time equal to the Delay. However, the parties shall take reasonable steps to minimize the length of Delay. "Force Majeure" shall mean a Delay attributable to any strike or other labor or industrial disturbance, civil disturbance, inability to secure customers, materials, supplies, or labor through ordinary sources, any changes in applicable laws or the interpretation thereof, or any lightening, earthquake, fire, or other cause beyond the reasonable control of the party for whom performance is required or its contractors or representatives.

29. NON-LIABILITY OF CITY OFFICIALS, EMPLOYEES, AND AGENTS

No elected or appointed board, commission, member, officer, employee or other agent of the City shall be personally liable to SAM, its successors, or assigns, in the event of any default or breach by the City or for any amount which may become due to SAM,

