

AGREEMENT REGARDING ASSIGNMENT OF ACQUISITION/CONDEMNATION PROCEEDS

This Agreement Regarding Assignment of Acquisition/Condemnation Proceeds (this “Condemnation Agreement”) is by and between The City of Seattle (the “City”), a Washington municipal corporation, acting through its Department of Parks and Recreation (“Parks”), and the Historical Society of Seattle and King County, a Washington nonprofit corporation doing business as the Museum of History and Industry (“MOHAI”).

RECITALS

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

A. Since 1914, MOHAI has been collecting, preserving and presenting the history of the Pacific Northwest and, in doing so, has generated broad public appreciation for our region’s diverse cultural, social and economic history.

B. Pursuant to that certain agreement by and between MOHAI and the City dated January 18, 1950, MOHAI financed and constructed the first phase of its facility upon City-owned land at McCurdy Park.

C. There have been four subsequent expansions and MOHAI presently uses facilities consisting of museum buildings (collectively, the “MOHAI Facility”), landscaping and other improvements related to museum access and parking (the “Other Improvements”).

D. The MOHAI Facility and Other Improvements occupy approximately 182,468 square feet of land as depicted on Exhibit A to this Condemnation Agreement (the “MOHAI Use Area”) and are located on the grounds of two City-owned parks, McCurdy Park and East Montlake Park and other City land, as well as on adjacent property owned by the Arboretum Foundation.

E. The Washington State Department of Transportation (“WSDOT”), the Federal Highway Administration and the Central Puget Sound Regional Transit Authority (“Sound Transit”) are planning the SR-520 bridge replacement project (the “SR 520 Project”), which will require the demolition of the MOHAI Facility and Other Improvements, the use of the MOHAI Use Area on a temporary basis and ultimately the permanent acquisition of some or all of the MOHAI Use Area.

F. MOHAI began to explore other options for its facilities based on its concerns about the long-term viability of the MOHAI Use Area as MOHAI’s permanent home given its location adjacent to SR 520 and the likelihood that the SR 520 Project would require MOHAI’s relocation.

G. To this end, the City and MOHAI have identified another City-owned property, the former Naval Reserve Armory at Lake Union Park (the “Armory”), as an appropriate site for MOHAI’s primary public venue and on October 2, 2006, the City Council adopted Resolution Number 30917, which supported and encouraged negotiations between Parks and MOHAI to investigate the development of the Armory for that purpose.

H. On September 29, 2008, following the parties’ due diligence activities with respect to the viability of the Armory as MOHAI’s primary public venue, the City Council adopted Resolution Number 31092, which provides specific principles that Parks and MOHAI must incorporate into binding agreements addressing the development and operation of a new regional history museum at the Armory.

I. Resolution Number 31092 also provides that the City will contribute certain compensation it receives from WSDOT in conjunction with the SR 520 Project’s effects on the MOHAI Facility and Other Improvements and the MOHAI Use Area to MOHAI’s development

of the Armory facilities and will assign the authority to negotiate with WSDOT for the amount of that compensation to MOHAI, subject to the City's approval of any final agreement with WSDOT.

AGREEMENT

Now, therefore, the parties agree as follows:

1. Conditional Assignment. The City hereby assigns to MOHAI, subject to review and approval by the City as provided in Section 6, all compensation that the City receives from WSDOT for the following:

- (a) The MOHAI Facility and Other Improvements; and
- (b) WSDOT's temporary use of the MOHAI Use Area, as depicted in Exhibit A, to the extent owned by the City.

2. Limitation on Scope. Nothing in this Condemnation Agreement affects the parties' rights with respect to the following:

- (a) The City's rights to negotiate for and receive the residual fee value and any other compensation associated with the MOHAI Use Area (net of the compensation available to MOHAI under Section 1(b));
- (b) The City's rights to real property, improvements and other interests outside of the MOHAI Use Area;
- (c) The City's rights (outside of the context of condemnation) to receive compensation to mitigate for the SR 520 Project's impacts on park land, whether in the form of cash compensation for replacement of any lost park land or conveyance of replacement property; and

(d) MOHAI's right to relocation benefits and other compensation to which MOHAI is entitled under state or federal law as a result of being displaced by the SR 520 Project.

3. MOHAI Authority. MOHAI is hereby granted exclusive authority to negotiate with WSDOT for the compensation for the property interests identified in Section 1 above. MOHAI, at its own cost and expense, shall be solely responsible for conducting all negotiations with WSDOT for the compensation associated with such interests. MOHAI's authority under this Condemnation Agreement is personal to MOHAI and may not be contracted or further delegated or assigned without the City's consent. Notwithstanding the foregoing, MOHAI may employ attorneys, architects, engineers, surveyors, appraisers and such other consultants as MOHAI reasonably determines to be necessary in order to establish the value of the property interests identified in Section 1 and negotiate with WSDOT, all at MOHAI's own cost and expense.

4. Arboretum Foundation. The City owns the MOHAI Facility, a portion of which is located on Arboretum Foundation property. The City agrees to support MOHAI's efforts to secure 100% of the compensation for the MOHAI Facility.

5. Hold Harmless for WSDOT. If required by WSDOT, the City shall agree to indemnify, defend, and hold WSDOT, its officers, agents and employees harmless from and against all claims, suits, losses, damages, fines, penalties, liabilities and expenses arising out of adverse claims to ownership of the MOHAI Facility, specifically including claims related to the portion thereof located on land owned by the Arboretum Foundation. MOHAI, however, shall reimburse the City for any amount the City actually pays WSDOT under the terms of this indemnity. In the event any such claim is made by WSDOT, the City and MOHAI will enter

into a joint interest agreement committing the City to vigorous, good faith defense against such claim; addressing other matters such as mutual cooperation and support; and reserving to MOHAI the right to prior approval of any settlement of any such claim that would trigger payment by MOHAI under its reimbursement obligation, which approval shall not be unreasonably withheld.

6. City Approval. Acceptance of any offer of settlement or other award from WSDOT; final assignment of proceeds to be paid to MOHAI for WSDOT's acquisition of the property interests identified in Section 1; and transfer to WSDOT of the property interests that are the subject of a proposed settlement must be approved by the Seattle City Council, by ordinance. Before conditionally accepting any such offer of settlement or other award from WSDOT, MOHAI shall obtain the consent of the Mayor or his or her designee (collectively, the "Mayor") for such settlement, which consent shall not be unreasonably withheld, conditioned or denied. All settlement offers shall clearly enumerate the interests for which compensation is being paid and the total compensation for each such interest, including the cost per square foot for all real property interests being acquired. At the Mayor's request, MOHAI shall deliver such supporting documentation as the Mayor may reasonably request. Following the Mayor's provision of his consent to the settlement and upon MOHAI's request, the Mayor will prepare and transmit to the City Council the legislation necessary for the acceptance of the proposed settlement; the final assignment to MOHAI of the proceeds from such settlement; and the transfer to WSDOT of the property interests that are the subject of the proposed settlement.

7. Use of Settlement Proceeds. The proceeds paid to MOHAI under this Agreement for the property interests identified in Section 1 shall be reserved for capital costs associated with replacing the functions and facilities at its Montlake location including but not limited to those

facilities and functions included in the proposed Armory project. If the proceeds paid to MOHAI, together with MOHAI's other resources available for and dedicated to the project, are sufficient to enable it to undertake the Armory project, it shall do so as soon as practicable following receipt of such proceeds. In the event MOHAI (having sufficient proceeds and other resources to enable it to undertake the Armory project) has not started construction at the Armory by June 30, 2017 or the proceeds and other resources are insufficient so that the Armory project is no longer feasible, MOHAI will return to the City the proceeds paid to MOHAI except for that portion of such proceeds MOHAI would have received in its own right, if any, together with accrued interest from the date MOHAI receives such proceeds until repaid. If proceeds are to be returned to the City, the portion to be retained by MOHAI as the amount it would have received in its own right, if any, shall be determined pursuant to a mutually acceptable process.

8. Reporting. MOHAI will provide monthly briefings to the City regarding the progress of negotiations with WSDOT in such format and containing such information as the City may request. The briefings will cover all issues related to the valuation, negotiation or documentation of the compensation for the property interests identified in Section 1. MOHAI also will make materials related to such briefings (including but not limited to the materials specified in Section 13) available to the City at the City's request. The scope and distribution of any materials shall be consistent with maintaining privilege status for such materials, provided that in the event of a disagreement between the City and MOHAI concerning the scope of such reports, the City's determination shall be final.

9. Litigation. If MOHAI does not reach a settlement with WSDOT, MOHAI also is granted exclusive authority to participate, at its own cost and expense, in any condemnation action brought by the State with respect to the interests described in Section 1 above. The City

and MOHAI shall reasonably cooperate with each other in the preparation for and conduct of such litigation by, without limitation, sharing valuation information and making witnesses available to the other party.

10. Duration of Condemnation Agreement. This Condemnation Agreement shall expire on July 1, 2012 if, by such date, MOHAI and WSDOT have not (a) agreed upon a final offer of settlement or other award for compensation for the property interests identified in Section 1; or (b) commenced a dispute resolution process including mediation, arbitration or litigation to resolve the amount of compensation due under Section 1. However, if MOHAI and WSDOT have agreed upon a final offer of settlement or other award for such compensation or such a dispute resolution process has been commenced and receipt by MOHAI of such compensation from WSDOT has been delayed such that MOHAI has been unable to start construction at the Armory by July 1, 2012, this Condemnation Agreement shall remain in effect until such date determined by the mutual consent of the parties. MOHAI's repayment obligation under Section 7 and MOHAI's rights to that portion of such proceeds MOHAI would have received in its own right shall not be affected by the expiration or termination of this Condemnation Agreement.

In addition, the City may terminate this Condemnation Agreement under any of the following circumstances:

(a) MOHAI refuses to permit the City adequate access to relevant books, records and other materials as provided herein;

(b) Breach of this Condemnation Agreement by MOHAI, specifically including derogation of the City's rights reserved under Section 2; or

(c) Material breach by MOHAI of its obligation under this Condemnation Agreement to act in good faith and deal fairly with the City.

11. Indemnity.

(a) MOHAI shall indemnify and hold harmless the City from and against any loss, damage, liability or claim suffered, incurred by, or asserted against the City arising out of, in connection with or based upon any act or omission by MOHAI relating in any way to this Condemnation Agreement or its services under this Condemnation Agreement, so long as MOHAI has acted in bad faith or with negligence.

(b) City shall indemnify and hold harmless MOHAI from and against any loss, damage, liability or claim suffered, incurred by, or asserted against MOHAI arising out of, in connection with or based upon any act or omission by the City relating in any way to this Condemnation Agreement, so long as the City has acted in bad faith or with negligence.

12. Confidentiality. To the extent allowed by law, MOHAI and the City shall maintain the confidentiality of all information and material either party receives from the other party pertaining to negotiating strategy or property valuation.

13. Books and Records; Audit. While performing under this Condemnation Agreement and for at least six (6) years after its termination or expiration, MOHAI shall keep, in King County, Washington, separate, accurate, complete and auditable records that document the basis for determining the value of the property interests described in Section 1. Such records shall include, without limitation, appraisals, purchase and sale agreements, deeds, easements and escrow instructions. MOHAI shall permit the City, from time to time as the Mayor or City Auditor deems necessary, to inspect, audit and copy such relevant records and those of any other person or entity that has performed work in connection with or related to the MOHAI's activities

hereunder, unless such records are protected from review by the City under attorney/client privilege. MOHAI shall ensure that any subcontract, agreement or other arrangement under which any other person or entity is permitted to perform work in connection with or related to the MOHAI's activities under this Condemnation Agreement provides that the relevant work product of any such person or entity is subject to the City's right to inspect, audit or copy, unless such work product is protected from review by the City under attorney/client privilege. Notwithstanding anything in this Agreement to the contrary, MOHAI agrees that it will produce to the City upon request and will not assert, as against the City, any privilege with respect to the work product of all architects, engineers, surveyors, appraisers and other similar consultants that MOHAI engages to carry out its obligations under this Agreement, if such work product was produced in the regular course of their business activities under this Agreement.

14. Governing Law; Venue. This Condemnation Agreement shall be governed by and construed in accordance with Washington law. Except as otherwise required by applicable law, any action under this Condemnation Agreement shall be brought in King County Superior Court.

15. Notices. All notices, certificates or other communications shall be in writing and shall be deemed given on the business day on which the same have been transmitted by facsimile or electronic mail with a telephone call by sender immediately to follow transmittal and an affirmative confirmation of receipt from recipient, whether verbal or electronic, or on the business day following the day on which the same have been sent using same day or overnight delivery via a commercial messenger or courier service that guarantees next day delivery.

If to the City: The City of Seattle
Department of Parks and Recreation
100 Dexter Avenue North
Seattle, WA 98109
Attn: Superintendent
Telephone: 206-684-8022
Fax: 206-233-7023
Email: timothy.gallagher@seattle.gov

The City of Seattle
Law Department
PO Box 94769
Seattle, WA 98124-4769
Attn: Helaine Honig
Telephone: 206-684-8200
Fax: 206-684-8284
Email: helaine.honig@seattle.gov

If to MOHAI: Museum of History and Industry
McCurdy Park
2700 – 24th Avenue East
Seattle, WA 98112-2099
Attn: Executive Director
Telephone: (206) 324-1685, ext. 32
Fax: (206) 324-1346
Email: leonard.garfield@seattlehistory.org

cc: B. Gerald Johnson
K&L Gates LLP
925 Fourth Avenue, Suite 2900
Seattle, WA 98104-1158
Telephone: (206) 623-7580
Fax: (206) 623-7022
Email: gerry.johnson@klgates.com

Either party may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.


16. Entire Agreement. This Condemnation Agreement contains the entire agreement of the parties and supersedes any prior written or oral agreements with respect to the matters described herein.

17. Severability. If any provision of this Condemnation Agreement is held to be unenforceable for any reason, the remainder of the Condemnation Agreement shall nevertheless remain in full force and effect.

18. Counterparts. This Condemnation Agreement may be executed in counterparts.

19. Survival of Provisions. The provisions of Sections 11 and 13 shall survive the expiration or earlier termination of this Condemnation Agreement.

CITY OF SEATTLE DEPARTMENT OF
PARKS AND RECREATION

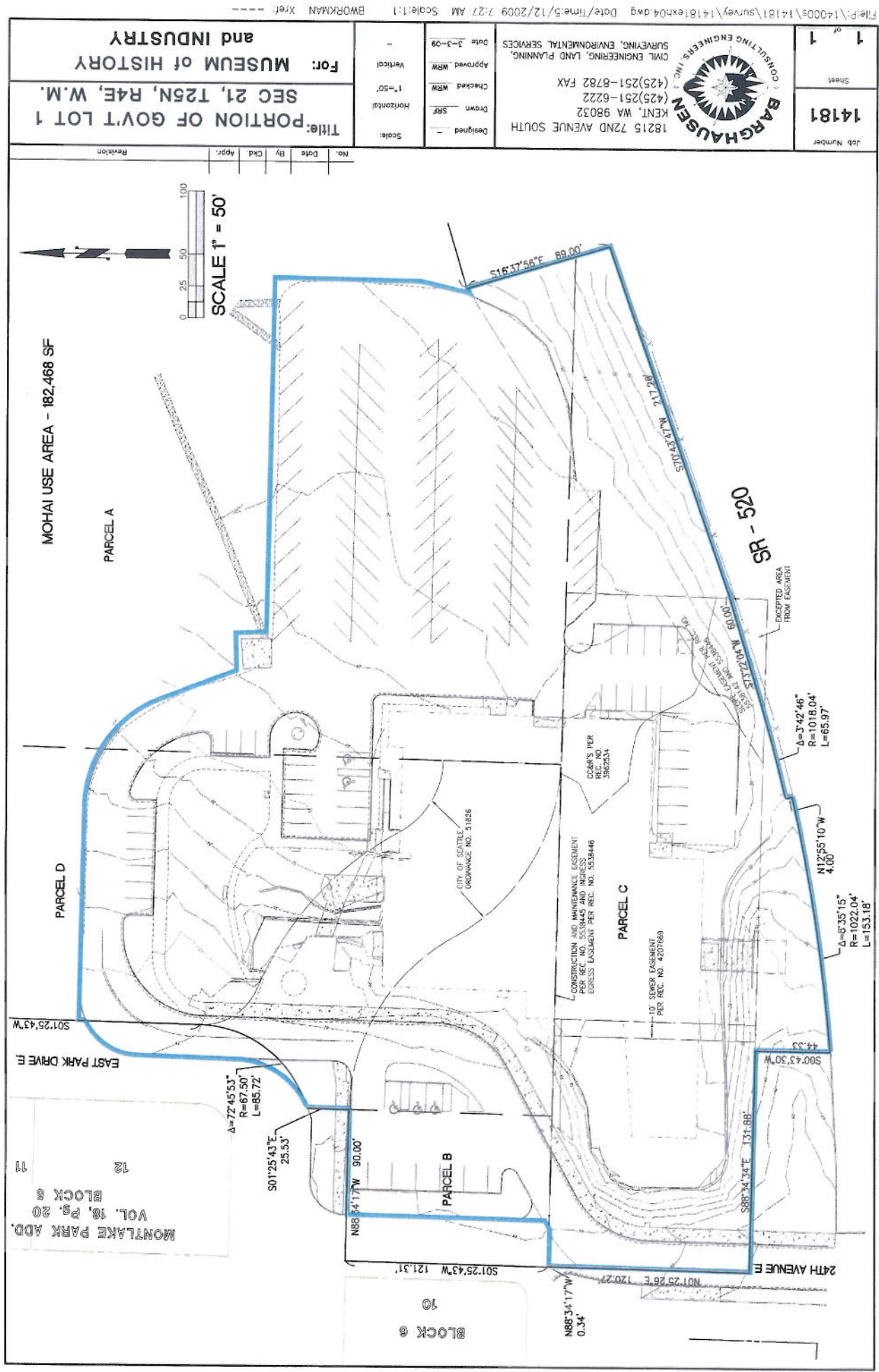
By 
Timothy Gallagher
Superintendent

Date 6/16/09

MUSEUM OF HISTORY AND INDUSTRY

By 
Leonard Garfield
Executive Director

Date 6/09/09



Job Number 14181	Sheet 1 of 1	BARGHAUSEN CONSULTING ENGINEERS INC. 18215 72ND AVENUE SOUTH KENT, WA 98032 (425)251-6222 (425)251-8782 FAX CIVIL ENGINEERING, LAND PLANNING, SURVEYING, ENVIRONMENTAL SERVICES	Date 3-3-09 Approved WRW Checked WRW Drawn SRF Scale 1"=50' Horizontal Vertical	Title: PORTION OF GOV'T LOT 1 SEC 21, T25N, R4E, W.M. For: MUSEUM of HISTORY and INDUSTRY
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