

Agreement Regarding Renovation of Seattle Asian Art Museum

THIS AGREEMENT REGARDING RENOVATION OF SEATTLE ASIAN ART MUSEUM (the “Agreement”) is dated as of _____, 2014 and is by and between THE CITY OF SEATTLE (the “City”), a first class city organized under the laws of the State of Washington, and the SEATTLE ART MUSEUM, a Washington nonprofit corporation (“SAM”) (together the City and SAM, the “Parties”).

Recitals

1. In 2007, the City Council approved the reprogramming of \$2 million in City funds originally slated for improvements related to the Olympic Sculpture Park for use instead for design and planning work associated with basic improvements to the Seattle Asian Art Museum (the “2008 SAAM Project”), a facility owned by the City and operated by SAM. The City and SAM entered into a Memorandum of Agreement dated July 24, 2008 and authorized by Ordinance 122590 (the “2008 Agreement”), pursuant to which SAM was to undertake the design and planning work, and to apply for development permits as the City’s agent and was responsible for any design and planning costs in excess of the City’s \$2 million commitment. Somewhat less than half of the \$2 million committed to the 2008 SAAM Project has been spent on initial design work, leaving just over \$1 million still available.

2. SAM was supportive of the 2008 SAAM Project scope reflected in the 2008 Agreement which was estimated to cost in the neighborhood of \$24 million to complete, including the \$2 million for initial design. The City and SAM came to an informal

understanding that each party would contribute an additional \$11 million toward completing the 2008 SAAM Project.

3. During 2008, the City Council began work on the renewal of the City's parks levy. The levy package sent to the voters by the City Council included \$9 million "to provide renovations to the Seattle Asian Art Museum including seismic and HVAC upgrades to allow continued use of the facility as a home for the Museum at Volunteer Park." The remaining \$2 million of the City's \$11 million share of the \$24 million project was to be identified from other sources.

4. Due to the recent recession and the Federal seizure of Washington Mutual (with the resulting loss of substantial revenue SAM needed to pay debt service on City-guaranteed debt incurred to build the expansion of the downtown museum), work on the 2008 SAAM Project was suspended.

5. Now that SAM's financial situation and the philanthropic climate are both improving, SAM is again actively considering the SAAM renovation and has restarted the design and planning work initiated under the 2008 Agreement. However, SAM is now evaluating a somewhat expanded scope for a project that would be preferable to the 2008 SAAM Project originally conceived under the 2008 Agreement. While all of the basic structural and systems upgrades included in the 2008 SAAM Project would still be accomplished, SAM believes that other work to make the SAAM building more functional as a public museum should be done as well. The larger project ("Possible Alternate SAAM Project") would be more costly than the original project. The Parties wish to collaborate to determine the appropriate scope of a mutually

acceptable SAAM renovation project that would yield a SAAM facility for which SAM could successfully secure funding and sustainably operate.

6. With the impending expiration of the 2008 Parks and Green Spaces Levy (2008 Parks Levy), the City informed SAM that it intends to reprogram the \$9 million reserved for the 2008 SAAM Project for alternate projects that can be accomplished sooner and confirmed its intent to provide \$11 million (in 2008 dollars) from other available sources when SAM is prepared to proceed with the 2008 SAAM Project or such larger amount as may be agreed to by the Parties for a mutually acceptable Possible Alternate SAAM Project.

7. SAM concurs that reprogramming of the levy funds is appropriate under present circumstances and joins the City in wishing to memorialize their current mutual understandings with respect to the SAAM renovation.

Agreement

1. **Confirmation of Continuing Availability of Funds Remaining under 2008 Agreement for Design and Planning of the 2008 SAAM Project.** To the extent that it remains consistent with this Agreement, the 2008 Agreement remains in full force and effect. The City confirms that the funds remaining to be spent from the \$2 million provided under the 2008 Agreement (approximately \$1.2 million) shall remain available for expenditure consistent with the 2008 Agreement. SAM confirms that it remains responsible for any costs of completing initial design and planning of at least the 2008 SAAM Project in excess of the funding provided under the 2008 Agreement.

2. **Reprogramming of 2008 Parks Levy funding dedicated to renovation of the Seattle Asian Art Museum.** SAM agrees that renovation of the Seattle Asian Art Museum at Volunteer Park (“SAAM”) is not feasible within the timeframe available for commitment and

expenditure of funds provided and available under the 2008 Parks Levy. SAM accepts that reprogramming the levy funds for other Parks purposes is appropriate at this time.

3. **City Commitment of Other Funding for SAAM Renovation.** The Executive agrees to include funding for completion of the 2008 SAAM Project, or a mutually acceptable Possible Alternate SAAM Project in a future City Capital Improvement Program and when approved by the City Council, to timely apply such funding, in accordance with this Agreement. City funding shall be \$11 million in 2008 dollars, or such larger amount as may be agreed to by the Parties for the Possible Alternate SAAM Project. The \$11 million shall be adjusted for inflation to the project start date by application of the Engineering News-Record Construction Cost Index using the annual 12-month average of the 20-city monthly index for the years and portions of years elapsed.

4. **SAAM Renovation Development Agreement and Lease or Ground Lease.** Between January 1 and March 31 of any year commencing on January 1, 2015, but not later than March 31, 2020, SAM may give the City notice that it is prepared to proceed with the SAAM renovation project, having completed a funding plan satisfactory to the City and identified funding sources in addition to the City that are necessary to complete the 2008 SAAM Project or a mutually acceptable Possible Alternate SAAM Project. Such notice shall include a request that City funding in accordance with this Agreement be included and approved in that year's City budget process to be available for the project in the following calendar year. The Parties acknowledge that if such request is approved by the City Council, full City funding pursuant to such request may span two City budget cycles and agree that actual fund availability may be spread over eighteen (18) months. During the six (6) months following receipt of SAM's notice, the Parties shall complete a SAAM Renovation Development Agreement ("Development

Agreement”) and a long-term lease and an alternate ground lease with respect to SAAM, one or the other of which will supersede the existing agreement between the City and SAM for use and operation of SAAM. The Development Agreement will provide for SAM management of the SAAM renovation project including delivery of the Project within the approved budget, subject to City oversight, including City design review and approval. The Agreement also will address the City’s and SAM’s financial commitments to fund actual project work, schedules for completion of work and other matters of mutual concern with respect to its construction. The long-term lease or ground lease will allocate responsibilities between the Parties for operation and maintenance of the SAAM building following completion of the SAAM renovation project.

5. **Federal Tax Credits.** The City and SAM intend to explore claiming federal historic rehabilitation tax credits for the SAAM renovation project. In order for the SAAM renovation project to be eligible for such credits or to maximize the value generated by such credits, it may be appropriate for the City to convey ownership of the SAAM building to a tax credit entity (“Tax Credit Entity”). If the Parties concur that such conveyance is necessary or sufficiently important to warrant conveyance of the SAAM building, then such conveyance will be accomplished by a ground lease from the City to SAM and conveyance of the SAAM building from the City to the Tax Credit Entity. Such conveyance will be by quit claim deed, which, in addition to conveying ownership of the building, will restrict its use to museum and related purposes. It is the intent of the parties that upon the expiration of the ground lease ownership of the SAAM building will revert to the City. In the event the Parties conclude sufficient value can be realized from tax credits without conveyance of the building, SAM chooses not to pursue tax credits, or SAM is unable to secure a commitment from a tax credit investor on reasonably acceptable terms, the City and SAM will execute a lease for the SAAM building and land.

6. **Miscellaneous Provisions.**

6.1 Counterparts. This Agreement may be executed in counterparts for the convenience of the Parties, and such counterparts shall together constitute one Agreement.

6.2 Integration. Together with the 2008 Agreement, this Agreement contains the entire integrated agreement between the Parties as to the matters covered herein and supersedes any oral statements or representations or prior written matter not contained in this instrument as to the matters set forth herein.

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 each party's authorized representative affix his/her signature below.

City:

CITY OF SEATTLE, a Washington municipal corporation

By: _____
Name: _____
Title: _____

SEATTLE ART MUSEUM, a Washington nonprofit corporation

By: _____
Name: _____
Title: _____