

#11

**CITY OF SEATTLE**

**ORDINANCE \_\_\_\_\_**

COUNCIL BILL 118187

1  
2  
3  
4 AN ORDINANCE authorizing the Superintendent of Parks and Recreation to execute an  
5 agreement with the Seattle Art Museum relating to the renovation of the Seattle Asian Art  
6 Museum in Volunteer Park.

7 WHEREAS, Ordinance 122590 authorized execution of an agreement with the Seattle Art  
8 Museum ("SAM") pursuant to which SAM undertook planning and design work for the  
9 restoration of the City-owned facility in Volunteer Park that houses the Seattle Asian Art  
10 Museum, including necessary seismic and mechanical upgrades ("Restoration Project");  
and

11 WHEREAS, the Restoration Project was estimated to cost approximately \$24 million to  
12 complete and the City and SAM came to an informal understanding that the City would  
contribute \$11 million toward completing the project; and

13 WHEREAS, on November 4, 2008, Seattle voters approved the 2008 Parks and Green Spaces  
14 Levy ("Parks Levy") which included \$9 million to support the Restoration Project; the  
15 remaining \$2 million of the City's share of project costs was to be identified from other  
sources; and

16 WHEREAS, SAM was to undertake fund-raising for the balance of the funding needed to  
17 complete the Restoration Project; and

18 WHEREAS, due to the economic recession of the past five years, SAM has not undertaken a  
19 capital campaign to raise funds for the project and will not be in a position to do so until  
approximately 2017; and

20 WHEREAS, the Department of Parks and Recreation and City Budget Office, together with  
21 SAM, agreed that the Parks Levy funds would be reprogrammed and used for scheduled  
22 major maintenance projects that otherwise would be undertaken in 2015-2017 with the  
23 understanding that the City would reserve \$9 million in the Cumulative Reserve Subfund  
until such time SAM has secured funding for the renovation; and

24 WHEREAS, the City and SAM wish to memorialize their current mutual understandings with  
25 respect to the Renovation Project; NOW, THEREFORE,  
26  
27  
28



**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 1 to this ordinance, between the City of Seattle and the Seattle Art Museum, concerning their roles in the planning, financing and constructing the renovation of the Seattle Asian Art Museum in Volunteer Park.

Section 2. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the \_\_\_\_ day of \_\_\_\_\_, 2014, and signed by me in open session in authentication of its passage this \_\_\_\_ day of \_\_\_\_\_, 2014.

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

Approved by me this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Edward B. Murray, Mayor

Filed by me this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Monica Martinez Simmons, City Clerk

(Seal)

Attachment 1: Agreement Regarding Renovation of Seattle Asian Art Museum



## **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: \_\_\_\_\_



**FISCAL NOTE FOR NON-CAPITAL PROJECTS**

<b>Department:</b>	<b>Contact Person/Phone:</b>	<b>CBO Analyst/Phone:</b>
Parks and Recreation	Michele Finnegan/684-7053	Forrest Longman/684-0331

**Legislation Title:**

AN ORDINANCE authorizing the Superintendent of Parks and Recreation to execute an agreement with the Seattle Art Museum relating to the renovation of the Seattle Asian Art Museum in Volunteer Park.

**Summary of the Legislation:**

The proposed ordinance authorizes Superintendent of Parks and Recreation to execute an agreement between the City and the Seattle Art Museum concerning their roles in the planning, financing and constructing the renovation of the Seattle Asian Art Museum in Volunteer Park.

**Background:**

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 the Seattle Art Museum (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.

SAM was supportive of the 2008 SAAM Project scope reflected in the 2008 Agreement which was estimated to cost in the neighborhood of a total 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.

During 2008, the City Council began work on the renewal of the City's parks levy. The 2008 Parks and Green Spaces Levy (2008 Parks Levy) approved by the voters 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.

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.

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.

With the impending expiration of the 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.

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 through the agreement authorized by the proposed ordinance.

**This legislation does not have any financial implications.**

**This legislation has financial implications.**

**Appropriations: N/A**

Appropriations Notes: This ordinance provides no appropriation authority. The budget authority needed to implement a future agreed upon SAAM project would be considered as part of the Capital Improvement Program (CIP) or through other ordinances.

**Anticipated Revenue/Reimbursement Resulting from this Legislation: N/A**

Revenue/Reimbursement Notes: This ordinance creates no revenue.

**Spending/Cash Flow: N/A**

Spending/Cash Flow Notes: The annual Capital Improvement Program development process and a future SAAM Renovation Development Agreement will determine spending timelines.



**Other Implications:**

- a) **Does the legislation have indirect financial implications, or long-term implications?**  
Yes, approval of the ordinance and the proposed agreement establishes the parameters for a future CIP project at the Seattle Asian Art Museum with a City contribution of \$11 million (in 2008 dollars adjusted by the 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).

The funding swap considered under separate legislation provided for the reprogramming of \$9 million in Levy proceeds earmarked for the Seattle Asian Art Museum renovation to provide for scheduled major maintenance projects that otherwise would have been undertaken in 2015-2017 and funded by the Cumulative Reserve Subfund (CRS). In return, the City intends to set aside \$9 million in CRS funds. The remaining funds have not been identified.

- b) **What is the financial cost of not implementing the legislation?**  
The City would not leverage SAM funds to improve the City facility currently used for the Seattle Asian Art Museum.
- c) **Does this legislation affect any departments besides the originating department?**  
No.
- d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?**  
There are none.
- e) **Is a public hearing required for this legislation?**  
A public hearing is recommended in accordance with Resolution 31203 which established new hearing procedures for certain Capital Projects with private partners.
- f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**  
Yes, consistent with requirements set forth in Resolution 31203.
- g) **Does this legislation affect a piece of property?**  
Yes, as the City and SAM explore claiming federal historic rehabilitation tax credits for the SAAM renovation project, the parties may deem it appropriate for the City to convey ownership of the SAAM building to a tax credit entity and grant it a ground lease.
- h) **Other Issues:** There are none.

**List attachments to the fiscal note below:** There are none.





City of Seattle  
Office of the Mayor

August 5, 2014

Honorable Tim Burgess  
President  
Seattle City Council  
City Hall, 2<sup>nd</sup> Floor

Dear Council President Burgess:

I am pleased to transmit the attached proposed Council Bill, which authorizes execution of an agreement with the Seattle Art Museum (SAM) relating to the renovation of the Seattle Asian Art Museum in Volunteer Park.

In 2008, ordinance 122590 authorized an agreement with the Seattle Art Museum pursuant to which SAM undertook planning and design work for the restoration of the City-owned facility in Volunteer Park that houses the Seattle Asian Art Museum, including necessary seismic and mechanical upgrades (Restoration Project). The Restoration Project was estimated to cost approximately \$24 million to complete and the City and SAM came to an informal understanding that the City would contribute \$11 million toward completing the project, with SAM providing the rest of the funding. The 2008 Parks and Green Spaces Levy (2008 Parks Levy) included \$9 million to support the Restoration Project; the remaining \$2 million of the City's share of project costs was to be identified from other sources.

In 2014, under separate legislation, the City Council considered a funding swap in which the \$9 million in 2008 Parks Levy funds designated to the Seattle Asian Art Museum renovation would be reprogrammed to provide for major maintenance projects that otherwise would have been undertaken in 2015-2017. SAM concurs that reprogramming the levy funds is appropriate as SAM has not undertaken a capital campaign to raise funds for the project due to the recent recession.

SAM and the City also wish to memorialize their current mutual understandings with respect to the Renovation Project through the agreement proposed with this legislation.

Thank you for your consideration of this legislation. Should you have questions, please contact Michele Finnegan, 684-7053.

Sincerely,

Ed Murray  
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

Ed Murray, Mayor  
Office of the Mayor  
600 Fourth Avenue, 7<sup>th</sup> Floor  
PO Box 94749  
Seattle, WA 98124-4749

Tel (206) 684-4000  
Fax (206) 684-5360  
TDD (206) 615-0476  
Ed.Murray@seattle.gov

