

WC 2349

2001 (or later) Projects  
 Je #, Name: Seattle Asian Art Museum  
 ADMIN 1a 1b 1c 1d  
 PLAN 2a 2b 2c 2d  
 DESIGN 3a 3b 3c 3d 3e  
 CONSTRUCT 4a 4b 4c 4d 4e  
 Copy to Engineering Yes/No

**A**  
**MEMORANDUM OF AGREEMENT**

Between  
**THE CITY OF SEATTLE**  
 And  
**SEATTLE ART MUSEUM**  
 Regarding

 ORIGINAL

**Planning and Design of Improvements at the Seattle Asian Art Museum**

This Memorandum of Agreement ("MOA") is dated July 24, 2008, and is entered into by and between the City of Seattle ("City") a first class city of the State of Washington, acting by and through its Superintendent of the Seattle Department of Parks and Recreation ("Department") and/or his designated representative, and the Seattle Art Museum, a Washington non-profit corporation ("SAM").

**1. RECITALS**

- 1.1 WHEREAS, the Department has jurisdiction over and operates a park commonly known as Volunteer Park, an approximately 48.3 acre public park located at 1247 15<sup>th</sup> Avenue E, in the Capitol Hill neighborhood of Seattle, Washington; and
- 1.2 WHEREAS, the Department owns a building in said public park known as the Seattle Asian Art Museum (SAAM); and
- 1.3 WHEREAS, the Department and SAM have had a long-term cooperative relationship and operating agreement concerning SAAM's facility, and are committed to providing a world-class museum for all citizens to enjoy; and
- 1.4 WHEREAS, under the current operating agreement between the Department and SAM ratified by Ordinance 109767 in 1981, the City and SAM have agreed to work cooperatively to identify capital expenditures needed for proper maintenance and upkeep of the museum and have further agreed to cooperate in seeking and obtaining additional funding from public and private sources for such capital expenditures; and
- 1.5 WHEREAS, both the Department and SAM are independently analyzing the need for major renovations and improvements to SAAM in order to maintain it for the benefit of the public; and
- 1.6 WHEREAS, the City provided significant funds toward the construction of the Olympic Sculpture Park ("OSP") as specified in the Construction and Finance Agreement between the City and SAM that was most recently amended through Ordinance 122141; and
- 1.7 WHEREAS, the Board of Trustees of SAM has agreed to reduce the amount of City financial obligation for the Boulevard Improvements specified in Section 5.2 of the Construction and Finance Agreement between the City of Seattle and the Seattle Art Museum for work on public park property associated with OSP authorized through City Ordinance 122141 by \$2 million, with the understanding that the City is not further obligated to pay SAM the \$2 million under the Boulevard Improvements Agreement and

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conditioned on the City re-appropriating those funds from the OSP project to the SAAM Restoration project in the Department's Capital Improvement Program and that these funds will be used exclusively for planning, design, and improvements to SAAM; and

1.8 WHEREAS, SAM has begun, and wishes to continue, the process of identifying the technical and financial feasibility of implementing specific improvements to SAAM, but requires consent and agreement of the City as the Property Owner to proceed; and

1.9 WHEREAS, by way of this MOA, the City accepts SAM's offer to act as its agent only for purposes of seeking permits and design approvals, including a Master Use Permit, for potential improvements to SAAM; and

1.10 WHEREAS, by way of this MOA, if SAM is successful in securing all necessary permits and other required approvals for improvements at SAAM and, if the City, in its sole discretion, determines that SAAM improvements should be made, a separate construction agreement will be developed to include City and SAM financial commitments to fund actual project work, schedules for completion of work, roles and responsibilities for project management, and further define long-term obligations for future major maintenance requirements of the facility;

NOW, THEREFORE, the parties memorialize their respective obligations as follows:

## 2. TERM AND SCOPE OF AGREEMENT

- 2.1 The term of this MOA shall commence on the date of execution by the parties and shall continue until the parties' respective obligations are satisfied, or until SAM or the Department exercises its option to terminate as provided herein.
- 2.2 Future Phases. It is the intent of SAM to continue this work in a phased manner. The phase covered by this MOA includes all Planning and Design Work as that term is defined in Section 2.3. Both parties agree to negotiate later as it pertains to the subsequent phase of construction, including whether to undertake a construction agreement adhering to all applicable laws and regulations relating to public contracting, and sources of potential funding for construction.
- 2.3 Planning and Design Work. It is the intent of the parties that the Planning and Design Work covered by this MOA includes developing preliminary and final design for the Project, seeking and obtaining permits and design approvals, and reimbursing SAM for costs paid to its project management/owner's representative as well as past costs paid by SAM to third parties for design, engineering and cost estimation/constructibility services performed to date in relation to the Project and any legal or accounting expenses incurred by SAM directly in connection with the Project, except as defined in Section 9.

## 3. PROJECT FUNDING

- 3.1 The City's maximum contribution to the SAAM Planning and Design Work shall not exceed \$2 million unless the City, in its sole discretion, agrees to increase its maximum

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contribution. Any and all costs, expenses, or other liabilities in excess of the City's maximum contribution shall be solely the responsibility of SAM.

- 3.2 Pursuant to this agreement SAM agrees to reduce the City's obligation to the OSP project by \$2 million by relieving the City's current obligation to fund the Boulevard Improvements. In return, the City will transfer said funds for use in connection with this MOA.
- 3.3 If the work under this MOA is completed for less than the City's maximum contribution, any remaining portion of the City's maximum contribution shall be used for other work directly related to the SAAM capital improvements, approved at the City's sole discretion.
- 3.4 SAM acknowledges and agrees that any and all funds contributed by the City to the SAAM improvements belong exclusively to the City, and that SAM's expenditure of those City funds shall be solely in SAM's capacity as the City's agent, and solely for the benefit of the City. SAM shall not have any other right in, or claim to, the City's funds.
- 3.5 SAM will invoice the City for appropriately incurred expenses monthly. The City will approved invoices within 30 days of receipt.

### 4. DESCRIPTION OF THE IMPROVEMENTS

- 4.1 Summary. The planning for capital improvements to be made to SAAM, and any future improvements made possible by the City's offer to commit funding for development, are known as Seattle Asian Art Museum Improvement Project (the "Project"). A summary of the Project is attached as "Exhibit 1-Project Scope."
- 4.2 Project Design and Plan. The parties have collaborated and will continue to do so on the design parameters of the Project until it has been accepted for permitting. The parties agree that the design and development of construction drawings for the Project will respect the National Register of Historic Places listing of Volunteer Park and all its features. The design shall meet all local, state, and federal permitting requirements.

### 5. PROJECT IMPLEMENTATION

- 5.1 City Responsibilities.
  - 5.1.1 Agency. The Department will execute a letter authorizing SAM to act as the Department's agent for purposes of applying for any necessary permits and approvals, including but not limited to a Master Use Permit ("MUP"), for the project improvements shown in Exhibit 1. As the Department's agent, SAM is not obligated to pay the Department any funds for support or oversight during the permitting process, and SAM will not obligate the City for any money associated with SAM's attempts to gain permits, except as identified in Section 3.1. SAM will not act as agent of the City for any other purpose.

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5.1.2 Project Support and Facilitation. The Department will support the application for the project. SAM will arrange for a pre-application intake appointment with the City's Department of Planning and Development, and the Department will assist as reasonably possible in the coordination of City agencies reviewing the application. The Department will provide timely responses to any request by SAM for information, records, studies, Department signatures, approval of conditions, or other areas where the Department's cooperation is needed during the courses of permit review. The Department will take any action it deems necessary to support and facilitate the project. The Department will regularly keep SAM informed of any City rules, activities, meetings, or comments received on the project. Nothing precludes the Department from seeking additional City funds to aid the project, nor does anything require the Department to do so.

5.1.3 City as Regulator. Notwithstanding the requirements of Section 5.1.2, nothing in this MOA shall require the City, when acting in its regulatory capacity, to take, or to refrain from taking, any action that is within its regulatory authority.

5.1.4 Design Approval. Any and all designs, at whatever stage, prepared by, or for SAM, for SAAM improvements, shall be subject to review by the City and to approval by the City. The City's approval, if any, shall be at the City's sole discretion. SAM shall not proceed with any subsequent stage of design without first securing the City's approval of the preceding stage of design.

5.1.5 Termination. The Department may withdraw support for the permit applications or other approvals at any time for any reason. If the Department exercises its right to terminate this MOA, it will notify SAM as set forth herein. Once notice of termination is given, SAM shall immediately arrange to suspend all operations and costs and the Department will have no further obligations under this MOA, and SAM's agency shall be terminated automatically and simultaneously, provided, however, that the Department shall continue to be obligated to pay SAM for all appropriate Planning and Design Work undertaken prior to the date of termination.

## 5.2 SAM Responsibilities.

5.2.1 Reporting. SAM will be responsible for keeping the City fully apprised of its activities and progress on this project.

5.2.2 Meetings. SAM will be responsible for attending public or department meetings on the progress of the project and to raise any issues to the Department in a timely fashion so that both parties can work proactively in resolving such issues.

5.2.3 Permit Agent. SAM will be the City's agent for the sole purpose of processing the permit applications and securing other required approvals for the project.

5.2.4 Permit Fees and Consultant Costs. SAM will pay the required City permit fees for processing the MUP application and any other costs associated with permitting from the City, State, or Federal government. SAM will contract directly with any consultant providing studies, design, or other services in support of the project and will obtain the contractual commitments described in Section 7.

5.2.5 Termination. SAM may withdraw the permit applications or other approvals at any time for any reason. If SAM exercises its right to terminate this MOA, it will notify the Department as set forth herein. Once notice of termination is given, SAM will immediately arrange to suspend all operations and costs and shall have no further obligations under this MOA, and its agency shall be terminated automatically and simultaneously, provided, however, that the Department shall continue to be obligated to pay SAM for all appropriate Planning and Design Work undertaken prior to the date of termination.

5.3 Joint Responsibilities.

5.3.1 The parties in good faith will move the project through the predevelopment phase and work to successful issuance of a MUP, as well as any other local, state, or federal approvals. The parties will also work in good faith toward a Construction Agreement on future phases, if the City, in its sole discretion, determines that future phases should proceed.

**6. ALL IMPROVEMENTS ARE THE PROPERTY OF THE CITY**

SAM will have no ownership interest in any of the Seattle Asian Art Museum designs. Both the City and SAM will be granted licenses to use the designs for purposes of the Project. Both parties agree that during the permitting process no physical changes will be undertaken at SAAM. All improvements as currently exist on site are the property of the City and shall remain so.

**7. INDEMNIFICATION**

Each party to this MOA shall protect, defend, indemnify, and hold harmless the other party, its officers, officials, employees, and agents, while acting within the scope of their employment, from any and all costs, claims, judgments, or awards of damages, both as to persons and property, arising out of, or in any way resulting from, the indemnifying party's acts or omissions. SAM shall require that any architect, engineer or design professional or any contractor of any tier (including all subcontractors) name the Department as an intended third party beneficiary of its contract work on the Project and shall further require such parties to indemnify and hold the Department harmless for any loss, damage or injury caused by such parties' acts or omissions in connection with the Project. To the extent the insurance policies carried by such parties permit it, SAM shall also require such policies to name the Department as an additional insured. Each of the parties agrees that its obligations under this indemnification provision extend to any claim, demand, or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each of the parties, by mutual negotiation, hereby waives, with respect to the other party only, any immunity that would otherwise be available to it under the Industrial Insurance provisions of Title 51, RCW.

**8. NONDISCRIMINATION**

Both parties agree they will comply with all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington, and the City of Seattle,

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including but not limited to Chapters 14.04, 14.10, 20.42, and 20.45 of the Seattle Municipal Code (SMC), as they may be amended; and rules, regulations, orders, and directives of the associated administrative agencies and their officers.

### **9. DISPUTE RESOLUTION**

Any disputes or misunderstandings that may arise under this MOA shall first be resolved through amicable negotiations, if possible, between the Department and SAM. If such parties do not agree upon a decision within a reasonable period of time, not to exceed thirty days after receipt of written notice of a dispute or misunderstanding by the aggrieved party to the other, the parties may pursue any other legal means to resolve such disputes, including but not limited to alternate dispute resolution processes. The venue of any action brought to enforce the terms of this MOA shall be King County Superior Court. Each party agrees to bear its own attorney's fees and costs. Each party will have available to it all remedies available at law and equity.

### **10. SUSPENSION OF OBLIGATIONS (FORCE MAJEURE)**

If a party's performance under this MOA is prevented by an unforeseeable act of nature; war or war-like operations; civil commotion; riot; labor dispute including a strike, lockout, or walkout; sabotage; Federal or State regulation or control; or other condition beyond the reasonable control of such party, then performance of such affected obligation shall be suspended, but only for the duration of such condition.

### **11. COMPLIANCE WITH LAW**

Both parties shall comply with all applicable laws of the United States and the State of Washington; the Charter, Municipal Code, and ordinances of The City of Seattle; and rules, regulations, orders, and directives of their administrative agencies and the officers thereof.

### **12. APPLICABLE LAW; VENUE**

This MOA 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.

### **13. CAPTIONS**

The titles of sections and subsections are for convenience only and do not define or limit the contents.

#### 14. NOTICES

Whenever under the provisions of this MOA it shall be necessary or desirable for one party to serve any notice, request, demand, report, payment or other communication to the other party, the same shall be in writing and shall be delivered by facsimile transmission, personal delivery, or first class mail, addressed as follows:

If to City:                   Seattle Department of Parks and Recreation  
                                  Attention: **Virginia Hassinger**  
                                  800 Maynard AVE S, FL 3.  
                                  Seattle, WA 98134-1336  
                                  Fax: 206-233-3949

If to SAM:                   Seattle Art Museum  
                                  Attention: **Robert Cundall**  
                                  1300 First Avenue  
                                  Seattle, WA 98101-2003

#### 15. RELATIONSHIP OF PARTIES

Nothing in this MOA shall be construed to create a partnership or joint venture between the parties.

#### 16. NO THIRD PARTY BENEFICIARIES

Nothing contained in this MOA is intended or shall be construed as creating or conferring any rights, benefits, or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this MOA.

#### 17. COUNTERPARTS

This MOA may be executed in counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument.

#### 18. ENTIRE AGREEMENT

This MOA and the exhibits attached hereto and forming a part hereof, are all of the covenants, promises, agreements, and conditions between the parties.

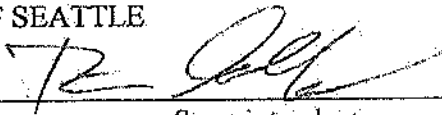
Exhibit 1 - Project Scope Seattle Asian Art Museum Mechanical, Fire, and Seismic/Life Safety Upgrade Improvements is attached and is hereby made a part of this MOA.

No verbal agreements or conversations between any officer, agent, associate, or employee of the City and any officer, agency, employee, or associate of SAM prior to the execution of this MOA shall affect or modify any of the terms or obligations contained in this MOA. Any such verbal agreements shall be considered unofficial information and in no way binding on either party.

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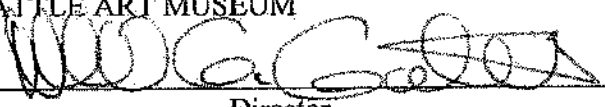
IN WITNESS WHEREOF, in consideration of the terms, conditions, and covenants contained herein, or attached and incorporated and made a part hereof, the parties have executed this MOA by having each party's authorized representative affix his/her signature below.

CITY OF SEATTLE

By   
Superintendent  
Seattle Department of Parks and Recreation

DATED 8/19, 2008

SEATTLE ART MUSEUM

By   
Director  
Seattle Art Museum

DATED August 4, 2008



**EXHIBIT 1:**

**Project Scope**

**SEATTLE ASIAN ART MUSEUM  
Mechanical, Fire, and Seismic/Life Safety Upgrade Improvements**

Summary of Work:

Item 1: Updating the building's climate control infrastructure, some of which is original to the building and the age of which exposes the facility to risk of a major mechanical failure and serious operational issues as components age and replacement parts become unavailable.

Item 2: Improving seismic and fire/life safety features that could otherwise jeopardize public safety.

More specifically, upgrading the existing climate control system will include replacing an inefficient boiler and related ductwork and adding a chiller plant and humidification and air handling systems to provide an environment comparable to that found in other buildings used for public assemblies. Exterior walls that are presently uninsulated will be insulated and the existing single pane windows will be replaced with double pane insulated windows, all in an effort to reduce energy costs and reduce condensation, which has the potential to damage structural elements of the building and provide an environment for mold to develop.

The above work involves removing interior walls, running ductwork, replacing windows and installing major equipment and insulation. It is contemplated the seismic and fire/safety improvements need to be undertaken concurrently, as these are invasive and essential to ensure the building's continued viability as a public venue. The seismic work will center on replacing hollow clay tile interior walls that could collapse during a seismic event, along with improving the stability of the building's primary main concrete slab and improving the safety of the airshafts in the event of a fire.

Without limiting the Summary of Work, the following is a more specific list of the proposed modifications:

**Mechanical System (Climate Control) Upgrades**

- a. **Accessibility** – Handrails at the main stairs and between the main and ground floors will be upgraded to code.
- b. **Air Handler** - new air handling units with increased efficiency and cooling capacity will replace existing units. To minimize disruption and cost, existing supply air ducts will be reused for return air.
- c. **Architectural** – architectural work will be done to restore areas impacted as a result of the mechanical upgrade with the intent to maintain the building's historic character.
- d. **Boiler Plant** - includes the replacement of the original 1933 steam boiler system with a gas-fired hot water boiler system. All steam distribution piping will be replaced with hot water distribution piping.
- e. **Chiller Plant** – the upgrade includes the installation of a 200 ton capacity chiller plant to add air conditioning and bring the building up to present day standards for a public assembly facility.
- f. **Condensation** – both to ensure maximum energy efficiency and to avoid damage that may be caused by excessive moisture; the exterior walls and portions of the roof will be insulated and the existing single-pane windows will be replaced with double-pane insulated windows.

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- g. **Electrical** – the existing 2000 amp panel will be upgraded to 3000 amps to support the mechanical upgrades. Existing conduit will be reused wherever possible.
- h. **HVAC Controls** – The existing pneumatic controls systems will be upgraded to a direct digital control system that will control and monitor the above components of the HVAC system.
- i. **Plumbing** – plumbing modifications will be made as necessary to support the mechanical upgrades.
- j. **Structural (excluding seismic)** – vertical and lateral support for the new mechanical systems will be installed.

### Seismic and Fire/Life Safety Upgrades

- a. **Connect Main Floor Concrete Slabs** - infilling some of the openings of the main floor slab with new concrete slabs or connecting by means of steel plates.
- b. **Containing Duct Runs** – contain duct runs by constructing fire rated soffits in appropriate locations and install dampers.
- c. **Replacing Hollow Clay Tile Walls** – replacement of interior hollow clay tile walls.