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MEMORANDUM OF UNDERSTANDING BETWEEN  
THE PORT OF SEATTLE AND THE SEATTLE AQUARIUM  
REGARDING A STRATEGIC RELATIONSHIP BETWEEN  
THE PORT OF SEATTLE AND THE SEATTLE AQUARIUM

This Memorandum of Understanding (the "MOU") is made and entered into by and between The Seattle Aquarium Society (SEAS), doing business as the Seattle Aquarium, a 501(c)(3) entity hereinafter referred to as "the Aquarium" and the Port of Seattle, a municipal corporation of the State of Washington hereinafter referred to as "the Port". The Aquarium and the Port are also referred to in this MOU collectively as "the Parties", and individually as a "Party."

RECITALS

WHEREAS, The Port and the Aquarium have a history of collaboration on marine and maritime projects, including conserving and restoring kelp beds, addressing the welfare of killer whales by working to reduce the noise generated by commercial vessels, and developing public education exhibits regarding our shared interests and broadening public awareness about the importance of stewarding the marine environment and maritime career opportunities; and

WHEREAS, On November 16, 2021, the Port of Seattle Commission adopted Order Number 2021-13, which directs the Port's Executive Director to develop and execute a memorandum of understanding that establishes a strategic relationship between the Port and the Aquarium and commits \$5,000,000 from the Port to the Aquarium over the next five years for development of the Aquarium's Ocean Pavilion, including a Port-related marine environmental educational exhibit; and

WHEREAS, The Port of Seattle is a municipal corporation, with authority under Title 53 of the Revised Code of Washington ("RCW"), including RCW 53.08.245, RCW 53.08.255, RCW 67.28, and other federal, state, and local laws, including to engage in tourism and promotion of Port facilities, and economic development and workforce development programs in Port-related industries; and

WHEREAS, Encouraging tourism is an important component of the Port's economic development strategy; and

WHEREAS, The Aquarium and the Port share values that include attracting tourism, environmental stewardship of the marine environment, workforce development, and equity; and

WHEREAS, Headquartered on the Seattle waterfront, the Port and the Aquarium are in close proximity to the Bell Harbor Convention Center, marina, and cruise ship terminal at Pier 66 which are Port of Seattle facilities that attract a great amount of public interest and are visited by thousands of residents from throughout the region and country as well as by international visitors; and

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WHEREAS, The waterfront is undergoing a major transformation associated with the removal of the Alaskan Way viaduct and associated construction of the new waterfront promenade and parks which will attract increased visitors; and

WHEREAS, Being directly linked to the Pike Place Market via a promenade, with newly rebuilt public piers to the north and south, the Ocean Pavilion will be a central feature for public access to the waterfront; and

WHEREAS, An increase in tourism will have a direct benefit to Port facilities and businesses; and

WHEREAS, Significant public investments are being made by the City of Seattle, King County, and the state of Washington to create an Ocean Pavilion at the Aquarium; and

WHEREAS, The purpose of the Ocean Pavilion is to educate and inspire local, national, and international visitors about the environmental stewardship of the marine ecosystem of the Salish Sea and its linkage to the Pacific Rim environment and communities; and

WHEREAS, This presents a generational opportunity for the Port to partner with the Aquarium in the development of, interpretive programming and the creation of a marine-focused exhibit at the Ocean Pavilion highlighting the Port's innovative programs to enhance and protect the maritime environment as well as promoting awareness of the Port's maritime facilities, and furthering future youth training and workforce opportunities in the blue economy; and

WHEREAS, There is a publicly accessible terrace landscape and Ocean Pavilion rooftop that affords spectacular views of Elliott Bay and Port harbor operations which creates additional interpretive opportunities; and

WHEREAS, This relationship supports the Century Agenda values and goals of the Port increasing tourism, training, job creation, and equity, diversity, and inclusion; and

WHEREAS, the implementation of the MOU will enable the Parties to identify opportunities for future

collaborations to further shared values and goals;

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants of the Parties contained herein, the Parties hereto agree as follows:

1. SCOPE OF WORK

This MOU establishes a five-year agreement between the Port and the Aquarium to develop a strategic relationship that focuses on matters of common interest including: 1) tourism and other economic development; 2) sustainability; 3) marine habitat conservation and restoration including underwater acoustics, kelp research, and killer whale research and conservation; 4) workforce development; 5) equity, diversity, and inclusion; and 6) the design and construction of programming at the Ocean Pavilion to create a marine-focused exhibit highlighting the Port's innovative programs to enhance and protect the maritime environment and promoting awareness of the Port's maritime facilities (the "Project").

The body of work within the MOU includes the following:

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A. Biennial Work Plans—The parties will create and implement two-year work plans on matters of common interest related to both parties' missions and values. Projects within the workplan may include a variety of endeavors including but not limited to events, promotional materials, community outreach, job fairs, staff- and volunteer-trainings, placemaking, and signage.

B. Work Group—Both parties will assign representatives, which may include a Port commissioner, to sit on a work group, which will meet no more than four times per year to determine opportunities to partner and implement the agreed-to projects.

C. Organizational Updates—Upon request, both Parties will make themselves available to the regular meetings of the other party to provide updates on matters related to this strategic relationship.

D. Port-Related Marine Environment Educational Exhibit— The Project will be designed and constructed to provide awareness of the Port of Seattle's marine-focused environmental programs and facilities and will promote and advertise Port properties and facilities in furtherance of the Port's economic development programs. Both parties will participate in an Aquarium-led design process which will result in a jointly designed exhibit in time for the opening of the Ocean Pavilion. The Aquarium will build, install, and maintain the exhibit, which will promote and increase public support for the Port's environmental programs and facilities in furtherance of the Port's economic development mission. Examples of the Port's innovative programs to be featured include but are not limited to improving water and air quality, shoreline and marine habitat, energy efficiency, and carbon reduction. The Aquarium will own all right, title and interest in and to the exhibit and the results of the Project.

The Aquarium shall ensure compliance with all state, federal, and other laws, and regulations in furtherance of the Project. The Aquarium shall be responsible for obtaining all necessary permits and/or agreements. The Aquarium shall be responsible for accomplishing all aspects of the Project scope outlined in Section 1.D.

Any changes to the exhibit during the duration of the MOU, as described in Section 1, shall require coordination with the Port and the Work Group and approval by the Parties.

2. PERIOD OF PERFORMANCE

The term of this MOU shall be five years commencing from the last signature date of the MOU unless terminated earlier in accordance with this MOU. Aquarium and Port staff will submit and/or present a project status report to their respective governance boards annually at a time of mutual agreement.

3. PROJECT FUNDING

The Port will contribute \$5,000,000 to the Aquarium under this MOU in accordance with the deliverable schedule below:

DELIVERABLE

LUMP SUM

Project Progress Report

\$100,000

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INVOICE SUBMITTAL AND  
DELIVERABLE DUE DATE

After MOU Execution

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Project Progress Report

\$1,000,000

Project Progress Report

\$1,000,000

Final Project Report and Notice \$900,000

of Completion of the Project

Progress Report

Final Progress Report

\$1,000,000

\$1,000,000

January 1, 2023

January 1, 2024

After Project completion and opening of the Ocean Pavilion

and marine-focused exhibit

highlighting

the

Port's

programs

January 1, 2026

Prior to the expiration of the

MOU in 2027

The parties may agree to an updated payment and deliverable schedule by written amendment.

Project progress reports will include a narrative describing the Project progress since the last report, design recommendations for the Project showing the marine-focused exhibit highlighting Port programs, an updated Project schedule, Biennial Work Plans developed under Section 1.A and minutes of Work Group meetings described in Section 1.B. Progress Reports after the Project is completed will include Biennial Work Plans developed under Section 1.A, minutes of Work Group meetings described in Section 1.B, and a narrative detailing the impacts of the Project and partnership.

The Aquarium shall submit an invoice to the Port with the deliverables listed above. Payment will be made by the Port within sixty (60) days of receipt of such properly submitted invoice and deliverable. The total payment under this MOU shall not exceed \$5,000,000.

Except for the Port's contributions as herein described, all Project costs shall be borne by the Aquarium. The Aquarium, at its sole cost and expense, shall secure and maintain in effect, all federal, state, and local permits and licenses required for the construction of the Project.

#### 4. RECORDS RETENTION AND AUDIT

During the progress of the work on the Project and for a period not less than six (6) years from the date of the completion of the Project or final payment by the Port to the Aquarium, whichever is later, the records and accounts pertaining to the Project and accounting thereof are to be kept available for inspection and audit by the Port, and the Aquarium shall provide the Port with copies of all records, accounts, documents, or other data pertaining to the Project upon the Port's request. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claims, or audit findings have been resolved, even though such litigation, claim, or audit continues past the typical six-year retention period. This provision is not intended to alter or amend records retention requirements established by applicable state and federal laws.

#### 5. INDEPENDENT CAPACITY

The employees or agents of each party who are engaged in the performance of this MOU shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

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#### 6. AGREEMENT ALTERATIONS AND AMENDMENTS

This MOU may be amended by mutual agreement of the Parties. Such amendments shall not be

binding unless they are in writing and signed by personnel authorized to bind each of the Parties.

#### 7. TERMINATION FOR CONVENIENCE

Either party may terminate this MOU upon 120 days' prior written notification to the other party. If this MOU is so terminated, the Port shall be responsible for payment of deliverables properly invoiced and accepted prior to the effective date of termination.

#### 8. TERMINATION FOR CAUSE

If for any cause, either party does not fulfill in a timely and proper manner its obligations under this MOU, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within fifteen (15) business days. If failure or violation is not corrected, this MOU may be terminated immediately by written notice of the aggrieved party to the other.

Notwithstanding anything in this MOU to the contrary, in no event shall a Party be liable to the other Party for breach of this Agreement as a result of a failure to perform or for delay in performance of any provision of this Agreement if such performance is delayed or prevented by a force majeure event. The term "force majeure event" means any event reasonably beyond the affected Party's control, whether unforeseen, foreseen, foreseeable, or unforeseeable and without the fault or negligence of the affected Party, including, but not limited to, events of nature, labor or civil disruption, orders of any court or governmental agency having jurisdiction of the Party's actions, pandemics or epidemics (including the COVID-19 pandemic), acts of war or terrorism, civil or military disturbances, or acts of God. The affected Party shall make all reasonable efforts to promptly resume performance of this Agreement and, when able, to resume performance of its obligations and give the other Parties written notice to that effect.

#### 9. DISPUTES

The designated representatives under Section 16, NOTIFICATION, shall use their best efforts to resolve disputes between the Parties. If the designated representatives are unable to resolve a dispute, the matter shall be reviewed by the executive director of each Party or his or her designee. The Parties agree to exhaust each of these procedural steps before seeking to resolve disputes in a court of law or any other forum.

#### 10. GOVERNANCE

This MOU shall be governed by and construed in accordance with the laws of the State of Washington. The King County Superior Court in Seattle, Washington shall have exclusive jurisdiction and venue over any legal action arising under this MOU.

#### 11. ASSIGNMENT AND THIRD-PARTY BENEFICIARIES

This MOU is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld. Nothing in this MOU is intended to, nor shall be construed to give any rights or benefits in the MOU to anyone other

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than the Port and the Aquarium, and all duties and responsibilities undertaken pursuant to this MOU will be for the sole and exclusive benefit of the Port and the Aquarium and not for the benefit of any other party.

#### 12. INDEMNIFICATION

Each party to this MOU will be responsible for the negligent acts or omissions of its own employees, officers, or agents in the performance of this MOU. Neither party will be considered the agent of the other and neither party assumes any responsibility to the other party for the consequences of any act or omission of any person, firm, or corporation not a party to this MOU. To the maximum extent allowed by law, the Parties shall protect, defend, indemnify, and save harmless each other, their officers, officials, employees, and agents, while acting within the scope of their employment, from any and all costs, claims, judgments, penalties, and/or awards of damages, arising out of or in any way resulting from the Parties' own negligent acts or omissions in connection with performance of activities under the terms of this MOU. Each Party agrees that its obligations under this provision extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents.

The Aquarium and the Port agree that their respective obligations under this subsection extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, the Aquarium and the Port, by mutual negotiation, hereby waive, with respect to the other party only, any immunity that would otherwise be available against such claims under the industrial insurance provisions of Title 51 RCW, and all other applicable Industrial Insurance / Worker's Compensation Acts or their equivalent in the applicable jurisdiction. Further, the indemnification obligations under this MOU shall not be limited in any way by any limitations on the amount or type of damages, compensation, or benefits payable to or for any third party under Worker's

Compensation Acts, Disability Benefit Acts, or other Employee Benefit Acts.

If the Aquarium or the Port incurs any judgment, award, and/or cost arising therefrom, including attorneys' fees, to enforce the provisions of this section, all such fees, expenses, and costs shall be recoverable by the prevailing party. This indemnification shall survive the termination of this MOU. This indemnification shall survive the termination of this MOU.

Notwithstanding anything to the contrary contained herein, and except for the third-party indemnification obligations set forth above, neither Party shall be responsible for payment to the other Party of consequential, special, or punitive damages in any way arising from this MOU or any claim of breach or failure under this MOU.

13. WAIVER

A failure by either party to exercise its rights under this MOU shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this MOU unless stated to be such in a writing signed by an authorized representative of the party and attached to the original MOU.

14. SEVERABILITY

If any provision of this MOU or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this MOU which can be given effect

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without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this MOU, and to this end the provisions of this MOU are declared to be severable.

15. ALL WRITINGS CONTAINED HEREIN

This MOU contains all the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of this MOU shall be deemed to exist or to bind any of the parties hereto.

16. NOTIFICATIONS

Any notice required or permitted to be given pursuant to this MOU shall be in writing, and shall be sent postage prepaid by U.S. Mail, return receipt requested, to the following addresses unless otherwise indicated by the Parties to this MOU:

To the Aquarium

Attn: President and CEO Robert W. Davidson  
Seattle Aquarium  
1483 Alaskan Way  
Seattle, Washington 98101

To the Port:

Attn: Executive Director Stephen P. Metruck  
Port of Seattle  
2711 Alaskan Way  
Seattle, Washington 98121

EXECUTED BY THE UNDERSIGNED PARTIES effective as of the last date below.

Seattle Aquarium

Port of Seattle

/s/

\_\_\_\_\_  
Signature

/s/

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



Robert W. Davidson  
President and CEO

Stephen P. Metruck  
Executive Director

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