

EXECUTION COPY

**CONCEPT AND DEVELOPMENT STUDY AGREEMENT**

THIS AGREEMENT, dated as of January 18, 2011 is by and between the City of Helsinki (the “**City of Helsinki**”), a self-governing municipal authority under the Finnish Local Government Act, and the Solomon R. Guggenheim Foundation, an education corporation chartered by the New York State Board of Regents (the “**Guggenheim**”).

**WHEREAS**, the City of Helsinki desires to establish a museum in Helsinki, Finland with a distinctive and innovative program and collection that would highlight the richness of Finnish and international modern and contemporary art and visual culture, while providing an innovative platform to rethink and challenge the conventions of a museum (the “**Museum**”);

**WHEREAS**, the Guggenheim (i) owns the Solomon R. Guggenheim Museum in New York City and the Peggy Guggenheim Collection in Venice, (ii) programs and provides operational support to the Guggenheim Museum Bilbao and the Deutsche Guggenheim, and (iii) has been engaged to program and to assist with the development of a Guggenheim Museum in Abu Dhabi;

**WHEREAS**, the Guggenheim is recognized as having a preeminent international program, and as a leader in international art collaborations;

**WHEREAS**, the Guggenheim’s charitable purposes include (a) providing for the promotion of art and for the mental or moral improvement of men and women by furthering their education, enlightenment and aesthetic taste and by developing the understanding and appreciation of art by the public, and (b) contributing to the establishment, maintenance and operation of museums or other proper places for the public exhibition of art;

**WHEREAS**, in furtherance of their respective and mutual interests, the City of Helsinki desires to retain the Guggenheim to conduct a concept and development study in order to explore the feasibility from an economic, urban, multidisciplinary, aesthetic, cultural, architectural, legal and social perspective of establishing a Guggenheim Museum in Helsinki; and

**WHEREAS**, conducting the concept and development study is within the Guggenheim’s mission and expertise.

**NOW, THEREFORE**, based upon the foregoing, and in consideration of the mutual agreements set forth in this Agreement, the parties agree as follows:

## 1. Engagement and Responsibilities.

(a) The City of Helsinki hereby engages the Guggenheim to conduct a concept and development study (the “**Study**”) regarding the suitability, viability, program, and operations of a new Guggenheim museum of modern and contemporary art and visual culture. The Study will evaluate the potential for the development of an art Museum in Helsinki that reimagines the possibilities for a museum of the future, with an innovative and multidisciplinary program. The Study will focus upon the following with respect to the Museum: mission/vision, exhibition and education programs, collections, preliminary site analysis, legal analysis, market study/economic-impact analysis, preliminary architectural program, project capital costs and long term financial commitments. As part of this concept and development study, the Guggenheim will examine the existing key visual arts institutions in Helsinki and, through active engagement of local museum professionals and specialists, provide a vision for the relationship that these existing institutions and the Museum might share. The Study Report (as hereinafter defined) will be comprised of (i) a report with the Guggenheim’s recommendations for the Museum and the basis for those recommendations, among other things (the “**Report**”), and (ii) technical annexes or memoranda that are trade or professional secrets of the Guggenheim (the “**Technical Annex**”). Any modification or expansion of the scope of services shall be subject to the mutual agreement of the parties to this agreement.

(b) The Guggenheim will direct, supervise, and control the Study. The Guggenheim shall select, retain and supervise such specialists and consultants (“**Consultants**”) as it deems appropriate. However, the Guggenheim shall consult with the City of Helsinki before selecting or retaining local Finnish Consultants. The Guggenheim shall provide the list of Consultants to the City of Helsinki promptly after the retainer agreement(s) with the Consultants are signed.

(c) A steering committee (the “**Steering Committee**”) shall be formed consisting of three members that will be appointed by the City of Helsinki and three members that will be appointed by the Guggenheim. Each of the City of Helsinki and the Guggenheim shall have the option of appointing two additional members. The Steering Committee shall convene, in person or by telephone, no less frequently than quarterly during 2011, it being understood that a meeting may go forward provided that at least two members of the Steering Committee are able to participate from each of the City of Helsinki and the Guggenheim. The Steering Committee shall receive briefings from the Guggenheim on the progress of the Study but shall not operate in a decision-making capacity. The meetings of the Steering Committee shall be confidential; however, this confidentiality requirement does not affect the legal obligations of the City of Helsinki as described in section 5(d) below, nor does it affect the right of the Guggenheim to share information with its trustees, key employees and Consultants to the extent it determines necessary.

(d) In the event that the Guggenheim requires or desires the assistance of any

governmental authorities or agencies (“**Agencies**”) for it to conduct the Study, the City of Helsinki will make a good faith effort to assist in identifying the appropriate Agencies and in developing, facilitating and coordinating the relationship between the Guggenheim and the Agencies.

## **2. Study Process and Completion.**

(a) The City of Helsinki agrees to appoint an English-speaking representative acceptable to the Guggenheim (the “**City of Helsinki Representative**”), to assist the Guggenheim in coordinating the Study, to communicate information to the Guggenheim, and to obtain information for the Guggenheim and its Consultants. Requests for information from the City of Helsinki needed by the Guggenheim to conduct the Study may be made to the City of Helsinki Representative, from time to time, who will be responsible for assembling the information and providing it to the Guggenheim on a timely basis. The Guggenheim shall inform the City of Helsinki Representative of the reasonable time period within which the information needs to be received in order not to delay completion of the Study. The City of Helsinki Representative will assist the Guggenheim in identifying appropriate individuals for the Guggenheim and its Consultants to work with on various portions of the Study.

(b) Work on the Study will commence within 5 days of the execution of this Agreement (the “**Commencement Date**”). After the Commencement Date, the Guggenheim will request from the City of Helsinki Representative initial information and materials which the Guggenheim will need to commence the Study, including but not limited to, detailed information about potential sites and the urban requirements, the master plans for the relevant areas, a conceptual framework for the development, sources of funding for the project, and required governmental approvals (the “**Preliminary Materials**”). The City of Helsinki will provide the Preliminary Materials in English and within ten (10) business days of such request unless the parties agree to a longer timetable. The City of Helsinki acknowledges that the Guggenheim will not be able to proceed fully with the Study without the Preliminary Materials, and that delays in providing any Preliminary Materials may delay completion of the Study, as set forth in Section 2(c). The Guggenheim may request additional information from the City of Helsinki, from time to time, during the course of the Study, and the City of Helsinki will respond on a prompt, timely basis. The parties acknowledge that the translation of the Preliminary Materials and of the additional information from Finnish into English requires considerable effort and may cause delays in delivery. The Guggenheim shall make any requests for material requiring translation promptly and the City of Helsinki shall likewise act promptly in complying with the requests.

(c) The full Study shall be completed and delivered in written report form in English (the “**Study Report**”), no later than December 30, 2011 (the “**Completion Date**”). All delivery dates set forth in this Section 2(c) shall be subject to extension by a period equal to the period of any delay encountered by the Guggenheim in commencing or fully working on the Study by reason of the City of Helsinki’s failure to deliver

Preliminary Materials, by agreement of the parties, or by a Force Majeure event as defined in Section 2(d) hereof.

(d) The Guggenheim shall be responsible for the timely delivery of the Study Report, subject to delays caused by reasons beyond the Guggenheim's reasonable control including, without limitation, acts of God; strike; lockout; civil disturbance, terrorism or riot; act of war; epidemic; accident; government regulation or delay; order of any court or Agency; fire; earthquake or other disaster; the City of Helsinki's breach of this Agreement, or its other acts, omissions, failure or delay; or the acts, omissions, failure or delay by a Consultant to the extent due to Force Majeure, or the acts, omissions, failure or delay by any other third party upon whom the Guggenheim is relying in order to complete the Study, to timely comply with a commitment made for its respective obligations ("**Force Majeure**"). Upon occurrence of a Force Majeure event, the Guggenheim shall be entitled to extend the Completion Date for the period of delay caused by the Force Majeure event. The Guggenheim will provide the City of Helsinki with prompt, written notice of any such delays caused by any Force Majeure events, which notice shall include the nature of the event and the additional estimated time that will be required to complete the Study Report.

(e) In the event that work on the Study is permanently discontinued prior to substantial completion for a reason solely attributable to the Guggenheim, the Guggenheim shall be entitled to reimbursements for its actual expenses but shall refund any amounts received in excess of actual expenses incurred.

(f) The Guggenheim undertakes, for the duration of this Study and for one year after the Completion Date referred to above in paragraph 2(c), not to commence negotiations for, or work on, any other Study or Study Report in the Nordic Countries or Baltic Sea Region. The Baltic Sea Region is for the purposes of this Agreement defined as any location within 200 kilometres of the Baltic Sea.

### **3. The Guggenheim Payment.**

(a) For the Guggenheim's work in connection with the Study (including retainer of Consultants), and all costs to be incurred by it under this Agreement, the City of Helsinki shall provide funding in the fixed amount of USD \$2,500,000 (Two Million Five Hundred Thousand United States Dollars) to the Guggenheim (the "**Study Payment**").

(b) The **Study Payment** shall be payable as follows:

(i) within five business days after the date this Agreement has been signed by both parties (the "**Execution Date**"), the City of Helsinki shall remit to the Guggenheim the amount of USD \$700,000 (Seven Hundred Thousand United States Dollars);

(ii) in each of the subsequent ten months, on the monthly anniversary of the date the payment is due pursuant to Section 3(b)(i), the City of Helsinki shall remit to the Guggenheim the amount of USD \$140,000 (One Hundred Forty Thousand United States Dollars); and

(iii) upon completion and submission of the written Study Report pursuant to Section 2(c), the City of Helsinki shall remit the amount of USD \$400,000 (Four Hundred Thousand United States Dollars).

The Guggenheim shall invoice the City of Helsinki separately for each of the payments set forth above. Each invoice shall be delivered to the City of Helsinki no later than five business days before the due date of the respective payment.

(c) Within ten business days of completion and submission of the written Study Report the Guggenheim shall also provide the City of Helsinki with an itemized accounting of actual expenses incurred in connection with the Study. Upon request, the Guggenheim shall provide the City of Helsinki with additional information and/or receipts of actual expenses incurred. If the Guggenheim incurs less than \$1,500,000 in expenses in connection with the Study, it shall refund to the City of Helsinki, within 30 business days of completion of the Study, the difference between \$1,500,000 and the actual expenses incurred.

(d) All payments made pursuant to Section 3(b) shall be by wire transfer to the following account:

Bank of America  
1501 Pennsylvania Avenue, NW  
Washington, DC 20005  
ABA: 026009593  
IN FAVOR OF SOLOMON R. GUGGENHEIM  
Account Number: 0019-2466-9335

(e) In the event the City of Helsinki does not make any one of the payments required under the agreement within 30 days of such payment's due date, the Guggenheim shall have no further obligation to perform services hereunder and shall have no obligation to return any amount previously paid by the City of Helsinki. However, in the event that the parties become aware that there will be a delay in the delivery of the Study Report for reasons other than Force Majeure and that the delay is solely attributable to the Guggenheim, the City of Helsinki shall be entitled to withhold any portion of a Study Payment that exceeds any amounts that the Guggenheim is obligated to pay to Consultants during the relevant period; Once the parties have mutually agreed upon a revised delivery schedule, the payments will immediately resume and be payable in full.

(f) All amounts set forth in this Agreement are, and will be paid, free and clear of any Finnish national, local or other taxes that might be required to be paid under Finnish or local law. Any such tax shall be paid by the City of Helsinki. In the event that the City of Helsinki is required to withhold or deduct any amounts in connection therewith, the City of Helsinki will pay to the Guggenheim (or the appropriate other third party) such additional amount or amounts as is/are necessary to ensure that the net amount actually received free and clear of any required deduction or withholding (including any required deduction or withholding on such additional amounts) will equal the full amount that would have been received had no such withholding or deduction been required.

#### **4. Work Product and Intellectual Property.**

(a) The Guggenheim will produce the Study Report, as well as plans, reports, designs, documentation, data, information, and other materials (collectively or individually the "**Work Product**"), some of which may be suitable for exhibition or publication. The City of Helsinki and the Guggenheim shall each own a complete set of the final Work Product.

(b) As between the parties, and subject to the rights of Consultants, the Guggenheim shall retain all copyright, trademark, and associated rights ("**Intellectual Property**") in the Work Product, except as set forth in Section 4(c) below. In the event the Guggenheim determines that it is unable or unwilling to proceed with the Museum, the Guggenheim shall grant, upon request, to the City of Helsinki a royalty-free, non-exclusive license in and to the Intellectual Property, including the right to reproduce, digitize, abridge, adapt, or otherwise use the Work Product, only in connection with planning for the potential development of a Museum. To the extent that any Work Product contains proprietary information or trade secrets of the Guggenheim or the Consultants, the Guggenheim shall identify such information as proprietary by clear and conspicuous markings or written notice, and the City of Helsinki shall be entitled to use such information only as otherwise set forth in this paragraph, and only in such manner as preserves the confidentiality of such information.

(c) The architectural firm hired in connection with the Study may produce presentation materials. Subject to the consent of the architectural firm, the City of Helsinki will own any such materials, to the extent produced.

#### **5. Access to Documents; Confidentiality; Public Relations**

(a) The parties acknowledge that this Agreement is by Finnish law in the public domain once it has been signed.

(b) The parties further acknowledge that they intend to make the Report public once the Study has been completed, but that the Technical Annex will be designated confidential under Finnish law.

(c) While the Guggenheim is working on the Study Report, the Work Product, including any information in the Report, is a Work-in-Progress and is, by Finnish law, not public and shall be kept confidential by both parties. To this end, the parties agree that, except to the extent that information has already been made public or released to the media, neither party shall discuss the Work-in-Progress, or release any parts of the Work-in-Progress or any information regarding the foregoing to the press or to other third parties that do not have a need for such discussions or information in connection with conducting the Study, without the prior written consent of the other party (which shall not be unreasonably withheld). The parties agree that, once the Report has been made public, the Technical Annex shall remain confidential and shall not be disclosed without the prior written consent of both parties, given that it is a business or professional secret of the Guggenheim.

(d) The parties note that, by Finnish law, the elected officials (members of the City Board and City Council) of the City of Helsinki have a right of access to information from City authorities and that such elected officials have a duty of non-disclosure regarding such information that is not yet public. The Mayor of Helsinki and the Deputy Mayor for Education, Culture and Personnel Affairs may also share information referred to above in paragraph 5(c) with senior officers of the City of Helsinki where they make a good faith determination that such internal sharing is necessary for the participation of the City of Helsinki in the preparation of the Study, provided they secure agreement from the senior officers to be bound by the same duty of non-disclosure.

(e) The parties agree that, with due regard to the legal obligations referred to above in paragraphs 5(a) through (d), the Guggenheim shall oversee and direct, in consultation with the City of Helsinki, the organization, timing, content and presentation of any press, public announcement, or public relations campaign with respect to the commencement, completion, or results of the Study, or any discussions or decisions about the possibility of proceeding or not proceeding with the Museum. The parties acknowledge that the Guggenheim's right of oversight and direction does not encompass the discussions of the elected officials of the City of Helsinki.

(f) The parties further agree that the Guggenheim's right of oversight and direction does not encompass the engagement and participation of the City of Helsinki's representatives in the Steering Committee and the Director of the Helsinki Art Museum in general discussion and debate about the future of the Helsinki Art Museum and about policies related to visual culture in the City of Helsinki. The parties agree that in such discussions and debates, confidential information regarding the Study Report or the possibility of the Museum shall not be disclosed or conferred to third parties.

## **6. Limitation on Commitment.**

(a) The parties agree that no commitment has been made to proceed with the Museum, or for any purpose, other than to conduct the Study as set forth in this

Agreement. Neither party shall indicate to any third party that any such commitment has been made or is under discussion, without the consent of the other party. In the event that after the completion of the Study, and regardless of the Study's results, each of the parties determines that the development of the Museum is in its respective interests and desires to proceed with the other party in the development of the Museum, such collaboration shall be subject to the parties entering mutually acceptable additional agreements with respect thereto.

(b) The parties further acknowledge that the Guggenheim is required to obtain the advance approval from the appropriate parties in Bilbao, Spain before entering into any agreement to manage or operate the Museum, and that no such approval has been granted as of the date hereof. Should the parties desire to proceed with the development of the Museum, the Guggenheim shall make a good faith effort to obtain said approval.

(c) The parties note that the selection and retainer of Consultants by the Guggenheim for purposes of this Agreement does not establish any right or expectation for the said Consultants regarding their participation in the possible further development of the Museum.

#### **7. Trademarks.**

Nothing in this agreement shall be construed to grant to the City of Helsinki any rights in or to the name GUGGENHEIM, GUGGENHEIM MUSEUM, SOLOMON R. GUGGENHEIM FOUNDATION or any derivative or variation thereof, all of which are expressly reserved by the Guggenheim. The City of Helsinki hereby (a) acknowledges that GUGGENHEIM and variations thereof, is a world famous trademark of the Guggenheim with registrations certified in more than 50 countries throughout the world, and (b) agrees that any use of the Guggenheim name or any variations thereof by the City of Helsinki or its representatives, beyond factual documentation necessary to accomplish the Study and use in connection with jointly-approved press releases and other public relations activities contemplated under Section 5 of this Agreement, requires the express, prior approval of the Guggenheim.

#### **8. Governing Law.**

This Agreement and all questions relating to its validity, interpretation, performance and enforcement (including, without limitation, provisions concerning limitations of actions), shall be governed by and construed in accordance with the laws of the State of New York, notwithstanding any conflict-of-laws doctrines of such state or other jurisdiction to the contrary, and without the aid of any canon, custom or rule of law requiring construction against the draftsman.

#### **9. Signatory Authority; Indemnification.**



Each party hereto warrants and represents that (i) it has received any authorizations required to enable such party to be bound by the terms hereof, and (ii) it has the full legal authority to enter into this Agreement and to be bound by the terms and conditions hereof. Each party hereby agrees to indemnify and hold harmless the other party, its affiliates and their respective directors, trustees, officers, employees and agents from and against any claims, actions, damages, expenses (including reasonable attorneys' fees), liabilities and costs arising from such party's breach of the representations and warranties in this paragraph.

#### **10. Arbitration of Disputes.**

(a) All controversies, disputes, claims and differences between the parties arising out of this Agreement, or the transactions contemplated hereby (each, a "**Dispute**"), that the parties cannot resolve by themselves shall be resolved only by arbitration pursuant to this Section. Either party may submit a Dispute to arbitration, in accordance with this Section. All disputes shall be arbitrated in New York, NY under the rules then in effect of American Arbitration Association, by a panel of three arbitrators. The arbitrators shall be instructed to deliver a written report of their determination to the Guggenheim and the City of Helsinki. Each party to such arbitration agrees that any award of the arbitrators shall be final, conclusive and binding and that neither party will contest the award, which cannot be disputed thereafter. It is specifically understood and agreed that any party may enforce any award rendered pursuant to the arbitration provisions of this Section by bringing suit in any court of competent jurisdiction. The parties agree that any such suit shall be brought in, and consent to the jurisdiction of, the Federal and State courts located in the State of New York.

(b) All fees, costs and expenses (including attorneys' fees and expenses) incurred by each party in connection with an arbitration hereunder shall be borne by the party that incurred such fees, costs and expenses. All costs and expenses attributable to the arbitrators shall be shared equally by the parties to the arbitration.

(c) Notwithstanding the foregoing, it is hereby agreed that no arbitration panel shall have any power to add to, alter or modify the terms and conditions of this Agreement or any other agreement executed and delivered in connection herewith or to decide any issue which does not arise from the interpretation or application of the provisions of this Agreement.

(d) The parties agree that the arbitration shall be kept confidential and that the existence of the arbitration and any element of it (including any pleadings, briefs or other documents submitted or exchanged, any testimony or other oral submissions and any awards) shall not be disclosed beyond the arbitrators, the parties, their counsel and any person participating in the proceedings, except as may be required in a judicial procedure relating to the arbitration or otherwise by law.

**11. Survival.**

The parties agree that the provisions set forth in Sections 4, 5, 6, 7, 8, 9, 10 and 11 shall survive the termination of this Agreement for any reason and the completion of the Study.

**12. Miscellaneous.**

(a) All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given, made and received only when delivered (personally, by courier service such as Federal Express, or by other messenger), or when sent by facsimile (with confirmation of successful transmission), addressed as set forth below:

- (i) If to the Guggenheim:

The Solomon R. Guggenheim Foundation  
1071 Fifth Avenue  
New York, NY 10128-0173  
Fax: 917-368-1450  
Attention: Richard Armstrong, Director of the Solomon R.  
Guggenheim Foundation and Museum

with a copy, given in the manner prescribed above, to:

The Solomon R. Guggenheim Foundation  
1071 Fifth Avenue  
New York, NY 10128-0173  
Fax: 917-386-1459  
Attention: Sarah Austrian, Deputy Director and General  
Counsel

- (ii) If to the City of Helsinki:

City of Helsinki  
City Hall  
Pohjoisesplanadi 11-13  
FI-00170 HELSINKI  
Finland  
Fax: +358-9-655783  
Attention: Mr Jussi Pajunen, Mayor of Helsinki

with a copy, given in the manner prescribed above, to:

City of Helsinki

Helsinki Art Museum  
Jaakonkatu 3 B  
FI-00100 HELSINKI  
Finland  
Fax: +358-9-31087000  
Attention: Dr Janne Gallen-Kallela-Sirén, Director

Any party may alter the address to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this paragraph for the giving of notice.

(b) This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective successors and assigns. No party may assign or transfer any of that party's rights or obligations under this Agreement without the prior written consent of the other party.

(c) The provisions of this Agreement are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part.

(d) This Agreement contains the entire understanding among the parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, letters of intent, inducements or conditions, express or implied, oral or written, except as contained in this Agreement. The express terms of this Agreement control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms this Agreement. This Agreement may not be modified or amended, or rights or remedies of a party waived, other than by an agreement in writing.

(e) The paragraph headings in this Agreement are for convenience only; they form no part of this Agreement and shall not affect its interpretation.

(f) In computing the number of days for purposes of this Agreement, all days shall be counted, including Saturdays, Sundays and holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday or holiday on which United States or Finnish banks are or may elect to be closed, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or such holiday.

(g) Notwithstanding anything contained herein to the contrary, this Agreement does not create a partnership, joint venture or relationship of trust or agency between the Parties.

(h) This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or

more counterparts have been signed by each party and delivered to the other party. Delivery of an executed counterpart of this Agreement by facsimile or other electronic transmission shall be as effective as delivery of a manually executed counterpart of this Agreement.

**13. Condition Precedent.**

The parties note that the City Board of Helsinki has approved this Agreement in draft in its meeting of January 17, 2011. The parties acknowledge and agree that the terms and provisions of this Agreement shall not be effective unless and until the principal terms of this Agreement have also been approved by the Guggenheim's Board of Trustees or Executive Committee.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first above written.

**THE SOLOMON R. GUGGENHEIM FOUNDATION**

By: \_\_\_\_\_  
Name: Richard Armstrong  
Title: Director, Solomon R. Guggenheim Foundation  
and Museum

**CITY OF HELSINKI**

By: \_\_\_\_\_  
Name: Jussi Pajunen  
Title: Mayor of Helsinki