

MARKETFRONT/PC-1 NORTH DEVELOPMENT AGREEMENT

BY AND BETWEEN

**THE CITY OF SEATTLE,
A WASHINGTON MUNICIPAL CORPORATION**

AND

**PIKE PLACE MARKET PRESERVATION AND DEVELOPMENT AUTHORITY,
A WASHINGTON PUBLIC DEVELOPMENT AUTHORITY,**

DATED: _____, 2015

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MARKETFRONT/PC-1 NORTH DEVELOPMENT AGREEMENT

THIS MARKETFRONT/PC-1 NORTH DEVELOPMENT AGREEMENT (the “Development Agreement”) is dated as of _____, 2015, 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 PIKE PLACE MARKET PRESERVATION & DEVELOPMENT AUTHORITY (the “PPMPDA”), a Washington public development authority chartered by the City under the laws of the State of Washington and City ordinance (collectively, the “Parties”).

ARTICLE 1 Recitals

The City owns the parcel of land in the Pike Place Urban Renewal Project area at 1901 Western Avenue, Seattle, Washington (the “Property”), which property is designated as PC-1 North in the Pike Place Urban Renewal Plan as amended in January of 1974, pursuant to Ordinance 102916 (the “Plan”), as extended by Ordinance 124361. The Property is legally described on Exhibit A.

The PPMPDA was chartered pursuant to Seattle Municipal Code 3.110 (Ordinance 103387 as amended), and RCW 35.21.730 *et seq.*, to undertake “renewal, rehabilitation, preservation, restoration and development of structures and open spaces” in the Pike Place Public Market (“Market”) “in a manner which affords a continuing opportunity for Market farmers, merchant residents, shoppers and visitors to carry on their traditional market activities” and, among other activities, “preserve and expand the residential community, especially for low-income people.”

The Property was occupied by the Municipal Market building, which contained public parking and Market-related commercial uses until that building burned down in 1974. The PPMPDA has operated surface-level public parking on the site under a series of agreements with the City since 1979.

The Plan calls for the Property to be the location of public parking for the Market and of commercial, residential, and public spaces to complement existing Market activity. The City and PPMPDA have been working toward the development of public parking on the site for several years.

The Washington State Department of Transportation's ("WSDOT") SR 99 bored tunnel project construction and the Waterfront Program construction will eliminate several hundred on-street short-term public parking spaces on the waterfront and in the vicinity of the Market. The development of replacement parking is essential to preserve the viability of the Market as a retail center and to support development of the central waterfront for public recreational and park uses.

On May 15, 2013, pursuant to Ordinance 124122, the City and the PPMPDA executed a Memorandum of Understanding concerning development of the Property (the "MOU") that described a process potentially leading to the conveyance of the Property to the PPMPDA and the construction of a new mixed-use structure, known as the Pike Place Market MarketFront (the "Project"), to be joined to the existing Public Market Parking Garage on adjacent property ("PC-1 South") owned by the PPMPDA. The new structure will provide an additional 300 parking spaces, more or less, and approximately 40 units of low-income senior housing, 12,000 square feet of retail commercial space, and 30,000 square feet of public open space, all of which would further the charter of the PPMPDA, would follow the intent of the Pike Place Market

Historical District Ordinance 100475, as amended, and would achieve certain of the City's objectives for development of the central waterfront as expressed in the City's Central Waterfront Concept Design and Framework Plan and Resolution 31399.

The MOU also articulated a series of principles to be respected and specific requirements for this Development Agreement, including but not limited to the following:

...In developing its PC-1N Project funding plan, the PMPDA must demonstrate that the Project as designed and funded is feasible and can be undertaken in a manner consistent with the prudent financial management of the PMPDA and its properties. The City Council will consider the feasibility and prudence of the proposed funding and financing of the PC-1N Project among other matters in its review of the Project Development Agreement....

The Parties have determined that this Development Agreement respects the principles articulated in the MOU and meets the MOU's requirements for this Development Agreement, specifically including the MOU's feasibility and prudence standard noted above.

The Project has been designed in close coordination with the City's Central Waterfront program to ensure that it will connect with the future "Overlook Walk" by way of the public open space, which will offer public access between the Market and the new Aquarium Plaza on the central waterfront. The PMPDA has completed environmental review for the Project and has determined that the Project will not result in any adverse environmental impacts. The development of Overlook Walk will depend upon the City's success in securing funding as a component of the Central Waterfront program.

The City's highest priorities for this Project include the Waterfront-Related Elements and parking garage. The replacement parking created by the new parking garage will be developed to maximize the number of short-term public parking stalls and accessibility and functionality for visitors to the Market and waterfront.

As part of this agreement, the City intends to convey the Property to the PPMPDA for public benefit consistent with the Community Renewal Act, (RCW 35.81.090), and the statute authorizing the formation of public authorities, including the PPMPDA (RCW 35.21.730(1) and 35.21.747(1)), which authorizes the transfer of property to a public development authority with or without consideration subject to appropriate deed restrictions necessary to ensure the continued use of such property for the public purposes or purposes for which it is transferred and with respect to which the City Grant described in this Agreement is made.

ARTICLE 2
Effective Date; Incorporation of Documents and Materials

Section 2.1 Effective Date. This Development Agreement will be effective upon the date when it is executed and delivered by authorized representatives of both the City and the PPMPDA following authorization by each Party's governing body.

Section 2.2 Exhibits (Incorporated by Reference).

Ex. A - Legal Description

Ex. B - Project 100% Construction Documents

Ex. C - Waterfront-Related Elements

Ex. D - Capital Budget (including Funding Plan/Sources & Uses)

Ex. E - PPMPDA Fundraising Plan

Ex. F - Form of Quit Claim Deed

Ex. G through I - Covenant, City Rights of Access Agreement(s)/Easement
for Public Open Space, Seattle City Light Temporary Easement for T4
Transmission Line

Ex. J - Project Schedule

ARTICLE 3
Design

Section 3.1 Design. As required under the MOU, the City must review and approve the PPMPDA's design development documents and 30%, 60% and 100% construction documents. The City's Director of the Office of the Waterfront ("Director") is required to review and approve the 100% construction documents prior to Project commencement. The 100% construction documents, when approved by the Director, will constitute the "Final Project Design" for purposes of this Development Agreement and will be appended to this Agreement as Exhibit B. The Final Project Design includes the "Waterfront-Related Elements" identified in Exhibit C. Throughout construction of the Project, the Parties will continue to observe procedures for close collaboration between their respective design teams for the Project and the City's Central Waterfront program.

3.1.1 Material Change. Except as provided in Section 3.1, any material changes to the Waterfront-Related Elements or parking garage require the prior approval of the Director or his successor. A material change is one that is estimated to cost \$50,000 or more to complete and that affects the design, function or utility of the Waterfront-Related Elements or the function or utility of the parking garage. The PPMPDA shall notify the Director of any proposed changes to the above-mentioned elements and any dispute between the Parties as to whether or not a proposed change is material shall be resolved in favor of requiring the Director's approval. Before the PPMPDA gives its construction contractor its Notice to Proceed with construction, the Parties shall develop a process under which any such proposed changes shall be reviewed by the Director, including a specific timeline for such review designed to minimize potential delays in completing the Project consistent with the Project Schedule. Nothing in this paragraph shall

be construed as limiting the authority of the City to approve or disapprove of proposed changes to the Project when acting in its regulatory capacity.

Section 3.2 Permitting. The PPMPDA shall manage all regulatory review for the Project including, but not limited to, Pike Place Market Historical Commission (the “Commission”) review, environmental review, and any other City review and permitting processes, including reviews by the Seattle Design Commission with respect to the Waterfront-Related Elements. The PPMPDA also shall be responsible for undertaking and managing informal, community-based design review, including review by the Market community.

ARTICLE 4 Funding

Section 4.1 Capital Budget. As reflected in Exhibit D, the “Capital Budget” is approximately \$73,000,000, to be provided from all available sources, including the City Funding described in Section 4.2.2. The Capital Budget will continue to be refined as competitive bidding proceeds and overall Project scope is confirmed. The PPMPDA’s Final Capital Budget (“Final Capital Budget”) will be submitted to the Director in conjunction with PPMPDA notification of the Project Commencement Date under Section 5.1.1.

Section 4.2 City Direct Funding and Other Support. The following are the City’s contributions to and support for the Project:

4.2.1 Property Conveyance. Consistent with Article 5, the City will convey title to the Property to the PPMPDA.

4.2.2 City Direct Funding. For the sole purpose of funding Eligible Project Costs (as defined below), the City will provide a Grant in the total amount of \$34,000,000, which includes all amounts that the City has reimbursed PPMPDA under the MOU for design, planning

and consultant costs prior to the date of this Agreement (“City Grant”). Proceeds of the City Grant may be used solely to pay or reimburse the PPMPDA for Eligible Project Costs, which shall be limited to the capital costs of design, planning, construction and equipping of the public parking garage and public plaza portions of the Project (“Eligible Project Costs”). If City Grant funds are utilized to fund PPMPDA’s equity, leverage loans or otherwise applied in a Federal New Market income tax structure, as provided in Section 4.3.4, an amount equal to the portion of such funds so applied shall be utilized to pay Eligible Project Costs.

4.2.3 Additional Grant Conditions. The PPMPDA shall meet and comply with the following conditions at all times during which the bonds issued to fund or refinance the City Grant remain outstanding:

(a) The PPMPDA agrees to expend or cause the expenditure of all available City Grant proceeds allocated to a City bond issuance within twelve (12) months after the date of the relevant bond issuance.

(b) The PPMPDA shall include in its annual report to the City required under ch. 3.110 of the Seattle Municipal Code, as amended, periodic reports on the planned and actual operations of the Project for as long as the City bonds issued to fund the City Grant remain outstanding.

(c) The funds identified in Section 4.2.2 shall become available for use and expenditure by the PPMPDA as described in Article 8. The PPMPDA shall use the funds, and all other funds available for the Project (including funds from all sources identified on the Final Capital Budget), only for development of the Project strictly in accordance with the Final Capital Budget.

Section 4.3 PPMPDA Funds and Fundraising. The PPMPDA shall obtain the balance of funding needed to fully fund the Final Capital Budget, increased or decreased as appropriate

resulting from scope, design and schedule changes and any cost overruns, as provided herein. Such funding will come from a variety of sources, including but not limited to the following:

4.3.1 PPMPDA Direct Funding. The PPMPDA currently has funds in the form of capital reserves, approximately \$570,000 of which it already has committed to design of the Project. The PPMPDA shall expend at least an additional \$2,430,000 in equity funds for design and construction of the Project.

4.3.2 Funding from Other Public Programs or Projects. The PPMPDA has represented that elements of the Project may be eligible for public funding or financing through various City, State or other public low- and moderate-income housing assistance programs, as well as capital grants from jurisdictions other than the City, as follows:

(a) WSDOT will contribute \$6,000,000 toward construction of the PC-1 North parking garage. Of that amount, \$3,500,000 has been received by the PPMPDA in exchange for the PPMPDA's commitment to certain parking rate restrictions on parking stalls in the existing PC-1 South garage as evidenced by a restrictive covenant between recorded under King County Recording No. 20141204002071. WSDOT and the PPMPDA are currently negotiating one or more agreements under which an additional \$2,500,000 will be provided to the PPMPDA when the PPMPDA obtains control of the Property and can commit to parking rate restrictions on parking stalls to be constructed in the new garage.

(b) The PPMPDA received a notice of award from the City's Office of Housing for approximately \$1,455,000, and has secured an allocation of approximately \$7,700,000 worth of tax credits for Project costs from the Washington State Housing Finance Commission's Low Income Housing tax credits program.

(c) The PPMPDA is seeking other funding, including a State capital grant for the Project that it anticipates will not exceed \$2,500,000.

4.3.3 PPMPDA Fundraising. The PPMPDA, working with the Pike Place Market Foundation, intends to secure additional funding from grants and philanthropic gifts. A detailed fundraising plan has been developed by the PPMPDA and is attached as Exhibit E (“PPMPDA Fundraising Plan”). This plan has been submitted to City staff and was accepted by the City’s Finance Director (“Finance Director”). The PPMPDA currently anticipates that such sources may yield up to \$6,000,000 for Project costs. The Finance Director will review PPMPDA’s progress in meeting its fundraising targets as set forth in the PPMPDA Fundraising Plan. In determining whether the PPMPDA has sufficient resources to construct the Project under that section, the Finance Director may consider the PPMPDA’s private sector donor pledges, pledge payment experience and such other relevant information as the Finance Director may reasonably require. The Finance Director will review PPMPDA’s private sector donor pledges under procedures to protect the confidentiality of donors and PPMPDA donor-related information to the extent possible. The PPMPDA shall submit to the Finance Director a copy of the pledges in a form acceptable to the Finance Director, with donor names verified by the Finance Director but omitted from the copy submitted. The Finance Director will deem a pledge reliable if it is from a person or entity of substantial net worth in relation to the amount pledged and the Finance Director knows of no reason why the pledge may not be honored.

4.3.4 Other Funding. The PPMPDA shall use its best efforts to secure additional funding for construction of elements of the Project through Federal New Market income tax credits. The PPMPDA currently estimates that such tax credits may generate net proceeds for application to Project costs of as much as \$4,000,000. To the extent otherwise permitted by applicable law, the PPMPDA may use any source of Project funding, specifically including the City Grant, in a manner that enables it to obtain private investment in PPMPDA-owned buildings under Federal income tax credit programs so long as an amount

equal to the portion of such funds so applied is utilized to pay Eligible Project Costs, all subject to restrictions on the sale or encumbrance of PPMPDA-owned property under applicable law and its charter and under the terms of the City conveyance.

4.3.5 Debt. The PPMPDA will borrow a combination of short and long term debt to apply toward its share of total Project costs. The PPMPDA currently estimates it will borrow \$14,000,000. Short term debt may be required as advances against funds that may be available later than when such funding will be required for construction of the Project, including multi-year pledges of gifts to the Project and tax credit proceeds.

ARTICLE 5

Project Commencement Actions Timeline; Property Conveyance

Section 5.1 Project Commencement Actions Timeline. The City will convey the Property to the PPMPDA (subject to a perpetual public access, use right or easement and to a utility easement) and the PPMPDA shall give its construction contractor Notice to Proceed with construction, in each case after the effective date of a City ordinance authorizing execution of this Development Agreement and upon completion of the following process:

5.1.1 The PPMPDA will notify the Director of the date it has determined to be the “Project Commencement Date.” The PPMPDA will provide such notification no later than thirty (30) days before the proposed Project Commencement Date.

5.1.2 The PPMPDA’s notification to the Director of the Project Commencement Date shall be accompanied by a comprehensive Project update including up-to-date information, including its Final Capital Budget, sufficient to enable the City to determine whether the following conditions have been satisfied:

(a) that the Final Capital Budget is sufficient to complete the Final Project Design, based on a review of the most up-to-date Project cost estimates and materials supporting those estimates provided by the PPMPDA; and

(b) that, as required by Ordinance 124122, the PPMPDA has demonstrated to the reasonable satisfaction of the City Finance Director that it has timely access to sufficient funds from all available sources, including the City Funding identified in this Development Agreement, to fully fund construction of the Project consistent with the Final Capital Budget and Final Project Design. The Final Capital Budget must include and the PPMPDA must maintain at each phase of Project construction contingencies consistent with industry standards. Promptly following any request, the PPMPDA shall provide the City with any additional information relevant to its review, including current information on the PPMPDA's fundraising efforts.

5.1.3 As soon as practical following review of the PPMPDA's information, the Director will notify the PPMPDA in writing whether or not the conditions in Section 5.1.2 have been satisfied. If either condition is not satisfied, the Director, together with the Finance Director, will work with the PPMPDA to address any actions that the PPMPDA could pursue in order to satisfy the condition(s). The Director shall notify the PPMPDA in writing, if and when, the City has determined that the conditions under subsection 5.1.2(a) and (b) are satisfied.

Section 5.2 Property Conveyance. When the conditions described in Section 5.1.2 have been satisfied, the Parties shall promptly schedule a date for the City to convey the Property to the PPMPDA on the terms set forth below.

5.2.1 Conditions of Conveyance. The City will convey the Property, together with all improvements on the site, to the PPMPDA pursuant to a quit claim deed substantially in the form attached as Exhibit F in "AS-IS" condition, without warranties or representations of any

kind. In accordance with RCW 35.21.747, the conveyance will be subject to covenants, restrictions and easements as set forth in the attached deed and easements, Exhibits G through I, to ensure the continued use of the Property for public purposes, including purposes such as low-income housing, public open space and short-term public parking.

5.2.2 Consideration. The City will receive no monetary consideration for conveyance of the Property to the PPMPDA or for the availability of the City Grant funding described herein. Consideration for transfer of the Property and the other obligations of the City under this Agreement includes: (a) the construction by the PPMPDA of the Project consistent with the requirements of this Development Agreement, including constructing the Waterfront-Related Elements and parking garage; and (b) continuous operation of the completed Project by the PPMPDA as an essential element of the Market in a manner consistent with the PPMPDA's charter. If the Parties later agree, the PPMPDA will undertake management and routine maintenance of the proposed Overlook Walk feature of the City's Central Waterfront Project by the PPMPDA consistent with the requirements of a mutually acceptable Overlook Walk Operation and Maintenance Agreement that the Parties will develop.

5.3 Notice to Proceed. The PPMPDA may issue the Notice to Proceed to its construction contractor after receiving the determination described in Section 5.1.2 and after satisfying all of the following conditions:

(a) The PPMPDA has obtained all necessary permits and all other governmental approvals for the Project.

(b) The PPMPDA has negotiated a construction contract for a guaranteed maximum price pursuant to the provisions of RCW 39.10 that the Director has determined is consistent with the requirements of the Development Agreement and under which the

PPMPDA's general contractor has agreed to construct the Project consistent with the Final Project Design.

(c) The PPMPDA has provided the Director copies of all required insurance policies or other evidence satisfactory to the Director of property and liability insurance in compliance with Article 10 of this Development Agreement.

(d) The PPMPDA has executed an easement agreement with Seattle City Light for the continued access to the location of, and for the maintenance of, the T4 transmission line currently located on the Property.

ARTICLE 6 Project Schedule

Section 6.1 Project Schedule. To satisfy the goals articulated in the MOU that the (1) PC-1 North parking garage be completed prior to demolition of the Alaskan Way Viaduct to provide replacement parking for the Market and waterfront businesses and attractions, including the Seattle Aquarium; and (2) the Project schedule maximize opportunities for meaningful coordination with construction of certain other elements of the City's Central Waterfront concept design such as the proposed Overlook Walk and the elevated Elliott Way connection, among others, the PPMPDA shall use its good faith best efforts to start construction of at least the below-grade portions of the Project on the "Project Commencement Date" shown on the Project Schedule. Once construction commences, the PPMPDA shall proceed diligently to complete the work so as to achieve substantial completion of the entire Project no later than the "Project Completion Date" shown on the Project Schedule. The current Project Schedule is attached as Exhibit J. The Project Completion Date reflected in the Project Schedule shall be extended for the duration of time reasonably necessary for the Parties to resolve issues such as potential cost overruns under Section 7.1.2 and proposed material changes under Section 3.1.1.

ARTICLE 7
Project Construction

Section 7.1 Project Construction.

7.1.1 Design and Construction. Subject to the requirements of this Development Agreement, PPMPDA shall undertake and be responsible for the management of all aspects of the design and construction of the Project. In conducting, causing or permitting any construction work on the Property, PPMPDA shall cause all construction work to be done in a good and workmanlike manner and shall comply with or cause compliance with all laws and permits. The PPMPDA shall obtain or cause to be obtained and maintain in effect, as necessary, all building permits, licenses and other governmental approvals that may be required in connection with construction of the Final Project Design. The PPMPDA shall complete construction of the Project substantially consistent with the Final Project Design, except as specifically provided herein. The PPMPDA shall use its good faith best efforts to resolve issues that may arise during construction to avoid material or other changes to the Final Project Design that would require the approval of the Director.

7.1.2 Requirements for Construction. In managing the Project, the PPMPDA shall ensure that the Project and its general contractor and others as appropriate comply with all of the following requirements:

(a) The PPMPDA shall require that (i) all contractors and subcontractors, including those of any entity contracting for any of the work for the Project comply with prevailing wage requirements of RCW 39.12; and (ii) its general contractor participate in the construction trades apprenticeship program, endeavoring to achieve 15% utilization of apprentices.

(b) The Project will be subject to the affirmative efforts and nondiscrimination requirements under SMC 20.42 and the equal benefits requirements under SMC 20.45.

(c) The Project component of the Final Capital Budget must include at least \$340,000 for public art to be incorporated into the Project. The selection of public art shall follow a process agreed to between PPMPDA and the City's Office of Arts & Culture or that office's successor. The Office of Arts & Culture will have representation on the review and selection panel PPMPDA will convene and use in the art selection process.

(d) The PPMPDA shall keep the Director informed of the time and place of each regular and special Project construction meeting to enable the Director or his designee to attend, become informed about the status of the Project, participate in discussions and present the City's position with respect to matters being discussed.

(e) The PPMPDA shall deliver a copy of any Project construction meeting minutes to the Director within seven (7) days after the PPMPDA receives them from its Project architect or contractor.

(f) The PPMPDA is responsible for all cost overruns that may be experienced by the Project, including those due to unforeseen conditions. The PPMPDA will notify the Director within ten (10) days of discovering any event or condition likely to lead to cost overruns and that must be addressed in order for the Project to proceed. The PPMPDA will evaluate ways to resolve any such event or condition and estimate the cost of doing so. In addressing potential cost overruns, the PPMPDA may, among other measures, apply funds within the Project contingency component of the Final Capital Budget, make modifications to the Final Project Design subject to Section 3.1.1 and apply such additional funds that the PPMPDA, in its sole discretion, determines are necessary to complete the Project. The PPMPDA will

inform the Director of the circumstances leading up to and resulting from the potential cost overruns and keep the Director apprised of its work and of its plans for addressing such conditions, specifically including any proposed changes in the Final Project Design requiring his approval under Section 3.1. If the PPMPDA determines that it may lack sufficient resources to address any cost overruns and, as a result, may not be able to complete the Project, it will so notify the Director within ten (10) days of such determination. The Parties will cooperate in developing and implementing a plan to complete, suspend or terminate the Project; provided, that such cooperation shall in no way modify or limit the City's available remedies in the event of default. Nothing in this paragraph shall be construed as limiting the authority of the City to approve or disapprove of proposed changes to the Project when acting in its regulatory capacity.

(g) Consistent with the City's Sustainable Building and Sites Policy adopted by Resolution 31326, upon completion of construction of the Project, the PPMPDA shall apply for Leadership in Energy and Environmental Design (LEED) certification of the Project (except for the affordable housing component) at the 2009 gold level or higher, under the U.S. Green Building Council's Rating System. The affordable housing component will comply with the Washington State Evergreen Sustainable Development Standard.

7.1.3 Cooling Tower Relocation. As required under the 2009 Agreement for Placement of HVAC Equipment on City Property between the City and the PPMPDA authorized by City Ordinance 123019, the PPMPDA shall relocate, at its sole expense, the cooling towers currently situated on the Property. The cooling towers shall be relocated as soon as practical after the PPMPDA receives the notice to do so under the above-referenced 2009 Agreement, but no later than the completion of the Overlook Walk.

7.1.4 Retail Space. The PPMPDA has designated four parking spaces on the western side of the Project parking facility as "interim parking" on the approved Master Use

Permit and Building Permit plans for the Project. The PPMPDA shall convert those stalls into a retail space of approximately 1,000 square feet that is accessible from the proposed Overlook Walk. This conversion shall be at the PPMPDA's sole expense and shall be executed during construction of the proposed Overlook Walk, subject to approval by the Market Historic Commission and the Director.

7.1.5 Waterfront-Related Elements. Notwithstanding Exhibit C (Waterfront Related Elements), the following components of the Waterfront-Related Elements shall be addressed as follows:

(a) PC-1 North Garage Façade. The façade of the garage adjacent to the Overlook Walk may remain open with steel cable barriers until the beginning of construction of the Overlook Walk when the PPMPDA shall be obligated to promptly complete infilling such façade.

(b) Heritage House Walkway. The southern pedestrian connection between the Overlook Walk and Western Avenue shall be completed by the PPMPDA when the Heritage House is redeveloped or substantially renovated.

(c) Public Plaza. The PPMPDA shall provide for a Project alternate for upgraded surface paving treatment of the PC-1 North public plaza adjacent to the Overlook Walk consistent with that of the Overlook Walk. Such upgrade shall be a high priority funding opportunity within the Market Foundation's campaign to raise philanthropic contributions to support development of the PC-1 North Project. The Friends of Waterfront Seattle (the "Friends") also may participate in raising funds for this upgrade. If the Foundation or the Friends succeed in raising such philanthropic funds for such surface treatment, the PPMPDA shall complete such upgrade when the Overlook Walk is constructed.

Section 7.2 City Obligations.

7.2.1 City-Requested Design Changes. The PPMPDA's responsibility for cost overruns notwithstanding, the City shall bear financial responsibility for any net direct or indirect cost increases necessary in order to implement those changes to the Project that the Director requests after having approved the Final Project Design (excluding permitting or other regulatory requirements).

7.2.2 Garage Access. In conjunction with construction by the City of the elevated Elliott Way connection to the Main Corridor, the City will design and build the roadway to support a new driveway access to the PPMPDA's PC-1 North garage from Elliott Way in a manner reasonably acceptable to the Parties. Both Parties recognize this driveway would provide direct access to the new garage from the new road, and is a shared responsibility for funding subject to future negotiations.

7.2.3 T4 Transmission Line. The City, in coordination with Seattle City Light, is responsible for relocation of the T4 transmission line running adjacent to and under the proposed northern garage access point from the new elevated Elliott Way connector road; provided, that the PPMPDA shall be responsible for any and all direct or indirect costs related to damage or impact to the T4 transmission line caused by the Project and unrelated to the City's right-of-way improvements in the area.

7.2.4 Easements and Property Line Adjustments. Any easements, property transfers or permits required to accommodate the portion of the Project that extends beyond the PC-1 North property line to the west, including space for temporary steps connecting to the new road and temporary relocation of one cooling tower will be subject to separate approval.

ARTICLE 8
Process for Disbursement of City Grant Proceeds

Section 8.1 Process for Disbursement of City Grant Proceeds.

(a) To aid the City in determining the timing of the issuance of bonds to fund the City Grant, on or prior to each June 30 and December 31 during the construction period (or until the City Grant proceeds have been fully disbursed), the PPMPDA shall provide to the City updated projections for monthly spending of the proceeds of the Grant through the end of the construction period. To aid the City in correctly sizing the anticipated issuance of taxable bonds to fund the City Grant, the PPMPDA further agrees to cooperate with the City Finance Director to provide updated spending projections confirming, as of the date on which the City expects to issue any bonds for the purpose of funding Grant disbursements, the amount of the Grant disbursements expected to be requested within the next succeeding twelve- (12) month period.

(b) The PPMPDA may request disbursements of the City Grant proceeds no more frequently than monthly to reimburse Eligible Project Costs, as defined in Section 4.2.2. The PPMPDA shall request disbursement of funds only for payment of Eligible Project Costs already incurred and the amount of each request must be limited to the amount needed to reimburse the PPMPDA for expenditures, supported by the documentation as described in Section 8.2.

(c) City Grant proceeds shall be disbursed pursuant to a disbursement request in a standard format agreed to by the Parties within thirty (30) business days after the request is received, if: (i) the disbursement request is submitted in compliance with the requirements of this Development Agreement; (ii) the PPMPDA is in compliance with the terms of this Development Agreement and no default exists under any other agreement for the financing or

development of the Project; and (iii) no part of the Project shall have been materially damaged by fire or other casualty.

Section 8.2 Invoices and Documentation. Each disbursement request shall be accompanied by (a) copies of all vendor invoices (including all applicable back-up materials) to be reimbursed with the requested funds, together with information sufficient to identify the budgeted expenses to which the invoices relate and to verify that such expenses are Eligible Project Costs; (b) an update to the Final Capital Budget showing the expenditures from each fund source since the date of the preceding invoice and the current balance of each fund source; and (c) an updated total Project Capital Budget Summary that includes a copy of the Project Schedule of Earned Values or other document showing the actual quantities of work completed to date for each bid item in accordance with the construction contract documents. All documents provided by the PPMPDA shall be submitted as PDF attachments to an e-mail sent to the Finance Director with a copy to the Director and/or their respective designees. Payment will be made on a reimbursement basis for actual quantities of each bid item of work completed and materials actually procured.

Section 8.3 Final Allocation of City Grant Proceeds. Not later than twelve (12) months after the Project is placed in service, the PPMPDA shall provide to the City a final allocation and summary of the use of City Grant proceeds, demonstrating that an amount equivalent to the total City Grant amount was expended for Eligible Project Costs.

ARTICLE 9
Phased Development; Alternative Projects

Section 9.1 Phased Development and Alternative Projects. If the Parties agree in writing that the Project reflected in the Final Project Design should be undertaken in phases, the PPMPDA may proceed on that basis, provided that the PPMPDA demonstrates to the Director's reasonable satisfaction that it remains committed to completion of the entire Project and has a viable plan for doing so, that includes all necessary financial resources to complete the Project. Each successive phase shall itself be subject to requirements of this Development Agreement. If the Parties agree that the Project, substantially as reflected in the Final Project Design, is either no longer viable or preferable to a mutually acceptable alternative project, the Parties may proceed to develop and construct such a mutually acceptable alternative project. Any such alternative project must include 300 public parking stalls, more or less, for both Market and waterfront use and provide public open space, access and use features appropriate for the Project. If the Parties agree such an alternative project can be completed within resources reasonably available to the Parties, a new or revised development agreement will be negotiated for review and approval by the PPMPDA Council and the City Council.

If the PPMPDA has not given notice of the Project Commencement Date within five (5) years after the effective date of this Development Agreement, the Agreement shall terminate. The City will thereafter convey the Property to the PPMPDA for continued use for Market and related public purposes contingent on the City's approval of the PPMPDA's plans for use of the site. Any conveyance must include reservation of reasonable and appropriate rights of public access and use, and will be contingent on PPMPDA Council and City Council review and approval of a new or revised development agreement for such project. Any such project must include at least 300 public parking stalls serving the Market and the waterfront; public open

spaces and access to ensure a connection between the waterfront and the Market as the Parties determine feasible and appropriate.

ARTICLE 10 Risk Management

Section 10.1 Risk Management.

10.1.1 Retainage and Bonding. The PPMPDA shall establish retainage at not less than five percent of its contractor's guaranteed maximum price and shall require bonding by its contractor to the extent required by law and warranted, in its judgment and discretion, after consultation with the Director.

10.1.2 Insurance Requirements. The PPMPDA shall obtain or cause to be obtained insurance in the following forms and with the limits of not less than those stated, with the City named as an additional insured, unless the City's Risk Manager agrees to modify these requirements:

(a) Professional Liability Insurance. Architect's and engineer's professional liability insurance covering the architect and engineer with a minimum limit of \$1,000,000 for each claim.

(b) Commercial General Liability. Commercial general liability insurance for the architect and the general contractor with minimum combined single limits of \$5,000,000 for the architect and \$5,000,000 for the general contractor for each occurrence. The policy shall include without limitation coverage for bodily injury, broad form property damage, personal injury (including but not limited to coverage for contractual and employee acts), blanket contractual, owner's and contractor's protective liability, and products and completed operations. Further, the policy for the general contractor shall include without limitation coverage for the hazards commonly referred to as "XCU" and shall contain a severability of interests provision.

The products and completed operations coverage for the general contractor shall extend for three (3) years past the date of substantial completion of the Project.

(c) Automobile Liability. Automobile liability insurance for the architect and general contractor with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to vehicles assigned to or used in the construction of the Project.

(d) Contractor's Equipment. Contractor's equipment insurance for the architect and general contractor covering owned, non-owned, leased equipment used in connection with construction of the Project. With the approval of the PPMPDA, the architect and the general contractor may self-insure owned, non-owned or leased equipment.

(e) Builder's Risk. Builder's risk insurance with a limit of liability consistent with the requirements of the PPMPDA's general contractor contract. The coverage shall be written on all risk of direct damage basis and shall include coverage for fire and physical loss or damage from flood and earthquake. Builder's risk insurance shall cover construction at the site, at any off-site storage location, if appropriate, and while in transit, any and all materials, equipment, machinery, tools and supplies, including buildings and all temporary structures to be used in or incidental to the fabrication, erection, testing or completion of the Project.

10.1.3 Liens. The PPMPDA will pay or cause to be paid all sums payable by it on account of any labor performed or materials furnished in connection with any work performed on the Project. The PPMPDA shall not permit any mechanic's or materialman's lien to be filed against the premises for work claimed to have been done for, or materials claimed to have been furnished to the PPMPDA.

10.1.4 Release. Each contract and subcontract for the Project shall include a specific provision to the effect that The City of Seattle is not liable under any circumstances for

claims or damages arising from any contractor's or subcontractor's performance or activities under the contract or subcontract, nor for any failure of the PPMPDA or any other party to make any payment.

ARTICLE 11
Indemnification and Dispute Resolution

Section 11.1 Indemnification.

11.1.1 PPMPDA Indemnification. To the fullest extent permitted by law, the PPMPDA shall indemnify, defend (using counsel acceptable to the City) and hold the City, its officers, agents, employees and elected officials (collectively, the "City Indemnified Parties") harmless from and against all claims, suits, losses, damages, fines, penalties, liabilities and expenses (including City's actual and reasonable personnel and overhead costs and attorneys' fees and other costs incurred in connection with claims, regardless of whether such claims involve litigation) of any kind whatsoever arising out of the Project, including, but not limited to, claims resulting from, arising out of, or connected with the following: (i) the acts or omissions of PPMPDA, its employees, agents, officers, affiliates, contractors, guests or invitees throughout the course of the Project; (ii) PPMPDA's breach of this Development Agreement; or (iii) construction of the Project. Except as may be required by applicable law, the above indemnity shall not be diminished by any actual or alleged acts, omissions or negligence of the City, its officers, employees, volunteers or agents. PPMPDA's defense and indemnity obligations extend to claims brought by its own employees and PPMPDA's foregoing obligations are specifically and expressly intended to act as a waiver of PPMPDA's immunity under Washington's Industrial Insurance Act, RCW Title 51, but only as to the City Indemnified Parties and to the extent necessary to provide the City Indemnified Parties with a full and complete defense and indemnity.

11.1.2 City Indemnification. To the fullest extent permitted by law, the City shall indemnify, defend (using counsel acceptable to PPMPDA) and hold PPMPDA, its Council members, employees, agents, officers, contractors, guests or invitees throughout the course of the Project (collectively, "PPMPDA Indemnified Parties") harmless from and against all claims, suits, losses, damages, fines, penalties, liabilities and expenses (including PPMPDA's actual and reasonable personnel and overhead costs and attorneys' fees and other costs incurred in connection with claims, regardless of whether such claims involve litigation) of any kind whatsoever resulting from, arising out of, or connected with the City's breach of this Development Agreement. The City's defense and indemnity obligations extend to claims brought by its own employees and the City's foregoing obligations are specifically and expressly intended to act as a waiver of the City's immunity under Washington's Industrial Insurance Act, RCW Title 51, but only as to PPMPDA Indemnified Parties and to the extent necessary to provide PPMPDA Indemnified Parties with a full and complete defense and indemnity.

Section 11.2 Limitation of Indemnification Obligation.

11.2.1 Limitation of PPMPDA's Obligation. If RCW 4.24.115 as in effect on the date of this Development Agreement applies to any claim, then to the extent required by such statute, the PPMPDA's indemnity: (i) shall not apply to damages caused by or resulting from the sole negligence of the City Indemnified Parties; and (ii) to the extent caused by or resulting from the concurrent negligence of (A) the City Indemnified Parties, and (B) PPMPDA, its Council members, agents, contractors, officers, affiliates, employees, guests or invitees shall apply only to the extent of the negligence of PPMPDA, its agents, contractors, officers, affiliates, employees, guests or invitees.

11.2.2 Limitation of City's Obligation. The City's obligation to indemnify PPMPDA shall not apply to (i) damages caused by or resulting from the sole negligence of

PPMPDA Indemnified Parties; and (ii) to the extent caused by or resulting from the concurrent negligence of (A) PPMPDA Indemnified Parties and (B) the City, its officers, agents, employees and elected officials shall apply only to the extent of the negligence of the City, its officers, agents, employees and elected officials.

THE CITY AND PPMPDA ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISIONS OF THIS ARTICLE WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.

Section 11.3 Dispute Resolution. In the event of a dispute regarding this Development Agreement, the Parties agree to follow the procedures in this Section prior to filing or initiating a lawsuit. The Parties shall make their best efforts to resolve disputes as expeditiously as possible through negotiations at the lowest possible decision-making level, and in the event such negotiations are unsuccessful, the matter shall be referred to the Director and the Executive Director of the PPMPDA. If those officials are unable to resolve the dispute within fifteen (15) days after the matter has been formally referred to them for resolution, they shall meet during the immediately succeeding seven (7) days to select a mediator to assist in the resolution of such dispute. The PPMPDA and the City agree to participate in mediation with the agreed upon mediator for a reasonable amount of time and in good faith. The cost of the mediation shall be shared equally between the City and PPMPDA.

ARTICLE 12

Miscellaneous Provisions

Section 12.1 Nondiscrimination; Compliance with Laws. The PPMPDA shall comply with all applicable laws including, without limitation, all equal employment opportunity and nondiscrimination laws of the United States, the State of Washington, and the City of Seattle, including but not limited to Chapters 14.04, 14.10, and 20.42 of the Seattle Municipal Code

(SMC), as they may be amended, and rules, regulations, orders, and directives of the associated administrative departments and their officers. Without limiting the generality of the foregoing, the PPMPDA shall cause the Project construction to comply with the requirements of the Americans with Disabilities Act (ADA). The PPMPDA expressly acknowledges that the provisions of the ADA may exceed requirements contained in building codes and other regulations and that in such instances, the ADA requirements shall control.

Section 12.2 Notices. All notices and requests required or permitted to be given in connection with this Development Agreement shall be in writing and shall be deemed given as of the day they are received either by messenger, express delivery service, or in the United States of America mail, postage prepaid, certified or registered, return receipt requested, and addressed as follows, or to such other address as the party to receive the notice or request so designates by written notice to the other consistent with this Section 12:

If to City: City of Seattle
Attn: Marshall Foster, Director
Office of the Waterfront
800 5th Avenue, Suite 3100
PO Box 34996
Seattle, WA 98124-4996

With a copy to: City of Seattle
City Attorney's Office
Attn: Helaine Honig, Assistant City Attorney
600 4th Avenue, 4th Floor
PO Box 94769
Seattle, WA 98124-4769

With a copy to: City of Seattle
Attn: Kristi Beattie, Finance Partnerships Manager
Department of Finance and Administrative Services
PO Box 94669
Seattle, WA 98124-4669

If to the PPMPDA: Pike Place Market Preservation & Development Authority
Attn: Ben Franz-Knight, Executive Director
85 Pike Street, Room 500
Seattle, WA 98101

With a copy to: Pacifica Law Group LLP
Attn: Gerry Johnson
1191 2nd Avenue, Suite 2000
Seattle, WA 98101-3404

Section 12.3 Term and Termination; Survival. Notwithstanding the foregoing, this Development Agreement shall terminate on May 15, 2020, if the PPMPDA has not commenced construction of the Project by that date. The following Sections shall survive the termination or expiration of this Development Agreement: Section 4.2.3(b), Section 11 and Section 12.4.

Section 12.4 Abandonment or Discontinuance of Work. If construction work is at any time abandoned or discontinued for fifteen (15) consecutive days or more and the PPMPDA has demonstrated that it intends to perpetuate such discontinuance, the PPMPDA shall be in default hereunder and the City, at its option, after no less than ten (10) days' notice and opportunity to cure provided to the PPMPDA, may enter onto the Property or designate a third party to enter onto the Property to complete the improvements or any portion thereof. Discontinuances resulting from circumstances beyond the PPMPDA's reasonable control as provided in Section 12.5 or incurred as a result of circumstances arising during construction of which the Parties are aware and are working to address shall not constitute defaults hereunder. If the City exercises the foregoing option, the PPMPDA shall promptly provide the City with a full set of Project documents and secure for the City the immediate right to use such documents and the City may employ such architects, contractors and workers, and may procure or furnish such materials, as it believes are necessary or appropriate to complete the improvements or portion thereof. The PPMPDA shall pay all costs incurred by the City pursuant to this Section, including a reasonable sum for supervision, attorneys' fees, and all related costs and expenses.

Section 12.5 Force Majeure. Except as otherwise expressly provided in this Development Agreement, time periods for any Party's performance under any provisions of this Development Agreement shall be extended for periods of time during which such performance is prevented due to circumstances beyond such Party's reasonable control, including without limitations, strikes, embargoes, shortages of labor or materials, governmental regulations, acts of God, unforeseen site conditions, casualty, war or other strife.

Section 12.6 Legal Relationship. This Development Agreement does not constitute the PPMPDA as the agent or legal representative of the City for any purpose whatsoever. The PPMPDA has no express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City or to bind the City in any manner or thing whatsoever. Nothing in this Development Agreement shall be construed to create any partnership or joint venture between the Parties.

Section 12.7 Mandatory Disclaimer.

The Pike Place Market Preservation and Development Authority ("PDA") is organized pursuant to Seattle Municipal Code (SMC) 3.110 and RCW 35.21.660, 35.21.670, and 35.21.730-755. RCW 35.21.750 provides in part as follows: "All liabilities incurred by such public corporation, commission, or authority shall be satisfied exclusively from the assets and properties of such public corporation, commission or authority and no creditor or other person shall have any right of action against the city, town, or county creating such corporation, commission, or authority on account of any debts, obligations, or liabilities of such public corporation, commission, or authority." The powers of the PDA are limited by state and federal law and regulations, ordinances of The City of Seattle, and other elements of the local regulatory scheme.

Section 12.8 Governing Law. This Development Agreement shall be governed by and interpreted under the laws of the State of Washington applicable to agreements made and to be performed in Washington, exclusive of its conflict of law rules.

Section 12.9 Time of Essence. The Parties agree that time is of the essence of this Development Agreement.

Section 12.10 Entire Agreement. This Development Agreement, when executed, contains the entire understanding between the Parties with respect to the subject matter hereof, and supersedes any promises or conditions in any other oral or written agreement, including the MOU. No provision of this Development Agreement may be amended or supplemented except by a written agreement signed by the Parties or their respective successors in interest.

IN WITNESS WHEREOF, the Parties have executed this Development Agreement as of the day and year stated above.

CITY OF SEATTLE

PIKE PLACE MARKET PRESERVATION &
DEVELOPMENT AUTHORITY

By _____
Marshall Foster
Director, Office of the Waterfront

By _____
Ben Franz-Knight
Executive Director