

AGREEMENT REGARDING LEVY PROCEEDS

By and between

THE CITY OF SEATTLE

and

PIKE PLACE MARKET PRESERVATION AND DEVELOPMENT AUTHORITY

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THIS AGREEMENT REGARDING LEVY PROCEEDS 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 AND DEVELOPMENT AUTHORITY (the “PDA”), a public corporation chartered by the City.

The City and the PDA agree as follows:

**ARTICLE 1.
Recitals**

The following facts and circumstances form the background of this Agreement:

1. In 1973, the City chartered the PDA pursuant to RCW 35.21.730, et seq. and Seattle Municipal Code (SMC) Chapter 3.110 (Ordinance 103387, as amended) to own and manage the properties of the Pike Place Market (the “Market”) with the objective of preserving its historic qualities, assuring its economic vitality, and promoting good management and harmonious relationships among Market users.

2. Market buildings owned by the PDA are in need of major repairs to, and replacement of, infrastructure such as plumbing, mechanical and electrical systems, roofs, windows, floors, building facades, and seismic and fire safety systems.

3. Pursuant to Ordinance _____ (the “City Ordinance”), the City will place before the voters, on the November 4, 2008 ballot, the question whether to levy property taxes to pay for or finance basic infrastructure improvements at the Market.

**ARTICLE 2.
Effective Date; Incorporation of Documents; Rules of Construction; Definitions**

Section 2.1 Effective Date. This Agreement will be effective upon the date when all of the following conditions are satisfied: (a) the City Council has authorized this Agreement; (b) Seattle City voters have approved the Levy; and (c) this Agreement is executed by authorized representatives of the City and the PDA.

Section 2.2 Incorporation of Documents. The following documents are attached as exhibits to this Agreement and by this reference are incorporated into this Agreement.

- (a) Exhibit A: Projected Cash Flow
- (b) Exhibit B: Core Market Infrastructure Projects
- (c) Exhibit C: Supplemental Market Infrastructure Projects
- (d) Exhibit D: Acceleration and Deceleration Examples

Section 2.3 Rules of Construction. The following rules shall apply to the construction of this Agreement unless the context otherwise requires:

(a) Words describing the singular number shall include the plural number and vice versa, except where otherwise indicated.

(b) All references herein to particular articles, sections or exhibits are references to articles, sections or exhibits of this Agreement, unless otherwise expressly stated.

(c) The headings and table of contents herein are solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.

Section 2.4 Definitions. The following terms shall have the respective meanings set forth below for all purposes of this Agreement.

“Actual Financing Costs” means the true interest cost and costs of issuance paid by the City on debt issued to finance all or a portion of the draws set forth in updated cash flows submitted by the PDA pursuant to Section 4.2.

“Agreement” means this Agreement Regarding Levy Proceeds by and between the City and the PDA.

“Assumed Financing Costs” means the assumed true interest cost and costs of issuance set forth in the projected cash flow in Exhibit A.

“Business Day” means any day other than (a) a Saturday or Sunday, or (b) an official City holiday.

“City” means The City of Seattle, Washington, a city of the first class of the State of Washington.

“City Ordinance” means Ordinance _____, passed by the City Council on _____, 2008.

“Code” means the Internal Revenue Code of 1986, as amended, together with corresponding and applicable final, temporary or proposed regulations and revenue rulings issued or amended with respect thereto by the United States Treasury Department or the Internal Revenue Service, to the extent applicable to bonds paid from Levy Proceeds.

“Core Market Infrastructure Projects” means the infrastructure projects identified in Exhibit B.

“Director” means the Director of the City’s Department of Finance.

“Levy” means the City’s levy of additional regular property taxes above the levy limit in RCW 84.55.010, pursuant to the City Ordinance.

“Levy Proceeds” means that portion of the City’s regular property taxes levied and collected pursuant to the City Ordinance and all interest and other earnings thereon.

“Market” means the Pike Place Market.

“Market Infrastructure Program” means the multi-phase program to construct the Market Infrastructure Projects.

“Market Infrastructure Projects” means the Core Market Infrastructure Projects and Supplemental Market Infrastructure Projects.

“PDA” means the Pike Place Market Preservation and Development Authority or its successors, established by the City pursuant to RCW 35.21.730 et seq. and SMC Chapter 3.110.

“PDA Projects” means improvements that are not Market Infrastructure Projects, to be funded by Federal new market tax credit funds or other PDA funds that are not Levy Proceeds.

“PDA Representative” means the person or persons designated from time to time by the PDA to act on behalf of the PDA.

“SMC” means the Seattle Municipal Code.

“State” means the State of Washington.

“Supplemental Market Infrastructure Projects” means the infrastructure projects identified in Exhibit C.

“Total City Amount” equals \$4.4 million, as adjusted under Section 4.4 and 4.6.

“Total PDA Amount” equals \$68.6 million, as adjusted pursuant to Section 4.5.

“RCW” means Revised Code of Washington.

ARTICLE 3. Projects

Section 3.1 Market Projects.

- (a) Subject to Section 3.2 and 6.2, the PDA agrees to complete the Core Market Infrastructure Projects. The PDA will serve as project manager for the Market Infrastructure Projects and PDA Projects. The PDA will make all management decisions regarding the Market Infrastructure Project and PDA Project design, construction, selection and management of contractors and vendors, change orders and all other components of project development.
- (b) The PDA’s Capital Renovation Committee will include three non-voting members appointed by the City as described further in this section. The City Council will appoint two non-voting members, who are not members of the PDA Council, to the PDA Council’s Capital Renovation Committee, as follows: one member with expertise in finance, and one member with expertise in construction and/or project management. Each of these two members will serve a two-year

term, and the City Council may reappoint a member to additional term(s). In addition, the Director will appoint, subject to confirmation by the City Council, a City employee with expertise in public finance, and/or other areas of interest to the City, to be a non-voting member of the PDA Council's Capital Renovation Committee, to serve a term established by the Director. Additionally, the fact that the City appoints members to the Capital Renovation Committee shall not be construed to modify or lessen the obligations of the PDA to manage and complete the Core Market Infrastructure Projects.

"Capital Renovation Committee" means a committee formed for the purpose of providing recommendations and information to the PDA Council for the purpose of guiding the PDA Council's decisions regarding the Market Infrastructure Program.

"PDA Council" means the twelve member group governing the PDA and the Core Market Infrastructure Program.

Section 3.2 Changes to a Core Market Infrastructure Project. The PDA will not delete or materially reduce in scope any Core Market Infrastructure Project without City approval as provided in Section 6.2. Any other material revision to the scope of a Market Infrastructure Project funded with Levy Proceeds, which does not constitute deletion or material reduction in scope of a Core Market Infrastructure Project, requires prior written approval of the Director.

ARTICLE 4. Application of Levy Proceeds

Section 4.1 Amount to be Allocated. Subject to the requirements of this Agreement, the Total PDA Amount shall be provided to the PDA. The Total City Amount shall be retained by the City to pay City financing costs.

Section 4.2 Annual PDA Requests. The projected cash flow incorporated as Exhibit A sets forth the anticipated timing and amount of monthly draws of increments of the Total PDA Amount expected to be paid to the PDA. On an annual basis, the PDA shall provide an updated cash flow to the Director. The updated cash flow shall be in the same form as Exhibit A, and shall show the portion of the Total PDA Amount previously disbursed as well as anticipated remaining monthly draws. The updated cash flow shall be submitted by the PDA Representative to the Director on or before October 1 of each year, except that the PDA's initial (October 1, 2008) updated cash flow shall be submitted to the Director no later than November 5, 2008. The PDA's updated cash flows may include monthly draw amounts that differ from the monthly draw amounts set forth in Exhibit A. If the PDA requests a monthly draw amount that is less than the amount set forth for the same month in Exhibit A, the difference shall accumulate to be available to the PDA for inclusion in a draw amount for a subsequent month or months, as determined by the PDA. If the PDA requests a monthly draw amount that is more than the draw amount set forth for the same month in Exhibit A, the difference shall be deducted from an amount requested for a subsequent month or months, as determined by the PDA.

In addition to providing the annual updated cash flow required under this section, the PDA shall also promptly notify the City of any material change expected to occur in the timing or amount of draws set forth in a particular updated cash flow.

Section 4.3 City Budget. The City's adopted budget will reflect the updated cash flows submitted pursuant to Section 4.2.

Section 4.4 Financing; Interest Rate Assumptions. The City agrees to obtain financing to the extent necessary to provide funds to the PDA in accordance with updated cash flows submitted pursuant to Section 4.2. The form, timing and amount of any City debt will be solely in the City's discretion. The cash flow incorporated as Exhibit A projects debt service on City debt based on both the timing and amount of the PDA's projected draws and the Assumed Financing Costs. If Actual Financing Costs are less than or equal to the Assumed Financing Costs, the City will use a portion of the Total City Amount to pay the Actual Financing Costs, subject to any adjustment resulting from acceleration or deceleration of PDA draw requests pursuant to Section 4.5. If Actual Financing Costs exceed the Assumed Financing Costs, the City will pay the difference from City sources, subject to any adjustment resulting from acceleration or deceleration of PDA draw requests pursuant to Section 4.5. Notwithstanding the foregoing, to the extent that the Actual Financing Costs exceed the Assumed Financing Costs because the City's bond counsel determines that some or all of the City debt can not be issued as tax-exempt obligations, the PDA (and not the City) shall be responsible for the amount by which the Actual Financing Costs exceed the Assumed Financing Costs as a result of the taxable nature of those obligations (such difference in financing costs to be determined by the City's financial advisor, acting reasonably, based on the difference in interest costs between taxable and tax-exempt obligations of comparable maturities at the time the obligations are priced). If Actual Financing Costs on all City debt issued to finance the Total PDA Amount are less than the Assumed Financing Costs for reasons other than acceleration or deceleration of PDA draw requests (that is, if there are aggregate savings due to interest rates or costs of issuance that are lower than assumed), the City will apply the difference to reduce the amount of the Levy in the final year.

Section 4.5 Increased Financing Costs Associated with Accelerated or Decelerated Draws. If the PDA has submitted an updated cash flow that requires the issuance of more City debt than is assumed in Exhibit A, an amount shall be deducted from the Total PDA Amount available to be drawn by the PDA, to be used to pay the resulting increase in financing costs. If the PDA has submitted an updated cash flow that requests draws that require the issuance of less City debt than is assumed in Exhibit A, the resulting savings will be added to the Total PDA Amount available to be drawn by the PDA. Attached as Exhibit D to this Agreement are examples demonstrating how increased costs and savings shall be calculated and allocated in the event that PDA draw amounts are accelerated or decelerated from the amounts set forth in Exhibit A. Within 30 days after the PDA has submitted an annual updated cash flow, the City shall provide such calculations to the PDA for its review and confirmation.

Section 4.6 Investment of Levy Proceeds. The City shall hold all Levy Proceeds until distributed to the PDA pursuant to this Agreement. The City shall invest Levy Proceeds in accordance with State law and the City's investment policy. The City will apply investment earnings to pay debt service on City debt incurred pursuant to Section 4.4. Prior to the issuance

of debt pursuant to Section 4.4 and to the extent that cumulative investment earnings are no longer needed for or exceed debt service requirements, investment earnings shall be retained by the City to reduce the amount of the Levy in the final year.

Section 4.7 Phasing. The Core Market Infrastructure Projects will be undertaken by the PDA in phases as set forth in Exhibit B, each phase representing one or more PDA-owned buildings. For each phase, the PDA will prepare a budget, to be confirmed upon negotiation with its contractor of a guaranteed maximum price for that phase. Upon completion of a phase, any unspent Levy Proceeds for such phase will be applied as provided in Section 6.1.

Section 4.8 Distribution of Funds. The PDA shall request draws of increments of the Total PDA Amount no more frequently than monthly. All requests shall include documentation as required in Section 4.9 and shall be submitted by the PDA Representative via email to the individual or group designated by the Director. If a request for funds is submitted in compliance with the requirements of this Agreement, the City shall provide funding within five Business Days after the request is submitted. If the City has not provided funding in the amount requested within five Business Days after a request is submitted, the City will pay interest on the amount not paid at the rate earned in the City's consolidated cash pool, commencing on the sixth Business Day after the request was submitted.

Section 4.9 Documentation. Each request from the PDA to draw an increment of the Total PDA Amount shall be accompanied by a completed invoice of the PDA, copies of vendor invoices to be paid or reimbursed with the requested funds, an identification of the project or projects associated with each vendor invoice, and certification by the PDA Representative that the request complies with the terms of this Agreement. All documents are to be submitted with the request as PDF attachments to an email sent to the individual or group designated by the Director.

ARTICLE 5.

Uses of Levy Proceeds

Section 5.1 Use of Levy Proceeds by the City. The City will use the Total City Amount only to pay costs of issuance and debt service on City debt incurred pursuant to Section 4.4.

Section 5.2 Use of Levy Proceeds by the PDA. Except as otherwise provided in this Agreement, the Total PDA Amount will be used only to pay the costs of Core Market Infrastructure Projects identified in Exhibit B and, to the extent permitted under Section 6.1, for Supplemental Market Infrastructure Projects identified in Exhibit C.

Section 5.3 Public Art. The PDA shall spend at least \$105,000 (which amount may be paid from a portion of the Total PDA Amount) to provide public art as part of the Market Infrastructure Program. The public art may be located anywhere within the Market. The selection of public art shall follow a process agreed to between the PDA and the City's Office of Arts & Cultural Affairs. It is expected that the Office of Arts & Cultural Affairs will have some representation on the review and selection panel. The public art, its location and display shall be

subject to usual and customary review and approval by the Pike Place Market Historical Commission.

Section 5.4 Excess Funds. In the event the PDA's actual cost of completion of any phase of construction of the Core Market Infrastructure Projects is less than the amount shown in Exhibit B, the unused portion for that phase may be applied only to Core Market Infrastructure Projects, or to one or more Supplemental Market Infrastructure Projects in accordance with Section 6.1.

ARTICLE 6. Changes in Scope

Section 6.1 Additions. A portion of the Total PDA Amount may fund all or a portion of the cost of one or more Supplemental Market Infrastructure Projects at the request of the PDA, subject to the approval of the Director. In seeking the approval of the Director to apply a portion of the Total PDA Amount to a Supplemental Market Infrastructure Project, the PDA must demonstrate to the Director's reasonable satisfaction the PDA's continuing capacity to complete the Core Market Infrastructure Projects within available resources.

Section 6.2 Deletions or Material Reductions. A determination not to construct a Core Market Infrastructure Project or to materially reduce the scope of any Core Market Infrastructure Project in Exhibit B requires the approval of the City by an ordinance passed by the City Council by a vote of not less than a two-thirds majority of its members. In the event the PDA determines that, due to circumstances beyond its own control, it is unable to construct all Core Market Infrastructure Projects, it shall immediately notify the Director. The Director, in consultation with the PDA, shall take the following steps:

- (c) Evaluate the PDA's conclusion with respect to its inability to construct all Core Market Infrastructure Projects, including the circumstances cited by the PDA for its inability to do so;
- (d) Evaluate other sources of potential funding available to the PDA that would enable the PDA to construct the Core Market Infrastructure Projects;
- (e) Evaluate alternative projects that could provide some or all of the functional benefit of the Core Market Infrastructure Projects the PDA has determined it is unable to construct;
- (f) Evaluate alternatives to eliminating or materially reducing the scope of any Core Market Infrastructure Project the PDA has determined it is unable to construct including delayed delivery of any such Core Market Infrastructure Project; bridge financing to enable the PDA to timely complete any such Core Market Infrastructure Project; elimination of one or more lower priority projects in the Market Infrastructure Program to enable timely completion of the Core Market Infrastructure Project the PDA has determined it is unable to construct; and such other possible measures in the Director's discretion; and

- (g) Provide a recommendation to the City Council regarding the PDA's request that a Core Market Infrastructure Project be deleted or materially reduced in scope as well as such other action as he or she deems reasonably appropriate under the circumstances presented.

**ARTICLE 7.
Other Funding**

Section 7.1 Cost Overrun Responsibility. The PDA will be responsible for all Core Market Infrastructure Project costs above the amounts shown in Exhibit B and will furnish any money necessary, in addition to the Total PDA Amount, to complete the Core Market Infrastructure Projects, except as permitted herein. The PDA acknowledges that the obligation of the City under this Agreement to provide the Total PDA Amount does not in any way constitute a representation, warranty, guaranty, advice or suggestion by the City as to the feasibility or viability of the Core Market Infrastructure Projects, and may not be relied on as such by any investor, tenant, lender, or other person, for any reason.

Section 7.2 Other PDA Funding. The parties acknowledge that the PDA will seek other funding to construct the Market Infrastructure Projects and the PDA Projects, which would complement the funding from Levy Proceeds. The PDA intends to apply other funding to pay costs of Supplemental Market Infrastructure Projects as well as for costs of PDA Projects, if the PDA determines to proceed with such projects. To the extent that the PDA applies other funding to pay costs of Core Market Infrastructure Projects, the portion of the Total PDA Amount originally programmed to pay the cost of such projects will be added to the Market Infrastructure Program contingency.

To the extent otherwise permitted by applicable law, the PDA may use a portion of its Total PDA Amount in a manner that enables it to obtain private investment in PDA-owned buildings under Federal income tax credit programs so long as an amount equal to the portion of the Total PDA Amount so applied is ultimately utilized to pay costs of Market Infrastructure Projects, all subject to restrictions on the sale of PDA-owned buildings under applicable law and its charter. Specifically, the PDA may apply for Federal new market tax credits for improvements to buildings to be improved during the first phase of the Market Infrastructure Program (consisting of the Hillclimb, Leland and Fairley buildings). If new market tax credits are obtained for this phase, an amount equal to the invested tax credit equity will be applied in the following order of priority:

- (a) PDA Projects (such as improvements to the Pike Market Child Care and Preschool facility, relocation of the PDA offices, and improvements to Pike Place);
- (b) Supplemental Market Infrastructure Projects in the Hillclimb, Leland and Fairley buildings; and
- (c) Core Market Infrastructure Projects in the Hillclimb, Leland and Fairley buildings.

Section 7.3 Alternate Distribution of Funds. In the event that the provision of a portion of the Total PDA Amount prior to the actual completion of work is needed for the PDA to obtain Federal new market tax credits, the PDA will request a lump sum distribution. The City will disburse the requested lump sum provided that the PDA submits evidence demonstrating to the Director's satisfaction that the following conditions have been met: (a) that the PDA has a commitment from a Federal tax credit investor, (b) that the PDA has controls in place to guarantee that an amount equal to the lump sum distribution will be used to fund the projects authorized by the City Ordinance and in accordance with this Agreement, and (c) that the PDA has formed or identified a qualified low income community business entity to facilitate the tax credit investments. Notwithstanding the foregoing, nothing in this Section shall in any way reduce or limit the PDA's obligation to comply with all federal, state and local laws applicable to obtaining other funding, including Federal new market tax credits.

ARTICLE 8. Reporting

Section 8.1 Phase Reports. The PDA will provide to the Director a report following completion of each phase of the Core Market Infrastructure Projects. The report for a phase shall be provided to the Director within 180 days after completion of the phase.

Section 8.2 Annual Reports. The PDA will provide to the Director an annual financial and status report regarding the Market Infrastructure Projects, updating the budget and amount spent for the Market Infrastructure Project by phase and showing spent and remaining contingencies. The Authority shall also provide reports to the Mayor and City Council as required by the City Ordinance. Annual reports of the PDA shall be provided together with the annual updated cash flow required pursuant to Section 4.2. The City shall provide to the PDA an annual report on the status of the collection, investment and distribution of Levy Proceeds, and any financing in connection therewith. The annual report of the City shall be provided prior to the date the PDA is required to submit its annual updated cash flow pursuant to Section 4.2.

Section 8.3 Audit. The PDA shall permit the City, from time to time as the City Auditor or the Director deems necessary (including up to six years after the final payment of any work funded by Levy Proceeds, or longer if the City deems it necessary for the City to comply with Internal Revenue Service records retention requirements in connection with tax-exempt bonds), to inspect and audit at any and all reasonable times and at such reasonable location as the City Auditor and/or Director selects, all pertinent books and records of the PDA or any other person or entity that has performed work funded by Levy Proceeds to verify, among other things, that all Levy Proceeds have been spent in compliance with this Agreement and applicable ordinances, that all documentation of funding requests is complete and accurate, and that work funded by Levy Proceeds has been performed in compliance with applicable contracts. Additionally, upon the City Auditor's or the Director's request, the PDA shall supply the City with, or shall permit the City to make, a copy of any books and records and any portion thereof. The PDA shall ensure that such inspection, audit and copying right of the City is a condition of any contract, agreement or other arrangement under which any other person or entity is permitted to perform work in connection with or related to the Market Infrastructure Program and the Levy Proceeds provided to the PDA under this Agreement.

Section 8.4 Communication and Information. The City and the PDA recognize that well-planned and executed communication between the PDA and its tenants, customers, and stakeholders throughout the implementation of the Market Infrastructure Program will be essential to the program's success. To provide good communication, the PDA will work closely with Turner Construction (Contractor), its General Contractor/Construction Manager (GC/CM), to provide information in a variety of ways, including the following or other methods that will achieve substantially the same results.

- (a) The PDA will publish and distribute to tenants a bi-monthly paper newsletter (increased to monthly if warranted) devoted to Market Infrastructure Program news, progress, and events.
- (b) The PDA will hold regular public meetings, anticipated to be monthly but less frequently if warranted, for tenants and other members of the Market community to hear updates from, and provide comments to, the PDA and Contractor. Well in advance of each meeting, the PDA will publicize the date, time, and location of the meeting.
- (c) The PDA will provide and keep up-to-date an easy-to-navigate website with information about the Market Infrastructure Program, including – for meetings of the PDA Council, its Capital Renovation Committee, its Finance and Asset Management Committee, and public meetings related to the Market Infrastructure Program – meeting notices, meeting agendas, and an archive of meeting minutes or notes. The website will also include current and past newsletters, schedule for upcoming construction activities and general anticipated impacts, whom to contact with questions, and other relevant information. During construction, the website will include a dedicated comment/question e-mail box that will be reviewed and answered at least every two or three days.
- (d) Not less than one month before construction begins for each phase, the PDA and Contractor will meet with tenants in the affected areas for that phase to discuss the details of anticipated impacts, provide written notice of the anticipated date for starting construction, and provide a written scope of work for the area in the immediate vicinity of each tenant. These meetings will cover topics such as when a business can expect workers to be in or near the shop, who those workers will be, what work they will do, tips on how to protect and secure merchandise during construction activity, and if and how construction in a business tenant's immediate area will affect its business hours.
- (e) The PDA will assign a member of the PDA's capital renovation team to each phase of the Market Infrastructure Program, and will give tenants the name and phone number of this person to provide a clear line of communication for questions or problem-solving. The PDA will give tenants the name and phone number of a 24/7 contact in case of an emergency.
- (f) The PDA will provide a centrally-located Information Center in the Market where it will post information regarding the Market Infrastructure Program such as

construction work plans, schedules for the current phase, and contact information for the responsible staff at the PDA and Contractor.

- (g) The PDA will hand-deliver to each tenant, post in the Information Center, and post in a designated location in each affected building, written Tenant Alerts to provide information about construction schedules.
- (h) During construction, the PDA will schedule meetings bi-weekly, or less frequently if warranted, for affected tenants to address group needs and concerns and provide input to the PDA about the project.
- (i) During construction, the PDA will deliver a written update at least weekly, or less frequently if warranted, to each affected tenant describing construction progress.

ARTICLE 9. Representations and Covenants

Section 9.1 Representations and Warranties of the PDA. As of the date of this Agreement, the PDA represents and warrants as follows.

- (a) The PDA is a public corporation duly chartered by the City pursuant to RCW 35.21.730 et seq. and Seattle Municipal Code Chapter 3.110.
- (b) The PDA Council has, in its resolution adopted on _____, 2008, approved this Agreement. The resolution is in effect and constitutes a legal, valid, and binding obligation of the PDA, and has not been amended since adoption.
- (c) The PDA has full legal right, power and authority under its charter and the laws of the State to execute and deliver this Agreement, to be bound by its terms and to consummate the transactions described herein, and to take any and all such action as may be required of the PDA to carry out, give effect to and consummate the transactions contemplated hereby.
- (d) The PDA has duly authorized, executed and delivered this Agreement. The PDA has duly authorized the performance by the PDA of its obligations and the consummation of the transactions contemplated under this Agreement.
- (e) This Agreement constitutes the legal, valid and binding obligation of the PDA enforceable in accordance with its terms, except as limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws or judicial decisions affecting the rights of creditors generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).
- (f) Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated herein, nor the compliance with the provisions hereof, conflicts with, or constitutes on the part of the PDA a violation of, or a breach of, or default under, the PDA's organizational

documents, or any statute, indenture, mortgage, commitment, note or other agreement or instrument to which the PDA is a party or by which the PDA is bound, or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the PDA or any of the PDA's activities or properties.

- (g) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or, to the best of the PDA's knowledge, threatened, against or affecting the PDA or the actions taken or contemplated to be taken by the PDA, nor, to the best of the PDA's knowledge, is there any basis therefor, wherein an unfavorable decision, ruling or finding would: (i) affect or seek to prohibit, restrain or enjoin the execution and delivery of this Agreement; (ii) affect or question the validity or enforceability of this Agreement; (iii) question the power or authority of the PDA to carry out the transactions contemplated by, or to perform its obligations under, this Agreement; or (iv) materially affect the business, financial condition or operations of the PDA.
- (h) No event has occurred and no condition exists which, with the passage of time, would constitute (or with the giving of notice or lapse of time, or both, would constitute) an event of default under this Agreement.
- (i) The PDA is not in material default under any document, instrument or commitment to which the PDA is a party or to which it or any of its property is subject which default would or could materially adversely affect the ability of the PDA to carry out its obligations under this Agreement.
- (j) To the best of the PDA's knowledge, the Market Infrastructure Projects do not conflict with any zoning, water, environmental or air pollution or other ordinance, order, law or regulation applicable thereto; the PDA has or will cause to be established an ongoing program to maintain the Market Infrastructure Projects' compliance with all applicable federal, state and local laws or ordinances (including rules and regulations) relating to zoning, building, safety, and environmental quality; and the PDA has not failed to obtain (or will obtain when required) and maintain in effect any material licenses, permits, franchises or other governmental authorizations necessary for the carrying out of the Market Infrastructure Program.
- (k) The PDA has obtained or will timely obtain all consents, approvals, permits, authorizations and orders of any governmental or regulatory agency that are required to be obtained by the PDA that are required for the carrying out of the Market Infrastructure Program.
- (l) Any certificate signed by any officer of the PDA and delivered to the City shall be deemed a representation and warranty by the PDA to the City as to the truth of the statements therein contained.

Section 9.2 Representations and Warranties of the City. As of the date of this Agreement, the City represents and warrants as follows.

- (a) The City is a first class city of the State.
- (b) The City Council has authorized the Mayor to execute this Agreement pursuant to the City Ordinance. The City Ordinance is in effect and constitutes a legal, valid, and binding obligation of the City, and has not been amended since enactment.
- (c) The City has full legal right, power and authority under its charter and the laws of the State to execute and deliver this Agreement, to be bound by its terms and to consummate the transactions described herein, and to take any and all such action as may be required of the City to carry out, give effect to and consummate the transactions contemplated hereby.
- (d) The City has duly authorized, executed and delivered this Agreement. The City has duly authorized the performance by the City of its obligations and the consummation of the transactions contemplated under this Agreement.
- (e) This Agreement constitutes the legal, valid and binding obligation of the City enforceable in accordance with its terms, except as limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws or judicial decisions affecting the rights of creditors generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).
- (f) Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated herein, nor the compliance with the provisions hereof, conflicts with, or constitutes on the part of the City a violation of, or a breach of, or default under, the City's charter, or any statute, indenture, commitment, note or other agreement or instrument to which the City is a party or by which the City is bound, or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the City or any of the City's activities or properties.
- (g) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or, to the best of the City's knowledge, threatened, against or affecting the City or the actions taken or contemplated to be taken by the City, nor, to the best of the City's knowledge, is there any basis therefor, wherein an unfavorable decision, ruling or finding would: (i) affect or seek to prohibit, restrain or enjoin the execution and delivery of this Agreement; (ii) affect or question the validity or enforceability of this Agreement; (iii) question the power or authority of the City to carry out the transactions contemplated by, or to perform its obligations under, this Agreement; or (iv) materially affect the business,

financial condition or operations of the City with respect to the City's obligations under this Agreement.

- (h) No event has occurred and no condition exists which, with the passage of time, would constitute (or with the giving of notice or lapse of time, or both, would constitute) an event of default under this Agreement.
- (i) The City is not in material default under any document, instrument or commitment to which the City is a party or to which it or any of its property is subject which default would or could materially adversely affect the ability of the City to carry out its obligations under this Agreement.
- (j) Any certificate signed by any officer of the City and delivered to the PDA shall be deemed a representation and warranty by the City to the PDA as to the truth of the statements therein contained.

Section 9.3 Covenants of the PDA.

- (a) Insurance. The PDA will require its general contractor to name the City as additional insured for primary and non-contributory limits of liability.
- (b) Maintenance and Repair. The PDA agrees to maintain, or cause to be maintained, the Market Infrastructure Projects, upon completion and for the normal expected useful life of the improvements, (i) in a reasonably safe condition and (ii) in good repair and in good operating condition, ordinary wear and tear excepted, making from time to time all necessary repairs thereto and renewals and replacements thereof.
- (c) Tax Exemption. It is the desire of the PDA and the City that interest on any City debt issued pursuant to Section 4.4 shall be and remain excluded from gross income of the owners of the bonds under federal tax law. The PDA therefore covenants and agrees that it has not taken or permitted to be taken and will not take or permit to be taken any action that will cause the interest on any of the bonds that are issued as tax-exempt bonds to become included in gross income for federal tax purposes pursuant to the Code or to become "arbitrage bonds" within the meaning of Section 148 of the Code. The PDA covenants that it will not take any action, fail to take any action or make or allow any use of (i) a Market Infrastructure Project funded with bond proceeds, or (ii) the proceeds of the bonds, which would cause the interest on any of the bonds that are issued as tax-exempt bonds to be or become includable in the gross income of such bond owners for federal income tax purposes.

Section 9.4 Covenants of the City. If the voters approve the question placed on the November 4, 2008 ballot by the City Ordinance, the City covenants to take all steps necessary to impose and collect the approved levy in the amount to provide the Total PDA Amount and the Total City Amount.

Section 9.5 Additional Instruments. The PDA and the City each hereby covenants to execute and deliver such additional instruments and to perform such additional acts as may be necessary to carry out the transactions contemplated in the City Ordinance and this Agreement.

Section 9.6 Covenant With Regard to Maintenance of Powers. As long as any obligation under this Agreement remains in effect, the PDA and the City shall each preserve its existence, use its best efforts to maintain the powers, functions, duties and obligations now reposed in it pursuant to law, and assure the assumption of its obligations under this Agreement by any corporation or political subdivision succeeding to its powers.

ARTICLE 10.

Miscellaneous Provisions

Section 10.1 Title to Improvements. The PDA shall retain title to all improvements constructed by it with Levy Proceeds.

Section 10.2 Indemnification.

(a) PDA Indemnification. To the fullest extent permitted by law, the PDA 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 Market Infrastructure Program and PDA Projects, including, but not limited to, claims resulting from, arising out of, or connected with the following: (i) the acts or omissions of the PDA, its employees, agents, officers, contractors, guests or invitees throughout the course of the Market Infrastructure Program; (ii) the PDA’s breach of this Agreement; (iii) construction of Market Infrastructure Projects or PDA Projects; or (iv) the PDA’s utilization of other funds, such as Federal new market tax credits, for Market Infrastructure Projects and PDA Projects. The PDA’s defense and indemnity obligations extend to claims brought by its own employees and the PDA’s foregoing obligations are specifically and expressly intended to act as a waiver of the PDA’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.

(b) City Indemnification. To the fullest extent permitted by law, the City shall indemnify, defend (using counsel acceptable to the PDA) and hold the PDA, its officers, agents, employees and elected officials (collectively, the “PDA Indemnified Parties”) harmless from and against all claims, suits, losses, damages, fines, penalties, liabilities and expenses (including the PDA’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 claims resulting from, arising out of, or connected with the City’s breach of this 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 the PDA Indemnified Parties and to the extent necessary to provide the PDA Indemnified Parties with a full and complete defense and indemnity.

Section 10.3 Limitation of Indemnification Obligation.

(a) Limitation of PDA Obligation. To the extent necessary to comply with RCW 4.24.115 as in effect on the date of this Agreement, the PDA's obligation to indemnify the City for damages arising out of bodily injury to persons or damage to property relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, road, or other structure, project, development, or improvement attached to real estate, including the Market Infrastructure Projects, (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) the PDA, its agents, contractors, officers employees, guests or invitees shall apply only to the extent of the negligence of the PDA, its agents, contractors, officers, employees, guests or invitees; PROVIDED, HOWEVER, the limitations on indemnity set forth in this Section shall automatically and without further act by either the City or the PDA be deemed amended so as to remove any of the restrictions contained in this Section 10.3(a) no longer required by then applicable law.

(b) Limitation of City Obligation. The City's obligation to indemnify the PDA shall not apply to (i) damages caused by or resulting from the sole negligence of the PDA Indemnified Parties, and (ii) to the extent caused by or resulting from the concurrent negligence of (A) the PDA Indemnified Parties and (B) the City, its agents, contractors, officers and employees shall apply only to the extent of the negligence of the City, its agents, contractors, officers, or employees; PROVIDED, HOWEVER, the limitations on indemnity set forth in this Section shall automatically and without further act by either the City or the PDA be deemed amended so as to remove any of the restrictions contained in this Section 10.3(b) no longer required by then applicable law.

THE PARTIES ACKNOWLEDGE THAT SECTIONS 10.2 AND 10.3 WERE MUTUALLY NEGOTIATED.

Section 10.4 Dispute Resolution. In the event of a dispute regarding this Agreement, both 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 PDA. If those officials are unable to resolve the dispute within a period of 15 days after the matter has been formally referred to them for resolution, they shall meet during the immediately succeeding seven days to select a mediator to assist in the resolution of such dispute. The PDA 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 parties.

Section 10.5 Investigation of Ethics Complaints. If the PDA receives a complaint alleging violation of SMC 3.110.560 or 3.110.570 relating to use of Levy Proceeds, the PDA will

designate the Seattle Ethics and Elections Commission as the “Ethics Committee” for purposes of SMC 3.110.580.

Section 10.6 Compliance with Laws. The PDA will do all work in compliance with all applicable laws, ordinances and regulations, including, but not limited to all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington and City of Seattle, including but not limited to Chapters 14.04, 14.10, and 20.42 of the SMC as they may be amended from time to time, and rules, regulations, orders, and directives of the associated administrative agencies and their officers. In order to encourage the hiring of women and minority group members and the subcontracting of public works, goods or services from qualified women and minority businesses, the PDA shall require that the general contractor/construction manager for the Core Market Infrastructure Projects comply with Affirmative Efforts provisions in SMC Chapter 20.42.050.

Section 10.7 Limited Liability. The Pike Place Market Preservation and Development Authority is organized pursuant to SMC 3.110 and 35.21.730-.755. RCW 35.21.750 provides as follows: “[A]ll 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.”

Section 10.8 No Remedy Exclusive. No remedy conferred upon or reserved to any party by this Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute, and either party hereto shall be free to pursue, at the same time, each and every remedy, at law or in equity, which it may have under this Agreement or otherwise.

Section 10.9 No Implied Waiver. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. For the exercise of any remedy, it shall not be necessary to give any notice, other than such notice as may be expressly required herein.

Section 10.10 Governing Law; Venue. This Agreement is governed by and shall be construed in accordance with the substantive laws of the State of Washington and shall be liberally construed so as to carry out the purposes hereof. Except as otherwise required by applicable law, any action under this Agreement shall be brought in the Superior Court of the State of Washington in and for King County.

Section 10.11 Notices. All notices, certificates or other communications shall be in writing and shall be sufficiently given and shall be deemed given on the Business Day on which the same have been transmitted by facsimile or electronic mail with a telephone call by sender immediately to follow transmittal and an affirmative confirmation of receipt from recipient, whether verbal or electronic, or on the Business Day following the day on which the same have

been sent using same day or overnight delivery via a commercial messenger or courier service that guarantees next day delivery.

If to the City: The City of Seattle
Department of Finance
600 Fourth Avenue, Sixth Floor
PO Box 94747
Seattle, WA 98124-4747
Attn: Director
Telephone: (206) 684-8347
Fax: (206) 684-8534
Email: dwight.dively@seattle.gov

If to the PDA: Pike Place Market Preservation and Development
Authority
85 Pike Street
Room 500
Seattle, WA 98101
Telephone: (206) 774-5232
Fax: (206) 682-7453
Email: carol@pikeplacemarket.org

Any party may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

Section 10.12 Binding Effect; No Assignment. This Agreement shall inure to the benefit of and shall be binding upon the City and the PDA and their successors. This Agreement may not be assigned without the written consent of the parties.

Section 10.13 Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 10.14 Amendments. This Agreement may not be effectively amended, changed, modified or altered, except by an instrument in writing duly executed by the City and the PDA (or their successors in title) upon passage of an ordinance by the City Council.

Section 10.15 Termination of Agreement. Unless otherwise stated herein, this Agreement and all obligations hereunder shall terminate one year after the final distribution of the Total PDA Amount to the PDA.

Section 10.16 Rights Created in Third Parties. The terms of this Agreement are not intended to establish nor to create any rights in any persons or entities other than the City, the PDA, and the respective successors and assigns of each.

Section 10.17 Time of Essence. Time and all terms and conditions shall be of the essence of this Agreement.

Section 10.18 Oral Agreements Not Enforceable. ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, TO EXTEND CREDIT OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

Section 10.19 Counterparts. This Agreement may be executed in counterparts.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, all as of the day and year first above mentioned.

THE CITY OF SEATTLE, a municipal corporation

By _____

Date: _____

**THE PIKE PLACE MARKET
PRESERVATION AND
DEVELOPMENT AUTHORITY**, a public corporation

By _____

Date: _____

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