WATERFRONT LID AGREEMENT

THIS WATERFRONT LID AGREEMENT ("Agreement") is by and among THE CITY OF SEATTLE, a first class charter city and municipal corporation (the "City"); and each of the parties identified as "Owners" on the attached signature pages (each an "Owner"); and WATERFRONT PARK CONSERVANCY, a Washington not-for-profit corporation (the "Conservancy"); effective as of the Effective Date (as defined in Section 7.11). The City, each Owner, and Conservancy are each a "Party" and collectively the "Parties" to this Agreement. Based on the mutual covenants and obligations set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

1. DETERMINATIONS AND FINDINGS.

1.1 The City Council (Council) adopted Resolution 31812, proposing to form a local improvement district under Chapter 35.43 RCW (the "LID") and is expected to consider Ordinance _____ on _____ forming the LID (the "LID Formation Ordinance") for the purpose of undertaking certain improvements to the Seattle central waterfront (the "LID Improvements"), described in the LID Formation Ordinance.

1.2 The Owner is the owner of the real property identified on its signature page and is legally authorized to enter into this Agreement with respect to its/his/her property (the "Property"). The Owner confirms that its/his/her Property is within the LID and is expected to be subject to assessment for a portion of the costs of the LID Improvements if the LID Formation Ordinance is approved by the Council.

1.3 The Owner has the right to protest formation of the LID under RCW 35.43.180 and challenge the jurisdiction or authority of the Council to proceed with the LID Improvements and create the LID under RCW 35.43.100. The City seeks Owner's waiver, as provided by RCW 35.43.182, of its right to challenge the jurisdiction or authority of the Council to proceed with the LID Improvements and creating the LID and to protest LID formation.

1.4 Simultaneously with the introduction and passage of the LID Formation Ordinance, the City Council is expected to consider (a) Ordinance _____, authorizing the execution and delivery by the City of this Agreement (the "Waterfront LID Agreement Authorizing Ordinance") and (b) Ordinance _____ (the "O&M Ordinance") providing, *inter alia*, for the maintenance of the Central Waterfront Improvements (as defined in the O&M Ordinance). The Central Waterfront Improvements include the LID Improvements.

1.5 For the purpose of ongoing oversight of matters relating to this Agreement and the O&M Ordinance and the representation of the Parties, other than the City, the Conservancy has been formed.

1.6 The Parties intend this Agreement to be fully enforceable in accordance with the terms set forth herein.

2. CERTAIN DEFINED TERMS. The following terms used in this Agreement shall have the meanings set forth below:

2.1 "Baseline Funding" means the City funds required under the O&M Ordinance as necessary for baseline operation and maintenance of the Waterfront Park and Public Spaces, as defined therein.

2.2 "Code of Conduct" means Department of Parks and Recreation Rule/Policy number P 060 7.21.00 or its successor rule or policy.

2.3 "LID" has the meaning given in Section 1.1 of this Agreement.

2.4 "LID Formation Ordinance" has the meaning given such term in Section 1 of this Agreement.

2.5 "LID Improvements" has the meaning given such term in Section 1.1 of this Agreement.

2.6 "Management Agreement" means the contract between the City and the Operating Partner providing for management of the Waterfront Park and Public Spaces by the Operating Partner and the City, primarily through DPR.

2.7 "O&M Ordinance" means the ordinance providing for a two-year pilot agreement and possible long-term Management Agreement between the City and the Operating Partner and the other terms as provided here, in the form as attached as Exhibit B, as the same may be amended in the future in accordance with the terms of this Agreement.

2.8 "Office of the Waterfront" means the City's Office of the Waterfront and Civic Projects, or its successor.

2.9 "Operating Partner" means the nonprofit corporation, public corporation or authority chartered by the City under RCW 35.21.730-.759, or other qualified entity selected by the City for a term to manage the programming, activation, and security of the Waterfront Park and Public Spaces.

2.10 "Oversight Committee" or "Committee" means the committee formed by the City pursuant to Sections 3.5 and 3.6 of this Agreement and the O&M Ordinance.

2.11 "Park Rules" means those rules codified in SMC 18.12 relating to the operation of City parks (including the Waterfront Park and Public Spaces) and including any administrative rules adopted in relation thereto, including Multi-Departmental Administrative Rule 17-01, as each may be amended from time to time.

2.12 "Performance Standard" has the meaning given such term in the O&M Ordinance.

2.13 "DPR" means the City of Seattle Department of Parks and Recreation.

2.14 "Waterfront LID Agreement Authorizing Ordinance" means the City of Seattle resolution providing for the City's execution of this Agreement.

2.15 "Waterfront Park and Public Spaces" has the meaning given such term in the O&M Ordinance.

3. AGREEMENTS OF THE CITY

3.1 Review of Plans in Development. Certain components of the LID Improvements have not progressed beyond 30% design. These elements include the Overlook Walk, Waterfront Park, Pike and Pine Street improvements, and Pioneer Square Street improvements. The City will continue to engage communities throughout the city in refining the design, and as part of this shall convene a representative group of owners of commercial properties located within the boundaries of the LID to advise the Office of the Waterfront on: (i) the evolving design of these elements of Waterfront Park and the Pike/Pine Corridor Project that have not yet reached 100 percent design; (ii) substantial changes, if any, in major elements that have reached 100 percent design; and (iii) Waterfront Park and Pike/Pine Corridor Project construction budget development and adjustment, specifically including contingencies and overhead costs. Such representatives shall have demonstrated experience in design, construction, construction pricing, construction management and/or engineering. The City shall provide additional opportunities for property owners in the Pike/Pine corridor to help shape the emerging design for Pike and Pine Streetscape improvements through the Pike and Pine Streetscape Project Sounding Board co-convened by the Downtown Seattle Association (DSA) and other focused workshops as needed. This process shall not result in any modifications to the scope of LID Improvements, although this process may result in recommendations for modifications that do not lower the special benefits provided under the LID.

3.2 Maximum LID Assessment. The City agrees and the LID Formation Ordinance confirms that the aggregate total dollar amount of assessments to be levied within the LID will be no greater than $160,000,000 (plus such additional amount as shall be approved for the payment of financing costs and the City's contribution to the Guaranty Fund of the City (pursuant to authority granted under RCW 35.54)) (the "Maximum LID Assessment"). The Maximum LID Assessment shall not be increased for any reason, including but not limited to increased costs required to complete the LID Improvements. All costs incurred by the City in connection with undertaking and completion of the LID Improvements shall be paid and/or financed from sources other than assessments within the LID and shall not result in an increase in the Maximum LID Assessment. The foregoing constitutes the City's waiver of rights under Chapters 35.43 and 35.44 RCW to increase the Maximum LID Assessment through supplemental assessment or reassessment.

3.3 Approval of the O&M Ordinance. The City acknowledges that consistent with the Waterfront Seattle Guiding Principles and Council Resolutions 31399 and 31768, the Waterfront Park and Public Spaces, which include the LID Improvements, should be maintained for the benefit of the residents of the City as a whole, for the benefit of the Property Owners within the LID and for the economic benefit of downtown Seattle which also inures to the benefit of the City and the region. Simultaneously with the submittal of the LID Formation Ordinance

(Exhibit A to this Agreement), the O&M Ordinance (Exhibit B to this Agreement) shall be presented to Council for approval.

3.4. Park Boulevard Designation. The City shall designate the Waterfront Park and Public Spaces not currently under DPR jurisdiction as a City park boulevard, in the manner as described in the O&M Ordinance.

3.5. Park Oversight. Management, operations, maintenance and security of the Waterfront Park and Public Spaces shall be subject to review in order to evaluate the effectiveness of the Management Agreement and to confirm that the Waterfront Park and Public Spaces are being operated and maintained in a manner consistent with the Performance Standard. The Operating Partner and the appropriate City departments are subject to review in their provision of services under the Management Agreement as set forth in the O&M Ordinance.

As provided in the O&M Ordinance, the City shall establish and designate a Central Waterfront Oversight Committee with the composition and responsibilities as provided therein, including:

- Development and review of the Performance Standards and associated metrics
- Providing recommendations for new Management Agreement(s)
- Review of operation and maintenance planning and reporting
- Recommending special park rules
- Reporting to the Mayor and City Council

3.6 Implementation of the O&M Ordinance. Under the O&M Ordinance and this Agreement, the City and Council commit to the implementation and funding of the obligations as described in the O&M Ordinance.

3.7 Park Rules. The operations of Waterfront Park and Public Spaces shall at all times be undertaken in accordance with the standards set forth in the O&M Ordinance, including posting and enforcement of Park Rules and the Code of Conduct.

3.8. Authorizing Ordinance. Upon the adoption of the Waterfront LID Agreement Authorizing Ordinance, the City will promptly execute this Agreement.

4. AGREEMENTS OF THE OWNER

4.1 Acknowledgment of Special Benefit and Waiver. In consideration of the commitments of the Parties to this Agreement, each Owner executing this Agreement,

(a) confirms with respect to his/her/its Property that the LID Improvements, upon completion, will provide a special benefit to his/her/its Property, and

(b) in accordance with RCW 35.43.182, waives his/her/its right to object to the formation of the LID, including but not limited to those rights specifically granted under RCW 35.43.100 and 35.43.180.

The foregoing shall be irrevocable upon the execution of this Agreement by the Owner, subject to the express provisions or limitations set forth herein and on the Owner's signature page. Each Owner acknowledges that the City will approve this Agreement and the LID Formation Ordinance in reliance upon the Owner's commitment and execution of this Agreement.

4.2 Reservation of Rights. The foregoing waiver shall not apply to any rights that an Owner has to object to a final assessment on its/his/her Property (including the determination of the special benefits allocable to the property, to appeal to the superior court the decision of the City affirming the final assessment roll), provided however that any such objection shall not be based on the City's creation or implementation of the LID itself. The Owner acknowledges that the final assessment on his/her/its Property may be higher or lower than the preliminary assessment roll prepared on behalf of the City in connection with the formation of the LID, so long as the sum of all LID assessments on the final assessment roll may not exceed the Maximum LID Assessment.

5. AGREEMENT OF THE CONSERVANCY. For all purposes under this Agreement, including but not limited to the right to receive notices, the right to enforce the obligations of the other Party, and the right to grant waivers and amend this Agreement, the Conservancy shall be the exclusive representative and agent of the Owners. No individual owner who is party to this Agreement may bring any individual action or claim to enforce such obligation, grant such waiver or amend this Agreement. The City shall be entitled to communicate solely with the Conservancy and rely upon the agreements with the Conservancy as agent for the Owners. The City recognizes the Conservancy as the agent of the Owners under this Agreement for all purposes, with full power and authority to act on the collective behalf of all Owners for all purposes relating to this Agreement. In particular, the City agrees that the Conservancy shall have the power to enforce this Agreement. Each Owner agrees that the Conservancy is the Party designated to enforce the terms of this Agreement on behalf of the Owners. The Conservancy has delivered a copy of its "Articles of Incorporation" and "Bylaws" dated _____, to the City. The Conservancy agrees and confirms that during the term of this Agreement, it will not dissolve or merge into another organization nor will it amend the provisions of its Bylaws at Sections _____ describing its [governance structure and voting rights] without the prior written consent of the City.

6. TERM. The commitments of the City shall remain in effect for 20 years following the date of final confirmation of the assessment roll for the LID, other than as provided in the O&M Ordinance with regard to the Oversight Committee.

7. GENERAL PROVISIONS.

7.1 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Washington.

7.2 Interpretation and Severability. If any provisions of this Agreement are determined to be unenforceable or invalid by a court of law, then all remaining provisions of the Agreement shall remain in force and effect. If a court finds unenforceability or invalidity of any portion of this Agreement, the Parties shall diligently and in good faith seek to modify the Agreement consistent with any court decision.

7.3 Time of Essence. Time is of the essence of this Agreement in every provision hereof.

7.4 Integration. This Agreement represents the entire agreement of the Parties with respect to the subject matter hereof. There are no other agreements, oral or written, except as expressly set forth herein. This Agreement may not be amended except by an instrument in writing executed by the City and Conservancy.

7.5 Default and Remedies. Except as set forth below, no Party shall be in default under this Agreement unless it has failed to perform under this Agreement for a period of ninety (90) days after receipt of written notice of default from the other Party. Each notice of default shall specify the nature of the alleged default and the manner in which the default may be cured satisfactorily. If the nature of the alleged default is such that it cannot be reasonably cured within the ninety (90) day period, then commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure. The Conservancy has the sole right to enforce performance by the City of its obligations under this Agreement or the O&M Ordinance in an action seeking specific performance by the City.

7.6 Notice. All notices and demands of any kind which a Party requires or desires to give to any other Party shall be in writing and either (i) delivered personally, (ii) sent by reputable overnight courier delivery service, such as Federal Express, or (iii) deposited in the U.S. mail, certified mail postage prepaid, return receipt requested, and addressed as follows:

If to the City:

Office of the Waterfront and Civic Projects
PO Box 34996
Seattle, WA 98124
Attn: Director, Office of the Waterfront and Civic Projects

Department of Parks and Recreation
100 Dexter Ave N
Seattle, WA 98109
Attn: Superintendent, Department of Parks and Recreation

with copy to:

Seattle City Council Central Staff
PO Box 34025
Seattle, WA 98124-4025
Attn: Director, City Council Central Staff

If to the Conservancy:

Notice by hand delivery shall be effective upon receipt. If sent by overnight courier service, notice shall be deemed delivered one (1) business day after sent. If deposited in the mail, notice shall be deemed delivered three (3) business days after deposited. Any Party at any time by notice to the other Party may designate a different address or person to which such notice or communication shall be given.

7.7 Recording. In accordance with RCW 35.43.182, this Agreement shall be recorded in the real property records of King County.

7.8 Counterparts. This Agreement may be executed in one or more counterparts, each one of which shall be deemed an original.

7.9. Mutual Representations and Warranties. Each Party represents and warrants to the other that (i) the execution, delivery and performance of this Agreement has been duly approved by all required government or corporate action, (ii) that the person or persons signing on behalf of such Parry have full authority to do so, (iii) that this Agreement and the obligations set forth herein are legal, binding obligations of the Parties, enforceable in accordance with their terms, and (iv) that the execution and performance of this Agreement will not conflict with any statute, law, ordinance, regulation or other agreement to which either Party may be bound.

7.10 No Third Party Beneficiaries. This Agreement is not intended to, and shall not be construed to, give any third party any interest or rights (including, without limitation, any third party beneficiary rights) with respect to or in connection with any agreement or provision contained herein or contemplated hereby.

7.11. Effective Date. This Agreement shall be effective upon all signers hereto (a) upon the effective date of the Waterfront LID Agreement Authorizing Ordinance by the City Council, (b) the effective date of the LID Formation Ordinance by the City Council, (c) the effective date of the O&M Ordinance by the City Council (adopted in the specific form attached hereto as Exhibit B, without amendment or modification), and (d) unless waived or amended by the City, the execution hereto by Owners of Property representing not less than fifty-one percent (51%) of the Maximum LID Assessment.

If all of the conditions in this section 7.11 are not satisfied by March 1, 2019, then this Agreement shall automatically terminate.

DATED as of this __ day of _____, 20__.

[Execution Pages Follow]

[Waterfront LID Agreement Execution Page]

THE CITY OF SEATTLE, a first class charter city

Office of the Waterfront and Civic Projects

_____

By:_____

Title: _____

Parks and Recreation Department

_____

By:_____

Title: _____

APPROVED AS TO FORM:

ATTORNEYS FOR THE CITY OF SEATTLE

_____

By:_____

Title: _____

[Waterfront LID Agreement Execution Page]

OWNER:

_____

[INDIVIDUAL'S NAME]

I hereby confirm that [I am/we are] the Owner of the below identified parcel:

Parcel Number(s):_____

Address: _____

Notice Address: _____

Additional Notice Name and Address(es): _____

_____

If a spousal consent is not attached hereto, I confirm that I have no spouse.

_____

Owner's Signature

WITHDRAWAL OF PROTEST

The undersigned, hereby withdraws any previously submitted written protest for the proposed City of Seattle Waterfront Local Improvement District.

_____

STATE OF WASHINGTON)

)ss.

COUNTY OF _____)

This record was acknowledged before me on _____, 20____ by

(Date)

_____.

(Name of Individual)

_____

(Signature of notary public)

Notary Public _____

(Title of office)

My Commission Expires: _____

(Date)

(Stamp)

CONSENT OF SPOUSE

I, _____, spouse of _____, acknowledge that he/she has signed and agreed to the Waterfront LID Agreement dated _____, 20__, between the City of Seattle, and _____, to which this Consent of Spouse is attached.

I hereby consent to my spouse binding our community property and his/her separate property in this manner.

_____

Printed Name:

STATE OF WASHINGTON)

)ss.

COUNTY OF _____)

This record was acknowledged before me on _____, 20____ by

(Date)

_____.

(Name of Individual)

_____

(Signature of notary public)

Notary Public _____

(Title of office)

My Commission Expires: _____

(Date)

(Stamp)

By virtue of its execution of this Waterfront LID Agreement, any individual executing this Waterfront LID Agreement with respect to the Parcel Number identified below on behalf of the entity listed below represents and warrants that he/she holds the title noted below his/her signature and that he/she is authorized and empowered by all necessary legal means, including corporate, partnership, or company action (as applicable), and under applicable law, to execute and deliver this Waterfront LID Agreement on behalf of such entity and to bind such entity to its obligations hereunder. If the signer is not the Owner, the signer should provide evidence of authority to sign.

Parcel Number(s): _____

Address: _____

Notice Address: _____

Additional Notice Name and Address(es):

_____

_____

Signature

WITHDRAWAL OF PROTEST

The undersigned, hereby withdraws any previously submitted written protest for the proposed City of Seattle Waterfront Local Improvement District.

_____

[ENTITY NAME],

[a/an STATE OF FORMATION] [TYPE OF ENTITY]

By: _____

Name: _____

Title: _____

STATE OF WASHINGTON)

)ss.

COUNTY OF _____)

This record was acknowledged before me on _____, 20____ by

(Date)

_____.

(Name of person signing on behalf of entity and capacity in which they are signing)

_____

(Signature of notary public)

Notary Public _____

(Title of office)

My Commission Expires: _____

(Date)

(Stamp)

[Waterfront LID Agreement Execution Page]

THE WATERFRONT CONSERVANCY, a Washington non-profit corporation

_____

By:_____

Title: _____