

BRYANT PROJECT DEVELOPMENT AGREEMENT

This Development Agreement is made and entered into by and between the Washington State Department of Transportation (“WSDOT”), the City of Seattle, (“CITY”) acting through its Department of Parks and Recreation (“PARKS”), and the University of Washington (“UW”), collectively, the “PARTIES,” and each, individually, a “PARTY.”

This Development Agreement outlines the process and define the roles and responsibilities of PARKS and UW to develop the Bryant Site into a public park consistent with requirements of Section 6(f) of the Land and Water Conservation Fund Act, 16 U.S.C. §§ 4601-4 through 4601-11 (“Section 6(f)”) as mitigation for impacts from WSDOT’s SR 520, I-5 to Medina: Bridge Replacement and HOV Project (the “SR 520 Project”) and for WSDOT and UW to compensate PARKS for its costs incurred in such development.

RECITALS

- A. UW owns the property commonly known as the Bryant Site, legally described in Exhibit A.
- B. The Bryant Site was selected by UW and PARKS as “Section 6f Replacement Property” for recreational impacts resulting from WSDOT’s acquisition of a portion of the Arboretum Waterfront Trail and the Ship Canal Waterside Trail (collectively, the “Trails”) which were developed with grant funding that makes them, along with portions of the associated parks, subject to the requirements of Section 6(f).
- C. WSDOT, UW, and PARKS are each parties to that certain Memorandum of Agreement designated by WSDOT as GCB 1294 (“MOA, GCB 1294”), and other agreements concerning WSDOT’s acquisition of Trails, the conveyance of the Bryant Site to the CITY, the agreement of WSDOT and UW to compensate PARKS for its estimated costs to perform Remedial Action and the Bryant Project, and other matters.
- D. This Development Agreement implements the MOA, GCB 1294 regarding the performance of and compensation for the Bryant Project, including the Remedial Action.
- E. When constructed, the park developed on the Bryant Site (the “Bryant Site Park”) will be open to the public, non-gated and admission-free, consistent with PARKS’ general policies concerning public parks and with the requirements of Section 6(f).

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency of which consideration is unconditionally acknowledged by the PARTIES, and Exhibit A attached and incorporated, the PARTIES adopt and agree to the RECITALS set forth above, and agree:

AGREEMENT

SECTION 1. DEFINITIONS. All capitalized terms not defined in this Development Agreement shall have the meanings ascribed to them in the MOA, GCB 1294.

SECTION 2. EFFECTIVE DATE; TERMINATION. This Development Agreement shall be effective when authorized and fully executed by the PARTIES. PARKS shall not be required to begin performance under this Development Agreement unless and until WSDOT has paid PARKS the sum described in Section 3.G, below. WSDOT's responsibilities under this Development Agreement will be completely fulfilled once WSDOT pays PARKS the sum described in Section 3.G. This Development Agreement shall expire on the date PARKS determines construction of the Bryant Project is substantially complete; provided, that PARKS shall notify UW at least 30 days prior to the date on which PARKS expects substantial completion to occur. UW shall have five business days from the date of notification to inspect the Bryant Site Park to determine whether it was constructed consistent with the design documents. The Superintendent of Parks and Recreation ("Superintendent") will in good faith consider any comments the UW makes provided they are timely and do not unreasonably delay construction close-out.

SECTION 3. ROLES AND RESPONSIBILITIES. PARKS and UW agree to work cooperatively throughout the design and development of the Bryant Site into a public park and each agrees to respond in a timely manner to requests and submittals from the other. The PARTIES agree:

- A. **Consultant Selection.** PARKS will administer and manage the consultant selection and design processes.
 1. PARKS will draft a Request for Qualifications ("RFQ") for selection of a consultant ("Consultant") to design the Bryant Site Park and will convene an interview panel to review the RFQ prior to its publication. The interview panel will also review the RFQ submittals.
 2. The interview panel will comprise two (2) PARKS staff, two (2) UW staff and one representative from the Seattle Design Commission.

3. The interview panel will recommend a Consultant to the Superintendent, who will select the Consultant. Once the Consultant is selected, PARKS will draft the Consultant contract and manage the Consultant's work. UW will not be a party to any Consultant contract and the Consultant will report directly to PARKS. UW will communicate with the Consultant only through the designated PARKS project manager

B. Bryant Project Review Committee. Before the Consultant is selected, PARKS and UW will jointly create an *ad hoc* "Bryant Project Review Committee" ("Review Committee") comprising PARKS and UW staff and other participants as jointly agreed upon. The Review Committee will serve in an advisory role to the PARKS Superintendent, meeting periodically to review the concept design and offer feedback as the design process moves forward.

C. Outreach.

1. PARKS will develop and manage a public outreach plan for stakeholders ("Outreach Plan"). The Outreach Plan will follow PARKS' established Community Relations Policy Number 060-P 1.2.10.
2. As part of the Outreach Plan, UW will ensure the appropriate UW committees are aware of opportunities to review and comment on the conceptual park design. These committees could include the University Landscape Advisory Committee, Grounds Improvement Advisory Committee, Committee on Accessibility, Faculty Council on University Facilities and Services, Associated Students of the University of Washington, Graduate and Professional Student Senate, and City/University Community Advisory Committee.

D. Administrative Review. At appropriate project milestones, PARKS will present the park design for review by a panel consisting of representatives of the Seattle Design Commission and the UW Architectural Commission review(s). The panel shall be advisory only, and its recommendations shall be transmitted to the Superintendent. This panel may comprise representatives from each body and not the full Commissions.

E. Environmental Review. PARKS shall be the lead agency for environmental review of the Bryant Project under the State Environmental Policy Act and other applicable environmental laws and regulations.

F. Landmarks Process. After the CITY is the owner of the Bryant Site, PARKS shall perform any and all coordination necessary for the Bryant Project with the Seattle Landmarks Board. No portion of any landmarks process shall be commenced or pursued prior to the conveyance of the Bryant Site to the CITY.

G. WSDOT Funding for Bryant Project and Remedial Action Costs. WSDOT will pay PARKS the sum of Nine Million Dollars (\$9,000,000.00) (“WSDOT Funds”) as full and fair compensation for PARKS’ estimated costs to perform the Bryant Project, including Remedial Action Costs. Payment will be made within 60 calendar days from the date the National Park Service issues a signed amendment to its agreement with the Washington State Recreation and Conservation Office approving the Bryant Site as the 6(f) Replacement Property. A signed original of this Development Agreement shall serve as PARKS’ invoice. WSDOT will have no further obligation to provide any funding for the Bryant Project or Remedial Action Costs and WSDOT shall have no role in the activities described in this Section 3 except for that described in this Section 3.G.

H. UW Funding for Remedial Action Costs. UW will fund a maximum of \$2,389,500 (“UW Funds”) to be used exclusively for Remedial Action Costs, as provided in Sections 3.3 and 3.4 of the MOA, GCB 1294. The UW Funds will be used for the payment of Remedial Action Costs, and PARKS will use the UW Funds before using WSDOT Funds or other funds to pay for additional Remedial Action Costs, if any. Nothing in this Development Agreement or in the MOA, GCB 1294, or any other document shall require PARKS to undertake or be responsible for any environmental remediation on property other than Bryant Site, except that PARKS shall be responsible for environmental remedial action required to remediate hazardous substances in the Bryant Building, including where the Bryant Building extends onto adjacent UW-owned property.

I. Environmental Remediation. As part of the development of the Bryant Site and the Remedial Action to be conducted thereon, CITY shall clean up the Bryant Site so that it is within applicable MTCA clean-up levels for its intended use as a public park. The provisions of this Section shall survive the expiration or termination of this Development Agreement.

J. Coordination of Construction Activities between PARKS and UW. PARKS shall notify UW in advance of the date on which it intends to advertise for bids for the construction of the Bryant Project and when PARKS has selected its construction contractor. Notwithstanding the possibility of a single contractor working on the Bryant Project and on adjacent UW property, PARKS shall be wholly responsible for the demolition of the Bryant building and appurtenant over-water and under-water structures on which the building sits, at PARKS’ cost and expense, even if the building extends over the property line onto adjacent UW-owned property.

K. Construction Contract. PARKS will manage all aspects of the Bryant Project construction from preparation of bid documents to final sign off on the completed project. PARKS will inform the UW of, and coordinate with the UW on, all construction-related activities. PARKS will endeavor to minimize impacts on nearby UW operations and UW tenants. Any offsite construction parking must be obtained by

PARKS or its contractor. UW cannot provide or ensure construction parking on UW property.

L. Permits. PARKS will obtain all necessary permits and be the sole point of contact in working with regulatory agencies and any and all tribes. With UW's written permission, except as provided in Section 3.F regarding the CITY'S Landmark's process, the CITY may apply for permits before the Bryant Site is conveyed to the CITY and in such case, UW will cooperate with the CITY; however, UW makes no representation or warranty as to any permits, licenses or other authorizations that may be required for the Bryant Project. UW and CITY agree that each Party shall be entitled to claim, with respect to the property owned by such Party, (a) the right to replace overwater development following the demolition of overwater structures on the Parties' respective properties, including without limitation the Bryant Building (of parts thereof), piers, pilings, and platforms, and (b) lot coverage rights in connection with the demolition of such structures. The CITY will cooperate with UW in the allocation of any potential development rights or additional mitigation credits to achieve the Parties' goals for redevelopment of the Bryant Site and the UW's adjacent Boat Street Marina, subject to the CITY'S responsibilities under the Shoreline Master Program. The provisions of this Section shall survive the expiration or termination of this Development Agreement.

M. Park Maintenance and Operation. CITY shall be responsible for the operation and maintenance of the Bryant Site Park in perpetuity, consistent with the terms of the applicable grant agreements implementing Section 6(f) and pursuant to the terms of the Operation and Maintenance Agreement between CITY and UW.

N. Park Name. The Bryant Site Park shall be named consistent with the Seattle Parks and Recreation Park Naming Procedures contained in SMC 18.08.010 or any successor ordinance. UW may propose names for consideration.

O. Potential Future Utility Easement to Benefit UW. UW agrees that, to the extent possible, it will locate all utilities on its own property in connection with the redevelopment of the Boat Street Marina. CITY agrees that, if UW is physically unable to accomplish its redevelopment of the Boat Street Marina without an underground utility easement over the Bryant Site, then UW may apply to Parks for the issuance of such an easement in a mutually acceptable location, designed to minimize impacts on the Bryant Site Park, and with a description of the reason(s) that such an easement is needed. Parks shall not unreasonably withhold its consent to the granting of the requested easement, at a cost that is reasonable under all of the circumstances, including with reference to the amount charged to other parties for easements over other CITY park properties. Any such easement shall specify that UW will have the obligation to maintain its utilities, promptly respond to any breaks or ruptures of utility

lines, and promptly restore the Bryant Site Park to its original condition following any entry thereon. The provisions of this Section shall survive the expiration or termination of this Development Agreement.

SECTION 4. RELEASE AND INDEMNITY.

- A. Release. PARKS acknowledges that the Bryant Project Development Costs, including the Remediation Action Costs that UW and WSDOT have agreed to pay PARKS under this Development Agreement, are based on PARKS' estimate of those costs. PARKS further acknowledges and agrees that it shall have no right to recover any further costs from UW or WSDOT if the Bryant Project Development Costs, the Remediation Costs, or both exceed PARKS' estimate. PARKS hereby releases UW and WSDOT from any obligation to pay additional Bryant Project Development Costs or Remediation Costs that PARKS may incur in developing the Bryant Site Park.
- B. Indemnity. PARKS hereby agrees that it will require its construction contractor for the Bryant Project to (a) indemnify UW from and against third-party claims to the same extent as it indemnifies PARKS for such claims, and (b) to maintain and have in effect commercial general liability insurance and pollution liability insurance to the level required by the CITY. Such insurance shall name UW and its Board of Regents, trustees, beneficiaries, employees, officers, and directors as additional insureds. CITY shall deliver to UW a copy of the insurance policy and endorsement evidencing the insurance required hereunder, prior to the commencement of demolition or construction activities.

SECTION 5. DISPUTE RESOLUTION. The representatives designated under Section 3.5.5 of the MOA, GCB 1294 shall use their best efforts to resolve non-regulatory disputes between the PARTIES. If these individuals cannot resolve a dispute, WSDOT's SR 520 Program Manager, the Director of Seattle Parks and Recreation's Planning and Development Division and the UW Architect and Assistant Vice Provost for Campus Planning or such individuals' functional successors shall review the matter and attempt to resolve it. If they cannot resolve the dispute, the matter shall be reviewed by the Secretary of Transportation, the Superintendent of Seattle Parks and Recreation and the UW Vice Provost for Planning and Budgeting. If a dispute involves only two of the three PARTIES, then the PARTY that is not involved and not affected by the dispute need not participate. The PARTIES agree to exhaust each of these procedural steps before seeking to resolve disputes in a court of law or any other forum.

SECTION 6. MISCELLANEOUS

- A. Notices. Any demand, request or notice which any PARTY hereto desires or may be required to make or deliver to another shall be in writing and shall be deemed given when personally delivered, when delivered by private courier service (such as Federal Express), or three days after being deposited in the United States Mail in registered or certified form, return receipt requested, addressed as follows:

To UW: Jeanette L. Henderson, Director of Real Estate

<u>MAILING ADDRESS:</u> UW Real Estate Campus Box 359446 Seattle, WA 98195-9446 Phone: (206) 616-3400 Fax: (206) 685-1547	<u>COURIER/DELIVERY ADDRESS:</u> UW Real Estate 4333 Brooklyn Ave NE, T-12 Seattle, WA 98195-9446
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To PARKS: Superintendent
Seattle Parks and Recreation
100 Dexter Avenue N.
Seattle, WA 98109

To WSDOT: Kerry Pihlstrom, Engineering Manager
I-5 to Medina: Bridge Replacement and HOV
Project
SR 520 Bridge Replacement and HOV Project
999 3rd Avenue, Suite 900
Seattle, WA 98104

or to such other address and person as either party may communicate to the other by like written notice.

- B. Modification of Agreement. No amendment of, modification, or supplement to this Development Agreement shall be valid or effective unless made in writing and signed by the PARTIES.
- C. Construction. The section headings throughout this Development Agreement are for convenience and reference only and the words in them shall not be held to expand, modify, amplify or aid in the interpretation, construction or meaning of this Development Agreement. All parties hereto have been represented by legal counsel in this

transaction and accordingly waive the general rule of construction that an agreement shall be construed against its drafter.

- D. Attorneys' Fees. If litigation occurs between the PARTIES in connection with this Development Agreement, each Party shall bear its own costs and attorneys' fees.
- E. Binding Effect. This Development Agreement shall inure to the benefit of and be binding upon the successors and assigns of the PARTIES.
- F. Applicable Law. This Development Agreement shall be construed and interpreted under the laws of the State of Washington.
- G. Counterparts. This Development Agreement may be executed in any number of counterparts and all counterparts shall be deemed to constitute a single agreement. The execution and delivery of one counterpart by any party shall have the same force and effect as if that party had signed all other counterparts. The signatures to this Development Agreement may be executed on separate pages and when attached to this Development Agreement shall constitute one complete document.
- H. Superintendent's Authority. The action of the Superintendent pursuant to or in implementation of this Development Agreement does not constitute any official action by any other City department or official that may be required by law, ordinance, rule or regulation. No permission, consent, or approval of PARKS contained herein or given pursuant to this Development Agreement is, or shall be construed as, a representation or assurance that the matter consented to or approved complies with applicable laws, regulations, ordinances or codes, nor shall any such consent or approval be construed to authorize any failure to comply with any of the foregoing.

Signatures on Following Page

The PARTIES hereto have executed this Development Agreement on the dates set forth below.

<p>The City of Seattle Department of Parks and Recreation</p> <p>By: <u></u> Christopher Williams Acting Superintendent, Seattle Department of Parks and Recreation</p> <p>Date: <u>August 19, 2013</u></p>	
<p>The Board of Regents of the University of Washington</p> <p>By: <u></u> Jeanette L. Henderson Director of Real Estate</p> <p>Date: <u>August 19, 2013</u></p>	<p>Approved as to form:</p> <p><u></u> Susan A. Shyne Special Assistant Attorney General</p> <p>Date: <u>8/19/2013</u></p>
<p>Washington State Department of Transportation</p> <p>By: <u></u> Julie Meredith, P.E. SR 520 Program Director</p> <p>Date: <u>8/12/13</u></p>	<p>Approved as to form:</p> <p><u></u> Deborah L. Cade Assistant Attorney General</p> <p>Date: <u>Aug 12 2013</u></p>

EXHIBIT A: Legal Description of the Bryant Site

GCB 1279, Exhibit A, Sheet 1 of 1

LEGAL DESCRIPTION
6-f AREA

February 21, 2013

THAT PORTION OF THE SOUTHEAST QUARTER OF SECTION 17, TOWNSHIP 25 NORTH, RANGE 4 EAST, W. M. DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHERLY CORNER OF LOT 31, BLOCK 38, BROOKLYN ADDITION TO SEATTLE, RECORDED IN VOLUME 7 OF PLATS, PAGE 32, RECORDS OF KING COUNTY, WASHINGTON;

THENCE SOUTH 42°53'03" EAST 16.00 FEET ALONG THE NORTHEAST LINE OF SAID LOT 31 TO THE POINT OF BEGINNING;

THENCE SOUTH 47°07'43" WEST 71.52 FEET;

THENCE SOUTH 48°19'14" EAST 7.19 FEET;

THENCE SOUTH 45°40'32" WEST 3.08 FEET;

THENCE SOUTH 20°29'22" EAST 32.49 FEET;

THENCE SOUTH 45°45'47" WEST 19.95 FEET;

THENCE SOUTH 42°52'17" EAST 108.25 FEET;

THENCE SOUTH 47°07'43" WEST 61.41 FEET TO THE INNER HARBOR LINE AS SHOWN ON 2005 THIRD SUPPLEMENTAL PLAT OF LAKE UNION HARBOR, STATE DEPARTMENT OF NATURAL RESOURCES, RECORDED UNDER RECORD NUMBER 20050810900004, RECORDS OF KING COUNTY, WASHINGTON;

THENCE SOUTH 42°43'14" EAST 311.77 FEET ALONG SAID INNER HARBOR LINE;

THENCE SOUTH 46°57'38" EAST 272.82 FEET ALONG SAID INNER HARBOR LINE TO THE SOUTHERLY CORNER OF BLOCK 22-A, SECOND SUPPLEMENTAL MAPS OF LAKE UNION SHORELANDS, AS SHOWN ON OFFICIAL MAP ON FILE IN THE OFFICE OF THE COMMISSIONER OF PUBLIC LANDS AT OLYMPIA, WASHINGTON;

THENCE NORTH 44°55'03" EAST ALONG THE SOUTHEAST LINE OF SAID BLOCK 239.27 FEET;

THENCE NORTH 73°04'49" WEST 13.79 FEET;

THENCE NORTH 53°53'50" WEST 28.80 FEET;

THENCE NORTH 84°40'45" WEST 42.28 FEET;

THENCE NORTH 01°09'06" WEST 9.58 FEET;

THENCE NORTH 04°55'53" WEST 3.67 FEET;

THENCE SOUTH 85°12'28" EAST 5.38 FEET;

THENCE NORTH 06°42'52" EAST 41.31 FEET;

THENCE NORTH 69°44'51" EAST 34.97 FEET;

THENCE NORTH 70°00'28" EAST 38.87 FEET TO THE NORTHEAST LINE OF SAID BLOCK 38 AND THE SOUTHERLY MARGIN OF NE BOAT STREET;

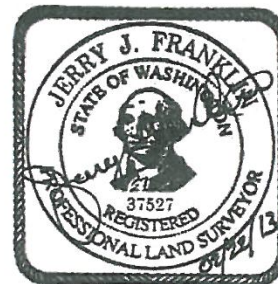
THENCE NORTH 59°49'38" WEST 552.75 FEET ALONG SAID NORTHEAST LINE AND SOUTHERLY MARGIN;

THENCE NORTH 42°53'03" WEST 115.98 FEET ALONG SAID NORTHEAST LINE AND SOUTHERLY MARGIN TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINING 156,481 SQUARE FEET (3.59 ACRES), MORE OR LESS.

ReidMiddleton

728 134th St. SW Suite 200
Everett, WA 98204
425/741-3800



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