

DRAFT – 5/9/13

COOPERATIVE AGREEMENT - UC XXXX

**BETWEEN WASHINGTON STATE DEPARTMENT OF
TRANSPORTATION AND THE PIKE PLACE MARKET
PRESERVATION & DEVELOPMENT AUTHORITY**

Parking Mitigation – Restrictive Covenants

THIS AGREEMENT is made and entered into this ____day of _____, 2013, between the Washington State Department of Transportation, hereinafter the “STATE” and The Pike Place Market Preservation & Development Authority, a Washington public development authority, hereinafter “PPMPDA,” and hereinafter referred to collectively as the “PARTIES,” and individually, as the “PARTY.”

WHEREAS, the STATE is constructing and will continue to construct the Alaskan Way Viaduct Replacement Project (“Project”); and

WHEREAS, the Final Environmental Impact Statement prepared for the Project identified loss of on-street short-term parking as one of the environmental impacts caused by the construction of the Project; and

WHEREAS, the STATE allocated \$30 million to mitigate the effects of Project construction on said parking as one of its Project Commitments; and

WHEREAS, PPMPDA currently offers public off-street parking in the Pike Place Market Historic District; and

WHEREAS, PPMPDA is willing to restrict a certain number of its existing parking spaces to short term parking at on-street rates by way of a restrictive covenant in exchange for monetary compensation;

WHEREAS, such a restriction would mitigate against the loss of on-street short-term parking caused by the Project; and

WHEREAS, in accordance with its Project Commitment, the STATE desires to acquire such a restrictive covenant from PPMPDA in exchange for monetary compensation; and

WHEREAS, pursuant to RCW 47.12.010 the STATE is authorized to enter into this AGREEMENT, and PPMPDA is likewise authorized under its charter.

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NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performances contained herein, IT IS MUTUALLY AGREED AS FOLLOWS:

1. GENERAL

1.1 PPMPDA owns real property located at 1531 Western Avenue, Seattle, Washington (“PROPERTY”). The PROPERTY is improved with parking spaces. Restricting the use of four hundred fifty (450) parking spaces located on the PROPERTY to short-term parking offered to the public at the rates set forth in the following Section 1.2 for a certain period of time would contribute to mitigation for impacts to parking in the downtown and waterfront areas in Seattle caused by construction of the Project. The STATE will pay monetary consideration to PPMPDA in the amount one million dollars (\$1,000,000) (“MITIGATION PAYMENT”), which payment the PARTIES believe is fair and adequate compensation for the value of the restrictions set forth in this AGREEMENT, in exchange for burdening the PROPERTY with restrictive covenants, as set forth below.

1.2 In consideration of the MITIGATION PAYMENT to be paid to it by the STATE, PPMPDA agrees to execute and record a Restrictive Covenant, attached to this AGREEMENT as Exhibit A. The Restrictive Covenant shall restrict the use of four hundred fifty (450) parking spaces located on the PROPERTY to short-term parking (no more than four hours) offered to the public at then-current street parking rates for the area around the Property (downtown commercial core parking zone); provided that in no event shall PPMPDA be required to charge less than four dollars (\$4.00) per hour (“RATE FLOOR”) for such short-term parking, regardless of then-current street parking rates. The RATE FLOOR may at the option of PPMPDA be increased by ten percent (10%) per hour on each annual anniversary of the date on which the Restrictive Covenant is recorded. This restriction of four hundred fifty (450) parking spaces to short term parking offered at the rates set forth in this paragraph shall apply for a period of three (3) years from the date of recording the Restrictive Covenant (“TERM”), after which period such restrictions and the Restrictive Covenant shall no longer apply.

1.3 As further consideration of the MITIGATION PAYMENT to be paid to it by the STATE, PPMPDA agrees that if it sells the PROPERTY prior to the expiration of the TERM, it will reference the Restrictive Covenant and include the following language in any deed or other conveyance document:

The use of four hundred fifty (450) parking spaces located on the PROPERTY is restricted to short-term parking (no more than four hours) that shall be offered to the public at then-current on street parking rates for the area around the Property; provided that OWNER shall not be required to charge less than four dollars (\$4.00) per hour for such parking, with the option to increase such hourly rate by ten percent (10%) per hour on each annual anniversary of the recording of the Restrictive Covenant against the Property documenting this restriction. This restriction shall terminate on _____.

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1.4 PPMPDA agrees to notify the STATE, in writing, of any proposed sale or conveyance of the PROPERTY.

1.5 In consideration of PPMPDA executing and recording the Restrictive Covenant in favor of the STATE, the STATE will pay the MITIGATION PAYMENT to PPMPDA as set forth in the following Section 2.

1.6 The STATE further agrees to execute any documents necessary to release the PROPERTY from the restrictive covenants after the expiration of this AGREEMENT.

1.7 Notwithstanding anything to the contrary, this Agreement is subject to the approval of the PPMPDA council within the ninety (90) days following the mutual execution and delivery of this Agreement. PPMPDA shall be entitled to terminate this Agreement by written notice to the STATE at any time within the ninety (90) days following the mutual execution and delivery of this Agreement if the PPMPDA council fails to approve this Agreement. Upon any such termination, neither party shall have any further rights or obligations under this Agreement, including without limitation the payment obligation set forth in Section 2.1 below.

2. PAYMENT AND RECORDS

2.1 The STATE will pay the MITIGATION PAYMENT to PPMPDA within two (2) weeks following the recording of the Restrictive Covenant attached hereto as Exhibit B.

2.2 PPMPDA shall maintain all books, records, documents, data and other evidence relating to this AGREEMENT and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this AGREEMENT. PPMPDA shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the AGREEMENT, shall be subject at all reasonable times to inspection, review or audit by the Agency, personnel duly authorized by the Agency, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

3. ENVIRONMENTAL REGULATION

3.1 DEFINITIONS

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3.1.1 The term “Environmental Laws” means any and all state, federal, and local statutes, regulations, and ordinances relating to the protection of human health and the environment.

3.1.2 The term “Hazardous Material” means any polluting, hazardous or toxic substance, material, or waste, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 C.F.R. §172.101) or by the United States Environmental Protection Agency as hazardous substances (40 C.F.R. pt. 302 and amendments thereto); or regulated by the Department of Ecology pursuant to the Washington Hazardous Waste Management Act (chapter 70.105 RCW), the Model Toxics Control Act (chapter 70.105D RCW; chapter 82.21 RCW), or the Water Pollution Control Act (chapter 90.48 RCW); petroleum products and their derivatives; and such other substances, materials and wastes as become regulated or subject to cleanup authority under any Environmental Laws.

3.2. PPMPDA shall comply with the following in respect to the PROPERTY:

3.2.1 Obtain and comply with all approvals and cause all notifications to be made as required by Environmental Laws.

3.2.2 Not generate, manufacture, refine, transport, treat, store, recycle, dispose of, release, or otherwise handle any Hazardous Material on the PROPERTY, or permit the foregoing, except in full compliance with Environmental Laws.

4. DISPUTE RESOLUTION

In the event that a dispute arises under this AGREEMENT, that the PARTIES are unable to resolve through all reasonable efforts, they shall attempt resolution as follows: The PPMPDA’s and the STATE’s Secretary of Transportation shall each appoint one member to a disputes board. These two members shall then select a third member not affiliated with the PARTIES or the PROPERTY acquisitions. The three member board shall review the facts and reach an equitable decision. The decision made by this three member board shall be advisory in nature. Expenses for the third member shall be shared equally between the PARTIES to this AGREEMENT.

5. LEGAL RELATIONS

5.1 PPMPDA shall protect, defend, indemnify, and hold harmless the STATE, its officers, officials, employees, and agents, while acting within the scope of this AGREEMENT as such, from any and all costs, claims, judgments, and/or awards of damages (both to persons and property), arising out of, or in any way resulting from, PPMPDA’s actions to be performed pursuant to the provisions of this AGREEMENT. PPMPDA will not be required to indemnify, defend, or save harmless the STATE if the claim, suit, or action is caused by the sole negligence of the STATE. Where such claims, suits, or actions result

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from concurrent negligence of the PARTIES, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the PARTY's own negligence.

5.2 This indemnification in subsection 5.1 above shall survive the termination of this AGREEMENT.

5.3 In the event that either PARTY deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the PARTIES hereto agree that any such action or proceedings shall be brought in the superior court situated in King County, Washington.

5.4 The employees or agents of each PARTY who are engaged in the performance of this AGREEMENT shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other PARTY.

5.5 PPMPDA acknowledges that this AGREEMENT does not at any time entitle PPMDA or any other person or entity associated with the PROPERTY to assistance under the Uniform Relocation and Real Property Acquisition Policy (Ch. 8.26 RCW).

6. TERM OF AGREEMENT AND MODIFICATION

6.1 This AGREEMENT shall become effective as of the date entered into above. This AGREEMENT shall remain in effect until the third (3rd) anniversary of the date of recording the Restrictive Covenant.

6.2 No modification of this AGREEMENT is valid unless evidenced in writing and signed by both PARTIES. No oral agreement may supersede, replace or amend this AGREEMENT.

6.3 No PARTY to this AGREEMENT shall transfer or assign any right or obligation hereunder without the prior written consent of the other PARTY.

7. REMEDIES FOR DEFAULT

7.1 If PPMPDA violates the terms of Section 1 of this Agreement or the Restrictive Covenants by failing to restrict the use of the portion of the PROPERTY improved with parking spaces to short-term parking offered at the rates set forth in Section 1, the STATE will provide PPMPDA with a written notice of default. If the default is not cured within thirty (30) days after receiving the notice of default by restoring the restrictions on the use of the PROPERTY as set forth in the Restrictive Covenant, the Parties agree that the STATE may terminate this AGREEMENT for default. Such termination will be in writing. If the AGREEMENT is terminated for default pursuant to this section, the Parties agree that PPMPDA shall pay to/reimburse the STATE a pro rata amount of the MITIGATION PAYMENT. The pro rata share of the MITIGATION PAYMENT paid by PPMPDA to the STATE in such circumstance shall reflect the amount of time remaining in the term of this

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AGREEMENT as of the date it was terminated by STATE, and shall be calculated by multiplying the MITIGATION PAYMENT by a fraction in which the numerator is equal to the number of full calendar months of the Term remaining after the date of termination and the denominator is equal to 36. In the event of such a termination for default pursuant to this section, PPMPDA shall also pay to the STATE a termination penalty (“TERMINATION PENALTY”) equal to five percent (5%) of the MITIGATION PAYMENT.

7.2 If PPMPDA violates the terms of Section 1 of this Agreement or the Restrictive Covenants by failing to restrict the use of the portion of the PROPERTY improved with parking spaces to short-term parking offered to the public at the rates set forth in Section 1 three times beyond the thirty (30) day cure period set forth in Section 7.2, the Parties agree that the STATE may terminate this AGREEMENT for default and PPMPDA will pay/reimburse the STATE a pro rata amount of the MITIGATION PAYMENT and a TERMINATION PENALTY as set forth in Section 7.1.

7.3 At its option, and as an alternative to the remedies set forth in Sections 7.1 and 7.2, the STATE may seek to enforce the terms of this AGREEMENT and the Restrictive Covenants in court in the event of a default.

7.4 PPMPDA 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.”

8. SURVIVAL

The terms and conditions contained in this AGREEMENT are intended to and shall survive the completion of the performance, cancellation, or termination of this AGREEMENT.

9. FORCE MAJEURE

Notwithstanding anything to the contrary in this AGREEMENT, any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, acts of war, terrorism, terrorist activities, inability to obtain services, labor, or materials or reasonable substitutes therefore, governmental actions, civil commotions, fire, flood, earthquake or other casualty, and other causes beyond the reasonable control of the party obligated to perform (collectively, “Force Majeure”), shall excuse the performance of such party (excluding payment obligations) for a period equal to any such prevention, delay or stoppage and, therefore, if this AGREEMENT specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay in such party’s performance caused by Force Majeure.

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10. CONTACT LIST

The individuals listed below shall be considered key personnel for the administration of this AGREEMENT. Should either PARTY require change of persons and/or address of the individuals of their PARTY, written notification shall be provided to the other PARTY identifying such change.

PPMPDA

Pike Place Market Preservation &
Development Authority
Attn: Ben Franz-Knight, Executive
Director
85 Pike Street, Room 500
Seattle, WA 98101
Phone: 206-774-5232

Email: ben@pikeplacemarket.org

STATE

Washington State Department of
Transportation
Attn: James M. Salter, Acquisition
Program Manager
PO Box 47338
Olympia, WA 98504
Phone: 360-705-7312

Email: salterj@wsdot.wa.gov

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IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT as of the day and year first above written.

PIKE PLACE MARKET PRESERVATION & DEVELOPMENT AUTHORITY	WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
_____ Ben Franz-Knight Executive Director Date _____	_____ Linea Laird, PE Alaskan Way Viaduct Program Administrator Date _____
	APPROVED AS TO FORM: _____ Amanda Phily Assistant Attorney General Date _____

List of Exhibits:

- Exhibit A Legal Description of Property**
- Exhibit B Restrictive Covenants**

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Exhibit A
Legal Description of Property

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Exhibit B
Restrictive Covenant

[see following pages]

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Please return to:
PACIFICA LAW GROUP LLP
1191 Second Avenue, Suite 2100
Seattle, WA 98101
Attention: Richard Moore, Esq.

RESTRICTIVE COVENANT

Grantor: PIKE PLACE MARKET PRESERVATION & DEVELOPMENT AUTHORITY

Grantee: WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

Legal Description

Abbreviated form: [_____]

Additional legal on page A-1 of document

Assessor's Property Tax Parcel Account Number(s): [_____]

Reference number(s) of documents being assigned or released and related documents: None

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RESTRICTIVE COVENANT
Parking Mitigation

THIS RESTRICTIVE COVENANT (the “Restrictive Covenant” or “Covenant”) is entered into as of _____, 2013, between the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION (the “STATE”), and PIKE PLACE MARKET PRESERVATION & DEVELOPMENT AUTHORITY, a Washington public development authority (“PPMPDA”).

W I T N E S S E T H:

WHEREAS, pursuant to RCW 47.12.010 the STATE is authorized to enter into this Covenant, and PPMPDA is likewise authorized under its charter; and

WHEREAS, the STATE is constructing and will continue to construct the Alaskan Way Viaduct Replacement Project (the “Project”); and

WHEREAS, PPMPDA currently offers public off-street parking in the Pike Place Market Historic District located at 1531 Western Avenue, Seattle, Washington (the “Property”); and

WHEREAS, the STATE and PPMPDA have entered into a Cooperative Agreement dated May __, 2013 (the “Agreement”), pursuant to which PPMPDA has agreed to restrict four hundred fifty (450) of its existing parking spaces on the Property to short term parking at on-street rates by way of a restrictive covenant, in exchange for monetary compensation from the STATE, which parking restriction will mitigate against the loss of on-street short-term parking caused by the Project; and

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, PPMPDA does hereby impose upon the Property the following covenants, restrictions, charges and easements, which shall run with the land and shall be binding and a burden upon the Property, for the length of time that this Restrictive Covenant shall be in full force and effect.

Section 1. Definitions. Unless otherwise expressly provided herein or unless the context clearly requires otherwise, the terms defined above shall have the meanings set forth above and the following terms shall have the respective meanings set forth below for the purposes hereof. Capitalized terms not defined herein shall bear the meaning given them in the Agreement.

“Covenant Period” means the period described in Section 3 hereof.

“Effective Date” means [*date of recording*].

“Parking Rate” means then-current hourly street parking rates for the area around the Property (*City parking zone to be referenced here*); provided that in no event shall PPMPDA be required to charge less than the then-applicable Rate Floor.

“Rate Floor” means an hourly rate equal to the following:

Period	Rate
--------	------

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Months 0-12, beginning on the Effective Date	\$4.00
Months 13-24	\$4.40
Months 25-36	\$4.84

“Short-Term Parking” means the use of a parking space on the Property for up to, but no more than, four (4) consecutive hours.

Section 2. Parking Restriction. For purposes of satisfying the requirements of the Agreement, PMPDA represents, warrants and covenants as follows:

(a) Short-Term Parking. During the Covenant Period, at least four hundred fifty (450) parking spaces in the Property shall be offered only for the purpose of Short-Term Parking at rates not to exceed the appropriate Parking Rate.

(b) Recording. This Restrictive Covenant shall be duly recorded at or before the Effective Date.

Section 3. Covenant Period. This Restrictive Covenant shall continue in full force and effect until the date that is three (3) years following the Effective Date, upon which date this Restrictive Covenant shall terminate in its entirety.

Section 4. Governing Law. This Restrictive Covenant shall be governed by the laws of the State of Washington.

IN WITNESS WHEREOF, the parties have caused this Covenant to be signed by their respective, duly authorized representatives, as of the day and year first written above.

**WASHINGTON STATE DEPARTMENT OF
TRANSPORTATION**

By: _____
Name: _____
Its: _____

**PIKE PLACE MARKET PRESERVATION &
DEVELOPMENT AUTHORITY**, a Washington
public development authority

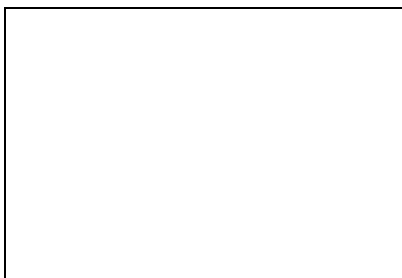
By: _____
Name: _____
Its: _____

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STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the _____ of the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____, 2013.



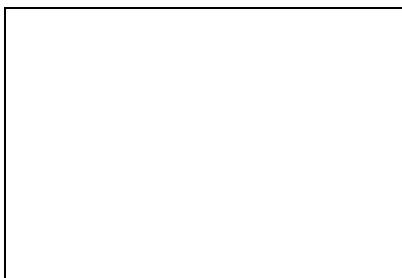
(Use this space for notarial stamp/seal)

Notary Public
Print Name _____
My commission expires _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the _____ of PIKE PLACE MARKET PRESERVATION & DEVELOPMENT AUTHORITY, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____, 2013.



(Use this space for notarial stamp/seal)

Notary Public
Print Name _____
My commission expires _____

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EXHIBIT A

Legal Description

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Situate in the County of King, State of Washington.