

GCB 1140
SR 99
ALASKAN WAY VIADUCT REPLACEMENT PROGRAM
Funding Agreement

THIS AGREEMENT (“Agreement”) for the Alaskan Way Viaduct Replacement Program (“PROGRAM”) is made and entered into between the State of Washington, hereinafter the “STATE,” and the Port of Seattle hereinafter the “PORT,” collectively the “Parties” and individually the “Party.”

WHEREAS, in the 1950s, the City of Seattle (“City”) and the Washington State Department of Transportation jointly designed and built the Alaskan Way Viaduct to accommodate passenger and freight mobility into the foreseeable future; and

WHEREAS, the central waterfront section of the Alaskan Way Viaduct passes through and is adjacent to downtown Seattle’s urban core and the Seattle waterfront; and

WHEREAS, the Duwamish and Ballard-Interbay industrial areas in Seattle are served by the SR 99 corridor and constitute a significant portion of Seattle’s maritime and industrial sector jobs and annual city-wide revenue; and

WHEREAS, in 2001 the Nisqually earthquake damaged the Alaskan Way Viaduct; and

WHEREAS, the Alaskan Way Viaduct is at risk of sudden and catastrophic failure in an earthquake and is nearing the end of its useful life; and

WHEREAS, a failure to maintain the Alaskan Way Viaduct capacity would result in unacceptable congestion for freight and other traffic within and between Seattle’s harbor and industrial areas; and

WHEREAS, in March 2007, the Washington State Governor, the King County Executive, and the Mayor of Seattle pledged to advance a series of key SR 99 projects (Moving Forward Projects) that will facilitate the removal and/or repair of key portions of SR 99, including the Yesler Way Vicinity Stabilization Project, the Electrical Line Relocation project, Battery Street Tunnel Fire and Life Safety Upgrades, SR 99 Lenora to Battery Street Tunnel Improvements, the SR 99 South Holgate Street to South King Street Viaduct Replacement Project, Transit Enhancements and Other Improvements; and

WHEREAS, in January 2009, the Governor of Washington State, the Mayor of Seattle and the King County Executive jointly recommended replacing the Alaskan Way Viaduct with a bored tunnel beneath downtown Seattle in conjunction with improvements in surface streets and transit service, and Port of Seattle Chief Executive Officer, Tay Yoshitani, endorsed the deep-bore tunnel concept; and

WHEREAS, the PROGRAM includes system-wide projects led by the Washington State Department of Transportation (such as Holgate to King viaduct replacement, Atlantic Street overcrossing, SR519 Phase 2, New Alaskan Way, Connection to Elliott Avenue/Western Avenue, SR 99 Bored Tunnel, new connections at the north and south portals), King County (such as South End Transit, North End Transit and other transit investments), the City (such as Spokane Street Viaduct, Mercer Corridor, Central seawall replacement and First Avenue Street car study) and the PORT (East Marginal Way Grade Separation), anticipated to total \$4.2 billion; and

WHEREAS, the Washington State Legislature passed ESSB 5768 and the Governor signed the bill into law designating and funding the SR 99 Bored Tunnel Project as the replacement for the Viaduct; and

WHEREAS, the STATE executed a design-build contract with Seattle Tunnel Partners in January 2011 for the design and construction of the SR 99 Bored Tunnel Project as a replacement for the Alaskan Way Viaduct as part of the PROGRAM; and

WHEREAS, the STATE issued a Supplemental Draft Environmental Impact Statement meeting the requirements of the National Environmental Policy Act and State Environmental Policy Act in 2010, issued a Final Supplemental Environmental Impact Statement and Section 4(f) Evaluation in July 2011 and issued a Record of Decision in August 2011 for the SR 99 Bored Tunnel Project; and

WHEREAS, as outlined in the Parties' prior Memorandum of Agreement No. GCA 6444; the STATE and the PORT are committed to a replacement for the Viaduct that will improve transportation access to and along the Seattle waterfront, including access for over eight million annual ferry riders; ensure connectivity and capacity between the Ballard-Interbay and Duwamish industrial areas and Seattle-Tacoma International Airport, including a corridor for oversized vehicles; provide access to port cargo, fishing and cruise facilities; minimize construction disruption; and increase opportunities for the public and freight to access the shoreline and waterfront; and

WHEREAS, the PORT's international trade, aviation, economic development, tourism and passenger terminal activities are vital to the economic growth of the region and the state, supporting nearly 194,000 jobs in the region, and the STATE and the PORT support infrastructure improvements necessary to achieve growth in trade and jobs and increase the region's competitiveness in global markets; and

WHEREAS, the Viaduct corridor is crucial to the region's freight mobility because it provides for 1.5 million freight trips annually by grade-separation of through traffic, rail lines and industrial corridors near the Port's marine terminals, which support the movement of \$30 billion in international and domestic cargo through the Port each year; and

WHEREAS, the STATE has designed and is constructing improvements, also known as AWV S Holgate to S King St Stage 3 – Atlantic St Bypass Project, to the surface street system in the vicinity of the corridor segment from S. Holgate Street to S. King Street that are designed to increase access to Terminal 46 and other port waterfront facilities. This project provides a new overcrossing at South Atlantic Street which will significantly improve freight hauling efficiency between the Port and Interstate 5 and Interstate 90, allowing trucks to bypass the frequent and lengthy railroad track blockages across South Atlantic Street; and

WHEREAS, the STATE's contractor is designing and will construct the SR 99 Tunnel Alternative, Tunnel Design Build (also known as, the SR 99 Bored Tunnel Project), and the PORT has reviewed its design scope and determined that, when completed, it will offer a direct benefit to the PORT by maintaining throughput capacity in the SR 99 corridor; keeping additional traffic off I-5; and minimizing construction disruption to regional traffic, industrial and maritime businesses, and PORT facilities; and

WHEREAS, the STATE and the City are designing and will construct other projects included in the PROGRAM that will maintain and improve traffic flow along the Seattle waterfront and between the Seattle waterfront and STATE highways; and,

WHEREAS the STATE has developed a plan for delivering the PROGRAM that includes: (i) the SR 99/Tunnel Alternative, South Access Connection Project that will facilitate freight movement to and from PORT container terminals along East Frontage Road, South Atlantic Street, South Royal Brougham Way, Alaskan Way South, East Marginal Way South, and South Dearborn Street; and (ii) the SR 99/Tunnel Alternative, North Access Connection Project that will ensure access to PORT cargo, fishing and cruise facilities via the tunnel or north end arterials, including Sixth Avenue North, North Republican Street, Dexter Avenue North, Aurora Avenue, and two-way North Mercer Street; and,

WHEREAS, the STATE has proposed that the PORT assist with the funding of the SR 99 Tunnel Alternative, Tunnel Design Build; the SR 99/Tunnel Alternative, South Access Connection Project; and the SR 99/Tunnel Alternative, North Access Connection Project hereinafter identified individually as the "PROJECT" and collectively as the "PROJECTS" and the PORT deems the PROJECTS to provide a direct benefit to the PORT; and

WHEREAS, the STATE will construct the PROJECTS using the design-build and design-bid-build methods of project delivery; and

WHEREAS, the Parties executed Memorandum of Agreement No. GCA 6444, Alaskan Way Viaduct and Seawall Replacement Program Bored Tunnel Alternative on April 12, 2010 in which the PORT agreed, to the extent feasible and authorized by the Port Commission, to fund or procure funding within the life of the PROGRAM not to exceed Three Hundred Million Dollars (\$300,000,000) toward the STATE's PROGRAM elements with the majority of the PORT's contribution occurring between 2016 and 2018; and

WHEREAS, the PORT allocated Twenty-Five Million Dollars (\$25,000,000) of up to Three Hundred Million Dollars (\$300,000,000) for funding of transportation projects serving the SR 99 system; and

WHEREAS, the Parties agree that the PORT has contributed Nineteen Million Dollars (\$19,000,000) of the Twenty-Five Million Dollars (\$25,000,000) towards funding of the East Marginal Way Overpass, Spokane Street widening, Duwamish Intelligent Transportation System and the SR 519 South Seattle Intermodal Access Project Phase 2 projects that complement the PROGRAM and provide capacity for future growth and improved safety; and

WHEREAS, the STATE has requested that the PORT's contribution toward funding of the PROJECTS begin on May 1, 2015; and

WHEREAS, the PORT would incur additional costs associated with issuing bonds prior to 2016; and

WHEREAS, the PORT has incurred additional costs associated with staffing requirements for assisting the STATE in developing the design, coordinating construction and other activities required to successfully complete the PROGRAM, including the PROJECTS; and

WHEREAS, the Parties wish to provide the terms and conditions of the PORT's future contribution towards funding the PROJECTS;

NOW, THEREFORE, by virtue of RCW 53.08.330, RCW 53.08.340 and RCW 47.28.140 and in consideration of the terms, conditions, covenants and performances contained herein, or attached and incorporated and made a part hereof, the Parties agree as follows:

1.0 STATE RESPONSIBILITIES

1.1 The STATE will ensure that the PROGRAM will be designed and constructed to facilitate efficient movement of freight and other traffic on the west corridors of the Seattle transportation system between the Duwamish and Ballard-Interbay neighborhoods, including maintaining access to fishing, cruise and other PORT facilities. The STATE further agrees that, at a minimum, the reconstruction of the surface streets on the central waterfront segment of the PROGRAM will include two lanes in each direction with left turn lanes at intersections between Pine Street and the Colman Dock. The section south of Colman Dock will have at a minimum, two continuous general purpose lanes in each direction, at all times, and a continuous northbound ferry queuing lane that expands to two lanes between Main Street and Yesler Way.

1.2 The STATE will ensure that: (i) all environmental review and documentation has been successfully completed and approved prior to construction of the tunnel, north portal,

south portal and central waterfront surface street projects; (ii) designs of PROJECTS are consistent with the STATE's and PORT's needs and provide the PORT with the direct benefit that has been committed to by the Parties; (iii) the PORT has the opportunity to review and comment on channelization plans prior to construction of each project in the PROGRAM; (iv) it coordinates with the PORT prior to making any changes to channelization plans that have been reviewed and commented on by the PORT; (v) all costs of the PROJECTS funded with proceeds from PORT issued bonds meet the requirements of the Internal Revenue Service ("IRS") for the use of tax exempt bond proceeds; and (vi) that the PORT continues as a member of Maintenance of Traffic Task Forces associated with construction of the PROJECTS.

2.0 PORT RESPONSIBILITIES

2.1 The PORT agrees to contribute Two Hundred Seventy-five Million Dollars (\$275,000,000) solely towards the costs of constructing the PROJECTS, *less* Seven Million Three Hundred Thousand Dollars (\$7,300,000) representing PORT costs for work performed by PORT staff that is related to the PROGRAM, including the PROJECTS, plus additional PORT costs associated with issuing bonds earlier than 2016 to meet its obligations under Section 3.0, for a total PORT contribution not to exceed Two Hundred and Sixty-seven Million, Seven Hundred Thousand Dollars (\$267,700,000).

2.2 Subject to this Section 2, the PORT agrees to fund construction for the PROJECTS, including mobilization, temporary erosion and sedimentation control, earthwork, pavement, drainage, structures, and utilities in the amounts and according to the schedule as described in Section 3.0 - Payment.

2.3 In addition to the total PORT contribution set forth in Section 2.1, the STATE may, by no later than 2018, request an additional PORT contribution of up to Six Million Dollars (\$6,000,000) to assist in funding transportation projects identified by the STATE as serving the SR 99 system. The Parties acknowledge and agree that PORT shall determine in its sole and absolute discretion whether and how much to contribute under this Section and, if so, how it will allocate any such contribution among the projects identified by the STATE. Any additional PORT contribution under this Section 2.3 shall be documented by attaching the minutes of the Port Commission authorizing such contribution as Supplement 1 to this Agreement, thereby incorporating it herein without further amendment.

2.4 The Port shall follow all requirements, included but not limited to I.R.S. regulations, associated with bond proceeds arbitrage.

3.0 PAYMENT

3.1 Subject to Section 2, the PORT agrees to make payments to the STATE in the amounts and according to the schedule set forth below:

a. Upon receiving the STATE's request for payment no later than April 1, 2015, the PORT shall make a lump sum payment of One Hundred Twenty Million Dollars (\$120,000,000) no later than May 1, 2015.

b. Upon receiving the STATE's request for payment no later than April 1, 2016, the PORT shall make a lump sum payment of One Hundred and Forty-seven Million Dollars (\$147,700,000) no later than May 1, 2016.

3.2 All requests for payment by the STATE under Section 3.1 shall include copies of contractor progress payments that support reimbursement to the STATE for actual construction costs incurred for the PROJECTS.

3.3 In the event the PORT commits to an additional contribution under Section 2.3, all requests for payment by the STATE therefor shall include copies of contractor progress payments that support reimbursement to the STATE for actual construction costs incurred for the project(s) identified in Supplement 1 to this Agreement.

4.0 MODIFICATIONS TO FUNDING OR SCOPE OF THE PROJECTS AND AMENDMENT

4.1 The Parties may adjust the PORT's contributions to the Projects under Section 2.0 by written amendment reflecting changes to the Port's timing and contribution, except as otherwise set forth in Section 2.3. In fulfilling its obligations under this Agreement, the Port will at all times retain its duty to act in the best interests of the Port.

4.2 Either Party may request changes to the provisions contained in this Agreement. Such changes shall be mutually agreed upon and incorporated by written amendment to this Agreement, except as otherwise set forth in Section 2.3. No variation or alteration of the terms of this Agreement shall be valid unless made in writing and signed by authorized representatives of the Parties hereto, except as otherwise set forth in Section 2.3.

5.0 NOTIFICATION

5.1 Any notice required or permitted to be given pursuant to this Agreement shall be in writing, and shall be sent postage prepaid by U.S. Mail, return receipt requested, to the following addresses unless otherwise indicated by the Parties to this Agreement:

To the STATE: Linea Laird, P.E.
 Program Administrator
 Washington State Dept. of Transportation
 999 Third Avenue, Suite 2424
 Seattle, WA 98104

To the PORT: Tay Yoshitani
 Chief Executive Officer
 Port of Seattle
 P. O. Box 1209
 Seattle, WA 98111

6.0 RECORDS RETENTION AND AUDIT

6.1 The PORT or its designee shall have the right to inspect, audit and/or copy records supporting or pertaining to the PORT's funding assistance to the PROGRAM and accounting thereof for the purpose of determining anything that is of consequence to this Agreement.

6.2 The STATE shall retain the records pertaining to or supporting the PORT's funding assistance to the PROGRAM for the periods required below. The STATE shall also ensure that relevant wage, payroll and cost records of all contractors, subcontractors and suppliers at all tiers shall be retained and open to similar inspection or audit for the periods required below:

- a. During the progress of work related to the PROJECTS funded by the PORT;
- b. For a period of not less than six (6) years after the PORT's final payment to the STATE under this Agreement; provided that if tax exempt bonds are used to provide funding assistance to the PROGRAM, the STATE shall retain records necessary to address an IRS audit for the period required under applicable IRS regulations; and
- c. If any claim, audit, or litigation arising out of, in connection with, or related to this Agreement is initiated, all documents and records shall be retained until such claim, audit or litigation involving the records is resolved or completed, whichever occurs later.

6.4 The STATE, its contractors, subcontractors and suppliers shall make a good faith effort to cooperate with the PORT and its designees when the PORT gives notice of its need to inspect or audit records referenced in this Section 6. Cooperation shall include assistance as may be reasonably required in the course of inspection or audit, including reasonable access to personnel with knowledge of the contents of the records being inspected or audited so that the information in the records is properly understood by the persons performing the inspection or audit. Cooperation shall also include establishing a specific mutually agreeable timetable for making the records available for inspection by the PORT and its designee. Unless otherwise agreed, if the STATE, its contractor, subcontractors and suppliers cannot make at least some of the relevant records available for inspection within twenty-eight (28) calendar days of the PORT's written request, cooperation will necessarily entail providing the PORT with a reasonable explanation for the delay in production of records.

7.0 DISPUTE AVOIDANCE AND RESOLUTION

7.1 Designated Representatives:

PORT: Anne Porter
Capital Project Manager V
Port of Seattle
Capital Development Division
P. O. Box 1209
Seattle, WA 98104
206-787-3133

STATE: Todd V. Trepanier
Deputy Administrator – Operation
Alaskan Way Viaduct Replacement Program
999 Third Avenue, Suite 2200
Seattle, WA 98104
206-805-2813

7.2 The designated representatives herein under section 7.1, shall use their best efforts to resolve disputes between the Parties. If the designated representatives are unable to resolve a dispute, then the responsible project managers or directors for each Party shall review the matter and meet as soon as possible, but in no case later than ten (10) business days after request by either Party, to attempt to resolve it. If the project managers or directors are unable to resolve the dispute, the matter shall be reviewed by the department director or Chief Executive Officer of each Party or his or her designee. The department director or Chief Executive Officer of each Party shall meet within ten (10) business days of request by either Party after exhaustion of the previous procedural steps. If after that meeting, the Parties are still not able to resolve the dispute, the Parties shall submit the dispute to mediation. Representatives of each party with authority to settle the claim, or in the case of the PORT, if Commission approval is required, management authority to recommend settlement of the claim directly to Commission, shall participate in the mediation. The mediator's fee will be divided equally among the parties participating in the mediation. The Parties agree to exhaust each of these procedural steps before seeking to resolve disputes in a court of law or any other forum.

8.0 EFFECTIVENESS AND DURATION

8.1 This Agreement is effective upon execution by both Parties and will remain in effect until final completion of all Parties' obligations contained or referenced in this Agreement, unless otherwise amended or terminated.

9.0 INDEMNIFICATION AND HOLD HARMLESS

9.1 Each of the Parties shall protect, defend, indemnify, and save harmless the other Party, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgment, and/or awards of damages, arising out of, or in any way resulting from, each of the Party's own negligent acts or omissions. The STATE shall also protect, defend, indemnify and save harmless the PORT, its officers, officials, employees and agents ("PORT indemnified parties"), from any and all costs, claims, judgment and/or awards of damages, arising out of, or in any way resulting from the design, permitting, or construction of the PROJECTS or the PROGRAM. In no event shall the PORT have any maintenance or repair obligation with respect to Alaskan Way, or facilities lying in public right-of-way along Alaskan Way, or arising out of or related to the PROGRAM or the PROJECTS. No Party will be required to indemnify, defend, or save harmless the other Party, its officers, officials, employees and agents if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of the other Party. Where such claims, suits, or actions result from the concurrent negligence of the Parties, the indemnity provisions provided herein shall be valid and enforceable only to the extent of a Party's own negligence.

Each of the Parties agrees that its obligations under this Section extend to any claim, demand and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each of the Parties, by mutual negotiation, hereby waives, with respect to each of the other Party only, any immunity that would otherwise be available against such claims under the Industrial Insurance provision of Title 51 RCW.

9.2. In the event of legal action challenging the PORT's legal authority to provide funding assistance to the PROGRAM or the PROJECTS, the PORT, in its sole discretion, may defend such legal action or may tender the defense to the STATE within ten (10) business days after the service of such legal action. Failure to tender the legal action to the STATE as provided herein shall constitute a waiver of PORT's right, if any, to seek indemnity for the claims asserted therein. In the event that the PORT chooses to tender to the STATE the defense of such legal action, and, to the extent permitted by law, the STATE shall defend, pay the cost of such defense, save harmless, and indemnify the PORT indemnified parties from any and all costs, claims, judgment and/or awards of damages, arising out of, or in any way resulting from, such legal action.

9.3 The indemnification, hold harmless, and/or waiver obligations described in this section shall survive the termination of this Agreement. In any action to enforce the provisions of the Section, the prevailing Party shall be entitled to recover its reasonable attorney's fees and costs incurred from the other Party.

10.0 VENUE

10.1 This Agreement shall be deemed to be made in the County of King, State of Washington, and the legal rights and obligations of the STATE and PORT shall be

determined in accordance with the laws of the State of Washington. All legal actions in connection with this Agreement shall be brought in the County of King, State of Washington.

11.0 RELATIONSHIP OF PORT AND STATE

11.1 Nothing contained herein shall be deemed or construed as creating the relationship of principal and agent, partnership, or joint venture partners between the STATE and the PORT.


12.0 AUTHORIZED SIGNATURES


12.1 The undersigned acknowledge that they are authorized to execute this Agreement and bind their respective agencies to the obligations set forth herein.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the latest date written below.

PORT OF SEATTLE

STATE OF WASHINGTON
DEPARTMENT OF TRANSPORTATION


By: Tay Yoshitani
Chief Executive Officer


By: Linea Laird, P.E.
Program Administrator
Alaskan Way Viaduct and Seawall
Replacement Program


Date: 8/14/13

Date: 8/27/13

APPROVED AS TO FORM:

APPROVED AS TO FORM:


By: Isabel R. Safora
Deputy General Counsel


By: Susan Cruise
Assistant Attorney General

Date: 8/12/13

Date: August 26, 2013

Alaskan Way Viaduct REPLACEMENT PROGRAM



U.S. Department of Transportation
Federal Highway Administration

WSDOT

King County

Port of Seattle

City of Seattle

999 Third Avenue, Suite 2400
Seattle, WA 98104
Fax: 206-382-5291

Transmittal

To *Tay Yoshitani, Port of Seattle*

From *DAM* *Doug Murdock, AWW Agreements*

Date *August 28, 2013*

Project *AWW Replacement Program*

Agreement	Status	Description	Original(s)	Sign. Date
GCB1140	Final	SR 99 AWW Replacement Program	1	08/27/2013
		WSDOT/Port of Seattle Funding Agreement		

If enclosures are not as noted, kindly notify us

Please find enclosed one (1) original of the above noted Agreement for your files and use.

Please give me a call at (206) 805-2857 if you have any questions.

Thanks.

CC: Geraldine Poor, Port of Seattle