

MEMORANDUM OF UNDERSTANDING
FOR INTERGOVERNMENTAL COOPERATION BETWEEN THE
PORT OF SEATTLE AND THE CITY OF SEATTLE FOR
THE SAFE AND SWIFT CORRIDOR PROGRAM

This Memorandum of Understanding (“MOU”) is made and entered into by the Port of Seattle, a municipal corporation of the State of Washington, hereinafter called the “Port,” and City of Seattle, a municipal corporation of the State of Washington, hereinafter called the “City.” The Port and the City are also referred to in this MOU collectively as “the Parties,” and individually as a “Party.”

RECITALS

WHEREAS, the City’s Comprehensive Plan establishes transportation goals and policies to preserve and improve mobility and access for the transport of goods and services, to enhance Seattle’s role as a hub for regional goods movement and as a gateway to national and international suppliers and markets, and to reliably connect the City’s manufacturing/industrial centers, urban centers, and business districts with the local, state, and international freight network; and

WHEREAS, Seattle’s deep-water port and trade relations are important elements of the City’s economy, history, and cultural identity; and

WHEREAS, the movement of goods in and out of the City and for local deliveries on City streets is a vital component of creating family-wage jobs and sustaining the City’s economic vibrancy and quality of life; and

WHEREAS, on October 3, 2016 the City adopted one of the nation’s first municipal Freight Master Plan to ensure efficient and reliable movement of goods by truck freight on City streets; and

WHEREAS, the joint venture of the ports of Seattle and Tacoma (The Northwest Seaport Alliance or “NWSA”) is the fourth largest gateway for containerized cargo in the western hemisphere and generates \$379 million in state and local tax revenue from marine cargo; investments in efficient movement of goods to and from port terminals enables Seattle’s competitiveness in the global economy, and

WHEREAS, the maritime industry annually generates approximately \$37.6 billion in economic impact for the State of Washington, supporting tens of thousands of family-wage jobs; maritime wages in 2015 averaged \$67,000 per year compared to the 2015 state average wage of \$56,700; and each maritime industry job supports 1.7 jobs elsewhere in the state economy; and

WHEREAS, the Alaskan Way, Elliott Avenue W, 15th Avenue W, and Mercer Street corridors are critical to supporting Seattle’s tourism economy, a growing industry in Seattle and King County, with visitors spending \$7 billion dollars and generating \$718 million in state and local taxes in 2016; and

WHEREAS, the City and Port recognize Key Arena as an important civic asset, a historic anchor to the Seattle Center and the Uptown Neighborhood, and a valuable source of tourism and entertainment revenue for the City; and.

WHEREAS, the Port, City, State of Washington, private sector partners, and other agencies within Puget Sound and the state have developed and signed funding agreements for freight infrastructure improvements, including SR 519, the Spokane Street Viaduct, the East Marginal Way Grade Separation, Duwamish Intelligent Transportation Systems, the Galer Street Flyover, and other FAST Corridor projects, all of which provide freight mobility benefits for the region; and

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WHEREAS, contributions by the City and Port for projects outlined in this MOU will leverage hundreds of millions of dollars in contributions from local, state, and federal sources; and

WHEREAS, the proposed South Lander Street Grade Separation project will benefit the Port and the Duwamish Manufacturing and Industrial Center (MIC) by improving overall traffic congestion and increasing freight mobility around Port facilities, including the adjacent east-west connectors on the Spokane Street Viaduct and SR519/Atlantic Street; and

WHEREAS, the projects outlined in this agreement will improve safety for all modes of transportation on critical freight routes within and between the Duwamish MIC and Ballard/Interbay MIC

WHEREAS; the Parties agree that the payment schedule for the Lander Agreement (Exhibit C), should be revised and will consider this proposed amendment to this schedule through a separate action;

NOW, THEREFORE, in consideration of mutual promises and covenants contained herein, the Parties hereby agree to the terms and conditions as follows:

1. PURPOSE AND DEFINITIONS

- 1.1. The purpose of this MOU is to launch a new partnership between the City and the Port, to be known as the Safe and Swift Corridor Program (“Program”). The Program will update multiple efforts between the Parties to improve critical transportation corridors in Seattle and will be focused on moving cargo, cars, transit and cyclists safely and swiftly on city streets.
- 1.2. The Program will include a series of projects that form the basis of this MOU. Those projects include, but are not necessarily limited to, the Lander Project, the East Marginal Way Improvement Project, transportation components of the Terminal 5 Modernization Project (and related effort to establish a U.S. Federal Railroad Administration designated quiet zone, Exhibit A), transportation components of the proposed Terminal 91 Uplands redevelopment, and transportation components of the proposed Key Arena redevelopment.
- 1.3. As used in this MOU, “Lander Project” means the construction of South Lander Street Grade Separation Project, a four-lane bridge spanning the west coast BNSF mainline railroad tracks between 1st and 4th Avenues South. The Lander Project is anticipated to begin construction in 2018 and open to traffic in late 2019, with Final Acceptance expected in 2020.
- 1.4. As used in this MOU, “Terminal 5 Modernization Project “ or “T5 Project” means the Port and NWSA’s Terminal 5 Modernization Project which is set to provide terminal improvements necessary to serve more environmentally sustainable, newer and larger vessels that will help maintain the NWSA’s competitive position, preserve and grow jobs, and support a healthy economy for the region and state. The improvements include crane rail strengthening, berth deepening, slope stabilization, electrical supply/distribution upgrades, new fender system and structural rehabilitation of the dock.
- 1.5. As used in this MOU, “East Marginal Way Improvement Project “ or “EMW-HHN Project” means the long-term project planned for East Marginal Way (EMW) between South Michigan Street and South Atlantic Street under the umbrella of the Heavy Haul Network (HHN) program that will improve safety and reliability in the movement of people and goods, support heavy freight loads by rebuilding the roadway to Heavy Haul standards, promote efficiency through signal modifications and intelligent transportation systems (ITS), and improve safety by better separating non-motorized modes from freight traffic.
- 1.6. Construction Contract Terms: The terms Final Inspection, Interim Final Inspections, Project Phase, Project Completion, Physical Completion, Substantial Completion, Final Acceptance shall have the meaning set forth in the City’s standard specifications found at <http://www.seattle.gov/util/Engineering/StandardSpecsPlans/index.htm>

2. SCOPE OF WORK

2.1. East Marginal Way (EMW) Corridor

- a. Shared Responsibilities Between the Parties
 - i. The Parties will complete a study to determine the impacts to the Heavy Haul Network (HHN) by trucks with HHN permits serving Port facilities and moving cargo within the HHN. The location of the HHN is described in October 2015 MOU (Exhibit D).
 - ii. The Parties will work together to negotiate with Union Pacific Railroad for removal of their western-most track for the purposes of widening the roadway in connection with the EMW-HHN Project.

- iii. The Parties will coordinate and collaborate on the design of the EMW-HHN Project.
 - iv. The Parties will work together to improve bike safety adjacent to Port properties as part of their work on the EMW-HHN Project.
- b. City Responsibilities
- i. The City will implement short-term improvements at the north end of the East Marginal Way (EMW) corridor using striping, concrete barriers, signs, and/or spot paving.
 - ii. The City will expedite portions of EMW-HHN Project on the north end of the EMW corridor within 12-18 months. This work is expected to include elements of the hybrid option being considered for the EMW-HHN Project such as a multi-use path on the west side of EMW south of South Hanford Street, a signalized diagonal crossing of South Hanford Street, and two-way protected bike lanes on the east side of EMW north of South Hanford Street to South Atlantic Street (see Exhibit G).
 - iii. The City will proceed with design of the EMW-HHN Project and achieve 30 percent design by early 2018. Key project elements will include roadway paving to heavy haul standards, separation between modes in the form of a multi-use path or protected bike lanes, and Intelligent Transportation System (ITS) elements to provide information and improve efficiency. The City will lead the effort to secure grants for the project.
- c. Port Responsibilities
- i. The Port committed to contributing funds directly to the EMW-HHN Project based on the commitments of the October 2015 HHN MOU and on the results of the pavement study (see Exhibit D).
 - ii. The Port will continue trucker and marine terminal operation education on improved vigilance of sharing the road with other transportation modes. Education may include field visits, trucker safety fairs, web page information and safety brochures.
 - iii. The Port will provide the City available information about cargo ship schedules and related truck traffic impacts.

2.2. South Spokane Street Corridor

- a. Shared Responsibilities
- i. The Parties will work together to secure approval of a U.S. Federal Railroad Administration designated quiet zone between the west end of the train bridge across the West Waterway of the Duwamish and the Terminal 5 gate as provided for in the MOU between the City and the Port (Exhibit A).
 - ii. The Parties will work together to complete improvements to the “five-way crossing” at the intersection of Chelan Avenue SW, West Marginal Way SW, SW Spokane Street and Delridge Way SW, including eventual closure of West Marginal Way leg leading into Terminal 5 and better signalization (Exhibit B).
 - iii. The Parties will support the Lander Project which will be a new east-west grade separation that is expected to minimize traffic volume along Spokane Street (and Atlantic Street), and thus improve flow for freight.
 - iv. The Parties will work collaboratively to finalize the Port’s conditionally approved street vacation packages on Terminals 18 and Terminal 5. The Parties will strive to finalize

the street vacations for Terminal 18 before the end of 2017 and the Terminal 5 street vacations before the end of 2018.

- v. The Port and the Seattle Department of Transportation (SDOT) will form a quarterly review committee to account for how the \$5 million match money (see section 2.2.b.ii) will be expended on elements of freight improvement projects. Examples of such projects include:

- SDOT costs on the approved Quiet Zone
- Cost savings on the Lander Project (Section 4.7)
- SDOT staff time on T5 Project mitigation

If the City adds elements not related to freight to any of the Projects covered by this MOU, or other freight-related projects undertaken by the City to achieve the \$5 million match, the Parties will evaluate whether or not these elements can be considered towards the \$5M match during their quarterly review committee meetings.

- vi. The Parties will establish a new technical group to nimbly respond to projects through the Spokane Street corridor (and EMW). The parameters of this group and specific responsibilities of the group will be determined at the first quarterly meeting of the group as referred to under 2.2.a.v.
- vii. The Parties will work together to improve bike safety adjacent to Port properties.

b. City Responsibilities

- i. The City shall match up to \$5 million in the Port's investments in the Lander Project with investments in other freight projects, smaller corridor improvement projects, and/or savings from significant collaborative projects such as the T5 Project-related Quiet Zone implementation and the Lander Project. The City's internal staff costs for T5 Project Quiet Zone, signalization improvements and other Spokane corridor projects shall count toward its \$5 million dollars in matching funds. The City shall seek project cost savings for the Quiet Zone and signalization projects.
- ii. The City shall establish truck/supply chain parking areas around the EMW/Spokane Street intersection.
- iii. The City agrees to release any and all claims against the Port related to street use fees associated with the Port's use of City streets in and about Terminals 5 and 18 while the street vacation conditional approvals for Terminals 5 and 18 were being processed, and hereby covenants not to bring suit against the Port with respect to any such claims. The City's release of claims under this paragraph survives the termination of this agreement.

c. Port Responsibilities

- i. The Port will provide \$10 million for the Lander Project. Of this \$10 million, \$5 million will be matched by the City through other investments in freight projects, smaller corridor improvement projects and savings with significant collaborative projects, like the T5 Project related Quiet Zone and the Lander Project.
- ii. In order to maintain reduced impacts on surrounding communities, the Port will continue to provide parking for short-haul trucks at Terminal 25 South or an alternate location.

2.3. 15th Avenue W/Elliott Avenue W/Mercer Street Corridors

a. Shared Responsibilities

- i. The Parties will establish a joint project group (with other relevant stakeholders) for the expenditure of a new Transportation Fund to make transportation improvements in the 15th Avenue W/Elliott Avenue W/Mercer Street corridor, including areas around Seattle Center.
- ii. The Parties will work together to establish a transportation and infrastructure plan and related agreements for the proposed Terminal 91 Uplands redevelopment prior to the end of 2017.
- iii. In the 15th Avenue W corridor, the Parties will coordinate Seattle bicycle path projects with those on Port properties in the 15th Avenue W corridor to improve the bicycle safety and connections between Fishermen's Terminal and downtown.

b. City Responsibilities

- i. The City shall monitor new Expedia headquarters-related traffic impacts (construction and eventually commuters) and shall endeavor to minimize traffic congestion resulting from the addition of Expedia development traffic.
- ii. The City shall coordinate with Expedia on the design and funding for the Port bike path improvements along east side of Terminal 91 Uplands and shall endeavor to require Expedia to contribute to funding these improvements.
- iii. Within the to-be-defined parameters of the new Transportation Fund, the City shall explore signal improvements (stemming from Mercer corridor) and implement changes as future modeling may require.
- iv. The City shall provide for the separation from freight for bike and pedestrian access/improvements leading into the Uptown neighborhood (West Mercer Place).
- v. The City shall partner with King County Metro to provide additional Rapid Ride service to serve Interbay, South Lake Union and Uptown neighborhoods, thereby endeavoring to remove additional single occupancy vehicles from the road.

c. Port Responsibilities

- i. The Port will provide \$5 million towards the Transportation Fund, once the parameters are defined, to make transportation improvements dedicated to roadway improvements in the 15th Avenue W/Elliott Avenue W/Mercer Street corridor, including areas around Seattle Center. The Port's contribution to the Transportation Fund is contingent upon the City entering into a future development agreement for Key Arena.

3. TERMS AND CONDITIONS

- 3.1. Implementing Agency: Each individual projects implementing agency shall ensure compliance for the respective project with the State Environmental Policy Act (SEPA) and the National Environmental Policy Act (NEPA), and shall be responsible for obtaining all necessary permits and/or agreements.

- 3.2. Contact Persons: The Parties to this Agreement shall designate person(s) to act as liaison for the Program and related projects. The contact persons shall meet on a mutually agreed scheduled basis.
- 3.3. Other Agreements: Given the broad scope of the Program, the Parties agree to reference other relevant agreements as needed, including, but not limited to, the agreements attached in the Exhibits section.
- 3.4. Public Involvement: The Parties shall be responsible for the continued public involvement and/or community outreach process for their respective led projects. Each shall develop a Public Involvement Plan with input from the other Party.
- 3.5. M/W/DBE and Small Business Utilization: In implementing the Projects, the City and the Port shall maximize the opportunities and participation of minority-owned, women-owned, and disadvantaged businesses, including those small businesses within the Seattle-Metropolitan region, within the rules and regulations of Federal funded projects.

4. COST REIMBURSEMENT AND FUNDING

The Port Commission authorizes the execution of this MOU and agrees to contribute an amount not to exceed Fifteen-Million Dollars (\$15,000,000) to the City as set forth in Section 2 Scope of Work subject to the following conditions:

- 4.1. All environmental review and permitting will be completed in accordance with Federal, State, and local requirements;
- 4.2. The Port and City continue to work together to ensure that the Project development and implementation during design and construction meet the needs of both Parties. Prior to application for the final payment for the Fifteen-Million Dollars (\$15,000,000), the City shall provide the opportunity for the Port to inspect and verify that the requirements of Physical Completion have been met for each of the Projects that are subject to this Agreement. Once the Port has verified that the requirements for Physical Completion have been satisfied for each Project that is subject to this Agreement, the City shall issue a letter to the Port requesting the Port issue final payment upon Final Acceptance.
- 4.3. The Lander Project is constructed as described in the August 31, 2016 MOA (Exhibit C);
- 4.4. The Port's obligations under this MOU shall not exceed Fifteen Million Dollars (\$15,000,000) as a cash payment, but may be reduced as provided in Section 4.7.
- 4.5. For the 15th Ave W/Elliott Avenue W/Mercer Street corridor, including areas around Seattle Center, as a portion of the total payment amount set forth in Section 4.4, the Port will reimburse the City Five million dollars (\$5,000,000) for costs expended on verifiable improvements in the corridor and in coordination with the joint project group to be established under 2.3.a.i.
- 4.6. If either Party fails to fulfill its obligations outlined under the terms of this MOU, then either party may elect pursue a dispute resolution process under Section 8. In the spirit of the cooperation for which this MOU was entered, in addition to the processes outlined in Section 8, the dispute

shall be discussed at the quarterly meeting at a minimum of two separate occasions to attempt to find resolution prior to pursuit of legal action or termination (Section 10).

- 4.7. In the event the total Lander Project cost estimate at the time of the Lander Project's Final Acceptance ("Final Cost") is *less* than the Lander Project estimate at the time of bid ("Bid Estimate"), the Port's total funding contribution to the Lander Project shall be adjusted by reducing the Port's contribution, up to Five Million Dollars (\$5,000,000) prior to reduction in City contributions. That adjustment to the Port's contribution shall be reduced by any already incurred matching investments by the City in other freight priorities (as outlined in section 2.2.b.i).

5. AMENDMENT

Either Party may request amendments to the provisions contained in this Agreement. Any amendments to this Agreement must be mutually agreed to by both Parties, in writing and executed with the same formalities as the original Agreement.

6. NOTIFICATION

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 City: Jessica Murphy, Project Manager
700 Fifth Ave, Suite 3700
PO Box 4996
Seattle, WA 98124-4996

To the Port: Geraldine Poor, Regional Transportation Manager
Port of Seattle
2711 Alaskan Way
Seattle, WA 98121

7. RECORDS RETENTION AND AUDIT

During the progress of the work on the Project and for a period not less than three (3) years from the date of final payment by the Port to the City, the records and accounts pertaining to the Project and accounting thereof are to be kept available for inspection and audit by the Port and the City shall provide the Port with copies of all records, accounts, documents, or other data pertaining to the Project upon the Port's request. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claims, or audit findings have been resolved, even though such litigation, claim, or audit continues past the typical three year retention period. This provision

is not intended to alter or amend records retention requirements established by applicable state and federal laws.

8. DISPUTES

The designated representatives under Section 6.0, 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 directors for each Party shall review the matter and attempt to resolve it. If the Project 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 Parties agree to exhaust each of these procedural steps before seeking to resolve disputes in a court of law or any other forum.

9. EFFECTIVENESS AND DURATION

This Agreement is effective upon the last date of execution by both Parties and will remain in effect until Project completion, unless otherwise stated herein or unless amended or terminated.

10. TERMINATION

Either Party may terminate this Agreement at any time upon thirty (30) days written notice to the other Party, but said written notice of termination shall not occur sooner than sixty (60) days from the execution of this Agreement. If the Port decides to terminate this Agreement, the Port shall reimburse the City an amount equivalent to the Port's proportionate share of those obligations that the City has contractually undertaken consistent with this Agreement prior to receiving the Port's notice of termination, but in no case shall the Port be obligated to reimburse the City any amounts in excess of the Port's Project funding contribution set forth in Section 4 of this Agreement.

11. INDEMNIFICATION AND HOLD HARMLESS

- 10.1 To the maximum extent permitted by law, each party shall protect, defend, indemnify, and hold harmless the other party, its officers, employees, and agents from any and all costs, claims, judgments, and/or awards of damages, arising out of or in any way resulting from the negligent acts or omissions of said indemnifying party, its officers, employees, and/or agents. Each party agrees that its obligations under this subsection extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees or agents. Each party, by mutual negotiation, hereby waives, as respects the other party only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event the indemnified party incurs any judgment, award, and/or cost arising therefrom, including attorney's fees to enforce this provision, all such judgments, awards and costs shall be recoverable from the indemnifying party.
- 10.2 The indemnification, hold harmless, and/or waiver obligation described in Section 10.1 of this Agreement shall survive the termination of this Agreement.

12. VENUE

This Agreement shall be deemed to be made in the County of King, State of Washington, and the legal rights and obligations of the City 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.

12. OTHER PROVISIONS

12.1 Severability. A determination by a court of competent jurisdiction that any provision of this Agreement or any part thereof is illegal or unenforceable shall not cancel or invalidate the remainder of such provision of this Agreement, which shall remain in full force and effect.

12.2 Interpretation. The captions of the Sections or Paragraphs of this Agreement are not a part of the terms or provisions of this Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the plural shall include the singular. The masculine, feminine and neuter genders shall each include the other.

12.3 Waivers. All waivers shall be in writing and signed by the waiving Party. Either Party's failure to enforce any provision of this Agreement shall not be a waiver and shall not prevent either Party from enforcing that provision or any other provision of this Agreement in the future.

12.4 Force Majeure. If either Party cannot perform any of its obligations due to events beyond its reasonable control (other than the payment of money), the time provided for performing such obligations shall be extended by a period of time equal to the duration of such events. Events beyond a Party's reasonable control include, but are not limited to, acts of God, war, civil commotion, labor disputes, strikes, fire, flood or other casualty, shortages of labor or materials, government regulations or restrictions and weather conditions.

12.5 Joint Drafting Effort. This Contract shall be considered for all purposes as prepared by the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

12.6 Third Party Beneficiaries. Nothing in this Agreement is intended to, nor shall be construed to give any rights or benefits in the Agreement to anyone other than the Port and the City, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the Port and the City and not for the benefit of any other party.

12.7 Authority. Each individual executing this Agreement on behalf of the Port or the City represents and warrants that he or she is duly authorized to execute and deliver the Agreement on behalf of the Port or the City.

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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement which shall be effective upon the date of recording.

PORT OF SEATTLE

THE CITY OF SEATTLE

David Soike, Interim Executive Director
Port of Seattle

Edward B. Murray, Mayor
City of Seattle

Date: _____

Date: _____

- Exhibit A:** MOU Between the Port of Seattle and the City of Seattle to Establish a Railroad Quiet Zone, authorized by The Northwest Seaport Alliance on August 1, 2017
- Exhibit B:** MOU Between the Port of Seattle and the City of Seattle to Permanently Close W Marginal Way SW, Authorized by The Northwest Seaport Alliance on August 1, 2017
- Exhibit C:** MOA Between Port of Seattle and City of Seattle, Lander Project, authorized by the Port of Seattle Commission, executed August 31, 2016
- Exhibit D:** MOU For Intergovernmental Cooperation between the Port of Seattle and The City of Seattle for Future Roadway Repair, authorized by the Port of Seattle and the Seattle City Council, executed October 30, 2015
- Exhibit E:** Map of locations referenced in this MOU
- Exhibit F:** Current Lander Summary Estimates of Cost and Funding Shares
- Exhibit G:** EMW-HHN Project details

Exhibit A

Copy of Final *The NWSA Managing Members authorized execution on August 1, 2017**

MEMORANDUM OF UNDERSTANDING BETWEEN THE PORT OF SEATTLE AND THE CITY OF SEATTLE TO ESTABLISH A RAILROAD QUIET ZONE

THIS MEMORANDUM OF UNDERSTANDING TO ESTABLISH A RAILROAD QUIET ZONE (“MOU”) is made and entered into by and between the City of Seattle, a Washington first class city and municipal corporation, through its Department of Transportation (“City” or “SDOT”) and the Port of Seattle (“Port”), either of which may be referred to hereinafter individually as “Party” or collectively as the “Parties.”

WHEREAS, The Port proposes to rehabilitate the existing marine cargo facilities at Terminal 5 at the west margin of the West Waterway in Elliott Bay; and

WHEREAS, the proposed changes include modification of intermodal rail facilities; and

WHEREAS, a Final Environmental Impact Statement prepared by the Port of Seattle identifies train horn noise required for public and private crossings and presence of human activity as an annoyance noise; and

WHEREAS, the Port, as part of its permit application for a Shoreline Substantial Development Permit, permit application Number 3019071, received from the City of Seattle (“City”) “Analysis and Decision of the Director of the Seattle Department of Construction and Inspections,” dated April 3, 2017 (“City Decision”);

NOW, THEREFORE, in consideration of mutual promises, covenants and MOU terms set forth herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged by both Parties, the Parties agree as follows:

1. PURPOSE

- 1.1. The purpose of this MOU is to describe how the Port and City will work together to secure approval of a U.S. Federal Railroad Administration (“FRA”) designated quiet zone between the west end of the train bridge across the West Waterway of the Duwamish and the Terminal 5 gate (“Quiet Zone”).

2. PORT RESPONSIBILITIES

- 2.1. The Port shall provide the funding to complete a scope of work and final design for appropriate measures to at-grade crossings and the rail corridor to reduce the need for locomotive horns that create noise impacts exceeding applicable standards and work together with the City to qualify the rail use area as a FRA-designated quiet zone.
- 2.2. The Port shall perform outreach and/or agreement with stakeholders as required through the FRA quiet zone approval process.
- 2.3. The Port shall convene regular meetings of Port and SDOT representatives to review proposed scope of work, infrastructure design and installation, technical analysis, and regulatory requirements.
- 2.4. After FRA approves final design for the Quiet Zone, the Port shall fund construction and implementation of infrastructure and other measures in the Scope of Work and final design as approved by SDOT and performed by BNSF or its designee.
- 2.5. If work performed by BNSF or its designee requires correction as identified by SDOT at the completion of construction and implementation, the Port shall fund the cost of these corrections.
- 2.6. The Port shall provide funding for the annual maintenance of the Quiet Zone as determined by BNSF Railway as necessary to retain FRA quiet zone designation.

3. CITY RESPONSIBILITIES

- 3.1. SDOT shall provide general oversight to ensure that Port responsibilities under this MOU are completed consistent with the terms of the City Decision.
- 3.2. SDOT shall review and provide direction to the Port or designated agent to ensure that after completion of Port responsibilities the rail use area will qualify for FRA quiet zone designation.
- 3.3. SDOT may prepare one or more analyses to assess consistency with City Decision and FRA quiet zone designation.
- 3.4. SDOT shall inform the Director of the Seattle Department of Construction and Inspections or his designee as to SDOT's assessment of completed Port responsibilities.
- 3.5. SDOT shall prepare and submit an analysis to BNSF Railway for engineering and construction.
- 3.6. SDOT, as required by FRA quiet zone regulations, shall come to agreement with BNSF Railway regarding final Quiet Zone design and implementation.
- 3.7. SDOT will issue the Notice to Proceed to BNSF Railway or its designated contractor to initiate construction.
- 3.8. At the completion of each improvement, the City will identify any work that does not meet the requirements as necessary to obtain FRA quiet zone designation, prepare a specific list of revisions, and submit them to BNSF or its designee for correction. The Port will fund these corrections as identified in Section 2.5.
- 3.9. SDOT will act as official petitioner to FRA for the purposes of establishing an FRA-designated quiet zone.

4. INVOICING AND PAYMENT

- 4.1. SDOT may obtain reimbursement for actual costs from the Port for the purposes of providing oversight and direction to the Port toward completing Port responsibilities and for completing

the Quiet Zone. Both Parties, in good faith, will work together to determine a reasonable methodology for establishing the total cost of work performed.

- 4.2. SDOT shall keep records as appropriate to describe work performed and actual costs incurred and submit an invoice on a regular basis, not more than once a month, for reimbursement for the actual costs incurred by SDOT, subject to any appropriations and/or other authorizations that may be necessary.

5. OWNERSHIP OF DOCUMENTATION

- 5.1. The Port shall own all documentation prepared by the Port to complete each Port responsibility. The Port shall reasonably make available all interim and final documentation to the City upon request for the purposes of timely oversight and direction by the City.
- 5.2. The City shall own all documentation prepared by the City for review and concurrence and for purposes of applying to establish the Quiet Zone. The City shall reasonably make available all interim and final documentation upon request for the purposes of review and comment by the Port.
- 5.3. The Port and City shall notify the other Party of any requests for access to materials or information prepared by either the Port or City by persons or entities outside this MOU. Both Parties recognize that they are public entities and are subject to the public disclosure laws of the State of Washington, and are not liable for breach if they disclose documents as required.

6. INDEMNIFICATION

- 6.1. **Indemnification and Hold Harmless.** Each Party 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 suits, costs, claims, actions, losses,

penalties, judgments, and /or awards of damages, of whatsoever kind arising out of, in connection with, or incident to activities undertaken pursuant to this MOU caused by or resulting from each Party's (or their respective agents and contractors) own negligent acts or omissions. Each Party agrees that it is fully responsible for the acts and omissions of its own contractors and subcontractors, their employees, and agents, acting within the scope of their employment as such, as it is for the acts and omissions of its own employees and agents. Each Party agrees that its obligations under this provision extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees or agents. The foregoing indemnity is specifically and expressly intended to constitute a waiver of each Party's immunity under Washington's Industrial Insurance Act, RCW Title 51, as respects the other Party only, and only to the extent necessary to provide the indemnified Party with a full and complete indemnity of claims made by the indemnitor's employees. The Parties acknowledge that these provisions were specifically negotiated and agreed upon by them. Each Party shall require similar indemnification language in all agreements with contractors and subcontractors entered into in conjunction with this MOU.

7. EFFECTIVE DATE AND TERM OF MOU

This MOU and its obligations shall take effect when fully executed by all Parties. The MOU will end when the Port has completed construction as per the approved and agreed design; provided, however, the Port will retain responsibility for funding for annual maintenance of the Quiet Zone as determined by BNSF Railway.

8. TERMINATION

8.1. Termination for Cause. Either Party may terminate this MOU with cause by giving the other Party written notice of such termination at least (30) calendar days prior to the effective date of termination.

9. ENTIRE MOU AND AMENDMENTS

9.1. **Entire MOU.** This document contains all term, conditions and provisions agreed upon by the Parties hereto, and shall not be modified except by written amendment.

9.2 **Amendments.** Except as otherwise provided for in this MOU, amendments may be made to this MOU within applicable authority for and on behalf of the City by its Transportation Director or authorized representative, and for and on behalf of the Port by its Director of Seaport Environmental and Planning or authorized representative and shall be in writing and executed by such duly authorized representative of each Party. No variation or alteration of the terms of this MOU shall be valid unless made in writing and signed by authorized representatives of the Parties hereto.

10. NOTIFICATION AND IDENTIFICATION OF CONTACTS

10.1. **Notice.** Any notice or communication, other than termination for cause as provided for in Subsection 8.1, required or permitted to be given pursuant to this MOU shall be in writing, and shall be sent postage prepaid by U.S. Mail, return receipt request, to the contact persons and addresses identified in Subsection 10.2 of this MOU unless otherwise indicated by the Parties in writing.

10.2 **Contact Persons and Addresses.** The contact persons for the administration of this MOU are as follows:

City of Seattle

Christopher Eaves, P.E.

700 5th Avenue, Suite 3800

Seattle, WA 98124-4996

(206) 684-4524

Port of Seattle

Anne Porter

2711 Alaskan Way

Seattle, WA 98121

(206) 787-3133

11. DISPUTE RESOLUTION PROCESS

The Parties, through their designated representatives identified in Subsection 10.2 of this MOU, shall use their best efforts to resolve any disputes pertaining to this MOU that may arise between the Parties. If these designated representatives are unable to resolve a dispute, the responsible project leads of both Parties shall review the matter and attempt to resolve it. If they are unable to resolve the dispute, the matter shall be reviewed by the department directors of the Parties or their designees. The Parties agree to exhaust each of these procedural steps before seeking to resolve disputes in a court of law or any other forum.

12. RECORDS RETENTION AND AUDIT

All MOU activities must be documented, including assessments, review comments, agendas and minutes of meetings, copies of invoices, or financial system expense reports documenting these items.

13. LEGAL RELATIONS

13.1. No Partnership or Joint Venture. No joint venture, agent-principal relationship or partnership is formed as result of this MOU. No employees or agents of one Party or any of its contractors or subcontractors shall be deemed, or represent themselves to be, employees or agents of the other Party.

13.2. No Third Party Beneficiaries. It is understood and agreed that this MOU is solely for the benefit of the Parties hereto and gives no right to any other person or entity.

- 13.3. **Assignment.** Neither this MOU, nor any interest herein, may be assigned by either Party without the prior written consent of the other Party.
- 13.4. **Binding on Successors and Assigns.** This MOU, and all of its terms, provisions, conditions, and covenants, together with any exhibits and attachments now or hereafter made a part hereof, shall be binding on the Parties and their respective successors and assigns.
- 13.5. **Mutual Negotiation and Construction.** This MOU and each of the terms and provisions hereof shall be deemed to have been explicitly negotiated between, and mutually drafted by both Parties.
- 13.6. **Waiver of Default.** Waiver of any default shall not be deemed to be a waiver of any subsequent default; as such, failure to require full and timely performance of any provision at any time shall not waive or reduce the right to insist upon complete and timely performance of any other provision thereafter. Waiver of breach of any provision of this MOU shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be modification of the terms of this MOU unless stated to be such in writing, signed by duly authorized representatives of the Parties, and attached to the original MOU.
- 13.7. **Applicable Law.** This MOU shall be governed by and construed in accordance with the laws of the State of Washington.
- 13.8. **Jurisdiction and Venue.** The King County Superior Court, situated in Seattle, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this MOU.
- 13.9. **Rights and Remedies.** The Parties' rights and remedies in this MOU are in addition to any other rights and remedies provided by law.
- 13.10. **Severability.** If any provisions of this MOU are held invalid by a court of competent jurisdiction, the remainder of the MOU shall not be affected thereby if such remainder would then continue to serve the purposes and objectives originally contemplated by the Parties.
- 13.11. **Entire MOU.** This MOU embodies the Parties' entire understanding and MOU on the issues covered by it, except as may be supplemented by subsequent written amendment to this MOU,

and supersedes any prior negotiations, representations or draft MOUs on this matter, either written or oral.

13.12. Survival. Each of the provisions of this Section 13 (Legal Relations) shall survive any expiration or termination of this MOU.

14. EXECUTION OF MOU – COUNTERPARTS

14.1. This MOU may be executed in two (2) counterparts, either of which shall be regarded for all purposes as an original.

IN WITNESS THEREOF, the Parties hereto have executed this MOU on the date indicated under their signatures.

The Port of Seattle

The City of Seattle

Signature Date

Type or Print Name

Title

Signature Date

Type or Print Name

Title

Exhibit B

Copy of Final *The NWSA Managing Members authorized execution on August 1, 2017**

MEMORANDUM OF UNDERSTANDING BETWEEN THE PORT OF SEATTLE AND THE CITY OF SEATTLE TO PERMANENTLY CLOSE W MARGINAL WAY SW

THIS MEMORANDUM OF UNDERSTANDING TO PERMANENTLY CLOSE W MARGINAL WAY SW (“MOU”) is made and entered into by and between the City of Seattle, a Washington first class city and municipal corporation, through its Department of Transportation (“City” or “SDOT”) and the Port of Seattle (“Port”), either of which may be referred to hereinafter individually as “Party” or collectively as the “Parties.”

WHEREAS, The Port proposes to rehabilitate the existing marine cargo facilities at Terminal 5 at the west margin of the West Waterway in Elliott Bay; and

WHEREAS, the proposed changes include redesign of entrance/exit gates and access points; and

WHEREAS, a Final Environmental Impact Statement prepared by the Port of Seattle states that eliminating the north leg of the five-legged SW Spokane Street / W Marginal Way SW / Chelan Avenue SW / Delridge Way SW intersection would dramatically improve traffic operations; and

WHEREAS, the Port, as part of its permit application for a Shoreline Substantial Development Permit, permit application Number 3019071, received from the City of Seattle (“City”) “Analysis and Decision of the Director of the Seattle Department of Construction and Inspections,” dated April 3, 2017 (“City Decision”);

NOW, THEREFORE, in consideration of mutual promises, covenants and MOU terms set forth herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged by both Parties, the Parties agree as follows:

1. PURPOSE

- 1.1. The purpose of this MOU is to describe how the Port and City will work together to accomplish a permanent closure of the surface railroad crossing of W Marginal Way SW north of SW Spokane St, across the Terminal 5 lead railroad tracks, to all motorized traffic, and retain and upgrade nonmotorized access.
- 1.2. The closure will take place before or when the number of lifts at the Terminal 5 On-Dock Intermodal Yard exceeds 245,000 lifts in a 12-month period (equivalent to 426,300 intermodal TEUs).

2. PORT RESPONSIBILITIES

- 2.1. The Port shall provide the funding to complete a scope of work that will identify appropriate measures to design and implement street closure measures in compliance with Condition 2 in the City Decision.
- 2.2. The Port shall provide the funding to implement measures associated with the street closure identified in the scope of work defined in 2.1 and as approved by SDOT, before or when the lift volumes in Section 1.2 are reached.
- 2.3. The Port shall coordinate with adjacent businesses north of West Marginal Way SW between the Terminal 5 gate and under the West Seattle Freeway prior to implementation of any access, signalization, signage, or striping changes in the public right-of-way adjacent to and connecting Terminal 7 to West Marginal Way SW under the West Seattle Freeway and prior to approval by SDOT.
- 2.4. The Port shall convene regular meetings of Port and SDOT representatives to review the proposed scope of work and to implement the street closure.
- 2.5. The Port shall retain nonmotorized access across active railroad tracks at W Marginal Way SW, and upgrade as needed to maintain access before and after the street is closed to motorized traffic.

- 2.6. The Port shall install a pedestrian pathway extending southeast from the northeast corner of the SW Spokane St/Delridge Way SW/W Marginal Way SW intersection to the crossing to the east for use when the primary nonmotorized crossing at W Marginal Way SW is blocked by a train.

- 2.7. The Port shall complete an analysis of the existing Terminal 5 bridge to determine if it is feasible to reconfigure existing lanes to accommodate Terminal 5 truck service as well as emergency access and heavy vehicle movement to industrial sites adjacent to Terminal 5, and north and east of rail lines that provide service to the terminal and the West Seattle yard. The analysis will specify lane dimensions, truck circulation and queue capacity for all lanes. The Port will submit the analysis to SDOT for review and approval of the re-channelization changes should the study indicate that the bridge could support three lanes of traffic. If the Port, SDOT and/or the Seattle Fire Department (SFD) determine that the existing bridge structure is insufficient to provide the three-lane cross section, the Port will provide alternate truck and emergency access to these sites equivalent to the mitigation provided by the three-lane cross section subject to the review and approval of SDOT and SPD, to be implemented prior to occupancy of Terminal 5 by a tenant.

- 2.8. The Port shall monitor and report the number of lifts annually at the Terminal 5 On-Dock Intermodal Yard to SDOT, noting specifically when the number of lifts approaches the threshold for street closure.

- 2.9. If work performed by the Port or its designee requires correction to meet the agreed plan per 2.1 above as identified by SDOT at the completion of road closure construction, the Port shall fund the cost of corrections.

3. CITY RESPONSIBILITIES

- 3.1. SDOT shall provide general oversight, direction, review and approval to ensure that Port responsibilities under this MOU are completed consistent with the terms of the Decision.

- 3.2. SDOT shall provide direction, review, and approval of all Port measures needed to safely close the street to ensure that after completion of Port responsibilities that measures will promote safe and efficient transportation operations.
- 3.3. At the completion of each improvement, the City will identify any work that does not meet the terms of the Decision, prepare a specific list of revisions, and submit them to the Port or its designee for correction.
- 3.4. For purposes of safety, SDOT may approve construction of quiet zone improvements as set forth in the memorandum of understanding between the Port and the City to establish a railroad quiet zone, that supersede the schedule for providing public access using permanent nonmotorized access improvements. Reasonable temporary nonmotorized access shall be provided during construction.
- 3.5. SDOT may prepare one or more additional analyses to assess design, implementation and efficacy of Port measures to ensure consistency with the Decision.
- 3.6. SDOT shall inform the Director of the Seattle Department of Construction and Inspections or his designee as to SDOT's assessment of completed Port responsibilities.

4. INVOICING AND PAYMENT

- 4.1. SDOT may obtain reimbursement for actual costs from the Port for the purposes of providing oversight and direction to the Port toward completing Port responsibilities and for completing any assessment of Port-implemented measures. Both Parties, in good faith, will work together to determine a reasonable methodology for establishing the total cost of work performed.
- 4.2. SDOT shall keep records as appropriate to describe work performed and actual costs incurred and, if it is obtaining reimbursement for actual costs, submit an invoice on a regular basis, not

more than once a month, for reimbursement for the actual costs incurred by SDOT, subject to any appropriations and/or other authorizations that may be necessary.

5. OWNERSHIP OF DOCUMENTATION

- 5.1. The Port shall own all documentation prepared by the Port to complete each Port responsibility. The Port shall reasonably make available all interim and final documentation to the City upon request for the purposes of timely oversight and direction by the City.
- 5.2. The City shall own all documentation prepared by the City for review and concurrence and for purposes of assessing Port measures. The City shall reasonably make available all interim and final documentation upon request for the purposes of review and comment by the Port.
- 5.3. The Port and City shall notify the other Party of any requests for access to materials or information prepared by either the Port or City by persons or entities outside this MOU. Both Parties recognize that they are public entities and are subject to the public disclosure laws of the State of Washington, and are not liable for breach if they disclose documents as required.

6. INDEMNIFICATION

- 6.1. **Indemnification and Hold Harmless.** Each Party 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 suits, costs, claims, actions, losses, penalties, judgments, and /or awards of damages, of whatsoever kind arising out of, in connection with, or incident to activities undertaken pursuant to this MOU caused by or resulting from each Party's (or their respective agents and contractors) own negligent acts or omissions. Each Party agrees that it is fully responsible for the acts and omissions of its own contractors or subcontractors, their employees and agents, acting within the scope of their employment as such, as it is for the acts and omissions of its own employees and agents. Each Party agrees that its obligations under this provision extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees or agents. The foregoing indemnity is specifically and expressly intended to constitute a waiver of each Party's immunity under Washington's Industrial Insurance Act, RCW Title 51, as respects the other Party only, and only to the extent necessary to provide the indemnified Party with a full and complete

indemnity of claims made by the indemnitor's employees. The Parties acknowledge that these provisions were specifically negotiated and agreed upon by them. Each Party shall require similar indemnification language in all agreements with contractors or subcontractors entered into in conjunction with this MOU.

7. EFFECTIVE DATE AND TERM OF MOU

7.1. This MOU and its obligations shall take effect when fully executed by all Parties. The MOU will end when the Port has completed construction as per the approved and agreed design.

8. TERMINATION

8.1. **Termination for Cause.** Either Party may terminate this MOU with cause by giving the other Party written notice of such termination at least (30) calendar days prior to the effective date of termination, and allowing the other Party to remedy the cause of termination.

9. ENTIRE MOU AND AMENDMENTS

9.1. **Entire MOU.** This document contains all term, conditions and provisions agreed upon by the Parties hereto, and shall not be modified except by written amendment.

9.2 **Amendments.** Except as otherwise provided for in this MOU, amendments may be made to this MOU within applicable authority for and on behalf of the City by its Transportation Director or authorized representative, and for and on behalf of the Port by its Director of Seaport Environmental and Planning or authorized representative and shall be in writing and executed by such duly authorized representative of each Party. No variation or alteration of the terms of this MOU shall be valid unless made in writing and signed by authorized representatives of the Parties hereto.

10. NOTIFICATION AND IDENTIFICATION OF CONTACTS

10.1. **Notice.** Any notice or communication, other than termination for cause as provided for in Subsection 8.1, required or permitted to be given pursuant to this MOU shall be in writing, and shall be sent postage prepaid by U.S. Mail, return receipt request, to the contact persons and addresses identified in Subsection 10.2 of this MOU unless otherwise indicated by the Parties in writing.

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Seattle, WA 98124-4996
(206) 684-4524

Port of Seattle

Anne Porter
2711 Alaskan Way
Seattle, WA 98121
(206) 787-3133

11. DISPUTE RESOLUTION PROCESS

The Parties, through their designated representatives identified in Subsection 10.2 of this MOU, shall use their best efforts to resolve any disputes pertaining to this MOU that may arise between the Parties. If these designated representatives are unable to resolve a dispute, the responsible project leads of both Parties shall review the matter and attempt to resolve it. If they are unable to

resolve the dispute, the matter shall be reviewed by the department directors of the Parties or their designees. The Parties agree to exhaust each of these procedural steps before seeking to resolve disputes in a court of law or any other forum.

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All MOU activities must be documented, including assessments, review comments, agendas and minutes of meetings, copies of invoices, or financial system expense reports documenting these items.

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13.1. **No Partnership or Joint Venture.** No joint venture, agent-principal relationship or partnership is formed as result of this MOU. No employees or agents of one Party or any of its contractors or subcontractors shall be deemed, or represent themselves to be, employees or agents of the other Party.

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13.7. Applicable Law. This MOU shall be governed by and construed in accordance with the laws of the State of Washington.

13.8. Jurisdiction and Venue. The King County Superior Court, situated in Seattle, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this MOU.

13.9. Rights and Remedies. The Parties' rights and remedies in this MOU are in addition to any other rights and remedies provided by law

13.10. Severability. If any provisions of this MOU are held invalid by a court of competent jurisdiction, the remainder of the MOU shall not be affected thereby if such remainder would then continue to serve the purposes and objectives originally contemplated by the Parties.

13.11. Entire MOU. This MOU embodies the Parties' entire understanding and MOU on the issues covered by it, except as may be supplemented by subsequent written amendment to this MOU, and supersedes any prior negotiations, representations or draft MOUs on this matter, either written or oral.

13.12. Survival. Each of the provisions of this Section 13 (Legal Relations) shall survive any expiration or termination of this MOU.

14. EXECUTION OF MOU – COUNTERPARTS

14.1. This MOU may be executed in two (2) counterparts, either of which shall be regarded for all purposes as an original.

**MEMORANDUM OF AGREEMENT BETWEEN
PORT OF SEATTLE AND CITY OF SEATTLE**

This Memorandum of Agreement (the "Agreement") is made and entered into by the Port of Seattle, a municipal corporation of the State of Washington, hereinafter called the "Port", and City of Seattle, a municipal corporation of the State of Washington, hereinafter called the "City". As used in this Agreement, "Project" means the construction of S Lander St Grade Separation Project, a four-lane bridge spanning the BNSF railroad tracks between 1st and 4th Avenues South. The Port and the City are also referred to in this Agreement collectively as "the Parties", and individually as a "Party."

RECITALS

WHEREAS, S. Lander St is a major east-west corridor within the Duwamish industrial area where general purpose, transit, and freight traffic cross the mainline and industrial spur railroad tracks; and

WHEREAS, the Port, City of Seattle, State of Washington, private sector partners, and other agencies within Puget Sound and the state have developed and signed funding agreements for freight infrastructure improvements, including SR 519, the Spokane St Viaduct, the E Marginal Way Grade Separation, Duwamish Intelligent Transportation Systems, the Galer St Flyover, and other FAST Corridor projects, all of which provide freight mobility benefits for the region; and

WHEREAS, both S Lander St, and other at-grade crossings in SODO, are routes for freight passing through Port facilities, especially those operated as container terminals by the Northwest Seaport Alliance and local distribution facilities; and

WHEREAS, S Holgate St fulfills an important function that is not intended to be replaced by the new S Lander Grade Separation Project; and

WHEREAS, the proposed Lander Overpass will provide a benefit to the Port and the industrial areas of the Duwamish Manufacturing-Industrial Center (as designated by the Puget Sound Regional Council) by reducing traffic congestion in and around Port facilities; and

WHEREAS, the City has explored alternative design options for the Lander Overpass over several years and is working to achieve a design and funding strategy for construction in 2018; and

WHEREAS, train crossings of S Lander St currently close the street to through traffic over 4.5 hours per day, and those closures are forecast to increase as rail travel is projected to increase significantly; and

WHEREAS, the Project will improve overall traffic congestion, including for adjacent east-west connectors on the Spokane St Viaduct and SR519/Atlantic St; and

WHEREAS, the Project will improve safety for drivers, bicyclists, and pedestrians by separating them from the grade crossing; and

WHEREAS, the Project will decrease air emissions due to idling, and improve trucking efficiencies to reduce operating costs; and

WHEREAS, the Project will support both existing and new jobs in the Duwamish Manufacturing-Industrial Center and will create 125 new jobs during construction; and

WHEREAS, the City is seeking and has been awarded grant funding from a broad group of partners; and

WHEREAS, the Port supported the City's application for a Fostering Advancements In Shipping And Transportation For The Long-Term Achievement Of National Efficiencies (FASTLANE) grant and for which a \$45,000,000 award is currently proposed, \$8,000,000 Freight Mobility Strategic Investment Board (FMSIB) grant, and various grants from the Puget Sound Regional Council;

NOW, THEREFORE, the Parties agree as follows:

1. SCOPE OF WORK

- 1.1. Project Title: The S Lander St Grade Separation Project (CIP Project TC366150).
- 1.2. Description: The Project will construct a bridge on S Lander St between 1st Ave S and 4th Ave S spanning the BNSF mainline railroad tracks, including a separated multi-use path (or equivalent separated facility), and four, 11-foot travel lanes for vehicles. Intersections at 1st and 4th Avenues provide for separated left-turning movements with sufficient capacity for trucks to clear the intersection. The grade will not exceed 7.5% and signalization will be implemented such that trucks are not predicted to need to stop on the uphill grade based on the 2016 Transportation Discipline Report (DRAFT dated June 30, 2016). The construction phase cost of the Project is currently estimated to be One Hundred and Twenty-Five Million Dollars (\$125,000,000) by the City.
- 1.3. Schedule: The Project is anticipated to begin construction in 2018 and open to traffic in late 2019, with Final Acceptance expected in 2020.

2. TERMS AND CONDITIONS

- 2.1. Implementing Agency: As the implementing agency the City shall ensure Project compliance with the State Environmental Policy Act (SEPA) and the National Environmental Policy Act (NEPA), and shall be responsible for obtaining all necessary permits and/or agreements. The City shall be responsible for accomplishing all aspects of the Project scope.
- 2.2. Contact Persons: The Parties to this Agreement shall designate person(s) to act as liaison for the Project. The contact persons shall meet on a mutually agreed upon, scheduled basis at a frequency appropriate to the phase and status of the Project.
- 2.3. Scope: The Project's defined scope as it relates to freight benefits shall be based on input from the funding partners. Any changes during design or construction to the functionality of the Project and benefits to the Port, as described in Section 1.2, and further illustrated by the description of Project benefits, and the Project plan as provided in Exhibits B and C, shall require the Port's review to maintain the Port's funding obligation. (See Exhibit B and Exhibit C) The Port's funding is contingent upon the commitments outlined in Section 1.2.
- 2.4. System Mobility: The City recognizes that other east-west corridors in the Duwamish provide significant utility to the Port. The City shall not reduce capacity on other east-west corridors in the Duwamish when the Project is completed without providing notice to and opportunity for input from the Port. Specifically, S Holgate St provides connections from 1st Ave S to 6th Ave S over the mainline railroad crossing with 4 lanes of capacity, as well as connections from there to Airport Way and on an elevated bridge to Beacon Hill. The improvements at S Lander St should add to the mobility in the neighborhood, and are not intended to be offset by other lane reductions. The City will work with the Port and others to maintain efficient freight mobility throughout the Duwamish Manufacturing/Industrial Center (MIC). Should there be a specific proposal to close S Holgate St, or if safety issues arise on S Holgate St or other critical freight routes, or should the City be required by outside entities to perform mandated actions that require changes, the City will include the Port in discussions regarding the resolution of the issue, and specifically discuss how mobility is maintained.

- 2.5. Industrial Lands Protection: The City will support efforts to protect, preserve, and enhance industrial lands and highlight the critical connection to freight mobility and other maritime issues.
- 2.6. Progress Report: The City shall provide the Port with a report that includes a copy of the WSDOT/FHWA approved Project schedule (or analogous format), and final engineer's estimate with contract bid items or summary of values. At the time of making application for each payment under Section 3, the City shall provide to the Port a progress report. The progress report will include a narrative describing the Project progress since the last report, an updated Project construction schedule showing the current progress and percent completion of the major work elements, and a tabulation of the construction progress payments made such that percent completion can be determined.
- 2.7. Inspections: The City shall provide opportunities for Project inspection by issuance of Notices of Final Inspection and/or Interim Final Inspections by Project Phase to the Port and other funding partners. The Port shall participate in inspections of the Project within the specified timeframe to inform punch-list requirements for Project Completion and to confirm its satisfaction that Project improvements, as defined in Section 1.2 and 2.3, are in place and fully operational. Prior to issuance of Notice of Physical Completion (to the Contractor), the City will provide the Port the opportunity for verification of Final Inspection work. Project conditions existing at the time of the Project's Final Inspection, but not identified by the Port until the request for final payment is made under 3.6, shall not be grounds for payment to be withheld.
- 2.8. Public Involvement: The City shall be responsible for the continued public involvement and/or community outreach process for the Project. The City shall develop a Public Involvement Plan for the Project with input from the Port and shall be specific with requests should it desire engagement from the Port.

3. COST REIMBURSEMENT AND FUNDING

The Port Commission authorizes the execution of the Agreement and agrees to contribute an amount of Five-Million Dollars (\$5,000,000) for the Project subject to the following conditions:

- 3.1. All environmental review and permitting will be completed in accordance with Federal, State, and local requirements;
- 3.2. The Port and City continue to work together to ensure that the Project development and implementation during design and construction meet the needs of both Parties ;
- 3.3. The Project is constructed as described in Section 1.2 or modified consistent with Section 2.3;
- 3.4. The Port's total contribution shall not exceed Five Million Dollars (\$5,000,000) as a cash payment, but pay be reduced as provided in Sections 3.5 and 3.7.
- 3.5. Total construction cost is currently estimated to be One-Hundred Twenty-Five Million Dollars (\$125,000,000). (See Exhibit D, Summary Estimates of Cost and Funding Shares, attached.)
The Port shall make three payments as follows:
- The first payment of Two Million (\$2,000,000) shall occur after the City has made progress payments to the Contractor totaling at least 50% of the construction Contract value. (This is expected in 2018).
 - The second payment of Two Million Dollars (\$2,000,000) shall occur upon Substantial Completion (as defined in the construction contract) of the Project, as issued by the City to the Contractor.
 - The final payment of One Million Dollars (\$1,000,000) shall occur upon Final Acceptance (as defined in the construction contract), subject to the requirements of Section 2.7 and Section 3.6, and the Port's receipt of a progress report and a letter from the City Project Manager attaching the Certificate of Final Acceptance. This is expected in 2020. The final payment may be subject to a reduction based on Section 3.7 of this Agreement.

- 3.6. Prior to application for the final payment, the City shall provide opportunity for the Port to inspect and verify that the requirements of Physical Completion have been met in accordance with Section 2.7. The City shall issue a letter to the Port requesting final payment upon Final Acceptance.
- 3.7. In the event the total construction contract value at the time of the Project's Final Acceptance ("Final Cost") is less than the Project estimate at the time of bid ("Bid Estimate"), the Port's total funding contribution shall be adjusted by a percentage that represents the proportional share of \$5,000,000 to the Bid Estimate.

4. AMENDMENT

Either Party may request changes to the provisions contained in this Agreement. Any change to this Agreement must be mutually agreed to by both Parties, in writing and executed with the same formalities as the original Agreement.

5. NOTIFICATION

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 City: Jessica Murphy, Project Manager
 700 Fifth Ave, Suite 3700
 PO Box 4996
 Seattle, WA 98124-4996

To the Port: Geraldine Poor, Regional Transportation Manager
 Port of Seattle
 2711 Alaskan Way
 Seattle, WA 98121

6. RECORDS RETENTION AND AUDIT

During the progress of the work on the Project and for a period not less than three (3) years from the date of final payment by the Port to the City, the records and accounts pertaining to the Project and accounting thereof are to be kept available for inspection and audit by the Port and the City shall provide the Port with copies of all records, accounts, documents, or other data pertaining to the Project upon the Port's request. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claims, or audit findings have been resolved, even though such litigation, claim, or audit continues past the typical three year retention period. This provision is not intended to alter or amend records retention requirements established by applicable state and federal laws.

7. DISPUTES

The designated representatives under section 5.0, NOTIFICATION, 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 directors for each Party shall review the matter and attempt to resolve it. If the Project 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 Parties agree to exhaust each of these procedural steps before seeking to resolve disputes in a court of law or any other forum.

8. EFFECTIVENESS AND DURATION

This Agreement is effective upon the last date of execution by both Parties and will remain in effect until Project completion, unless otherwise stated herein or unless amended or terminated.

9. TERMINATION

Either Party may terminate this Agreement at any time upon thirty (30) days written notice to the other Party, but said written notice of termination shall not occur sooner than sixty (60) days from the execution of this Agreement. If either Party decides to terminate this Agreement, the Port shall reimburse the City its proportionate share of all costs payable under this Agreement at the time of notice of termination, including those obligations that the City has contractually undertaken prior to the notice of termination, but in no case shall the Port be obligated to reimburse the City any amounts in excess of the Port's Five Million Dollars (\$5,000,000) contribution set forth in Section 3 of this Agreement.

10. INDEMNIFICATION AND HOLD HARMLESS

10.1 To the maximum extent permitted by law, each party shall protect, defend, indemnify, and hold harmless the other party, its officers, employees, and agents from any and all costs, claims, judgments, and/or awards of damages, arising out of or in any way resulting from the negligent acts or omissions of said indemnifying party, its officers, employees, and/or agents. Each party agrees that its obligations under this subsection extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees or agents. Each party, by mutual negotiation, hereby waives, as respects the other party only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event the indemnified party incurs any judgment, award, and/or cost arising therefrom, including attorney's fees to enforce this provision, all such judgments, awards and costs shall be recoverable from the indemnifying party.

10.2 The indemnification, hold harmless, and/or waiver obligation described in Section 10.1 of this Agreement shall survive the termination of this Agreement.

11. VENUE

This Agreement shall be deemed to be made in the County of King, State of Washington, and the legal rights and obligations of the City 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.

12. OTHER PROVISIONS

12.1 **Severability.** A determination by a court of competent jurisdiction that any provision of this Agreement or any part thereof is illegal or unenforceable shall not cancel or invalidate the remainder of such provision of this Agreement, which shall remain in full force and effect.

12.2 **Interpretation.** The captions of the Sections or Paragraphs of this Agreement are not a part of the terms or provisions of this Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the plural shall include the singular. The masculine, feminine and neuter genders shall each include the other.

12.3 **Construction Contract Terms.** The terms Final Inspection, Interim Final Inspections, Project Phase, Project Completion, Physical Completion, Substantial Completion, Final Acceptance shall

have the meaning set forth in the City's standard specifications found at <http://www.seattle.gov/util/Engineering/StandardSpecsPlans/index.htm>

12.3 Waivers. All waivers shall be in writing and signed by the waiving Party. Either Party's failure to enforce any provision of this Agreement shall not be a waiver and shall not prevent either Party from enforcing that provision or any other provision of this Agreement in the future.

12.4 Force Majeure. If either Party cannot perform any of its obligations due to events beyond its reasonable control (other than the payment of money), the time provided for performing such obligations shall be extended by a period of time equal to the duration of such events. Events beyond a Party's reasonable control include, but are not limited to, acts of God, war, civil commotion, labor disputes, strikes, fire, flood or other casualty, shortages of labor or materials, government regulations or restrictions and weather conditions.

12.5 Joint Drafting Effort. This Contract shall be considered for all purposes as prepared by the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

12.6 Third Party Beneficiaries. Nothing in this Agreement is intended to, nor shall be construed to give any rights or benefits in the Agreement to anyone other than the Port and the City, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the Port and the City and not for the benefit of any other party.

12.7 Authority. Each individual executing this Agreement on behalf of the Port or the City represents and warrants that he or she is duly authorized to execute and deliver the Agreement on behalf of the Port or the City.

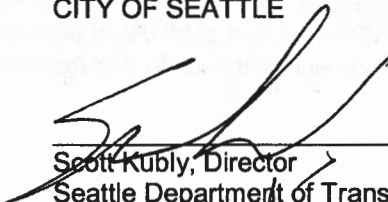
12.8 Exhibits. This Agreement includes the following exhibits: Exhibit A: Lander Vicinity Map; Exhibit B: Project Benefits; Exhibit C: Project Plan & Profile and Cross Sections; and Exhibit D: Summary Estimate of Cost and Funding Shares which shall be deemed incorporated into this Agreement by this reference.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement which shall be effective upon the last date set forth below.

PORT OF SEATTLE

CITY OF SEATTLE


Theodore J. Fick, Chief Executive Officer


Scott Kubly, Director
Seattle Department of Transportation

Date: 8/31/2016

Date: 8/21/16



MEMORANDUM OF UNDERSTANDING

FOR INTERGOVERNMENTAL COOPERATION BETWEEN THE PORT OF SEATTLE AND THE CITY OF SEATTLE FOR FUTURE ROADWAY REPAIR AND ROADWAY CONSTRUCTION PROJECTS LOCATED WITHIN SEATTLE'S HEAVY HAUL NETWORK

This Memorandum of Understanding ("MOU") is entered into by the PORT OF SEATTLE, a port district and Washington municipal corporation ("Port"), and the CITY OF SEATTLE, a Washington municipal corporation ("City"), (collectively the "Parties").

WHEREAS, import containers that are shipped by rail from the Port can exceed weight limits allowed on state highways and local streets; and

WHEREAS, the Port is served by two intermodal rail hubs – the Burlington Northern Railway's Seattle International Gateway and Union Pacific's Argo Yard – that require containers to be trucked (drayed) on local streets from the Port's marine terminals; and

WHEREAS, local transload businesses that reconsolidate container loads may also receive heavy import containers that must be trucked from the marine or rail terminals; and

WHEREAS, to address this conflict, other West Coast ports, including Los Angeles, Long Beach and Tacoma, have created heavy haul networks to move cargo over short distances at low speeds within their harbor areas on standard marine chassis; and

WHEREAS, the City's existing load limits put the Port at a competitive disadvantage with other West Coast ports; and

WHEREAS, Chapter 46.44 of the Revised Code of Washington authorizes the City to issue a special permit authorizing the applicant to operate or move a vehicle or combination of vehicles of a load exceeding the maximum weight upon City rights of way; and

WHEREAS, a heavy haul network will create a better working environment for truck owners and shippers by enabling them to compete more effectively for cargo by reducing costs and expediting the movement of goods, without compromising safety; and

WHEREAS, shippers, truck owner-operators, trucking companies, railroads and the Port have an interest in increasing cargo volumes through the city and are requesting the establishment of a heavy haul network linking marine terminals to local railheads and nearby transload facilities; and

WHEREAS, the City, Port, and the State of Washington have made significant investments to maintain and improve access to and from the marine port with rebuilt roadways, new bridges, and new road connections; and

WHEREAS, the City supports the Port's efforts to enhance its competitiveness in international and national trade; and

WHEREAS, the City wants to implement transportation related measures that will grow Seattle's diverse economy and support living wage jobs; and

WHEREAS, the City and Port agree that creating a heavy haul network, allowing overweight trucks serving Port facilities to operate on the network under permit, will result in some accelerated damage to existing roadways and additional cost for future roadway repair and rebuilding projects within the Heavy Haul Network; and

WHEREAS, RCW 53.08.330 and 53.08.340 authorize the expenditure of Port funds in conjunction with plans of the local jurisdiction in order to upgrade, improve or repair roads serving Port facilities; and

WHEREAS, the City and Port agree that implementing a heavy haul network will require an enforcement officer to monitor the network and ensure the safety for all roadway users;

NOW THEREFORE, in consideration of mutual promises and covenants contained herein, the Parties hereby agree to the terms and conditions as follows:

1.0 ADOPTION OF HEAVY HAUL NETWORK LEGISLATION

1.1 The City will make its best effort to adopt heavy haul legislation in 2015.

- 1.2 To support the legislative process, the Port will satisfy all reasonable requests from the City for supporting materials and information regarding Port operations.
- 1.3 This MOU will commence (“Commencement Date”) on the effective date of City heavy haul network legislation that includes all of the following elements:
- i. The adopted heavy haul network legislation includes all routes contained in Attachment A to this MOU, incorporated herein by this reference; and
 - ii. The adopted heavy haul network legislation allows for a maximum tandem drive axle weight of forty three thousand (43,000) pounds and a maximum gross vehicle weight of ninety eight thousand (98,000) pounds;

2.0 DETERMINING THE IMPACT OF OVERWEIGHT TRUCKS

- 2.1 The City and the Port engineers agree that allowing overweight trucks that serve Port facilities on the roadways that connect Port marine terminals to local railheads and nearby transload facilities, identified on Attachment A to this MOU (“Heavy Haul Network”), will result in some accelerated damage to such roadways and additional costs for future roadway repair or rebuilding projects within the Heavy Haul Network, described as follows:
- i. Accelerated damage of existing roadways is estimated to be equal to approximately ten percent (10%) of the cost to repair said roadway; and
 - ii. Additional project costs for roadway repair and construction projects is estimated to be equal to approximately ten percent (10%) of the cost of said project.
- 2.2 The City and Port agree that the City and Port will jointly commission and pay equal shares for the actual costs of a study to determine the actual impacts to the Heavy Haul Network by trucks with Heavy Haul Network permits serving Port facilities and moving cargo within the Heavy Haul Network, including additional costs for future roadway repair and rebuilding projects within the Heavy Haul Network (“Study”).
- i. The City and Port must commission the Study within two (2) months of the Commencement Date.
 - ii. The consultant hired by the City to conduct the Study will, among other things, complete a count of overweight vehicles using the Heavy Haul Network.
 - iii. The Study must be complete within six months of the Commencement Date of this MOU.
 - iv. The Port will reimburse the City for its equal share of the Study costs within thirty (30) days of receiving a copy of the Study and the City’s request for reimbursement.

- 2.3. The City and Port agree that, in order to determine future impacts to the Heavy Haul Network by trucks with Heavy Haul Network permits serving Port facilities, the Study will be updated every (5) five years and be issued before June 30, 2021, 2026, and 2031 (collectively, the "Study Updates").
- 2.4 The City and Port agree that all dollar figures contained within this MOU will be adjusted to current dollars for each of the Study Updates. The dollar figures will be updated using the Consumer Price Index provided by the United States Bureau of Labor Statistics or its successor.

3.0 PORT FINANCIAL COMMITMENT

- 3.1 Subject to Section 1.3, the Port agrees to pay the City up to Two Hundred and Fifty Thousand Dollars (\$250,000) in support of the Heavy Haul Network implementation and operations through 2017, detailed as follows:

- i. Upon adoption of the Heavy Haul Network legislation, not to exceed Ninety Thousand Dollars (\$90,000) to account for one-time start-up costs, including an enforcement vehicle, portable truck scales, and direct administrative costs to establish the new Heavy Haul Network permit type. The Port will reimburse the City no later than thirty (30) days after the Port's receipt of a letter from the City documenting actual, direct start-up costs payable under this subsection 3.1(i).
- ii. In 2016, not to exceed Ninety Thousand Dollars (\$90,000) towards the difference between annual Heavy Haul Network permit revenues and annual Heavy Haul Network direct operational costs.
- iii. In 2017, not to exceed Seventy Thousand Dollars (\$70,000) towards the difference between annual Heavy Haul Network permit revenues and annual Heavy Haul Network direct operational costs.
- iv. All requests for payment by the City under subsections 3.1(ii) and (iii) will include a letter from the City identifying the applicable annual Heavy Haul Network permit revenues and the annual Heavy Haul Network direct operational costs. The Port will make payment to the City no later than thirty (30) days after receiving the information required in this subsection 3.1(iv).

- 3.2 Subject to Section 1.3, the Port agrees to pay the City a minimum of Ten Million Dollars (\$10,000,000) and maximum of Twenty Million Dollars (\$20,000,000) over the next twenty (20) years to account for accelerated damage to existing roadways within the Heavy Haul Network by trucks with Heavy Haul Network permits serving Port facilities, and additional costs for future roadway repair or rebuilding projects within the Heavy Haul Network, subject to the following:

- i. The City and the Port will, by agreement, develop a list and schedule for Heavy Haul Network project(s).

- ii. If the Study shows that accelerated damage to existing roadways by trucks with Heavy Haul Network permits serving Port facilities, and additional costs for future roadway repair or rebuilding projects within the Heavy Haul Network totals between Ten Million Dollars (\$10,000,000) and Twenty Million Dollars (\$20,000,000), the Port will pay the City in accordance with the provisions of Section 3.2.
- iii. If the Study or any of the Study Updates shows that accelerated damage to existing roadways by trucks with Heavy Haul Network permits serving Port facilities, and additional costs for future roadway repair or rebuilding projects within the Heavy Haul Network totals either less than Ten Million Dollars (\$10,000,000) or more than Twenty Million Dollars (\$20,000,000), the Port and City agree to renegotiate the terms of this MOU.
- iv. The Port's contributions under this Section 3.2 will not exceed Two Million Dollars (\$2,000,000) during any single calendar year during the term of this MOU, unless the Port Commission and the City agree to a greater amount to achieve the goals of this MOU.
- v. When developing designs for roadway repair and rebuilding projects within the Heavy Haul Network, the City will consult with the Port during conceptual design and at regular intervals during design and construction. The City will make every effort to devise project design components that maintain efficient freight movements throughout the Heavy Haul Network. Where feasible, such designs will consider separation of transportation modes to preserve and enhance multi-modal safety and mobility.
- vi. The Port will not be required to make any contributions under this Section 3.2 before the City has certified that a Heavy Haul Network project has reached substantial completion by sending the Port a copy of the Seattle Department of Transportation Engineer letter to the City's contractor establishing the substantial completion date, as required by the City's standard specifications for construction projects. The City and the Port will agree on the minimum advance notification to the Port of a particular project's substantial completion and the Port reserves the right to request inspection of any such project prior to issuance of substantial completion.
- v. All requests for payment by the City under this Section will include a letter from the City identifying the project, itemizing project categories and expenditures that support reimbursement to the City for actual direct costs incurred by the City on a Heavy Haul Network project. The Port will make payment to the City no later than thirty (30) days after receiving the information required in this Section.
- vi. In the event the Port secures funding from other non-City sources for the Heavy Haul Network roadway repair and construction projects, the amount of such funding will be credited against the Port's obligations under this Section 3.2.

4.0 DURATION

4.1 This MOU will commence on a date consistent with the requirements of Section 1.3 and will remain in effect until December 31, 2035, unless earlier terminated in accordance with Section 5.1.

5.0 AMENDMENT AND TERMINATION

5.1 The MOU may be terminated prior to December 31, 2035, only by a written instrument executed by each of the parties hereto. If it is impracticable to perform under the MOU due to a change in the law, the parties will first seek to amend the MOU; if amendment is not possible, the MOU may be terminable by either party.

6.0 SUCCESSORS AND ASSIGNS

6.1 This MOU will be binding and inure to the benefit of the Parties hereto and their respective successors and assigns.

6.2 Neither this MOU nor any term or provision hereof, or any inclusion by reference, will be construed as being for the benefit of any party not a signatory hereto (except for any successors and assigns thereto). No other person or organization will have any right of action based upon any provision of this MOU.

7.0 DISPUTE RESOLUTION

7.1 If disputes occur, the City and Port will designate representatives for the purpose of resolving disputes that arise under this Agreement:

7.2 The Designated Representatives will use their best efforts to resolve disputes between the parties. If the Designated Representatives are unable to resolve a dispute, the responsible department directors will review the matter and attempt to resolve it. If they are unable to resolve the dispute, the matter will be reviewed by the chief executive officer of each party or his or her designee. The parties agree to exhaust each of these procedural steps before seeking to resolve disputes in a court of law or any other forum.

7.3 In any action by a party hereto required to enforce this MOU, each party should bear its own costs including attorney's fees and all reasonable costs and expenses incurred as a result of a breach of this MOU, and of bringing or defending the suit.

8.0 NOTICES

8.1 Any notice required or permitted to be given pursuant to this MOU will be in writing and will be deemed to have been duly given when delivered in person or upon receipt after dispatch by certified or registered first class mail, postage prepaid, return receipt requested, to the party to whom the same is so given or made, to the addresses set forth in Section 8.0, or to such other address as any party may designate by giving notice to the other party hereto.

9.0 INDEMNIFICATION AND HOLD HARMLESS

- 9.1 Each of the Parties will 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 City will 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 Heavy Haul Network 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 will 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 Heavy Haul Network projects, the Port, in its sole discretion, may defend such legal action or may tender the defense to the City within ten (10) business days after the service of such legal action. Failure to tender the legal action to the City as provided herein will constitute a waiver of Port's right, if any, to seek indemnity for the claims asserted therein.
- 9.3 The indemnification, hold harmless, and/or waiver obligations described in this Section will survive the termination of this MOU. In any action to enforce the provisions of this Section, the prevailing Party will be entitled to recover its reasonable attorney's fees and costs incurred from the other Party.

10. RECORDS RETENTION AND AUDIT

- 10.1 The Port or its designee will have the right to inspect, audit and/or copy records supporting or pertaining to the Port's funding contributions to the Heavy Haul Network throughout the term (and any extensions) of this MOU and accounting thereof for the purpose of determining anything that is of consequence to this MOU.
- 10.2 The City will retain the records pertaining to or supporting the Port's funding contributions to the Heavy Haul Network for the periods required below. The City will also ensure that relevant wage, payroll and cost records of all contractors, subcontractors and suppliers at all tiers will be retained and open to similar inspection or audit for the periods required below:

- i. During the progress of work related to the Heavy Haul Network projects receiving Port funds;
 - ii. For a period of not less than six (6) years after the termination of this MOU; provided that if the Port uses debt to provide funding contributions to the Heavy Haul Network, the City will retain those records necessary to address an audit for the period required under applicable regulations for the use of debt; and
 - iii. If any claim, audit, or litigation arising out of, in connection with, or related to this MOU is initiated, all documents and records will be retained until such claim, audit or litigation involving the records is resolved or completed, whichever occurs later.
- 10.3 The City, its contractors, subcontractors and suppliers will 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 10. Cooperation will 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 will 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 City, its contractors, 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.

11.0 GENERAL PROVISIONS

- 11.1 The parties will work to expeditiously answer requests for information and to provide approvals or consents provided for in this MOU. The parties agree to take further actions and execute further documents, either jointly or within their respective powers and authority, to implement the intent of this MOU. The Parties agree to work cooperatively with each other to achieve the mutually agreeable goals as set forth in this MOU.
- 11.2 This MOU will be interpreted, construed and enforced in accordance with the laws of the State of Washington. Venue for any action under this MOU will be King County, Washington.
- 11.3 Each Party will be responsible for its own costs, including legal fees, incurred in negotiating or finalizing this MOU unless otherwise agreed in writing by the parties.
- 11.4 This MOU may be amended only by a written instrument executed by each of the parties hereto.
- 11.5 This MOU constitutes the entire agreement of the parties with respect to the subject matters of this MOU, and supersedes any and all prior negotiations (oral and written), understandings and agreements with respect hereto.

ATTACHMENT A: STREETS TO BE INCLUDED WITHIN HEAVY HAUL NETWORK


Street	From	To
South Atlantic Street	Alaskan Way South	1st Avenue South
Colorado Avenue South	South Atlantic Street	South Massachusetts Street
South Massachusetts Street	Colorado Avenue South	1st Avenue South
1st Avenue South	South Atlantic Street	South Holgate Street
Alaskan Way South	South Atlantic Street	South Holgate Street
East Marginal Way South	South Holgate Street	Diagonal Avenue South
South Holgate Street	1st Avenue South	6th Avenue South
6th Avenue South	South Massachusetts Street	South Holgate Street
South Hanford Street	East Marginal Way South	Occidental Avenue South
1st Avenue South	South Hanford Street	South Spokane Street
Occidental Avenue South	South Hanford Street	South Horton Street
South Horton Street	1st Avenue South	3rd Avenue South
13th Avenue SW	SW Florida Street	North to street end
SW Florida Street	16th Avenue SW	11th Avenue SW
11th Avenue SW	SW Florida Street	SW Lander Street
16th Avenue SW	SW Florida Street	Klickitat Avenue SW
Klickitat East Roadway Avenue SW	16th Avenue SW	13th Avenue SW
Klickitat West Roadway Avenue SW	16th Avenue SW	13th Avenue SW
SW Spokane North Roadway Street	13th Avenue SW	SW Spokane Street
SW Klickitat South Roadway Way	13th Avenue SW	SW Spokane Street
South Spokane Street Ramp	East Marginal Way South	South Spokane Street
West Marginal Way SW	26th Avenue SW	SW Spokane Street
SW Spokane Street	Chelan Avenue SW	East Marginal Way South
South Spokane SR Street	South Spokane Street	East Marginal Way South
Spokane Duwamish Bridge RP	South Spokane Street	Duwamish Avenue South Bridge
Duwamish Avenue South Bridge	Spokane Duwamish Bridge RP	East Marginal Way South
Diagonal Avenue South	East Marginal Way South	South Oregon Street
South Oregon Street	Diagonal Avenue South	Denver Avenue South
Denver Avenue South	South Oregon Street	Utah Avenue South
South Spokane Street	East Marginal Way South	Airport Way South
Airport Way South	South Spokane Street	South Edmunds Street
South Edmunds Street	Airport Way South	7th Avenue South

- 11.6 Section headings are intended as information only, and will not be construed with the substance of the section they caption.
- 11.7 In construction of this MOU, words used in the singular will include the plural and the plural the singular, and "or" is used in the inclusive sense, in all cases where such meanings would be appropriate.
- 11.8 This MOU may be executed in several counterparts, each of which will be deemed an original, and all counterparts together will constitute but one and the same instrument.

IN WITNESS WHEREOF, each of the Parties has executed this MOU by having its authorized representative affix his/her name in the appropriate space below:

CITY OF SEATTLE

PORT OF SEATTLE

By:  Date 10.20.15
Edward B. Murray, Mayor
City of Seattle

By:  Date 10/30/2015
Ted J. Fick, Chief Executive Officer
Port of Seattle

THE SAFE AND SWIFT CORRIDOR PROGRAM

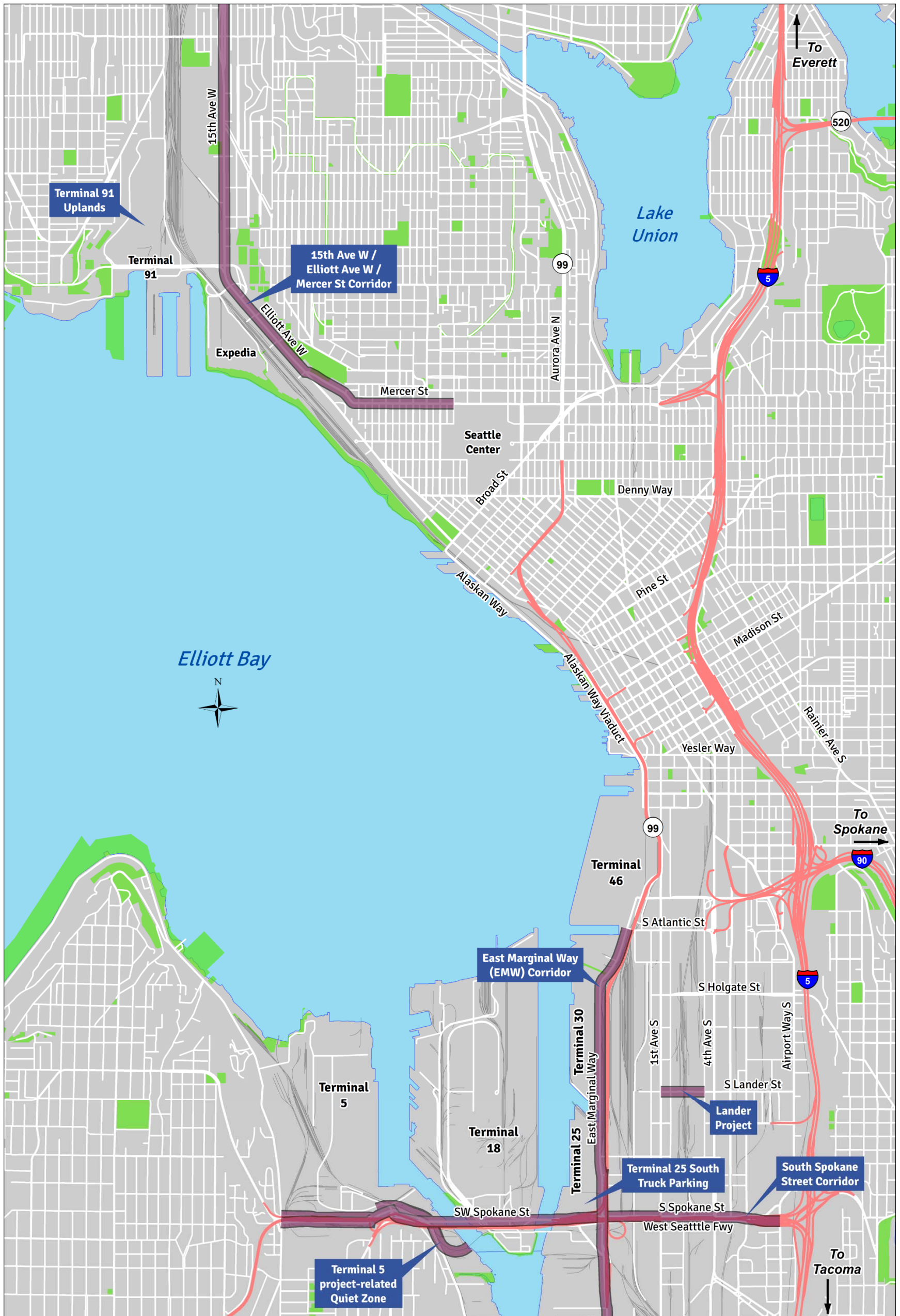


Exhibit E: Map of Locations Referenced in the MOU

Exhibit G: EMW-HHN Project details

Diagram of signalized
diagonal crossing of
South Hanford Street





FACT SHEET

EAST MARGINAL WAY CORRIDOR IMPROVEMENT PROJECT

March 2017

PROJECT BACKGROUND

As Seattle grows, improvements to freight mobility are essential to promote regional and international economic competitiveness. East Marginal Way is a major freight corridor for trucks transporting goods, over-sized trucks, and those carrying flammable cargo. The corridor also provides a major connection for people who bike between the West Seattle Bridge Trail, downtown, and the SODO neighborhood.

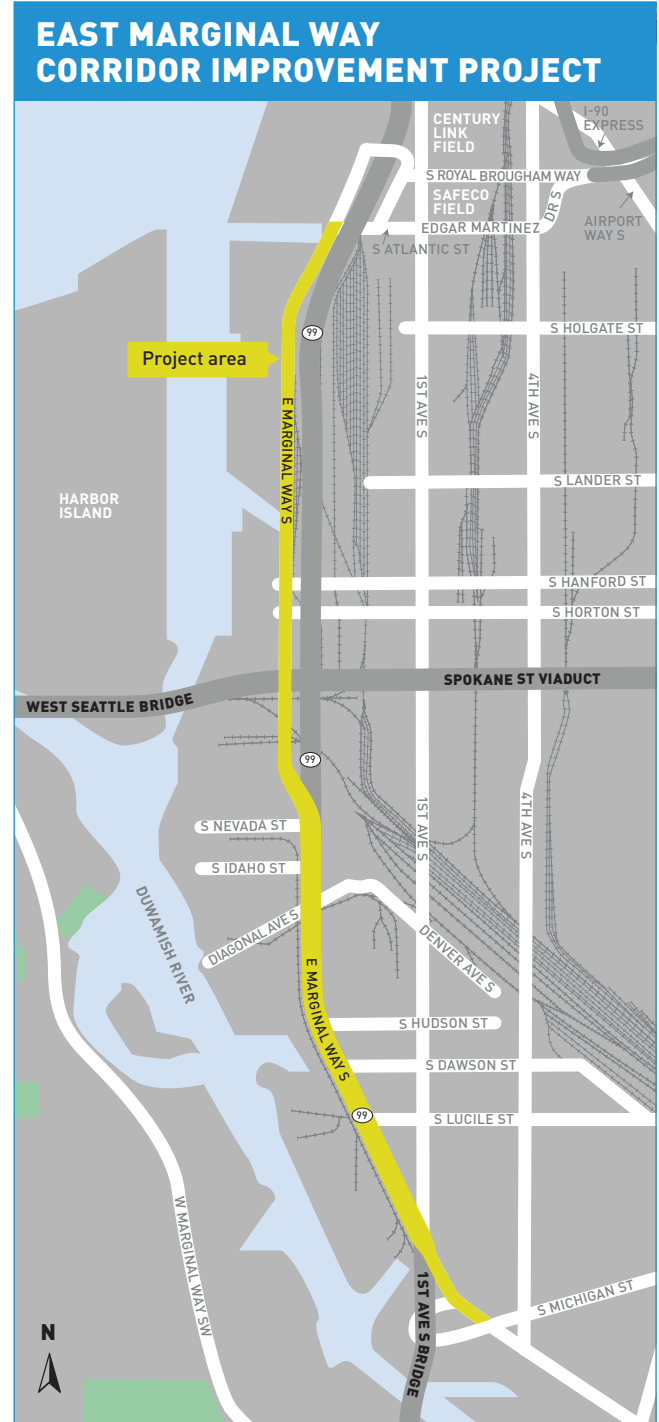
Through the **East Marginal Way Corridor Improvement Project**, we will improve safety, efficiency, and reliability in the movement of people and goods. We will rebuild the street to support freight loads, promote efficiency in reduction of bottlenecks through signal modifications and intelligent transportation systems (ITS), and improve safety for all modes by better separating non-motorized modes from freight traffic.

PROJECT BENEFITS

Improved freight mobility: Support the economic vitality of our region including the Port of Seattle and local industrial businesses.

Safety: Better access and connections in combination with separating non-motorized modes to reduce potential conflicts.

Better pedestrian and bike connections: New and upgraded facilities for people walking and biking also improve access for employees using transit or non-motorized modes to get to work in the area.



WHAT YOU NEED TO KNOW

- We are rebuilding the roadway to Heavy Haul standards, allowing heavier cargo to be transported along the corridor with appropriate permits
- We will make improvements to signal timing and wayfinding
- We have options for better separating people biking and walking from freight traffic
- We want to hear from you!

PROJECT INFORMATION AND CONTACT

Dawn Schellenberg, Communications Lead
EastMarginal@seattle.gov | (206) 684-5189
www.seattle.gov/transportation/eastmarginal.htm



Seattle
Department of
Transportation



PROJECT FUNDING

Funding to evaluate alternatives and complete early design is provided by the 9-year Levy to Move Seattle, approved by voters in 2015. Learn more about the levy at: www.seattle.gov/LevytoMoveSeattle

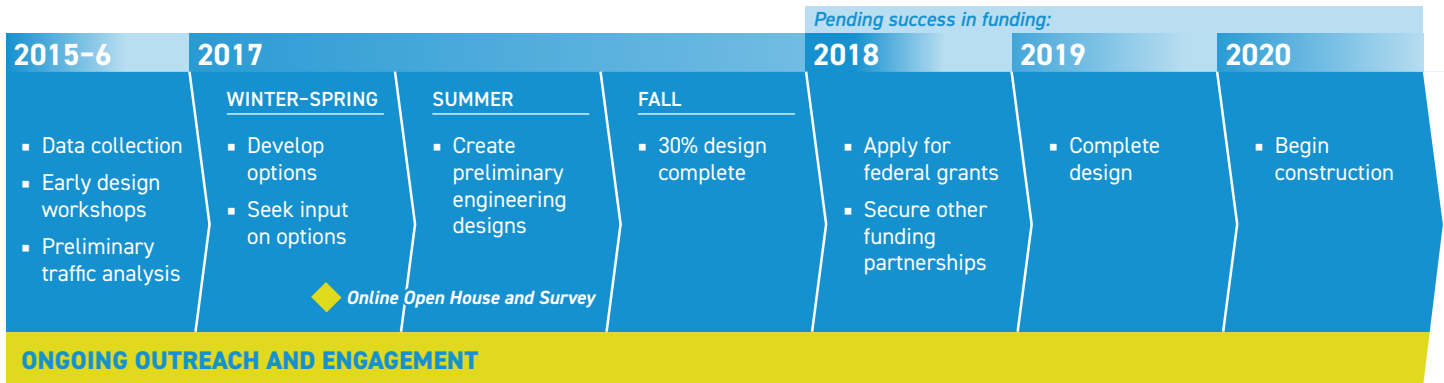
Full funding is dependent on contributions from other public partners such as the Port of Seattle and the State, as well as competitive Federal grant programs such as FASTLANE. Learn more about FASTLANE grants at: www.transportation.gov/buildamerica/FASTLANEgrants

OUTREACH SCHEDULE

This project began in 2015 with the examination of existing conditions and community input. A variety of methods engaged stakeholders, such as briefings, a public workshop, and an online survey.

In 2017, we are using public input, data collection, and technical analysis to evaluate different options for the future of the corridor.

PROJECT SCHEDULE



If you need this information translated, call (206) 684-5189
 Si necesita traducir esta información al español, llame al (206) 684-5189
 如果您需要此信息翻譯成中文 請致電 (206) 684-5189

PROJECT INFORMATION AND CONTACT

Dawn Schellenberg, Communications Lead
EastMarginal@seattle.gov | (206) 684-5189
www.seattle.gov/transportation/eastmarginal.htm



Seattle
 Department of
 Transportation



Exhibit F: Current Lander Summary Estimates of Cost and Finding Shares

SUMMARY ESTIMATE OF CONSTRUCTION COST: \$123M

SUMMARY ESTIMATE OF CONSTRUCTION FUNDING SHARES:

Source	Contribution
Federal – USDOT (FASTLANE)	\$45,000,000
Federal – PSRC STP funds	\$9,500,000
Federal – National Highway Freight Program (NHFP)	\$3,000,000
State - Freight Mobility Strategic Investment Board (FMSIB)	\$8,000,000
State – Connecting Washington	\$7,000,000
Local – Levy to Move Seattle	\$20,000,000
Local – Other City sources	\$13,000,000
Local - Port of Seattle	\$15,000,000
Local – BNSF (pursuant to 23 CRF 666.210)	\$2,500,000
Total:	\$123,000,000