

DRAFT
INTERLOCAL AGREEMENT BETWEEN PORT OF SEATTLE AND CITY OF KENT
FOR S. 228TH GRADE SEPARATIONS

PURPOSE

This Agreement is entered into by and between the City of Kent (City), a municipal corporation of the State of Washington and the Port of Seattle (Port), a municipal corporation of the State of Washington, collectively known as the Parties, to implement the Memorandum of Understanding among the principle parties of the FAST Corridor by sharing funds to construct two grade separations on S. 228th Street in Kent, Washington.

RECITALS

WHEREAS, the assurance of continued freight and passenger mobility throughout Puget Sound is an issue of critical strategic importance to the City and to the Port;

WHEREAS, projected growth in cargo volumes and the implementation of commuter rail service by the Regional Transit Authority are expected to generate more frequent mainline rail traffic, with a projected increase in traffic congestion at many of the at-grade crossings along major arterials;

WHEREAS, the Port, the State of Washington (State), King County (County), the Port of Tacoma, the City, and other local jurisdictions have developed and signed the Freight Action Strategy Memorandum of Understanding ("FAST MOU") which commits approximately Two Hundred and Sixty Million Dollars (\$260,000,000.00) for grade separation and other road and rail improvements;

WHEREAS, the Freight Action Strategy Memorandum of Understanding ("FAST MOU") commits the Ports of Seattle and Tacoma to jointly contribute seven percent (7%) of the estimated project costs;

WHEREAS, S. 228th Street is listed on Attachment B to the FAST MOU as among FAST Corridor Phase II Projects for immediate implementation;

WHEREAS, the S. 228TH Street Project (Project) calls for road improvements along a three mile corridor, and for grade separations at the Burlington Northern Santa Fe (BNSF) and Union Pacific (UP) rail lines;

WHEREAS, the first stage of the Project's scheduled corridor improvement (road improvements) is complete, open to traffic, and provides access from the Kent valley up the west hill to I-5, the second stage of the Project (grade separation at the BNSF) is currently under construction, and the final stage of the Project, (grade separation at the Union Pacific) will commence after completion of the grade separation at the BNSF;

WHEREAS, the grade separations of the Project, which will complete the S. 228th Street corridor, are critical to address the impacts of increased rail traffic resulting from the reopening of Stampede Pass to freight traffic, and will specifically benefit the Port by providing a seamless connection between the forty million square feet of warehouse and industrial space in the Kent valley and the Port of Seattle and Sea-Tac Airport;

WHEREAS, the Project grade separations, while located on arterials within the corporate limits of the City, will benefit all of the parties to the FAST MOU by promoting the efficient movement of passengers and cargo throughout the region;

WHEREAS, pursuant to the FAST MOU, the Port endorsed a 3.5% funding participation toward the costs of the Project;

WHEREAS, the City and the Port agree on a proposed Port contribution which will be 3.5% of the cost of the Project, based on the estimated project cost at the time the FAST MOU was executed; and

WHEREAS, the Port's 3.5% share of the Project cost is estimated to be One Million One Hundred and Ninety Thousand Dollars (\$1,190,000.00), which shall be used for construction purposes only.

TERMS OF AGREEMENT

1. Scope of Work

1.1 Project Title: South 228th Street Union Pacific and BNSF Railroad Grade Separations

1.2 Project Description: Construction of grade separations at both the Union Pacific (UP) and Burlington Northern Santa Fe (BNSF) rail lines on S. 228th Street to complete the S. 228th Street corridor between 84th Avenue S. and Military Road/I-5. (See exhibits 1 through 3.)

1.3 Project Schedule: Construction of the BNSF grade separation Project is currently ongoing and is scheduled for completion in October of 2009. Design work on the UP grade separation Project is scheduled to be completed in 2009 with construction commencing in 2010 and completion in 2011.

1.4 Direct Costs of Construction - The direct costs of construction include: mobilization, maintenance of traffic, temporary erosion and sedimentation control, earthwork, pavement, drainage, structures, traffic items (including signage, signalization, lighting, Intelligent Transportation Systems, and pavement markings), retaining walls, landscaping, environmental mitigation, and utilities as listed in the bid documents and corresponding Schedule of Values.

2. TERMS AND CONDITIONS

2.1 At-Grade Railroad Crossings: Upon completion of the Project grade separations at both the UP and BNSF railroad tracks, the existing at-grade crossings will be permanently closed.

2.2 Lead Agency: The City shall be lead agency for the Project in regard to State Environmental Policy Act and National Environmental Policy Act compliance and responsible for obtaining all necessary permits. As lead agency, the City shall be responsible for accomplishing all actions necessary for the construction of the Project.

2.3 Consultants and Contractors: The City has already and shall in the future retain consultants and contractors for Project purposes that include, but are not limited to, design, right-of-way acquisition, and construction of the grade separation Project. The City, at its sole discretion, shall select, hire, or coordinate with other agencies to retain consultants or contractors.

2.4 Value Engineering: A value engineering study was performed on the BNSF grade separation portion of the Project. A value engineering study will also be performed on the UP grade separation portion of the Project.

2.5 Contact Persons: The parties to this Agreement shall designate person(s) to act as liaison for the project. The contact persons shall meet regularly as appropriate given the phase and status of the project.

2.6 Schedule: The City shall determine the schedule for the Project based on funding, right of way acquisition and other items that dictate the project schedule. The Port shall be notified of any schedule changes.

2.7 Progress Reports: The City shall forward progress reports to the Port on a monthly basis. These reports shall review and update the status of the Schedule of Values and expenditures of the Project. The progress reports shall also identify any issues that can impact the scope, Project cost and schedule and describe the action plan to resolve any issues.

2.8 Extra Work: If the City decides to make any change from the design approved by the Port, the City will collaborate with the Port for any new element of design that affects the Port's anticipated benefit.

3. PAYMENT

3.1 Reimbursement: The City shall, in connection with any request for reimbursement under this Section, provide the Port with the WSDOT inspection-verified and approved Schedule of Values showing percentage of completion on the items listed above. The Port agrees to reimburse the City for 3.5% of the direct costs of construction for the Project, up to a maximum amount of One Million, One Hundred and Ninety Thousand Dollars (\$1,190,000.00), which includes any applicable taxes under the conditions described below:

- All environmental review under SEPA and NEPA has been successfully completed;
- All necessary permits have been obtained from regulatory agencies;
- Approved Schedule of Values of the direct construction costs, including:
 - Monthly construction cash flow projections through the life of the contract
 - Monthly payment requests, including a detailed break down of the direct construction costs
- The Project, or its component, has been completed in a manner that is consistent to the with the plans and technical specifications reviewed and approved by the Port

3.2 Progress Payments: The Port will make progress payments, upon request of the City. These payments will be made in accordance with the terms of this Agreement. The Parties agree that by making such progress payments, the Port shall not waive its right to object to the appropriateness of any Project expenditure. At the time of final audit for the Project, the Parties shall make all required adjustments and these adjustments shall be made and reflected in determining the amount of the Port's contribution to the funding for the Project.

3.3 Payment Schedule: The Port agrees to make payments for the work by the City on the Project within thirty (30) days from the date of the Port's receipt of a billing for the Project from the City.

4. AMENDMENT

Either Party may request changes to the provisions contained in this Agreement. Such changes to this Agreement shall be agreed upon and incorporated by written amendment to this Agreement executed with the same formalities as the 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: Project Engineer, S. 228th Street Grade Separations
City of Kent
400 W. Gowe Street
Kent, WA. 98032-5895

To the PORT: Project Manager
Port of Seattle
2711 Alaskan Way
Seattle, WA 98121

6. RECORDS RETENTION AND AUDIT

During the progress of the work and for a period not less than three (3) years from the date of final payment 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 copies of all records, accounts, documents, or other data pertaining to the Project will be furnished upon request. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claim, or audit finding has been resolved even though such litigation, claim, or audit continues past the 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 herein 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 date of recording and will remain in effect until October 31, 2013, unless otherwise amended or terminated.

9. TERMINATION

10.1 Either party may terminate this Agreement at any time upon thirty (30) days written notice. If either Party decides to terminate this Agreement, the Port shall reimburse the City for all costs payable under this Agreement and all non-cancelable obligations that the City incurred prior to termination. For the purposes of this Agreement, "non-cancelable obligations" are defined as those costs that the City is obligated to pay as of the day that either Party provides notice that it is terminating this Agreement.

11. INDEMNIFICATION AND HOLD HARMLESS

11.1 Each of the Parties, shall protect, defend, indemnify, and save harmless the other Party, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgment, and/or awards of damages, arising out of, or in any way resulting from, each of the Party's own negligent acts or omissions. No Party will be required to indemnify, defend, or save harmless the other Party if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of the other Party. Where such claims, suits, or actions result from the concurrent negligence of the Parties, the indemnity provisions provided herein shall be valid and enforceable only to the extent of each Party's own negligence.

11.2 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 the other Party only, any immunity that would otherwise be available against such claims under the Industrial Insurance provision of Title 51 RCW.

11.3 The indemnification, hold harmless, and/or waiver obligation described in this section shall survive the termination of this Agreement. In any action to enforce the provisions of the Section each party shall be responsible for its own costs and attorneys' fees.

12. VENUE

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

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

PORT OF SEATTLE

CITY OF KENT

Tay Yoshitani, Chief Executive Officer

Suzette Cooke, Mayor

Date: _____

Date: _____

APPROVED AS TO FORM:

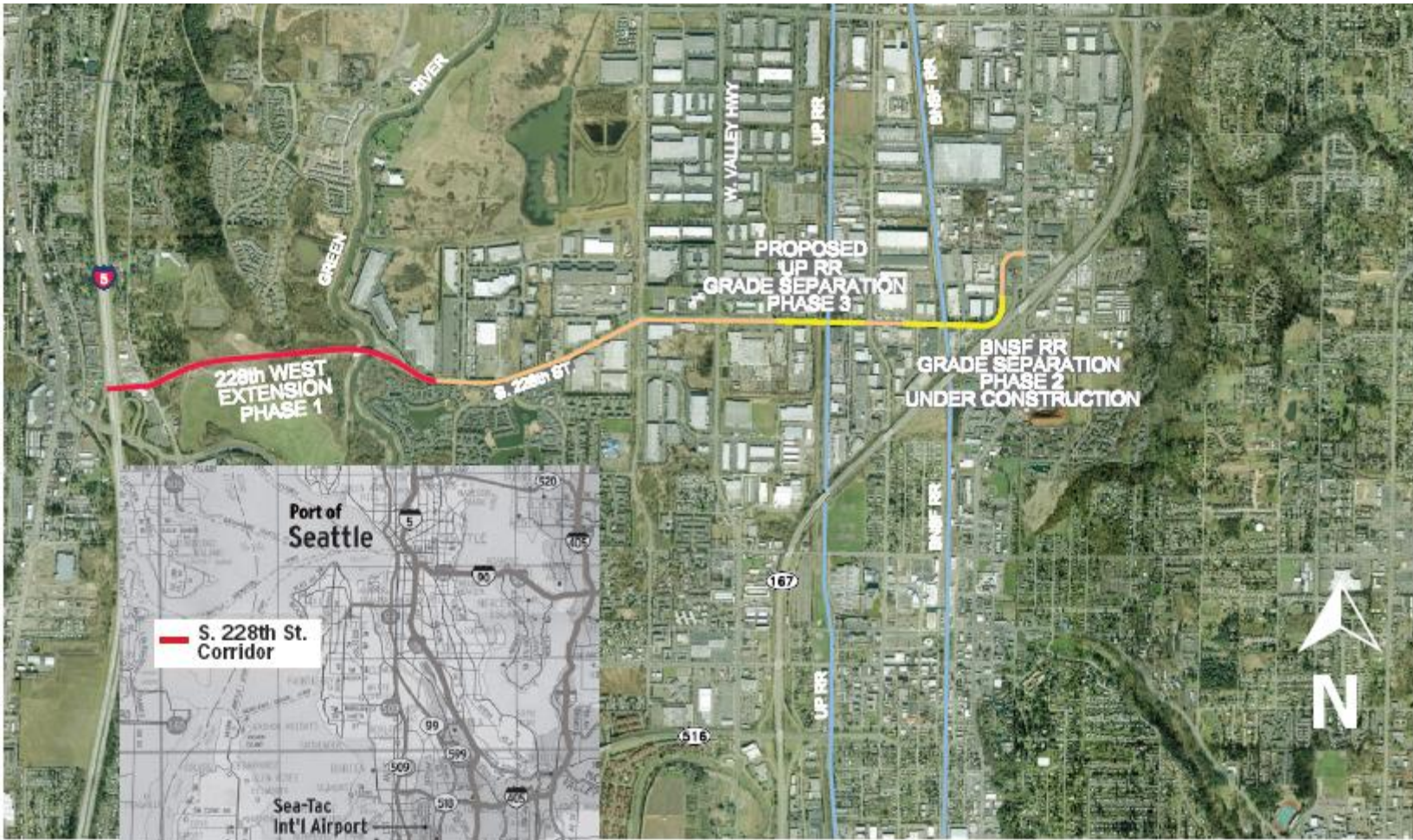
APPROVED AS TO FORM:

Kent City Attorney

Port of Seattle Legal Department

Date: _____

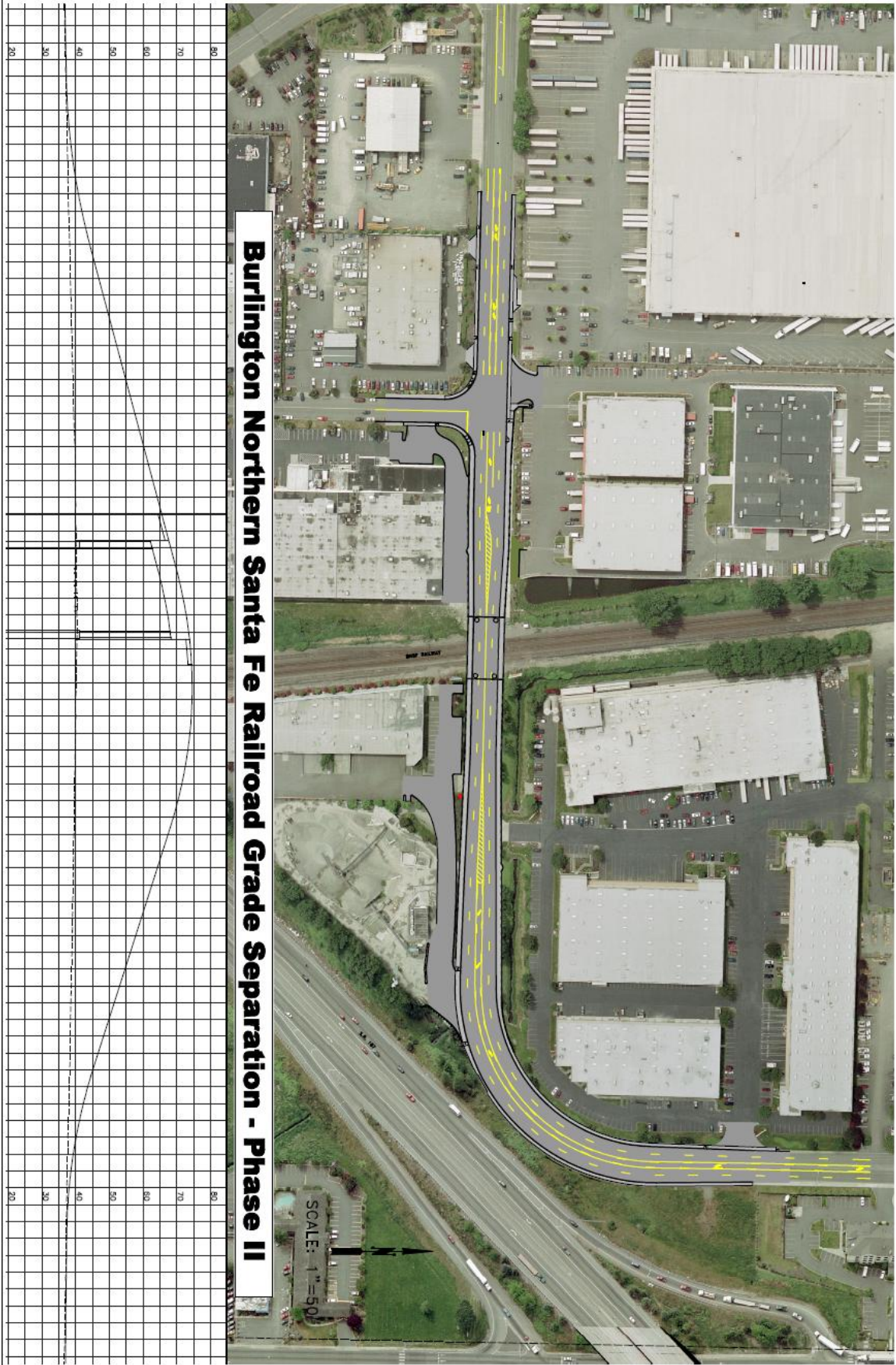
Date: _____



S. 228th St. Corridor



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Union Pacific Grade Separation—Phase 3

