

INTERLOCAL AGREEMENT BETWEEN PORT OF SEATTLE AND KING COUNTY

This Interlocal 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 King County, a political subdivision of the State of Washington, hereinafter called the "County". As used in this Agreement, "Project" means the replacement of the now closed 78-year old South Park Bridge with a two-leaf bascule bridge spanning the Duwamish River. The Port and the County are also referred to in this Agreement collectively as "the Parties", and individually as a "Party."

RECITALS

WHEREAS, the South Park Bridge has provided access within the Duwamish industrial area for general purpose and freight traffic for the past 78-years; and

WHEREAS, the South Park Bridge came to the end of its useful life and was closed to the public on June 30, 2010; and

WHEREAS, diverted traffic from the South Park Bridge, which was forced to find alternative routes, added traffic congestion to other corridors, including the First Avenue South Bridge, West Marginal Way and I-5, which are all routes for freight passing through Port facilities; and

WHEREAS, the South Park Bridge is located on 14th/16th Avenue South across the Duwamish River. (See Exhibit A – Vicinity Map, attached.) The south half of the Bridge is located in the County. The County is responsible for the operation and maintenance of all County roads, bridges and rights-of-way located within the County; and

WHEREAS, the north half of the Bridge is located in the City of Tukwila. The County and the City of Tukwila have previously entered into an agreement, executed January 3, 2003, in which the City of Tukwila granted the County authority to make any decisions related to the operation, maintenance and management of the Bridge to the same extent as if the entire Bridge were part of the County road system, and

WHEREAS, the County is seeking funding for a replacement bridge, including grant funds and funds from a broad group of partners; and

WHEREAS, the South Park Bridge served a neighborhood with a high percentage of low-income residents and businesses that are reliant on the access provided by the bridge; and

WHEREAS, the Port seeks opportunities to support the residents and businesses in communities as a good neighbor; and

WHEREAS, the bridge replacement provides a clear benefit to the Port and the industrial areas of the Duwamish Manufacturing and Industrial Center (as designated by the Puget Sound Regional Council), by reducing traffic congestion in and around Port facilities on the Seattle waterfront; and

WHEREAS, the Port and other agencies within King County 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, the West Seattle Bridge, the West Galer Street Flyover and other FAST Corridor projects, that provide freight mobility benefits for the region; and

WHEREAS, the Port supported the County's successful application for a \$34,000,000 Transportation Investment Generating Economic Recovery (TIGER II) grant; and

WHEREAS, the Project will improve overall traffic congestion, especially for adjacent Duwamish River bridges, including the First Avenue South Bridge, resulting in \$158 million in savings to freight haulers who will not suffer from more congestion on the First Avenue South Bridge and \$157 million in travel time savings for users of the new South Park Bridge, over 30 years; and

WHEREAS, the Project will support both existing and new jobs in the Duwamish Manufacturing and Industrial Center and will create \$80 million in short-term construction jobs; and

WHEREAS, the Project will improve safety for drivers, bicyclists and pedestrians, while providing benefits to air quality and waterway restoration; and

WHEREAS, the Project will provide direct access to industrial locations in the Duwamish Manufacturing and Industrial Center while providing traffic congestion relief at adjacent river crossings; and

WHEREAS, the Project will provide environmental benefits for both air quality and water quality habitat; and

WHEREAS, the Port Commission on June 22, 2010, discussed and supported the general intent to commit \$5,000,000 to the project; and

WHEREAS, the Port Commission on July 7, 2010, approved an aquatic easement to King County with a value of \$534,000 which would be deducted from the \$5,000,000 total funding commitment to King County's South Park Bridge; and,

WHEREAS, an additional \$180,000 for an Environmental Mitigation easement will be deducted from the \$5,000,000 total funding commitment to King County's South Park Bridge; and,

WHEREAS, the Parties are authorized by RCW Chapter 39.34 to enter into an interlocal cooperation agreement of this nature

NOW, THEREFORE, the Parties agree as follows:

1. SCOPE OF WORK

1.1. Project Title: The South Park Bridge Replacement

1.2. Description: The Project involves the replacement of the 78-year old South Park Bridge with a two-leaf bascule bridge spanning the Duwamish River, including separated sidewalks and dedicated bicycle lanes in both directions, as well as travel lanes wider than in the old bridge, providing the same or higher capacity for automobile and truck traffic as the old bridge prior to closure. The construction cost of the project is currently estimated to be \$133,466,000 by the County.

1.3. Schedule: Portions of the existing bridge were removed in late 2010. The Project is scheduled for bid advertisement in early 2011 with substantial completion expected in spring, 2013.

2. TERMS AND CONDITIONS

2.1. Implementing Agency: As the implementing agency the County shall ensure Project compliance with the State Environmental Policy Act (SEPA) and National Environmental Policy Act (NEPA), and shall be responsible for obtaining all necessary permits and/or agreements. The County 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. Schedule/Scope: The scope and schedule for the Project has been mutually agreed upon by the FHWA, the Washington State Department of Transportation and other funding partners. Construction change orders that do not change Project functionality and benefits to the Port, or the overall scope or general schedule of the Project will not require coordination or documentation with the Port. Any changes 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 coordination with the Port. See Exhibit B - Project Benefits and Exhibit C – Typical Cross Section and Project Plan, attached. The Port's funding is contingent on the bridge being constructed as described in Section 1.2.
- 2.4. Progress Report: The County shall provide the Port with a copy of the WSDOT/FHWA approved project schedule, and final engineer's estimate that includes contract bid items or summary of values. At the time application for payment is made, the County 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 so that 50% of the project completion can be determined.
- 2.5. Public Involvement: The County shall be responsible for the public involvement and/or community outreach process for the Project. The County shall develop a Community Outreach Plan for the Project with the Port and other stakeholders in the Project.

3. COST REIMBURSEMENT AND FUNDING

The Port agrees to contribute Five-Million Dollars (\$5,000,000) in total for the South Park Bridge Replacement subject to the following conditions:

1. All environmental review and permitting has been successfully completed, documented and not subject to any appeal or legal challenge;
2. The Port and County continue to work together to ensure that the Project developments during construction meet the needs of both parties including, but not limited to, construction staging and local freight circulation;
3. The Port is satisfied that the Project, as constructed, provides the benefits to the Port identified in this Agreement and;
4. The Port Commission authorizes the execution of this Agreement and the payment of (Four Million and Two-Hundred and Eighty-Six Thousand Dollars (\$4,286,000) for the Project's construction costs (Five Million Dollars (\$5,000,000) minus the Aquatic Easement value currently estimated to be (Five-Hundred and Thirty-Four Thousand Dollars (\$534,000)), minus the Environmental Mitigation easement funds currently estimated to be (One-Hundred and Eighty Thousand Dollars (\$180,000)).
5. The Port's funding of \$4,286,000 of the total \$133,466,000 estimated construction cost for the Project is approximately 3.2% of the total construction cost. The total constructions costs are for items described on attached Exhibit E. In the event the total construction cost for the Project is less (at substantial completion) than the estimated total, the parties will reduce the Port's contribution by 3.2% of the amount under \$133,466,000. The parties will undertake this calculation after any remaining Freight Mobility Strategic Investment Board ("FMSIB") funds (up to \$5,000,000) have been released. (FMSIB funds are provided on the condition that they are to be used only when the construction costs exceed \$128,466,000. If any FMSIB funds remain at the time of substantial completion, those funds are released back to FMSIB.)"

Once the Port Commission has authorized its contribution of \$4,286,000 toward construction of the Project, the Port shall make two payments as follows:

The first payment of \$2,143,000 (expected in 2012) shall occur after the County has made aggregate progress payments totaling at least 50% of the total project cost for completed construction. The second payment of \$2,143,000 (expected in 2013) shall occur upon receipt of the final progress report and a letter from the County Construction Contract Project Engineer certifying the Project is substantially complete, supported by a progress report. The second payment may be subject to a reduction based on Section 3.5 of this agreement.

The County shall certify the project has reached substantial completion by sending the Port a copy of the letter from the County Road Engineer to the Contractor establishing the substantial completion date, as required by the County's 2010 Project Specifications. (See Exhibit D, Definition of Substantial Completion, attached.) Upon receipt of the letter, the Port reserves the right to request an inspection of the Project, to confirm the project improvements, as defined in Section 1, Scope of Work, are in place and fully operational. To allow the County to proceed with the construction contract approval process in a timely manner, if the Port has not conducted said inspection and provided the County with any comments within seven (7) days of the established substantial completion date, the Port does waive the right to request and perform said inspection.

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 County: King County, DOT, Road Services
 201 S Jackson Street, Ste. 300
 KSC TR 0317
 Seattle, WA 98104

To the Port: 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 County, 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 County 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 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. If either Party decides to terminate this Agreement, the Port shall reimburse the County for all costs payable under this Agreement at the time of notice of termination and all non-cancelable obligations that the County incurred prior to receiving the Port's notice of its intent to terminate this Agreement. For the purposes of this Agreement, "non-cancelable obligations" are defined as those costs that the County is obligated to pay as of the day that either Party provides notice that it is terminating this Agreement, including the Port's percentage of the total cost of any phase of the Project that the County has commenced prior to the Port's notice of termination, whether or not such phase has reached completion.

10. INDEMNIFICATION AND HOLD HARMLESS

- 10.1 To the maximum extent permitted by law, the County shall protect, defend, indemnify, and hold harmless the Port, its officers, officials, employees, and agents from any and all costs, claims, demands, suits, actions, judgment, and/or awards of damages, including but not limited to reasonable attorney's fees, to the extent arising out of, or in any way resulting from, the County's own negligent acts or omissions or the negligent acts or omissions of the County's agents and contractors.
- 10.2 The County 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, the County hereby waives, with respect to the Port only, any immunity that would otherwise be available against such claims under the Industrial Insurance provision of Title 51 RCW to the extent necessary to provide indemnification as required under this Agreement.
- 10.3 The indemnification, hold harmless, and/or waiver obligation described in this Agreement in paragraphs 10.1 and 10.2 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 County 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 County, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the Port and the County and not for the benefit of any other party.

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

PORT OF SEATTLE

King County

Tay Yoshitani, Chief Executive Officer

Dow Constantine, County Executive

Date: _____

Date: _____

APPROVED AS TO FORM:

Port Attorney

County Attorney

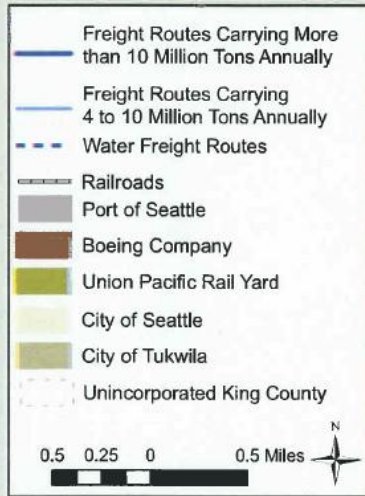
Date: _____

Date: _____

ATTEST:

Exhibit A - Vicinity Map

Freight Delays Hurt the U.S. Economy



- ✔ Trucks crossing the South Park Bridge carried up to 10 million tons of cargo each year.
- ✔ Traffic now diverts to surrounding routes already carrying over 10 million tons of cargo each year.
- ✔ Up to 20,000 more cars and trucks must use the 1st Avenue South Bridge waterway crossing every day.
- ✔ Freight delays on the 1st Avenue South Bridge will surpass \$4 million in 2011 and grow to almost \$50 million by 2040.



Washington is the most trade-dependent state in the U.S. More congestion in the Seattle manufacturing area will slow freight delivery nationwide.

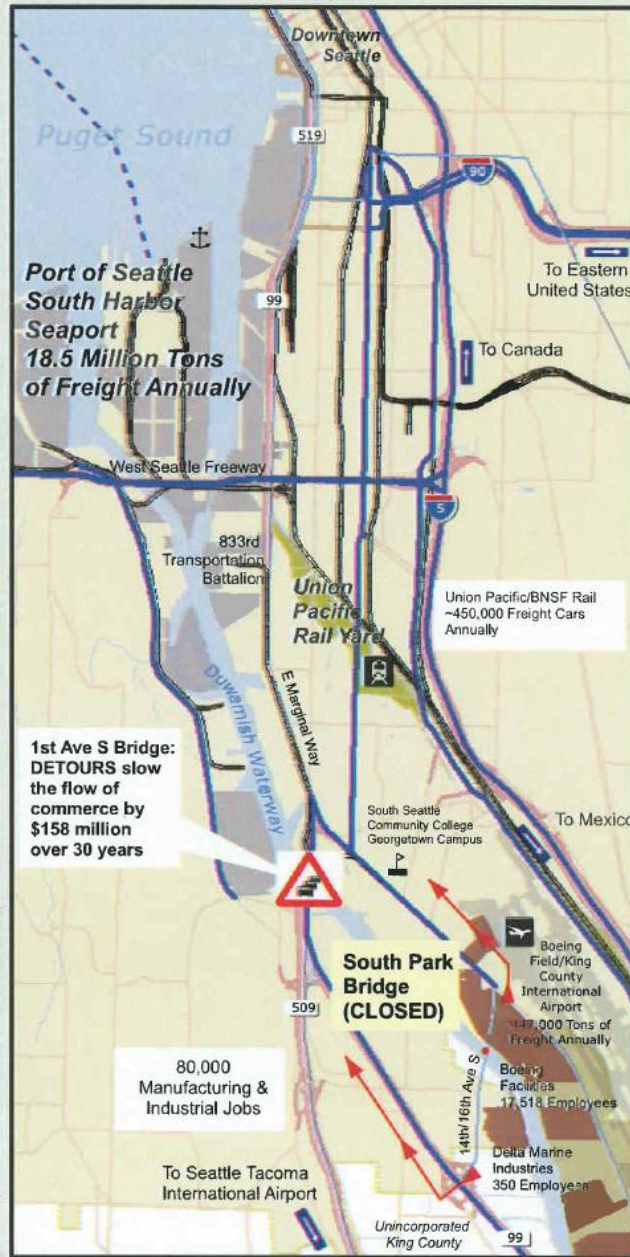


EXHIBIT B - PROJECT BENEFITS



South Park Bridge open house held April 27 at the Machinists Hall. Citizens viewed displays, learned about plans, and expressed concerns to public officials prior to the bridge closing on June 30, 2010.

Neel Ahrens, King County

Summary of Benefits

A new South Park Bridge would benefit many users. Its replacement will serve as the cornerstone for future community development and environmental restoration efforts in the South Park neighborhood and the Duwamish Waterway. Without a bridge, this neighborhood will become an island—its residents cut off from human services, its properties financially stunted from appreciating, and the flow of commerce hampered by detours, congestion, and delays.

A new South Park Bridge will benefit our nation, the Pacific Northwest, and bridge users in different ways by providing:

- ✓ \$157 million in travel time savings for users of the new South Park Bridge.
- ✓ \$158 million in savings to freight haulers (making the import and export of goods less expensive and more competitive in the world market) who will not suffer from more congestion on the 1st Avenue South Bridge.
- ✓ \$1.8 million in additional savings from 1st Avenue South Bridge openings for freight haulers waiting for a more heavily congested bridge to open.
- ✓ Keep 420 tons of additional greenhouse gases from being released, worth \$3.7 million, due to detours and congestion.
- ✓ \$80 million in short-term job salary creation, as construction funding multiplies itself into businesses hiring more people.

- ✓ \$1.5 billion in potential long-term job, salary creation when new businesses build and hire new employees working in aerospace, bio-tech, international trade, and software development.

Other, more difficult to quantify, benefits will come from a new South Park Bridge such as:

- ✓ Fewer accidents due to less congestion on the 1st Avenue South Bridge.
- ✓ Travel time savings for emergency aid vehicles responding to police and medical emergencies.
- ✓ Safer travel lanes for bicyclists and pedestrians, which will encourage additional use.
- ✓ Benefits of nearshore Duwamish restoration efforts to the ecosystem of the waterway, as a catalyst for other projects, and as part of the overall Environmental Protection Agency Duwamish clean up effort.
- ✓ Shorter travel times for disposal of hazardous waste sediments removed as part of Superfund clean up efforts.

"To the pioneers of South Park, the new bridge does not represent the culmination of years of effort to secure a satisfactory and permanent structure across the river, nor does it signify the beginning of an unprecedented boom period. Rather it marks a step along the roads of progress, many of which they have had the pleasure to witness."

From the South Park Bridge Dedication Ceremony, March 21, 1931
Walthew, Margaret, ed. 1949. The Duwamish Diary, 1849-1949. Seattle, WA: Cleveland High School.



South Park Bridge Replacement-Partnerships

6

EXHIBIT C: Project Plan and Cross Section

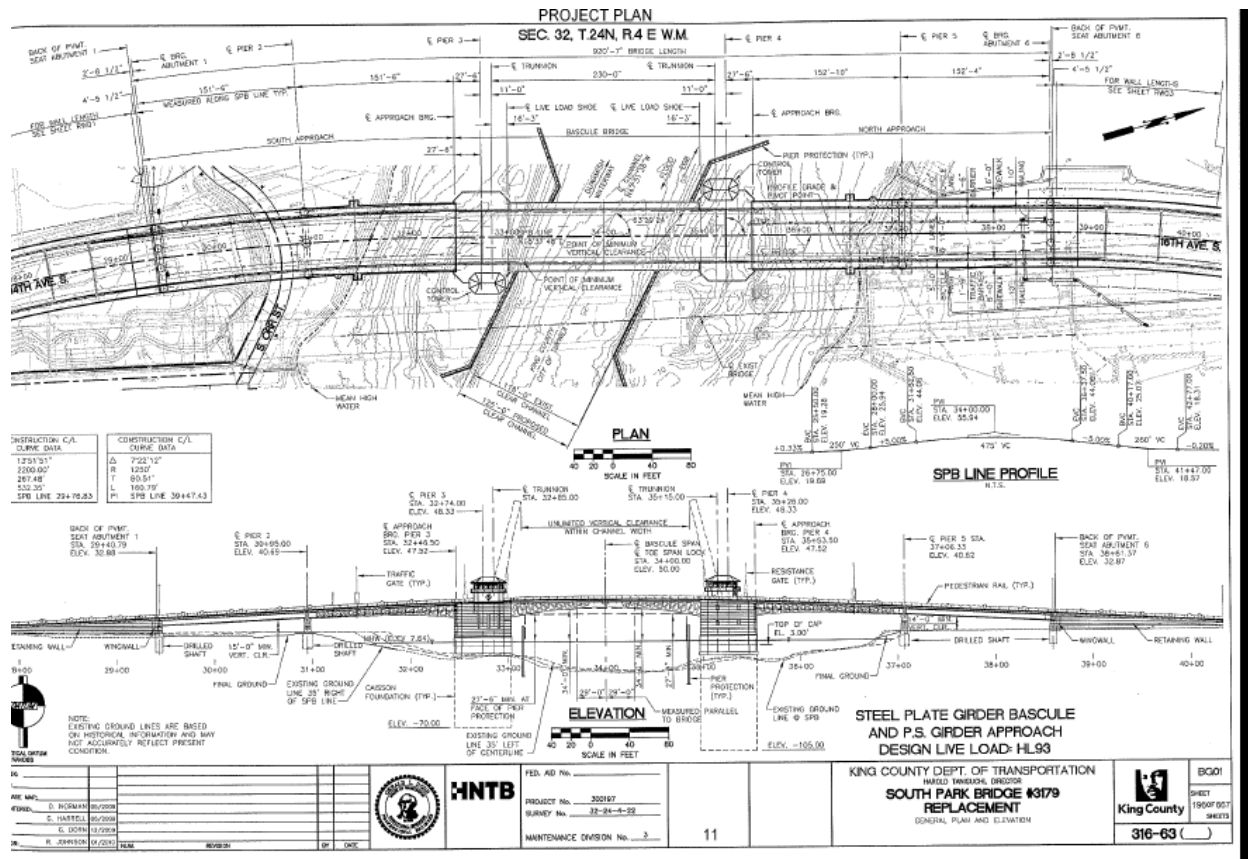
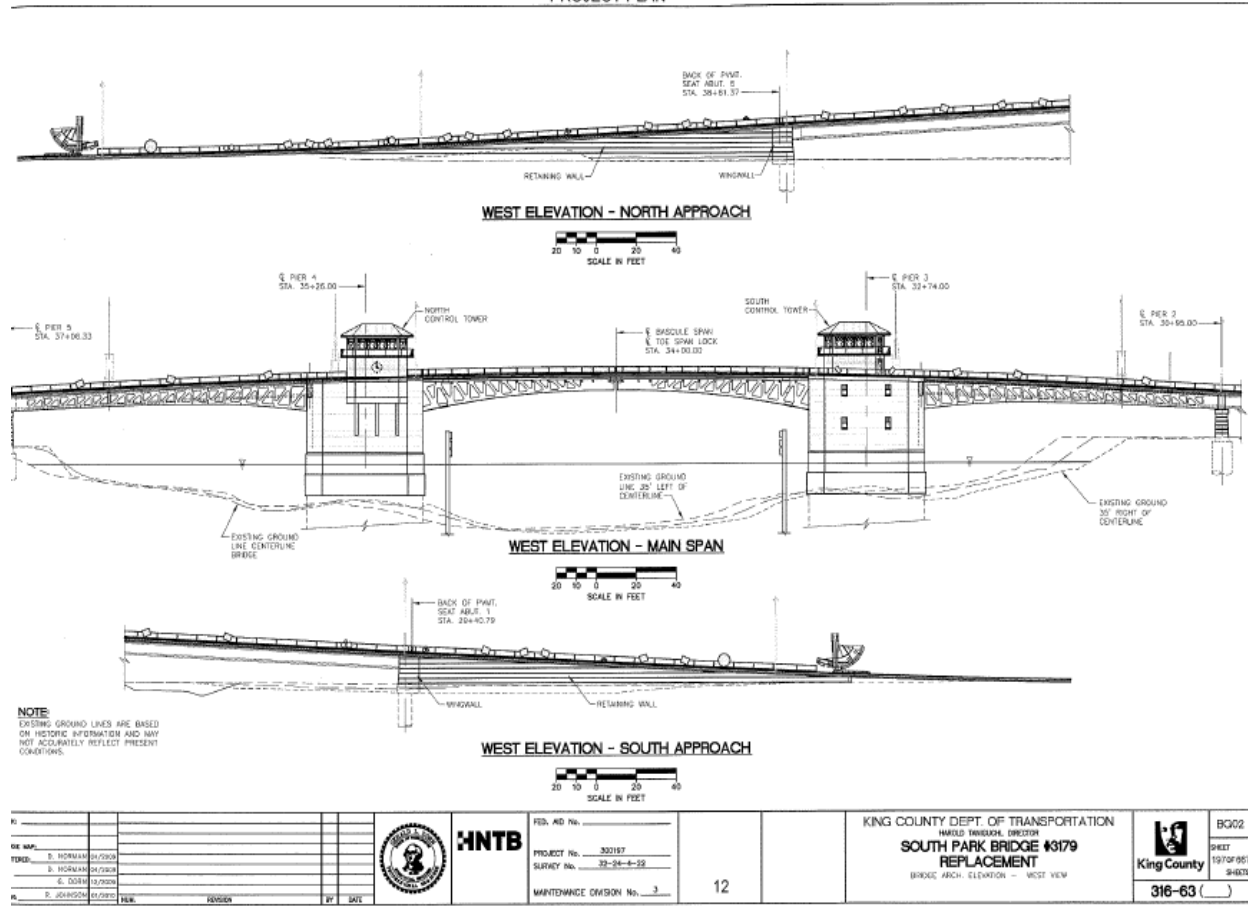


EXHIBIT C - Project Plan and Cross Section PROJECT PLAN



PI: _____ DE: _____ TOR: B. HORNMAN 04/2009 B. HORNMAN 04/2009 E. DODD 03/2009 B. JOHNSON 04/2009			FED. AID No. _____ PROJECT No. 300187 SURVEY No. 32-24-4-32 MAINTENANCE DIVISION No. 3	12	KING COUNTY DEPT. OF TRANSPORTATION HAROLD WINGDAKE, DIRECTOR SOUTH PARK BRIDGE #3179 REPLACEMENT BRIDGE ARCH. ELEVATION - WEST VIEW	BG02 SHEET 1973P/051 9-4823
REVISION BY DATE	KING COUNTY 		316-63 ()			

EXHIBIT C - Project Plan and Cross Section

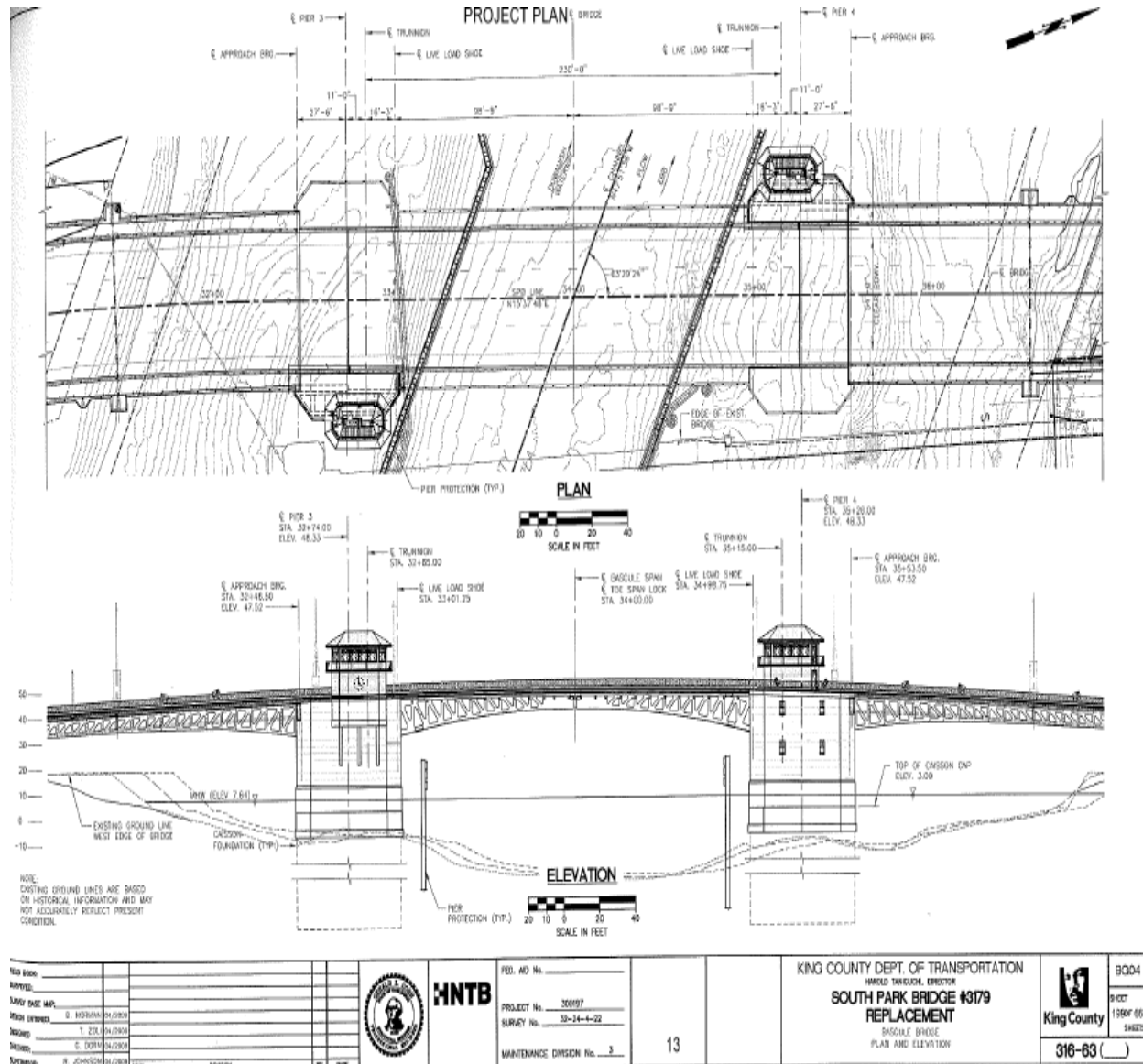


EXHIBIT C: Project Plan and Cross Section

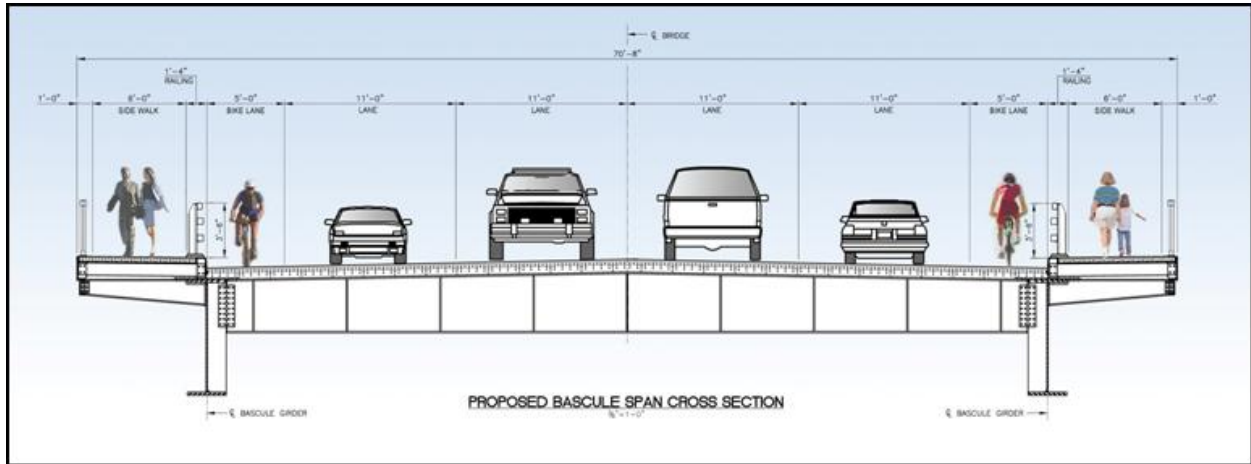


EXHIBIT D - Definition of Substantial Completion

Definition of Substantial Completion per the County's 2010 Project Specifications:

Substantial Completion Date is the day the Engineer determines that: (1) two-way vehicular, pedestrian and bicycle traffic can be routed onto the bridge and approaches; (2) the bridge is fully operational and open to marine traffic utilizing the new and permanent mechanical and electrical systems; and (3) the Contractor has provided the County a certificate of final electrical inspection and acceptance.

**EXHIBIT E – Summary Estimates of
COST and
FUNDING SHARES
(to be completed by County)**

SUMMARY ESTIMATE OF COST:

Estimated construction contract cost:	
Additional construction costs:	
Total:	\$133,466,000

SUMMARY ESTIMATE OF FUNDING SHARES:

Federal TIGER II		
WSDOT		
Transportation Improvement Board		
Freight Mobility Strategic Investment Board		
Puget Sound Regional Council		
City of Seattle		
Port of Seattle	4,286,000	
Total:		100%