

Attachment A

March 26, 2010

INTERLOCAL AGREEMENT BETWEEN PORT OF SEATTLE AND CITY OF SEATTLE FOR WIDENING OF THE SPOKANE VIADUCT

This Interlocal Agreement (“Agreement”) is made and entered into by the City of Seattle, a municipal corporation of the State of Washington, hereinafter called the “City” and the Port of Seattle, a municipal corporation of the State of Washington, hereinafter called the “Port. As used in this Agreement, “Project” means the construction of those elements associated with the widening of the Spokane Viaduct between Harbor Island and I-5, to benefit the movement of freight and goods and enhance the use of other Port related facilities, as are further described in Section 1. The Port and the City are also referred to in this Agreement collectively as “the Parties”, and individually as a “Party”.

RECITALS

WHEREAS, the assurance of continuing freight movement throughout Puget Sound is an issue of critical strategic importance to the City and to the Port.

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 Three Hundred and Fifty Four Million Dollars (\$354,000,000.00) for grade separation and other road and rail improvements (See Exhibit A);

WHEREAS, the Project is listed on Attachment A to the FAST MOU as among the FAST Corridor Phase 1 projects for immediate implementation;

WHEREAS, the Project calls for road improvements in the Spokane Street corridor between 5th Avenue South and the East Duwamish Waterway that will provide substantial benefits to the Port in the following ways:

- Provide new access to surface streets from the upper Spokane roadway;
- Reduce delays on the lower Spokane roadway at railroad tracks;
- Reduce conflicts between rail and vehicle traffic modes;
- Enhance freight mobility; including access the Port’s terminals and
- Improve safety and traffic flow for all travel modes;

WHEREAS, the Project will also facilitate transit access between West Seattle and downtown;

WHEREAS, the Port, as part of the FAST MOU, agreed to contribute five million dollars, (\$5,000,000) towards the construction of the Project;

WHEREAS, the City, as part of the FAST MOU, agreed to contribute one million, six hundred thousand dollars. (\$1,600,000) to the construction of the Port’s East Marginal Way Grade Separation Project;

WHEREAS, the City and Port agree that because the Project and the East Marginal Way Grade Separation Project are being constructed at about the same time, the payments that each

of the Parties has committed to paying to each other would be processed most efficiently if the Port pays to the City the net difference between the one million, six hundred thousand dollars (\$1,600,000) committed by the City for the East Marginal Way Grade Separation Project and the five million dollars (\$5,000,000) that the Port has committed for the Project, which means that the Port pays the City three million, four hundred thousand dollars (\$3,400,000). The Port agrees to contribute three million, four hundred thousand dollars (\$3,400,000) toward the construction of the Project.

NOW, THEREFORE, the Parties agree as follows:

1. SCOPE OF WORK

- 1.1. Project Title: Spokane Viaduct Widening
- 1.2. Description: The Project is one of the package of 25 "FAST Corridor" rail separation and Port access projects. The project will add an eastbound off-ramp at Fourth Avenue S and an additional eastbound lane between SR 99 and Fourth Avenue S, and relocate the westbound on- and off-ramps from their current location on Fourth Avenue S to First Avenue S. In addition, the upper roadway will be widened by 41 feet between Sixth Avenue S. and East Marginal Way, making space for a new westbound acceleration-deceleration lane, a permanent median, and wider lanes and shoulders. The lower roadway will be rebuilt in concrete in both directions. Elements of mutual benefit to the Parties are further outlined in Exhibit B.
- 1.3. Schedule: The Project was advertised on May 15, 2009, construction started in the 4th Quarter 2009. Construction completion is scheduled for the 2nd Quarter of 2012, at which time the structure will be fully operational.

2. TERMS AND CONDITIONS

- 2.1. Lead Agency: The City shall be the lead agency for the Project in regards to State Environmental Policy Act (SEPA) and National Environmental Policy Act (NEPA) compliance and shall be responsible for obtaining all necessary permits and/or agreements. As lead agency, 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 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 shall be mutually agreed upon by the City and Port. All scope and schedule changes shall be coordinated by the City using a formal documentation process that includes a Change Control Board (CCB) in the Capital Projects and Roadway Structures Division (CPRS) in the Seattle Department of Transportation (SDOT).
- 2.4. Traffic Control Plans: SDOT will review all contractor traffic control submittals giving strong consideration to the interests of freight and Port traffic. SDOT will, to the extent feasible, work to minimize the impact of any traffic control plans that could negatively affect the Port's facility access and drayage routes. SDOT agrees to notify and coordinate with the Port's representative before approving any traffic control plans that could negatively affect Port traffic.
- 2.5. Progress Reports: The City shall provide progress reports to the Port at the time application for payment is made. The progress report will include a narrative describing

the project progress since the last report, an updated CPM construction schedule showing the current progress and percent complete of the major work elements, and a construction payment schedule. The construction payment schedule will include a listing of the contract bid items or a schedule of values and a tabulation of the construction progress payments made on the respective contract bid items. The construction progress tabulation will include the contract bid item amounts, amounts previously paid on the contract per bid item, the current contract bid item payment request, and the total amounts paid on the bid items.

- 2.6. Agency Coordination: The City anticipates that interagency agreements may be required with the Washington State Department of Transportation (WSDOT) and Burlington Northern Santa Fe Railroad (BNSF). The Port agrees to support the City to the extent practical in the City's pursuit of such interagency agreements and/or permits.
- 2.7 Design Changes: The City shall not order or approve any design changes that negatively affect the traffic level of service or reduce the benefits of the Project for the Port without first obtaining the Port's written approval of these design changes. The City shall inform the Port of any design change that could reduce the Port's anticipated benefit of improved traffic flow. The City shall provide the Port with copies of the proposed design change for the Port's review, comment and approval. The Port shall provide the City with comments within two weeks of its receipt of the proposed design changes. If the Port offers comments or exceptions to the proposed plans, the Port further agrees to participate in meetings scheduled by the City to resolve the Port comments and exceptions. The City agrees to evaluate and considering incorporating appropriate changes proposed by the Port necessary to address the Port's concerns and exceptions.
- 2.8 Public Involvement: The City shall be responsible for the public involvement and/or community outreach process for the Project. The City shall develop a Community Outreach Plan for the Project with the Port and other stakeholders in the Project. The City shall give the Port at least two weeks' notice of any scheduled public meetings.
- 2.9 Ownership and Maintenance: The City shall own all Project improvements and shall be responsible for the reasonable maintenance of the Project. As part of this Agreement, the Port will grant the City any easements or right of entry to Port property that are necessary to facilitate the installation and maintenance of any improvement to be installed under the scope of the Project. The grant of these easements to the City will be in effect as long as the Project exists on Port property. If the Project is removed, the easements will revert to the Port. The granting of any easements and the placement of any improvements on Port property is contingent upon the approval of the Port Commission or Chief Executive Officer.

3 COST REIMBURSEMENT AND FUNDING

The City and Port agree that the Project and the East Marginal Way Grade Separation Project are being constructed at about the same time and that the Parties had agreed to contribute to each other for these capital projects as part of discussions for the FAST MOU. The Parties agree that the payments that each had agreed to pay to the other will be processed most efficiently if the Port pays to the City the net difference between the one million, six hundred thousand dollars (\$1,600,000) the City agreed to contribute to the East Marginal Way Grade Separation Project and the five million dollars (\$5,000,000) that the Port agreed to contribute to the Project. This means that the Port will pay the City the difference between the five million dollars (\$5,000,000) and the one million, six hundred thousand dollars (\$1,600,000) which is three million, four hundred thousand dollars (\$3,400,000). The Port agrees to contribute three million, four hundred thousand dollars (\$3,400,000) toward the construction of the Project under the following conditions:

Interlocal Agreement between Port of Seattle and City of Seattle for the Spokane St. Widening Project

1. All environmental review and permitting has been successfully completed, documented and not subject to any appeal or legal challenge;
2. The Port and City 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, Port facility access and local freight circulation;
3. The Port is satisfied that the Project, as constructed, provides the benefits to the Port identified in the preamble of this Agreement and;
4. The Port Commission authorizes the execution of this Agreement and the payment of three million, four hundred thousand dollars (\$3,400,000) for the Project costs.

If the Port Commission authorizes contribution of \$3,400,000 toward construction of the Project, the Port shall make payment as follows:

One Lump Sum Payment of one million, seven hundred thousand dollars \$1,700,000 at the end of the 1st Quarter, 2011 upon receipt a letter from the City SDOT Project Manager certifying the contractor has been paid in excess of one million, seven hundred thousand dollars (\$1,700,000) supported by a progress reports, as outlined in section 2.5.

One Lump Sum Payment of one million, seven hundred thousand dollars (\$1,700,000) upon Substantial Completion of the Project under the conditions set forth in this Agreement.

The City shall certify the project has reached Substantial Completion by sending the Port a copy of the letter from the SDOT Engineer to the Contractor establishing the Substantial Completion date, as required by the City of Seattle 2008 Standard Specifications. (See Exhibit C) 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, and Exhibit B, are in place and fully operational.

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: Stuart Goldsmith, Spokane Viaduct Widening
Seattle Department of Transportation
Capital Projects & Roadway Structures Division
700 Fifth Ave., Suite 3900
P.O. Box 34996
Seattle, WA 98124-4996

To the PORT: Christine Wolf
Seaport Planning
Port of Seattle
2711 Alaskan Way
P.O. Box 1209
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 finding has 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 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 execution by both Parties and will remain in effect until Completion of the Project, 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 City for all costs payable under this Agreement and all non-cancelable obligations that the City 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 City 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 City 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 City 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 City's own negligent acts or omissions.

10.2 The City 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 City hereby waives, with respect to the Port only, any immunity that would otherwise be available against such claims under the Industrial Insurance provision

Interlocal Agreement between Port of Seattle and City of Seattle for the Spokane St. Widening Project

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 11.1 and 11.2 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 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 SEATTLE

Tay Yoshitani, Chief Executive Officer

Peter Hahn, Director

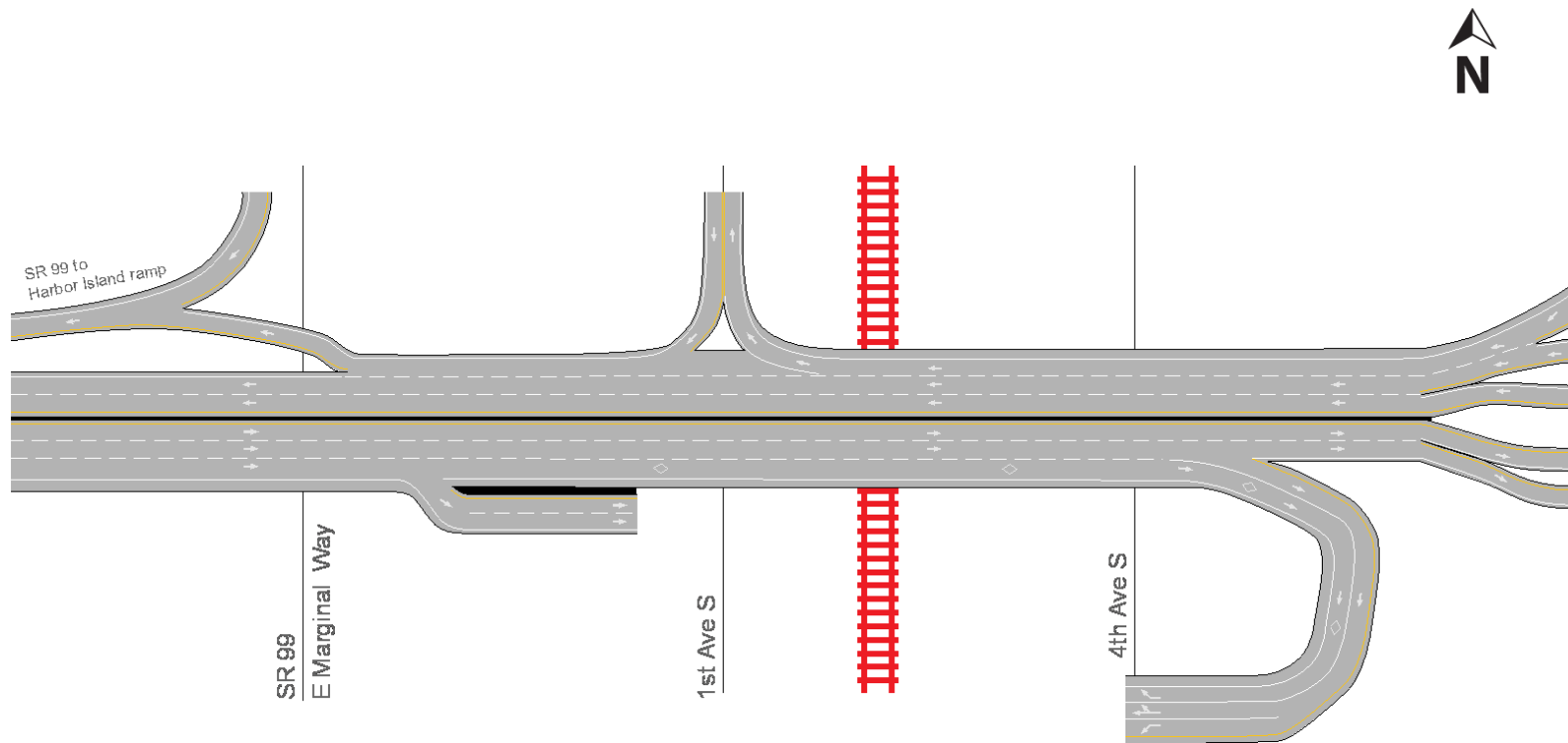
Date: _____

Date: _____

Exhibit A – Resolution No. 3283 and FAST MOU

Exhibit B—Elements of Mutual Benefit
New Upper Roadway Channelization

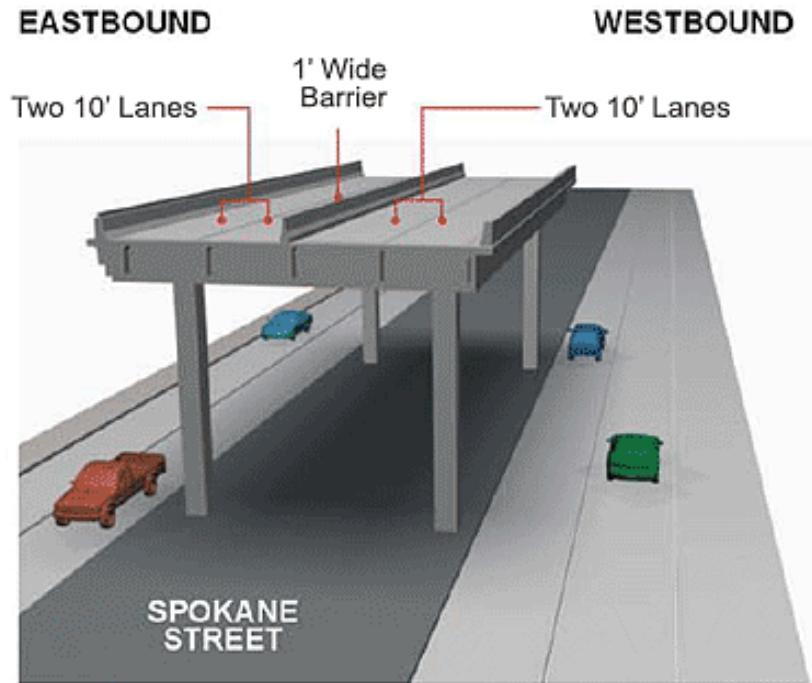
SOUTH SPOKANE STREET VIADUCT CHANNELIZATION



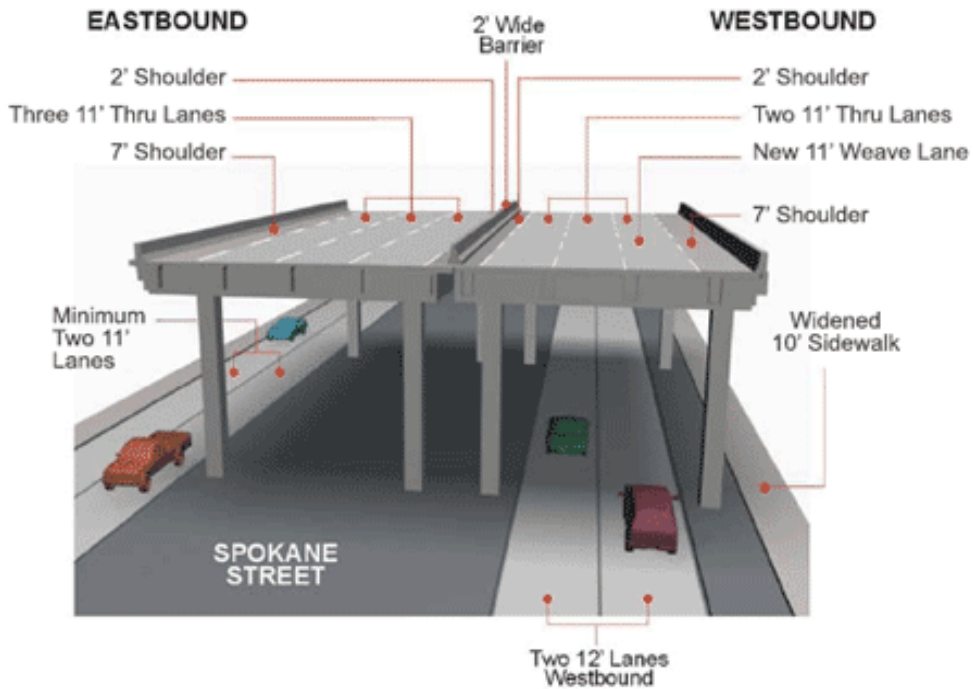
NOT TO SCALE

Lane Configuration on both Upper and Lower Roadways

Existing Viaduct



Viaduct after Widening



Summary of Changes and Benefits

Widening of Spokane Viaduct (Upper Roadway)

Changes	Benefits
<p>The upper roadway between 6th Avenue South and East Marginal Way will be widened to the north by 41 feet.</p> <p>The existing upper roadway deck will be repaved and variable message signs will be installed.</p> <p>Seismic strengthening of the viaduct will be completed.</p>	<p>The widened structure will allow room for:</p> <ul style="list-style-type: none"> • Two thru lanes of traffic in each direction • A new westbound acceleration/ deceleration lane • A permanent median • Wider lanes and shoulders • An additional eastbound HOV/Transit lane between East Marginal Way and 4th Ave South

New Westbound On- and Off-Ramp at 1st Avenue

Changes	Benefits
<p>The existing ramp at 4th Avenue South for westbound traffic will be replaced by a new ramp at 1st Avenue South, built to current design standards.</p> <p>The existing westbound 1st Ave. on-ramp will be demolished, as crews widen the upper roadway 41 feet to the north.</p>	<p>Relocating the westbound ramps to 1st Avenue South will improve westbound traffic flow and safety. (The existing ramps at 4th Avenue South require an abrupt weave from the I-5 merge to exit off the viaduct, and a sharp right turn to enter traffic westbound. The new westbound merge lanes at 1st Avenue South will allow for smoother and much safer entry to and exit from the upper roadway.)</p>

Lower Spokane Street Reconstruction

Changes	Benefits
<p>The lower roadway will be rebuilt with curbs and gutters, and a new 10-foot wide sidewalk with landscaping will be installed along the north side of the lower roadway</p>	<p>The lower roadway will be rebuilt with curbs and gutters, and a new 10-foot wide sidewalk with landscaping will be installed along the north side of the lower roadway.</p>

Exhibit C - Definition of “Substantial Completion” per the 2008 City of Seattle Standard Specifications

1-05.11(1) SUBSTANTIAL COMPLETION DATE

“When the Contractor considers the Work to be substantially complete, the Contractor shall so notify the Engineer and request the Engineer establish the Substantial Completion Date. To be considered substantially complete the following conditions must be met:

1. The Owner must have full and unrestricted use and benefit of the facilities, both from an operational and safety standpoint; and
2. Only minor incidental Work, replacement of temporary substitute facilities, or corrective or repair Work remains to reach physical completion of the Work.

The Contractor's request shall list the specific items of Work in subparagraph two immediately above that remain to be completed in order to reach physical completion. The Engineer will schedule an inspection of the Work with the Contractor to determine the status of completion.

If, after inspection, the Engineer concurs with the Contractor that the Work is substantially complete, the Engineer will, by written notice to the Contractor, set the Substantial Completion Date. If, after this inspection, the Engineer does not consider the Work substantially complete, the Engineer will, by written notice, so notify the Contractor giving the reasons therefore.

Upon receipt of written notice concurring in or denying Substantial Completion, whichever is applicable, the Contractor shall pursue vigorously, diligently and without unauthorized interruption, the Work necessary to reach substantial and/or physical completion. The Contractor shall provide the Engineer with a revised critical path schedule indicating when the Contractor expects to reach substantial and/or physical completion of the Work.

The above process shall be repeated until the Engineer establishes the Substantial Completion Date.