

**November 9, 2011**  
**Argo Yard Truck Roadway Project**

**Memorandum of Understanding**

**Port of Seattle**  
**Freight Mobility Strategic Investment Board**  
**Prologis, L.P.**  
**City of Seattle**  
**Union Pacific Railroad Company**

**THIS MEMORANDUM OF UNDERSTANDING (this “MOU”)** is entered into among the following parties (the “Parties”):

1. The Port of Seattle (the “Port”) is a municipal corporation whose powers are enumerated in part in Chapter 53.08 RCW. The Port’s transportation strategies are to ensure long-term effective access to Port facilities, provide access to future development projects and promote regional economic competitiveness.
2. The Washington State Freight Mobility Strategic Investment Board (“FMSIB”), established by RCW 47.06A.030, which is authorized to propose and approve projects that facilitate freight movement between and among local, national and international markets to enhance trade opportunities.
3. Prologis, L.P. (Prologis), formerly known as AMB Property, L.P., a Delaware limited partnership licensed to do business in the state of Washington.
4. The City of Seattle (“City”), a first class Washington municipality with powers conferred by Title 35 RCW and other laws of the state of Washington, acting by and through the Seattle Department of Transportation (“SDOT”). SDOT’s mission includes policy and action plans to make Seattle's transportation system accessible and convenient for transit users, pedestrians, bicyclists, motorists, and freight.
5. The Union Pacific Railroad Company (“UP”) a Delaware corporation licensed to do business in the state of Washington.

The “Project” which is the subject of this MOU is defined as: the construction of a southbound dedicated truck roadway from east of East Marginal Way at a newly constructed underpass of the rebuilt SR 99/East Marginal Way trestle to the Argo Rail Yard (the “Yard”) gate, including the construction of a new Automated Gate System (“AGS”) at the existing Yard entrance.

The Project will provide a faster route from the Port marine terminals and a more efficient entry into the Yard. The Project concept is envisioned in three elements, and is more specifically defined in Section 1.2. and shown on Exhibit A.

## RECITALS

**WHEREAS**, it is the purpose of this MOU to memorialize the Parties' mutual understanding as to the planning, design, right-of-way acquisition, permitting and construction, ownership and maintenance of property in support of the Project; and

**WHEREAS**, the Project will provide expedited truck access from the Port marine terminals to the Yard, and will eliminate an existing difficult weaving maneuver for traffic traveling from southbound SR 99/East Marginal Way to Diagonal Avenue S.; and

**WHEREAS**, the Parties and the trucking community in the Duwamish area strongly support the Project; and

**WHEREAS**, construction of the Project will also improve access to the Prologis warehouse and other industrial sites in the vicinity; and

**WHEREAS**, construction of the Project will reduce traffic congestion on southbound SR 99/East Marginal Way, providing time savings for all users; and

**WHEREAS**, construction of the Project will reduce travel time for truck drivers traveling from the marine terminals to the Yard's gate; and

**WHEREAS**, construction of the Project will reduce traffic congestion and truck travel times, which will likely reduce adverse air quality impacts, and create a more efficient movement of freight; and

**WHEREAS**, construction of the Project will create safety improvements on and at the intersection of Colorado Street S., Diagonal Avenue S., and Denver Avenue S., which today has no delineation or signage; and

**WHEREAS**, construction of the Project will create traffic and safety improvements on Diagonal Avenue S. west to East Marginal Way S., and on Denver Avenue S. east to Utah Avenue S. or the Yard's gates.

NOW, THEREFORE, the Parties agree to the "Project Elements" as follows:

### **1. SCOPE OF WORK**

1.1. Project Title: Argo Yard Truck Roadway Project

1.2. Project Description: The Project includes three elements as shown in Exhibit B.

1.2.1. **Element I** of the Project includes:

- a. Planning, design, property easement acquisition, permitting and construction of a one-way, southbound 16' truck roadway from a new undercrossing of the rebuilt SR 99 Trestle on the east side of east Marginal Way to Colorado Street S. between the Yard and the Prologis property; and
  - b. Installation of a fence on the east side of the truck roadway, providing security for the Yard; and
  - c. Installation of ecology blocks on the west side of the truck roadway, offering delineation for the roadway and limiting access to adjacent property while providing emergency access to the roadway; and
  - d. The design elements are conceptual only and may be modified through the design and permit process.
- 1.2.2. **Element II** of the Project includes:
- a. Planning, design, permitting and construction of improvements to Colorado Avenue S., including moving the travel lanes 8' to the east and other elements identified in the final design necessary to accommodate expected truck weight and size; and
  - b. Planning, design, environmental review, permitting and construction of improvements to Diagonal Avenue S. and Denver Avenue S. between SR 99/East Marginal Way and the Yard's truck gates, and the intersection with Colorado Street S. identified in the final design to accommodate expected truck weight and size; and
  - c. Timely planning and design review of the existing E. Marginal Way S. roadway at the entrance to the underpass roadway; and
  - d. The design elements are conceptual only and may be modified through the design and permit process.
- 1.2.3. **Element III of the Project** includes:
- a. Planning, design, permitting and construction of a new AGS which provides enhanced technology to identify driver and freight information to reduce data entry and damage inspection time and result in less waiting time at the Yard's truck gate.

## 2. SCOPE OF MOU

### 2.1. Schedule/Scope:

- 2.1.1. Execute this MOU between the Port, FMSIB, UP, Prologis and the City, which includes a general approval of goals, scope, budget and the roles of each Party to complete the Project.
- 2.1.2. Initiate easement agreements between the Port and UP and the Port and Prologis to obtain the easements to construct the truck roadway.
- 2.1.3. Complete design of Elements I, II and III at the same time easements are being conveyed. Consistent with Section 4 below, the Parties will provide scoping input, and have the opportunity to review and approve in writing at 30% and 90% design for Elements I and II. Element III design shall be approved solely by UP with the other Parties reviewing and providing input at 30% and 90% design.
- 2.1.4. Begin construction following the conveyance of the easements and the approval of the final design of all Project Elements. Consistent with the terms of this MOU,

all Parties will work in good faith to collaboratively move the Project forward within the established budget.

### **3. INDIVIDUAL PARTIES' RESPONSIBILITY TO CONVEY EASEMENTS TO THE PORT**

- 3.1. The Parties agree that the Port will execute separate easements with UP and Prologis on forms mutually acceptable to the Parties thereto. Actual construction of any Project Element shall not proceed until Prologis and UP conveys both easements to the Port and design for Elements I and II is completed and approved in writing by the Parties. Provided, however, notwithstanding any other provision herein to the contrary, UP may, at its sole discretion, schedule and expense proceed with Element III in the event that easements are not conveyed. In the event UP proceeds with construction of Element III on its own schedule prior to the Port's entering into an appropriate funding agreement with the State of Washington Department of Transportation (WSDOT), UP may not be reimbursed for its expenses incurred in constructing Element III as provided hereunder.
- 3.2. UP shall convey an easement to the Port of approximately 11,400 sq. ft. of property depicted in Exhibit C at no cost to the Port. The duration of the easement shall last as long as the intended uses of Element I remain in effect.
- 3.3. Prologis shall convey an easement to the Port of approximately 15,700 sq. ft. of property as depicted in Exhibit C. The Port shall pay Prologis fair market value for the easement from Project funds following conveyance of the Prologis easement to the Port. The duration of the easement shall last as long as the intended uses of Element I remain in effect.
- 3.4. Both of these individual agreements must be executed and recorded before any of the individual easement agreements shall be enforceable.
- 3.5. The easements shall include an abandonment clause which identifies a process where the Project right-of-way returns to the current owners if the truck roadway constructed in Element I ceases to operate as a truck roadway as described in this MOU.
- 3.6. Before Prologis and UP convey easements to the Port, UP, Prologis and the Port shall conduct, at the Project's direct expense, a Phase I Environmental Site Assessment (Phase I ESA) for each easement to determine the existing environmental conditions associated with Element I. The Phase I ESA will identify potential environmental concerns and potential environmental liability that may arise as a result of the Project construction. The Port, UP and Prologis shall review the content of the completed Phase 1 ESA and negotiate allocation of any environmental liability as necessary before being required to proceed. If the Parties cannot agree to such allocation, there shall be no obligation to proceed with the conveyance of the easements.

### **4. INDIVIDUAL PARTY RESPONSIBILITY AND PRIORITIES**

The Parties shall be responsible for the following:

- 4.1 Port shall:
  - a. Act as the lead agency under RCW 47.06A.060(3) and ensure Project compliance with Chapters 226-16 and 226-02 WAC.
  - b. Act as the implementing agency in planning, design, right-of-way acquisition, permitting and construction of Project Elements I & II;

- c. Monitor and coordinate with UP's process on planning, design, permitting (to the extent any permitting for Element III is required under applicable law or regulation), and construction of Project Element III;
- d. To the extent review is required for Elements I, II or III under applicable law, serve as lead agency under the State Environmental Policy Act (SEPA), Chap. 43.21C RCW for Elements I, II and III;
- e. Be responsible for Element I ownership, operation, liability and maintenance associated with its operational use;
- f. Contribute up to \$2,200,000 to the Project that will be used for planning, design, right-of-way, permitting and construction of Element I and II of the Project;
- g. Acquire title to the easements depicted in Exhibit C;
- h. Obtain all City Street Use Permits for the work in the City right-of-way;
- i. Provide quarterly reports to FMSIB on implementation of all planning, design, right-of-way acquisition, permitting, and construction steps for Project Elements I, II, and III, for FMSIB's review and approval under Section 4.2 below;
- j. Submit itemized invoices to the Washington State Department of Transportation for release of FMSIB funds for Elements I, II, and III under Section 4.2 below; and
- k. Promptly negotiate and finalize funding agreements with WSDOT for Elements I, II and III.

4.2 FMSIB shall:

- a. Coordinate with other Parties to this MOU to act as a neutral facilitator and to assist with permitting issues and cash flow funding schedules;
- b. Provide \$600,000 in funding to the Port for planning, design, right-of-way acquisition, permitting and construction of Elements I and II of the Project upon execution of the MOU and after completing a funding agreement with WSDOT;
- c. Upon execution and recording of the easements described in Section 3 above; completion and approval of design for Elements I, II, and III; submission of properly itemized invoices by the Port; and FMSIB confirmation that the Project is being implemented, and that design and construction match the FMSIB Project funding application or, if different, provide the same anticipated improvement to freight movement, FMSIB shall:
  - (i) Provide \$2,500,000 in funding to the Port for reimbursement to UP for the construction of the AGS in Element III, upon confirmation that UP has provided up to \$1,250,000 in funding, as set forth in more detail in Exhibit D, Table 3.
  - (ii) Provide up to an additional \$1,250,000 as the last funds in, if needed, for the estimated \$5,000,000 AGS project in Element III. If the AGS project cost is under or equals \$5,000,000, FMSIB will retain the unspent portion of its \$1,250,000 additional funding. If the AGS project exceeds \$5,000,000, UP will be responsible for additional costs

over \$5,000,000. See Exhibit D, Table 3 for examples of the funding share for Element III.

- d. Review the status reports submitted by the Port on implementation of planning, design, right-of-way acquisition, permitting, and construction steps for Project Elements I, II, and III (as applicable). The purpose and scope of FMSIB's review is limited to evaluating whether the Project is being implemented and that design and construction either match the FMSIB Project funding application or, if different, provides the same anticipated improvement to freight movement.

4.3 Prologis shall:

- a. Provide an easement to the Port for construction of the truck roadway as shown in Exhibit C. Prologis shall have no other obligations, or be required to incur or contribute any other costs or expenses whatsoever, including assessments, with regard to the Project.

4.4 City shall:

- a. Coordinate with the other Parties to this MOU on design concepts for the intersection and roadway improvements in Elements I and II;
- b. Review and, where appropriate, approve design and final plans for roadway standards and signage for all roadway improvements in Elements I and II through the City permit process;
- c. Cooperate with the Port and UP in all City permitting processes necessary for the Project for each Element.

4.5 UP shall;

- a. Provide the Port with an easement, in exchange for FMSIB funding for Element III, needed for the private truck roadway as shown in Exhibit A. (See Section 4.2 (c) for a description and timing of FMSIB's funding responsibility for Element III. See Exhibit D, Table 3 for examples of the funding share for Element III) UP shall not be required to convey the easement to the Port until all conditions to release of FMSIB funding for Element III have been satisfied;
- b. Provide up to \$1,250,000 in funding for the construction of the AGS in Element III. See Exhibit D, Table 3 for examples of the funding share for Element III;
- c. Plan, design, permit and construct the AGS;
- d. Act as the implementing entity in planning (to the extent any permitting for Element III is required under applicable law or regulation), design, permitting, and construction of Project Element III;
- e. Be responsible for Element III liability and maintenance associated with its operational use.

## 5. AMENDMENT

Any amendment to this MOU must be agreed to by all Parties, in writing, and executed with the same formalities as the original MOU.

## 6. NOTIFICATION

Any notice required or permitted to be given pursuant to this MOU shall be in writing to the following individuals, 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 MOU:

**Port of Seattle:** Dan Burke, Pier 69, P.O.Box 1209, Seattle, WA 98111, [burke.d@portseattle.org](mailto:burke.d@portseattle.org), 206-787-3376.

**Freight Mobility Strategic Investment Board:** Karen Schmidt, 1063 Capitol Way, Room 201, P.O.Box 40965, Olympia, WA 98504-0965, [SchmidK@fmsib.wa.gov](mailto:SchmidK@fmsib.wa.gov), 360-586-9695.

**Prologis, L.P.:** Regina Menssen, 12720 Gateway Drive Suite 110, Tukwila, WA 98168, [rmenssen@prologis.com](mailto:rmenssen@prologis.com), 206-414-7612, with a copy to Jill Blechschmidt, Pier 1, Bay 1, San Francisco, CA, 94111, [jblechschmidt@prologis.com](mailto:jblechschmidt@prologis.com), 415-733-9479.

**Union Pacific Railroad Company:** Gerry Bisailon, General Director of Premium Operations, 1400 Douglas St., Mail Stop 1160, Omaha, NE, 68179, [gbisailon@up.com](mailto:gbisailon@up.com), 402-544-6710.

**City of Seattle:** Lorelei A. Williams, PE, 700 Fifth Avenue, Suite 3900, PO Box 34996, Seattle, WA 98124-4996, [Lorelei.Williams@seattle.gov](mailto:Lorelei.Williams@seattle.gov), 206-684-5178.

## 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 work is completed for the Project and it is first open for traffic, the records, documents, data, accounts and other records pertaining to the Project, the accounting thereof, and the performance of each Party's obligations under this MOU (collectively "Records") are to be maintained by each Party. Unless the Records are exempt from disclosure under Chapter 42.56 RCW, the Records shall be made available upon request, at no additional cost, for inspection and audit by the Port, the City, FMSIB, the state Auditor, and federal and state officials authorized by law. If any litigation, claim, or audit is commenced before the expiration of the three (3) year period, the Records and accounts along with supporting documentation shall be retained until all litigation, claims, or audit findings have been finally 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, NOTIFICATION, shall use their commercially reasonable efforts to resolve disputes between the Parties. If the designated representatives are unable to resolve a dispute, then the responsible Project representative for each Party who signed this MOU shall review the matter and attempt to resolve it. If the Project representatives 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 MOU is effective upon the date of execution by all Parties and will remain in effect until Project completion, unless otherwise stated herein or unless amended or terminated.

## **10. TERMINATION**

Any Party may terminate this MOU at any time prior to the award of a construction contract by the Port and the Port's assumption of a non-cancellable obligation, upon thirty (30) days written notice to the other Parties. Once a construction contract has been awarded by the Port and the Port has assumed a non-cancellable obligation, which event shall not occur if any Party has terminated this MOU or if each Party has not approved the different components of the Project, or conveyed the required easements, then no Party shall have the right unilaterally to terminate this MOU. For the purposes of this MOU, "non-cancelable obligations" are defined as those costs that the Port is obligated to pay as of the day that any Party provides notice that it is terminating this MOU, including the Port's percentage of the total cost of any phase of the Project that has commenced prior to the notice of termination, whether or not such phase has reached completion.

## **11. INDEMNIFICATION AND HOLD HARMLESS**

11.1. To the maximum extent permitted by law, each Party shall protect, defend, indemnify, and hold harmless each other Party, its officers, officials, employees, and agents from any and all costs, claims, demands, suits, actions, judgment, and/or awards of damages to the extent arising out of or in any way resulting from the indemnifying Party's own negligent acts or omissions or the negligent acts or omissions of the indemnifying Parties' agents and contractors, in each case solely in connection with such indemnifying Party's performance of its obligations hereunder. The Parties agree that their respective 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 Parties hereby waive 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.

11.2. With respect to any claim that arises before the termination of this MOU, the indemnification, hold harmless, and/or waiver obligation described in this in paragraphs 11.1 and 11.2 shall survive the termination of this MOU.

## **12. VENUE**

This MOU shall be deemed to be made in the County of King, State of Washington, and the legal rights and obligations of the Parties shall be determined in accordance with the laws of the State of Washington. All legal actions in connection with this MOU shall be brought in the County of King, State of Washington.



### 13. OTHER PROVISIONS

- 13.1. **Severability.** A determination by a court of competent jurisdiction that any provision of this MOU or any part thereof is illegal or unenforceable shall not cancel or invalidate the remainder of such provision of this MOU, which shall remain in full force and effect.
- 13.2. **Interpretation.** The captions of the Sections or Paragraphs of this MOU are not a part of the terms or provisions of this MOU. Whenever required by the context of this MOU, the singular shall include the plural and the plural shall include the singular. The masculine, feminine and neuter genders shall each include the other.
- 13.3. **Waivers.** All waivers shall be in writing and signed by the waiving Party. Any Party's failure to enforce any provision of this MOU shall not be a waiver and shall not prevent any Party from enforcing that provision or any other provision of this MOU in the future.
- 13.4. **Joint Drafting Effort.** This MOU shall be considered for all purposes as prepared by the joint efforts of the Parties and shall not be construed against any Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.
- 13.5. **Third Party Beneficiaries.** Nothing in this MOU is intended to, nor shall be construed to give any rights or benefits in the MOU to anyone other than the stated Parties, and all duties and responsibilities undertaken pursuant to this MOU will be for the sole and exclusive benefit of the Parties and not for the benefit of any other party.

The Parties agree that a transaction of this type involves terms and conditions which have not yet been agreed upon and that this MOU is in no way intended to be a complete or definitive statement of all the terms and conditions of the proposed transaction, but contemplates and is subject to the negotiation and execution of additional implementing documents.

IN WITNESS WHEREOF, the parties have executed this MOU.

**Freight Mobility Strategic  
Investment Board**

**Prologis, L.P.  
By: Prologis, Incl, its general partner**

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Signature

\_\_\_\_\_  
Signature

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Title

\_\_\_\_\_  
Date

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Title

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Date

**Port of Seattle**

**City of Seattle**

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Signature

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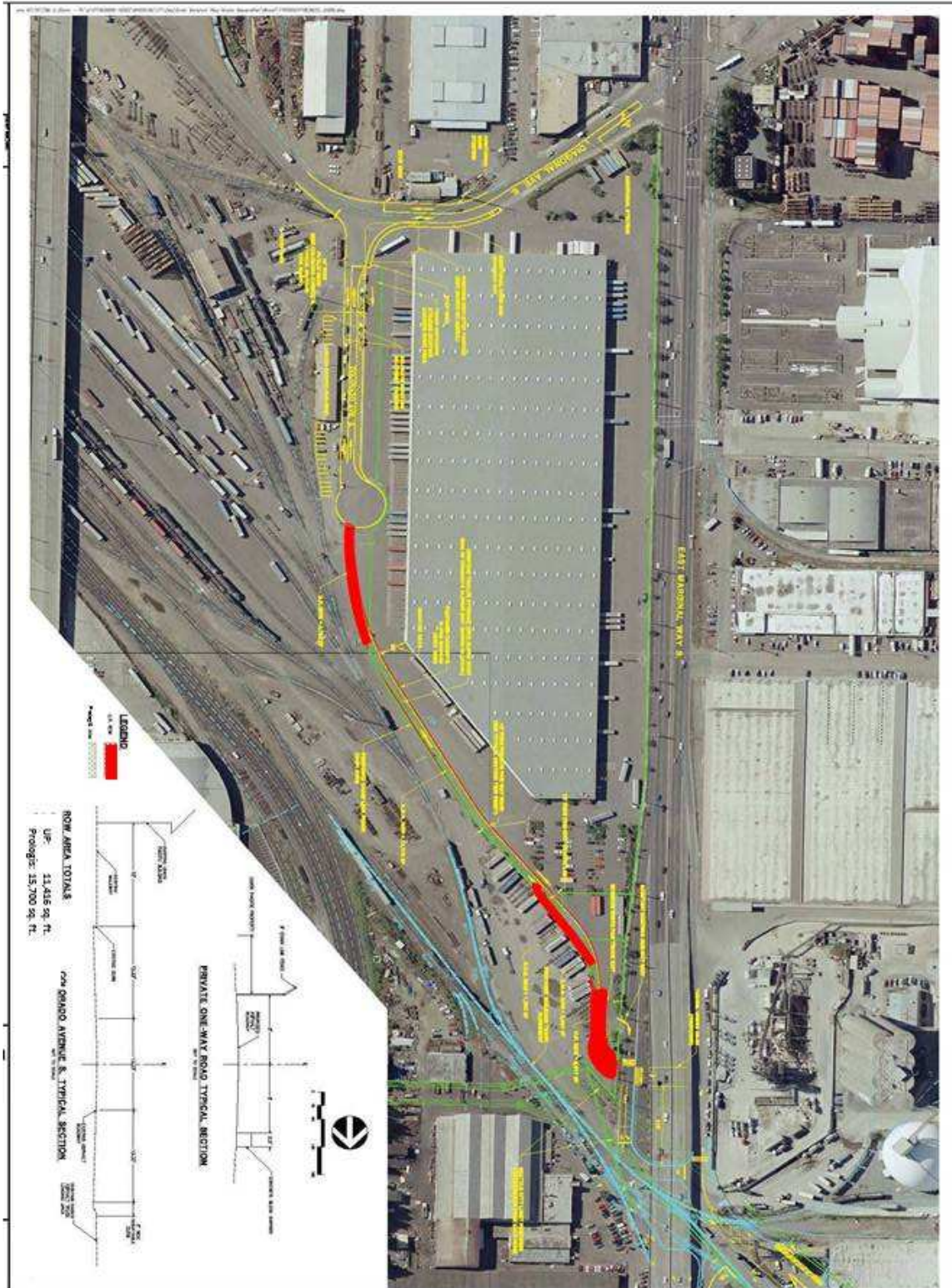
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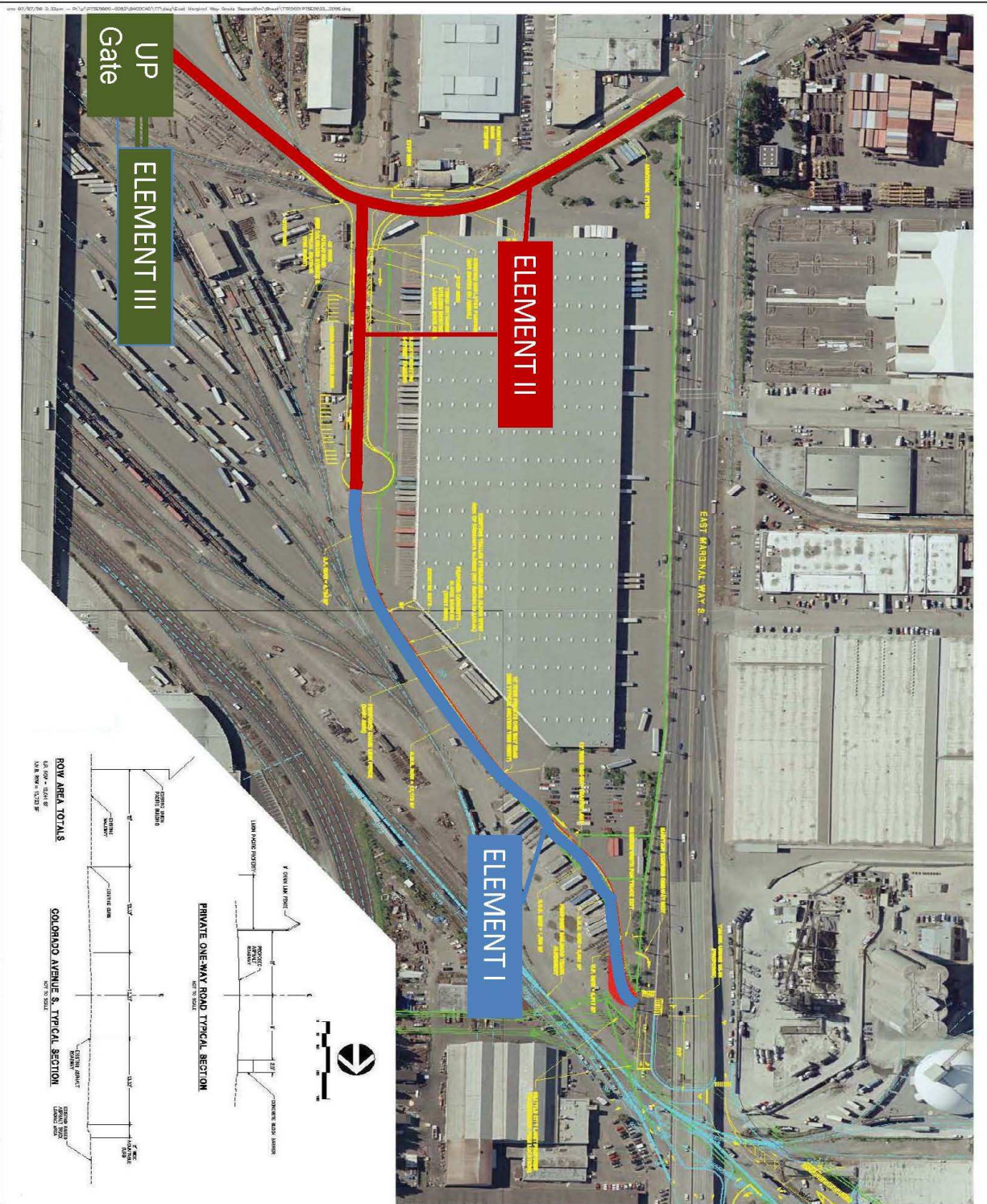
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# Exhibit A: Project Concept Illustration



# Exhibit B: Project Elements





## **Exhibit D: Project Cost and Funding**

**Table 1: Cost Assumptions for the Argo Yard Truck Roadway Project<sup>(1)</sup>**

Project Element	FMSIB	POS	UP	Total	Notes
Element I	(2)\$550,000	\$1,444,000		\$1,994,000	Includes planning, design, ROW acquisition and construction of one-way truck roadway.
Element II	\$50,000	\$ 756,000		\$806,000	Includes planning, design, ROW acquisition and construction of roadway and intersection improvements on Colorado/Diagonal/Denver
Element III	(2)\$3,750,000		\$1,250,000	\$5,000,000	Includes planning, design, permitting and construction of new AGS
<b>Total</b>	<b>\$4,350,000</b>	<b>\$2,200,000</b>	<b>\$1,250,000</b>	<b>\$7,800,000</b>	

(1)Project costs are estimated from 10% design; final costs may shift between elements to reflect timing and cash flow and provide maximum flexibility.

(2)Shifted \$394,000 in right-of-way cost from Element I to AGS in Element III

**Table 2: Estimated Cost for Work Items**

Project Element Costs	
Planning/design (Element 1 & II)	\$220,000
ROW (Element 1)	\$550,000
One-Way Truck Street (trestle to Colorado) (Element I)	\$1,334,000
Colorado/Diagonal/Denver Street improvements (Element II)	\$396,000
Intersection of Colorado/Diagonal/Denver (Element II)	\$300,000
Automated Gate System (Element III)	\$5,000,000
<b>Total</b>	<b>\$7,800,000</b>

**Table 3: Union Pacific and FMSIB Examples of Project Cost Share of AGS Depending on Final Cost of Element III**

Total Project Cost (Estimated)	UP Funding	FMSIB Funding (50% of total up to a maximum of \$2.5M)	FMSIB Additional Funding (Last dollars in to a maximum of \$1.25M)
\$5,000,000	\$1,250,000	\$2,500,000	\$1,250,000
<b>If Cost is greater than \$5M</b>			
\$5,500,000	\$1,750,000	\$2,500,000	\$1,250,000
\$6,000,000	\$2,250,000	\$2,500,000	\$1,250,000
\$5,500,000	\$2,750,000	\$2,500,000	\$1,250,000
\$7,000,000	\$3,250,000	\$2,500,000	\$1,250,000
<b>If Cost is less than \$5,000,000</b>			
\$4,500,000	\$1,250,000	\$2,250,000	\$1,000,000
\$4,000,000	\$1,250,000	\$2,000,000	\$750,000
\$3,500,000	\$1,250,000	\$1,750,000	\$500,000
\$3,000,000	\$1,250,000	\$1,500,000	\$250,000