

GCB 3063
INTERLOCAL AGREEMENT BETWEEN
WSDOT / Port of Seattle

This INTERLOCAL AGREEMENT (Agreement) is entered into between the Washington State Department of Transportation (WSDOT) and the Port of Seattle (Port), individually referred to as the “Party” and collectively referred to as the “Parties.”

RECITALS

- A.** Pursuant to Chapter 39.34 Revised Code of Washington (RCW), Interlocal Cooperation Act, the Parties desire to enter into an agreement with one another in order to jointly establish a mutual and cooperative system to carry out their respective obligations of this Agreement for the construction of the Puget Sound Gateway Program (PROGRAM).
- B.** In 2015 the Legislature funded the construction of the PROGRAM through the Connecting Washington revenue package.
- C.** The Legislature directed that \$130 million of the \$1.875 billion Program funding is to come through local funding sources.
- D.** The State Route 509 Completion Project (PROJECT), consisting of two stages of construction related to the Port’s contribution, is part of the PROGRAM and will provide the Port with improvements in local and regional accessibility to its facilities. As shown on Exhibit B, the SR 509 alignment will provide more direct access to the Airport from I-5 to the south and will reduce congestion on surface streets currently used for access. This Agreement is for both Stages 1 and 2 construction of the PROJECT that will provide essential connections to the ports of Tacoma and Seattle and will help ensure people and goods move more reliably through the Puget Sound region. The PROJECT will benefit the Port by providing direct freight links from both harbors of the NW Seaport Alliance and from Seattle-Tacoma International Airport (Sea-Tac) to key distribution centers in the region, to Eastern Washington, and to other states along the northern tier.
- E.** The PROJECT will further give travelers accessing Sea-Tac options for approaching from the South, by finally linking SR 509 and Interstate 5.
- F.** The Port has entered into a Local Funding and Phasing Memorandum of Understanding (MOU) with WSDOT (Exhibit A), commencing on July 1, 2018, acknowledging that the Port is one of eighteen (18) Local Agency Partners committed to provide matching funds/contributions commensurate with the benefits accrued from the PROJECT at a local level.
- G.** The Port is willing to contribute matching funds towards the required local contribution for the Stages 1 and 2 of construction.

NOW, THEREFORE, pursuant to chapter 39.34 RCW, the above recitals that are incorporated herein as if fully set forth below, and in consideration of the terms, conditions, covenants, and performances contained herein, and the attached Exhibits A and B, and incorporated and made a part hereof, the Parties agree as follows:

IT IS MUTUALLY AGREED AS FOLLOWS:

1. General

- 1.1 This Agreement quantifies the Port's local contribution commitment to be applied towards Stages 1 and 2 of construction of the PROJECT components of the PROGRAM and defines the roles and responsibilities between the Parties for delivery of the PROJECT.
- 1.2 The PROJECT will: provide an alternate route between Interstate 5 South and the Duwamish Manufacturing Industrial Center; it will reduce congestion on SR 518 to improve north access to Seattle-Tacoma International Airport; and will provide an opportunity for a potential future south access route accessing the airport.
- 1.3 This Agreement is effective upon the last date of execution of both Parties and will terminate upon the sooner of the PROJECT completion, or 12/31/30, unless mutually extended by the Parties.
- 1.4 WSDOT shall provide the Port with written notice of commencement of the Phase 1, Stage 1b portion of the PROJECT's construction at least thirty (30) days prior to the commencement date.

2. Payment

- 2.1 The Port agrees to contribute funds in two equal payments each in the amount of fifteen million Dollars (\$15m), for a total contribution amount of thirty million dollars (\$30m) to WSDOT for entirety (Stages 1 and 2) of construction of the PROJECT. WSDOT will invoice the Port with evidence that payments of at least fifteen million dollars (\$15m) have been made by WSDOT for the Phases 1 and 2 of construction of the PROJECT. The Port will pay the invoice within thirty (30) days of receipt from WSDOT.
- 2.3 The Port shall not be obligated to contribute funds in excess of thirty million dollars (\$30m) for the Stages 1 and 2 of construction for the PROJECT. If WSDOT requests additional funds from the Port in the future, a written amendment to this Agreement authorizing a contribution increase must be mutually agreed upon, and subject to Port Commission approval.
- 2.4 The Port shall make two payments as follows:
 1. The first payment of fifteen million dollars (\$15m) shall occur after WSDOT has made progress payments to the contractor for the completion of Stage 1b, or fifteen million dollars (\$15m) of the eligible construction costs of Stage 1b and in either case, no earlier than December 2023.
 2. The second payment of fifteen million dollars (\$15m) shall occur after WSDOT has made progress payments to the contractor for the completion of Stage 2, or payments totaling at least thirty million dollars (\$30m) of the construction contract of the entire SR 509 Stage 1b and Stage 2 project components, and in either case no sooner than December 2029.

3. Modifications to funding or scope of the projects and amendment

3.1 The Parties may adjust the Port's contributions to the project under Section 2 by written amendment reflecting changes to the Port's timing and contribution. In fulfilling its obligations under this Agreement, the Port will at times retain its duty to act in the best interests of the Port.

3.2 Either Party may request changes to the provisions contained in this Agreement. Such changes shall be mutually agreed upon and incorporated by written amendment to this Agreement. No variation or alteration of the terms of this Agreement shall be valid unless made in writing and signed by authorized representatives of the Parties hereto.

4. Contract Administration

4.1 The Parties do not by this Agreement create any separate legal or administrative entity. The Secretary of Transportation or his designee and Port of Seattle Executive Director, or his designee shall be responsible for working with each other to administer the terms of this Agreement. The Parties do not intend to jointly own any real or personal property as part of this undertaking. The Parties will cooperatively work together to further the intent and purpose of this Agreement.

5. Dispute Resolution

5.1 In the event that a dispute arises under this Agreement, it shall be resolved as follows: The Parties shall each appoint a member to a disputes board; these two members shall select a third board member not affiliated with either Party. The three-member board shall conduct a dispute resolution hearing that shall be informal and unrecorded. An attempt at such dispute resolution in compliance with the aforesaid process shall be a prerequisite to the filing of any litigation concerning the dispute. The Parties shall equally share in the cost of the third disputes board member; however, each Party shall be responsible for their own costs and fees.

6. Indemnification

6.1 To the extent permitted by law, WSDOT and the Port shall protect, defend, indemnify, and save harmless each other, their respective 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, Indemnifying Party's negligent acts or omissions. Neither WSDOT nor the Port will be required to indemnify, defend, or save harmless each other 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 concurrent negligence of WSDOT and the Port, the indemnity provisions provided herein shall be valid and enforceable only to the extent of WSDOT's or the Port's own negligence. WSDOT and the Port agree that their respective 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. For this purpose, WSDOT and the Port, by mutual negotiation, hereby waive, with respect to the other party only, any immunity that would otherwise be available against such claims under the industrial insurance

provisions of Title 51 RCW. In the event that WSDOT or the Port incurs any judgment, award, and/or cost arising therefrom, including attorneys' fees, to enforce the provisions of this section, all such fees, expenses, and costs shall be recoverable by the prevailing party. This indemnification shall survive the termination of this Agreement.

7. Venue

7.1 In the event that either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the Parties hereto agree that any such action or proceedings shall be brought in Thurston County Superior Court. Further, the Parties agree that each will be solely responsible for payment of their own attorneys' fees, witness fees, and costs.

8. Contacts and Notices

8.1 Contact between the Parties, including but not limited to invoicing, agreement administration, and notices will be directed to the below identified contacts as follows or his/her designee or such other addresses as either Party may, from time to time, designate in writing:

Geraldine Poor
Regional Transportation
Manager
Port of Seattle
PO Box 1209
Seattle, WA 98111

WSDOT Project Manager shall be:
Steve Fuchs **OR** Andrey Chepel
PO Box 47440 **OR** 999 3RD Ave Ste 2200
Olympia, WA 98503 **OR** Seattle, WA 98104
Phone (360) 357-2623 **OR** (360) 805-2978
Email: fuchss@wsdot.wa.gov **OR**
ChepelA@wsdot.wa.gov

9. Amendment

9.1 This Agreement may be amended or modified only by the mutual agreement of the Parties. Such amendments or modifications shall not be binding unless they are in writing and signed by persons authorized to bind each of the Parties.

10. Severability

10.1 Should any clause, phrase, sentence or paragraph of this Agreement or its application be declared invalid or void by a court of competent jurisdiction, the remaining provisions of this Agreement or its applications of those provisions not so declared shall remain in full force and effect.

11. No Third-Party Beneficiaries

11.1 This Agreement is executed for the sole and exclusive benefit of the signatory Parties. Nothing in this Agreement, whether expressed or implied, is intended to confer any right, remedy or other entitlement upon any person other than the Parties hereto, nor is anything in this Agreement intended to relieve or discharge the

obligation or liability of any third-party, nor shall any provision herein give any third-party any right of action against any party hereto.

12. Audits/Records:

12.1 All records for the PROJECT in support of all costs incurred shall be maintained by WSDOT for a period of six (6) years following final payment by the Port to WSDOT. The Port shall have full access to and right to examine said records, during normal business hours and as often as it deems necessary. Should the Port require copies of any records, it agrees to pay the costs thereof. The Parties agree that the work performed herein is subject to audit by either or both Parties and/or their designated representatives, and/or the federal/state government.

13. Signature Authority

13.1 The Port of Seattle Executive Director, Steve Metruck, was authorized to execute this agreement by Resolution No. _____ adopted by the Port of Seattle Commission on the 10th day of December, 2019, at a regularly scheduled meeting.

14. Recording

14.1 The _____ will record a copy of this Agreement in the Office of the _____ County Auditor as provided by law.

15. Working Days

15.1 Working days for this Agreement are defined as Monday through Friday, excluding Washington State furlough days or state holidays pursuant to RCW 1.16.050.

In Witness Whereof, the Parties hereto have executed this Agreement as of the date last written below.

Port of Seattle

Washington State
Department of Transportation

By _____

By _____

Date: _____

Date: _____

Approved as to Form

Approved as to Form

By _____

By _____
Assistant Attorney General

Date: _____

Date: _____