

FUNDING AGREEMENT

REGARDING A STUDY OF THE COST AND FEASIBILITY
OF RESTORING SEATTLE'S PIER 86 FOR PUBLIC
FISHING

Between

PORT OF SEATTLE

And

WASHINGTON STATE DEPARTMENT OF FISH AND
WILDLIFE

And

CRUISE, LLC

This Funding Agreement (the “Agreement”) dated as of the _____ day of _____, 2021 is by and among the Washington Department of Fish and Wildlife (WDFW), the Port of Seattle (POS) and Cruise LLC (Cruise). Cruise is a division of Expedia Group, Inc. (“Expedia Group”). The parties desire to establish terms for the phased funding of the renovation of the existing public fishing pier at Pier 86 (Centennial Park) in Elliott Bay (the “Public Pier”).

The Public Pier was constructed in 1979 and closed in 2018. WDFW and POS have confirmed that the Public Pier, tire reef and associated facilities are owned by WDFW, which are located on Department of Natural Resources (“DNR”) tidelands managed by the Port of Seattle under a Port Management Agreement.

Expedia Group has opened its new campus adjoining Pier 86 and has invested substantial funds to-date in enhancements and improvements to the pedestrian and bicycle trails and shoreline environment north of Pier 86. The parties now jointly desire to evaluate the cost and feasibility of the renovation of the Public Pier through a detailed due diligence exercise, as described below (the “Cost and Feasibility Analysis”). The Cost and Feasibility Analysis would precede any determination by the parties to proceed (or not proceed) with the possible renovation of the Public Pier. Toward this end, the parties shall provide proportional funding in support of this Cost and Feasibility Analysis, subject to the terms outlined herein.

In consideration of the mutual covenants and obligations set forth herein, the parties agree:

1. DESCRIPTION OF THE PUBLIC PIER PROJECT.

The renovation of the Public Pier (the “Project”), for which the Cost and Feasibility Analysis will be undertaken, is intended to include the following components:

1.1 Construction Elements.

- Renovate and restore the Public Pier for public use
- Demolish portions of existing Public Pier, while retaining any pilings that are in good condition
- Rebuild Public Pier facility without increasing over-water coverage
- Replacement Public Pier would include public fishing pier and public water taxi/ferry float
- Construction of replacement Public Pier would optimize area of Public Pier based on minimum requirements for ferry float and restriction on new over-water coverage
- Construct new floating dock connected to Public Pier for water taxi/foot ferry service (“Ferry Float”)

- Construct a new floating dock to allow for medium size water taxis (such as the King County *MV Doc Maynard* or *MV Sally Fox*, each 104 ft long) to moor at the pier in prevailing weather conditions to ensure 95% availability.
- Construct gangway to connect Ferry Float to Public Pier
- Possible construction of floating breakwater to protect Ferry Float from winter storms
- Provide access control for Ferry Float, to limit access to public ferry passengers and crew
- Provide access control for Public Pier, to secure it during hours it is closed
- Provide power to the Public Pier/Ferry Float for lighting and ferry farebox needs (shore power for vessels not provided)
- Provide pedestrian-level lighting
- Provide appropriate signage
- No shore-side improvements would be undertaken for the Project

1.2 *Use and Operations.*

- Public Pier
 - Open to general public during normal park hours
 - Use would be subject to normal park rules
- Ferry Float
 - Moorage at the Ferry Float will be restricted to water taxi vessels for public use and use by WDFW police vessels.
 - Access to Ferry Float limited to water taxi passengers, crew and emergency response personnel.

2 COST AND FEASIBILITY ANALYSIS ELEMENTS.

The Cost and Feasibility Analysis shall include preparation and evaluation of a report on the following elements of the Project:

2.1 *Site Analysis and Design*

The Cost and Feasibility Analysis will include the following elements relating to analysis of the Project site and design of the Project:

- Survey
- Bathymetric survey
- Geotechnical studies
- Structural condition evaluation
- Structural design
- Zoning, regulatory and permitting analysis

- Preliminary assessment of potential impacts and mitigation (including microalgae and eelgrass surveys)
- Feasibility of Ferry Float operations under King County Ferry District guidelines
- Measures to implement security consistent with other similar marine facilities
- Lighting plans
- Criteria for facility construction (i.e., target for useful life of renovated Public Pier)

2.2 *Project Budget*

The Cost and Feasibility Analysis will include the following elements relating to the Project budget:

- Construction pricing and project cost estimates
- Preparation of Project capital budget

2.3 *Permit Documents*

The Cost and Feasibility Analysis will include the following elements relating to preparation of the Project permit documents:

- Preparation of schematic plans adequate for permit applications
- Production of permit application documents
- Outline procurement process and construction requirements for Public Pier project

2.4 *Construction Agreements*

The Cost and Feasibility Analysis will include the following elements relating to preparation of construction and operation agreements for the Project:

- Development Agreement (including construction, project management, funding)
- Operations & Maintenance Agreement

3. MANAGEMENT OF FEASIBILITY ANALYSIS WORK

Cruise will be responsible for managing and conducting the Cost and Feasibility Analysis, including without limitation, the following:

- a. Cruise shall contract with such consultants and professionals as it deems necessary to complete the Cost and Feasibility Analysis.
- b. (the “Consultants”). Cruise shall select such consultants based on qualifications and experience.
- c. Cruise will provide a monthly update to POS and WDFW regarding the progress of the Feasibility Analysis.
- d. Cruise will maintain appropriate records to allow the work on the Cost and Feasibility Analysis to be audited in accordance with Section 7.12.

- e. Cruise will cause the Consultants to prepare draft studies and reports representing their work product and will assemble such studies and reports into a draft feasibility report for circulation to the parties.
- f. Following circulation of the draft cost and feasibility report, Cruise will obtain comments from WDFW and POS and will cause the Consultants to prepare final studies and reports for the Feasibility Analysis. POS shall have up to thirty (30) days to provide comments to the Feasibility Analysis. Cruise will then prepare a final Feasibility Analysis report and will circulate it to the parties.
- g. The Feasibility Analysis report and the studies and reports on which it is based shall be jointly owned by the parties and may be used by any of the parties for any purpose without restriction.
- h. Cruise will not itself be paid any compensation for the preparation of the Cost and Feasibility Analysis.

4. TERM

This agreement shall be for one (1) year, beginning May 1, 2021 and ending April 30th, 2022 (“The Commencement Date”). The work performed under this agreement shall be completed within the term or such extended term, whose extension shall be agree to formally by all parties prior to the end of the term of the agreement and provided that work continue to completion of work effort described in this agreement which requires no new authorizations, financial agreements, or additional tasks or scope .

5. TIMING.

Cruise will undertake commercially reasonable efforts to complete the Feasibility Analysis within eight (8) months of the commencement of the work or no later than April 30th, 2022.

6. FEASIBILITY ANALYSIS FUNDING

6.1 Funding Allocation. The total cost of the Feasibility Analysis is estimated to be \$500,000, as set forth in the budget attached as Exhibit A. The parties shall fund the following proportions of this project cost:

- WDFW: 33% (\$167,000)
- POS: 17% (\$ 83,000)
- Cruise: 50% (\$250,000)

The funding obligations of WDFW and POS for the Feasibility Analysis shall not exceed the amounts set forth above.

6.2 Funding Process

- a. Cruise shall pay all costs for the Feasibility Analysis as and when due and seek reimbursement from WDFW and POS for completed work as set forth below.
- b. Not more frequently than every thirty (30) days, Cruise shall provide WDFW and POS with an listing of those costs paid by Cruise during the preceding period, together with

reasonable documentation of such costs, percentage completion of each component of the Cost and Feasibility Analysis, and anticipated cost to complete the Cost and Feasibility Analysis.

POS agrees to pay Cruise a firm fixed total price (lump sum) of up to \$83,000 in accordance with the mutually agreed upon milestone payment schedule of fees set forth below. In no case shall the total compensation exceed the sum set forth herein. WDFW and POS shall pay properly completed invoices within thirty (30) days.

Draft Cost and Feasibility Study by [November 30th2021,.....\$40,000

Final Cost and Feasibility Study by [December 31st2021.....\$43,000

7. PROJECT CONSTRUCTION

7.1 Review of Feasibility Analysis. Following completion of the Feasibility Analysis, the parties will meet within forty-five (45) days to review the results of the Feasibility Analysis.

7.2 Construction Budget Approval. Within one hundred and twenty days of the completion of the Cost and Feasibility Analysis (or such longer period as to which the parties may agree), each party, acting in its sole and absolute discretion, shall make an election whether it desires to proceed with preparation of construction permit documents for the Project and bidding of Project construction (collectively, the “Construction Budget Process”). If one or more parties elect not to proceed with Construction Budget Process, then the parties shall have no further obligations hereunder.

7.3 Funding of Construction. Pursuant to the Construction Agreements, the allocation of funding of construction of the Project is expected to be in the proportions set forth in Section 5(a) above, provided that WDFW and POS shall not be liable to contribute funds in excess of their respective shares. In particular, the expected share for the Port of Seattle is anticipated to be 1/6 of the total project cost, up to a maximum of \$1,000,000.

8. MISCELLANEOUS

8.1 Attorneys’ Fees. The prevailing party in any action or proceeding arising out of or relating to this Agreement shall be entitled to recover its costs and expenses, including, without limitation, all reasonable attorneys’ fees, in such amount as shall be determined by a court or arbitrator.

7.2 Notice. All notices and other communications under this Agreement shall be in writing and shall be deemed to have been duly given if and when personally served or three (3) days after deposit thereof in the United States mail, registered or certified, return receipt

requested, postage prepaid, to the intended party at its last known address. Notice shall be delivered, as appropriate, to:

WDFW:
Attention:

POS:
Attention:

Cruise:
Attention:

Any party to receive notice hereunder may change or add its address for the purpose of receiving notices as herein provided by delivering notice in the manner aforesaid to the other party.

8.3 Complete Agreement; Amendment. This Agreement represents the complete agreement of the parties with respect to the matters addressed herein. No amendment, supplement or modification of this Agreement shall be binding unless executed in writing by the parties. No waiver shall be binding unless executed in writing by the party making the waiver. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver. This Agreement may be executed in counterparts, which may be transmitted electronically, each of which shall constitute an original, and all of which will be deemed a single document. Signature of an electronic copy of this Agreement, and transmission of a signature page electronically, shall bind the signing party to the same degree as delivery of a signed original.

8.4 No Third-Party Beneficiary. The parties enter into this Agreement for the sole benefit of the parties in exclusion of any other party, and no third-party beneficiary is intended or created by execution of this Agreement. Nothing in this Agreement is intended to and/or shall be construed to give any rights or benefits to any subconsultant, individual, company, and/or firm other than the parties.

8.5 Public Disclosure. The parties acknowledge that they may be required to disclose information provided under this agreement pursuant to the Washington State Public Records Act, Chapter (RCW 42.56). The disclosing party will determine whether the documents should be disclosed. In no event shall any party be liable to any other party for the disclosure of documents and information, including work product, it deems necessary to disclose under the law.

8.6 No Partnership. Nothing contained in this Agreement and no action by the parties pursuant to this Agreement will be deemed or construed to create a partnership or a joint venture.

8.7 Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington, excluding any choice of law rules. Venue for any

action arising out of or in connection with this Agreement, shall be in the state or federal courts in King County, Washington

8.8 Severability. If any provision of this Agreement is, to any extent, declared by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement (or the application of such provision to persons or circumstances other than those in respect of which the determination of invalidity or unenforceability was made) will not be affected thereby and each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law.

8.9 Captions and Capitalized Terms. The captions preceding the text of each section are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of this Agreement. Capitalized terms are also elected only for convenience of reference and do not have any connection to the meaning that might otherwise be attached to such term in a context outside of this Agreement.

8.10 Singular and Plural. Whenever required by the context of this Agreement, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa.

8.11 Warranty and Representation of Authority. The parties each represent to the other that the person or persons executing this Agreement have authority to do so and to bind the parties hereunder. All consents, permissions and approvals related to entry into this Agreement, and the obligations hereunder, have been obtained.

8.12 Audit and Access to Records. The parties shall maintain books, ledgers, records, documents or other evidence relating to the costs and/or performance under this agreement (“records”) on a generally recognized accounting basis and to such extent and in such detail as will properly reflect and fully support all fees, costs and charges. With regard to the records, the parties shall do and require its employees, agents and subconsultants to do the following:

- A. Make such records open to inspection or audit by representatives of the PORT during the term of this Agreement and for a period of not less than three years after the expiration of this Agreement.
- B. Retain such records for a period of not less than three years after the expiration of this Agreement; provided, however, if any litigation, claim, or audit arising out of, in connection with, or related to this Agreement is initiated, such records shall be retained until the later of (a) resolution or completion of litigation, claim or audit; or (b) six years after the date of termination of this Agreement.
- C. Provide adequate facilities reasonably acceptable to representatives conducting the audit so that such representatives can perform the audit during normal business hours.
- D. Make a good faith effort to cooperate with representatives of the party conducting the audit. Cooperation shall include assistance as may be reasonably required in the course of inspection or audit, including access to personnel with knowledge of the contents of the records being inspected or audited so that the information in the records is properly understood by the persons performing the inspection or audit. Cooperation shall also include establishing a specific mutually agreeable timetable

for making the records available for inspection by the party's representatives. If a party cannot make at least some of the relevant records available for inspection within seven (7) days of a written request, cooperation will necessarily entail providing a reasonable explanation for the delay in production of records.

8.13 Port Logo. Cruise and WDFW may not use any Port logo, and any use of Port name or logo that implies Port endorsement of the entity is prohibited unless written consent is provided by the Director of Public Affairs or Manager, Corporate Communications.

8.14 Access. Any access to property managed or owned by the Port that would be required as part of the Feasibility Analysis may be subject to additional Indemnity and Insurance requirements.

WASHINGTON STATE DEPARTMENT OF
FISH AND WILDLIFE

By: _____

Its: _____

Dated: _____

PORT OF SEATTLE

By: _____

Its: _____

Dated: _____

CRUISE LLC

By: _____

Its: _____

Dated: _____

