

Item No.	8d_attach
Meeting Date:	October 25, 2022

**MEMORANDUM OF
UNDERSTANDING (MOU)**

between

WSDOT / PORT OF SEATTLE

This MOU documents agreement between the Washington State Department of Transportation (“WSDOT”) and the Port of Seattle (“Port”), each a “Party” or collectively the “Parties.”

1. Background.

WSDOT is planning the construction of the SR 509 24th Avenue S/S 188th Street – New Expressway Project (“Project”), also known as the SR 509 Completion Project Stage 2, and portions thereof lie with the Port property boundary. The Port has certain design requirements or requests to be incorporated into the construction of the Project. The Parties have had ongoing discussions that have resulted in design decisions by WSDOT for elements within the Project. WSDOT will construct the Project improvements as described in this MOU and shown in Exhibit A. This MOU is intended to cover Design and Construction relative to SR 509 Stage 2 and any post-construction maintenance/operations terms and commitments will be addressed by a separate agreement or amendment to existing agreements.

2. Project Development and Coordination.

2.1 Jurisdiction. The terms and commitments herein to meet the mutually-agreeable requirements of the Port apply only to facilities within those Port property areas outside of the WSDOT ROW. WSDOT ROW limits are defined as those recorded on the current approved ROW Plans.

2.2 Review and Coordination. During the design phase (RFP development) of this Project, WSDOT and Port will identify the extent of the design elements and improvements within the Port property, and/or associated with access to the Port property. WSDOT will provide Port with Project design plans as early as possible, and will schedule and meet with Port to review, to the extent knowable by WSDOT during Project development, the right-of-way and environmental requirements, facilities design, traffic maintenance, and construction scheduling to ensure the Port has opportunity to comment. The Parties will thereafter work cooperatively to concur with and incorporate the desired design elements, standards, aesthetics, material/finishes, and improvements and the timing and process to establish any property commitments or permits as required under Section 2.5.

The Port acknowledges its obligation to plan for and participate in each of the Project’s plan reviews and comment resolutions and task force meetings prior to construction plan Release for

Construction at the Port's cost. Port will participate in the Preconstruction meetings to coordinate and resolve any outstanding plan review or task force meeting issues prior to beginning construction. The Port acknowledges that WSDOT is the owner representative in the contract with the Design-Builder and WSDOT will act on behalf of the Port and FAA to ensure that the work is performed in accordance with the contract, which includes the FAA regulations and adopted Port standards.

Review submittals to and from either Party will be transmitted prior to 3:00pm on the due date day.

2.3 Alternate Technical Concepts (ATC). During the Design-Builders' proposal development for this Project, WSDOT may receive requests for acceptance of alternate design concepts which may include design elements and improvements within the Port property, and/or associated with access to the Port property that are not covered by this MOU. The Port acknowledges that WSDOT is required both to keep ATC's confidential until award and to respond with an acceptance or rejection within 8 working days of receipt of an ATC. WSDOT will provide Port with ATC design plans as early as possible and will schedule and meet with Port to review. The Parties will thereafter work cooperatively to concur with and incorporate the desired revisions and process an amended MOU.

2.4 Environmental Approach. Wetland Buffer impacts may be mitigated for at Barnes Creek. Wetland impacts may be mitigated for at the (former I.A.C Seattle III property) advance mitigation site. Wetland impact limits are considered to be determined as follows:

Permanent Impacts:

- To Cut and Fill grading lines
- To Drip line of Bridge
- 3' outside of Fill wall

Temporary Impacts

- 5' beyond Cut grading lines
- 20' beyond fill grading lines
- 5' outside dripline of bridge
- For Fill Walls: 5' outside of the 3' permanent impact line.

WSDOT acknowledges that stormwater runoff from SR 509 Completion Project Stage 2 cannot discharge into the Port's system. The Port's system is subject to the Airport's NPDES permit and is required to maintain separation from the SR509 Completion Project Stage 2 stormwater system

2.5 Construction Approach. WSDOT will construct the Project to meet the mutually-agreeable requirements of the Port. WSDOT will include applicable sections from the FAA regulations and adopted Port standards directly or as references in the WSDOT construction contract documents for Stage 2 as Mandatory Standards for all work done on Port right of way and property.

If the Port wants any item of work constructed to deviate from what is required by FAA regulations and adopted Port design standards published at the time the RFP was advertised, the Port must inform WSDOT in writing at least ninety (90) days prior to WSDOT's addendum due date for Proposals of such changes. Otherwise, any change requested by Port after (90) days prior

to WSDOT's addendum due date will be funded solely by the Port if such change increases the cost of the Project. See Section 3.0 below. However, changes requested by the Port after (90) days prior to WSDOT's addendum due date that are necessary to bring the work in compliance with applicable sections of the FAA regulations and adopted Port standards included in the advertised RFP, shall not be funded by the Port.

The desired design elements identified below are based on WSDOT's conceptual design to be included in the advertised RFP. Some of these commitments may become null and void based on the final design scope and configuration innovations or alternative technical concepts of the selected Design-Builder:

- a) Illumination and Signal work within Project limits. Signalization for Starling Drive will be protected in place during construction. Independent lighting for access drives to/from S 200th Street, if requested, will be permitted, installed, powered, and maintained at Port's expense in accordance with the terms of betterments in Section 3.0
- b) Signing work within Project limits. New signs requested by the Port that did not exist prior to the Project that are not warranted for safe operation will be considered a betterment and paid for by the Port per Section 3.0 upon approval. The existing street right of way width for westbound S 188th is insufficient to accommodate standard street sign placement and the Port will cooperate with the City to secure sufficient right of way width or permit rights to install required signage per Section 2.6.
- c) Utility relocation work within Project limits. Existing utilities within the street ROW are there by franchise rights (Type 1) and any conflicting facilities shall be relocated at the utility owner's cost. Existing utility services from within the ROW to the Port's property will be maintained 24/7 during construction and preserved after construction.
- d) FAA Requirements. WSDOT acknowledges that the Port is not responsible to administer the FAA requirements but will help WSDOT identify design elements or approaches that aren't in alignment with those requirements. WSDOT will remove the trees within the WSDOT ROW acquired from the Port that have been identified by the Port as non-compliant with the height restriction terms of the property deed and the Land Exchange Agreement. Use of cranes and other equipment during construction will comply with the height restrictions and other requirement imposed by the FAA 7640.
- e) Storm Water Detention Pond work. New Project ponds within 10,000 ft of the AOA will be designed and constructed to include features intended as wildlife hazard deterrents in compliance . The design may include pondside slopes lined with HDPE or planted with dense vegetation to prevent wildfowl use and an unlined pond bottom to provide infiltration. New Project ponds experiencing standing water longer than 48 hours, or that are identified by the Port to be experiencing a wildlife hazard or non-compliance with GCA-4419, will be filled with a floating ball blanket which is Port's BMP for mitigating open-water associated hazardous-wildlife attractants.
- f) Landscaping – Plants used within project limits that lie within 10,000' of the AOA will be of those varieties in the Airport Approved Plant List. The Port will review and may approve other plant types if not already on the plant list. Elm species, though currently not on this list, have already been requested and approved for this project

2.6 Property Rights and Permitting. WSDOT will be responsible for recording any

land exchange relinquishments and transfers in the King County Auditor office.

Upon approval from the FAA , Port will grant WSDOT a 15' x 15' permanent nonexclusive easement abutting the street right of way, for the placement of a Destination/Wayfinding roadside traffic sign for the safe operation of the new RAB, on a site to be determined on the north side of S 188th Street with adequate distance from the Airfield Operations Area fence so as not to compromise airfield safety and security. Port will grant WSDOT a 15' wide temporary construction easement on tax parcel 3223049020 for approximately 6 months to complete installing/removing construction fencing, grading, drainage, paving, and landscaping during reconstruction of the existing shared use path at the SW corner of S 188th and DMMD.

2.7 Street Closure limits and allowances. WSDOT will coordinate the Maintenance of Traffic (MOT) conditions with the Port prior to and during construction. Currently anticipated and planned traffic restrictions include the following, which are subject to change based upon the final design of the selected Design Builder:

- a) The Port will not object to S 192nd Street being closed across the SR 509 ROW for 6 to 9 months during the new bridge construction. For the duration of such closure, S 188th Street and S 194th Street will remain open and unrestricted during this period.
- b) S 200th Street access drives to/from the Port property will be maintained 24/7 during construction, with the exception of periodic flagging station closures during the work day for safety during bridge construction activities.
- c) Starling Drive access at S 188th Street will be maintained 24/7 during construction.
- d) Additional Maintenance of Traffic strategies may be necessary during construction as will be coordinated with the Port

2.8 WSDOT shall allow Port inspectors access to the Project construction site to inspect any work involving Port-owned property, right of way or utilities, or property to be transferred to and/or maintained by the Port after construction, at reasonable times and with the prior consent of WSDOT upon 48 hours prior written notice to the WSDOT project engineer.

2.9 FHWA-1273 (Exhibit B), *Required Contract Provisions Federal-Aid Construction Contracts*, is incorporated and made a part hereof and the provisions therein will apply to all work on this Project.

3. Payment and Costs.

The Port acknowledges that requests for change(s) to the WSDOT construction contract after (90) days prior to WSDOT's addendum due date, other than changes that are necessary to bring the design in compliance with applicable sections of the FAA requirements and adopted Port standards, may increase costs for the Port and that WSDOT will not implement any such change(s) unless the Port agrees in advance in writing to be solely responsible for the costs associated with such change. All such changes shall ultimately be made at the sole discretion of WSDOT. WSDOT acknowledges that the Port shall not be responsible for increased costs for any design changes requested by the Port that are necessary to bring the design or the work in compliance with FAA requirements and adopted Port standards.

Betterment. Notwithstanding the foregoing, if Port desires to include a betterment in the above design elements work at any specific location, WSDOT will allow for betterment work to be performed, provided the Parties can reasonably coordinate the Project schedule to accommodate the betterment work without increasing Project costs or delaying the Project. Betterment is defined as any significant deviation or upgrading of the design being contemplated during the implementation of the Project that is not attributable to the highway construction or to meeting current requirements or standards and is made solely for the benefit of and at the election of Port. The difference in cost between the minimum construction required as a result of the Project and Port's desired betterment shall be at Port's sole expense and the additional funds authorized by amendment to GCB 3331. The estimated cost of betterments to be paid by the Port will be fully loaded, including but not limited to Design-Builder's change order markup, sales tax, WSDOT construction engineering management labor, and WSDOT regional overhead markup.

4. Indemnification.

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 (WSDOT and the Port) 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 MOU.

5. General Provisions

5.1 Breach. If a Party is in material breach of or fails to perform the terms and provisions of this MOU and such failure continues for a period for thirty (30) days after written notice from the other Party (or if such failure is not susceptible of a cure within such thirty (30) day period, cure has not been commenced within such thirty (30) day period and diligently pursued thereafter to completion), then such non-defaulting Party may, (a) terminate this MOU, and (b) pursue any remedies it may have under applicable law or principles of equity relating to such default, including an action for damages, specific performance and/or injunctive relief. Where the non-defaulting Party pursues an action for damages or otherwise,

such party shall be entitled to reasonable attorneys' fees, court costs and associated expenses in any prevailing action, if awarded in such action.

5.2 Rights and Remedies. The rights and remedies of the Parties to this MOU are in addition to any other rights and remedies provided by law, except as otherwise provided in this MOU.

5.3 No Waiver. Failure of a Party to enforce any term under this MOU shall not be deemed, nor shall it constitute, a waiver of such term or any other term, unless otherwise provided in a writing executed by the Party charged.

5.4 Compliance with Laws. Each of the Parties shall comply, and to the best of its ability shall ensure, that its employees, agents, consultants and representatives comply with all federal, state, and local laws, regulations, and ordinances applicable to the work and services to be performed.

5.5 Interpretation. This MOU is the result of negotiations between the Parties. Any ambiguity in this MOU shall not be presumptively construed in favor of or against any party.

5.6 Authority. Each Party represents and warrants that it has the requisite authority to execute this MOU.

5.7 Amendment. This MOU 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.

5.8 Counterpart and Electronic Signature. This MOU may be signed in multiple counterparts, each of which constitutes an original and all of which taken together constitute one and same MOU. Electronic signatures or signatures transmitted via e-mail in a "PDF" may be used in place of original signatures on this MOU. The Parties intend to be bound by its electronic or "PDF" signature on this MOU, are aware that the other Parties are relying on its electronic or "PDF" signature and waives any defenses to the enforcement of this MOU based upon the form of signature.

5.9 Audits/Records. All records for the PROJECT in support of all costs incurred shall be maintained by WSDOT for a period of six (6) years from the date of termination of this MOU or any final payment authorized under this MOU, whichever is later. 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. In the event of litigation or claim arising from the performance of this MOU, the Parties agree to maintain the records and accounts until such litigation, appeal or claims are finally resolved. This section shall survive the termination of this MOU. 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.

6. Endorsement

IN WITNESS WHEREOF, the Parties hereto have caused this MOU to be duly executed by their respective, authorized representatives as of the Party's date signed last below.

For Washington State Department of Transportation

For Port

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