

**MEMORANDUM OF UNDERSTANDING BETWEEN
PORT OF SEATTLE AND CITY OF SEATTLE
REGARDING
EAST MARGINAL WAY CORRIDOR IMPROVEMENT PROJECT**

This Memorandum of Understanding (the “MOU”) is made and entered into by the PORT OF SEATTLE, a port district and municipal corporation of the State of Washington (“Port”), and the CITY OF SEATTLE, a municipal corporation of the State of Washington (“City”). The Port and the City are also referred to in this MOU collectively as “the Parties”, and individually as a “Party.” As used in this MOU, “Project” means the construction of improvements on the City of Seattle’s East Marginal Way Corridor North Segment between S Spokane St and S Atlantic St. Potential future projects in the Central and South segments may be the subject of future collaboration.

RECITALS

WHEREAS, East Marginal Way is a Major Truck Street and a component of the Heavy Haul Network, and has provided access within the Duwamish industrial area for general purpose and freight traffic for many years; and

WHEREAS, East Marginal Way is also a significant corridor on the citywide bicycle network; and

WHEREAS, this arterial has experienced collisions and fatalities in recent years; and

WHEREAS, the Port and the City entered into the Heavy Haul Agreement on October 30th, 2015 (the “Heavy Haul Agreement”) titled “Memorandum of Understanding for Intergovernmental Cooperation between the Port of Seattle and the City of Seattle for Future Roadway Repair and Roadway Construction Projects Located Within Seattle’s Heavy Haul Network” in which the Port agreed to pay funds to the City in an amount to be determined by a Heavy Haul Network Study for future roadway repair or rebuilding projects; and

WHEREAS, the Port and City jointly funded and completed a Heavy Haul Pavement Report in February 2019, which determined the Port’s Heavy Haul Network funding contribution to the City will be \$10,154,000 million, and also documented a PCI of 23 for this segment of East Marginal Way; [The Pavement Condition Index (PCI) is a standardized evaluation method that uses a numerical index between 0 (lowest) and 100 to indicate the general condition of a pavement. The pavement rating of this segment represents a very poor condition with limited life span]; and

WHEREAS, the Port’s funding responsibility is meant to compensate for the additional cost of more rapid deterioration of the roadways in the Heavy Haul Network; and

WHEREAS, the City has consulted with the Port during design of the improvements to East Marginal Way, which includes reconstructing the roadway and separating transportation modes to preserve and enhance multi-modal safety and mobility; and

WHEREAS, the City will replace the pavement between Massachusetts/Holgate and Spokane St and raise it to Heavy Haul standards and construct a two-way protected bike lane (PBL) on the east side from S Atlantic St to S Spokane St, bike path improvements on the western side from S Horton to S Spokane St, a diagonal bicycle crossing at S Horton St and intersection redesign and improvements for safety at S Hanford St, as well as lighting and landscaping along the PBL; and

WHEREAS, the project provides a clear benefit to the Port and the industrial areas of the Duwamish Manufacturing and Industrial Center; and

WHEREAS, the Port has supported continuing grant applications by the City for state or federal grants; and

WHEREAS, RCW 53.08.330 and 53.08.340 authorize the expenditure of Port funds in conjunction with plans of the local jurisdiction in order to upgrade, improve or repair roads servicing port facilities; and

WHEREAS, City assets (such as sidewalk, hydrants, and street lighting) currently exist on Port property within areas licensed to the Northwest Seaport Alliance (NWSA) along the eastern property line, outside of the existing security fence and utilities are maintained by the City; and

WHEREAS, the Project will improve safety for truck and car drivers, bicyclists and pedestrians by separating modes and facilitating truck turning movements, while providing environmental benefits to air quality and stormwater facilities; and

WHEREAS, the Project will support both existing and new jobs in the Duwamish Manufacturing-Industrial Center and construction is forecast to create over 300 direct and indirect jobs; and

WHEREAS, this MOU is consistent with and in furtherance of the Heavy Haul Agreement of October 30th, 2015;

NOW, THEREFORE, in consideration of mutual promises and covenants contained herein, the Parties hereby agree as follows:

1. SCOPE OF WORK

- 1.1. Project Title: East Marginal Way Improvement Project - North Segment.
- 1.2. Description: The Project includes improvements for freight mobility and the safety of all users on the North Segment of the East Marginal Way Corridor:
 - A. Reconstruction of the East Marginal Way S roadway to heavy haul standards from approximately S Massachusetts St to S Spokane St
 - B. Terminal 25S driveway redesign and reconstruction
 - C. Rebuilt intersection, traffic signal and potential railroad crossing relocation at S Hanford St, improving signal operations and safety
 - D. New signalized diagonal bicycle crossing at East Marginal Way S and S Horton St improving safety and truck turning radii
 - E. 2-way protected bike lane on the east side of the street between S Atlantic St and S Spokane St that improves the safety of all users of the corridor by separating trucks from bikes
 - i) From S Atlantic St to approximately S Massachusetts St, this bike lane would be under the SR-99 Viaduct
 - ii) From S Massachusetts St to approximately S Holgate St, the bike lane would be to the east of East Marginal Way with a significant buffer from the roadway
 - iii) From S Holgate St to S Hanford St, and in some sections between S Hanford and S Spokane St, the bike facility will be adjacent to the roadway but buffered by a concrete barrier or by a planting strip
 - F. Multi-use path on the west side of the street between S Horton St and S Spokane St
 - G. Civil and signal adjustments as needed at S Atlantic St and S Spokane St to accommodate the protected bike lane
 - H. Lighting and landscaping along the 2-way protected bike lane
 - I. Rebuilding the sidewalk on the west side of East Marginal Way S adjacent to the roadway reconstruction north of S Horton St

- J. Replacing the existing water main in areas where the roadway will be reconstructed north of S Horton St, will be a concurrent project element, funded by Seattle Public Utilities.

The SDOT construction cost of this scope of work is currently estimated to be \$38.13 million, subject to further design.

- 1.3. Anticipated Schedule: Construction of North Segment is currently anticipated to occur between 2022 and 2025.

2. TERMS AND CONDITIONS

2.1. Implementing Agency: As the implementing agency the City shall ensure Project compliance with the State Environmental Policy Act (SEPA) and National Environmental Policy Act (NEPA), and the City shall be responsible for obtaining all necessary permits and/or agreements. The City shall be responsible for accomplishing all aspects of the Project scope in Section 1.2.

2.2. Contact Persons: The Parties to this MOU shall designate person(s) to act as liaison for the Project during construction. The contact persons shall meet on a mutually agreed upon, 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 will be mutually agreed upon by the Federal Highways Administration (FHWA), the Washington State Department of Transportation (WSDOT) and other funding partners. Construction change orders that do not change Project functionality and benefits to the Port, or the overall scope or general schedule of the Project will not require coordination or documentation with the Port. Any changes to the functionality of the Project and benefits to the Port, as described in Section 1.2, and further illustrated by the description of Project benefits, and the Project plan as provided in Exhibits B and C shall require coordination with the Port. (See Exhibit B - Project Benefits and Exhibit C – Typical Cross Section and Project Plan, attached.) The Port's funding is contingent on the Project being constructed as described in Section 1.2.

2.4. Construction Coordination and Specifications: The City will include language in the contract specifications that govern the contractor's coordination with POS, NWSA and tenants including property access, driveway closures and maintenance of traffic on City right of way. The City will coordinate with the Port and the NWSA on the language, with input from tenants coordinated by the NWSA as necessary.

2.5. 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.

3. CITY WORK ON PORT PROPERTY (Temporary Construction Easements (TCEs) and Long-term Maintenance)

3.1. The City's design improves City assets on portions of three parcels of Port property along the western margin of the public right of way and the eastern edges of Port properties. This will require Temporary Construction Easements (TCEs).

3.2. The parties have agreed upon compensation to the Port for the TCEs through an appraisal process.

3.3. East Marginal Way TCE valuation

North Segment TCEs		
Parcel	Square Footage	TCE Payment
PP-10	540	\$600
PP-12	21,134	\$164,600
PP-17A	14,101	\$125,400
Total TCE Payments		\$290,600

The general locations of the property to be provided under TCEs (“Property”) is shown in Exhibit B.

3.4. The City will negotiate a maintenance easement, with the Port or the NWSA as appropriate within two years of the completion of the Project, for necessary access to maintain assets that are on Port property to include: sidewalk, protected bike lane, and signal equipment (Seattle Department of Transportation (SDOT)), hydrants and service connections (Seattle Public Utilities (SPU)), and street lighting poles and handholes (Seattle City Light (SCL)). Maintenance easements will be provided at no cost to the City, provided the installed location of the infrastructure, as depicted on City “as-built” plans, does not substantially burden the property or prevent Port or NWSA tenants from using the property.

4. PROJECT COST REIMBURSEMENT AND FUNDING

Except for the Port’s contributions as herein described, all Project costs shall be borne by the City, including but not limited to the costs of design and permit review of the project; environmental investigation, clean up and any remedial costs; and replacement, repair, relocation of utilities made necessary by construction of the Project. The City, at its sole cost and expense, shall secure and maintain in effect, all federal, state and local permits and licenses required for the construction of the Project, including, without limitation, crossing, zoning, building, health, environmental, and communication permits and licenses.

Based on the 2019 Heavy Haul Pavement Report, the Heavy Haul agreement calls for a Port contribution of \$10,154,000 toward the cost of Heavy Haul Network roadway repair or rebuilding projects. Based on the Heavy Haul Network project list and schedule developed as Exhibit F, the City and Port agree that East Marginal Way Improvement Project will receive up to Five-Million Five Hundred Thousand Dollars (\$5,500,000) in total toward the Project. The Project and future payments will be subject to the following conditions:

- 4.1. The City will complete all environmental review and permitting and resolve any appeal or legal challenge.
- 4.2. 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 and local freight circulation.
- 4.3. The Project is constructed as described in Section 1.2.
- 4.4. The Port’s total contribution is not to exceed Five Million, Five Hundred Thousand Dollars (\$5,500,000) toward the Project’s construction costs.
- 4.5. Progress Report: For any cash payments, the City shall provide the Port with a copy of the WSDOT/FHWA approved project schedule, and final engineer’s estimate that includes contract bid items or summary of values. At the time application for payment is made, the City shall provide to the Port a progress report. The progress report will include a narrative describing the

project progress since the last report, an updated project construction schedule showing the current progress and percent completion of the project, and a tabulation of the construction progress payments made so that percentage of the project completion can be determined. Consistent with the Heavy Haul Agreement Paragraph 3.2.v, the progress report will also identify the project and itemize project categories and expenditures that support reimbursement to the City for actual direct costs incurred by the City on this Heavy Haul project.

Total SDOT construction cost is currently estimated to be \$38.13 million, subject to further design.

- 4.6. (See Exhibit D, Summary Estimates of Cost and Funding Shares, attached.) The Port shall make three payments as follows:
- a. The first payment of Two Million, Two Hundred Thousand Dollars (\$2,200,000) shall occur after the City has made progress payments totaling at least 50% of the total project cost that includes heavy haul construction (Element A in Section 1.2). This is expected in approximately 2023-2024.
 - b. The second payment of Two Million, Two Hundred Thousand Dollars (\$2,200,000) shall occur upon Substantial Completion of the Project, as defined in the Construction Contract, as issued by the City to the Contractor. This is expected approximately one year later.
 - c. The final payment of One Million, One Hundred Thousand Dollars (\$1,100,000) shall occur upon Final Acceptance as defined in the Construction Contract. This is expected approximately one year after Substantial Completion.
 - d. This payment schedule supersedes the requirement in Paragraph 3.2.iv of the Heavy Haul Agreement limiting annual contributions to Two Million Dollars (\$2,000,000) during any single calendar year.
- 4.7. The City shall notify the Port that the project has reached Substantial Completion by forwarding that notification. 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, are in place and fully operational.
- 4.8. The Port's third and final payment will be based on total construction costs estimated at the time of Final Acceptance. In the event the total construction cost at the time of the City's Final Acceptance as defined in the Construction Contract is less than the estimated Total Construction Cost at Final Design (60% design shown in Exhibit E), the Port's total funding contribution shall be adjusted by a percentage that represents the proportional share of \$5,500,000 to the Total Construction Cost unless otherwise agreed to by the parties in writing.

5. AMENDMENT

Either Party may request changes to the provisions contained in this MOU. Any changes to this MOU must be mutually agreed to by both 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, 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:

To the City: Attn: Megan Hoyt, Project Manager
Seattle Department of Transportation
PO Box 34996
Seattle, WA 98124-4996

To the Port: Attn: Geraldine Poor, Regional Transportation Senior Manager
 Port of Seattle
 2711 Alaskan Way
 Seattle, WA 98121

7. RECORDS RETENTION AND AUDIT

During the progress of the work on the Project and for a period not less than six (6) years from the date of the completion of the Project or final payment by the Port to the City, whichever is later, 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 findings have been resolved, even though such litigation, claim, or audit continues past the typical six 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, 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 executive director 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 both Parties and will remain in effect until completion of the Project, unless otherwise stated herein or unless amended or terminated.

10. TERMINATION

If the Project is not approved by the Port, the City, or other regulatory agencies with jurisdiction, or if the Project is not constructed as defined in Section 1.2 for whatever reason by 2030, this MOU shall immediately terminate.

11. INDEMNIFICATION AND HOLD HARMLESS

To the extent permitted by law, the City 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 or other wrongful acts or omissions, or the negligent or other wrongful acts or omissions of its employees, agents, contractors, consultants, licensees, or invitees, while acting within the scope of their employment, contract, license, or invitation, related to this MOU. Neither the City 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 or other wrongful act or omission of the other party. Where such claims, suits, or actions result from concurrent negligence or other wrongful acts or omissions of the City and the Port or their employees, agents, contractors, consultants, licensees, or invitees, while acting within the scope of their employment, contract, license, or invitation, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the City's or the Port's own negligence or other wrongful act or omission, or the negligence or other wrongful act or omission of its employees, agents, contractors, consultants, licensees, or invitees, while acting within the scope of their employment, contract, license, or invitation, related to this MOU. The City 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, the City 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, and all other applicable Industrial Insurance / Worker's Compensation Acts or their equivalent in the applicable jurisdiction. Further, the indemnification obligations under this MOU shall not be limited in any way by any limitations on the amount or type of damages, compensation, or benefits payable to or for any third party under Worker's Compensation Acts, Disability Benefit Acts, or other Employee Benefit Acts. In the event that the City 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.

12. VENUE

This MOU shall be deemed to be made in King County, 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 MOU shall be brought in King County Superior Court.

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 Joint Drafting Effort. This Contract shall be considered for all purposes as prepared by the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

13.3 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 Port and the City, and all duties and responsibilities undertaken pursuant to this MOU will be for the sole and exclusive benefit of the Port and the City and not for the benefit of any other party.

IN WITNESS WHEREOF, the Parties hereto have executed this MOU which shall be effective upon the date of recording.

PORT OF SEATTLE

CITY OF SEATTLE

Stephen P Metruck, Executive Director

Kristen Simpson, Acting Director
Seattle Department of Transportation

Date: _____

Date: _____

City Attorney

- Exhibit A – Vicinity Map**
- Exhibit B – Property Map**
- Exhibit C – Project Cross Section**
- Exhibit D – Project Benefits**
- Exhibit E – Cost and Funding Shares**
- Exhibit F – Heavy Haul Framework**

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EXHIBIT A: Vicinity Map



**Exhibit B: Temporary Construction Easement Map
 (general area shown here, staff will approve of actual TCEs in coordination with tenants)**

Exhibit B: Project Scope and Property Overview

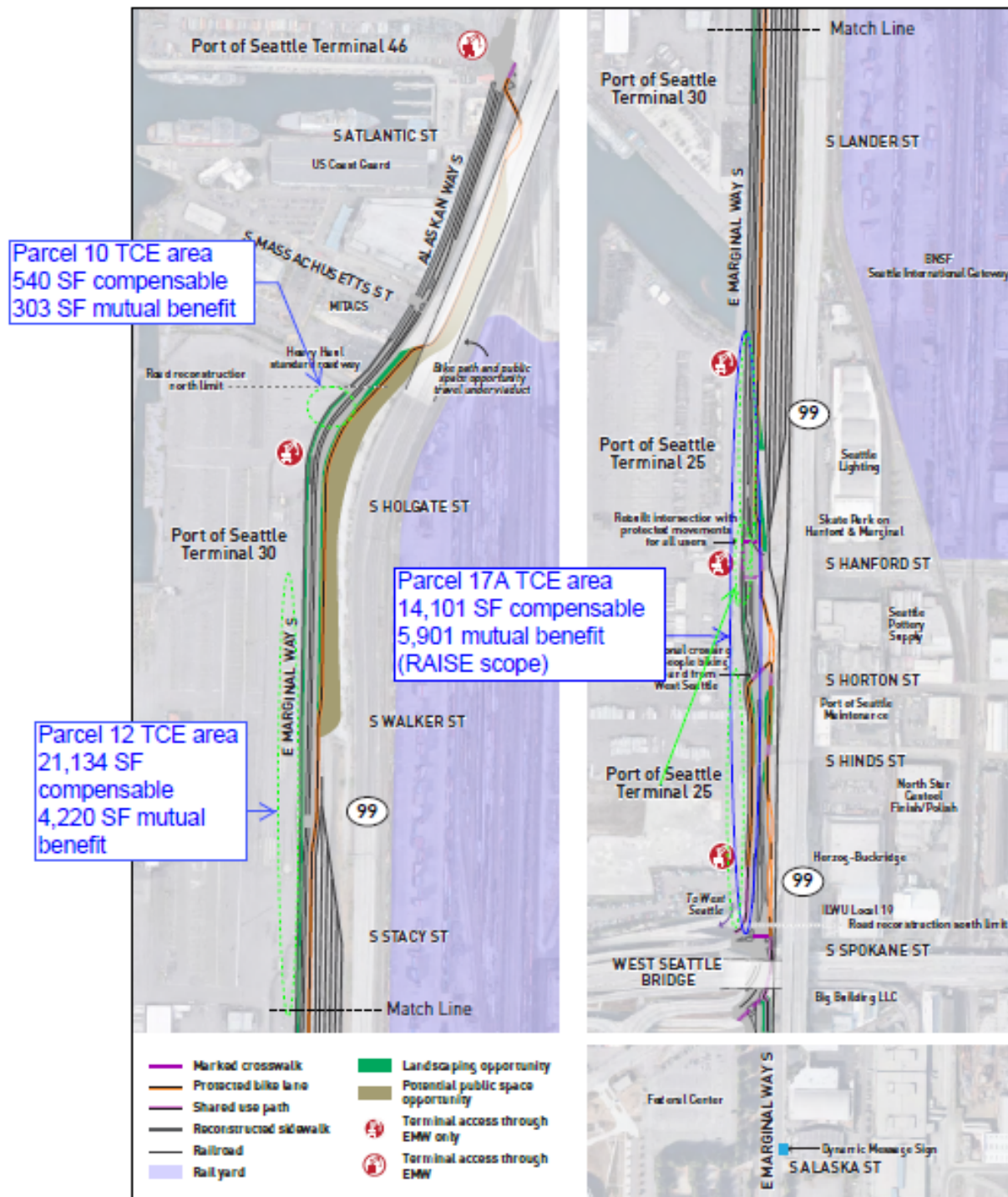
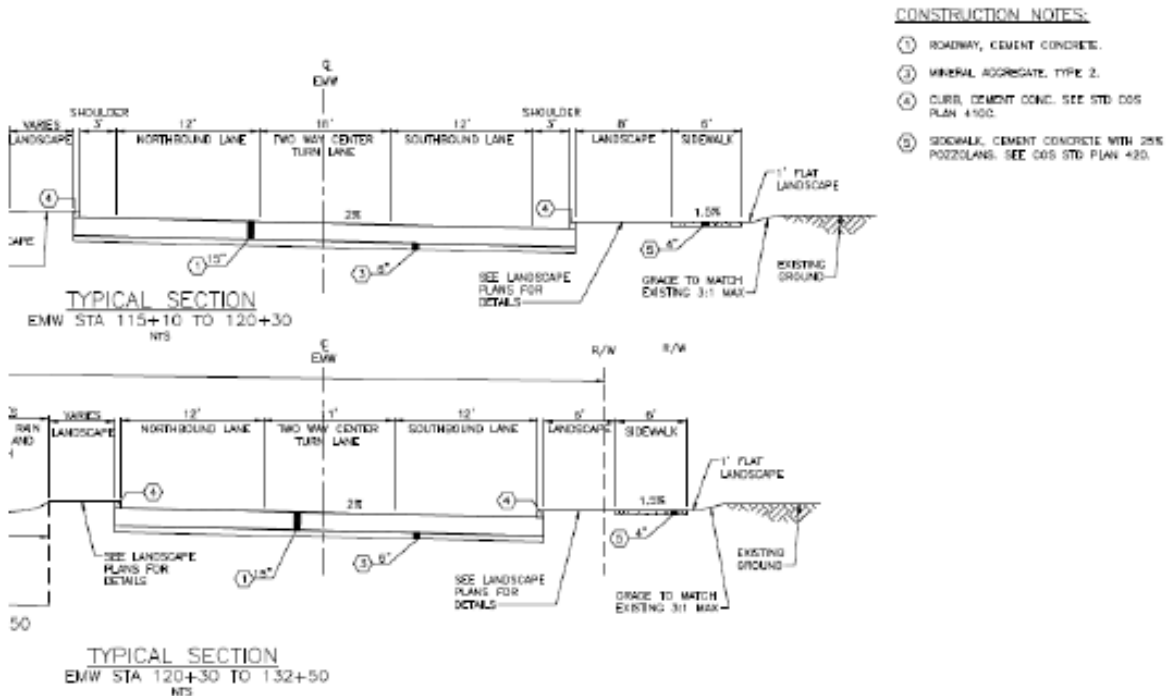


EXHIBIT C: Project Cross Section

Exhibit C: Key Project Scope Elements

Heavy Haul Pavement

The cross-section of the reconstructed roadway will be 15 inches of concrete over 6 inches of mineral aggregate.



Protected Bike Lane and Lane Widths

Physical barrier between freight and bike traffic:

The project design features a 2-way protected bike lane on the east side of the street between S Atlantic St and S Spokane St. The protected bike lane will feature a physical barrier—most often a concrete divider, but sometimes a landscaping strip—that separates people on bikes from vehicle traffic.

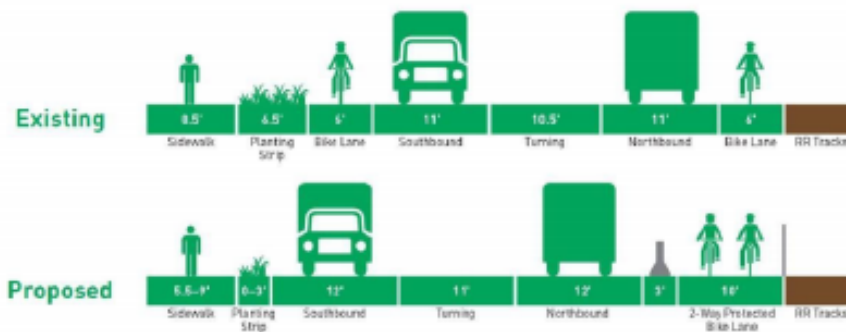


EXHIBIT D: Project Benefits

Exhibit D - Project Benefits

East Marginal Way Corridor Improvement Project

Freight capacity and mobility will be an essential component of regional and national economic recovery. East Marginal Way is a major freight corridor that provides access to the Port of Seattle terminals, rail yards, industrial businesses and the regional highway system, and between local Manufacturing and Industrial Centers (MIC's). It is also a designated Heavy Haul Route, critical last-mile connector and vital route for over-sized trucks or those carrying flammable cargo. In addition, the corridor provides a major connection for people who bike between the West Seattle Bridge Trail, downtown, and the SODO neighborhood.

This project will:

- Improve safety and reliability in the movement of people and goods
- Support freight loads by rebuilding the roadway
- Promote efficiency through signal modifications and intelligent transportation systems (ITS)
- Improve safety by better separating non-motorized modes from freight traffic

Economic Competitiveness

- *The East Marginal Way project is the key arterial street in the SODO "Qualified Opportunity Zone," one of a handful of economically distressed communities targeted for new investments to support economic development under the 2017 Tax Cuts and Jobs Act*
- *Construction of the East Marginal Way project will generate more than 500 jobs between 2022-24 with a long-term economic benefit equivalent to 380 permanent jobs created*
- *The project will support one of the Pacific NW's largest industrial job centers, the Duwamish Manufacturing Industrial Center, employing more than 75,000 area residents in a variety of manufacturing and maritime enterprises with PSRC forecasting another 25,000 jobs generated within the MIC by 2040*
- *East Marginal Way will directly connect Port of Seattle Terminals 46, 30, 25 and 104, and access routes to Terminals 5 and 18 and 103*
- *E Marginal Way also connects the US Coast Guard Base and Ash Grove Cement to the Port of Seattle's marine terminal facilities*
- *E Marginal transportation links include connections to Interstates 5 and 90 and intermodal facilities for the Union Pacific and Burlington Northern Santa Fe railroads*
- *The project will support ongoing efforts to redevelop container facilities at Terminals 5 and 104*



**EXHIBIT E: Summary Estimates of
 COST and FUNDING SHARES**

Exhibit E -Funding Estimate

Table 1: Project Costs by Project Milestone and Fiscal Year (\$ Millions)

	FY 2021 & Prior	FY 2022	FY 2023	FY 2024	FY 2025	Total
PE/NEPA, Design	\$4.48	\$1.12	-	-	-	\$5.60
ROW	-	-	-	-	-	-
Construction	-	\$0.10	\$10.44	\$20.85	\$6.84	\$38.23
Total	\$4.48	\$1.22	\$10.44	\$20.85	\$6.84	\$43.83
	Previously incurred (non-RAISE-eligible) expenses		RAISE-eligible expenses			\$38.13

Table 2: Project Budget Summary by Source and Use (\$ Millions)

	Funding Source	Total Funding Amount	Percent of Total
Federal Funds	RAISE Grant Funds	\$20.00	58%
	FHWA	\$2.00	
	Total Federal Funds	\$22.00	
Non-Federal Funds	City of Seattle	\$3.00	42%
	State Grants	\$7.63	
	Port of Seattle	\$5.50	
	Total Non-Federal Funds	\$16.13	
Total Project Funding (eligible RAISE costs only)		\$38.13	100%



EXHIBIT F: North Harbor Heavy Haul Network (HHN) Prioritization Framework

Recommendations for Project Contributions

- Focus funding on projects on the segments of the HHN that carry the most HH¹ (and overall NSWA) truck traffic—see selection criteria and more info on the selected HHN corridors/segments below.
- Contribute more than the amount addressing the actual impact of HHN on those corridors/segments, to encourage the City to ensure projects on those segments are implemented in a timely fashion (all \$ in 1,000s):

Street	From	To	2035 HH Truck Volume*	Pavement Condition Index**	Remaining Life w/out HH	Remaining Life with HH	Pavement Rebuild Costs*** (\$1,000s)	Present Value Cost Difference**** due to HH (\$1,000s)	Potential Contribution
East Marginal Way S	S Holgate St	Diagonal Ave S	100	23	0	0	\$34,000	\$2,775	\$5,500
SW Spokane St	Chelan Ave SW	Klickitat Ave	190	50	9	3	\$4,712	\$1,146	2,500
	Klickitat Ave	East Marginal Way S	110	76, 80	13	7-8	\$4,656	\$1,785	1,900
West Marginal Way S	26 th Ave SW	SW Spokane St	130	76	0	0	\$2,339	\$191	\$253
Total Priority Corridors							\$45,707	\$5,865	\$10,154
TOTAL							\$200,504	\$10,154	\$10,154

*The volume projections for 2035 are based on a combination of data sources and modeling efforts, including the 2015 Container Terminal Access Study, the traffic analysis for the T-5 EIS, and a 2015 technical memorandum by Heffron Transportation, providing information on truck trips and truck weights on corridors that are part of the HHN.

**The Pavement Condition Index (PCI) is standardized evaluation method, it uses a numerical index between 0 (lowest) and 100, to indicate the general condition of a pavement.

***Cost to remove existing pavement, excavate as needed, and place new pavement. Does not include any sidewalk restoration, pavement marking, utilities, traffic control, etc.

****Cost difference covers only the cost of reduced life of existing/future pavement and cost of increased pavement depth due to accommodation of HH.

¹ The MOU allows permitted HH trucks to carry a gross vehicle weight of 98,000 pounds instead of 80,000 pounds.