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Item No. 10b_attach

Meeting Date: October 24, 2023

MEMORANDUM OF AGREEMENT BETWEEN
PORT OF SEATTLE AND CITY OF SEATTLE
REGARDING

8th Ave S/Gateway Park North Project

This Memorandum of Agreement (the "MOA") 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 MOA collectively as "the Parties", and individually as a "Party." As used in this MOA, "Project" means design and permitting for the construction of improvements along 8th Avenue S, Gateway Park North, and at the street end area along the Duwamish River.

RECITALS

WHEREAS The Gateway Park North site ("Site") consists of a Seattle Department of Transportation ("SDOT") street-end right-of-way, a Seattle Parks & Recreation ("SPR") parcel, and a silver parcel ("Sliver") of the former Commercial Waterway District No. 1 of King County, to which the Port is the successor in interest, located at the 8th Avenue S street end area along the Lower Duwamish Waterway in Seattle;

WHEREAS The site is envisioned by the community as a street-end park with river access, a vision pursued by the Georgetown Community for over 40 years;

WHEREAS This Project was initiated as a result of Georgetown Open Space Committee and community advocacy, and was supported and funded by Seattle City Council;

WHEREAS In December 2019 the Port of Seattle Commission adopted the Duwamish Valley Community Benefits Commitment, a long-term commitment to equity and Port investment in the Duwamish Valley, and the Gateway Park North Project advances the goals set out in this commitment through application of the Port's expertise in estuarine habitat restoration;

WHEREAS The Port of Seattle Century Agenda compels the Port to restore, create, and enhance 40 additional acres of habitat in the Green/Duwamish watershed and Elliott Bay;

WHEREAS Both Parties agree that the Gateway Park North Project ("Project") proposed improvements would be beneficial to the City, the Port, and the community;

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

I. SCOPE OF WORK

Project Title: 8th Ave South/Gateway Park North Improvements

Description: The Project includes sampling, design, and permitting for public access, bankline stabilization, and habitat restoration work at the Site. Elements of the scope include:

- Soil sampling work, including contracting, planning, and implementing soil sampling and characterization at the Site to support design and permitting.
- Design work, including bankline stabilization design, public access design, and corridor improvement design.
- Permitting work, including local, state, and federal permitting for in-water and upland Project components.
- Anticipated Schedule: Design of the Project is expected to start in Q2 2023 with a goal of completion of design and permitting by Q4 2025.

II. ROLES AND RESPONSIBILITIES

1. City of Seattle Obligations

- a. The City is responsible for soil sampling, design, permitting, and all related costs for the Project. All contracts will be executed and managed by the City.
- b. 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. The City shall be solely responsible for compliance with such permits and licenses.
- c. The City will complete any environmental review and permitting and resolve any appeal or legal challenge.
- d. The City will engage the Port to solicit comments, coordinate, and work together in good faith to deliver all aspects of the Project. The City and the Port shall meet on a mutually agreed upon, scheduled basis at a frequency appropriate to

the phase and status of the Project.

e. 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 input of the Port and other stakeholders in the Project.

f. 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 action and long-term monitoring costs; and replacement, repair, relocation of utilities made necessary by construction of the Project. The City shall be solely responsible for any costs associated with non-compliance or alleged noncompliance and any cost overruns.

g. The City will invoice the Port for bankline stabilization and habitat restoration design costs, which will be itemized separately by the City's contractor. The City will also invoice the Port for 50% of permitting costs as they are incurred on a quarterly basis. Invoices will be itemized to show total charges, City portion, and Port portion. Payment will be made by the Port within sixty (60) days of receipt of such properly submitted invoices and supporting documentation (e.g., subcontractor invoices).

2. Port of Seattle Obligations

a. The Port will support the City's Project design work and Project permitting through in-kind support, to include staff time and permitting and design expertise. Other in-kind support including materials or use of the Port's Duwamish Valley Community Hub may also be provided, to be determined by availability and project need.

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b. The Port will contribute \$500,000 to be used by the City toward costs related to bankline restoration design and 50% of overall permitting costs up to \$500,000. The Port's total contribution toward the Project's design and permitting costs will not exceed \$500,000.

III. AMENDMENT

Either Party may request changes to the provisions contained in this MOA. Any changes to this MOA must be mutually agreed to by both Parties in writing.

IV. NOTIFICATION

Any notice required or permitted to be given pursuant to this MOA shall be in writing, and shall be sent via email and postage prepaid by U.S. Mail, return receipt requested, to the following addresses unless otherwise indicated by the Parties to this MOA:

To the City: Attn: CJ Holt, Project Manager

Seattle Department of Transportation

PO Box 34996

Seattle, WA 98124-4996

cj.holt@seattle.gov

To the Port: Attn: Danielle Butsick, Environmental Program Manager

Port of Seattle

2711 Alaskan Way

Seattle, WA 98121

Butsick.d@portseattle.org

A copy of the notice, demand, or communication may be sent simultaneously to the email addresses provided above, but shall not be deemed sufficient for notice under this Agreement.

V. 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.

VI. INDEMNIFICATION AND HOLD HARMLESS

To the extent permitted by law and except as provided in Paragraph VII. Environmental Indemnity below,

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 MOA. 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

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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 MOA. 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 MOA 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 MOA.

VII. ENVIRONMENTAL INDEMNITY

This MOA does not alter jurisdictional responsibilities and does not bind either jurisdiction to go forward with construction. The parties agree indemnification provisions will be included in any future construction agreement.

VIII. OTHER PROVISIONS

1. Severability. A determination by a court of competent jurisdiction that any provision of this MOA or any part thereof is illegal or unenforceable shall not invalidate the remainder of such provision(s) of this MOA, which shall remain in full force and effect

2. Survival. Paragraphs VI. Indemnification and Hold Harmless, and VII. Environmental Indemnity shall survive the expiration or any earlier termination of this agreement.

3. 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.

4. Third Party Beneficiaries. Nothing in this MOA is intended to, nor shall be construed to give any rights or benefits in the MOA to anyone other than the Port and the City, and all duties and responsibilities undertaken pursuant to this MOA will be for the sole and exclusive benefit of the Port and the City and not for the benefit of any other party.

IX. EFFECTIVENESS AND DURATION. This MOA 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.

X. TERMINATION. If the Parties mutually agree to discontinue work on the Project, or if approval cannot be obtained by other regulatory agencies with jurisdiction, or if the Project cannot otherwise proceed as defined in Paragraph I. Scope of Work and cannot advance to construction for whatever reason by January 1, 2028, this MOA shall immediately terminate.

1. Termination for Convenience

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Either party may terminate this MOA upon 30 days' prior written notification to the other party. If this MOA is so terminated, the Port shall be responsible for payment of properly submitted invoices accepted prior to the effective date of termination.

2. Termination for Cause

If for any cause, either party does not fulfill in a timely and proper manner its obligations under this MOA, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within fifteen (15) business days. If failure or violation is not corrected, this MOA may be terminated immediately by written notice of the aggrieved party to the other.

XI. DISPUTES. The designated representatives under Paragraph IV. 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 senior managers for each Party shall review the matter and attempt to resolve it. If the Project senior managers are unable to resolve the dispute, the matter shall be reviewed by the department director of each Party or his or her designee.

XII. VENUE. This MOA 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 MOA shall be brought in King County Superior Court.

1. Counterparts. This Agreement may be executed in counterparts constituting two (2) duplicate originals, each of which is deemed to be an original and constitutes the entire understanding and agreement of the Parties.

2. Exhibits. This Agreement consists of following the following exhibits, each of which is incorporated herein:

Exhibit A – Vicinity Map and Site Plan

Exhibit B – Potential Design Concept

3. Entire Agreement. This Agreement and the Exhibits attached hereto, and by this reference incorporated herein, set forth the entire agreement of the Parties regarding the Project, and there are no other agreements or understandings, oral or written, between the Parties concerning this Project.

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

PORT OF SEATTLE CITY OF SEATTLE

Stephen P. Metruck, Executive Director Greg Spotts, Director
Seattle Department of Transportation

Date: _____ Date: _____

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EXHIBIT A: Vicinity Map and Site Plan

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EXHIBIT B: Potential Design Concept

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