

BEFORE THE CITY OF SEATTLE HEARING EXAMINER

In the Matter of the Appeal of)
WASHINGTON STATE MAJOR) Hearing Examiner File: **W-26-001**
LEAGUE BASEBALL STADIUM)
PUBLIC FACILITIES DISTRICT; and) PORT OF SEATTLE'S REPLY
SEATTLE BUILDING &) ON MOTION TO INTERVENE
CONSTRUCTION TRADES COUNCIL,)
from an FEIS and FEIS addendum for the)
Greater Duwamish MIC, issued by the Director,)
Seattle Office of Planning and Community)
Development)
_____)

The Examiner should decline Appellants' invitation to silence a key party in this proceeding by depriving the Port of Seattle (the "Port") of permissive intervention in this appeal. Under the controlling standard, intervention is appropriate where a party demonstrates a "substantial interest" that will not be "adequately represent[ed]" by other parties to the appeal. *See* Examiner Rule 5.09(b). The Port has demonstrated both of these factors here.

A. This Appeal Stems from the Parties' Disagreements Regarding the Propriety of Residential Development in the MIC.

The parties disagree on whether and to what extent housing should be permitted in the Greater Duwamish Manufacturing and Industrial Center (the "MIC") and the Stadium Area Transition Overlay District ("STAOD") within the MIC. While Appellants generally

1 favor the eventual development of housing in these areas,¹ the Port generally disfavors it
2 unless it is done in a way that protects the Port's operations in and around the STAOD and
3 the broader MIC. And the City, as the local land use regulatory jurisdiction, must adopt
4 policies and land use codes that regulate future development in these areas. The City, the
5 Port, and several other parties have been engaged in protracted litigation centering on this
6 very issue, with cases pending in both the King County Superior Court and the State Court
7 of Appeals.²

8 Each party that has appeared in this matter is interested in the City's actions to
9 analyze housing impacts under the State Environmental Policy Act ("SEPA"), including in
10 the draft MIC Subarea Plan (referred to here as the "Subarea Plan"). However, the City's
11 and the Port's interests are distinct; so each should be allowed to participate in this
12 proceeding, which directly implicates future housing development in the MIC.

13 **B. The Stringent Intervention Standard Appellants Rely on Does Not**
14 **Apply in this Proceeding; but Even if it Did, the Port Satisfies It.**

15 Examiner Rule 5.09 controls the Port's intervention request. Appellants' advocacy
16 for a more stringent intervention standard is misguided. Appellants' Response to the Port's
17 Motion to Intervene [*hereinafter* "Response"] cites a discussion in *Westerman v. Cary*,
18 claiming that this case establishes our State's "standard rule for intervention." *See* Response
19 at 4, ln. 16 (citing *Westerman*, 125 Wn.2d 277, 303 (en banc) (1994)). But the cited
20 discussion relates to "of right" intervention under Court Rule 24(a)(2). *See id.* (clearly citing
21 CR 24(a)(2) prior to articulating the standard cited by Appellants). The Response ignores
22 the fact that permissive intervention rights are covered by CR 24(b), **not** CR 24(a). *See*
23 *Westerman*, 125 Wn.2d at 304 (separately discussing permissive intervention with reference
24 to CR 24(b)(2))³; *see also Spokane County v. State*, 136 Wn.2d 644, 648-50 (en banc) (1998)

25
26 ¹ *See, e.g.*, Response at 3, ln. 12.

27 ² *See Port of Seattle v. City of Seattle*, No. 25-2-10758-2 SEA (King Cnty. Super. Ct. filed Apr. 7, 2025); *City of Seattle v. Port of Seattle*, No. 62389-7-II (Wn. App. Ct. filed June 17, 2026). The Examiner may take official notice of these pending lawsuits as well as any pleadings therein pursuant to Examiner Rule 3.19.

³ Notably, *Westerman* acknowledges the more relaxed standard for permissive intervention under CR 24(b),

1 (clearly discussing CR 24(a)(2)'s "of right" intervention standard in language quoted by
2 Response at 4, ln. 24, then separately discussing permissive intervention under CR 24(b)(2)
3 in a discussion not quoted in the Response).

4 The Port seeks permissive intervention rights in this appeal. This request might be
5 covered by CR 24(b) if the Examiner did not already have its own standard in Examiner
6 Rule 5.09(b).⁴ In any event, the Port meets either standard, because its interest in the City's
7 SEPA review of Subarea Plan housing policies is direct and tangible, as well as substantial.

8 **C. The Port Has a Direct, Substantial Interest in Subarea Plan Policies**
9 **Governing Housing Development in the MIC, and the City's**
10 **Environmental Review Thereof.**

11 Appellants' claim that the Port has failed to demonstrate a "substantial interest" in
12 the City's SEPA review of the Subarea Plan scarcely merits a response. The Subarea Plan at
13 issue, along with its implementing policies and regulations, reflects decades of coordinated
14 planning with the Port's close participation. The Subarea Plan itself recognizes the
15 importance of preserving freight access to the Duwamish MIC and notes that the City's
16 recently adopted transportation levy dedicates \$45 million "specifically to freight and goods
17 movement," with additional investments benefiting transportation infrastructure serving the
18 Duwamish MIC. Subarea Plan at 32.⁵ All future development in this area will directly impact
19 the operations associated with the Port, as the Port's heavy-haul freight routes span almost
20 the entire STAOD and MIC. See Exhibit A.⁶ These routes are the subject of several MOUs,

21 _____
22 noting that the court "agree[s] that an interested government agency generally should be allowed to participate
23 if the case will affect the agency . . ." *Westerman*, 125 Wn.2d at 304. So not only does *Westerman* not support
24 Appellants' claims, it actually militates in favor of the Port's intervention in this matter. The Port is a special
25 purpose municipal corporation founded in 1911 and currently authorized and organized under Chapter 53.04
26 RCW. The Port promotes economic opportunities and quality of life in the Puget Sound region by advancing
27 trade, travel, commerce and job creation in an equitable, accountable and environmentally responsible manner.
⁴ See also Examiner Rule 1.03(c) (allowing the Examiner to determine appropriate procedure "[w]hen
questions arise *that the Rules do not address* . . ." and noting that the Superior Court Civil Rules may be
consulted "for guidance") (emphasis added).

⁵ See also Subarea Plan App. A (identifying numerous existing and planned freight mobility projects serving
the Duwamish MIC, including the SODO Rail Corridor project to improve access to Port facilities).

⁶ Appellants suggest it is "entirely speculative" to presume that future housing located in the STAOD would
be "in or adjacent to active industrial and freight corridors." Response at 5. Given the vast footprint of Port
facilities and truck routes the STAOD and broader MIC, it is virtually guaranteed that any new housing in the

1 where the Port and the City have established funding and cooperation terms to ensure the
2 ongoing functionality of this critical road network. *See, e.g., Exhibits B, C, and D.*⁷

3 One of the primary stated purposes of the Subarea Plan is to protect the Port and its
4 operations from the encroachment of inconsistent development. *See, e.g., Subarea Plan at 21*
5 *(“New housing development surrounded by land within the MIC has the potential to*
6 *perpetuate conflicts between residential and industrial uses in the MIC. . . . Seattle’s*
7 *container and cargo port facilities are in the Duwamish MIC and are a backbone of economic*
8 *activity in the MIC and the city overall. Policies and actions to ensure land use compatibility*
9 *. . . are critical to maintaining the health of the Container Port and the maritime sector.”)*.⁸
10 This is why the Port and its facilities are referenced **nearly one hundred times** in the current
11 draft of the Subarea Plan, which spans 76 pages. Considering this, Appellants’ claims that
12 the Port’s interests in the City’s SEPA review of the Subarea Plan are “academic,”
13 “theoretical,” or “hypothetical” are absurd and should be rejected outright.

14 Appellants concede that the Port “may well have an interest in opposing the
15 allowance of housing in the MIC and STAOD,” then incongruously argue that the Port has
16 no interest in this SEPA appeal because the SEPA action at issue did not itself modify
17 development standards, coyly claiming that “Appellants do not seek through this appeal to
18 allow housing in the MIC or STAOD.” *See Response at 4, ln.1.* Under Appellants’ contrived

19 _____
20 area would be in close proximity to Port facilities and key freight transportation corridors. *See Exhibit A.*

21 ⁷ *Exhibit B*, 2015 Heavy Haul Network MOU (outlining Port’s commitment of \$10-20 million for freight
22 corridor improvements); *Exhibit C*, 2017 Safe & Swift Corridor MOU (Port committing up to \$15 million for
23 freight mobility projects; stating that City and Port contributions will “leverage hundreds of millions of dollars”
24 in freight infrastructure investments); *Exhibit D*, 2021 West Seattle Bridge MOU (Port committing \$9 million
25 toward the \$175 million West Seattle Bridge program; reaffirming the City’s commitment to “protect, preserve,
26 and enhance industrial lands . . . and . . . work with the Port and others to maintain efficient freight mobility
27 throughout the . . . MICs”).

⁸ *See also Subarea Plan at 3* (“This subarea plan provides enhanced policy guidance to help ensure that local
land use, transportation, economic development, public service and environmental decisions are made in
consideration of th[e Port’s] long-term and widespread economic contribution – providing for the industrial
lands and transportation systems to ensure that the seaport continues to function effectively alongside the
vibrant city waterfront.”); Goal DLU.1 (“A critical purpose of land use in the Duwamish MIC is supporting
maritime cargo and other industrial [sic] maritime uses and making sure suitable land is available.”); DLU 1.1
 (“Protect encroachment of non-industrial uses near shorelines by applying the Maritime Manufacturing and
Logistics zone generally to shoreline adjacent parcels plus a buffer area generally consisting of a minimum of
one or two city blocks.”); DLU 1.2 (“Avoid siting major new land uses that could disrupt the functionality of
critical rail and truck infrastructure links to container port facilities and other water-dependent uses.”)

1 standard, *no party* (including Appellants themselves) would have interests adequate to
2 challenge any SEPA review of proposed land use policies or development regulations. This
3 is simply not the law of our State, nor is it reflected in the Seattle Municipal Code.⁹

4 As Appellants know well, participation in the SEPA review process (including public
5 comments and appeals) is a critical step in helping local governments develop and adopt
6 land use policy consistent with controlling law. Appellants' decision to file the immediate
7 appeal is illustrative of this concept. Regardless, Appellants have failed to justify their
8 proposed double standard under which their interests are adequate to initiate this appeal, but
9 the Port's interests are inadequate to participate in the proceedings. No such standard exists.
10 *See id.*

11 Appellants' attempt to narrow their SEPA appeal to a single housing policy raises a
12 distinction without a difference, as each policy discussed squarely relates to future
13 development of housing within the MIC. *See* Response at 2, ln. 14—3, ln. 26. Appellants
14 fail to explain why Policy DLU 5.1 would or should be less of a concern for the Port than
15 the others. To the contrary, this appeal appears to be an attempt to force the City to reverse
16 a policy that would discourage housing in the MIC, so it is central to the Port's substantial
17 interests in this matter.

18 **D. The City Cannot and Will Not Represent the Port's Interests in This**
19 **Appeal.**

20 Intervention is especially appropriate here because the Port's interests are clearly
21 separate and distinct from the City's; so the City will not be able to "adequately represent"
22 the Port as contemplated in Examiner Rule 5.09. The City is participating in this appeal (as
23 well as separate litigation involving the Port and the City) as a land use regulatory
24

25 ⁹ Rather, SEPA generally provides participation standing to any party that comments on proposed land use
26 legislation. *See, e.g.*, SMC 25.05.545.B (providing that parties that timely comment may challenge appealable
27 SEPA actions); SMC 25.05.680.B (Examiner appeal of certain procedural SEPA determinations available to
"any interested person"); SMC 25.05.755 (defining "interested person" to include any public or private
organization "significantly affected by or interested in proceedings before an agency . . ."); *Lands Council v.*
Washington State Parks & Rec. Comm'n, 176 Wn. App. 787, 801 (2013) (discussing relaxed standing
requirements where alleged injury is procedural in nature, including in SEPA cases).

jurisdiction. The Port and its related facilities will be subject to future applicable land use regulations adopted by the City throughout the MIC. The interests of a regulator and a regulated party are obviously separate and distinct, so Appellants' assumption that the City can somehow advance the Port's interests in this land use appeal is unfounded.

Appellants pretend to misunderstand the significance of the litigation between the Port and the City, which relates to one City action to allow housing in the MIC as well as its SEPA review of that action under the same Final Environmental Impact Statement that is at issue in this appeal. This separate litigation is still active in two other fora, has been pending for over a year, and has not been settled or dismissed. This demonstrates that the City and the Port are far from aligned on these land use policies or the relevant FEIS. Considering this, the City cannot and will not adequately represent the Port's interests in this Appeal.

E. Conclusion

For the foregoing reasons, the Port respectfully requests that the Examiner grant its motion to intervene in this Appeal.

/ / / /

DATED this 8th day of July, 2026

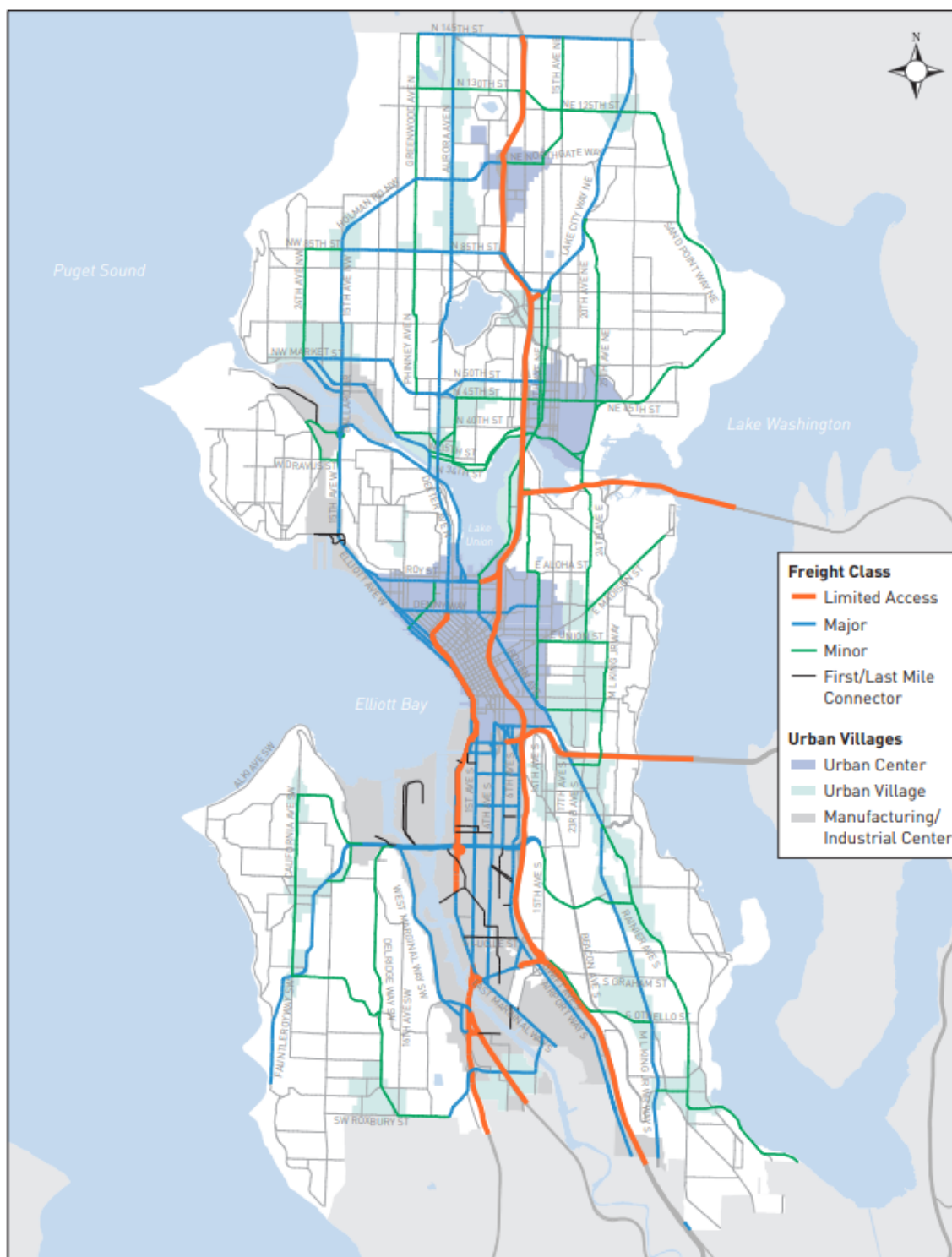
Davis Wright Tremaine LLP
Attorneys for Port of Seattle



By: _____
Clayton P. Graham, WSBA # 38266
Megan C. Raymond, WSBA # 58367
Kenneth P. Nelson, WSBA # 59940

EXHIBIT A

City-Designated Major Truck Street (Citywide)



City-Designated Major Truck Street (STAOD)



EXHIBIT B



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

This Memorandum of Understanding ("MOU") is entered into by the PORT OF SEATTLE, a port district and Washington municipal corporation ("Port"), and the CITY OF SEATTLE, a Washington municipal corporation ("City"), (collectively the "Parties").

WHEREAS, import containers that are shipped by rail from the Port can exceed weight limits allowed on state highways and local streets; and

WHEREAS, the Port is served by two intermodal rail hubs – the Burlington Northern Railway's Seattle International Gateway and Union Pacific's Argo Yard – that require containers to be trucked (drayed) on local streets from the Port's marine terminals; and

WHEREAS, local transload businesses that reconsolidate container loads may also receive heavy import containers that must be trucked from the marine or rail terminals; and

WHEREAS, to address this conflict, other West Coast ports, including Los Angeles, Long Beach and Tacoma, have created heavy haul networks to move cargo over short distances at low speeds within their harbor areas on standard marine chassis; and

WHEREAS, the City's existing load limits put the Port at a competitive disadvantage with other West Coast ports; and

WHEREAS, Chapter 46.44 of the Revised Code of Washington authorizes the City to issue a special permit authorizing the applicant to operate or move a vehicle or combination of vehicles of a load exceeding the maximum weight upon City rights of way; and

WHEREAS, a heavy haul network will create a better working environment for truck owners and shippers by enabling them to compete more effectively for cargo by reducing costs and expediting the movement of goods, without compromising safety; and

WHEREAS, shippers, truck owner-operators, trucking companies, railroads and the Port have an interest in increasing cargo volumes through the city and are requesting the establishment of a heavy haul network linking marine terminals to local railheads and nearby transload facilities; and

WHEREAS, the City, Port, and the State of Washington have made significant investments to maintain and improve access to and from the marine port with rebuilt roadways, new bridges, and new road connections; and

WHEREAS, the City supports the Port's efforts to enhance its competitiveness in international and national trade; and

WHEREAS, the City wants to implement transportation related measures that will grow Seattle's diverse economy and support living wage jobs; and

WHEREAS, the City and Port agree that creating a heavy haul network, allowing overweight trucks serving Port facilities to operate on the network under permit, will result in some accelerated damage to existing roadways and additional cost for future roadway repair and rebuilding projects within the Heavy Haul Network; 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 serving Port facilities; and

WHEREAS, the City and Port agree that implementing a heavy haul network will require an enforcement officer to monitor the network and ensure the safety for all roadway users;

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

1.0 ADOPTION OF HEAVY HAUL NETWORK LEGISLATION

1.1 The City will make its best effort to adopt heavy haul legislation in 2015.

- 1.2 To support the legislative process, the Port will satisfy all reasonable requests from the City for supporting materials and information regarding Port operations.
- 1.3 This MOU will commence ("Commencement Date") on the effective date of City heavy haul network legislation that includes all of the following elements:
 - i. The adopted heavy haul network legislation includes all routes contained in Attachment A to this MOU, incorporated herein by this reference; and
 - ii. The adopted heavy haul network legislation allows for a maximum tandem drive axle weight of forty three thousand (43,000) pounds and a maximum gross vehicle weight of ninety eight thousand (98,000) pounds;

2.0 DETERMINING THE IMPACT OF OVERWEIGHT TRUCKS

- 2.1 The City and the Port engineers agree that allowing overweight trucks that serve Port facilities on the roadways that connect Port marine terminals to local railheads and nearby transload facilities, identified on Attachment A to this MOU ("Heavy Haul Network"), will result in some accelerated damage to such roadways and additional costs for future roadway repair or rebuilding projects within the Heavy Haul Network, described as follows:
 - i. Accelerated damage of existing roadways is estimated to be equal to approximately ten percent (10%) of the cost to repair said roadway; and
 - ii. Additional project costs for roadway repair and construction projects is estimated to be equal to approximately ten percent (10%) of the cost of said project.
- 2.2 The City and Port agree that the City and Port will jointly commission and pay equal shares for the actual costs of a study to determine the actual impacts to the Heavy Haul Network by trucks with Heavy Haul Network permits serving Port facilities and moving cargo within the Heavy Haul Network, including additional costs for future roadway repair and rebuilding projects within the Heavy Haul Network ("Study").
 - i. The City and Port must commission the Study within two (2) months of the Commencement Date.
 - ii. The consultant hired by the City to conduct the Study will, among other things, complete a count of overweight vehicles using the Heavy Haul Network.
 - iii. The Study must be complete within six months of the Commencement Date of this MOU.
 - iv. The Port will reimburse the City for its equal share of the Study costs within thirty (30) days of receiving a copy of the Study and the City's request for reimbursement.

2.3. The City and Port agree that, in order to determine future impacts to the Heavy Haul Network by trucks with Heavy Haul Network permits serving Port facilities, the Study will be updated every (5) five years and be issued before June 30, 2021, 2026, and 2031 (collectively, the "Study Updates").

2.4 The City and Port agree that all dollar figures contained within this MOU will be adjusted to current dollars for each of the Study Updates. The dollar figures will be updated using the Consumer Price Index provided by the United States Bureau of Labor Statistics or its successor.

3.0 PORT FINANCIAL COMMITMENT

3.1 Subject to Section 1.3, the Port agrees to pay the City up to Two Hundred and Fifty Thousand Dollars (\$250,000) in support of the Heavy Haul Network implementation and operations through 2017, detailed as follows:

- i. Upon adoption of the Heavy Haul Network legislation, not to exceed Ninety Thousand Dollars (\$90,000) to account for one-time start-up costs, including an enforcement vehicle, portable truck scales, and direct administrative costs to establish the new Heavy Haul Network permit type. The Port will reimburse the City no later than thirty (30) days after the Port's receipt of a letter from the City documenting actual, direct start-up costs payable under this subsection 3.1(i).
- ii. In 2016, not to exceed Ninety Thousand Dollars (\$90,000) towards the difference between annual Heavy Haul Network permit revenues and annual Heavy Haul Network direct operational costs.
- iii. In 2017, not to exceed Seventy Thousand Dollars (\$70,000) towards the difference between annual Heavy Haul Network permit revenues and annual Heavy Haul Network direct operational costs.
- iv. All requests for payment by the City under subsections 3.1(ii) and (iii) will include a letter from the City identifying the applicable annual Heavy Haul Network permit revenues and the annual Heavy Haul Network direct operational costs. The Port will make payment to the City no later than thirty (30) days after receiving the information required in this subsection 3.1(iv).

3.2 Subject to Section 1.3, the Port agrees to pay the City a minimum of Ten Million Dollars (\$10,000,000) and maximum of Twenty Million Dollars (\$20,000,000) over the next twenty (20) years to account for accelerated damage to existing roadways within the Heavy Haul Network by trucks with Heavy Haul Network permits serving Port facilities, and additional costs for future roadway repair or rebuilding projects within the Heavy Haul Network, subject to the following:

- i. The City and the Port will, by agreement, develop a list and schedule for Heavy Haul Network project(s).

- ii. If the Study shows that accelerated damage to existing roadways by trucks with Heavy Haul Network permits serving Port facilities, and additional costs for future roadway repair or rebuilding projects within the Heavy Haul Network totals between Ten Million Dollars (\$10,000,000) and Twenty Million Dollars (\$20,000,000), the Port will pay the City in accordance with the provisions of Section 3.2.
- iii. If the Study or any of the Study Updates shows that accelerated damage to existing roadways by trucks with Heavy Haul Network permits serving Port facilities, and additional costs for future roadway repair or rebuilding projects within the Heavy Haul Network totals either less than Ten Million Dollars (\$10,000,000) or more than Twenty Million Dollars (\$20,000,000), the Port and City agree to renegotiate the terms of this MOU.
- iv. The Port's contributions under this Section 3.2 will not exceed Two Million Dollars (\$2,000,000) during any single calendar year during the term of this MOU, unless the Port Commission and the City agree to a greater amount to achieve the goals of this MOU.
- v. When developing designs for roadway repair and rebuilding projects within the Heavy Haul Network, the City will consult with the Port during conceptual design and at regular intervals during design and construction. The City will make every effort to devise project design components that maintain efficient freight movements throughout the Heavy Haul Network. Where feasible, such designs will consider separation of transportation modes to preserve and enhance multi-modal safety and mobility.
- vi. The Port will not be required to make any contributions under this Section 3.2 before the City has certified that a Heavy Haul Network project has reached substantial completion by sending the Port a copy of the Seattle Department of Transportation Engineer letter to the City's contractor establishing the substantial completion date, as required by the City's standard specifications for construction projects. The City and the Port will agree on the minimum advance notification to the Port of a particular project's substantial completion and the Port reserves the right to request inspection of any such project prior to issuance of substantial completion.
- v. All requests for payment by the City under this Section will include a letter from the City identifying the project, itemizing project categories and expenditures that support reimbursement to the City for actual direct costs incurred by the City on a Heavy Haul Network project. The Port will make payment to the City no later than thirty (30) days after receiving the information required in this Section.
- vi. In the event the Port secures funding from other non-City sources for the Heavy Haul Network roadway repair and construction projects, the amount of such funding will be credited against the Port's obligations under this Section 3.2.

4.0 DURATION

- 4.1 This MOU will commence on a date consistent with the requirements of Section 1.3 and will remain in effect until December 31, 2035, unless earlier terminated in accordance with Section 5.1.

5.0 AMENDMENT AND TERMINATION

- 5.1 The MOU may be terminated prior to December 31, 2035, only by a written instrument executed by each of the parties hereto. If it is impracticable to perform under the MOU due to a change in the law, the parties will first seek to amend the MOU; if amendment is not possible, the MOU may be terminable by either party.

6.0 SUCCESSORS AND ASSIGNS

- 6.1 This MOU will be binding and inure to the benefit of the Parties hereto and their respective successors and assigns.
- 6.2 Neither this MOU nor any term or provision hereof, or any inclusion by reference, will be construed as being for the benefit of any party not a signatory hereto (except for any successors and assigns thereto). No other person or organization will have any right of action based upon any provision of this MOU.

7.0 DISPUTE RESOLUTION

- 7.1 If disputes occur, the City and Port will designate representatives for the purpose of resolving disputes that arise under this Agreement:
- 7.2 The Designated Representatives will use their best efforts to resolve disputes between the parties. If the Designated Representatives are unable to resolve a dispute, the responsible department directors will review the matter and attempt to resolve it. If they are unable to resolve the dispute, the matter will be reviewed by the chief executive officer 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.
- 7.3 In any action by a party hereto required to enforce this MOU, each party should bear its own costs including attorney's fees and all reasonable costs and expenses incurred as a result of a breach of this MOU, and of bringing or defending the suit.

8.0 NOTICES

- 8.1 Any notice required or permitted to be given pursuant to this MOU will be in writing and will be deemed to have been duly given when delivered in person or upon receipt after dispatch by certified or registered first class mail, postage prepaid, return receipt requested, to the party to whom the same is so given or made, to the addresses set forth in Section 8.0, or to such other address as any party may designate by giving notice to the other party hereto.

9.0 INDEMNIFICATION AND HOLD HARMLESS

- 9.1 Each of the Parties will protect, defend, indemnify, and save harmless the other Party, its 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, each of the Party's own negligent acts or omissions. The City will also protect, defend, indemnify and save harmless the Port, its officers, officials, employees and agents ("Port indemnified parties"), from any and all costs, claims, judgment and/or awards of damages, arising out of, or in any way resulting from the design, permitting, or construction of the Heavy Haul Network projects. No Party will be required to indemnify, defend, or save harmless the other Party, its officers, officials, employees and agents 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 the concurrent negligence of the Parties, the indemnity provisions provided herein will be valid and enforceable only to the extent of a Party's own negligence. Each of the Parties agrees that its obligations under this Section 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, each of the Parties, by mutual negotiation, hereby waives, with respect to each of the other Party only, any immunity that would otherwise be available against such claims under the Industrial Insurance provision of Title 51 RCW.
- 9.2. In the event of legal action challenging the Port's legal authority to provide funding assistance to the Heavy Haul Network projects, the Port, in its sole discretion, may defend such legal action or may tender the defense to the City within ten (10) business days after the service of such legal action. Failure to tender the legal action to the City as provided herein will constitute a waiver of Port's right, if any, to seek indemnity for the claims asserted therein.
- 9.3 The indemnification, hold harmless, and/or waiver obligations described in this Section will survive the termination of this MOU. In any action to enforce the provisions of this Section, the prevailing Party will be entitled to recover its reasonable attorney's fees and costs incurred from the other Party.

10. RECORDS RETENTION AND AUDIT

- 10.1 The Port or its designee will have the right to inspect, audit and/or copy records supporting or pertaining to the Port's funding contributions to the Heavy Haul Network throughout the term (and any extensions) of this MOU and accounting thereof for the purpose of determining anything that is of consequence to this MOU.
- 10.2 The City will retain the records pertaining to or supporting the Port's funding contributions to the Heavy Haul Network for the periods required below. The City will also ensure that relevant wage, payroll and cost records of all contractors, subcontractors and suppliers at all tiers will be retained and open to similar inspection or audit for the periods required below:

- i. During the progress of work related to the Heavy Haul Network projects receiving Port funds;
 - ii. For a period of not less than six (6) years after the termination of this MOU; provided that if the Port uses debt to provide funding contributions to the Heavy Haul Network, the City will retain those records necessary to address an audit for the period required under applicable regulations for the use of debt; and
 - iii. If any claim, audit, or litigation arising out of, in connection with, or related to this MOU is initiated, all documents and records will be retained until such claim, audit or litigation involving the records is resolved or completed, whichever occurs later.
- 10.3 The City, its contractors, subcontractors and suppliers will make a good faith effort to cooperate with the Port and its designees when the Port gives notice of its need to inspect or audit records referenced in this Section 10. Cooperation will include assistance as may be reasonably required in the course of inspection or audit, including reasonable 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 will also include establishing a specific mutually agreeable timetable for making the records available for inspection by the Port and its designee. Unless otherwise agreed, if the City, its contractors, subcontractors and suppliers cannot make at least some of the relevant records available for inspection within twenty-eight (28) calendar days of the Port's written request, cooperation will necessarily entail providing the Port with a reasonable explanation for the delay in production of records.

11.0 GENERAL PROVISIONS

- 11.1 The parties will work to expeditiously answer requests for information and to provide approvals or consents provided for in this MOU. The parties agree to take further actions and execute further documents, either jointly or within their respective powers and authority, to implement the intent of this MOU. The Parties agree to work cooperatively with each other to achieve the mutually agreeable goals as set forth in this MOU.
- 11.2 This MOU will be interpreted, construed and enforced in accordance with the laws of the State of Washington. Venue for any action under this MOU will be King County, Washington.
- 11.3 Each Party will be responsible for its own costs, including legal fees, incurred in negotiating or finalizing this MOU unless otherwise agreed in writing by the parties.
- 11.4 This MOU may be amended only by a written instrument executed by each of the parties hereto.
- 11.5 This MOU constitutes the entire agreement of the parties with respect to the subject matters of this MOU, and supersedes any and all prior negotiations (oral and written), understandings and agreements with respect hereto.

ATTACHMENT A: STREETS TO BE INCLUDED WITHIN HEAVY HAUL NETWORK

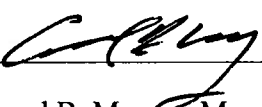
Street	From	To
South Atlantic Street	Alaskan Way South	1st Avenue South
Colorado Avenue South	South Atlantic Street	South Massachusetts Street
South Massachusetts Street	Colorado Avenue South	1st Avenue South
1st Avenue South	South Atlantic Street	South Holgate Street
Alaskan Way South	South Atlantic Street	South Holgate Street
East Marginal Way South	South Holgate Street	Diagonal Avenue South
South Holgate Street	1st Avenue South	6th Avenue South
6th Avenue South	South Massachusetts Street	South Holgate Street
South Hanford Street	East Marginal Way South	Occidental Avenue South
1st Avenue South	South Hanford Street	South Spokane Street
Occidental Avenue South	South Hanford Street	South Horton Street
South Horton Street	1st Avenue South	3rd Avenue South
13th Avenue SW	SW Florida Street	North to street end
SW Florida Street	16th Avenue SW	11th Avenue SW
11th Avenue SW	SW Florida Street	SW Lander Street
16th Avenue SW	SW Florida Street	Klickitat Avenue SW
Klickitat East Roadway Avenue SW	16th Avenue SW	13th Avenue SW
Klickitat West Roadway Avenue SW	16th Avenue SW	13th Avenue SW
SW Spokane North Roadway Street	13th Avenue SW	SW Spokane Street
SW Klickitat South Roadway Way	13th Avenue SW	SW Spokane Street
South Spokane Street Ramp	East Marginal Way South	South Spokane Street
West Marginal Way SW	26th Avenue SW	SW Spokane Street
SW Spokane Street	Chelan Avenue SW	East Marginal Way South
South Spokane SR Street	South Spokane Street	East Marginal Way South
Spokane Duwamish Bridge RP	South Spokane Street	Duwamish Avenue South Bridge
Duwamish Avenue South Bridge	Spokane Duwamish Bridge RP	East Marginal Way South
Diagonal Avenue South	East Marginal Way South	South Oregon Street
South Oregon Street	Diagonal Avenue South	Denver Avenue South
Denver Avenue South	South Oregon Street	Utah Avenue South
South Spokane Street	East Marginal Way South	Airport Way South
Airport Way South	South Spokane Street	South Edmunds Street
South Edmunds Street	Airport Way South	7th Avenue South

- 11.6 Section headings are intended as information only, and will not be construed with the substance of the section they caption.
- 11.7 In construction of this MOU, words used in the singular will include the plural and the plural the singular, and "or" is used in the inclusive sense, in all cases where such meanings would be appropriate.
- 11.8 This MOU may be executed in several counterparts, each of which will be deemed an original, and all counterparts together will constitute but one and the same instrument.

IN WITNESS WHEREOF, each of the Parties has executed this MOU by having its authorized representative affix his/her name in the appropriate space below:

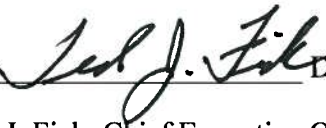
CITY OF SEATTLE

PORT OF SEATTLE

By: 

Date 10.26.15

Edward B. Murray, Mayor
City of Seattle

By: 

Date 10/30/2015

Ted J. Fick, Chief Executive Officer
Port of Seattle

EXHIBIT C



MEMORANDUM OF UNDERSTANDING

FOR INTERGOVERNMENTAL COOPERATION BETWEEN THE PORT OF SEATTLE AND THE CITY OF SEATTLE FOR THE SAFE AND SWIFT CORRIDOR PROGRAM

This Memorandum of Understanding ("MOU") is made and entered into by the Port of Seattle, a municipal corporation of the State of Washington, hereinafter called the "Port," and City of Seattle, a municipal corporation of the State of Washington, hereinafter called the "City." The Port and the City are also referred to in this MOU collectively as "the Parties," and individually as a "Party."

RECITALS

WHEREAS, the City's Comprehensive Plan establishes transportation goals and policies to preserve and improve mobility and access for the transport of goods and services, to enhance Seattle's role as a hub for regional goods movement and as a gateway to national and international suppliers and markets, and to reliably connect the City's manufacturing/industrial centers, urban centers, and business districts with the local, state, and international freight network; and

WHEREAS, Seattle's deep-water port and trade relations are important elements of the City's economy, history, and cultural identity; and

WHEREAS, the movement of goods in and out of the City and for local deliveries on City streets is a vital component of creating family-wage jobs and sustaining the City's economic vibrancy and quality of life; and

WHEREAS, on October 3, 2016 the City adopted one of the nation's first municipal Freight Master Plan to ensure efficient and reliable movement of goods by truck freight on City streets; and

WHEREAS, the joint venture of the ports of Seattle and Tacoma (The Northwest Seaport Alliance or "NWSA") is the fourth largest gateway for containerized cargo in the western hemisphere and generates \$379 million in state and local tax revenue from marine cargo; investments in efficient movement of goods to and from port terminals enables Seattle's competitiveness in the global economy, and

WHEREAS, the maritime industry annually generates approximately \$37.6 billion in economic impact for the State of Washington, supporting tens of thousands of family-wage jobs; maritime wages in 2015 averaged \$67,000 per year compared to the 2015 state average wage of \$56,700; and each maritime industry job supports 1.7 jobs elsewhere in the state economy; and

WHEREAS, the Alaskan Way, Elliott Avenue W, 15th Avenue W, and Mercer Street corridors are critical to supporting Seattle's tourism economy, a growing industry in Seattle and King County, with visitors spending \$7 billion dollars and generating \$718 million in state and local taxes in 2016; and

WHEREAS, the City and Port recognize Key Arena as an important civic asset, a historic anchor to the Seattle Center and the Uptown Neighborhood, and a valuable source of tourism and entertainment revenue for the City; and.

WHEREAS, the Port, City, State of Washington, private sector partners, and other agencies within Puget Sound and the state have developed and signed funding agreements for freight infrastructure improvements, including SR 519, the Spokane Street Viaduct, the East Marginal Way Grade Separation, Duwamish Intelligent Transportation Systems, the Galer Street Flyover, and other FAST Corridor projects, all of which provide freight mobility benefits for the region; and

WHEREAS, contributions by the City and Port for projects outlined in this MOU will leverage hundreds of millions of dollars in contributions from local, state, and federal sources; and

WHEREAS, the proposed South Lander Street Grade Separation project will benefit the Port and the Duwamish Manufacturing and Industrial Center (MIC) by improving overall traffic congestion and increasing freight mobility around Port facilities, including the adjacent east-west connectors on the Spokane Street Viaduct and SR519/Atlantic Street; and

WHEREAS, the projects outlined in this agreement will improve safety for all modes of transportation on critical freight routes within and between the Duwamish MIC and Ballard/Interbay MIC

WHEREAS, the Parties agree that the payment schedule for the Lander Agreement (Exhibit C), should be revised and will consider this proposed amendment to this schedule through a separate action;

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

1. PURPOSE AND DEFINITIONS

- 1.1. The purpose of this MOU is to launch a new partnership between the City and the Port, to be known as the Safe and Swift Corridor Program ("Program"). The Program will update multiple efforts between the Parties to improve critical transportation corridors in Seattle and will be focused on moving cargo, cars, transit and cyclists safely and swiftly on city streets.
- 1.2. The Program will include a series of projects that form the basis of this MOU. Those projects include, but are not necessarily limited to, the Lander Project, the East Marginal Way Improvement Project, transportation components of the Terminal 5 Modernization Project (and related effort to establish a U.S. Federal Railroad Administration designated quiet zone, Exhibit A), transportation components of the proposed Terminal 91 Uplands redevelopment, and transportation components of the proposed Key Arena redevelopment.
- 1.3. As used in this MOU, "Lander Project" means the construction of South Lander Street Grade Separation Project, a four-lane bridge spanning the west coast BNSF mainline railroad tracks between 1st and 4th Avenues South. The Lander Project is anticipated to begin construction in 2018 and open to traffic in late 2019, with Final Acceptance expected in 2020.
- 1.4. As used in this MOU, "Terminal 5 Modernization Project " or "T5 Project" means the Port and NWSA's Terminal 5 Modernization Project which is set to provide terminal improvements necessary to serve more environmentally sustainable, newer and larger vessels that will help maintain the NWSA's competitive position, preserve and grow jobs, and support a healthy economy for the region and state. The improvements include crane rail strengthening, berth deepening, slope stabilization, electrical supply/distribution upgrades, new fender system and structural rehabilitation of the dock.
- 1.5. As used in this MOU, "East Marginal Way Improvement Project " or "EMW-HHN Project" means the long-term project planned for East Marginal Way (EMW) between South Michigan Street and South Atlantic Street under the umbrella of the Heavy Haul Network (HHN) program that will improve safety and reliability in the movement of people and goods, support heavy freight loads by rebuilding the roadway to Heavy Haul standards, promote efficiency through signal modifications and intelligent transportation systems (ITS), and improve safety by better separating non-motorized modes from freight traffic.
- 1.6. Construction Contract Terms: The terms Final Inspection, Interim Final Inspections, Project Phase, Project Completion, Physical Completion, Substantial Completion, Final Acceptance

shall have the meaning set forth in the City's standard specifications found at <http://www.seattle.gov/util/Engineering/StandardSpecsPlans/index.htm>

2. SCOPE OF WORK

2.1. East Marginal Way (EMW) Corridor

a. Shared Responsibilities Between the Parties

- i. The Parties will complete a study to determine the impacts to the Heavy Haul Network (HHN) by trucks with HHN permits serving Port facilities and moving cargo within the HHN. The location of the HHN is described in October 2015 MOU (Exhibit D).
- ii. The Parties will work together to negotiate with Union Pacific Railroad for removal of their western-most track for the purposes of widening the roadway in connection with the EMW-HHN Project.
- iii. The Parties will coordinate and collaborate on the design of the EMW-HHN Project.
- iv. The Parties will work together to improve bike safety adjacent to Port properties as part of their work on the EMW-HHN Project.

b. City Responsibilities

- i. The City will implement short-term improvements at the north end of the East Marginal Way (EMW) corridor using striping, concrete barriers, signs, and/or spot paving.
- ii. The City will expedite portions of EMW-HHN Project on the north end of the EMW corridor within 12-18 months. This work is expected to include elements of the hybrid option being considered for the EMW-HHN Project such as a multi-use path on the west side of EMW south of South Hanford Street, a signalized diagonal crossing of South Hanford Street, and two-way protected bike lanes on the east side of EMW north of South Hanford Street to South Atlantic Street (see Exhibit G).
- iii. The City will proceed with design of the EMW-HHN Project and achieve 30 percent design by early 2018. Key project elements will include roadway paving to heavy haul standards, separation between modes in the form of a multi-use path or protected bike lanes, and Intelligent Transportation System (ITS) elements to provide information and improve efficiency. The City will lead the effort to secure grants for the project.

c. Port Responsibilities

- i. The Port committed to contributing funds directly to the EMW-HHN Project based on the commitments of the October 2015 HHN MOU and on the results of the pavement study (see Exhibit D).
- ii. The Port will continue trucker and marine terminal operation education on improved vigilance of sharing the road with other transportation modes. Education may include field visits, trucker safety fairs, web page information and safety brochures.
- iii. The Port will provide the City available information about cargo ship schedules and related truck traffic impacts.

2.2. South Spokane Street Corridor

a. Shared Responsibilities

- i. The Parties will work together to secure approval of a U.S. Federal Railroad Administration designated quiet zone between the west end of the train bridge across the West Waterway of the Duwamish and the Terminal 5 gate as provided for in the MOU between the City and the Port (Exhibit A).
- ii. The Parties will work together to complete improvements to the "five-way crossing" at the intersection of Chelan Avenue SW, West Marginal Way SW, SW Spokane Street and Delridge Way SW, including eventual closure of West Marginal Way leg leading into Terminal 5 and better signalization (Exhibit B).
- iii. The Parties will support the Lander Project which will be a new east-west grade separation that is expected to minimize traffic volume along Spokane Street (and Atlantic Street), and thus improve flow for freight.
- iv. The Parties will work collaboratively to finalize the Port's conditionally approved street vacation packages on Terminals 18 and Terminal 5. The Parties will strive to finalize the street vacations for Terminal 18 before the end of 2017 and the Terminal 5 street vacations before the end of 2018.
- v. The Port and the Seattle Department of Transportation (SDOT) will form a quarterly review committee to account for how the \$5 million match money (see section 2.2.b.ii) will be expended on elements of freight improvement projects. Examples of such projects include:
 - SDOT costs on the approved Quiet Zone
 - Cost savings on the Lander Project (Section 4.7)
 - SDOT staff time on T5 Project mitigation

If the City adds elements not related to freight to any of the Projects covered by this MOU, or other freight-related projects undertaken by the City to achieve the \$5 million match, the Parties will evaluate whether or not these elements can be considered towards the \$5M match during their quarterly review committee meetings.
- vi. The Parties will establish a new technical group to nimbly respond to projects through the Spokane Street corridor (and EMW). The parameters of this group and specific responsibilities of the group will be determined at the first quarterly meeting of the group as referred to under 2.2.a.v.
- vii. The Parties will work together to improve bike safety adjacent to Port properties.

b. City Responsibilities

- i. The City shall match up to \$5 million in the Port's investments in the Lander Project with investments in other freight projects, smaller corridor improvement projects, and/or savings from significant collaborative projects such as the T5 Project-related Quiet Zone implementation and the Lander Project. The City's internal staff costs for T5 Project Quiet Zone, signalization improvements and other Spokane corridor projects shall count toward its \$5 million dollars in matching funds. The City shall seek project cost savings for the Quiet Zone and signalization projects.
- ii. The City shall establish truck/supply chain parking areas around the EMW/Spokane Street intersection.

- iii. The City agrees to release any and all claims against the Port related to street use fees associated with the Port's use of City streets in and about Terminals 5 and 18 while the street vacation conditional approvals for Terminals 5 and 18 were being processed, and hereby covenants not to bring suit against the Port with respect to any such claims. The City's release of claims under this paragraph survives the termination of this agreement.

c. Port Responsibilities

- i. The Port will provide \$10 million for the Lander Project. Of this \$10 million, \$5 million will be matched by the City through other investments in freight projects, smaller corridor improvement projects and savings with significant collaborative projects, like the T5 Project related Quiet Zone and the Lander Project.
- ii. In order to maintain reduced impacts on surrounding communities, the Port will continue to provide parking for short-haul trucks at Terminal 25 South or an alternate location.

2.3. 15th Avenue W/Elliott Avenue W/Mercer Street Corridors

a. Shared Responsibilities

- i. The Parties will establish a joint project group (with other relevant stakeholders) for the expenditure of a new Transportation Fund to make transportation improvements in the 15th Avenue W/Elliott Avenue W/Mercer Street corridor, including areas around Seattle Center.
- ii. The Parties will work together to establish a transportation and infrastructure plan and related agreements for the proposed Terminal 91 Uplands redevelopment prior to the end of 2017.
- iii. In the 15th Avenue W corridor, the Parties will coordinate Seattle bicycle path projects with those on Port properties in the 15th Avenue W corridor to improve the bicycle safety and connections between Fishermen's Terminal and downtown.

b. City Responsibilities

- i. The City shall monitor new Expedia headquarters-related traffic impacts (construction and eventually commuters) and shall endeavor to minimize traffic congestion resulting from the addition of Expedia development traffic.
- ii. The City shall coordinate with Expedia on the design and funding for the Port bike path improvements along east side of Terminal 91 Uplands and shall endeavor to require Expedia to contribute to funding these improvements.
- iii. Within the to-be-defined parameters of the new Transportation Fund, the City shall explore signal improvements (stemming from Mercer corridor) and implement changes as future modeling may require.
- iv. The City shall provide for the separation from freight for bike and pedestrian access/improvements leading into the Uptown neighborhood (West Mercer Place).
- v. The City shall partner with King County Metro to provide additional Rapid Ride service to serve Interbay, South Lake Union and Uptown neighborhoods, thereby endeavoring to remove additional single occupancy vehicles from the road.

c. Port Responsibilities

- i. The Port will provide \$5 million towards the Transportation Fund, once the parameters are defined, to make transportation improvements dedicated to roadway improvements in the 15th Avenue W/Elliott Avenue W/Mercer Street corridor, including areas around Seattle Center. The Port's contribution to the Transportation Fund is contingent upon the City entering into a future development agreement for Key Arena.

3. TERMS AND CONDITIONS

- 3.1. Implementing Agency: Each individual projects implementing agency shall ensure compliance for the respective project with the State Environmental Policy Act (SEPA) and the National Environmental Policy Act (NEPA), and shall be responsible for obtaining all necessary permits and/or agreements.
- 3.2. Contact Persons: The Parties to this Agreement shall designate person(s) to act as liaison for the Program and related projects. The contact persons shall meet on a mutually agreed scheduled basis.
- 3.3. Other Agreements: Given the broad scope of the Program, the Parties agree to reference other relevant agreements as needed, including, but not limited to, the agreements attached in the Exhibits section.
- 3.4. Public Involvement: The Parties shall be responsible for the continued public involvement and/or community outreach process for their respective led projects. Each shall develop a Public Involvement Plan with input from the other Party.
- 3.5. M/W/DBE and Small Business Utilization: In implementing the Projects, the City and the Port shall maximize the opportunities and participation of minority-owned, women-owned, and disadvantaged businesses, including those small businesses within the Seattle-Metropolitan region, within the rules and regulations of Federal funded projects.

4. COST REIMBURSEMENT AND FUNDING

The Port Commission authorizes the execution of this MOU and agrees to contribute an amount not to exceed Fifteen-Million Dollars (\$15,000,000) to the City as set forth in Section 2 Scope of Work subject to the following conditions:

- 4.1. All environmental review and permitting will be completed in accordance with Federal, State, and local requirements;
- 4.2. The Port and City continue to work together to ensure that the Project development and implementation during design and construction meet the needs of both Parties. Prior to

application for the final payment for the Fifteen-Million Dollars (\$15,000,000), the City shall provide the opportunity for the Port to inspect and verify that the requirements of Physical Completion have been met for each of the Projects that are subject to this Agreement. Once the Port has verified that the requirements for Physical Completion have been satisfied for each Project that is subject to this Agreement, the City shall issue a letter to the Port requesting the Port issue final payment upon Final Acceptance.

- 4.3. The Lander Project is constructed as described in the August 31, 2016 MOA (Exhibit C);
- 4.4. The Port's obligations under this MOU shall not exceed Fifteen Million Dollars (\$15,000,000) as a cash payment, but may be reduced as provided in Section 4.7.
- 4.5. For the 15th Ave W/Elliott Avenue W/Mercer Street corridor, including areas around Seattle Center, as a portion of the total payment amount set forth in Section 4.4, the Port will reimburse the City Five million dollars (\$5,000,000) for costs expended on verifiable improvements in the corridor and in coordination with the joint project group to be established under 2.3.a.i.
- 4.6. If either Party fails to fulfill its obligations outlined under the terms of this MOU, then either party may elect pursue a dispute resolution process under Section 8. In the spirit of the cooperation for which this MOU was entered, in addition to the processes outlined in Section 8, the dispute shall be discussed at the quarterly meeting at a minimum of two separate occasions to attempt to find resolution prior to pursuit of legal action or termination (Section 10).
- 4.7. In the event the total Lander Project cost estimate at the time of the Lander Project's Final Acceptance ("Final Cost") is *less* than the Lander Project estimate at the time of bid ("Bid Estimate"), the Port's total funding contribution to the Lander Project shall be adjusted by reducing the Port's contribution, up to Five Million Dollars (\$5,000,000) prior to reduction in City contributions. That adjustment to the Port's contribution shall be reduced by any already incurred matching investments by the City in other freight priorities (as outlined in section 2.2.b.i).

5. AMENDMENT

Either Party may request amendments to the provisions contained in this Agreement. Any amendments to this Agreement must be mutually agreed to by both Parties, in writing and executed with the same formalities as the original Agreement.

6. NOTIFICATION

Any notice required or permitted to be given pursuant to this Agreement 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 Agreement:

To the City:	Jessica Murphy, Project Manager 700 Fifth Ave, Suite 3700 PO Box 4996 Seattle, WA 98124-4996
--------------	---

To the Port:

Geraldine Poor, Regional Transportation 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 three (3) years from the date of final payment by the Port to the City, 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 three 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 6.0, 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 chief executive officer 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 Agreement is effective upon the last date of execution by both Parties and will remain in effect until Project completion, unless otherwise stated herein or unless amended or terminated.

10. TERMINATION

Either Party may terminate this Agreement at any time upon thirty (30) days written notice to the other Party, but said written notice of termination shall not occur sooner than sixty (60) days from the execution of this Agreement. If the Port decides to terminate this Agreement, the Port shall reimburse the City an amount equivalent to the Port's proportionate share of those obligations that the City has contractually undertaken consistent with this Agreement prior to receiving the Port's notice of termination, but in no case shall the Port be obligated to reimburse the City any amounts in excess of the Port's Project funding contribution set forth in Section 4 of this Agreement.

11. INDEMNIFICATION AND HOLD HARMLESS

- 10.1 To the maximum extent permitted by law, each party shall protect, defend, indemnify, and hold harmless the other party, its officers, employees, and agents from any and all costs, claims, judgments, and/or awards of damages, arising out of or in any way resulting from the negligent acts or omissions of said indemnifying party, its officers, employees, and/or agents. Each party agrees that its 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. Each party, by mutual negotiation, hereby waives, as respects the other party only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event the indemnified party incurs any judgment, award, and/or cost arising therefrom, including attorney's fees to enforce this provision, all such judgments, awards and costs shall be recoverable from the indemnifying party.
- 10.2 The indemnification, hold harmless, and/or waiver obligation described in Section 10.1 of this Agreement shall survive the termination of this Agreement.

12. VENUE

This Agreement shall be deemed to be made in the County of King, 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 Agreement shall be brought in the County of King, State of Washington.

12. OTHER PROVISIONS

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

12.2 Interpretation. The captions of the Sections or Paragraphs of this Agreement are not a part of the terms or provisions of this Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the plural shall include the singular. The masculine, feminine and neuter genders shall each include the other.

12.3 Waivers. All waivers shall be in writing and signed by the waiving Party. Either Party's failure to enforce any provision of this Agreement shall not be a waiver and shall not prevent either Party from enforcing that provision or any other provision of this Agreement in the future.

12.4 Force Majeure. If either Party cannot perform any of its obligations due to events beyond its reasonable control (other than the payment of money), the time provided for performing such obligations shall be extended by a period of time equal to the duration of such events. Events beyond a Party's reasonable control include, but are not limited to, acts of God, war, civil commotion, labor disputes, strikes, fire, flood or other casualty, shortages of labor or materials, government regulations or restrictions and weather conditions.

12.5 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.

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

12.7 Authority. Each individual executing this Agreement on behalf of the Port or the City represents and warrants that he or she is duly authorized to execute and deliver the Agreement on behalf of the Port or the City.

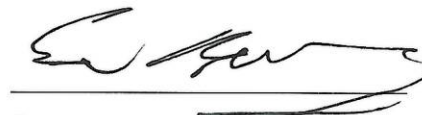
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement which shall be effective upon the date of recording.

PORT OF SEATTLE

THE CITY OF SEATTLE



David Soike, Interim Executive Director
Port of Seattle



Edward B. Murray, Mayor
City of Seattle

Date: 8/16/17

Date: 8/16/17

- Exhibit A:** MOU Between the Port of Seattle and the City of Seattle to Establish a Railroad Quiet Zone, authorized by The Northwest Seaport Alliance on August 1, 2017
- Exhibit B:** MOU Between the Port of Seattle and the City of Seattle to Permanently Close W Marginal Way SW, Authorized by The Northwest Seaport Alliance on August 1, 2017
- Exhibit C:** MOA Between Port of Seattle and City of Seattle, Lander Project, authorized by the Port of Seattle Commission, executed August 31, 2016
- Exhibit D:** MOU For Intergovernmental Cooperation between the Port of Seattle and The City of Seattle for Future Roadway Repair, authorized by the Port of Seattle and the Seattle City Council, executed October 30, 2015
- Exhibit E:** Map of locations referenced in this MOU
- Exhibit F:** Current Lander Summary Estimates of Cost and Funding Shares
- Exhibit G:** EMW-HHN Project details

**FIRST AMENDMENT TO THE MEMORANDUM OF AGREEMENT ("MOA") CONCERNING
THE CONSTRUCTION OF THE SOUTH LANDER ST. GRADE SEPARATION PROJECT**

This First Amendment to the MOA ("First Amendment to the MOA") concerning the construction of the South Lander St. Grade Separation Project ("Project"), dated August 31, 2016 is made and entered into by the Port of Seattle, a municipal corporation of the State of Washington, hereinafter called the "Port," and City of Seattle, a municipal corporation of the State of Washington, hereinafter called the "City." The Port and the City are also referred to in this First Amendment collectively as "the Parties."

RECITALS

WHEREAS, the Parties entered into the MOA on August 31, 2016;

WHEREAS, on August 16, 2017 the Parties entered into the Safe and Swift Corridor Program MOU ("Program MOU");

WHEREAS, as a result of entering into the Program MOU, the Parties would like to amend the payment schedule for the Port's financial contributions to the Project that were originally set forth in the MOA;

WHEREAS, the Parties agree that the MOA should be amended to reflect their intent to change the payment schedule for the Project; and

WHEREAS, except for the change in Payment Schedule expressed in this First Amendment, the Parties intend that all other terms, conditions and provisions of the MOA remain unchanged and shall continue in full force and effect as set forth in the MOA.

NOW, THEREFORE, the Parties agree as follows:

1. Payment Schedule

1.1. Sections 3.5(a) and (b) of the MOA is hereby amended and restated in its entirety to read as follows

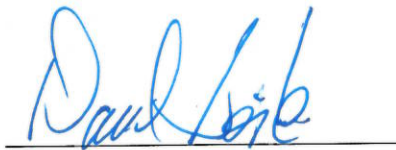
3.5 (a) The Lander Project cost is currently estimated to be One-Hundred Twenty-Five Million Dollars (\$125,000,000). Upon receipt of invoice from the City, the Port shall make five payments as follows, which includes its \$5 million dollar obligation set forth in the August 31, 2016 MOA with the City. The Parties agree to amend the schedule for these payments that was originally set forth in the MOA between the Port of Seattle and the City of Seattle, dated August 31, 2016 as set forth below:

- i. The first payment of Two Million Dollars (\$2,000,000) shall occur after the City has made progress payments to the Contractor totaling at least 25 percent of the construction Contract value. (This is expected in Q2 2018).
- ii. The second payment of Four Million Dollars (\$4,000,000) shall occur AFTER THE City has made progress payments to the Contractor totaling at least 50 percent of the construction Contract value (expected Q4 2018).

- iii. The third payment of Two Million Dollars (\$2,000,000) shall occur after the City has made progress payments to the Contractor totaling at least 75 percent of the construction Contract value (expected Q2 2019).
 - iv. The fourth payment of Four Million Dollars (\$4,000,000) shall occur upon Substantial Completion (as defined in the construction contract) of the Project, as issued by the City to the Contractor.
 - v. The final payment of Three Million Dollars (\$3,000,000) shall occur upon Final Acceptance (as defined in the construction contract), and subject to the requirements of the 2016 MOA attached under Exhibit C, and the Port's receipt of a progress report and a letter from the City Project Manager attaching the Certificate of Final Acceptance. This is expected in 2020. The final payment may be subject to a reduction based on Section 4.7 of the Program MOU.
2. Effect of Amendment. Except as provided in this Amendment, all other terms, conditions and provisions of the MOA remain unchanged and shall continue in full force and effect as set for the in the MOA.

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

PORT OF SEATTLE



David Soike, Interim Executive Director
Port of Seattle

Date:

8/16/17

THE CITY OF SEATTLE



Edward B. Murray, Mayor
City of Seattle

Date:

8/16/17

EXHIBIT D

MEMORANDUM OF UNDERSTANDING BETWEEN PORT OF SEATTLE AND CITY OF SEATTLE

This Memorandum of Understanding (MOU) is made and entered into by the Port of Seattle, a municipal corporation of the State of Washington, hereinafter called the "Port", and The City of Seattle, a municipal corporation of the State of Washington, hereinafter called the "City". As used in this MOU, "Projects" or "Project" means the repairs to the West Seattle High Bridge (WSHB) and S Spokane St Swing Bridge (SSSB), as well as associated improvement projects on the SSSB. The Port and the City are also referred to in this MOU collectively as "the Parties", and individually as a "Party."

RECITALS

WHEREAS, the WSHB and SSSB were designed as a major east-west roadway corridor within the Duwamish industrial area where general purpose, transit, and freight traffic cross the West Duwamish Waterway (reference Exhibit A); and

WHEREAS, the WSHB typically carried 84,000 vehicles daily, closed suddenly and unexpectedly in March 2020 due to safety concerns arising from rapidly growing cracks in the concrete structure; and

WHEREAS, the City closed the WSHB in March 2020 due to safety concerns arising from the rapidly growing cracks in the concrete structure; and

WHEREAS, the closure has adversely affected tens of thousands of Seattle residents and businesses with disruption that disproportionately affected historically underrepresented communities; and

WHEREAS, the Mayor of The City of Seattle chose to repair the WSHB in order to open the bridge as quickly as possible in response to feedback from the Port, The Northwest Seaport Alliance, local business and the community; and

WHEREAS, the Port and The Northwest Seaport Alliance are critical economic and transportation partners to the City; and

WHEREAS, the City has prioritized emergency vehicle, transit, freight and maritime worker access on the SSSB since the beginning of the WSHB closure, and

WHEREAS, in coordination with the Port and others from the maritime industry, the City holds monthly Maritime Townhall meetings to keep the maritime community abreast of developments regarding access to the bridges and status of repair efforts, and

WHEREAS, the SSSB plays a vital role in the freight supply chain that is tied to the regional and national economy, and is designated as a part of the City's Major Truck Street system, Heavy Haul Network, and Seaport Intermodal Connector system, as well as the National Highway System Intermodal Freight Connector; and

WHEREAS, the joint marine cargo operating venture of the ports of Seattle and Tacoma (The Northwest Seaport Alliance or "NWSA") is the fourth largest gateway for containerized cargo in the United States and generates \$379 million in state and local tax revenue from marine cargo; and

WHEREAS, the Port's Terminal 5, an international marine cargo terminal on the west side of the Duwamish, is an essential part of the Puget Sound gateway, and The NWSA is poised in January 2022 to reopen a modernized version of the container terminal, capable of handling ultra-large container ships, allowing our gateway to expand its cargo-handling capabilities to remain globally competitive and grow our local and national economy; and

Memorandum of Understanding Between Port of Seattle and City of Seattle

WHEREAS, the efficient operation of the SSSB and efficient flow of traffic through the surrounding transportation system is essential to the West Seattle and Duwamish Valley communities, and to the international supply chain that relies the successful operation of Seattle's marine cargo facilities, including soon-to-be reopen Terminal 5; and

WHEREAS, investments in efficient movement of goods to and from port terminals and throughout the surrounding transportation system enables Seattle to remain competitive in the global economy and provide those positive economic benefits to our region, and

WHEREAS, the maritime industry annually generates approximately \$37.6 billion in economic impact for the State of Washington, supporting tens of thousands of family-wage jobs with maritime wages in 2015 averaging \$67,000 per year compared to the 2015 state average wage of \$56,700; and each maritime industry job supports 1.7 jobs elsewhere in the state economy; and

WHEREAS, the City of Seattle's transportation infrastructure provides critical connectivity for the maritime industry; and

WHEREAS, the West Seattle Bridges project will rehabilitate the WSHB to restore full service, remove the detour routes that have negatively affected neighborhoods on both sides of the Duwamish Waterway, and make repairs to the SSSB which has served as a city lifeline for emergency responders, transit riders, and freight vehicles during the WSHB closure; and

WHEREAS, the Projects will improve safety for drivers, bicyclists, and pedestrians crossing the Duwamish; and

WHEREAS, the Projects will decrease air emissions due to congestion, idling, and long detour routes; and

WHEREAS, when the City discovered load carrying deficiencies on the SSSB in 2020, the City sought administrative remedies, rather than load-limiting the SSSB to freight and heavy vehicles; and

WHEREAS, the Projects will be subject to the City's Priority Hire program which prioritizes the hiring of residents that live in economically distressed areas, particularly in Seattle and King County and the jobs created by the Projects are estimated to result in wages totaling between \$600,000 and \$900,000; and

WHEREAS, Seattle's deep-water port and trade relations are important elements of the City's economy, history and cultural identity; and

WHEREAS, City staff coordinate regularly with Port and NWSA staff on design, engineering, traffic control, and access for this and many other projects; and

WHEREAS the 2022 opening of Terminal 5 has created greater coordination among the City, Port and NWSA staff, including the addition of City staff to the WSB project team to manage low bridge access; and

WHEREAS the Port's support of expanded hours for Terminal 5 workers through the facility's marine terminal operator will help mitigate the impacts on the SSSB during key peak hours; and

WHEREAS, the Port, City, and State of Washington have made significant investments to maintain and improve access to and from the marine port with rebuilt roadways, new bridges, and road connections; and

WHEREAS, the City is seeking and has been awarded grant funding from a broad group of partners, which has included strong support and targeted advocacy from the Port and NWSA; and

Memorandum of Understanding Between Port of Seattle and City of Seattle

WHEREAS, the City has enshrined in legislation support for the freight businesses through the Freight Master Plan, Heavy Haul network, and Safe and Swift agreements; and

WHEREAS, the City routinely works collaboratively with the Port and NWSA to identify and improve traffic operations; and

WHEREAS, the Port and the City continue to work collaboratively, along with the NWSA, to establish multiple drayage truck parking areas in the Duwamish MIC for the benefit of both truck drivers and Duwamish Valley residents; and

WHEREAS, the City has included a member of the Port of Seattle Commission and several members of the maritime community in the West Seattle Bridge Community Task Force to ensure the maritime and industrial sectors have had a public opportunity to raise their concerns at a high and public level; and

WHEREAS, the Port and NWSA supported the City's application for an INFRA grant application for which \$11,000,000 was awarded, a state budget request proposed for \$25,000,000, and various grants from the Puget Sound Regional Council;

NOW, THEREFORE, the Parties agree as follows:

1. SCOPE OF WORK

- 1.1. Project Title: The West Seattle Bridge Immediate Response (CIP Project MC-TR-C110).
- 1.2. Description: The Projects will construct repairs for the WSHB and the SSSB, along with capital improvements to major detour routes in West Seattle and the Duwamish Valley. The total program cost is estimated at \$175.3 million, with capital project cost of \$159.1 million including the WSHB and SSSB repairs which are currently estimated at \$71.5 million, the major detour improvements are estimated at \$33.7 million, the WSHB emergency repairs are estimated at \$19.7 million, and the SSSB maintenance projects are estimated at \$4 million.
- 1.3. Schedule: The Projects began in 2020 with emergency repairs and detour work, the WSHB and SSSB scope elements are anticipated to begin construction in 2021. The SSSB rehabilitation is anticipated to be completed by third quarter 2022, the WSHB repairs are anticipated to be physically completed in time to open for traffic by mid-2022, with final acceptance expected in 2022.

2. TERMS AND CONDITIONS

- 2.1. Implementing Agency: As the implementing agency the City shall perform State Environmental Policy Act (SEPA) and the National Environmental Policy Act (NEPA) review for the Projects and shall be responsible for obtaining all necessary permits and/or agreements for the City Projects. The City shall be responsible for accomplishing all aspects of the Projects.
- 2.2. Contact Persons: The Parties to this MOU shall designate person(s) to act as liaison for the Project. 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. Scope: The Project's defined scope shall be based on input from the funding partners. Any changes during design or construction to the Project as described in Section 1, and the Project plan as provided in Exhibits B and C, shall require the Port's review and reasonable approval to

Memorandum of Understanding Between Port of Seattle and City of Seattle

maintain the Port's funding obligation (See Exhibit B and Exhibit C). The Port's funding is contingent upon the commitments outlined in Section 1 and 2 in this document.

2.4. Spokane St Swing Bridge (SSSB) access: After the closure of the WSHB, with public safety as the top priority, the City restricted low bridge access to keep the SSSB clear for emergency vehicles, transit, and heavy freight. Additional access has been granted for conditional use to certain user groups, of which workers at Terminal 5 (T5) constitute one group, subject to the following:

- a. SDOT will authorize up to 550 roundtrips per day for workers required to support international marine cargo operations at T5.
 - Between 7 am and 3 pm, SSA Marine and ILWU will minimize trips to 100 one-way trips per hour within those daytime hours.
 - Outside of those hours, SDOT will authorize up to 200 one-way trips per hour
- b. In coordination with the Port and the NWSA, while the high bridge remains closed, SSA Marine will provide flex-hours for up to 180 ILWU workers to ensure that they arrive at T5 prior to 7 am as well as provide on-terminal truck queuing starting at 6am.
- c. "T5 Labor" includes ILWU Locals 19, 52 and 98, mechanics and SSA. Each entity and members will follow existing application procedures with applications due by the 15th of each month for authorized low bridge access in the following month.
- d. The SSSB is to be used only by T5 Labor only when dispatched across the Duwamish or when traveling across the Duwamish between marine cargo terminals.
- e. ILWU trips to terminals other than T5 continue to be authorized when a worker is dispatched across the Duwamish; however, those non-T5 trips are assumed and expected to NOT be higher than as of the date of this MOU (averaging 10 trips per hour maximum). These trips are counted as part of the authorized trip numbers listed above.
- f. ILWU and mechanic individual trips are limited to no more than two-round trips per day.
- g. ILWU and SSA Marine's coordination is necessary to enforce the authorized trip target. A pattern of exceeding the authorized trip target will result in the City directly engaging with SSA and ILWU and giving both entities an opportunity to take corrective action with their users.
 - Following engagement, any persistent and on-going patterns of excessive use by authorized users could result in a reduction of ILWU/SSA access to the low bridge.
- h. Once T5 reopens to marine traffic, SDOT, ILWU, SSA Marine and NWSA will regularly communicate to ensure coordinated execution.
- i. NWSA will work with SDOT in advance of Terminal 5 opening to develop a terminal data reporting strategy and provide regular terminal data updates to inform low bridge access predictions and management.

2.5. Design/Construction Review and Coordination of Construction Impacts:

- a. In addition to the provisions of Section 2.4, the City will provide the Port and NWSA opportunities to review and have meaningful input on design, construction, traffic control, and other components of the Projects in order to avoid or minimize impacts on the Port and freight movement. The City will provide responses to demonstrate how comments were integrated. The City will provide notification of major construction milestones and closures in a 3-week look ahead schedule, distributed on a weekly basis.
- b. The City, Port, and NWSA, including each entities' relevant consultants, contractors and tenants, will coordinate closely to minimize construction impact on local businesses, their respective operations and the surrounding transportation system. Full and partial road closures will be coordinated and scheduled a minimum of 4 weeks in advance of closure, targeting times that reduce impacts, such as nights, weekends and holidays whenever

Memorandum of Understanding Between Port of Seattle and City of Seattle

possible. SDOT or its explicitly designated representative shall confirm road closures or other construction impacts through highlighting of the 3-week look ahead schedule, occurring on a weekly basis. SDOT or its designee shall provide a regular opportunity for the Port, NWSA and connected parties to provide direct feedback on construction impacts and be flexible in making adjustments if needed/when possible. Any unanticipated changes shall be communicated to the Port and NWSA as soon as possible via the following contacts:

Port of Seattle Assistant Director of Engineering – Design Joanna Hingle Hingle.j@portseattle.org Cell: 206-484-0914	The Northwest Seaport Alliance Senior Manager of Operations, Steve Queen squeen@nwseaportalliance.com Cell: 206-465-3269
---	---

2.6. Terminal 5 Permitting:

- a. The City, Seattle Department of Construction and Inspection (SDCI) and other relevant City departments, will work in support of the Terminal 5 construction activities, and prioritize urgent permitting requests, which may include projects within the T5 program that are being led by the Port or NWSA's tenant, SSA Marine. As the Port, SSA Marine or one of their consultant representatives submit for T5 related permits, the application will include the following language:

This is a Priority 2 project under SDCI Plan Review Priority Guidelines (significant public facility and transportation projects), and all land use and construction review under Terminal 5 will be reviewed as such. SDCI will continue to dedicate staff to review of the project per the Port-City Memorandum of Agreement dated February 18, 2020.

- b. No permit applications for development located within the shoreline district will be submitted under this request.
- c. The Port will provide the City (SDCI) with a draft list of anticipated permits. As further emerging issues develop, the City and SDCI will support those requests with priority responses.

2.7. Protection of Industrial Lands and Freight Mobility: The City will support efforts to protect, preserve, and enhance industrial lands, will highlight the critical connection to freight mobility and other maritime issues, and will work with the Port and others to maintain efficient freight mobility throughout the manufacturing/industrial centers (MICs).

2.8. Future Replacement Bridge study: The City is currently conducting the West Seattle High Bridge Replacement Planning Study in order to be ready when the repaired bridge nears the end of its service life around 2060. The study will help the City better understand the mobility needs of this critical and constrained corridor and will examine the feasibility of four replacement location concepts. As part of the development of the replacement concepts and criteria for evaluating them, the City is coordinating closely with those agencies with adjacent projects and property, including Sound Transit, the Port, and the NWSA, in order to consider potential impacts and opportunities. The City will work with the Port to ensure the study notes the importance of container terminal operations and access needs in developing and evaluating the replacement concepts. The High Bridge Replacement Planning Study findings and recommendations will be completed by the end of 2021. The findings and recommendations will inform future studies as work continues to prepare for eventual replacement of the bridge.

2.9. Truck Access Improvements: The City will continue working collaboratively with the Port and NWSA to identify and improve traffic operations. Specifically, the City will continue design to rechannelize S Spokane St east of the T-18 main gate entrance to improve traffic flow near the

Memorandum of Understanding Between Port of Seattle and City of Seattle

East Waterway Bridge, and will carry out the project at the City's cost in 2022 after the WSHB opens to traffic.

- 2.10. Drayage Truck Parking: The Port and the City will work collaboratively, along with the NWSA, to establish multiple drayage truck parking areas in the Duwamish MIC for the benefit of both Duwamish Valley residents and truck drivers serving the marine cargo terminals.
- a. The City will provide parking available to drayage truck drivers at a new lot to be established at 11th Ave SW to include approximately 25 truck parking spots as depicted on Exhibit E. The City of Seattle will explore other opportunities near East Marginal Way, under the Spokane St viaduct and nearby areas as depicted in Exhibit E with the intention to develop up to 70 additional parking spots. These parking spots will be developed and available to truckers by the end of Q4 2022 contingent on City Council action supporting truck permit parking. This work will be supported by a plan for development, operations, and implementation completed by the City and provided to the Port by the end of 2021.
 - b. The City and Port will collaborate on a plan for additional cargo truck parking areas for a minimum of 100 additional trucks by January 2023, including feasibility and a funding plan. This will include, but not be limited to, exploring the feasibility of other City-owned and Port-owned properties; and specifically exploring City-owned property along the east side of East Marginal Way between Hanford and Holgate, also noted in Exhibit E. This plan will be provided to the Port Commission once completed in written form.
 - c. Along with the NWSA, the City and the Port will establish a new coordinated community outreach program to truckers and Duwamish neighborhoods to better understand truck issues and create a collaborative process to develop recommendations to those issues, beyond the items addressed in 2.10a and 2.10b. A core intent of this program will be to inform City and Port actions to reduce on-street overnight container drayage truck parking, among other items to be identified by community members.
- 2.11. Duwamish Trail Bicycle Path: The City will construct Duwamish Trail bike lanes on West Marginal Way after the WSHB reopens. The City will work with the Port, NWSA and all of the industrial users of the major truck route to together to ensure the design will maximize safety for all modes and minimize freight impacts on this Major Truck Street.
- 2.12. East Marginal Way Improvement Project: The City has applied for federal funding via the Rebuilding American Infrastructure with Sustainability and Equity (RAISE) Discretionary Grant program for the East Marginal Way Improvements. If sufficient federal funding is not awarded for completion of both the East Marginal Way Phase 2 heavy haul improvements and the Phase 1 bicycle path, the City will include East Marginal Way Phase 2 heavy haul improvements in the City's next transportation levy.
- 2.13. Progress Report: At the time of making application for each payment under Section 3, the City shall provide the Port with a report that includes a copy of the WSDOT/FHWA approved Project schedule (or analogous format), and final engineer's estimate with contract bid items or summary of values. The progress report will include a narrative describing the progress on repair and improvements projects, an updated Project construction schedule showing the current progress and percent completion of the major work elements, as well as progress regarding the terms 2.4 through 2.12 of this MOU since the last report.

3. COST REIMBURSEMENT AND FUNDING

The Port Commission has authorized the execution of the MOU and agrees to contribute Nine Million Dollars (\$9,000,000) for the Project subject to the following conditions:

- 3.1. All Project environmental review and permitting will be completed in accordance with federal, state, and local requirements;
- 3.2. The Port and City continue to work together to ensure that the Projects' development and implementation during design and construction meet the needs of both Parties;
- 3.3. The Projects are constructed as described in Section 1.2 or modified consistent with Section 2.3;
- 3.4. The Port's total contribution shall not exceed Nine Million Dollars (\$9,000,000) as a cash payment, but may be reduced as provided in Sections 3.5.
- 3.5. Total program cost is currently estimated to be One Hundred and Seventy-five million dollars (\$175,250,217). The Port shall make three payments as follows:
 - a. The first payment of Three Million (\$3,000,000) shall be made after the City has reopened the West Seattle High Bridge with full access consistent with prior operations (7 lanes) and shown progress satisfactory to the Port on items 2.4 through 2.12 above. (This is expected in mid-2022).
 - b. The second payment of Three Million Dollars (\$3,000,000) shall be made upon Substantial Completion of the Spokane St Swing Bridge Repair and Improvement Projects (This is expected by year end 2022) including progress satisfactory to the Port on items 2.4 through 2.12.
 - c. The final payment of Three Million Dollars (\$3,000,000) shall be made upon Final Acceptance of all projects (as defined in the construction contract) and including progress satisfactory to the Port on items 2.4 through 2.12 (this is expected by year-end 2022).
 - d. Port payments made are subject to the requirements of Section 2.4 through 2.12, or progress toward those items, and Section 3.6, and the Port's receipt of a progress report and a letter from the City attaching the Certificate of Final Acceptance. This is expected in 2022. The final payment may be subject to a reduction based on Section 3.7 of this Agreement.
- 3.6. Prior to application for the final payment, the City shall provide opportunity for the Port to verify that the requirements of this MOU have been met.
- 3.7. The Port's final payment will be reduced if additional funding is received from other federal, state or local partners above the shares shown in Exhibit D. The reduction would be a proportionate share of the new funds relative to the Program cost.

4. AMENDMENT

No Party may make unilateral changes to this MOU. Either Party may request changes to the provisions contained in this MOU. Any change to this MOU must be mutually agreed to by both Parties, in writing and executed with the same formalities as the original MOU.

5. 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:

Memorandum of Understanding Between Port of Seattle and City of Seattle

To the City:

Heather Marx, Director
West Seattle Bridge & Downtown Mobility
700 Fifth Ave, Suite 3700
PO Box 4996
Seattle, WA 98124-4996

To the Port:

Geraldine Poor
Regional Transportation Senior Manager
Port of Seattle
2711 Alaskan Way
Seattle, WA 98121

6. RECORDS RETENTION AND AUDIT

During the progress of the work on the Projects and for a period not less than three (3) years from the date of final payment by the Port to the City, the records and accounts pertaining to the Projects 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 Projects 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 three year retention period. This provision is not intended to alter or amend records retention requirements established by applicable state and federal laws.

7. DISPUTES

The designated representatives under section 5.0, 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 Projects' directors for each Party shall review the matter and attempt to resolve it. If the Projects' directors are unable to resolve the dispute, the matter shall be reviewed by the department director or chief executive officer 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.

8. EFFECTIVENESS AND DURATION

This MOU is effective upon the last date of execution by both Parties and will remain in effect until the Projects' completion, unless otherwise stated herein or unless amended or terminated.

9. TERMINATION

Either Party may terminate this MOU at any time upon thirty (30) days written notice to the other Party, but said written notice of termination shall not occur sooner than sixty (60) days from the execution of this MOU. If either Party decides to terminate this MOU, the Port shall reimburse the City for all costs payable under this MOU at the time of notice of termination and its portion of all obligations that the City has contractually undertaken prior to receiving the Port's notice of its intent to terminate this MOU.

10. INDEMNIFICATION AND HOLD HARMLESS

10.1 Each party shall protect, defend, indemnify, and hold harmless the other party, its officers, employees, and agents from any and all costs, claims, judgments, and/or awards of damages, arising out of or in any way resulting from the negligent acts or omissions of said indemnifying party, its officers, employees, and/or agents. Each party agrees that its 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. Each party, by mutual negotiation, hereby waives, as respects the other party only, any immunity that would otherwise be available to it against such claims under the

Memorandum of Understanding Between Port of Seattle and City of Seattle

Industrial Insurance provisions of Title 51 RCW. In the event the indemnified party incurs any judgment, award, and/or cost arising therefrom, including attorney's fees to enforce this provision, all such judgments, awards and costs shall be recoverable from the indemnifying party. The parties agree that to the extent permitted by the courts to be applicable, RCW 35.32A.090 will apply.

- 10.2 The indemnification, hold harmless, and/or waiver obligation described in this Section 10 shall survive the termination of this MOU.

11. VENUE

This MOU shall be deemed to be made in the Superior Courts of King County, Washington at Seattle 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 the County of King, State of Washington.

12. OTHER PROVISIONS

12.1 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.

12.2 Interpretation. The captions of the Sections or Paragraphs of this MOU are not a part of the terms or provisions of this MOU. Whenever required by the context of this MOU, the singular shall include the plural and the plural shall include the singular. The masculine, feminine and neuter genders shall each include the other.

12.3 Waivers. All waivers shall be in writing and signed by the waiving Party. Either Party's failure to enforce any provision of this MOU shall not be a waiver and shall not prevent either Party from enforcing that provision or any other provision of this MOU in the future.

12.4 Force Majeure. If either Party cannot perform any of its obligations due to events beyond its reasonable control (other than the payment of money), the time provided for performing such obligations shall be extended by a period of time equal to the duration of such events. Events beyond a Party's reasonable control include, but are not limited to, acts of God, war, civil commotion, labor disputes, strikes, fire, flood or other casualty, shortages of labor or materials, government regulations or restrictions and weather conditions.

12.5 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.

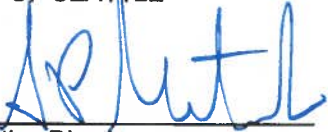
12.6 Third Party Beneficiaries. Nothing in this MOU is intended to, nor shall be construed to give any rights or benefits in the MOU to anyone other than the Port and the City, and all duties and responsibilities undertaken pursuant to this MOU will be for the sole and exclusive benefit of the Port and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

12.7 Authority. Each individual executing this MOU on behalf of the Port or the City represents and warrants that he or she is duly authorized to execute and deliver the MOU on behalf of the Port or the City.

Memorandum of Understanding Between Port of Seattle and City of Seattle

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

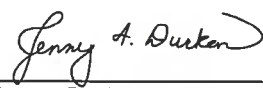
PORT OF SEATTLE



Executive Director
Stephen P. Metruck

Date: 11/15/2021

THE CITY OF SEATTLE



Jenny Durkan, Mayor

Date: 11/8/21

Attachments:

- Exhibit A: Vicinity Map
- Exhibit B: Project Benefits
- Exhibit C: Program Components
- Exhibit D: Summary Estimate of Cost and Funding Strategy
- Exhibit E: Map of Potential Truck Parking Areas

Exhibit A: Vicinity Map

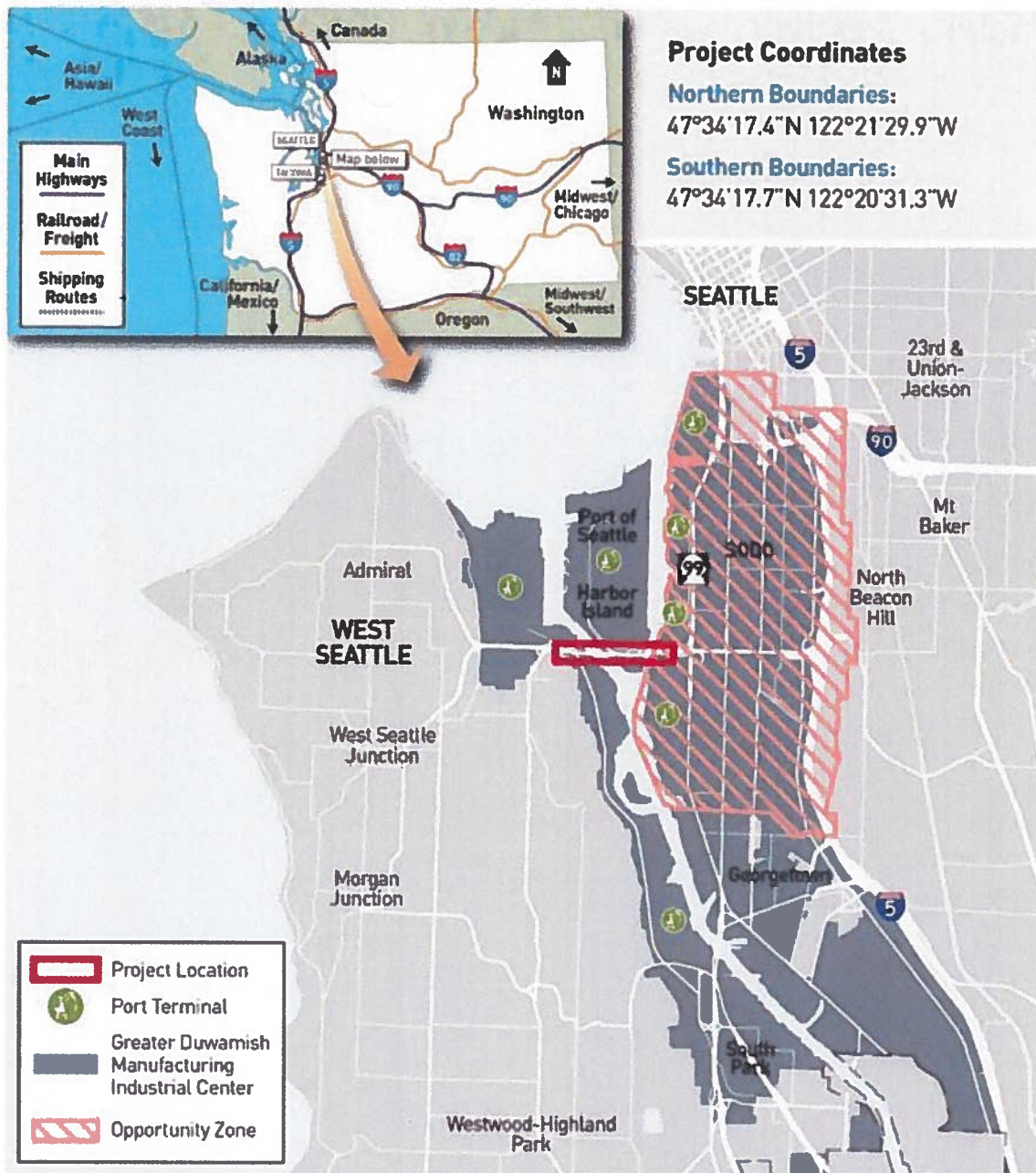


Exhibit B: Project Benefits

The West Seattle Bridges Project will provide the following key benefits to the West Seattle community and the entire Puget Sound Region

1 Restore Mobility to tens of thousands of West Seattle residents who have been cut off from jobs and opportunities. Reopening the West Seattle Bridge and eliminating lengthy detours results in a **benefit-cost ratio of 5.38**.

2 Preserve the Freight Economy for businesses and workers across the region and the nation. Eliminating the risk of load-posting the Spokane Street bridge will ensure that the Port of Seattle remains a home to **thousands of union jobs**.

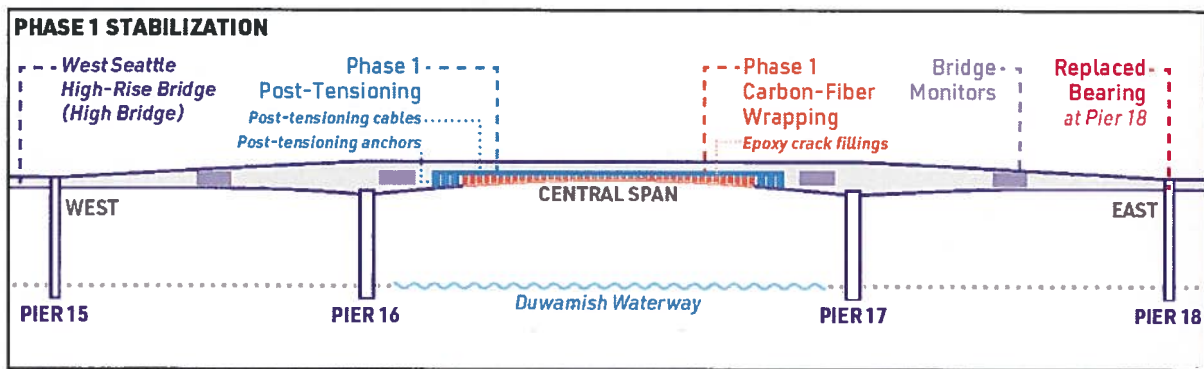
3 Promote Racial Equity and Environmental Justice for marginalized neighborhoods that have borne the brunt of roadway detours, absorbing approximately **128,000 tons of greenhouse gas emissions** into their communities since the West Seattle Bridge has been closed.

4 Innovation and Resiliency are at the core of this project, and all SDOT efforts: from structural health monitoring technologies that enhance safety, to the innovative Priority Hire Program which has identified **5,800 construction workers** living in areas impacted by the bridge closure that will be prioritized for employment on the project.

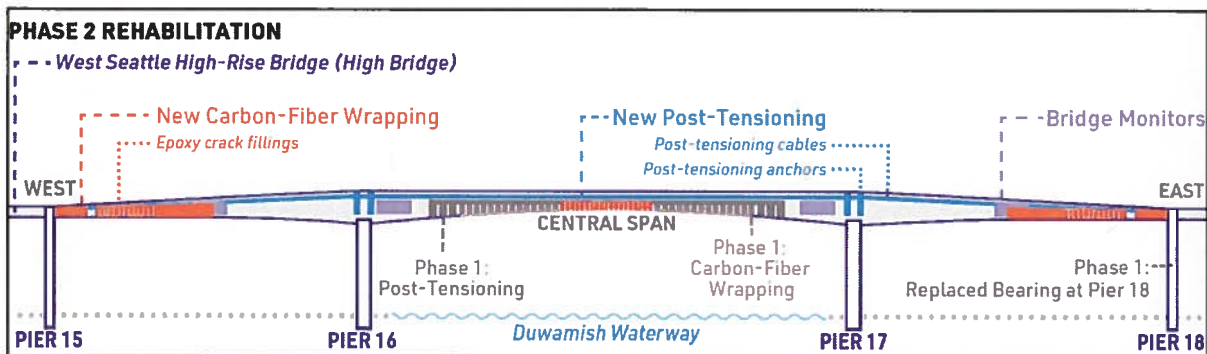


Exhibit C: Program Components

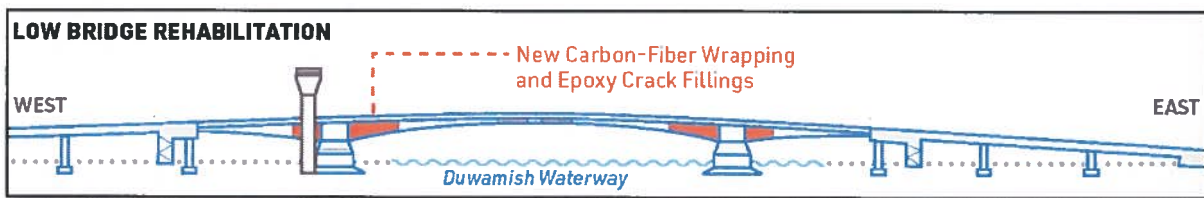
1. WSHB Emergency Repairs/Stabilization (phase 1)



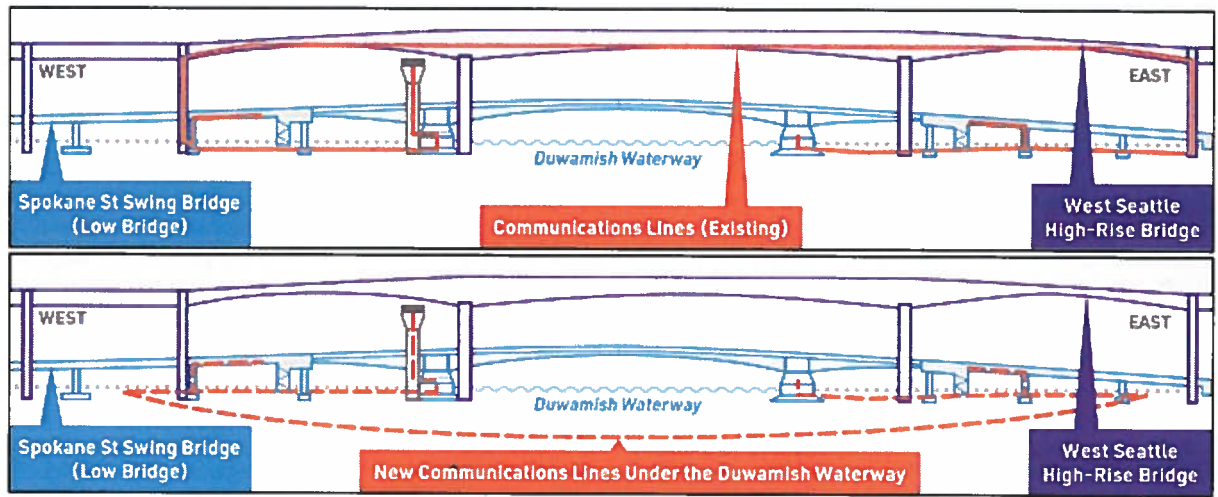
2. WSHB Rehabilitation (phase 2)



3. Low Bridge Rehabilitation Project



4. Low Bridge Controls Project



5. High Bridge Replacement Planning

REPLACEMENT PLANNING STUDY SCHEDULE		
June	2021 Q3	Q4
Launch high bridge replacement planning scope and schedule	- Feasibility findings - Introduce core concepts - Draft planning study	Final planning study

6. Reconnect West Seattle (RWS):

Guided by community feedback the Reconnect West Seattle Implementation Plan describes planned investments for neighborhood mitigation projects: bike projects, freight projects, and projects/services to support mobility. Example projects include updating the markings on the road, adjusting signal timing, and improving road signs and real-time information.

In addition, the City is working with neighborhoods like Highland Park, South Park, Georgetown, and SODO to prioritize projects that will reduce the impact of increased detour traffic through their communities; prioritizing transit connections; building new bicycle projects.

The Freight Network Prioritization Process portion of the RWS framework aims to fill gaps in the freight network and build needed connections. Access to T5, T18, and other key locations in the Spokane St and West Marginal Way corridors is a focus of this effort.

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

SUMMARY PROJECTS COSTS:

West Seattle Bridges Program	
Reconnect West Seattle	49,994,731
Emergency Repairs	19,742,722
Bridge Monitoring/Testing	3,360,344
High Bridge Repair	58,173,189
Low Bridge Strengthening	13,297,000
Low Bridge Control System / HDD and Comms	4,051,005
High Bridge Replacement Planning	10,000,251
Traffic and Revenue Study	2,354,303
Program Development	14,276,672
Total:	175,250,217

SUMMARY ESTIMATE OF FUNDING STRATEGY:

City of Seattle	
• Bonding – City of Seattle	107,813,000
• STBD	8,000,000
• Gas Tax	4,840,000
• Street Use & Occupation	730,000
• Commercial Parking Tax	217,000
• General Funds/TNC	500,000
Federal	
• WSDOT Local Bridge Grant	12,000,000
• INFRA Grant	11,250,600
• HIP Grant	7,500,000
• STP Grant	6,900,000
• FHWA Grant (TDM)	1,500,000
Port of Seattle	9,000,000
Other Local Funds	5,000,000
Total:	175,250,600

Exhibit E: Map of Potential Truck Parking Areas



Exhibit E- Potential Truck Parking locations to be investigated

Last Updated: 9/2/2021