**CITY OF SEATTLE**

**ORDINANCE** _____

COUNCIL BILL 118075

AN ORDINANCE relating to the East Marginal Way Grade Separation Project; authorizing the Director of the Department of Transportation, on behalf of the City of Seattle, to execute a Memorandum of Agreement with the Port of Seattle regarding the design, permitting, construction, financing, transfer, use, and related aspects of the project.

WHEREAS, the Port of Seattle ("Port") and the City are participants in the FAST Corridor Partnership ("FAST Corridor") created pursuant to a Memorandum of Understanding dated April 29, 1998, subsequently amended and restated by the 2002 Memorandum of Understanding for Phases I and II of the FAST Corridor, dated December 12, 2002 ("FAST MOU"); and

WHEREAS, the FAST Corridor refers to a series of related but independent projects that systematically improve freight mobility and mitigate the impacts of increasingly heavy use of the freight transportation corridors in the Everett-Seattle-Tacoma region; and

WHEREAS; the Port, in its capacity as lead agency for the East Marginal Way Grade Separation Project ("Project"), built a new overpass structure that routes vehicular traffic up and over existing rail tracks that serve Harbor Island and West Seattle connecting South Spokane Street, Duwamish Avenue South, and East Marginal Way South; and

WHEREAS, in addition to the new grade separation, other components of the Project included realignment of a portion of South Spokane Street, construction of a new at-grade roadway under the new grade separation structure for the Port of Seattle Terminals 104 and 102 local access circulation, utility relocations, signage, and landscaping improvements; and

WHEREAS, the Port constructed the portion of Phase 1 work in existing and future City street right-of-way in accordance with the requirements of Street Use Permit No. 67156 issued on February 26, 2008, and Street Use Permit No 84978 issued on December 14, 2009; NOW, THEREFORE,

**BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

Section 1. The Director of the Seattle Department of Transportation ("Director"), or his or her designee, is hereby authorized to execute, for and on behalf of the City, an agreement with

the Port of Seattle, substantially in the form of the Memorandum of Agreement, attached hereto as Attachment 1.

Section 2. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the ____ day of _____, 2014, and signed by me in open session in authentication of its passage this _____ day of _____, 2014.

_____

President _____ of the City Council

Approved by me this ____ day of _____, 2014.

_____

Edward B. Murray, Mayor

Filed by me this ____ day of _____, 2014.

_____

Monica Martinez Simmons, City Clerk

(Seal)

Attachment 1: Memorandum of Agreement
Exhibit A: Schematic of the Project
Exhibit B: List of Actions that the Port Must Satisfy Before the City Accepts Title to the Project

# MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF SEATTLE AND THE PORT OF SEATTLE REGARDING THE EAST MARGINAL WAY GRADE SEPARATION

THIS MEMORANDUM OF AGREEMENT (hereinafter "Agreement"), is made and entered into between The City of Seattle (hereinafter "the City"), a municipal corporation of the State of Washington, acting by and through the Seattle Department of Transportation (hereinafter "SDOT,") and the Port of Seattle, a municipal corporation of the State of Washington (hereinafter the "Port"). The Port and the City are sometimes referred to herein as the "Parties" and either as the "Party."

## RECITALS

A. The Port and the City are participants in the FAST Corridor Partnership created pursuant to a Memorandum of Understanding dated April 29, 1998, subsequently amended and restated by the 2002 Memorandum of Understanding for Phases I and II of the FAST Corridor, dated 12/12/02 (hereinafter the "FAST MOU").

B. FAST Corridor refers to a series of related but independent projects which when completed systematically improve freight movement and mitigate the impacts of increasingly intensive use of the freight transportation corridors in the Everett-Seattle-Tacoma region. This integrated freight mobility corridor strategy is consistent with the Puget Sound Regional Council's Metropolitan Transportation Plan (Destination 2030).

C. The East Marginal Way Grade Separation Project (hereinafter the "Project") was designated as a Phase I FAST Corridor Project in the FAST MOU. Phase I Projects under the FAST MOU were deemed to be the highest priority of the FAST Corridor projects.

D. The Port, in its capacity as lead agency for the Project, proposes to construct a vehicular grade separation that routes vehicular traffic up and over existing rail tracks that serve Harbor Island and West Seattle. Rail traffic to and from these areas now crosses East Marginal Way South and Duwamish Avenue South at grade.

E. The purpose of the Project's grade separation and related road and utility relocations is to accommodate both: (1) existing and projected increases in rail traffic; and (2) existing and projected increases in vehicular traffic, including trucks and general purpose traffic that use East Marginal Way, Duwamish Avenue S., S. Spokane Street, and the surrounding roadways. In addition, separating rail from vehicular traffic enhances traffic safety for vehicles, pedestrians and bicycles, improves access to local business, and minimizes traffic tie-ups.

F. Upon completion of the grade separation and subject to the approval of the City Council and the Port Commission, the Port intends to transfer to the City, and the

City intends to accept ownership of the grade separation improvement and any related property interests, as well as such at-grade widening or relocations of City streets as identified in Exhibit A.

## AGREEMENT

In consideration of the promises and covenants contained herein, SDOT and the Port agree as follows:

### 1. PROJECT DESCRIPTION

The Project constructs a new overpass structure that routes vehicular traffic up and over existing railroad tracks in an area located south of South Spokane Street in the vicinity of Duwamish Avenue South. Duwamish Avenue South will be designated as local access only and permanently closed to through traffic in the vicinity of the BNSF and UP Railroad tracks. This new grade separation connects to the three existing surface streets known as South Spokane Street, Duwamish Avenue South, and East Marginal Way South. The Project also includes minor street improvements at those street connections, realignment of approximately 500 linear feet of South Spokane Street, and construction of a new at-grade roadway under the new grade separation structure for Port of Seattle Terminals 104 and 102 local access circulation. After the Washington State Department of Transportation SR99 Spokane overcrossing wood trestle replacement project at mile post 28.40 to mile post 28.70 is completed, the Port will implement Phase II of the Project which will reconstruct the northbound approach to the intersection that avoids crossing the UP Harbor Lead track and construct a new southbound at grade connection to the proposed Argo Yard Truck Roadway, Other components of the Project include building demolitions, establishment of new public right of way and associated drainage infrastructure, utility relocations as required by the new structure's alignment, signage and signalization as required for traffic movement, and new landscape areas. **Exhibit A** attached hereto and incorporated herein by this reference depicts a schematic of the Project.

Additionally the Port and City have agreed that the southbound roadway segment that connects the overpass structure to E Marginal Way S will be constructed to accommodate a single lane as part of the Phase II implementation. If the Port or the City determines the operation as a single lane is a congestion or safety concern within 10 years from the completion of the Phase II construction, then the Port shall at its expense design a two-lane, southbound segment that is acceptable to the City, obtain permission from relevant parties to relocate railroad tracks as needed for the segment, and construct the segment.

### 2. PROJECT DESIGN APPROVAL PROCESS

To the extent not already completed as of the date hereof, the Parties shall observe the following process for the design of the Project:

**2.1** In the event that at any point in the design/review process the Port determines it is impossible or impracticable to adhere to SDOT Design Guidelines or the alignment set forth in **Exhibit A**, with each design submittal required under this section, the Port shall submit to the City for its review and approval a written notation of any deviation from the Design Guidelines or alignment not previously disclosed in a prior submittal and an explanation for the deviation.

**2.2** The Parties recognize that time is of the essence, and agree that the Parties shall work expeditiously and cooperatively during the design/review process. The Parties shall endeavor to provide submittals/feedback to each other as early as possible through the design process. Within five (5) working days after receipt of a design submittal, SDOT shall notify the Port by e-mail or fax whether the submittal is complete (a "Complete Submittal") or incomplete (an "Incomplete Submittal") in accordance with the criteria set forth below for the applicable submittal.

**2.3** If SDOT identifies an Incomplete Submittal, the Port shall (unless a disagreement exists) deliver to SDOT for review and approval or disapproval a revised submittal as soon as possible and in any event within seven (7) working days. Within five (5) working days after receipt of such revised submittal, SDOT shall notify the Port by e-mail or fax whether the submittal is a Complete Submittal or an Incomplete Submittal. This process shall be repeated until SDOT determines that the submittal is complete.

**2.4** If SDOT approves a Complete Submittal required under this section with comments, the Port shall incorporate such comments into the next submittal or any disagreement regarding those comments shall be resolved before the Port delivers the next design submittal. If SDOT fails to comment on a Complete Submittal within the time set forth below, that submittal shall be deemed to be approved. If SDOT disapproves a Complete Submittal required under this section, the Port shall (unless a disagreement exists) deliver to SDOT for review and approval or disapproval a revised submittal addressing the reason(s) for disapproval within ten (10) working days after delivery of the disapproval. No later than seven (7) working days after receipt of such revised submittal, SDOT shall deliver its written comments and approval or disapproval to the Port. Any disagreement based on SDOT's disapproval of a design submittal shall be resolved before the Port delivers the next design submittal.

**2.5** The Parties shall meet as necessary to resolve disagreements that may arise in connection with each design submittal. Disputes shall be resolved pursuant to section 11 of this Agreement and the timeframes set forth in this section shall be tolled during the pendency of any such dispute.

**2.6** The City shall have the right of approval of the section(s) of the Project construction contract(s) that describe(s) the specifications for the work. In order to ensure

Project quality consistent with City standards and guidelines, these specifications shall follow as closely as possible the Standard Specifications for Road, Bridge and Municipal Construction (2008 Edition) and Standard Plans for Municipal Construction (2008 Edition) (collectively, hereinafter "City of Seattle Standard Plans and Specifications") and as further clarified in the street improvement permit #84978 issued for the Project. .

**2.7** The Port shall cause the contract(s) between the Port and all designers of the Project to be amended to state explicitly that (i) the City is a third party beneficiary of the Project design contracts, including without limitation the indemnification provisions of such contracts, (ii) all representations, warranties and guarantees of each Project designer relating to the design of the Project run to the City, and (iii) the City shall be named as an additional insured as if it had been so named on the date the design contracts were first executed on all policies of insurance the Port requires such designers to carry. Within ten (10) working days after execution of this Agreement, the Port shall deliver to the City a copy of such amended design contracts and evidence reasonably acceptable to the Risk Manager of the City that the City has been named an additional insured in accordance with this subsection 2.7. The Port shall comply with the requirements of this section in all design contracts for the Project entered into subsequent to the execution of this Agreement, and shall, within ten (10) working days after execution of any such design contracts, deliver copies thereof to SDOT.

## 3. PERMIT APPROVAL PROCESS

**3.1** The City agrees to promptly review and process all City-required permits necessary to facilitate the Port's construction of the Project

A. Overpass Design Approval. Written approval of the City's Director of Transportation shall be required for the following design elements: (1) the type of bridge design used for the retained fill and elevated structure that provides the grade separation from surface railroad tracks (hereinafter "Overpass and its features, including but not limited to access to utilities, aerial and ground clearances for maintenance equipment and inspections; and (2) design standards for the roadway geometrics of the Overpass and surface approach roads, pedestrian and bicycle access, traffic and signal operations and local access roadways.

B. Surface Street Approval. Roadways relocated as part of the Project and any new surface roadways created as part of the Project (collectively hereinafter "Relocated Surface Streets") shall be designed in compliance with the Seattle Right of Way Improvements Manual and the City of Seattle Standard Plans and Specifications, and constructed pursuant to street improvement permits issued and administered by SDOT.

C. Utility Infrastructure Improvements. All utility infrastructures replaced, repaired and/or relocated, shall be designed in compliance with City of Seattle Standard Plans and Specifications, and pursuant to street use permit(s) issued and administered by SDOT.

**3.2** Permits and Licenses. The Port, at its sole cost and expense, shall secure and maintain in effect, all federal, state and local permits and licenses required for the construction of the Project, including, without limitation, crossing, zoning, building, health, environmental, and communication permits and licenses. The City shall cooperate with and assist the Port in securing and maintaining any such permits or licenses, provided, nothing in this provision, or elsewhere in this Agreement, shall require the City, when acting in its regulatory capacity, to take, or to refrain from taking, any action that is not within its regulatory authority.

**3.3** Railroad Franchise. The Parties acknowledge that the railroad franchise located in the vicinity of the Project may need to be relocated, or expanded to accommodate the construction of the Project. The City agrees to assist the Port in obtaining a relocation or expansion of this franchise as necessary to allow the construction of the Project.

## 4. PROJECT CONSTRUCTION PROCESS

**4.1** The Port shall cause the Project to be constructed and installed in conformance with all public works laws of the State of Washington applicable to it, and shall select its contractor for construction of the Project ("Project Contractor") in accordance with such laws. The Port shall cause the contract(s) between the Port and the Project Contractor ("Project Contract") to state explicitly that (i) the City is a third party beneficiary of the entire Project Contract, including without limitation the indemnification and insurance provisions thereof, and (ii) all representations, warranties and guarantees of the Project Contractor relating to the construction of the Project run to the City. Within ten (10) working days after execution of the Project Contract, the Port shall deliver a copy of it to SDOT.

**4.2** The Port shall provide SDOT with the Project Contractor's initial construction schedule and with schedule updates on a timely basis, so that any necessary coordination between the Project Contractor and SDOT can be accomplished. The Project Contractor shall schedule all inspections with SDOT at least 5 working days prior to the proposed work.

**4.3** Either Party may initiate changes to the final plans and specifications for the Project by submitting the proposed change to the other Party for its review and approval or disapproval. Approval of a proposed change shall not unreasonably be denied. Any proposed change shall be deemed to be approved if written comments are not delivered to the initiating Party within ten (10) working days. The initiating Party shall respond in writing to the reviewing Party's comments. If the reviewing Party disapproves the proposed change or approves it with comments, the proposed change shall not be implemented until the comments are included in the change order or the dispute is resolved in accordance with section 12.

**4.4** Prior to the commencement of construction of the Project, the Port shall (i) cause the Project Contractor to name the City as an additional insured on all policies of

insurance that the Port requires the Project Contractor to carry and (ii) provide SDOT with evidence reasonably acceptable to the Risk Manager of the City that the City has been so named.

**4.5** The Port shall provide all project management and inspection necessary to ensure timely construction and installation of the Project in accordance with the final plans and specifications for the Project, including the following:

(a) The Project Contractor shall construct the Project strictly in accordance with the final plans and specifications and construction contract addenda approved by the Parties and issued as part of the bidding process, unless the Parties approve changes to the Project pursuant to paragraph 4.3 above.

(b) The Port shall administer the Project Contract and take the lead role in inspecting and accepting the Project Contractor's work. SDOT will provide staff to coordinate construction-related issues that arise, review proposed changes for approval involving other City departments as necessary, and provide oversight of the Port's Project construction management process. Field problems found by SDOT shall be documented as exception reports and shall be resolved through the Port's construction administration staff. SDOT will not accept the Project until all exception reports are dealt with to the City's satisfaction.

(c) The Port and the Project Contractor shall develop and execute any traffic control plans that are required for work on the Project.

(d) If requested, the Port's inspection staff shall forward weekly to SDOT any written reports, including without limitation daily inspection reports (inspectors' field notes), relating to construction progress as well as any schedules prepared by the Project Contractor regarding work to be performed. SDOT shall make reasonable efforts to attend regularly scheduled project progress/scheduling meetings for the Project.

(e) Within six months following SDOT's acceptance of the Project, the Port shall prepare or have prepared "as built" drawings for SDOT's permanent records, consisting of 2 bound copies of record drawings showing as-built changes represented in relation to the approved permitted design. The Port shall also provide a digitized file in Autocad 2007 format, utilizing and adhering to the City of Seattle's CAD layering standards.

(f) The Port shall reasonably consult with SDOT during the construction process to effectuate the purposes of this Agreement and represent in good faith SDOT's interests to the Project Contractor.

**4.6** Upon completion of the construction of any Project contract, the Port shall provide SDOT with at least ten (10) working days prior written notice of the Pre - Final Inspection, following the receipt of a request from the Project Contractor for such inspection under the contract documents for the construction of the Project. SDOT shall attend the Pre - Final Inspection with the Port and prepare and transmit to the Port a

written punchlist of deficient work within twenty (20) working days after the Pre - Final Inspection. The Port shall provide SDOT with written notice of the Final Inspection immediately following the receipt of a request from the Project Contractor for such inspection under the contract documents for the construction of the Project. The Final Inspection shall be held at least ten (10) working days following the Port's notice to SDOT. SDOT shall attend the Final Inspection with the Port. The process for Final Inspection shall be repeated until all items of deficient work on the punch list have been corrected and the City informs the Port that it may transmit the Port's written Notice of Acceptance of the Project to the Project Contractor.

## 5. Indemnification

**5.1** The Port shall retain responsibility for design defects and construction errors or deficiencies, and for the repair or replacement of the Overpass and Relocated Surface Streets or any part or element thereof occasioned by such defect, errors or deficiencies, for a period of six years after transfer of the Overpass and relocated Surface Street to the City. The Port's responsibility for repair or replacement of the Overpass and Relocated Surface Streets shall not extend to damage caused by unforeseen and fortuitous casualty events to include damage by earthquake that occur after the transfer of ownership to the City in accordance with section 9. With respect to claims arising out of or connected in any manner with any work performed to design or construct the Project that accrue within six years of substantial completion (as that term is defined at RCW 4.16.310) of the Project or after termination of the Project designers' and contractors' services, whichever is later, the Port agrees to release, defend and indemnify SDOT, the City and its employees and agents from and against each and every claim (including without limitation designers' and contractors' claims) that relate to injury or death to any person or damage to any property, provided that, to the extent applicable, and in accordance with RCW 4.24.115: (i) the Port's duties under this section 4.1 shall not apply to claims resulting from the sole negligence of SDOT, the City or its employees, consultants, contractors or agents; and (ii) to the extent that a claim arises out of the concurrent negligence of SDOT, the City or its employees, contractors or agents, and the Port or its employees, consultants, contractors or agents, the Port's obligations hereunder shall be to the extent of its negligence and that of its employees, consultants, contractors or agents. Solely for the purpose of effectuating the foregoing indemnity and not for the benefit of the Port's employees or any third parties, the Port expressly waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. The aforesaid indemnification has been explicitly and mutually negotiated by the Parties and shall survive the termination or expiration of this Agreement.

**5.2** The City agrees to release, defend and indemnify the Port and its employees and agents from and against each and every claim that relate to injury or death to any person or damage to any property and that arise out of or are connected in any manner with the City's operation and maintenance of the Overpass and associated real property after transfer of ownership to the City in accordance with section 9: provided that, to the extent applicable, and in accordance with RCW 4.24.115: (i) the City's duties

under this section 4.1 shall not apply to claims resulting from the sole negligence of the Port or its employees, consultants, contractors or agents; and (ii) to the extent that a claim arises out of the concurrent negligence of the Port or its employees, contractors or agents, and the City or its employees, consultants, contractors or agents, the City's obligations hereunder shall be to the extent of its negligence and that of its employees, consultants, contractors or agents; and further provided that this section 5.2 does not apply to claims related to or arising from contamination that remains on the property at the time of transfer of ownership. Solely for the purpose of effectuating the foregoing indemnity and not for the benefit of the City's employees or any third parties, the City expressly waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. The aforesaid indemnification has been explicitly and mutually negotiated by the Parties and shall survive the termination or expiration of this Agreement.

**5.3** The indemnities provided by the City in section 5.2 is valid only to the extent that it is permitted under RCW 35.32A.090. If it shall be finally determined by a court of competent jurisdiction that an indemnity provided by the City in section 5.2 is prohibited by, or is inconsistent with, RCW 35.32A.090, the indemnity shall be of no force or effect and the remainder of this Agreement shall not be deemed void or voidable by virtue of such determination. The Port acknowledges that the City has made no representation or warranty as to the effectiveness of the indemnities provided by the City.

## 6. FINANCING

Except for the City's contribution as herein described, all Project costs shall be borne by the Port, including but not limited to the costs of SDOT's design and permit review of the Project; provided, the Port's responsibility to pay, upon receipt of monthly invoices, for the City's coordination and QA/QC review during construction. The Port shall pay all costs relating to the replacement, repair, relocation or protection of City-owned utilities made necessary by construction of the Project, as itemized on monthly billing statements. The City expects that for the period from October 2009 through December 2012, for work performed by SDOT and Seattle Public Utilities, the Port's responsibility will not exceed $1,400,000. The City will notify the Port if that expectation changes. The City's financial contribution to the Project shall be $1.6 million.

## 7. Environmental Due Diligence

**7.1** The Port shall be responsible for environmental investigation and cleanup and the remedial action costs on, in, or under the land used for Phase I of the Project or necessitated by construction of the Project, including utility relocations related to the Project. Environmental cleanup conditions will be incorporated into the permits issued by the City for construction of the Project in accordance with section 7.3

**7.2** The Parties acknowledge that the Port has identified and delineated on the Transfer Properties areas of known or suspected contamination with Hazardous Substances, as well as any nearby property from which Hazardous Substances may migrate to the Transfer Properties, and provided to the City for its review copies of the following documentation:

- Phase 1 Environmental Site Assessment
- Phase II Environmental Site Assessment
- Documents relating to remedial, removal or cleanup activities
- Documents relating to allegations, orders, claims, regulatory demands or losses related to the alleged existence or migration of any Hazardous Substance from or on any new right-of-way to be transferred to the City
- Documentation regarding any alleged violation of any environmental law

In addition, the Parties acknowledge that the Port has developed, in consultation with the City, revised cleanup action plans (RCAPs) under the Washington State Department of Ecology's ("Ecology") Voluntary Cleanup Program Guidance and in accordance with this section and section 8.

**7.3** The City and the Port have jointly developed a remedial action Project Methods and Protocols addressing the management of Hazardous Substances discovered during Environmental Due Diligence or during remedial actions or project construction. Revised Cleanup Action Plans (RCAPs) have been developed that will incorporate the Project Methods and Protocols and standards of this Agreement. Provisions of the RCAPs and remedial action Project Methods and Protocols shall be incorporated into the permit(s) issued by SDOT.

## 8. CONDITION OF RIGHT-OF-WAY TRANSFERRED TO CITY

**8.1** Title: If there are liens or other encumbrances on the Project, Transfer Properties or associated real property interests at the time of transfer, the Parties shall cooperate in addressing them in a property disposition agreement.

**8.2** Environmental Due Diligence: The Port shall be responsible for documenting compliance with Environmental Due Diligence and completion of remedial actions in accordance with the requirements of the - RCAPs. This has been documented in the Cleanup Action and Closure Reports for the project.

**8.3** Clean up Level for Hazardous Substances: The Port shall be responsible for environmental investigation, remedial actions and remedial action costs, including maintenance and monitoring provided in the RCAPs, on, in, under or the land used for the Project, as necessitated by construction or operation of the Project, including utility relocations related to the Project. The Port shall follow Model Toxics Control Act (MTCA) Method A Industrial Cleanup Standards for soils and groundwater (WAC 173-340-704), or Method C if Method A Standards are not applicable, if approved by Ecology and agreed to by the City.

## 9. TRANSFER OF OWNERSHIP

SDOT shall accept fee simple or easement ownership of the real property interests and structures for the Project upon fulfillment of the following conditions:

**9.1** As soon as practicable following acceptance of the Project by the Port pursuant to section 4 the Port shall: (i) transfer the Overpass and associated real property interests to the City, at no cost, pursuant to the terms of a property disposition agreement; and (ii) dedicate the Relocated Surface Streets to the City. The Port shall provide the City with the Port Commission Resolution authorizing the transfer, and shall grant to the City fee or easement interest in the real property acquired by the Port for the purposes of constructing the Project and any other real property interests including permanent easements associated with the Overpass.

**9.2** After the Port Commission has adopted the Resolution authorizing the transfer of title of the Project to the City, but before the Port has completed the list of actions that must be satisfied before the City accepts title to the Project, SDOT shall present the ordinance and Recommendation to Accept for transfer of title of the Project to the Seattle City Council for adoption. The list of actions that the Port must satisfy before the City accepts title to the Project are attached to this Agreement as **EXHIBIT B**.

## 10. PUBLIC USE OF PROJECT PRIOR TO TRANSFER

**10.1** A component of the Project is the construction of the eastbound surface roadway ("Roadway") depicted on **EXHIBIT A** to its new location under the Overpass. Once constructed, the Roadway must serve traffic until the Overpass and ramps are ready to be opened for public use. The Port and the City acknowledge that construction phasing will require that the Roadway open and close several times before it is permanently opened to the public. During this period of temporary opening and closing, the Port shall retain all liability for the Roadway and public use of it. Upon the date that the Roadway is permanently open for use by the public, but before the City has accepted ownership of the real property interests and the structures in accordance with section 9, the City and the Port shall share liability equally for each and every claim that relate to the injury or death to any person or damage to any property and that arise out of or are connected in any manner with the maintenance of the Overpass and associated real property until the date that the City accepts title to the Project.

**10.2** The Port may request that the Overpass and ramps be opened for Port or public use prior to the City's acceptance of ownership by ordinance. If the Port requests opening prior to the City's final approval of the Project, the City shall perform a preliminary inspection and prepare a list of construction items that have not yet been completed (punch list). The City shall determine which items on the punch list must be completed before the Overpass and ramps or associated surface streets may be opened for Port or public use. If the Overpass is opened to the public before its transfer to the City, the City and the Port shall share equally the liability for the public's use of the Overpass, as set forth for the Roadway in 10.1 above.

**10.3** The Port recognizes that the City may exercise its police power to regulate the use of the Overpass and associated surface streets and to control or restrict access to them at any time the Overpass or associated surface streets are opened for Port or public use.

**10.4** The City will include the roadways and structure, when open to the public, in its snow and ice response and removal plans.

## 11. DESIGNATED REPRESENTATIVES; EXECUTIVE STEERING COMMITTEE.

**11.1** Responsibilities of Designated Representatives. To promote effective intergovernmental cooperation and efficiencies, the Parties shall each designate a representative ("Designated Representative") who shall be responsible for coordination of communications between the Parties and shall act as the point of contact for each Party. The Designated Representatives shall jointly prepare status reports for submission to the Executive Steering Committee. The status reports shall at a minimum contain a summary of progress on the scope and schedule for the Project and a description of any changes in the Project budget and any upcoming issues.

**11.2** Coordination. Each Designated Representative is also responsible for coordinating the input and work of its agency, consultants, and staff as it relates to this Agreement. The Parties reserve the right to change Designated Representatives, by written notice to the other Party during the term of this Agreement. Each Party's Designated Representative is named below with the individual's contact information.

**11.3** Designated Representatives and Contact Information

City of Seattle

John Arnesen, Project Manager
Seattle Department of Transportation
P.O. Box 34996
Seattle, WA 98124-4996
Telephone: (206) 684-8921
Fax: (206) 470-6722
E-mail: john.arnesen@seattle.gov

Port of Seattle

Tim Leonard, Project Manager
Port of Seattle
Pier 69/P.O. Box 1209
Seattle, WA 98121

Telephone: (206) 787 - 3018
Fax: (206) 787 - 3280
E-mail: leonard.t@portseattle.org

**11.4** Executive Steering Committee. An executive steering committee (hereinafter "Executive Steering Committee") shall be composed of two representatives each from the City and the Port. The Mayor shall appoint the Director of SDOT or his or her assign and the SDOT Director of Capital Projects and Roadway Structures Division. The Port's Chief Executive Officer hereby appoints the Deputy Chief Executive Officer and the Chief Engineer. The Executive Steering Committee shall meet as determined by the Committee to review the status report submitted by the Designated Representatives and provide such advice as may be necessary to fulfill the objectives of this Agreement

## 12. DISPUTE RESOLUTION

In the event the Designated Representatives cannot resolve a disagreement arising under this Agreement, the Parties shall follow the formal dispute resolution steps below.

**12.1** The Party's Designated Representative shall notify the other in writing of any problem or dispute the Designated Representative believes needs formal resolution. This written notice shall include:

(a) description of the issue to be resolved;
(b) a description of the difference between the Parties on the issue; and
(c) a summary of steps taken by Designated Representative to resolve the issue.

**12.2** Upon receipt of written notice of a request for a formal dispute resolution under this section, the Executive Steering Committee shall meet within ten (10) working days of receiving the written notice and attempt to resolve the dispute.

**12.3** The Parties agree that they shall have no right to seek relief under this Agreement in a court of law until and unless each of these procedural steps is exhausted.

**12.4** In the event that any Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the Parties hereto agree that any such action or proceeding shall be brought in a court of competent jurisdiction situated in King County, Washington.

## 13. TERM OF AGREEMENT.

**13.1** Termination of Agreement. If the Project is not finally approved by the City or other regulatory agencies with jurisdiction, if the City Council declines to accept title to the Project, or if the Project or any part of it is not constructed for whatever reason, this Agreement shall become null and void and the Port and the City shall execute an amendment to this Agreement so indicating.

**13.2** Term. This Agreement shall be in effect from the date of last execution unless otherwise terminated pursuant to the provisions of this section.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the dates written below.

| **THE CITY OF SEATTLE** | **PORT OF SEATTLE** |
|---|---|
| _____<br>Director of Transportation<br><br>Date: _____ | _____<br>Chief Executive Officer<br><br>Date: _____ |

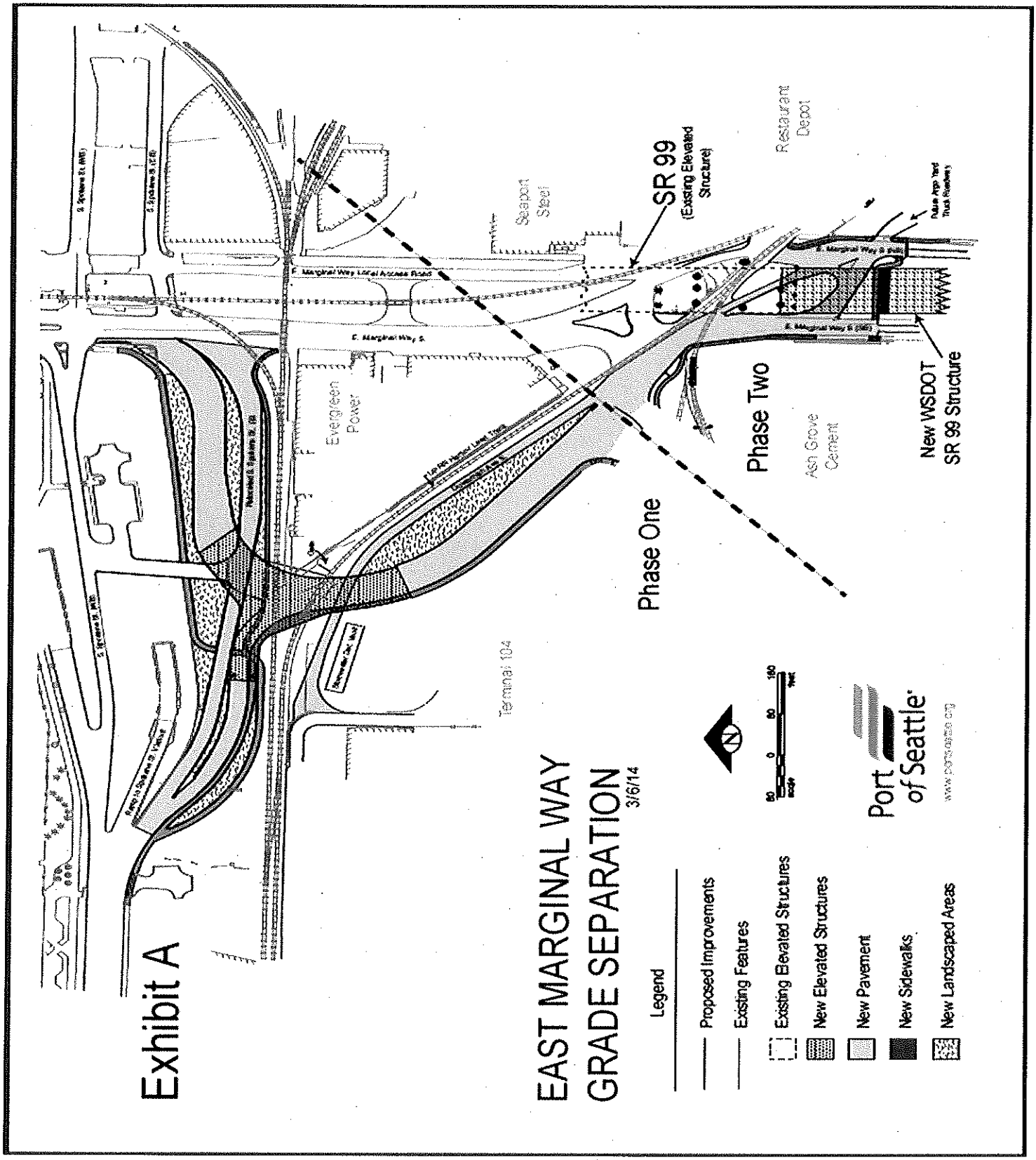


Exhibit A
EAST MARGINAL WAY
GRADE SEPARATION
3/6/14
Legend
Proposed Improvements
Existing Features
Existing Elevated Structures
New Elevated Structures
New Pavement
New Sidewalks
New Landscaped Areas
Port of Seattle
Phase One
Phase Two
SR 99
(Existing Elevated Structure)
New WSDOT
SR 99 Structure
Seaport Steel
Evergreen Power
Ash Grove Cement
Restaurant Depot
Terminal 104

# EXHIBIT B

## East Marginal Way Grade Separation: List of actions that the Port must satisfy before the City accepts title to the Project

Prior to transfer of ownership to the City of the new infrastructure and associated property interests, the following steps and documents must be completed:

1. Confirmation of environmental cleanup of Project real property with supporting documentation;
2. Port and City's QA/QC agents jointly recommend that the Overpass is safe to open to the public and the Engineer of Record provides a stamped letter stating that the Overpass has been built per plans;
3. City's Traffic Engineer confirms that the Overpass is safe to open to the public;
4. Punch list is compiled from all affected Parties;
5. Punch list is completed to the City's satisfaction;
6. The Port will provide the City with copies of all real estate purchase and sale agreements and any other agreements relating to the privately-owned Transfer Properties acquired by the Port for the Project and all relevant title documents for the Port-owned Transfer Properties;
7. (a) As-built plans, for all structure, surface and underground infrastructure, are submitted to the City within 6 months of opening the Overpass to the public (#1-3 above), and format and completeness is approved by the City;

   or

   Port desires formal City acceptance of the Transfer Properties and improvements (by ordinance) prior to submittal and acceptance of final as-builts, the City may comply upon agreement by the Port that after the six month deadline for as-builts has elapsed, the Port will pay a $500 penalty on a daily basis for late submittal.

Form revised: February 26, 2014

# FISCAL NOTE FOR CAPITAL PROJECTS ONLY

| Department: | Contact Person/Phone: | CBO Analyst/Phone: |
|---|---|---|
| Seattle Department of Transportation | David Conway/684-5016 | Doug Palmer/684-5266 |

**Legislation Title:**

AN ORDINANCE relating to the East Marginal Way Grade Separation Project; authorizing the Director of the Department of Transportation, on behalf of the City of Seattle, to execute a Memorandum of Agreement with the Port of Seattle regarding the design, permitting, construction, financing, transfer, use, and related aspects of the project.

**Summary and background of the Legislation:**

This legislation authorizes the Director of the Department of Transportation, on behalf of the City of Seattle ("City"), to enter into a Memorandum of Agreement with the Port of Seattle regarding the East Marginal Way Grade Separation project ("EMGS MOA"). The EMGS MOA provides, among other things, transfer of ownership by the Port of Seattle to the City of the grade separation improvement and any related property interests, as well as such at-grade widening or relocation of City streets identified in the EMGS MOA.

The Port of Seattle ("Port") and the City are participants in the FAST Corridor Partnership created pursuant to a Memorandum of Understanding dated April 29, 1998, subsequently amended and restated by the 2002 Memorandum of Understanding for Phases I and II of the FAST Corridor, dated December 12, 2002 ("FAST MOU"). The FAST Corridor refers to a series of related but independent projects which when completed systematically improve freight movement and mitigate the impacts of increasingly intensive use of the freight transportation corridors in the Everett-Seattle-Tacoma region. This integrated freight mobility corridor strategy is consistent with the Puget Sound Regional Council's Metropolitan Transportation Plan (Destination 2030).

The East Marginal Way Grade Separation Project ("Project") was designated as a Phase I FAST Corridor Project in the FAST MOU. To that end the Port, in its capacity as lead agency for the Project, constructed a vehicular grade separation that routes vehicular traffic up and over existing rail tracks that primarily serve the Port terminals on Harbor Island and West Seattle.

The purpose of the Project's grade separation and related road and utility relocations is to accommodate both: (1) existing and projected increases in rail traffic; and (2) existing and projected increases in vehicular traffic, including freight and general purpose traffic that use East Marginal Way, Duwamish Avenue S., S. Spokane Street, and the surrounding roadways. In addition, separating rail from vehicular traffic enhances traffic safety for vehicles, pedestrians and bicycles, improves access to local business, and minimizes traffic delays.

| Project Name: | Project I.D.: | Project Location: | Start Date: | End Date: |
|---|---|---|---|---|
| East Marginal Grade Separation | | Various | Various | Various |

Please check any of the following that apply:

___ **This legislation creates, funds, or anticipates a new CIP Project.**

___ **This legislation does not have any financial implications.**

_X_ **This legislation has financial implications**

**Appropriations:** None.

Appropriations Notes: The work associated with the capital project is substantially complete. Appropriations are needed for ongoing operations and maintenance. In 2015, SDOT will request additional appropriations to continue operations and maintenance.

**Spending Plan and Future Appropriations for Capital Projects:**

Spending Plan and Budget Notes: None.

**Funding Source:** N/A

Funding Source Notes:

**Bond Financing Required:** None.

Bond Notes:
**Uses and Sources for Operation and Maintenance Costs for the Project:**

Operation and Maintenance Notes: See other implications.

**Periodic Major Maintenance Costs for the Project:**

**Funding sources for replacement of project**: N/A.

**Total Regular Positions Created, Modified, or Abrogated through this Legislation, Including FTE Impact:** None.

**Do positions sunset in the future?** N/A.

**Other Implications:**

**a) Does the legislation have indirect financial implications, or long-term implications?**

Yes, adoption of this legislation has long-term financial implications. As owner of the City right-of-way, SDOT would be responsible for the operations and maintenance of the infrastructure which includes the roadway infrastructure, and landscaping maintenance costs. The annual costs total approximately $41,309 (Pavement management: $24,319, Structures: $13,650, Urban Forestry: $1,840, Street Maintenance: $1,500). The construction contract cost for replacement of the bridge structure total $20.5M in 2012 dollars. The remaining useful life is 85 years.

**b) What is the financial cost of not implementing the legislation?**

The Port built the infrastructure to City standards as the intent was the City would assume operations and maintenance responsibilities. If the City were to not implement the legislation, the issue could wind up in the legal system.

**c) Does this legislation affect any departments besides the originating department?**

The acceptance and transfer of certain SCL and SPU utility infrastructure associated with the Project will be finalized. SPU and SCL have no new additional funding or appropriation needs.

**d) What are the possible alternatives to the legislation that could achieve the same or similar objectives?** None.

**e) Is a public hearing required for this legislation?**

No.

**f) Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**

No.

**g) Does this legislation affect a piece of property?**

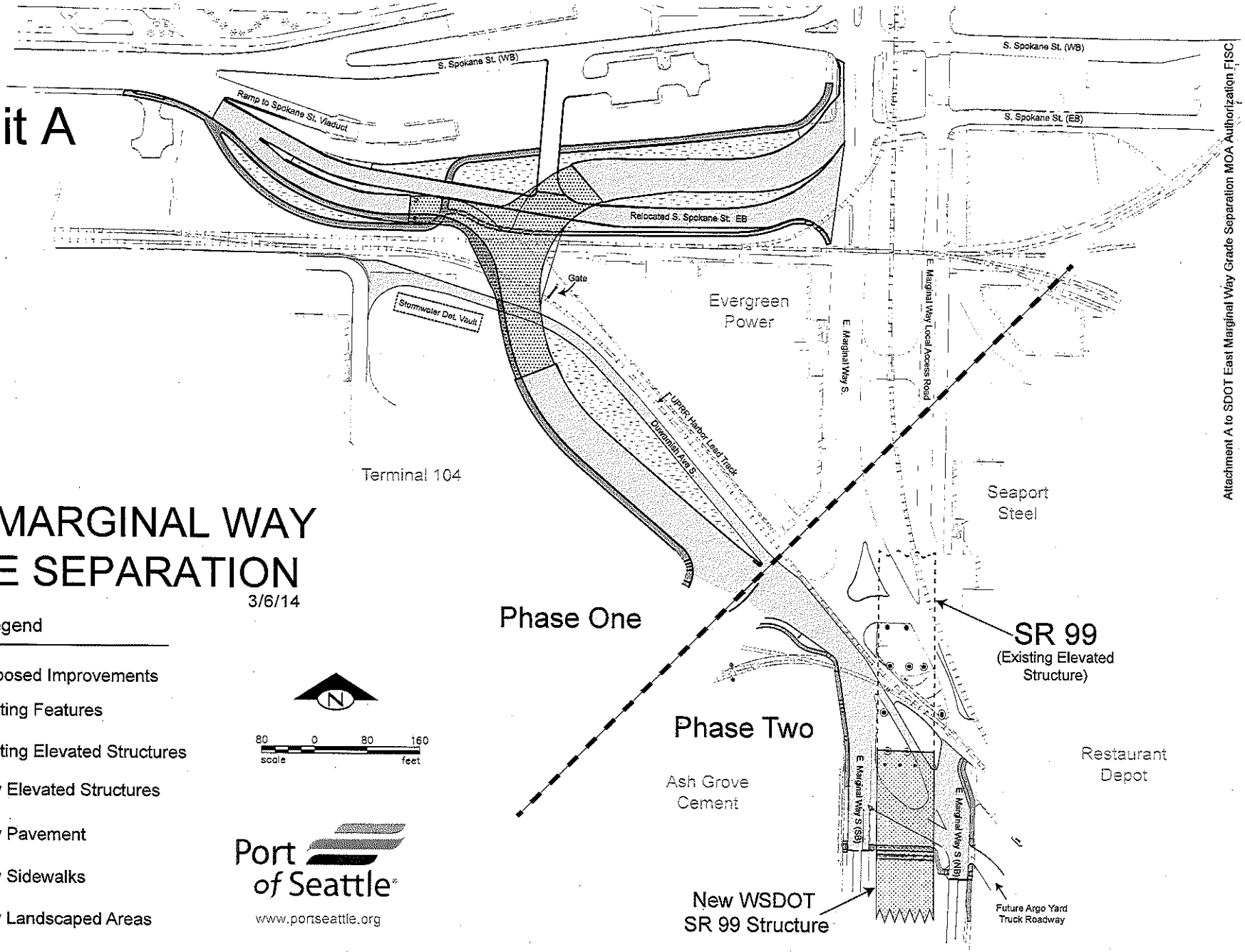
Yes, there are several parcels that will be transferred to the City as part of the Project to be owned and operated as City street right-of-way and utility easements.

**h) Other Issues:** None.

**List attachments to the fiscal note below:**

Attachment A: Project Map
Attachment B: Vicinity Map

# Exhibit A




# EAST MARGINAL WAY GRADE SEPARATION

3/6/14

Legend

- Proposed Improvements
- Existing Features
- Existing Elevated Structures
- New Elevated Structures
- New Pavement
- New Sidewalks
- New Landscaped Areas

N

80 0 80 160
scale feet

Port of Seattle
www.portseattle.org

Attachment A to SDOT East Marginal Way Grade Separation MOA Authorization FISC

Gretchen M. Haydel
SDOT East Marginal Way Grade Separation MOA ...horization FISC ATT A
March 28, 2014
Version #1

# Vicinity Map
# East Marginal Way Grade Separation

N
W E
S

Feet
0 200

©2009, THE CITY OF SEATTLE, all rights reserved. No warranties of any sort, including accuracy, fitness or merchantability, accompany this product.
Coordinate System: State Plane, NAD83/91, Washington North Zone | Vertical Datum: North American Vertical datum of 1988 (NAVD88)
Produced by the Seattle Public Utilities - IT GIS

See map legend on separate page.

**City of Seattle**
Edward B. Murray
Mayor

April 15, 2014

Honorable Tim Burgess
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Burgess:

I am pleased to transmit the attached proposed Council Bill that authorizes the Director of the Department of Transportation, on behalf of the City of Seattle ("City"), to enter into a memorandum of agreement ("MOA") with the Port of Seattle ("Port"). The MOA sets forth the terms and conditions for transferring ownership of the grade separation improvements and related property interests in connection with the East Marginal Way Grade Separation Project ("Project") from the Port to the City.

The Project is part of the larger FAST Corridor partnership between multiple agencies in the Puget Sound region to coordinate several independent projects that systematically improve freight mobility and mitigate the impacts of increasingly heavy use of freight transportation corridors in the Everett-Seattle-Tacoma region. The Project designed and constructed a new overpass structure that routes traffic over existing railroad tracks near East Marginal Way South, south of Spokane Street. The new grade separation structure connects three existing surface streets: South Spokane Street, Duwamish Avenue South, and East Marginal Way South.

This Council Bill permits the City to execute the agreement and does not transfer property. Separate Council action will be needed to transfer property once the Port meets all the requirements identified in Section 9 of the MOA.

This grade separation will help to mitigate the impact that projected increases in rail and vehicular traffic will have on the area. In addition, separating rail from vehicular traffic enhances traffic safety for vehicles, pedestrians, and bicycles, improves access to local businesses, and minimizes traffic delays.

Thank you for considering this legislation. The ordinance marks the end of a successful project resulting in benefits for the traveling public, businesses, residents, and visitors to the City's industrial area. Should you have any questions, please contact Jonathan Layzer at 206 684-5300.

Sincerely,

Edward B. Murray
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

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