



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.

- 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 _____

By: _____ Date _____

Edward B. Murray, Mayor
City of Seattle

Ted J. Fick, Chief Executive Officer
Port of Seattle

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