

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 ____, 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 for the 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 this Agreement.
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

THE CITY OF SEATTLE

David Soike, Interim Executive Director
Port of Seattle

Edward B. Murray, Mayor
City of Seattle

Date: _____

Date: _____