

THE NORTHWEST SEAPORT ALLIANCE
MEMORANDUM

MANAGING MEMBERS
ACTION ITEM

| | |
|------------------------|---------------|
| Item No. | 6D |
| Date of Meeting | April 6, 2021 |

DATE: March 25, 2021

TO: Managing Members

FROM: John Wolfe, CEO

Sponsor: Tong Zhu, Chief Commercial Officer and Chief Strategy Officer

Project Manager: Curtis Stahlecker, POS Project Manager

SUBJECT: T5 Quiet Zone MOU Amendment

A. ACTION REQUESTED

Authorization to amend the existing T5 Quiet Zone Memorandum of Understanding (MOU) with the City of Seattle.

B. SYNOPSIS

A Pre-issuance condition of the T5 Master Use Permit (MUP) was the entering into a Memorandum of Understanding (MOU) with the Seattle Department of Transportation (SDOT) to establish a railroad quiet zone between the train bridge and the gate of the terminal. The quiet zone MOU agreement with the City of Seattle was authorized by a dual vote of the Port of Seattle and the Port of Tacoma with the execution authorized by the NWSA on August 1, 2017.

Pursuant to the MOU, the Port of Seattle (on behalf of the NWSA) and SDOT have worked collaboratively to complete the design for the establishment of the railroad quiet zone. This collaboration has also led to the inclusion of five additional adjacent interrelated MUP conditions and other transportation improvements to be incorporated into the quiet zone MOU, all of which have a direct impact on T5.

These proposed amendments to the MOU have been requested by SDOT to include the additional MUP conditions work that SDOT agreed to provide and include a mechanism for project accounting activities for the added work performed under the MOU. This request is to approve amendments to the agreement for inclusion of the additional MUP conditions and other revisions as outlined below in Section C.

C. BACKGROUND

At the August 1, 2017, meeting a dual vote by the NWSA, Port of Seattle, and the Port of Tacoma authorized \$5.2M (\$2.6M from each port) funding for the railroad quiet zone. A

second vote by the NWSA Managing Members authorized the execution of the MOU Agreement with the City of Seattle to establish a railroad quiet zone.

- The establishment of the railroad quiet zone MOU was a “Prior to Issuance of MUP” condition. The MOU obligates the Port of Seattle/NWSA to fund the design and installation for appropriate measures to at-grade crossings and the rail corridor extending from the T5 gate to the train bridge over the Duwamish River.
- The establishment of the MOU provided both parties with the framework to work together to satisfy the “Prior to Occupancy” MUP Condition 19: quiet zone technical analysis and stakeholder agreement with the civil design submitted to BNSF for engineering and construction.

Since the quiet zone MOU has been in place, the two agencies have worked very closely together to fulfill the MUP condition. Through this collaboration and utilizing the quiet zone MOU document as the basis, three adjacent MUP conditions have been incorporated into the quiet zone design documents, and two adjoining MUP conditions have been completed by SDOT (traffic signal design engineers and field crew).

The additional five MUP conditions added as the proposed amendments were authorized by Managing Members on April 2, 2019. The authorization on April 2, 2019, authorized funds for permit conditions that were utilized to complete these additional five MUP conditions that are incorporated into the proposed quiet zone MOU amendment putting the total number of MUP conditions to six.

All six of the “Prior to Occupancy” MUP conditions SDOT has performed under the MOU have been performed efficiently, within budget, and ahead of schedule. The next steps are right-of-way and property acquisition, followed by construction once BNSF completes their design and the West Marginal Way corridor is no longer a key detour route after the West Seattle High Bridge has been repaired and reopened to traffic.

Of additional note, two additional items were performed under the quiet zone MOU. SDOT installed a CCTV for NWSA Operations and provided their support staff and consultant to perform load testing on the Port of Seattle overpass that serves the T5 gate entrance. Both tasks were funded outside of the T5 Berth Modernization project.

D. AMENDMENT DESCRIPTION AND DETAILS

The executed quiet zone MOU requires the Port of Seattle to be responsible for all costs incurred by SDOT on the project. Using this MOU agreement as the funding instrument for SDOT, the Port and SDOT have been able to develop a comprehensive design and construction package that incorporates four integrally connected MUP conditions into one project called SDOT T5 Access Improvements.

The SDOT T5 Access Improvements project includes the following MUP conditions: Design and install the T7 access road (MUP 10); Design and install a pedestrian pathway (MUP 11); Design and install T5 access bridge restriping and circulation (MUP 12); and Design and install railroad quiet zone (MUP 19).

The project document set will be finalized to bidding documents once BNSF provides SDOT with the railroad final design input. All four of these MUP conditions have met the “Prior to Occupancy” permit condition. Condition 10 has been completed as far as it can be until the project is fully implemented. Condition 12 is fully complete and Conditions 11 and 19 have the design completed as required by the permit.

Two additional MUP conditions, flashing alert replacement (MUP 14) and Spokane Street corridor traffic signal upgrades (MUP15) were also completed by SDOT under the MOU by SDOT signal design staff and field crews. The utilization of SDOT to perform the design and installation proved to be an efficient method of design and installation as SDOT engineers and crews are the most knowledgeable about the Seattle signal system.

The Spokane Street corridor traffic signal upgrade is a MUP condition 15 and requires improvements to six signals to within the corridor. SDOT engineers designed and identified the intersection at East Marginal Way and Hanford intersection for the signal system. The signal system is scheduled to be replaced under a future SDOT project. Rather than install the MUP condition upgrade now, a recommendation was made by SDOT to defer the installation of this signal until the new project is built.

Through the collaboration of the project team and the Seattle permitting department, the East Marginal Way and Hanford signal will be installed in the SDOT project at later date and the permit condition is considered complete with the payment of \$67,000. The payment represents the cost that would have been spent for installing the signal upgrade now, only to have the signal demolished with the future work, which the project team and permitting staff did not see as a wise use of public funds.

The two new CCTV cameras in the proposed amendment provide visibility to previous blind spots along the Spokane Street corridor at two locations where traffic signals were upgraded under MUP 15. SDOT crews, dispatchers, terminal and truck drivers can use them to monitor truck queues along the corridor and make more informed routing or operations decisions. This work was performed concurrently with the Spokane Street traffic signal upgrades that are part of the MUP requirements. Because the cameras were not required by the MUP the costs were tracked separately. The CCTV camera installation was funded by a NWSA operations project not connected with the T5 program.

The T5 Overpass live load testing activity was a follow-on activity from the lane reconfiguration “Prior to issuance of the MUP” condition 3. Condition 3 required that the bridge have an engineering report confirming the structure had the load capacity to be converted from two to three lanes of traffic. The engineering report confirmed the bridge could be converted to three lanes but had a service life deficiency under certain loading conditions that would require traffic mitigation measures (speed restrictions, additional stops signs at each entrance, and escorting of certain permitted loads). However, given the recent issues with the high and low bridges, SDOT was concerned with the long-term efficacy and sustainability of the traffic mitigation measures over time. SDOT’s concern combined with the Port of Seattle’s need to be in compliance with the revisions to the WSDOT bridge rating system, the live load test was conducted utilizing the quiet zone MOU. As with the CCTV work this task was funded outside the T5 program completely by the Port of Seattle.

The final item included in the proposed amendment is acknowledging that within the Safe and Swift MOU agreement, the City and POS have corresponding matching \$5M fund obligations based on the final cost of the Lander Project. The total Lander Project came in below cost estimate, resulting in neither the City nor the Port being required to fulfill these matching funds commitment. The Port will continue to pay the City's project-related cost as typically billed to the project.

The executed quiet zone MOU has served well as a reimbursement vehicle between the Port and SDOT through the MUP design development and the limited amount of construction completed to date. However, the next major project milestone will be contracting, and SDOT would like a document that provides a clear accounting of the project funding. This is not an unreasonable request as the proposed amendment provides a project accounting structure, defines utilization of contingency, defines payment processes, sets an upper limit on expected costs, and memorializes the completion of MUP conditions.

The previously executed MOU obligated the Port to pay for all the work to implement the rail quiet zone with no dollar limit. The proposed quiet zone MOU amendment establishes a dollar limit and includes additional MUP Conditions along with the accompanying funding as provided in the April 2, 2019 authorization. The proposed amendment also includes a programmatic contingency to address any unforeseen conditions associated with any of the adjacent roadways, structures or ground conditions that could arise during the project and could impact the project scope schedule or budget.

The total costs with the proposed MOU amendment continue to remain below the authorized amounts.

Schedule

Contract document preparation, right-of-way property procurement and construction of the four designed MUP conditions are what remain to be finalized tasks within the MOU amendment. The three construction activities combined into the SDOT T5 Access Improvements include: T7 access road finalization (MUP 10); Pedestrian pathway (MUP 11); and installation of railroad quiet zone (MUP 19).

SDOT has performed the property appraisals and have initiated property discussions. This process is expected to be ongoing throughout 2021 and possibly in to 2022.

SDOT anticipates the construction will not begin until the West Seattle Bridge has been repaired and is open to traffic. Once the bridge has been opened to traffic, much of the congestion on West Marginal Way currently being used as a bypass route will be relieved. This will allow T5 Access Improvements project to be constructed with minimal disruption to the traveling public. The West Seattle Bridge opening is scheduled for mid-2022. Provided the West Seattle Bridge maintains the current schedule, the earliest the SDOT T5 Access Improvements would be in construction is late 2022.

E. FINANCIAL IMPLICATIONS

Source of Funds

The funding for the permit conditions was previously authorized. On August 1, 2017, \$5.2M was authorized, and on April 2, 2019, another \$8.35M was authorized, totaling \$13.55M. These costs are managed under the authorization for the T5 Modernization Program. The financial tabulation in the proposed quiet zone MOU amendment will use these previously authorized funds, and **no new funding is being requested.**

F. ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS

Alternative 1) Do Nothing. If the proposed amendment is not authorized for execution, the Port would need to take over the management of the project. This would include coordination with BNSF, procure design services to compile the bid documents, manage the right-of-way and property acquisitions, administer the bid process and construction management. These responsibilities can be performed by the Port, but it will take additional time to procure the necessary professional services to finalize the work. In all likelihood, the cost would increase due in part to the efficiency and institutional knowledge lost when a significant team change occurs on a project.

Alternative 2) This request. By authorizing staff to execute the amendment to the quiet zone MOU the work would continue uninterrupted. The current property acquisition team would remain in place maintaining continuity with the property owners. The same design team will be interacting with BNSF, finalizing the contract documents and overseeing the construction. Maintaining the current project team retains institutional knowledge gained through the design development maintaining an efficient and economical path for the implementation of the remaining work elements.

Alternative 2 is the recommended course.

G. ATTACHMENTS TO THIS REQUEST

- Attach 1: Draft Amendment Number 1 to Memorandum of Understanding to Establish a Railroad Quiet Zone
- Attach 2: T5 Quiet Zone and Adjacent MUP Conditions map
- Attach 3: Executed Memorandum of Understanding to Establish a Railroad Quiet Zone
- Attach 4: Executed Safe and Swift Memorandum of Understanding

H. PREVIOUS ACTIONS OR BRIEFINGS

| Date | Action | Amount |
|-------------------|---|----------------------|
| March 3, 2021 | T-5 Modernization - Program Update | \$0 |
| February 2, 2021 | T-5 Modernization - Upland Elements Construction Authorization | \$0 |
| October 6, 2020 | T-5 Modernization - Program Update | \$0 |
| September 1, 2020 | T-5 Modernization - Tribal Agreement Update | \$0 |
| August 4, 2020 | T-5 Marine Building - Approval to advertise for North Building construction only | \$0 |
| July 2, 2020 | T-5 Marine Building - Authorization to advertise for North and South Buildings construction request | \$0 |
| July 2, 2020 | T-5 Modernization - Program Update | \$0 |
| April 7, 2020 | T-5 Modernization - Program Update | \$0 |
| January 14, 2020 | T-5 Modernization - Program Update | \$0 |
| October 1, 2019 | T-5 Modernization - Program Update | \$0 |
| August 6, 2019 | T-5 Modernization - Program Update | \$0 |
| June 4, 2019 | T-5 Program Update | \$0 |
| May 20, 2019 | Program Authorization for Construction of Berth Modernization Program | \$0 |
| April 2, 2019 | Additional Program Funding and Authorization to Fund T-5 Modernization Program | \$314,150,000 |
| February 26, 2019 | Authorization to advertise for construction | \$0 |
| February 5, 2019 | Pre-authorization Program Briefing | \$0 |
| November 13, 2018 | Motion to prepare construction documents for authorization to advertise | \$0 |
| August 1, 2017 | Railroad quiet zone funding, tribal payments, and Agreements | \$5,650,000 |
| October 4, 2016 | Additional Funding, Seattle City Light Agreement, and Project Labor Agreement | \$8,200,000 |
| June 7, 2016 | DEIS Briefing | \$0 |
| November 4, 2015 | Additional SEPA and Design Funding | \$2,000,000 |
| October 13, 2015 | Test Pile Bids Exceeded Engineer's Estimate | \$0 |
| July 14, 2015 | Additional Design Authorization | \$5,000,000 |
| June 3, 2014 | Initial Design Authorization | \$4,700,000 |
| May 13, 2014 | T-5 Berth Modernization Briefing | \$0 |
| March 12, 2014 | Additional Pre-Design Authorization | \$150,000 |
| October 27, 2013 | Initial Pre-Design Authorization | \$150,000 |
| TOTAL | | \$340,000,000 |

AMENDMENT NO. 1
MEMORANDUM OF UNDERSTANDING BETWEEN THE PORT OF SEATTLE AND THE
CITY OF SEATTLE TO ESTABLISH A RAILROAD QUIET ZONE

This AMENDMENT TO THE MEMORANDUM OF UNDERSTANDING TO ESTABLISH A RAILROAD QUIET ZONE (“Amendment”) is made and entered into by the City of Seattle, a Washington first class city and municipal corporation, through its Department of Transportation (“City” or “SDOT”) and the Port of Seattle (“Port”) acting on behalf of the Northwest Seaport Alliance (NWSA), either of which may be referred to hereinafter individually as “Party” or collectively as the “Parties.”

WHEREAS, on August 29, 2017, the City and the Port executed an MOU for the Establishment of a Railroad Quiet Zone adjacent to Terminal 5 in West Seattle, hereinafter referred to as the “MOU”; and

WHEREAS, the Port is rehabilitating the existing marine cargo facilities at Terminal 5 at the west margin of the West Waterway in Elliot Bay; and

WHEREAS, the proposed changes include modification of intermodal rail facilities; and

WHEREAS, a Final Environmental Impact Statement prepared by the Port of Seattle identifies train horn noise required for public and private crossings and presence of human activity as an annoyance noise; and

WHEREAS, the Port as part of its permit application for a Shoreline Substantial Development Permit, permit application Number 3019071, received from the City of Seattle (“City”) Analysis and Decision of the Director of the Seattle Department of Construction and Inspections,” dated April 3, 2017 (“City Decision”);

WHEREAS, the City Decision requires the permanent acquisition of private property to be used as a public street;

NOW, THEREFORE, in consideration of mutual promises, the sufficiency of which is hereby acknowledged, in order to clarify and memorialize broader Seattle Department of Transportation (SDOT) permit responsibilities, the City and the Port, amend the MOU as follows:

1. Section 2.1 is deleted and replaced with the following language:

The Port shall provide the funding to complete a scope of work and final design for appropriate measures to improve at-grade crossings and the rail corridor to reduce the need for locomotive horns that create noise impacts exceeding applicable standards and

work together with the City to qualify the rail use area as a FRA-designated quiet zone, Additional scope of work to be incorporated into this agreement could include, but is not limited to, installing or refreshing striping and signage on nearby surface access routes; designing and implementation of the pedestrian pathway; installation of flashing alert sign; upgrading, installing, or replacing traffic signals, ITS equipment, or closed-circuit traffic cameras; and studying or evaluating Port of Seattle structures.

2. Section 2.4 is deleted and replaced with the following language:

After FRA approves the final design for the Quiet Zone, the Port shall fund construction and implementation of infrastructure and other measures in the Scope of Work and final design as approved by SDOT and BNSF and performed by SDOT and BNSF or its designee.

3. Section 2.6 is deleted and replaced with the following language:

The Port shall provide funding for the annual maintenance of the Quiet Zone as determined by BNSF Railway as necessary to retain FRA quiet zone designation. This funding may be directly paid to BNSF, or indirectly through SDOT if BNSF determines that SDOT must maintain an asset.

4. Section 2.7 is added to the MOU:

The Port shall provide the funding to acquire all property interests needed to complete the project including; temporary construction easements and permanent property acquisition. Property acquisition includes, but is not limited to, funding for condemnation costs for staff time, consultant fees, outside counsel, and property acquisition, as needed.

5. Section 2.8 is added to the MOU

The Port shall fund or provide mitigation for impacts to environmental covenant area needed for freight mobility at Crossing 3.

6. Section 3.1 is deleted and replaced with the following language:

SDOT shall provide general oversight, design, and implementation to ensure that Port responsibilities are completed consistent with the terms of the City Decision.

7. Section 3.1.1 is added to read as follows:

Specific work will include, but not be limited to, the design and installation of railroad quiet zone T-5 Master Use Permit Condition (MUP 5); design and installation of the T-7 access road striping and signage (MUP 10); design and installation of a pedestrian pathway (MUP 11); design and installation of the T-5 access bridge striping and circulation (MUP 12); replacement of the Flashing Alert Sign (MUP 14); design and installation of five (5) of the six (6) upgraded traffic signal along the Spokane St. corridor (MUP 15); submittal of technical analysis (civil design) and agreement (Federal Railroad Administration Notice of Intent) to BNSF for engineering and construction (MUP 19); and other activities as identified in the scope of work.

8. Section 3.1.2 is added to read as follows:

Upgrade of the final Spokane St. corridor traffic signal under MUP 15 at East Marginal Way S and S Hanford Street will be performed by SDOT through the East Marginal Way Corridor Improvement Project (substantial completion expected in 2022). This signal upgrade installation was deferred as the future SDOT project will reconfigure the intersection thus demolishing any upgrades. SDOT and the Port have agreed SDOT will incorporate the signal upgrades in the future contract and the Port will provide SDOT the current equipment and installation costs of sixty-seven thousand dollars (\$67,000) as identified in Table A.

9. Section 3.5 is deleted and replaced with the following language:

SDOT shall prepare and submit technical analysis (civil design) and agreement (Federal Railroad Administration Notice of Intent) to BNSF Railway for engineering and construction.

10. Section 3.7 is deleted and replaced with the following language:

SDOT will issue Notice to Proceed to BNSF Railway, BNSF's designated contractor, and/or SDOT's designated contractor to initiate construction.

11. Section 4.1 is deleted and replaced with the following language:

SDOT shall invoice the Port quarterly for actual costs of providing oversight, direction, and construction activities toward completing Port responsibilities to implement the Quiet Zone, and any other costs contemplated in this agreement.

12. Section 4.1.1 is added to read as follows:

Quarterly progress payments for reimbursable costs under this Agreement shall be made upon the completion and invoicing of the work as described in Section 4.1 above. Within

forty-five (45) calendar days after the Port's receipt of any complete and accurate invoice, the Port shall remit the reimbursement. The PARTIES will work cooperatively, in good faith to resolve issues related to the accuracy of these invoices so as to avoid any delay in payment.

13. Section 4.3 is added to the MOU:

The Parties are committed to working cooperatively and efficiently and will closely monitor the time required to complete work products consistent with the mutually agreed upon scope of work and estimated budgets identified in Table A. SDOT shall provide active, ongoing oversight to ensure all public funds are expended efficiently. SDOT shall provide prompt notice to the Port of potential changes to budget or schedule. The utilization of the contingency funds contained within the project budgets are intended for variances in scope or schedule. Any utilization of the project budget contingency shall require prior written approval from the Port to utilize the contingency, which will not be unreasonably withheld.

14. Section 4.4 is added to the MOU:

The Port agrees to include an additional programmatic contingency of five hundred thousand dollars (\$500,000). The programmatic contingency will be utilized for any unexpected or unknown conditions that arise during the design or implementation of the T-5 Access Improvements. Any utilization of the programmatic contingency funds shall require prior written approval from the Port to utilize the contingency, which will not be unreasonably withheld.

15. Section 4.5 is added to the MOU:

The parties agree to monitor and reconcile the actual versus estimated costs on a quarterly basis. If necessary, the Parties will negotiate additional funding or a reduction in services to the extent that such work cannot be performed within the estimate of compensation and expense reimbursement due for the services delivered and work performed.

16. Section 4.6 is added to the MOU:

Since 2018 the Port has been paying for City costs incurred for the Quiet Zone project. The City/Port Safe & Swift MOU Paragraph 2.2.c.i provided matching funds for an additional \$5M from the Port to the City for the Lander St. Overpass project, if needed. Paragraph 2.2.b.i provides that the matching funds would be used for the City's staff time for the Quiet

Zone. Since the City and Port have acknowledged that the \$5M payment will not be needed, the parties agree that paragraph 2.2.b.i of the Safe and Swift MOU is no longer applicable, and the Port will continue to pay the City’s Quiet Zone project costs to the City.

17. Exhibit A - Terminal 5 Cost Estimate Summary is added to the MOU:

| Exhibit Table A – Terminal 5 Cost Estimate Summary Table for SDOT-Related MUP Conditions and supporting work | |
|---|------------------------------|
| Activity | Budget/Estimated Cost |
| T-5 Access Improvements | \$5,225,000 |
| Design and install railroad quiet zone (MUPs 5 & 19) | \$3,000,000 |
| Design and install T-7 access road (MUP 10) | \$ 850,000 |
| Design and install a pedestrian pathway (MUP 11) | \$1,300,000 |
| Design and install T-5 access bridge striping and circulation (MUP 12) | \$ 75,000 |
| T-5 Signal/ITS Upgrades Improvements | \$ 446,000 |
| Install Spokane St. corridor traffic signal upgrades (MUP 15) | \$ 353,000 |
| Deferred Spokane St. corridor traffic signal upgrade at East Marginal Way & Hanford | \$ 67,000 |
| Replace flashing alert sign (MUP 14) | \$ 26,000 |
| T-5 CCTV Upgrades | \$23,000 |
| T-5 Overpass Load Testing | \$230,000 |
| Program Contingency | \$500,000 |
| TOTAL | \$6,424,000 |

Costs in this table do not include estimated costs for the closure of W. Marginal Way, an item covered under a separate MOU at approximately \$1,525,000 based on current SDOT cost projections.

IN WITNESS THEREOF, the Parties hereto have executed this Amendment to the MOU on the date indicated under their signatures.

The Port of Seattle

The City of Seattle

Signature Date

Signature Date

Type or Print Name

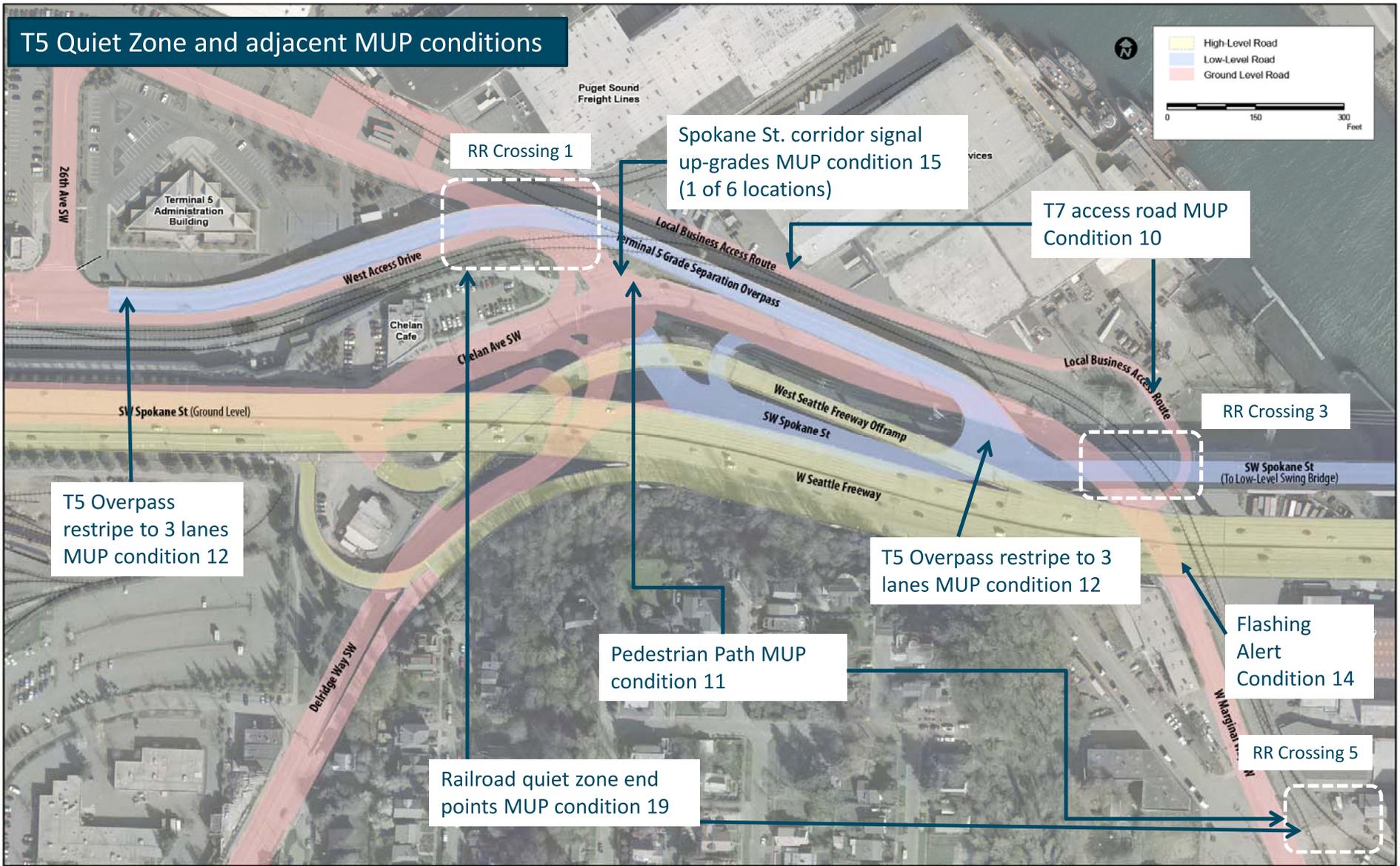
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T5 Quiet Zone and adjacent MUP conditions



MEMORANDUM OF UNDERSTANDING BETWEEN THE PORT OF SEATTLE AND THE CITY OF SEATTLE TO ESTABLISH A RAILROAD QUIET ZONE

THIS MEMORANDUM OF UNDERSTANDING TO ESTABLISH A RAILROAD QUIET ZONE ("MOU") is made and entered into by and between the City of Seattle, a Washington first class city and municipal corporation, through its Department of Transportation ("City" or "SDOT") and the Port of Seattle ("Port"), either of which may be referred to hereinafter individually as "Party" or collectively as the "Parties."

WHEREAS, The Port proposes to rehabilitate the existing marine cargo facilities at Terminal 5 at the west margin of the West Waterway in Elliott Bay; and

WHEREAS, the proposed changes include modification of intermodal rail facilities; and

WHEREAS, a Final Environmental Impact Statement prepared by the Port of Seattle identifies train horn noise required for public and private crossings and presence of human activity as an annoyance noise; and

WHEREAS, the Port, as part of its permit application for a Shoreline Substantial Development Permit, permit application Number 3019071, received from the City of Seattle ("City") "Analysis and Decision of the Director of the Seattle Department of Construction and Inspections," dated April 3, 2017 ("City Decision");

NOW, THEREFORE, in consideration of mutual promises, covenants and MOU terms set forth herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged by both Parties, the Parties agree as follows:

1. PURPOSE

- 1.1. The purpose of this MOU is to describe how the Port and City will work together to secure approval of a U.S. Federal Railroad Administration ("FRA") designated quiet zone between the west end of the train bridge across the West Waterway of the Duwamish and the Terminal 5 gate ("Quiet Zone").

2. PORT RESPONSIBILITIES

- 2.1. The Port shall provide the funding to complete a scope of work and final design for appropriate measures to at-grade crossings and the rail corridor to reduce the need for locomotive horns that create noise impacts exceeding applicable standards and work together with the City to qualify the rail use area as a FRA-designated quiet zone.
- 2.2. The Port shall perform outreach and/or agreement with stakeholders as required through the FRA quiet zone approval process.
- 2.3. The Port shall convene regular meetings of Port and SDOT representatives to review proposed scope of work, infrastructure design and installation, technical analysis, and regulatory requirements.
- 2.4. After FRA approves final design for the Quiet Zone, the Port shall fund construction and implementation of infrastructure and other measures in the Scope of Work and final design as approved by SDOT and performed by BNSF or its designee.
- 2.5. If work performed by BNSF or its designee requires correction as identified by SDOT at the completion of construction and implementation, the Port shall fund the cost of these corrections.
- 2.6. The Port shall provide funding for the annual maintenance of the Quiet Zone as determined by BNSF Railway as necessary to retain FRA quiet zone designation.

3. CITY RESPONSIBILITIES

- 3.1. SDOT shall provide general oversight to ensure that Port responsibilities under this MOU are completed consistent with the terms of the City Decision.
- 3.2. SDOT shall review and provide direction to the Port or designated agent to ensure that after completion of Port responsibilities the rail use area will qualify for FRA quiet zone designation.
- 3.3. SDOT may prepare one or more analyses to assess consistency with City Decision and FRA quiet zone designation.

3.4. SDOT shall inform the Director of the Seattle Department of Construction and Inspections or their designee as to SDOT's assessment of completed Port responsibilities.

3.5. SDOT shall prepare and submit an analysis to BNSF Railway for engineering and construction.

3.6. SDOT, as required by FRA quiet zone regulations, shall come to agreement with BNSF Railway regarding final Quiet Zone design and implementation.

3.7. SDOT will issue the Notice to Proceed to BNSF Railway or its designated contractor to initiate construction.

3.8. At the completion of each improvement, the City will identify any work that does not meet the requirements as necessary to obtain FRA quiet zone designation, prepare a specific list of revisions, and submit them to BNSF or its designee for correction. The Port will fund these corrections as identified in Section 2.5.

3.9. SDOT will act as official petitioner to FRA for the purposes of establishing an FRA-designated quiet zone.

4. INVOICING AND PAYMENT

4.1. SDOT may obtain reimbursement for actual costs from the Port for the purposes of providing oversight and direction to the Port toward completing Port responsibilities and for completing the Quiet Zone. Both Parties, in good faith, will work together to determine a reasonable methodology for establishing the total cost of work performed.

4.2. SDOT shall keep records as appropriate to describe work performed and actual costs incurred and submit an invoice on a regular basis, not more than once a month, for reimbursement for the actual costs incurred by SDOT, subject to any appropriations and/or other authorizations that may be necessary.

5. OWNERSHIP OF DOCUMENTATION

- 5.1. The Port shall own all documentation prepared by the Port to complete each Port responsibility. The Port shall reasonably make available all interim and final documentation to the City upon request for the purposes of timely oversight and direction by the City.
- 5.2. The City shall own all documentation prepared by the City for review and concurrence and for purposes of applying to establish the Quiet Zone. The City shall reasonably make available all interim and final documentation upon request for the purposes of review and comment by the Port.
- 5.3. The Port and City shall notify the other Party of any requests for access to materials or information prepared by either the Port or City by persons or entities outside this MOU. Both Parties recognize that they are public entities and are subject to the public disclosure laws of the State of Washington, and are not liable for breach if they disclose documents as required.

6. INDEMNIFICATION

- 6.1. **Indemnification and Hold Harmless.** Each Party shall 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 suits, costs, claims, actions, losses, penalties, judgments, and /or awards of damages, of whatsoever kind arising out of, in connection with, or incident to activities undertaken pursuant to this MOU caused by or resulting from each Party's (or their respective agents and contractors) own negligent acts or omissions. Each Party agrees that it is fully responsible for the acts and omissions of its own contractors and subcontractors, their employees, and agents, acting within the scope of their employment as such, as it is for the acts and omissions of its own employees and agents. Each Party agrees that its obligations under this provision extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees or agents. The foregoing indemnity is specifically and expressly intended to constitute a waiver of each Party's immunity under Washington's Industrial Insurance Act, RCW Title 51, as respects the other Party only, and only to the extent necessary to provide the indemnified Party with a full and complete indemnity of claims made by the indemnitor's employees. The Parties acknowledge that these provisions were specifically negotiated and agreed upon by them. Each Party shall require

similar indemnification language in all agreements with contractors and subcontractors entered into in conjunction with this MOU.

7. EFFECTIVE DATE AND TERM OF MOU

This MOU and its obligations shall take effect when fully executed by all Parties. The MOU will end when the Port has completed construction as per the approved and agreed design; provided, however, the Port will retain responsibility for funding for annual maintenance of the Quiet Zone as determined by BNSF Railway.

8. TERMINATION

8.1. Termination for Cause. Either Party may terminate this MOU with cause by giving the other Party written notice of such termination at least (30) calendar days prior to the effective date of termination.

9. ENTIRE MOU AND AMENDMENTS

9.1. Entire MOU. This document contains all terms, conditions and provisions agreed upon by the Parties hereto, and shall not be modified except by written amendment.

9.2 Amendments. Except as otherwise provided for in this MOU, amendments may be made to this MOU within applicable authority for and on behalf of the City by its Transportation Director or authorized representative, and for and on behalf of the Port by its Director of Seaport Environmental and Planning or authorized representative and shall be in writing and executed by such duly authorized representative of each Party. No variation or alteration of the terms of this MOU shall be valid unless made in writing and signed by authorized representatives of the Parties hereto.

10. NOTIFICATION AND IDENTIFICATION OF CONTACTS

10.1. Notice. Any notice or communication, other than termination for cause as provided for in Subsection 8.1, 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 request, to the contact persons and addresses identified in Subsection 10.2 of this MOU unless otherwise indicated by the Parties in writing.

10.2 Contact Persons and Addresses. The contact persons for the administration of this MOU are as follows:

City of Seattle

Christopher Eaves, P.E.

700 5th Avenue, Suite 3800

Seattle, WA 98124-4996

(206) 684-4524

Port of Seattle

Anne Porter

2711 Alaskan Way

Seattle, WA 98121

(206) 787-3133

11. DISPUTE RESOLUTION PROCESS

The Parties, through their designated representatives identified in Subsection 10.2 of this MOU, shall use their best efforts to resolve any disputes pertaining to this MOU that may arise between the Parties. If these designated representatives are unable to resolve a dispute, the responsible project leads of both Parties shall review the matter and attempt to resolve it. If they are unable to resolve the dispute, the matter shall be reviewed by the department directors of the Parties or their designees. The Parties agree to exhaust each of these procedural steps before seeking to resolve disputes in a court of law or any other forum.

12. RECORDS RETENTION AND AUDIT

All MOU activities must be documented, including assessments, review comments, agendas and minutes of meetings, copies of invoices, or financial system expense reports documenting these items.

13. LEGAL RELATIONS

13.1. No Partnership or Joint Venture. No joint venture, agent-principal relationship or partnership is formed as result of this MOU. No employees or agents of one Party or any of its contractors or subcontractors shall be deemed, or represent themselves to be, employees or agents of the other Party.

13.2. No Third Party Beneficiaries. It is understood and agreed that this MOU is solely for the benefit of the Parties hereto and gives no right to any other person or entity.

13.3. **Assignment.** Neither this MOU, nor any interest herein, may be assigned by either Party without the prior written consent of the other Party.

13.4. **Binding on Successors and Assigns.** This MOU, and all of its terms, provisions, conditions, and covenants, together with any exhibits and attachments now or hereafter made a part hereof, shall be binding on the Parties and their respective successors and assigns.

13.5. **Mutual Negotiation and Construction.** This MOU and each of the terms and provisions hereof shall be deemed to have been explicitly negotiated between, and mutually drafted by both Parties.

13.6. **Waiver of Default.** Waiver of any default shall not be deemed to be a waiver of any subsequent default; as such, failure to require full and timely performance of any provision at any time shall not waive or reduce the right to insist upon complete and timely performance of any other provision thereafter. Waiver of breach of any provision of this MOU shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be modification of the terms of this MOU unless stated to be such in writing, signed by duly authorized representatives of the Parties, and attached to the original MOU.

13.7. **Applicable Law.** This MOU shall be governed by and construed in accordance with the laws of the State of Washington.

13.8. **Jurisdiction and Venue.** The King County Superior Court, situated in Seattle, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this MOU.

13.9. **Rights and Remedies.** The Parties' rights and remedies in this MOU are in addition to any other rights and remedies provided by law.

13.10. **Severability.** If any provisions of this MOU are held invalid by a court of competent jurisdiction, the remainder of the MOU shall not be affected thereby if such remainder would then continue to serve the purposes and objectives originally contemplated by the Parties.

13.11. **Entire MOU.** This MOU embodies the Parties' entire understanding and MOU on the issues covered by it, except as may be supplemented by subsequent written amendment to this MOU, and supersedes any prior negotiations, representations or draft MOUs on this matter, either written or oral.

13.12. **Survival.** Each of the provisions of this Section 13 (Legal Relations) shall survive any expiration or termination of this MOU.

14. EXECUTION OF MOU – COUNTERPARTS

14.1. This MOU may be executed in two (2) counterparts, either of which shall be regarded for all purposes as an original.

IN WITNESS THEREOF, the Parties hereto have executed this MOU on the date indicated under their signatures.

The Port of Seattle

The City of Seattle

David Soike 8/1/17
Signature Date

[Signature] 8/29/17
Signature Date

David Soike
Type or Print Name

SCOTT KUBLY
Type or Print Name

Interim Exec. Dir.
Title

DIRECTOR
Title



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 mitigationIf 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. MW/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 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

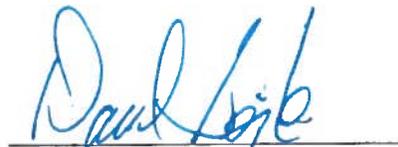
3.5 (a) The Lander Project cost is currently estimated to be One-Hundred Twenty-Five Million Dollars (\$125,000,000). Upon receipt of invoice from the City, the Port shall make five payments as follows, which includes its \$5 million dollar obligation set forth in the August 31, 2016 MOA with the City. 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 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



Item No.: 6D
Date of Meeting: April 06, 2021

T5 Quiet Zone MOU Amendment

Presenter: Curtis Stahlecker, Project Manager Port of Seattle

Action Requested

Authorization to amend the existing T5 Quiet Zone Memorandum of Understanding (MOU) with the City of Seattle.

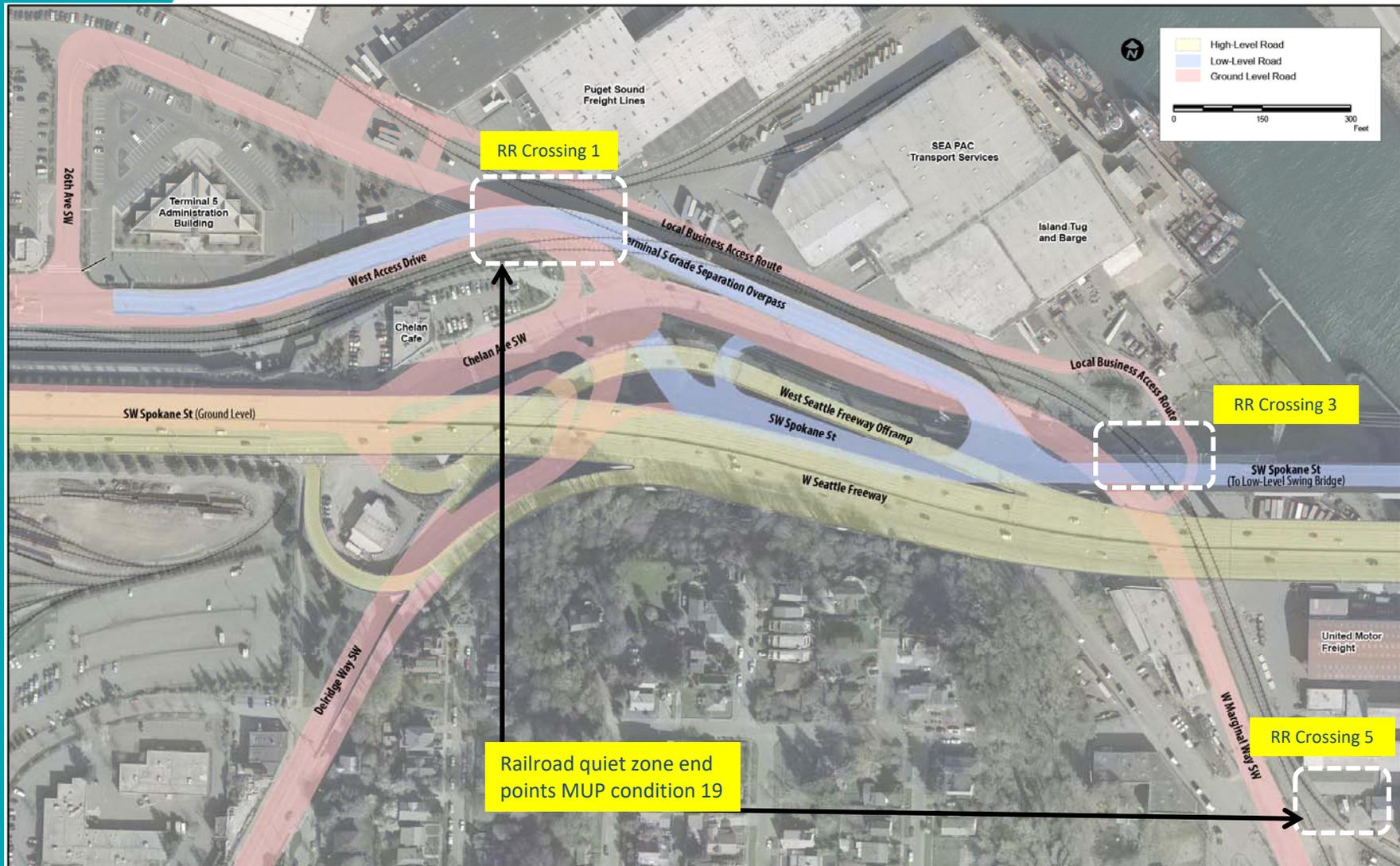


Background

- Executed in 2017, the Quiet Zone MOU with the City of Seattle was a Master Use Permit (MUP) pre-permit issuance requirement.
- The Quiet Zone MOU requires the Port of Seattle (Port)/ NWSA to fund the design and installation of appropriate measures to at-grade crossings and the rail corridor.
- Using the MOU, the Port and Seattle Department of Transportation (SDOT) have worked closely together to achieve the completion of Pre-occupancy MUP conditions adjacent to the railroad quiet zone.



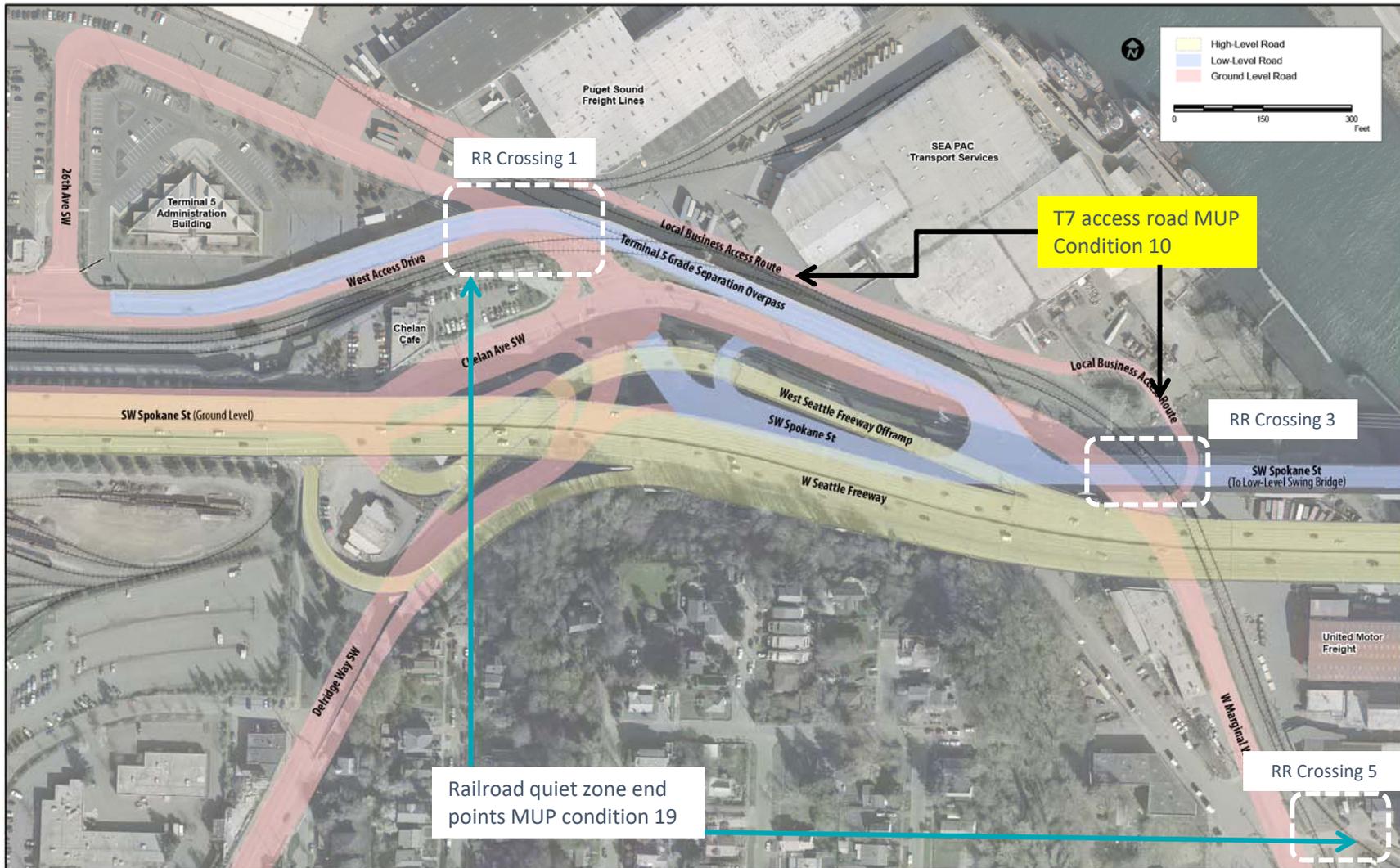
T5 RR Quiet Zone end points



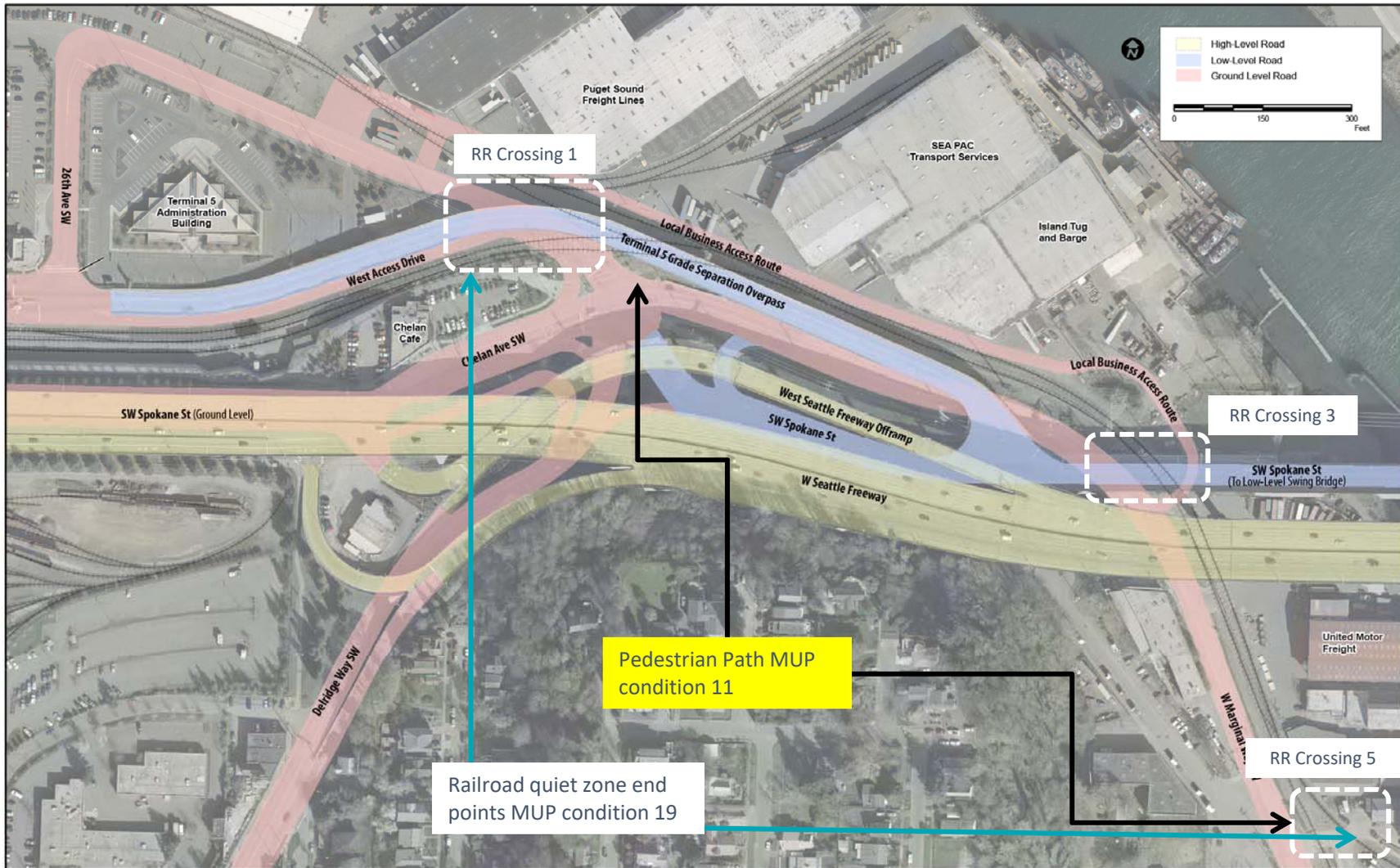
Adjacent MUP Conditions

- Adjacent to the Quiet Zone corridor are 5 other MUP conditions:
 - Condition 10 – T7 Access Road
 - Condition 11 – Pedestrian Pathway
 - Condition 12 – Overpass reconfiguration
 - Condition 14 – Flashing Alert
 - Condition 15 – Spokane St Signal upgrades
- The quiet zone MOU was used as the basis to incorporate this work into the SDOT design and installation by SDOT field crews
- SDOT field crews installed conditions 12, 14, and 15

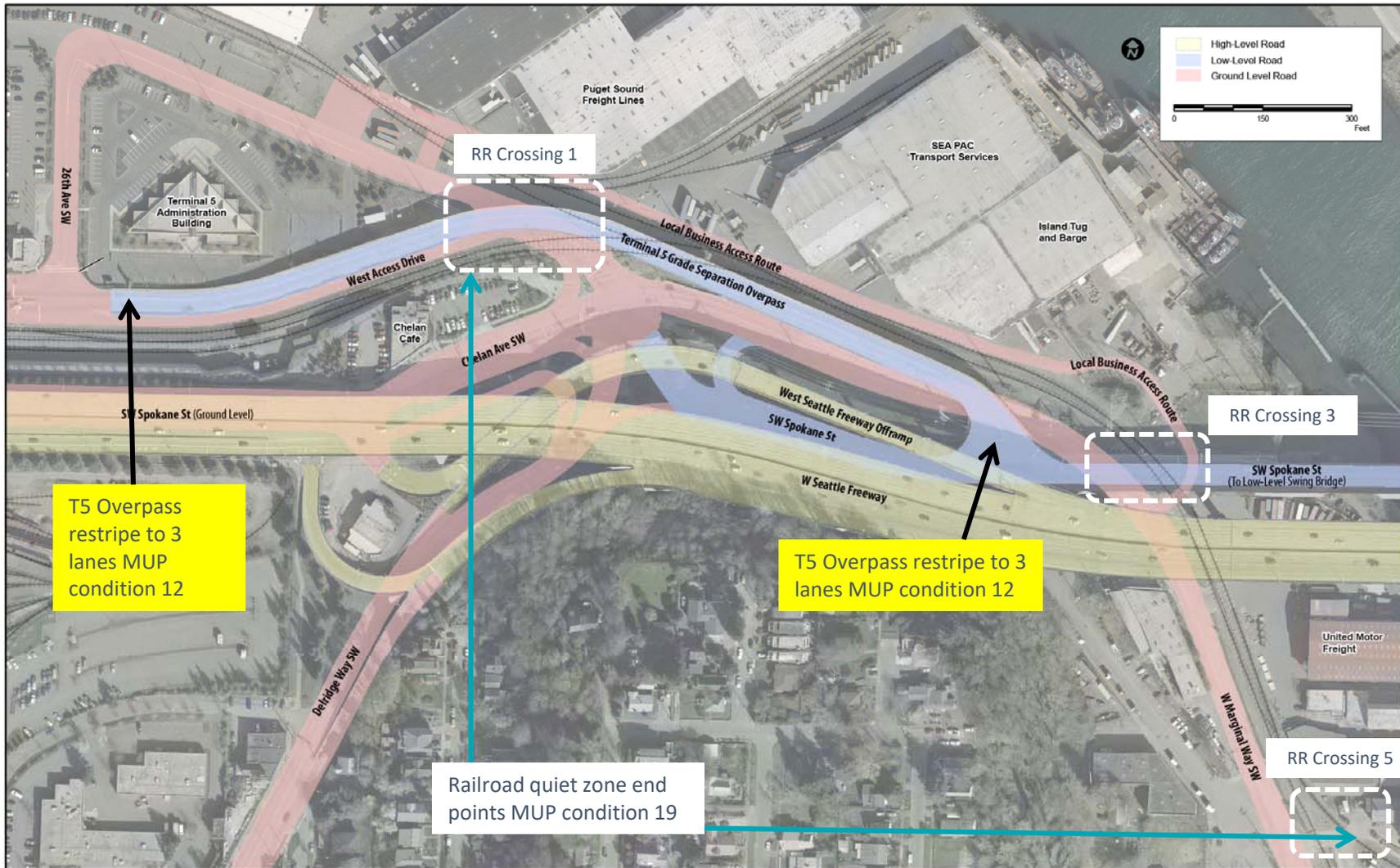
Condition 10 – T7 Access Road



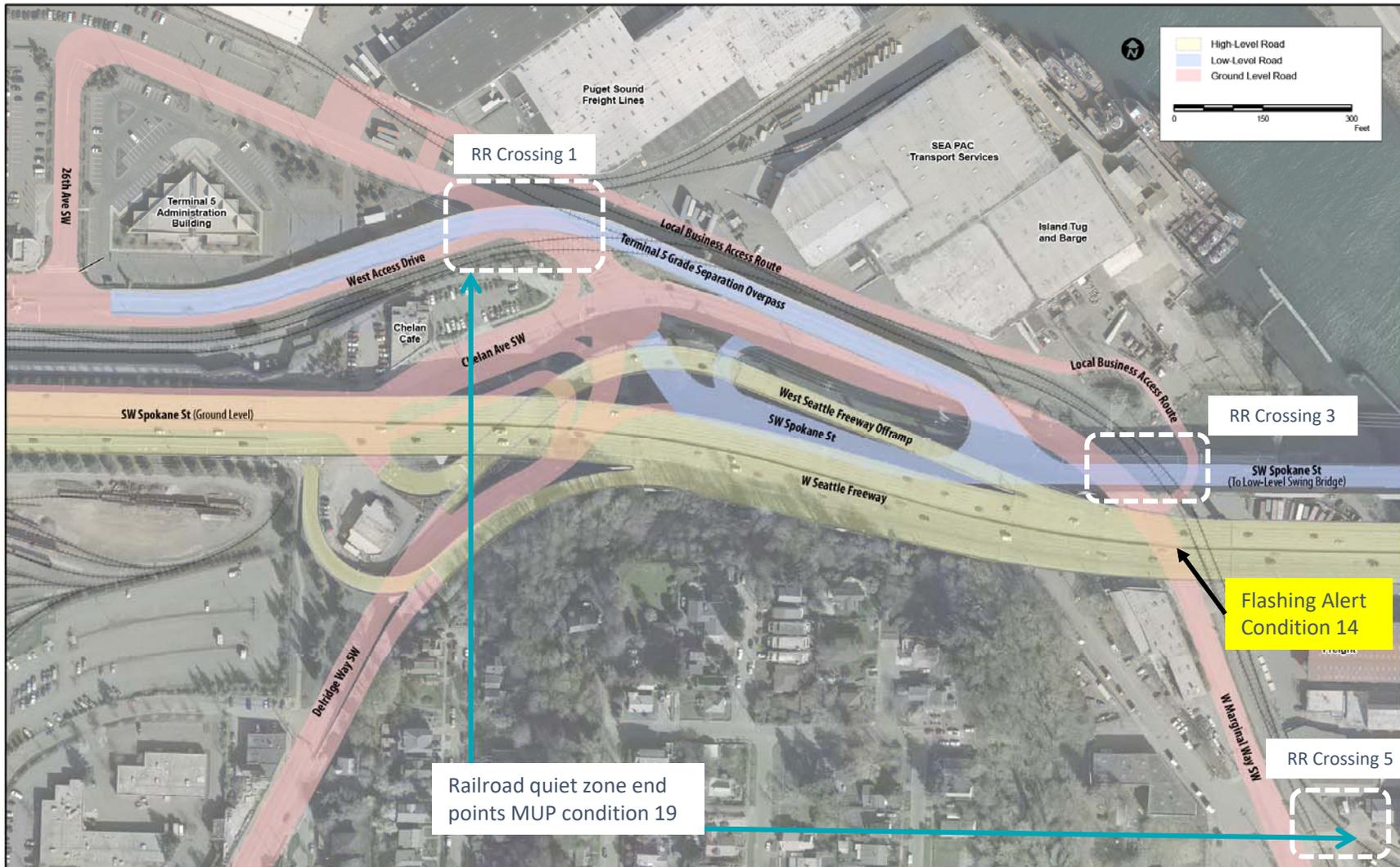
Condition 11 – Pedestrian Pathway



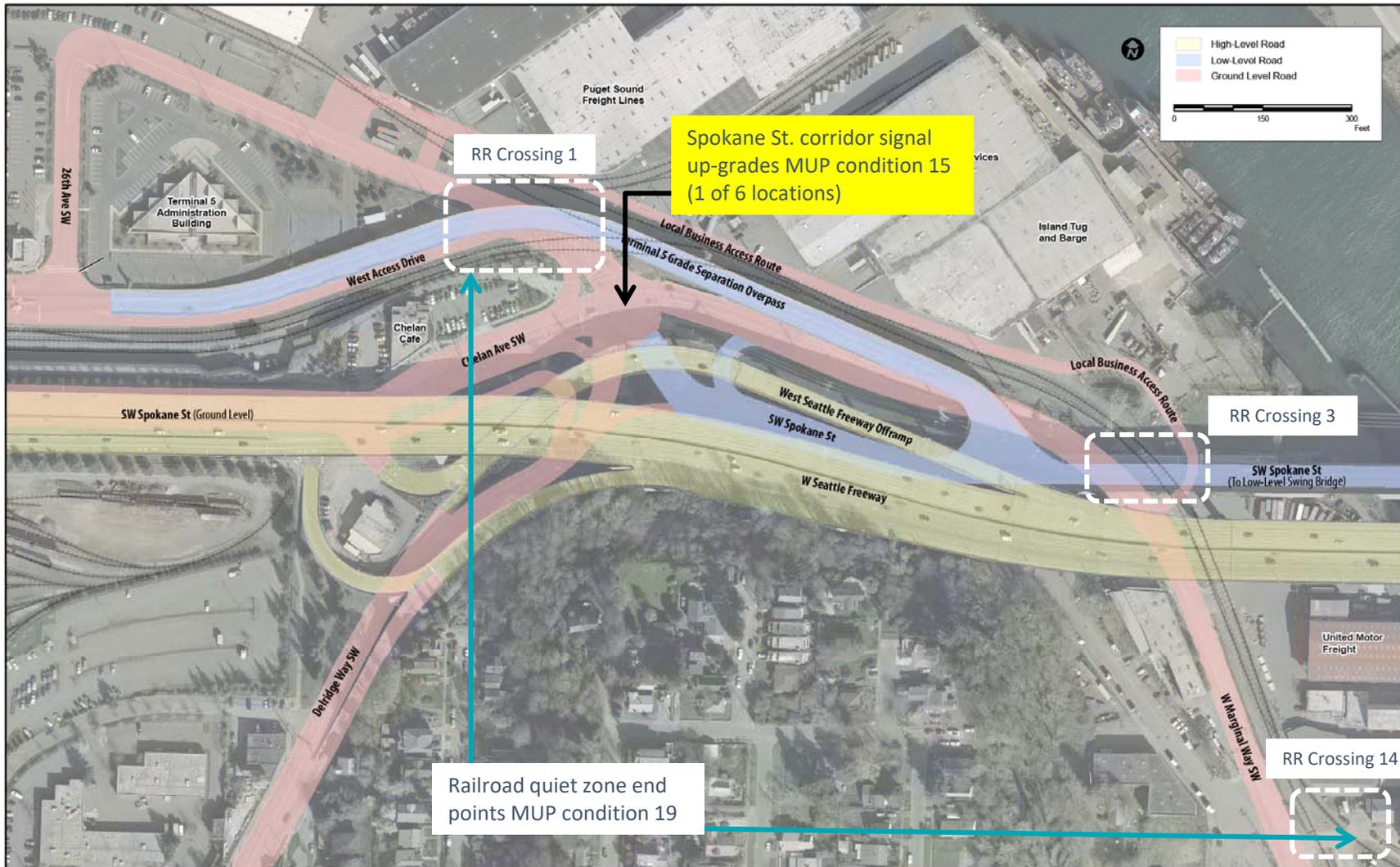
Condition 12 – T5 Overpass Restripe



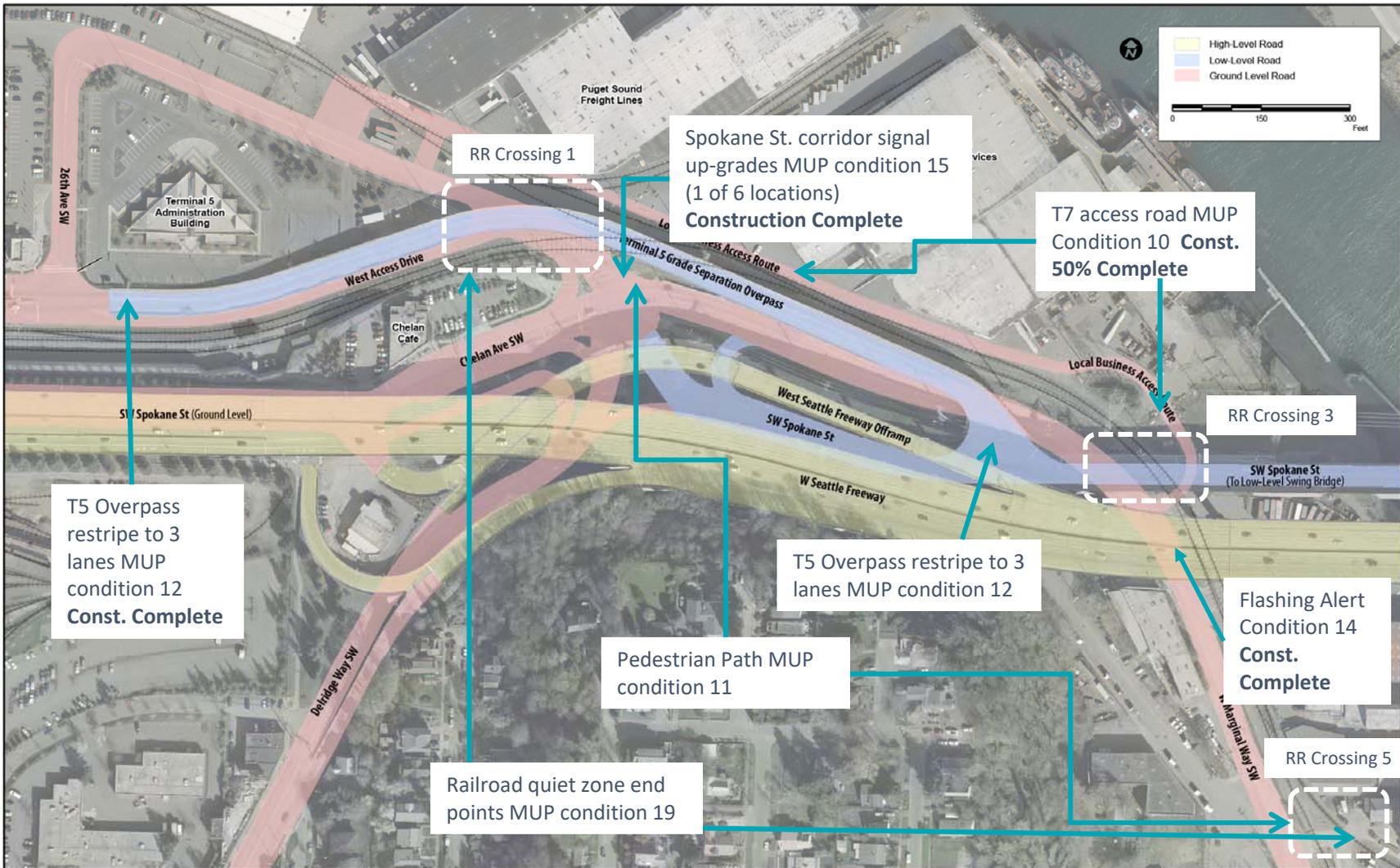
Condition 14 – Flashing Alert



Condition 15 – Spokane St. Signal upgrades



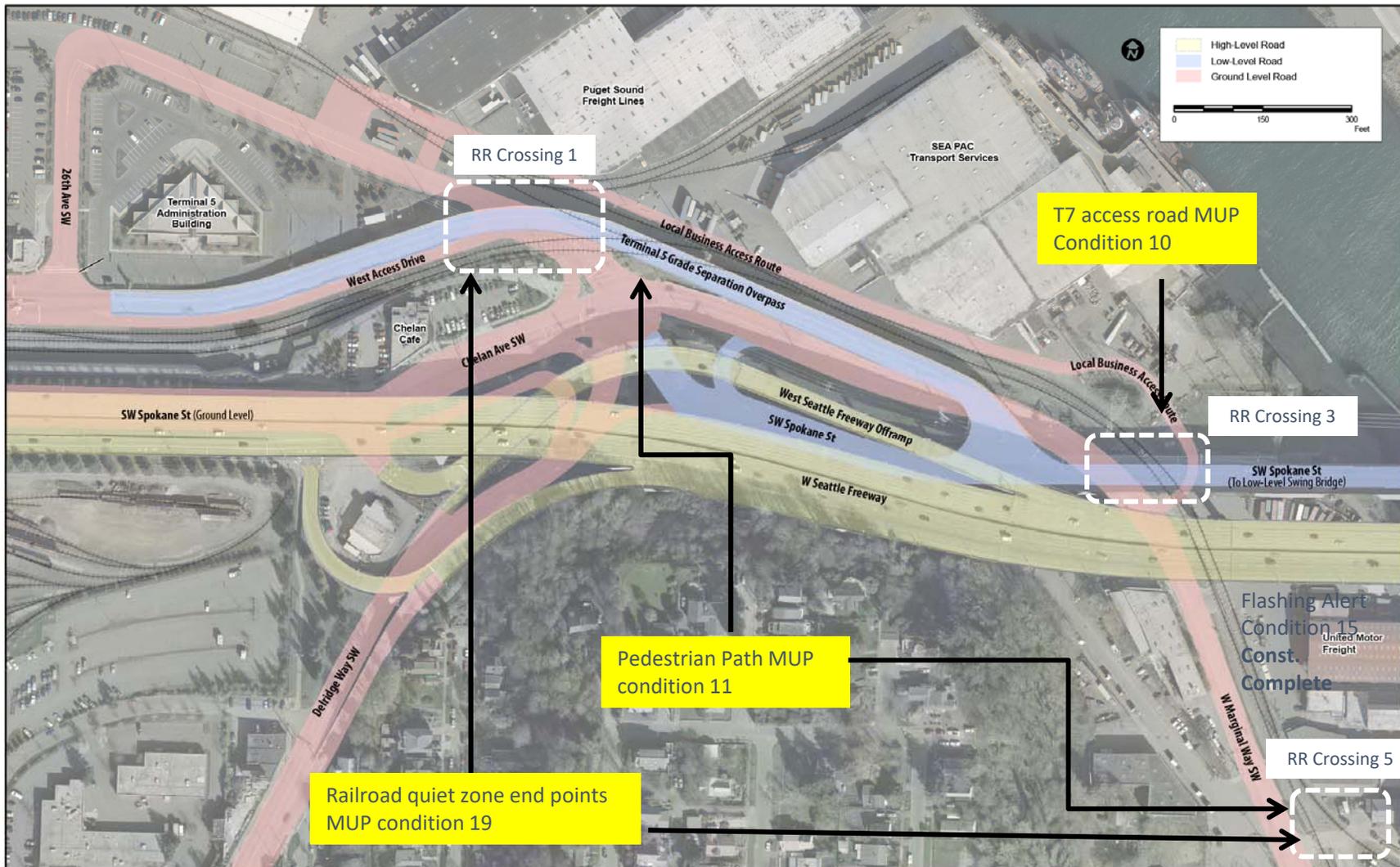
T5 Quiet Zone and Adjacent MUP conditions



Remaining Work

- The proposed amendment identifies the remaining work defined as SDOT T5 Access Improvements Project.
- SDOT T5 Access Improvement Project includes:
 - Final coordination with BNSF
 - Procure right-of-way/property acquisitions
 - Compile bid documents and advertise
 - Install remaining T7 Access road (Approved MUP Condition 7)
 - Install Pedestrian Pathway (Approved MUP Condition 11)
 - Install Railroad Quiet Zone (Approved MUP Condition 19)

SDOT T5 Access Improvements Project



Financial Implications

- The funding source is T5 Modernization Program
- No new funds are requested for the Quiet Zone MOU amendment



Alternatives Considered and Their Implications

- **No Action Alternative:** Not executing the MOU amendment would require the Port of Seattle to take on the management of the project. These responsibilities can be performed by the Port, but will take additional time to procure the necessary professional services to finalize the work. In all likelihood, the cost would increase due in part to the efficiency and institutional knowledge lost when a significant team change occurs on a project.
- **Recommended Action:** Authorizing execution of the quiet zone MOU amendment will allow the work would continue uninterrupted. The project team would remain in place to finalize; the property and right-of-way acquisition, interactions with BNSF, finalizing the contract documents and overseeing the construction. Maintaining the current project team retains institutional knowledge gained through the design development for an efficient and economical path for construction.

Action Requested

Request Managing Members of The Northwest Seaport Alliance (NWSA) authorize the Chief Executive Officer or their delegate to approve an amendment to the T5 Quiet Zone Memorandum of Understanding (MOU) with the City of Seattle.