

INTERLOCAL AGREEMENT BETWEEN PORT OF SEATTLE AND KING COUNTY

This Interlocal Agreement (the "Agreement") is made and entered into by the Port of Seattle, a municipal corporation of the State of Washington, hereinafter called the "Port", and King County, a political subdivision of the State of Washington, hereinafter called the "County". As used in this Agreement, "Project" means the replacement of the now closed 81-year old South Park Bridge with a two-leaf bascule bridge spanning the Duwamish River. The Port and the County are also referred to in this Agreement collectively as "the Parties", and individually as a "Party."

RECITALS

WHEREAS, the South Park Bridge has provided access within the Duwamish industrial area for general purpose and freight traffic for the past 81-years; and

WHEREAS, the South Park Bridge came to the end of its useful life and was closed to the public on June 30, 2010; and

WHEREAS, diverted traffic from the South Park Bridge, which was forced to find alternative routes, added traffic congestion to other corridors, including the First Avenue South Bridge, West Marginal Way and I-5, which are all routes for freight passing through Port facilities; and

WHEREAS, the South Park Bridge is located on 14th/16th Avenue South across the Duwamish River. (See Exhibit A – Vicinity Map, attached.) The south half of the Bridge is located in the County. The County is responsible for the operation and maintenance of all County roads, bridges and rights-of-way located within the County; and

WHEREAS, the north half of the Bridge is located in the City of Tukwila. The County and the City of Tukwila have previously entered into an agreement, executed January 3, 2003, in which the City of Tukwila granted the County authority to make any decisions related to the operation, maintenance and management of the Bridge to the same extent as if the entire Bridge were part of the County road system; and

WHEREAS, the County has been awarded funding for a replacement bridge, including grant funds and funds from a broad group of partners; and

WHEREAS, the South Park Bridge served a neighborhood with a high percentage of low-income residents and businesses that are reliant on the access provided by the bridge; and

WHEREAS, the Port seeks opportunities to support the residents and businesses in communities as a good neighbor; and

WHEREAS, the bridge replacement provides a clear benefit to the Port and the industrial areas of the Duwamish Manufacturing-Industrial Center (as designated by the Puget Sound Regional Council), by reducing traffic congestion in and around Port facilities on the Seattle waterfront; and

WHEREAS, the Port and other agencies within King County 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, the West Seattle Bridge, the West Galer Street Flyover and other FAST Corridor projects, that provide freight mobility benefits for the region; and

WHEREAS, the Port supported the County's successful application for a \$34,000,000 Transportation Investment Generating Economic Recovery (TIGER II) grant; and

WHEREAS, the Project will improve overall traffic congestion, especially for adjacent Duwamish River bridges, including the First Avenue South Bridge, resulting in \$158 million in savings to freight haulers who will not suffer from more congestion on the First Avenue South Bridge and \$157 million in travel time savings for users of the new South Park Bridge, over 30 years; and

WHEREAS, the Project will support both existing and new jobs in the Duwamish Manufacturing-Industrial Center and will create \$80 million in short-term construction jobs; and

WHEREAS, the Project will improve safety for drivers, bicyclists and pedestrians, while providing benefits to air quality and waterway restoration; and

WHEREAS, the Project will provide direct access to industrial locations in the Duwamish Manufacturing-Industrial Center while providing traffic congestion relief at adjacent river crossings; and

WHEREAS, the Port Commission on June 22, 2010, discussed and supported the general intent to commit \$5,000,000 to the project; and

WHEREAS, the Port Commission on July 7, 2010, approved aquatic and temporary construction easements to King County with a value of \$534,000 which would be deducted from the \$5,000,000 total funding commitment to King County's South Park Bridge; and,

WHEREAS, an additional \$180,000 for a restoration easement will be deducted from the \$5,000,000 total funding commitment to King County's South Park Bridge; and,

WHEREAS, the Parties are authorized by RCW Chapter 39.34 to enter into an interlocal cooperation agreement of this nature

NOW, THEREFORE, the Parties agree as follows:

1. SCOPE OF WORK

1.1. Project Title: The South Park Bridge Replacement.

1.2. Description: The Project involves the replacement of the 81-year old South Park Bridge with a two-leaf bascule bridge spanning the Duwamish River, including separated sidewalks and dedicated bicycle lanes in both directions, as well as travel lanes wider than in the old bridge, providing the same or higher capacity for automobile and truck traffic as the old bridge prior to closure. The construction cost of the project is currently estimated to be \$137,894,642 by the County.

1.3. Schedule: Portions of the existing bridge were removed in late 2010. The Project was advertised for construction bids on January 11, 2011 with construction expected to begin by May 2011 with Final Acceptance expected at the beginning of 2014.

2. TERMS AND CONDITIONS

2.1. Implementing Agency: As the implementing agency the County shall ensure Project compliance with the State Environmental Policy Act (SEPA) and National Environmental Policy Act (NEPA), and shall be responsible for obtaining all necessary permits and/or agreements. The County shall be responsible for accomplishing all aspects of the Project scope.

2.2. Contact Persons: The Parties to this Agreement shall designate person(s) to act as liaison for the Project. The contact persons shall meet on a mutually agreed upon, scheduled basis at a frequency appropriate to the phase and status of the Project.

- 2.3. Schedule/Scope: The scope and schedule for the Project has been mutually agreed upon by the Federal Highways Administration (FHWA), the Washington State Department of Transportation (WSDOT) and other funding partners. Construction change orders that do not change Project functionality and benefits to the Port, or the overall scope or general schedule of the Project will not require coordination or documentation with the Port. Any changes to the functionality of the Project and benefits to the Port, as described in Section 1.2., and further illustrated by the description of Project benefits, and the Project plan as provided in Exhibits B and C shall require coordination with the Port. (See Exhibit B - Project Benefits and Exhibit C – Typical Cross Section and Project Plan, attached.) The Port's funding is contingent on the bridge being constructed as described in Section 1.2.
- 2.4. Progress Report: The County shall provide the Port with a copy of the WSDOT/FHWA approved project schedule, and final engineer's estimate that includes contract bid items or summary of values. At the time application for payment is made, the County shall provide to the Port a progress report. The progress report will include a narrative describing the project progress since the last report, an updated project construction schedule showing the current progress and percent completion of the major work elements, and a tabulation of the construction progress payments made so that 50% of the project completion can be determined.
- 2.5. Public Involvement: The County shall be responsible for the public involvement and/or community outreach process for the Project. The County shall develop a Community Outreach Plan for the Project with the Port and other stakeholders in the Project.

3. COST REIMBURSEMENT AND FUNDING

The Port Commission authorizes the execution of the Agreement and agrees to contribute Five-Million Dollars (\$5,000,000) in total for the South Park Bridge Replacement subject to the following conditions:

1. All environmental review and permitting has been successfully completed, documented and not subject to any appeal or legal challenge;
2. The Port and County continue to work together to ensure that the Project developments during construction meet the needs of both Parties including, but not limited to, construction staging and local freight circulation;
3. The Project is constructed as described in Section 1.2;
4. The Port's total contribution is Five Million Dollars (\$5,000,000) which includes the aquatic and temporary construction easements currently valued at Five-Hundred Thirty-Four Thousand Dollars (\$534,000), and includes the restoration easement valued at One-Hundred Eighty Thousand Dollars (\$180,000). The Port's cash payment is the remaining Four Million, Two-Hundred and Eighty-Six Thousand Dollars (\$4,286,000) toward the Project's construction costs.
5. Total construction cost is currently estimated to be One-Hundred Thirty-Seven Million, Eight Hundred Ninety-Four Thousand, Six Hundred and Forty-Two Dollars (\$137,894,642). (See Exhibit D, Summary Estimates of Cost and Funding Shares, attached.) The Port shall make two payments as follows:
 - a. The first payment of Two Million, One Hundred and Forty Three Thousand Dollars (\$2,143,000) shall occur after the County has made progress payments totaling at least 50% of the total project cost for completed construction. (This is expected in 2012).
 - b. The second and final payment of Two Million, One Hundred and Forty-Three Thousand Dollars (\$2,143,000) shall occur upon receipt of the final progress report and a letter from the County Construction Contract Project Engineer certifying the Project has reached Final Acceptance (see Exhibit E for definition). (This is expected in 2013). The second and final payment may be subject to a reduction based on Section 3.7 of this agreement.
6. The County shall certify the project has reached Final Acceptance by sending the Port a copy of the letter from the County Road Engineer to the Contractor acknowledging such. Upon receipt of

the letter, the Port reserves the right to request an inspection of the Project, to confirm the project improvements, as defined in Section 1, Scope of Work, are in place and fully operational.

7. The Port's second and final payment will be based on total construction costs estimated at the time of Final Acceptance. Any cost savings difference between the current estimated construction cost and the final costs will be distributed as follows: the County will first refund any savings to the Freight Mobility Strategic Investment Board (FMSIB) up to its total contribution of Five Million Dollars (\$5,000,000). If there are cost savings in excess of Five Million Dollars (\$5,000,000), the County will apportion the total savings amount between the Port of Seattle and the City of Seattle to reflect their respective proportional investments up to the full amount of their respective contributions (up to Five Million Dollars (\$5,000,000) to the Port of Seattle and up to Fifteen Million Dollars (\$15,000,000) to the City of Seattle.)

4. AMENDMENT

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

5. 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 County: King County, DOT, Road Services
201 S Jackson Street
KSC TR 0317
Seattle, WA 98104

To the Port: Port of Seattle
2711 Alaskan Way
Seattle, WA 98121

6. 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 County, 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 County 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.

7. DISPUTES

The designated representatives under section 5.0, NOTIFICATION, shall use their best efforts to resolve disputes between the Parties. If the designated representatives are unable to resolve a dispute, then the responsible 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.

8. EFFECTIVENESS AND DURATION

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

9. 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 either Party decides to terminate this Agreement, the Port shall reimburse the County for all costs payable under this agreement at the time of notice of termination and its portion of all obligations that the County has contractually undertaken prior to receiving the Port's notice of its intent to terminate this Agreement, but in no case shall that amount exceed the \$5,000,000 contribution of the Port set forth in section 3 of this agreement.

10. INDEMNIFICATION AND HOLD HARMLESS

- 10.1 To the maximum extent permitted by law, the County shall protect, defend, indemnify, and hold harmless the Port, its officers, officials, employees, and agents from any and all costs, claims, demands, suits, actions, judgment, and/or awards of damages, including but not limited to reasonable attorney's fees, to the extent arising out of, or in any way resulting from, the County's own negligent acts or omissions or the negligent acts or omissions of the County's agents and contractors.
- 10.2 The County 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, the County hereby waives, with respect to the Port only, any immunity that would otherwise be available against such claims under the Industrial Insurance provision of Title 51 RCW to the extent necessary to provide indemnification as required under this Agreement.
- 10.3 The indemnification, hold harmless, and/or waiver obligation described in this Agreement in paragraphs 10.1 and 10.2 shall survive the termination of this Agreement.

11. 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 County 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 County, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the Port and the County and not for the benefit of any other party.

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

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

PORT OF SEATTLE

King County


Tay Yoshitani, Chief Executive Officer

Harold Taniguchi, Director
King County Department of Transportation

Date: 2/28/2011

Date: _____

APPROVED AS TO FORM:


Port Attorney

County Attorney

Date: 2/28/11

Date: _____

ATTEST:

ATTEST:

Exhibit A - Vicinity Map

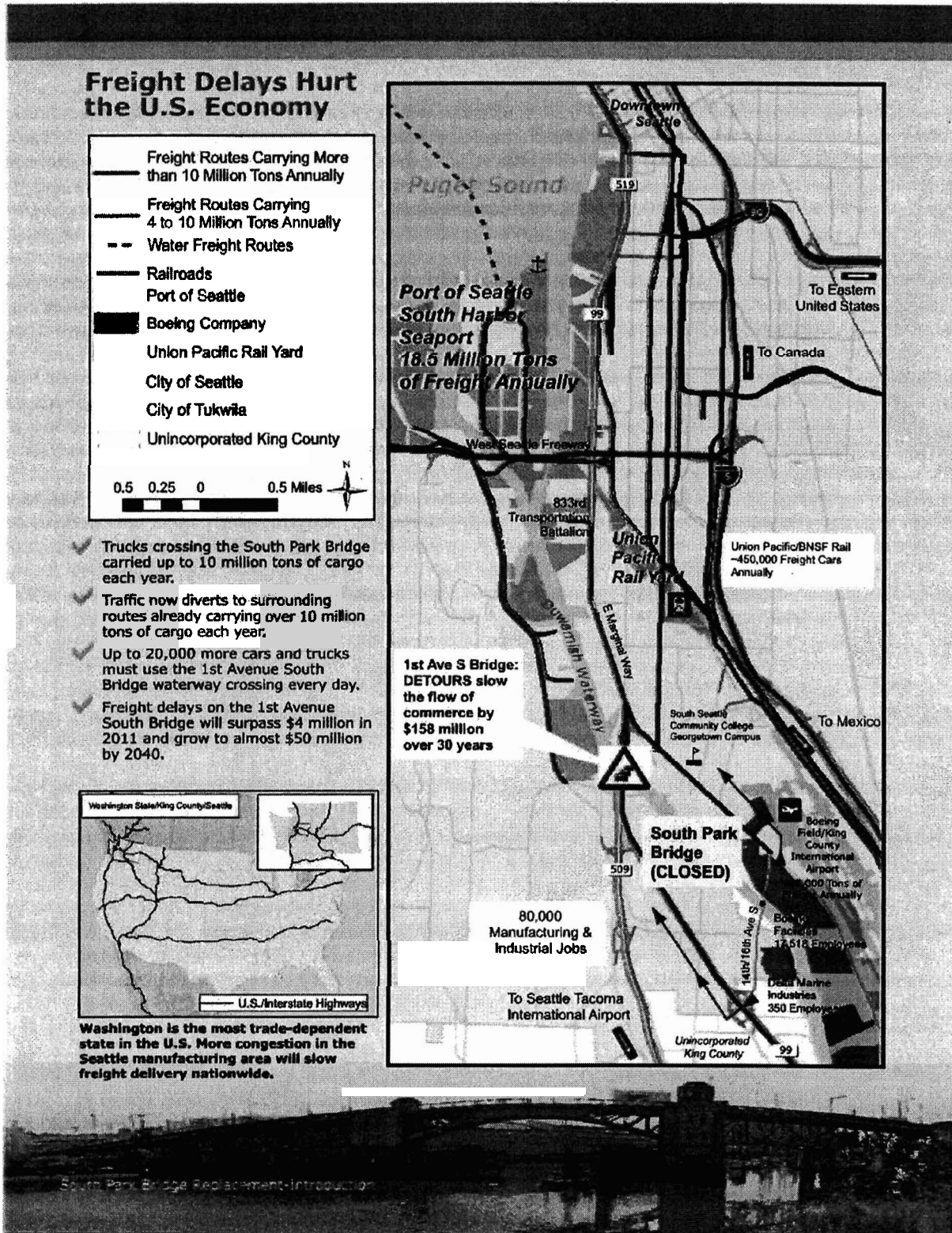


EXHIBIT B - PROJECT BENEFITS



South Park Bridge open house held April 27 at the Machinists Hall. Citizens viewed displays, learned about plans, and expressed concerns to public officials prior to the bridge closing on June 30, 2010.

Ned Ahrens, King County

Summary of Benefits

A new South Park Bridge would benefit many users. Its replacement will serve as the cornerstone for future community development and environmental restoration efforts in the South Park neighborhood and the Duwamish Waterway. Without a bridge, this neighborhood will become an island—its residents cut off from human services, its properties financially stunted from appreciating, and the flow of commerce hampered by detours, congestion, and delays.

A new South Park Bridge will benefit our nation, the Pacific Northwest, and bridge users in different ways by providing:

- ✓ \$157 million in travel time savings for users of the new South Park Bridge.
- ✓ \$158 million in savings to freight haulers (making the import and export of goods less expensive and more competitive in the world market) who will not suffer from more congestion on the 1st Avenue South Bridge.
- ✓ \$1.8 million in additional savings from 1st Avenue South Bridge openings for freight haulers waiting for a more heavily congested bridge to open.
- ✓ Keep 420 tons of additional greenhouse gases from being released, worth \$3.7 million, due to detours and congestion.
- ✓ \$80 million in short-term job salary creation, as construction funding multiplies itself into businesses hiring more people.

- ✓ \$1.5 billion in potential long-term job, salary creation when new businesses build and hire new employees working in aerospace, bio-tech, international trade, and software development.

Other, more difficult to quantify, benefits will come from a new South Park Bridge such as:

- ✓ Fewer accidents due to less congestion on the 1st Avenue South Bridge.
- ✓ Travel time savings for emergency aid vehicles responding to police and medical emergencies.
- ✓ Safer travel lanes for bicyclists and pedestrians, which will encourage additional use.
- ✓ Benefits of nearshore Duwamish restoration efforts to the ecosystem of the waterway, as a catalyst for other projects, and as part of the overall Environmental Protection Agency Duwamish clean up effort.
- ✓ Shorter travel times for disposal of hazardous waste sediments removed as part of Superfund clean up efforts.

"To the pioneers of South Park, the new bridge does not represent the culmination of years of effort to secure a satisfactory and permanent structure across the river, nor does it signify the beginning of an unprecedented boom period. Rather it marks a step along the roads of progress, many of which they have had the pleasure to witness."

From the South Park Bridge Dedication Ceremony, March 21, 1931
Walthew, Margaret, ed. 1949. The Duwamish Diary, 1849-1949. Seattle, WA: Cleveland High School.



South Park Bridge Replacement-Partnerships

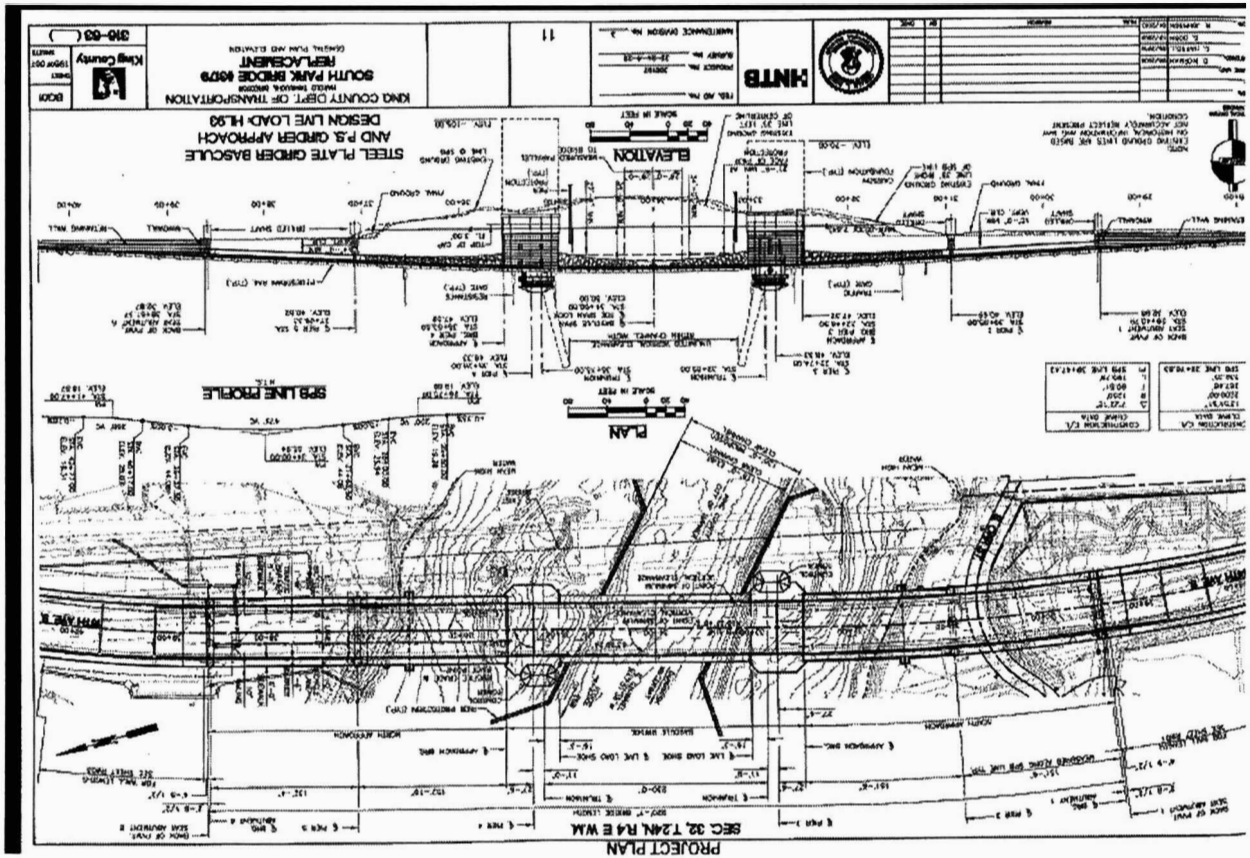
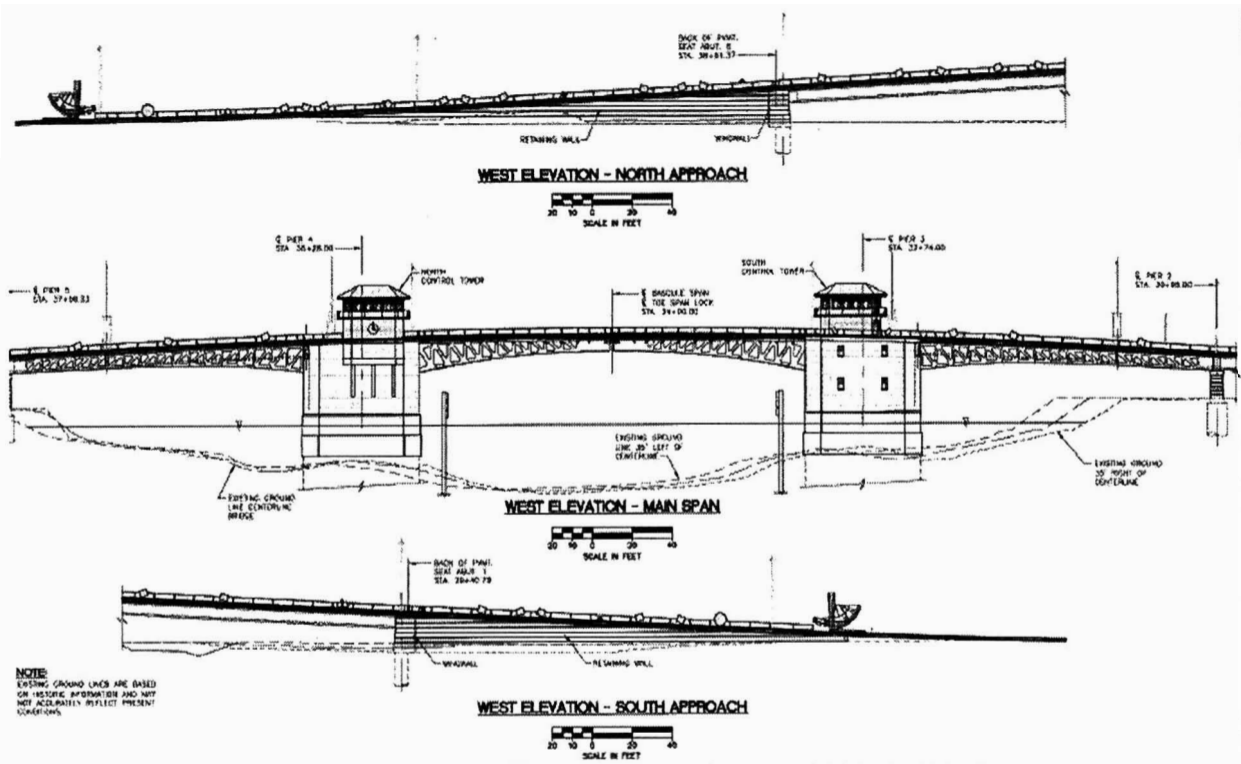


EXHIBIT C: Project Plan and Cross Section

EXHIBIT C - Project Plan and Cross Section
PROJECT PLAN



NOTE:
EXISTING GROUND LINES ARE BASED ON HISTORIC INFORMATION AND MAY NOT ACCURATELY REFLECT PRESENT CONDITIONS.

| | | | | | | |
|--|--|---|----|--|--|---|
| REVISIONS NO. DATE BY 1. 11/15/07 B. JOHNSON 2. 03/25/08 B. JOHNSON 3. 05/05/08 E. GOSWAMI 4. 05/05/08 B. JOHNSON | | PER. AND NO. _____ PROJECT No. 001817 SURVEY No. 22-25-3-22 MAINTENANCE DIVISION No. 3 | 12 | KING COUNTY DEPT. OF TRANSPORTATION HAROLD SIMONSEN, DIRECTOR SOUTH PARK BRIDGE #3179 REPLACEMENT BRIDGE ARCH. ELEVATION - WEST VIEW | | BOG2 SHEET 107 OF 987 SHEETS 316-63 |
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EXHIBIT C - Project Plan and Cross Section

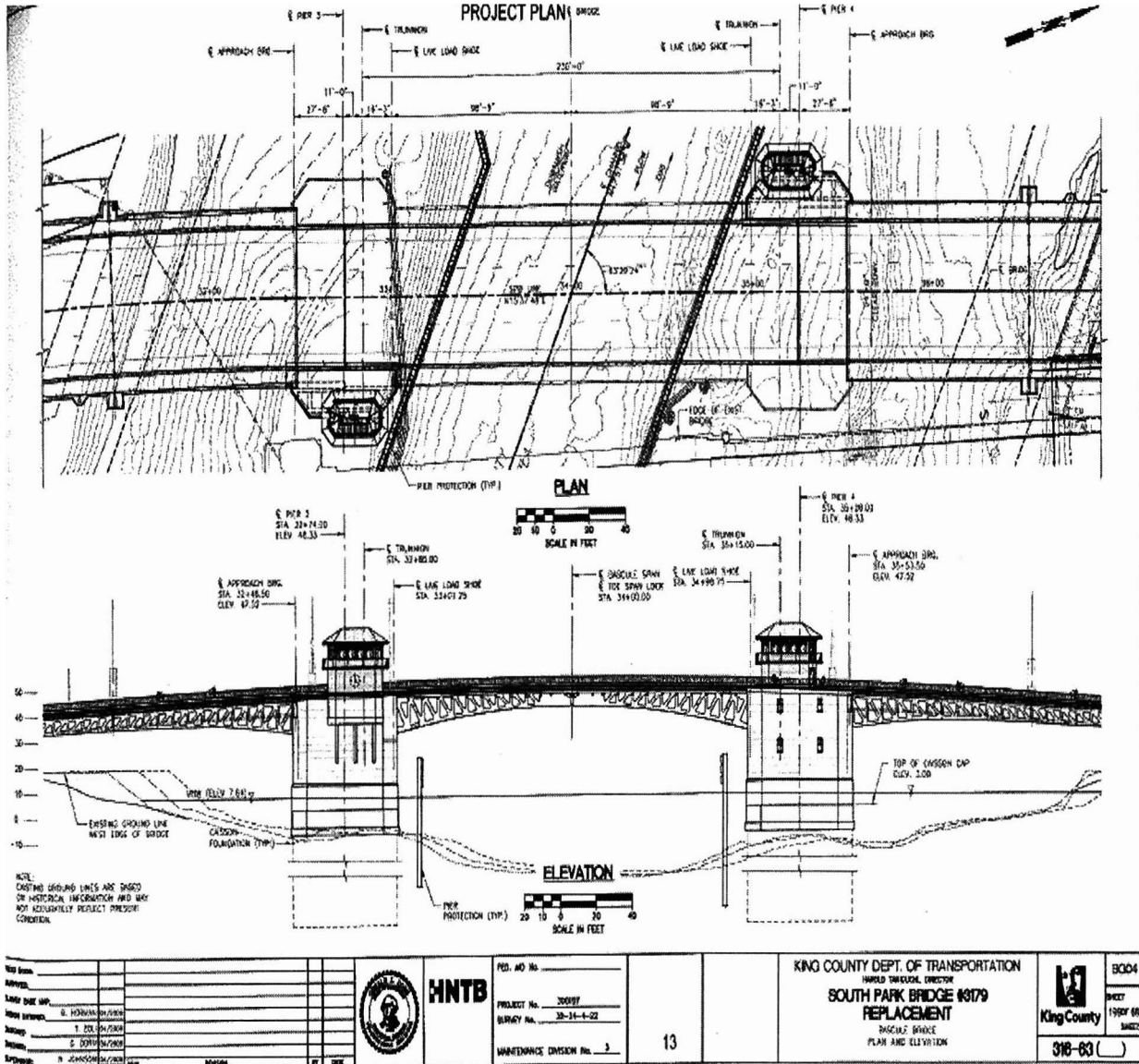
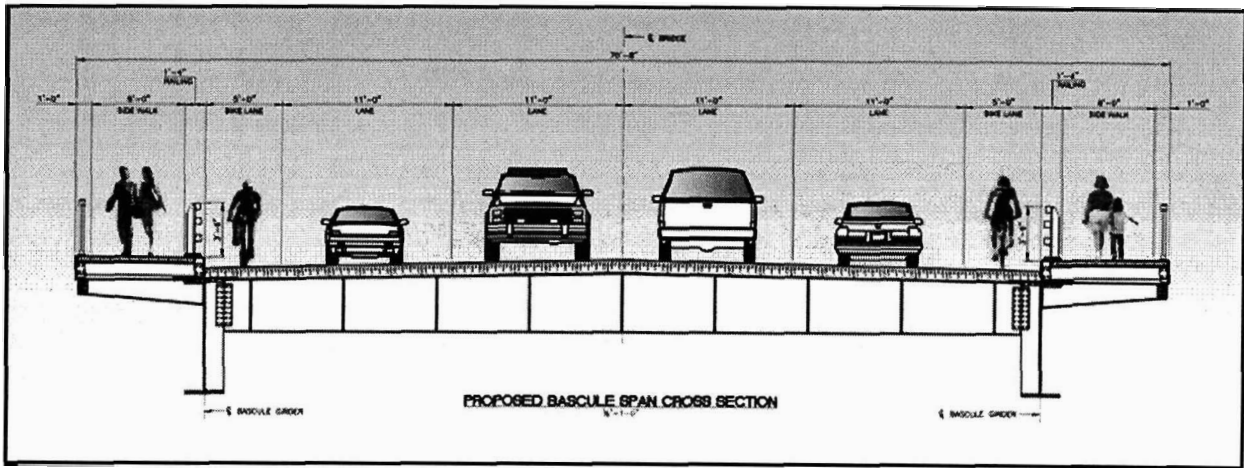


EXHIBIT C: Project Plan and Cross Section



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

SUMMARY ESTIMATE OF CONSTRUCTION COST (\$ in thousands):

| | |
|---|----------------------|
| Estimated Probable Contract Cost | \$107,835,000 |
| Utilities Relocation and Art Elements | 1,164,142 |
| Contingency (10%) | 10,783,500 |
| Construction Mgmt. and Administration (15%) | 18,112,000 |
| | |
| Total: | \$137,894,642 |

SUMMARY ESTIMATE OF CONSTRUCTION FUNDING SHARES (\$ in thousands):

| | |
|---|----------------------|
| Federal – U.S. DOT (TIGER II) | \$34,000,000 |
| State – WSDOT (Federal Bridge Funds) | 20,000,000 |
| State - Transportation Improvement Board | 10,000,000 |
| State - Freight Mobility Strategic Investment Board | 5,000,000 |
| Municipal Planning Organization - Puget Sound Regional Council | 15,000,000 |
| Local – King County | 30,000,000 |
| Local - City of Seattle | 15,000,000 |
| Local - Port of Seattle | 5,000,000 |
| | |
| Total: | \$134,000,000 |

**Exhibit E:
Definition of Final Acceptance**

Definition of "Final Acceptance" per the Project Specifications:

The Contractor must perform all the obligations under the contract before a completion date and final acceptance can occur. Failure of the Contractor to perform all the obligations under the contract shall not bar King County from unilaterally accepting the contract as provided in Section 1-09.9.

The Director of Transportation, or a duly authorized assistant, accepts the completed contract and the items of work shown in the Comparison of Quantities by signature of the Notice of Completion and Acceptance. The date of that signature constitutes the acceptance date. Progress estimates or payments shall not be construed as acceptance of any work under the contract.

The Contractor agrees that Final Acceptance shall not relieve the Contractor of the responsibility to indemnify, defend and protect King County against any claim or loss resulting from the failure of the Contractor (or the subcontractors or lower-tier subcontractors) to pay all laborers, mechanics, subcontractors, material persons or any other person who provides labor, supplies or provisions for carrying out the work. Final Acceptance shall not constitute acceptance of any unauthorized or defective work or material. King County shall not be barred from requiring the Contractor to remove, replace, repair or dispose of any unauthorized or defective work or material or from recovering damages for any such work or material.