



April 7, 2010

Governor Christine Gregoire  
Office of the Governor  
P.O. Box 40002  
Olympia, Washington 98504-0002

Re: *SR 99 Bored Tunnel Project*

Dear Governor Gregoire:

The project to replace the Alaskan Way Viaduct is moving forward, yet the question of who will pay for the full costs of the project is unresolved. Good public stewardship requires that we settle these issues before a tunnel construction contract goes out for bid.

As you know, in October 2009 the Seattle City Council approved a Memorandum of Agreement (MOA) concerning implementation of a complex set of projects along the Seattle waterfront. These include the State's highway project to replace the Alaskan Way Viaduct with a deep-bore tunnel, and the City's projects to replace the deteriorating seawall and develop related street and waterfront improvements. At the heart of the MOA is the proposition that the City and State should work cooperatively to negotiate detailed and binding agreements to advance these projects. City and State transportation staff have been working collaboratively to advance elements of these agreements over the past few months. I would like to acknowledge our negotiation process, and also communicate in a more formal way to you my thinking about the issues before us.

While I have made it clear that I prefer the I-5/transit/surface street solution for the Viaduct, it is my duty as Mayor to carry out contracts approved by the Seattle City Council. On the eve of last year's general election, I announced that I would respect the Council's decision to go forward with the tunnel, but that I would continue to raise some hard questions, including who will bear responsibility for cost overruns. I will keep each of these promises.

By this letter, I reiterate my commitment to move forward with negotiations on a set of master implementing agreements for WSDOT's construction of the deep-bore tunnel. These agreements must address the host of issues that arise from construction in and under Seattle's dense urban core, including property acquisition, permitting, utility disruptions and relocations, potential damage to buildings and facilities through soil settlement, and environmental liabilities. The agreements also should identify who will bear responsibility for all costs of the project, including potential cost overruns.

I know the cost overrun issue is a bone of contention that some argue does not need to be addressed now. I disagree. I believe that responsible public stewardship requires we address this matter openly.

The original understanding between the City and the State, as reflected in the letter agreement signed by you, Mayor Nickels and Executive Sims, on January 13, 2009, was that each party would bear responsibility for costs on its respective portions of the project. The State Legislature has since adopted a different position with respect to any overruns. The State's enabling legislation for Alaskan Way Viaduct replacement project, RCW 47.01.402, provides in part:

The state's contribution [to the tunnel project] shall not exceed two billion four hundred million dollars. If costs exceed two billion four hundred million dollars, no more than four hundred million [dollars] of the additional costs shall be financed with toll revenue. Any costs in excess of two billion eight hundred million dollars shall be borne by property owners in the Seattle area who benefit from replacement of the existing viaduct with the deep bore tunnel.

This approach to funding — where a vaguely defined subset of local taxpayers would bear responsibility for potential cost overruns on a State highway project — is unprecedented in Washington.

Since taking office on January 1, I have heard two rationales for ignoring this statutory language. The first is that project planners are continuing to refine the engineering on which the cost estimates are based, and so we can be reasonably certain that the project will stay within budget. While I respect the expertise of WSDOT engineers and their diligence in moving the project forward, I believe the greatest risk of cost overruns will arise if and when the boring machine encounters unforeseen problems, such as undocumented utility lines, equipment failures, or unexpected soil conditions. In other words, major risks may not be apparent until after tunneling is underway. That has been the experience with other tunneling projects. At this early stage, we cannot be confident that cost overruns will not occur. And, if the risk is truly remote, there is no need for extraordinary provisions imposing the risk on Seattle-area property owners.

The second rationale offered for ignoring the statutory language is that the language itself is unenforceable. Indeed, some members of the Seattle City Council have publicly asserted that the City cannot be forced to pay for overruns on a State-managed highway project. At the same time, many State legislators insist that the Legislature meant what it said — the State's financial obligation is capped and any additional costs will be the responsibility of Seattle-area property owners.

In my view, much of this discussion misses the point. The Legislature's ultimate goal seems clear, as does the \$2.4 billion funding limit. If the existing statute does not fully accomplish its objectives, the Legislature may attempt further steps to place the burden of cost overruns on City government, or a yet-to-be created local taxing district. The prospect that these matters will be left for the courts and the Legislature to resolve while the work is ongoing — or, worse, that the work itself would be brought to a stop — is not acceptable.

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I strongly believe all parties should resolve these issues before the State executes its design-build contract and before tunneling begins. This approach is far preferable to one that leaves these important matters unresolved. If we avoid these issues and cost overruns arise, much of the public will be justly outraged. This group may include taxpayers statewide who relied on the statutory language and reasonably believed Seattle property owners would bear the excess costs. Or, it may include Seattle property owners, who would point out that they did not agree to bear the costs of a State project, and were told they would have no obligation to do so. Almost certainly, it would include members of the public at large, who would wonder why the project was ever undertaken without a comprehensive funding plan in place. I believe we owe it to our constituents to address the difficult questions now, before the project is underway.

I hope that we can work constructively to resolve these issues. To that end, I have instructed my representatives on the City team to negotiate in good faith toward comprehensive master agreements. The Project Oversight Committee of senior elected officials, which you are now reconvening, should provide a useful forum to develop agreement on plans for cost overruns and other issues that cannot be resolved at the staff level. If there is an impasse on these issues, and the State holds firm on its intent that Seattle property owners will bear the full cost of any overruns, I will promptly seek a City Council determination of whether a majority nevertheless wants work on the tunnel to proceed. As Mayor, I will not support an agreement that leaves Seattle taxpayers at risk for tunnel cost overruns.

Sincerely,

A handwritten signature in cursive script that reads "Michael McGinn".

Mike McGinn

Mayor

cc: Seattle City Council