

Ordinance No. 122978

Council Bill No. 116514

AN ORDINANCE relating to the Alaskan Way Viaduct for SR 99 Viaduct Replacement from South Holgate to South King Street Stage 1 Project; authorizing execution of three Memoranda of Agreement between the Washington State Department of Transportation and the City of Seattle.

The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: [Signature]
Councilmember 30/30

Jan Drago
30/30

Committee Action:

S-O Pass JD, SC, RM, RC, BH

CF No. _____

Date Introduced:	<u>4-27-09</u>	
Date 1st Referred:	To: (committee)	<u>transportation</u>
Date Re - Referred:	To: (committee)	
Date Re - Referred:	To: (committee)	
Date of Final Passage:	Full Council Vote:	<u>9-0</u>
Date Presented to Mayor:	Date Approved:	<u>5-19-09</u>
Date Returned to City Clerk:	Date Published:	<u>3 P</u>
Date Vetoes by Mayor:	Date Veto Published:	T.O. <input checked="" type="checkbox"/> F.T. <input type="checkbox"/>
Date Passed Over Veto:	Veto Sustained:	

5-11-09 Pass 9-0

This file is complete and ready for presentation to Full Council. Committee: _____
(initial/date)

Law Department

Law Dept. Review OMP Review City Clerk Review Electronic Copy Loaded Indexed

1 WHEREAS, SCL will provide design review and construction inspection to determine that all
2 SCL standards and requirements are met prior to placing new or modified electrical
3 distribution lines and other electrical facilities into service, and will provide all 26kV
4 transformers for the Project; NOW, THEREFORE,

5 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

6 Section 1. Concurrently with execution of the other two Memoranda of Agreement, the
7 Director of Transportation or her designee is hereby authorized to execute, for and on behalf of
8 the City, the Memorandum of Agreement entitled "SR 99 Alaskan Way Viaduct Property,
9 Environmental Remediation, Design Review, Permitting, and Construction Coordination
10 Agreement for SR 99 South Holgate Street to South King Street Viaduct Replacement Project,
11 Stage 1" (No. GCA 5934) between WSDOT and the City, substantially in the form attached
12 hereto as Attachment 1.
13

14 Section 2. Concurrently with execution of the other two Memoranda of Agreement, the
15 Superintendent of Seattle City Light or his designee is hereby authorized to execute, for and on
16 behalf of the City, the Memorandum of Agreement entitled "SR 99 Alaskan Way Viaduct SCL
17 Facilities Work - for SR 99 South Holgate Street to South King Street Viaduct Replacement
18 Project, Stage 1" (No. UT 01343) between WSDOT and the City, substantially in the form
19 attached hereto as Attachment 2.
20

21 Section 3. Concurrently with execution of the other two Memoranda of Agreement, the
22 Director of Seattle Public Utilities or his designee is hereby authorized to execute, for and on
23 behalf of the City, the Memorandum of Agreement entitled "SR 99 Alaskan Way Viaduct SPU
24 Facilities Work - SR 99 South Holgate Street to South King Street Viaduct Replacement Project,
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1 Stage 1" (No. UT 01342) between WSDOT and the City, substantially in the form attached
2 hereto as Attachment 3.

3 Section 4. Any act consistent with the authority and prior to the effective date of this
4 ordinance is hereby ratified and confirmed.

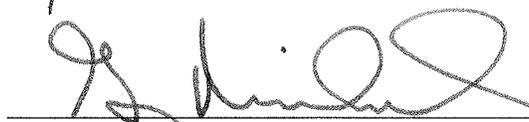
5 Section 5. This ordinance shall take effect and be in force thirty (30) days from and after
6 its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days
7 after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.
8

9
10 Passed by the City Council the 11th day of May, 2009, and signed by me in open
11 session in authentication of its passage this 11th day of May, 2009.
12

13
14 

15 President _____ of the City Council

16 Approved by me this 19th day of May, 2009.

17
18 

19 Gregory J. Nickels, Mayor

20 Filed by me this 20th day of MAY, 2009.

21
22 
23 City Clerk

24 (Seal)
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Attachment 1: MEMORANDUM OF AGREEMENT NO. GCA 5934: SR 99
Alaskan Way Viaduct Property, Environmental Remediation,
Design Review, Permitting, and Construction Coordination
Agreement for SR 99 South Holgate Street to South King Street
Viaduct Replacement Project, Stage 1

Attachment 1, Exhibit A: Project Description
Attachment 1, Exhibit B: Project Property
Attachment 1, Exhibit C: Project Schedule

Attachment 2: MEMORANDUM OF AGREEMENT NO. UT 01343: SR 99
Alaskan Way Viaduct SCL Facilities Work - for SR 99 South
Holgate Street to South King Street Viaduct Replacement Project,
Stage 1

Attachment 2, Exhibit A: Port of Seattle Property TCE Approved Easement Format
Attachment 2, Exhibit B: Seattle City Light Minor Change Request & Approval

Attachment 3: MEMORANDUM OF AGREEMENT NO. UT 01342: SR 99
Alaskan Way Viaduct SPU Facilities Work - SR 99 South Holgate
Street to South King Street Viaduct Replacement Project, Stage 1

Attachment 3, Exhibit A: Seattle Public Utilities Minor Change Request & Approval



1 MEMORANDUM OF AGREEMENT
2 NO. GCA 5934
3 SR 99 ALASKAN WAY VIADUCT
4 PROPERTY, ENVIRONMENTAL REMEDIATION, DESIGN REVIEW,
5 PERMITTING, AND CONSTRUCTION COORDINATION
6 AGREEMENT
7 FOR SR 99 SOUTH HOLGATE STREET TO SOUTH KING STREET
8 VIADUCT REPLACEMENT PROJECT, STAGE 1
9

10 THIS Property, Environmental Remediation, Design Review, Permitting, and
11 Construction Coordination Agreement, No. GCA 5934 for the South Holgate Street to
12 South King Street Viaduct Replacement Project Stage 1 (“Agreement”) is made and
13 entered into between the State of Washington Department of Transportation, hereinafter
14 the “STATE,” and the City of Seattle hereinafter the “CITY” (managed by the Seattle
15 Department of Transportation, hereinafter “SDOT”), collectively the “Parties” and
16 individually the “Party.”
17

18 WHEREAS, the Alaskan Way Viaduct (AWV or Viaduct) and seawall are at risk of
19 sudden and catastrophic failure in an earthquake and are nearing the end of their useful
20 lives; and
21

22 WHEREAS, the STATE and the Federal Highway Administration (FHWA), in
23 consultation with the CITY, are proposing improvements to State Route 99 (SR 99), a
24 non-limited access highway which includes the Viaduct, and the seawall; and
25

26 WHEREAS, in March 2007, the Governor, the King County Executive and the Mayor of
27 Seattle pledged to advance a series of key SR 99 projects (Moving Forward Projects) that
28 will facilitate the removal and/or repair of key portions of SR 99, which are: Yesler Way
29 Vicinity Stabilization Project, Electrical Line Relocation (formerly known as Electrical
30 Utility Relocation Phase 1 under agreement No. GCA 5680), Battery Street Tunnel Fire
31 and Life Safety Upgrades, SR 99 Lenora to Battery Street Tunnel Improvements, the SR
32 99 South Holgate Street to South King Street Viaduct Replacement Project, and Transit
33 Enhancements and Other Improvements; and
34

35 WHEREAS, in January 2009, the Governor, the King County Executive and the Mayor
36 of Seattle reached an agreement recommending a solution for replacing the existing
37 viaduct structure in the central waterfront area (Central Waterfront Decision); and,
38

39 WHEREAS, taken together, the Moving Forward Projects and the Central Waterfront
40 Decision are known as the Program; and
41

42 WHEREAS, the STATE intends to remove a portion of the viaduct structure as part of
43 one of the Moving Forward Projects, the SR 99 South Holgate Street to South King Street
44 Viaduct Replacement Project by December 31, 2012. The South Holgate Street to South
45 King Street Viaduct Replacement Project will replace the Viaduct’s south end with a new



1 side-by-side surface and aerial roadway that connects to the existing Viaduct, provide
2 new SR 99 on- and off-ramps near South King Street, create an underpass below SR 99
3 on the north side of South Atlantic Street, and build new bicycle/pedestrian paths on the
4 east and west sides of SR 99. The South Holgate Street to South King Street Viaduct
5 Replacement Project will be carried out in stages. Stage 1 of the South Holgate Street to
6 South King Street Viaduct Replacement Project (the "PROJECT" as defined under
7 section 1.22 and Exhibit A) is the subject of this Agreement; and

8
9 WHEREAS, concurrently with this GCA 5934 ("SDOT Agreement" or "this
10 Agreement"), the STATE and CITY, through Seattle City Light (SCL), are entering into
11 an agreement, UT 01343 (SCL Holgate to King Stage 1 Agreement); and

12
13 WHEREAS, concurrently with this SDOT Agreement, GCA 5934, the STATE and
14 CITY, through its Seattle Public Utilities Department (SPU), are entering into an
15 agreement, UT 01342 (SPU Holgate to King Stage 1 Agreement); and

16
17 WHEREAS, the PROJECT will in some instances require the use of existing CITY Street
18 Right-of-Way; and

19
20 WHEREAS, the CITY will own and/or maintain significant Infrastructure to be
21 constructed as part of the PROJECT; and

22
23 WHEREAS, the Parties wish to establish protocols and procedures for property
24 acquisition, environmental remediation, design review, permitting, and construction
25 coordination to govern their relationship during the course of the PROJECT,

26
27 NOW, THEREFORE, pursuant to RCW 47.24.020 and in consideration of the terms,
28 conditions, covenants, and performances contained herein, or attached and incorporated
29 and made a part hereto,

30
31 IT IS MUTUALLY AGREED AS FOLLOWS:

32
33
34 **1. DEFINITIONS**

35
36 Words not otherwise defined, which have well-known technical or construction industry
37 meanings, are used in accordance with such recognized meanings.

38
39 1.1 Approved Plans means the construction plans and provisions that evidence the
40 CITY's determination, through the processes described in Section 7 of this Agreement,
41 that the plans conform to the Street Use Code and other requirements, and that plan
42 review comments are resolved to both Parties' satisfaction; Approved Plans are included
43 in the STATE's advertisement for bids, or supplementation thereto, and evidence the
44 agreement between the STATE and its contractors for construction of the PROJECT.



1 1.2 AWV means the Alaskan Way Viaduct on State Route 99, a non-limited-access
2 highway over a portion of CITY Street Right-of-Way and located partially in the City of
3 Seattle.

4
5 1.3 Business Days means Monday through Friday, inclusive, except for official City
6 of Seattle and state holidays.

7
8 1.4 CITY means the City of Seattle, a Washington municipal corporation

9
10 1.5 City Construction Project Engineer means the person designated by the SDOT to
11 act as the City's coordinator and primary representative in matters arising during the
12 course of construction as set forth in this Agreement.

13
14 1.6 CITY Designated Representative means the CITY official listed in Section 22.1
15 of this Agreement.

16
17 1.7 City of Seattle means CITY.

18
19 1.8 CITY Street Right-of-Way means public street right-of-way under the jurisdiction
20 of the SDOT pursuant to Title 15 of the Seattle Municipal Code.

21
22 1.9 Defective Work means design or construction work or materials that fail to
23 comply with the Approved Plans, CITY-approved modifications to the Approved Plans,
24 or the laws, rules, regulations or standards as specified in this Agreement.

25
26 1.10 DPD means the City of Seattle Department of Planning and Development.

27
28 1.11 Engineer of Record means the engineer licensed in the State of Washington who
29 has been commissioned by the STATE as the prime engineer of the PROJECT, having
30 overall responsibility for the adequacy of the design and the coordination of the design
31 work of other engineers and whose professional seal is on the Approved Plans.

32
33 1.12 Environmental Compliance Assurance Procedure (ECAP) means procedures
34 incorporated into the WSDOT *Construction Manual* M41-01.05 dated July 2008 (Section
35 1-2.2k(1)) and the WSDOT *Environmental Procedures Manual* M31-11.05 (Sections 610
36 and 690) dated October 2008, as modified by this Agreement, which provide guidance
37 on compliance with Environmental Laws and environmental Remediation. The purpose
38 of the ECAP is to recognize and eliminate environmental violations during the
39 construction phase on STATE construction sites and to ensure prompt notification to
40 STATE management and agencies. For purposes of the ECAP, violations are defined as
41 actions that are not in compliance with environmental standards, permits, or laws.

42 1.13 Environmental Law(s) means any environmentally related local, state or federal
43 law, regulation, ordinance or order (including without limitation any final order of any
44 court of competent jurisdiction of which the STATE has knowledge), now or hereafter in
45 effect including, but not limited to: the Federal Clean Air Act; the Federal Water
46 Pollution Control Act; the Federal Safe Drinking Water Act; the Federal Comprehensive



1 Environmental Response Compensation and Liability Act, as amended by the Superfund
2 Amendments and Reauthorization Act of 1986; the Federal Resource Conservation and
3 Recovery Act, as amended by the Solid and Hazardous Waste Amendments of 1984; the
4 Federal Occupational Safety and Health Act; the Federal Emergency Planning and Right-
5 to-Know Act of 1986; the Federal Hazardous Materials Transportation Control Act of
6 1980; the Federal Clean Water Act of 1977; the Federal Insecticide, Fungicide and
7 Rodenticide Act; the Federal Waste Management Recovery and Recycling Act; the
8 Washington Hazardous Waste Management Act; the Washington Hazardous Waste Fees
9 Act; Washington Model Toxics Control Act; the Washington Nuclear Energy and
10 Radiation Act; the Washington Radioactive Waste Storage and Transportation Act; the
11 Washington Underground Petroleum Storage Tanks Act; and any regulations
12 promulgated thereunder from time to time.

13
14 1.14 Hazardous Substance(s) means any substance, or substance containing any
15 component, now or hereafter designated as a hazardous, dangerous, toxic or harmful
16 substance, material or waste, subject to regulation under any federal, state or local law,
17 regulation or ordinance relating to environmental protection, contamination or cleanup
18 including, but not limited to, those substances, materials and wastes listed in the United
19 States Department of Transportation Hazardous Materials Table (49 C.F.R. §172.101) or
20 by the United States Environmental Protection Agency as hazardous substances (40
21 C.F.R. pt. 302 and amendments thereto) or in the Washington Hazardous Waste
22 Management Act (Ch. 70.105 RCW) or the Washington Model Toxics Control Act (Chs.
23 70.105D RCW and 82.21 RCW), petroleum products and their derivatives, and such
24 other substances, materials and wastes as become regulated or subject to cleanup
25 authority under any Environmental Law.

26
27 1.15 Infrastructure means the portions of SPU Facilities, SCL Facilities and roadway
28 improvements constructed or modified as part of the PROJECT to be owned, operated
29 and/or maintained by the CITY.

30
31 1.16 Letter of Acceptance means the written document prepared by the CITY and
32 delivered to the STATE that signifies the City of Seattle's approval of the CITY
33 Infrastructure built by the STATE's contractor; the CITY's issuance and STATE's
34 acknowledgment of the Letter of Acceptance effects transfer of Infrastructure ownership
35 and obligations for operation and maintenance as agreed by the Parties.

36
37 1.17 Letter of Plan Approval means the letter provided to the STATE by the CITY
38 following the completion of the plan review process, signifying that the plans and
39 specifications have been approved by the City of Seattle.

40
41 1.18 MTCA means the Washington Model Toxics Control Act (Chs. 70.105D RCW
42 and 82.21 RCW).



1 1.19 Plan Review Package means clear and complete plans, specifications, and the
2 necessary assumptions, studies, models and calculations upon which the design was
3 based, and corrections previously requested by the CITY.
4

5 1.20 100% Plan Review Package means the Plan Review Package submitted to the
6 City of Seattle concurrent with STATE's final internal review of the construction contract
7 plans and contract provisions that shall evidence the agreement between the STATE and
8 its contractors for construction of the PROJECT.
9

10 1.21 PROGRAM means all of the projects, collectively, implemented by the STATE
11 that remove and replace the AWW and seawall.
12

13 1.22 PROJECT means the SR 99 South Holgate Street to South King Street Viaduct
14 Replacement Project, Stage 1, as described in Exhibit A, Project Description.
15

16 1.23 Project Engineer means the person appointed by the STATE to lead the
17 PROJECT during design and/or construction or his or her designee.
18

19 1.24 Project Property means all real property interests acquired by the STATE for the
20 PROJECT as described in Exhibit B, Project Property.
21

22 1.25 Project Schedule means the schedule of design, permitting and construction
23 events presented in Exhibit C, Project Schedule, and agreed to by the Parties, as it may be
24 amended from time to time by agreement of the Parties.
25

26 1.26 Remediation means the same as Remedy or Remedial Action defined in MTCA
27 which includes any action or expenditure consistent with the purposes of MTCA to
28 identify, eliminate, or minimize any threat or potential threat posed by Hazardous
29 Substances to human health or the environment including any investigative and
30 monitoring activities with respect to any release or threatened release of a Hazardous
31 Substance and any assessments to determine the risk or potential risk to human health or
32 the environment.
33

34 1.27 Round Table Meeting means a meeting typically held five weeks following the
35 submittal of the 100% Plan Review Package to the City of Seattle and STATE, and
36 commonly attended by the STATE's PROJECT team and STATE reviewers to resolve
37 and address STATE comments on the 100% Plan Review Package.
38

39 1.28 SCL means Seattle City Light.
40

41 1.29 SCL Facilities means the electrical facilities impacted by, or constructed as part of,
42 the PROJECT that are owned or to be owned by the CITY.
43

44
45 1.30 SDOT means the Seattle Department of Transportation.
46



1 1.31 SPU means Seattle Public Utilities.

2
3 1.32 SPU Facilities means the water, drainage and wastewater facilities impacted by,
4 or constructed as part of, the PROJECT that are owned or to be owned by the CITY.

5
6 1.33 STATE means the State of Washington Department of Transportation.

7
8 1.34 STATE Designated Representative means the STATE official listed in Section
9 22.1 of this Agreement.

10
11 1.35 Street Use Permit means written authorization secured by the STATE from the
12 Director of SDOT for use of the CITY Street Right-of-Way pursuant to Title 15 of the
13 Seattle Municipal Code.

14
15 1.36 Submittal Control Document means a list of all documents or reports that are
16 required by the Approved Plans or construction contract documents or applicable law to
17 be provided to or submitted to the STATE and the CITY.

18
19 1.37 WSDOT means Washington State Department of Transportation.

20
21
22 **2. OBJECTIVES OF AGREEMENT**

23
24 2.1 This Agreement is prepared by the STATE and CITY to govern relationships
25 between them during the course of the PROJECT to be constructed by the STATE, as
26 described in Exhibit A, Project Description.

27
28 **3. PROPERTY ACQUISITION**

29
30 3.1 Acquisition

31
32 3.1.1 The STATE has or will acquire, at its expense, all property and interests
33 that it deems necessary for the PROJECT. The Project Property is depicted on Exhibit B
34 attached hereto.

35
36 3.1.2 The STATE is responsible, at its expense, for performance of all
37 appraisals, appraisal review, title review, surveys, property investigation, relocation
38 assistance and all other investigations and services in connection with the acquisition of
39 the Project Property.

40
41 3.1.3 The STATE is responsible for identification and investigation of
42 Hazardous Substances on Project Property following procedures set in the current
43 WSDOT *Environmental Procedures Manual M 31-1.05* dated October 2008 and
44 WSDOT *Right of Way Manual M 26-01* dated October 2006. The STATE shall provide
45 to SDOT's Real Property and Environmental Manager, as soon as received by, or
46 prepared by or for the benefit of, the STATE, copies of all documentation of



1 environmental investigation concerning the Project Property, remedial actions, reports,
2 studies or other documentation, including, but not limited to, (1) documents relating to
3 due diligence and/or all appropriate inquiry, environmental assessments, and remedial,
4 removal or cleanup activities related to the Project Property; (2) documents relating to
5 allegations, orders, claims, regulatory demands, or losses relating to the alleged existence
6 or migration of any Hazardous Substance from or on any parcel of Project Property; and
7 (3) any alleged violation of any Environmental Law or other information relating to
8 environmental condition of the Project Property.
9

10 3.1.4 The STATE is responsible for acquiring and transferring to the CITY
11 easement rights for SCL Facilities by temporary construction easement (“Temporary
12 Construction Easement”). The acquisition and transfer provisions pertaining to the
13 Temporary Construction Easements are provided in the SCL Holgate to King Stage 1, UT
14 01343 Agreement.
15

16 **4. ENVIRONMENTAL REMEDIATION DURING CONSTRUCTION**

17

18 4.1 STATE Responsibilities. The STATE shall be responsible for identification,
19 investigation and Remediation of Hazardous Substances found within the limits of the
20 PROJECT during its environmental due diligence of the Project Property and will
21 identify areas of known Hazardous Substances in the Plan Review Packages circulated
22 for CITY review and approval. In addition, the STATE shall be responsible for
23 identification, investigation and Remediation of Hazardous Substances discovered during
24 construction. Provisions for Remediation of known Hazardous Substances, approved
25 Remediation plans, and provisions for Remediation of Hazardous Substances discovered
26 during construction shall be included in the Plan Review Packages and Approved Plans.
27 Nothing in this Agreement is intended to alter the legal obligations of the STATE with
28 respect to hazardous substances that may remain in place after completion of the
29 PROJECT.
30

31 4.2 Environmental Remediation will be in accordance with Environmental Law. The
32 STATE shall follow the Model Toxics Control Act (MTCA) and associated procedures
33 approved by the Washington State Department of Ecology for Remedial Action, and the
34 STATE will undertake Remediation using environmental professional judgment that
35 achieves an overall effectiveness comparable to the substantial equivalent of a
36 Washington State Department of Ecology conducted or supervised Remedial Action
37 appropriate to the specific site conditions and contaminants with no environmental
38 restrictions or covenants unless agreed to by the CITY in writing. The STATE is not
39 obligated to implement the public notification and documentation procedures common to
40 the substantial equivalent of a Washington State Department of Ecology conducted or
41 supervised Remedial Action.
42

43 4.3 The STATE shall not use soil found to exceed MTCA cleanup levels or that
44 exhibits visual and/or olfactory indications of Hazardous Substance as earth fill or trench
45 backfill within the PROJECT. There shall be no requirements or agreements affecting the
46 City Street Right-of-Way concerning ongoing monitoring of soil or groundwater relating



1 to Hazardous Substances unless agreed to by the CITY in writing prior to Remedial
2 Action.

3
4 4.4 Under certain circumstances, and in consultation with the CITY, the STATE may
5 conduct additional Remediation of contaminated areas, including areas outside the limits
6 of the PROJECT. These circumstances may include, but are not limited to:

7
8 4.4.1 Instances in which Remediation may be necessary to prevent adverse
9 water quality impacts and/or to comply with other State and Federal permit
10 conditions;

11 4.4.2 Instances that in the judgment of the STATE Project Engineer require
12 immediate Remediation to protect public health and safety;

13 4.4.3 Where regulatory agencies with jurisdiction require additional
14 Remediation;

15 4.4.4 Where additional Remediation is necessary to prevent recontamination of
16 the limits of the PROJECT, address subsurface utility facilities located or planned
17 within or near the limits of the PROJECT or within the Project Property, or
18 address disturbance or exacerbation of existing contamination; and

19 4.4.5 Where additional Remediation is necessary to meet mutually acceptable
20 risk management standards in accordance with STATE and CITY protocols.

21
22 4.5 All work shall comply with the WSDOT *Environmental Procedures Manual M*
23 *31-11* and WSDOT *Construction Manual M41-01*, Environmental Law, except as
24 modified by this Agreement.

25
26 4.6 The STATE will include the CITY in its ECAP when unanticipated
27 contamination is found within the limits of the PROJECT. Notification procedures will
28 include notifying the CITY orally followed by written notification.

29
30 4.7 The STATE's Project Engineer will determine, in consultation with the CITY,
31 Remediation of known and unanticipated Hazardous Substances within the limits of the
32 PROJECT. In instances where the CITY disputes the STATE's plan(s) for Remediation
33 in connection with the Project Property, the CITY and STATE will resolve the dispute
34 through the dispute resolution process in Section 20 of this Agreement.

35
36 4.8 The STATE shall prepare plans in consultation with the CITY for Remediation of
37 known and unanticipated Hazardous Substances in connection with the CITY Street
38 Right-of-Way, and shall obtain CITY concurrence prior to implementing Remedial
39 Actions. In instances where the CITY finds the STATE's plans for Remediation
40 unacceptable, the CITY or STATE may request resolution through the dispute resolution
41 process in Section 20 of this Agreement.

42
43 4.9 Prior to the start of construction, and after the contractor has been selected, the
44 STATE will initiate and host an environmental preconstruction meeting. The STATE will
45 invite City of Seattle staff, STATE staff and the STATE contractor to discuss known



1 contamination, environmental procedures, environmental Remediation and permit
2 conditions that apply to the PROJECT.

3
4 4.10 The STATE will obtain all required permits and approvals for Remediation.

5
6 4.11 Remediation work shall not proceed in areas outside of the limits of the
7 PROJECT unless the STATE has obtained written permission of the property owner and
8 appropriate permits to work on property that is not part of the PROJECT. The STATE
9 shall make reasonable efforts to obtain permission of the property owner. The STATE
10 may utilize the assistance of the State Department of Ecology as provided in the MTCA
11 regulations.

12
13 4.12 The STATE shall provide the CITY with copies of environmental close-out
14 reports for Remediation activities.

15
16 4.13 All costs associated with testing, handling, storing, removing, transporting,
17 disposing, or treating Hazardous Substances that are excavated in connection with the
18 PROJECT will be paid by the STATE. In addition, STATE shall be responsible for all
19 costs associated with Remediation of any releases that are caused or exacerbated by its
20 own employees or contractors. The STATE shall be identified as the generator for these
21 Hazardous Substances.

22
23 4.14 The CITY will provide to the STATE all records regarding any known areas
24 where Hazardous Substances may be located within the limits of the PROJECT,
25 including but not limited to environmental investigation reports for properties located in
26 the PROJECT. The reports shall be provided for the STATE's information only, shall not
27 be relied upon by the STATE, and the CITY's provision of these records shall not
28 constitute a representation or warranty as to the accuracy of the information contained in
29 the reports.

30
31 4.15 The STATE will provide to the CITY all records regarding any known areas
32 where Hazardous Substances may be located within the limits of the PROJECT and
33 Project Property, including but not limited to environmental investigation reports for the
34 Project Property. In addition, the STATE will notify and provide information regarding
35 any contamination encountered during construction. Reports provided by the STATE are
36 for information only, and shall not be relied upon by the CITY, and the STATE's
37 provision of these records shall not constitute a representation or warranty as to the
38 accuracy of the information contained in the reports.

39
40 **5. RIGHT-OF-WAY USE**

41
42 5.1 The CITY authorizes the STATE to use CITY Street Right-of-Way for the
43 PROJECT, subject to the provisions of Street Use Permits and the conditions contained in
44 this Agreement. The STATE's use of CITY Street Right-of-Way shall comply with the
45 Seattle Municipal Code and all other applicable laws, including but not limited to the



1 Shoreline Management Act, the National Environmental Policy Act and the State
2 Environmental Policy Act.

3
4 5.2 The STATE shall obtain Street Use Permits for the use of CITY Street Right-of-
5 Way for the PROJECT. The Parties agree that the requirements of and conditions
6 applicable to the Street Use Permits issued for CITY Street Right-of-Way in connection
7 with the PROJECT will also apply to the Project Property. The STATE agrees to abide
8 by and comply with all such requirements and conditions and to include all such
9 requirements and conditions in its contracts with contractors.

10
11 5.3 The STATE shall apply for and obtain all necessary federal, state and City of
12 Seattle-issued permits and approvals prior to commencing any work on the PROJECT,
13 including but not limited to all permits, approvals or permission for exploratory
14 investigations, testing, site preparations, demolition and construction.

15
16 5.4 The STATE acknowledges the right of the CITY to exercise its police power
17 pursuant to general law and applicable statutes for the protection of the health, safety, and
18 welfare of its citizens and their properties. Nothing in this Agreement shall be construed
19 as waiving the CITY's rights to exercise its police power or to preclude exercising such
20 regulatory power in connection with this PROJECT.

21
22
23 **6. FUTURE DESIGN MODIFICATIONS AND CHANGE MANAGEMENT**
24 **PROCEDURES**

25
26 6.1 The STATE shall consult the CITY with regard to all aspects of planning, design
27 and construction of the PROJECT.

28
29 6.2 The STATE shall neither make nor implement revisions or deviations from the
30 Approved Plans without first obtaining the review and concurrence of the CITY.

31
32
33 **7. DESIGN, PLAN REVIEW & PERMITS**

34
35 7.1 This Agreement addresses the design and plan review process for SDOT, SCL,
36 and SPU and the process for issuance of Street Use Permits by SDOT; it does not address
37 plan review or permits issued by other departments of the City of Seattle.

38
39 7.2 The Parties agree to work cooperatively with each other and in good faith to
40 implement procedures to attempt to accomplish the following:

41
42 7.2.1 Enable timely and expeditious completion of the PROJECT design in
43 accordance with the Project Schedule, Exhibit C.

44
45 7.2.2 Facilitate thorough review of all stages of design to ascertain that the
46 design of Infrastructure is in compliance with City of Seattle policy and



1 regulations, and standards and specifications. This includes the STATE's
2 preparing plans and documentation in a form that meets CITY standards for
3 review, the CITY's consolidating and reconciling its comments, and the STATE's
4 addressing all CITY comments from each stage of review in the material
5 submitted for the following review.
6

7 7.2.3 Enable both Parties to comply with all laws and procedures governing
8 their actions. For example, procedures must enable the STATE to comply with
9 STATE procedures regarding review of its final Approved Plans for advertising
10 while at the same time enabling the CITY to comply with SMC Title 15.
11

12 7.3 The STATE will take the lead in coordinating regular communications and
13 meetings between the CITY and the STATE in this endeavor.
14

15 7.4 The CITY shall not give direction to the STATE's consultants or contractors
16 during the design and review of Plan Review Packages.
17

18 7.5 The STATE agrees to prepare a PROJECT design in collaboration with SDOT,
19 SCL, and SPU staff and shall submit Plan Review Packages pursuant to the procedures
20 outlined in this Agreement.
21

22 7.6 The STATE agrees to seek and incorporate input from the CITY in the early
23 stages of preliminary engineering, preparation of Plan Review Packages, and throughout
24 the PROJECT design and permitting process. The STATE agrees that design of
25 Infrastructure will include consideration of long-term operation and maintenance costs, in
26 addition to up-front design and construction costs.
27

28 7.7 The STATE's design and construction shall comply with the following
29 requirements:
30

31 7.7.1 The design and construction of CITY Infrastructure shall conform to all
32 City of Seattle laws, rules, regulations and standards and all applicable federal and
33 state laws, rules, regulations and standards, including but not limited to the
34 following, except as otherwise provided in this Agreement:
35

36 7.7.1.1 The Seattle Municipal Code

37 7.7.1.2 The City of Seattle Standard Specifications for Road, Bridge and
38 Municipal Construction

39 7.7.1.3 The City of Seattle Standard Plans for Municipal Construction,

40 7.7.1.4 SDOT, SCL, DPD and SPU Director's Rules, including the City of
41 Seattle Right of Way Improvements Manual, 2005-22.

42 7.7.1.5 SCL Material Standards

43 7.7.1.6 SCL Construction Guidelines
44

45 7.7.2 The STATE will consult with the CITY on any requested deviation from
46 City of Seattle standards.



1
2 7.7.3 The Parties agree that the STATE shall submit plans for Infrastructure
3 prepared in accordance with SR 99 Alaskan Way Viaduct and Seawall
4 Replacement CADD manual revision 1.0, dated June 2006.
5

6 7.7.4 The Parties agree that the Approved Plans shall be stamped by the
7 STATE's Engineer of Record. The STATE is responsible for ensuring that permit
8 applications and plans meet City of Seattle regulatory standards.
9

10 7.8 After a complete Street Use Permit application and a 100% Plan Review Package
11 have been submitted to the CITY, SDOT shall coordinate its review and issuance of
12 Street Use Permits. This work includes coordinating pre-application reviews, receiving
13 and distributing materials among City of Seattle reviewers, collating and tracking review
14 comments, and working with other CITY departments to resolve conflicting comments or
15 requirements.
16

17 7.9 The Parties agree to the following measures to facilitate timely review.
18

19 7.9.1 The STATE agrees to establish and provide to the CITY a target schedule
20 for the STATE's submittal to the CITY of the Plan Review Packages as soon as
21 such schedule is available. The STATE shall notify the CITY of any proposed
22 schedule modifications. If the STATE determines that it cannot meet the
23 anticipated dates, the STATE shall provide to the CITY's Designated
24 Representative a revised submittal schedule as soon as possible after delay is
25 known or anticipated.
26

27 The STATE shall notify the CITY's Designated Representative fifteen (15)
28 Business Days prior to the scheduled Plan Review Package to confirm that the
29 Plan Review Package will be transmitted as scheduled or to establish a deferred
30 date so that CITY staff can be appropriately scheduled for the review.
31

32 7.9.2 The STATE shall prepare and timely submit plans to the CITY and provide
33 corrections and additional information as requested by the CITY in a manner that
34 will allow CITY departments sufficient time to review the Street Use Permit
35 application and the plans. The times for review for each Plan Review Package are
36 stated in the table below. The CITY agrees to fifteen (15) Business Days for
37 review of 30% Plan Review Packages, twenty-five (25) Business Days for review
38 of the 60% Plan Review Packages and the 90% Plan Review Packages and fifteen
39 (15) Business Days for the 100% Plan Review Packages. However, the number of
40 Business Days for review will increase if the STATE submits multiple Plan
41 Review Packages to the CITY for concurrent review in accordance with the table
42 below, or as otherwise agreed by the Parties.
43



1

Submittal Phase	Number of Business Days per Number of Plan Review Packages Under Review		
	One	Two	Three
30% Plan Review Package	15 days	25 days	25 days
60% Plan Review Package	25 days	40 days	45 days
90% Plan Review Package	25 days	40 days	45 days
100% Plan Review Package	15 days	15 days	20 days

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In the event that more than three Plan Review Packages are under review at the same time, the Parties agree to negotiate a reasonable review time for the Plan Review Package being submitted.

7.10 The Parties agree that the plan submittal to the CITY will take place as follows, and the plans will be prepared to meet the following requirements.

7.10.1 The CITY review period begins with the receipt by the CITY's Designated Representative of the Plan Review Package and ends when the CITY'S final comment document is submitted to the STATE electronically in a Microsoft Excel document format. The CITY is solely responsible for assigning appropriate CITY staff to review and provide comment within the established timeframes.

7.10.2 Following its review of 30% plans, SDOT shall prepare and deliver to the STATE a preliminary draft of Street Use Permit conditions. SDOT shall update the preliminary draft permit conditions sufficiently in advance of dates scheduled for 60%, 90% and 100% Plan Review Package submittals to enable incorporation of the draft conditions into the STATE's construction contract documents.

7.10.3 The STATE shall deliver the Plan Review Packages as further described in this Agreement. If the CITY receives a submittal from the STATE that does not contain all the requirements of a Plan Review Package, the CITY will notify the STATE that the submittal is incomplete. To expedite the process and to the extent possible, the CITY will attempt to begin review of an incomplete submittal. However, the STATE shall submit the information needed to complete the Plan Review Package as soon as possible and shall highlight any changes made since the incomplete submittal.

7.11 The CITY's Designated Representative shall work with the CITY departments to identify deficiencies in the Plan Review Packages. The CITY departments shall reconcile conflicting comments, and SDOT shall incorporate the comments in a single document.

7.12 The CITY shall assist the STATE in determining appropriate responses to comments and resolution of deficiencies noted in its comments.



1 7.13 The STATE shall provide initial written responses to all comments within two (2)
2 weeks of receiving the CITY's comments to a Plan Review Package and shall incorporate
3 all responses into the next succeeding Plan Review Package.
4

5 7.14 The STATE and CITY shall hold a comment resolution meeting immediately
6 after comments are received and responded to. Any unresolved comments shall be
7 forwarded to a comment resolution team composed of CITY and STATE staff. In the
8 event the team cannot resolve all issues, they will be elevated to appropriate levels of
9 management.
10

11 7.15 The STATE and CITY agree to follow a process as set forth in this Agreement to
12 facilitate both the STATE's compliance with STATE procedures governing preparation
13 of bid packages and SDOT procedures for issuing Street Use Permits. The process shall
14 include the following steps:
15

16 7.15.1 The STATE shall not submit its 100% Plan Review Package to the CITY
17 until it has ascertained that all the CITY's previous review comments have been
18 reconciled.
19

20 7.15.2 The CITY will determine, following the 100% submittal within the
21 timeframe stated in the table above, whether all comments on the 90% Plan
22 Review Package have been addressed. At the conclusion of this determination,
23 the CITY shall notify the STATE in writing either that the 100% Review Package
24 has been approved by the CITY or that STATE has not addressed all the CITY's
25 90% comments. In such case, the CITY shall submit to the STATE clear
26 instructions for addressing the outstanding issues.
27

28 7.15.3 The STATE shall invite the CITY to participate in its Round-Table
29 Meeting to enable full discussion of the implications and consequences of
30 changes proposed by STATE to the 100% Plan Review Package..
31

32 7.15.4 SDOT shall issue its Street Use Permit within five (5) Business Days
33 following the Round-Table Meeting if the plans conform to the requirements of
34 the Street Use Code. If any issues remain for resolution, the Street Use Permit
35 will include a condition stating that the permittee shall not begin construction
36 until remaining review comments have been resolved. The STATE shall engage
37 CITY reviewers in resolution of review comments and, if required, elevate
38 unresolved comments in accordance with the dispute resolution procedures in
39 Section 20 of this Agreement.
40

41 7.15.5 The STATE shall work with the CITY to ensure that all comments on
42 the 100% Plan Review Package are adequately incorporated into the STATE's
43 advertisement for bid, or are otherwise addressed to the Parties' satisfaction. This
44 process will include comment resolution with CITY reviewers, a meeting with the
45 STATE and CITY resolution teams, and, if required, elevation of unresolved
46 comments to the executive management teams for the STATE and CITY.



1
2 7.15.6 The CITY will coordinate a final check of the 100% Plan Review
3 Package to confirm that the 100% Plan Review Package adequately addresses the
4 CITY comments, that all conditions have been satisfied to the CITY's
5 satisfaction and that plans conform to the requirements of the Street Use Code.
6 Upon such confirmation, the CITY will issue to the STATE a Letter of Plan
7 Approval signifying that the STATE has addressed the plan review comments and
8 marking completion of the design and plan review process. No construction is
9 authorized until this letter is issued by the CITY. The Street Use Permit and
10 Letter of Plan Approval are not a representation or assurance that the design or
11 plans comply with applicable laws, regulations, ordinances or codes, nor shall the
12 Street Use Permit or Letter of Plan Approval be construed to authorize any failure
13 to comply with any of the foregoing.
14

15 7.16 The STATE shall neither make nor implement any revisions or deviations from
16 the Approved Plans without first obtaining the review and concurrence of the CITY.
17
18

19 **8. PROJECT SERVICES AND FUNDING**
20

21 8.1 The STATE shall provide necessary funding for all PROJECT costs without
22 reimbursement from the City of Seattle, except for the City of Seattle cost responsibilities
23 established in this Agreement, in SCL Agreement UT 01343, in SPU Agreement UT
24 01342, and any subsequent agreements.
25

26 8.2 The STATE will reimburse SDOT pursuant to the terms of Agreement GCA 5730,
27 entitled Project Services Agreement for State Route 99 Alaskan Way Viaduct and
28 Seawall Replacement Program and SR 519/I-90 Intermodal Access Project – IC
29 Improvements (“Project Services Agreement”).
30

31 8.3 The categories of services to be provided by SDOT are: project management,
32 project controls and coordination, design review and consultation, permit development
33 and coordination, right of way services, and services to support construction activities.
34
35

36 **9. PARTICIPATION BY MINORITY AND WOMEN'S BUSINESS**
37 **ENTERPRISES**
38

39 9.1 The STATE and the CITY agree that it is good public policy to utilize the services of
40 minority-owned and women-owned business enterprises in the construction of public
41 works projects, to the fullest extent permitted by law.
42

43 9.2 In furtherance of the foregoing public policy for the PROJECT, the STATE has
44 agreed to include Disadvantaged Business Enterprise (DBE) provisions in its construction
45 contract for the PROJECT.
46



1 **10. CONSTRUCTION MANAGEMENT, INSPECTION AND CONTRACT**
2 **ADMINISTRATION**

3
4 10.1 The STATE will advertise the PROJECT for construction bids in accordance with
5 the current Washington State Department of Transportation Standard Specifications for
6 Road, Bridge, and Municipal Construction and the STATE's construction contract
7 documents, both as amended.

8
9 10.2 The STATE shall act as the sole authority in the administration of the PROJECT
10 construction contract. The STATE will designate a STATE Project Engineer to
11 administer and manage the construction contract for the PROJECT to ensure work is
12 constructed in accordance with the Approved Plans, the terms and conditions of the Street
13 Use Permits, this Agreement, the SCL Holgate to King Stage 1 Agreement, and the SPU
14 Holgate to King Stage 1 Agreement. The STATE may utilize a consultant(s) in providing
15 some or all of these services.

16
17 10.3 The STATE shall allow the CITY to consult with and make inquiries of the
18 STATE Project Engineer or designee, attend all meetings, and have access to all
19 documentation as to all matters concerning the PROJECT. The CITY shall not provide
20 direction, directly or indirectly, to the STATE's consultant(s) or contractors. Except in
21 the instances listed below, the CITY shall direct all communications to the STATE's
22 Project Engineer or designee, including communications regarding compliance with
23 Street Use Permits, quality of construction and contractor performance. The STATE will
24 manage any requests from the CITY that have contractual or scope-of-work impacts and
25 will coordinate responses. The CITY will communicate with STATE's consultants or
26 contractors (1) where authorized to do so by the STATE's Designated Representative; (2)
27 to arrange for regulatory permitting and inspections made pursuant to permits issued by
28 the CITY other than Street Use Permits, e.g. electrical permits or other permits obtained
29 from the CITY by the consultant or contractor; and (3) for the Street Use Permits, if
30 necessary because of a threat to health or safety.

31
32 10.4 The CITY will provide qualified staff and consultants during construction. CITY
33 staff and consultants will communicate with the STATE Project Engineer or designee in
34 evaluating the conformity of Infrastructure with the Approved Plans and will
35 immediately notify the Project Engineer or designee of any compliance issues.
36 Notwithstanding any act or omission by the CITY pursuant to this subsection, the STATE
37 shall not be relieved of any of its authority over, and responsibility for, the PROJECT, as
38 provided for in Section 10.2 of this Agreement or elsewhere in this Agreement.

39
40 10.5 SDOT will provide a City Construction Project Engineer tasked to: (1) coordinate
41 the use of City of Seattle inspectors, crews and consultants, (2) communicate with the
42 STATE Project Engineer regarding the CITY's positions relating to regulatory
43 compliance, changes in design, the CITY's participation in reviewing contractor
44 submittals, and the use of CITY resources, (3) coordinate the final inspection and
45 acceptance of Infrastructure with representatives from CITY departments, and (4) report
46 on construction progress and issues to City of Seattle department managers.



1
2 10.6 The CITY may observe testing and provide a written evaluation to the STATE
3 regarding whether the materials or facilities tested meet with the requirements of the
4 Approved Plans and construction contract documents. The STATE shall endeavor to
5 provide five (5) Business Days notice of all testing required by the Approved Plans, and
6 the CITY will be provided a copy of certified test reports. Testing and inspection of
7 CITY Infrastructure shall conform to the requirements of the CITY Standard
8 Specifications for Road, Bridge and Municipal Construction
9

10 10.7 The CITY shall provide for Street Use Permit inspections pursuant to Title 15 of
11 the Seattle Municipal Code, the Street Use Permit, and this Agreement.
12

13 10.8 The STATE's construction contract documents shall require the contractor to
14 prepare and submit a Submittal Control Document for review and approval by the
15 STATE, SPU, SCL and the SDOT by the date required by the construction contract
16 documents. The STATE, SPU, SCL and SDOT shall jointly prepare an agency draft of
17 the Submittal Control Document prior to contract award and identify which submittals
18 are to be provided for review and/or joint approval relating to Infrastructure. This Parties'
19 draft shall be used to assist in determining if the contractor's Submittal Control
20 Document is complete.
21

22 10.9 The CITY shall review all documents and reports included in the approved
23 Submittal Control Document, within ten (10) business days of the CITY's receipt, unless
24 the City of Seattle Standard Specifications for Road, Bridge and Municipal Construction
25 allow for a longer review period, and respond in a timely manner to requests for
26 information.
27

28 10.10 The STATE's Project Engineer will review and approve or reject all submittals
29 not requiring SPU, SCL or the SDOT approval.
30

31 10.11 Any and all services provided by the CITY are subject to all limitations on the
32 CITY's liability contained in this Agreement, including, but not limited to, those
33 contained in Section 16, Risk Allocation.
34
35

36 **11. MAINTENANCE OF TRAFFIC**

37

38 11.1 The Parties agree that it is the goal of this PROJECT to maintain local motorized
39 and non-motorized traffic in safe corridors within the construction site while minimizing
40 impact to the existing street system. To achieve this goal, the Parties shall formulate plans
41 to maintain traffic flow during construction of the PROJECT. The Parties agree to
42 develop an outreach plan specifically focused on maintenance-of-traffic issues. This
43 outreach plan will elicit input from affected stakeholders in the vicinity of the PROJECT.
44 Key stakeholders will be determined by the Parties.
45



1 11.2 The Parties shall formulate maintenance-of-traffic plans to provide for each of the
2 following:

3
4 11.2.1 Safe routing for pedestrian and bicycle traffic during construction in a
5 facility separated from motorized traffic through the construction site.

6
7 11.2.2 Access to the Port of Seattle and holding and queuing space for traffic
8 destined for Colman Dock.

9
10 11.2.3 Over-legal truck movements.

11
12 11.2.4 Minimizing impacts to traffic on 1st Avenue South.

13
14 11.2.5 Transit movement and access to transit in the corridor during construction.

15
16 11.2.6 Maintenance of traffic coordination with concurrent transportation
17 construction projects.

18
19
20 **12. FINAL INSPECTION AND PROJECT ACCEPTANCE**

21
22 12.1 Throughout construction of the PROJECT, CITY staff and consultants shall assist
23 the STATE Project Engineer in evaluating the quality of Infrastructure built by the
24 STATE's contractor. The STATE shall notify the CITY upon substantial completion of
25 the PROJECT work and shall invite the CITY to participate in a joint pre-final inspection
26 of the completed Infrastructure. The CITY shall timely inspect the completed
27 Infrastructure and shall exercise its right to approve or reject construction or materials
28 which are deficient, or which deviate from the Approved Plans, or any CITY- approved
29 revisions to the Approved Plans. The CITY shall submit a written response within ten
30 (10) Business Days of the date of the pre-final inspection, notifying the STATE of the
31 CITY's willingness to accept the completed Infrastructure, or rejecting the completed
32 Infrastructure. In the event that the completed Infrastructure is rejected, such response
33 shall include written notice of any known deficiencies and Defective Work so that the
34 STATE can use the response in its preparation of a contract punchlist.

35
36 12.2 The STATE shall timely address each deficiency and Defective Work identified
37 by the CITY during the pre-final inspection and shall resolve all deficiencies and
38 Defective Work to comply with CITY standards, CITY-Approved Plans, or any approved
39 revisions to the Approved Plans. If disagreements arise between the CITY and the
40 STATE on what constitutes Defective Work or a deficiency or whether the Infrastructure
41 constructed for the benefit of the CITY meets agreed upon requirements, the
42 disagreement shall be resolved using the dispute resolution process established in Section
43 20 of this Agreement. The CITY shall assist the STATE Project Engineer in determining
44 appropriate remedies for each deficiency and for Defective Work. Both Parties agree to
45 act as expeditiously as possible to assure a timely resolution of deficiencies and Defective
46 Work.



1
2 12.3 Once the STATE's Project Engineer determines that the STATE has remedied all
3 deficiencies and Defective Work identified by the CITY during the pre-final inspection,
4 the Project Engineer shall invite the CITY to timely participate in a joint final inspection
5 of the completed Infrastructure. The CITY shall submit a written response within ten (10)
6 Business Days of the date of the final inspection notifying the STATE of the CITY's
7 willingness to accept the completed Infrastructure for ownership and operation, or
8 notifying the STATE of any remaining deficiencies or Defective Work.
9

10 12.4 The CITY agrees, upon satisfactory completion of the PROJECT work, receipt of
11 the STATE's Notice of Substantial Completion to the STATE's contractor, successfully
12 placing City of Seattle utilities into operation, receipt from the STATE of one color set of
13 the Red-Line Plans, pursuant to Section 13.6, to deliver a Letter of Acceptance, subject to
14 any contractor claims caused by the negligent acts or omissions of the STATE in
15 administering the PROJECT contract. The Letter of Acceptance shall signify the CITY's
16 acceptance of Infrastructure to be owned by the CITY, and shall signify the STATE's
17 transfer of Infrastructure to be owned by the CITY. The Letter of Acceptance shall be
18 jointly executed by the Parties. The CITY may, at its discretion, issue one Letter of
19 Acceptance for all SCL, SPU and SDOT Infrastructure built by the STATE for the
20 PROJECT.
21

22 12.5 Once the terms outlined in Section 12.4 are satisfied, the CITY will deliver to the
23 STATE a signed Letter of Acceptance within ten (10) Business Days. Following receipt
24 of the Letter of Acceptance from the CITY, the STATE will sign the Letter of
25 Acceptance within ten (10) Business Days, completing joint execution of the document.
26

27 12.6 In instances where CITY Infrastructure must be placed into use and operation
28 prior to the STATE Project Engineer's notice of substantial completion, and after the
29 CITY has determined that this Infrastructure meets with the minimum inspection and
30 testing requirements necessary for placing the Infrastructure into use, the CITY will
31 notify the STATE in writing that it is assuming responsibility for and cost of the interim
32 use and operation of the Infrastructure until the STATE completes the PROJECT work
33 and the CITY accepts the Infrastructure.
34

35 12.7 The CITY will write a Letter of Acceptance at the end of the PROJECT unless
36 both Parties agree to phase Infrastructure acceptance by geographic areas. The Parties
37 may mutually agree to perform the pre-final inspection and final inspection procedures of
38 this Section, and the CITY may issue a Letter of Acceptance for portions of the
39 PROJECT. A Letter of Acceptance shall only be issued for geographic areas in which the
40 STATE has completed all PROJECT work and has satisfied the requirements of Section
41 12.4 for each geographic area. Roadway restoration will not be complete until all
42 roadways are fully open to public vehicular and pedestrian use.
43



1
2 **13. RED-LINES AND RECORD DRAWINGS**
3

4 13.1 The STATE shall prepare the final construction documentation in general
5 conformance with WSDOT's *Construction Manual*, WSDOT manual M4-01. The
6 STATE shall maintain one set of Approved Plans as the official contract drawings and
7 provisions to which the STATE shall make drawings and notations in either red ink or
8 red pencil to show the constructed configuration of all Infrastructure that deviates from
9 the design and contract requirements shown in the Approved Plans as typically recorded
10 per STATE and City of Seattle standard practices. These documents shall be referred to
11 as the Red-Line Plans.
12

13 13.2 The Red-Line Plans shall be kept current throughout construction with accurate
14 and comprehensive information detailing the constructed configuration of the
15 Infrastructure. The Red-Line Plans shall reflect the same level of detail as the Approved
16 Plans, and shall provide the drawing accuracy necessary for public and private utility
17 purveyors to locate their respective utilities in accordance with state law.
18

19 13.3 The STATE may choose to delegate preparation and maintenance of the Red-Line
20 Plans to its construction contractors. However, the STATE remains responsible for the
21 quality, condition and completion of Red-Line Plans. If the STATE chooses to delegate
22 these responsibilities, the STATE's construction contracts shall require contractors to
23 provide the STATE and the CITY access to the Red-Line Plans during the working hours
24 established in the STATE contract.
25

26 13.4 The STATE Project Engineer and the City Construction Project Engineer shall
27 jointly review the Red-Line Plans monthly to evaluate whether the Red-Line Plans reflect
28 a current, accurate and comprehensive record of the constructed configuration of the
29 Infrastructure. If the STATE Project Engineer or the City Construction Project Engineer
30 determine that the Red-Line Plans are not current, accurate or comprehensive, the
31 STATE shall immediately revise the Red-Line Plans to remedy deficiencies.
32

33 13.5 Prior to placing Infrastructure into service during the course of construction, the
34 STATE shall provide the CITY with color photocopies of portions of the Red-Line Plans
35 showing the constructed configuration of the Infrastructure being placed into service.
36

37 13.6 The STATE shall submit one color set of the completed Red-Line Plans prior to
38 the Parties executing the Letter of Acceptance provided for in Section 12.
39

40 13.7 At the conclusion of construction, the STATE shall prepare digital drawings
41 showing the constructed configuration of the Infrastructure in an AutoCAD digital format
42 (Record Drawings). The Record Drawings shall comply with the digital and graphical
43 standards of the City of Seattle Inter-Departmental CADD Standards. The STATE shall
44 provide the CITY with two (2) full-scale bond copies plus the digital files of the Record
45 Drawings within six (6) months after the Parties execute the Letter of Acceptance.
46



1
2 **14. WARRANTIES**

3
4 **12-month Warranty of Work**

5
6 14.1 The STATE warrants that all PROJECT Infrastructure being accepted by the
7 CITY for ownership, operation and maintenance: (1) meet with the requirements of the
8 Approved Plans, and all CITY-approved modifications to the Approved Plans made
9 during the course of construction; (2) are constructed in accordance with City-issued
10 permits; (3) are free of defects in material and workmanship; and (4) are free of defects in
11 design(s). This twelve- (12-) month Warranty of Work shall apply to any corrective work
12 required to address non-conforming and Defective Work that is discovered and
13 communicated by the CITY to the STATE for a period of twelve (12) months following
14 the CITY's Letter of Acceptance of PROJECT Infrastructure.
15

16 14.2 The STATE's Warranty of Work on City of Seattle Infrastructure and facilities
17 begin when the STATE's contractor's warranty of work begins, except that in no instance
18 shall the STATE's Warranty of Work to the CITY begin until the CITY and the STATE
19 have jointly executed the Letter of Acceptance.
20

21 14.3 If within the Warranty of Work period, the CITY discovers and gives written
22 notice to the STATE of non-conforming or Defective Work in the accepted
23 Infrastructure, the STATE shall promptly investigate the work the CITY believes is non-
24 conforming or defective. The STATE shall promptly remedy non-conforming or
25 Defective Work. Disagreements between the CITY and the STATE on what constitutes
26 non-conforming or Defective Work shall be resolved using the dispute resolution process
27 established in Section 20. The STATE shall diligently prosecute the corrective work and
28 shall procure materials using the fastest means available as necessary to minimize the
29 loss of use and operation of the accepted Infrastructure. Corrective work shall be
30 completed within the time frame specified by the CITY and mutually agreed upon by the
31 STATE.
32

33 14.4 If, during construction, the CITY encounters an emergency situation caused by
34 non-conforming or Defective Work, it must immediately notify the STATE. The STATE
35 will take immediate corrective action. If, after the warranty period begins, the CITY
36 encounters an emergency situation caused by non-conforming or Defective Work, it may
37 have to immediately correct it. Direct and indirect costs incurred by the CITY,
38 attributable to correcting an emergency situation associated with non-conforming or
39 Defective Work, shall be paid by the STATE to the CITY.
40

41 **Transfer of Title and Warranty of Title**

42
43 14.5 All right and title to the Infrastructure accepted by the CITY will be transferred by
44 the STATE to the CITY as of the date of the State's signature acknowledging the CITY's
45 Letter of Acceptance pursuant to the provisions of Section 12. Neither the STATE nor its



1 contractors shall hold a property right in any of the Infrastructure accepted by the CITY
2 for ownership, including the materials and equipment comprising the Infrastructure.

3 14.6 The STATE shall warrant good and merchantable title to all materials, supplies,
4 equipment and items installed or incorporated into the accepted Infrastructure. The
5 STATE shall further warrant that all Infrastructure transferred to, and accepted by, the
6 CITY is free from claims, liens and charges.

7 8 **Manufacturers' Warranties**

9
10 14.7 The STATE shall provide the CITY all manufacturers' and suppliers' guarantees
11 and warranties furnished to the STATE's contractor as a customary trade practice in
12 connection with the contractor's purchase of any equipment, materials, or items
13 incorporated into the Infrastructure. The STATE shall further warrant that it has the right
14 to transfer such warranties and guarantees furnished to the STATE through its
15 construction contract to the CITY and that such transfer shall not adversely affect such
16 warranties and guarantees. These guarantees and warranties shall not relieve the STATE
17 from its obligations under Warranty of Work.

18 19 **Warranty Inspections**

20
21 14.8 During the warranty period, the CITY shall have the right to inspect the accepted
22 Infrastructure for non-conforming and Defective Work, and will promptly report any
23 such work to the STATE for remedy through corrective work. The CITY shall bear the
24 cost of these inspections.

25 26 27 **15. PUBLIC OUTREACH**

28
29 15.1 The STATE agrees to lead and manage the public outreach effort for the
30 PROJECT. In recognition of the CITY's experience in working with the Seattle
31 community, the STATE will solicit CITY input and work with the CITY in all public
32 outreach activities. The STATE will not publicly distribute outreach information,
33 planning materials and documents without first obtaining the CITY's review. However,
34 the STATE shall be free to comply with any public records request received under
35 chapter 42.56 RCW for such materials, provided that prior to releasing any sensitive or
36 confidential material, the STATE shall first provide written notice to the CITY in
37 accordance with Section 26 of this Agreement.

38 39 40 **16. RISK ALLOCATION**

41 **16.1 Limits of Liability.**

42 16.1.1 No CITY Liability for Assistance, Inspection, Review, or Approvals. The
43 review or approval of any of the STATE's PROJECT plans or specifications, or the
44 inspection of the STATE's work, or any assistance provided to the STATE by the CITY
45 is for the CITY's sole benefit and shall not constitute an opinion or representation by the



1 CITY as to any compliance with any law, ordinance, rule, or regulation or any adequacy
2 for other than the CITY's own purposes; and such assistance, inspection, review or
3 approval shall not create or form the basis of any liability on the part of the CITY or any
4 of its officials, officers, employees, or agents for any injury, damage, or other liability
5 resulting from, or relating to, any inadequacy, error, or omission therein or any failure to
6 comply with applicable law, ordinance, rule, or regulation; and such assistance,
7 inspection, review, or approval shall not relieve the STATE of any of its obligations
8 under this Agreement, the SCL Holgate to King Stage 1, UT 01343 Agreement, and the
9 SPU Holgate to King Stage 1, UT 01342 Agreement or under applicable law.

10 16.1.2 No CITY Liability for Delay, Consequential, or Liquidated Damages. The
11 CITY shall not be liable in damages for any failure to act within any time limits
12 established by law or for any other delay in issuing permits, other approvals, or
13 concurrences to the STATE or the STATE's contractors, nor shall the CITY have any
14 liability for consequential or liquidated damages, and, to the maximum extent allowed by
15 law, the STATE shall protect, defend, indemnify, and save harmless the CITY, and its
16 officials, officers, employees, and agents, from any and all costs, claims, demands,
17 judgments, damages, or liability of any kind caused by, resulting from, relating to, or
18 connected to delays in issuing permits, other approvals, or concurrences.

19 16.1.3 No CITY Liability for Third Party Claims of Diminution in Value of
20 Property. The CITY shall not be liable in damages for any third party claims alleging
21 diminution in value of property, including, but not limited to, claims of elimination or
22 impairment of rights to light and air and quiet enjoyment, or alleging a taking of property
23 rights, nor shall the CITY have any liability for related consequential or liquidated
24 damages, and, to the maximum extent allowed by law, the STATE shall protect, defend,
25 indemnify, and save harmless the CITY, and its officials, officers, employees, and agents,
26 from any and all costs, claims, demands, judgments, damages, or liability of any kind
27 caused by, resulting from, relating to, or connected to the third party claims of diminution
28 in value of property arising out of the PROJECT.

29 16.1.4 STATE Contractor's Bonds. The STATE shall require its construction
30 contractors to provide performance bonds to the STATE and to maintain those bonds at
31 all times pertinent to the respective contractor's obligations under its contracts. The
32 penal sums of those bonds shall be commercially reasonable and consistent with the
33 limits set for similar projects. Such bonds shall be executed by an approved Surety that is
34 registered with the Washington State Insurance Commissioner, and that appears on the
35 current Authorized Insurance List in the State of Washington published by the Office of
36 the Insurance Commissioner, and that shall be conditioned upon the faithful performance
37 of the contract by the contractor. The STATE shall ensure faithful completion of the
38 PROJECT by use of the STATE's contractor bonds or other means, and in the event of
39 any claim for payment is presented to the CITY for any PROJECT work, the STATE
40 upon timely notice and investigation, resulting in STATE responsibility under this
41 Agreement, the SCL Holgate to King Stage 1, UT 01343 Agreement, and the SPU
42 Holgate to King Stage 1, UT 01342 Agreement shall promptly pay such claim.

43



1 16.2 General Indemnification.

2 16.2.1 Indemnity. To the extent permitted by law, the STATE shall protect,
3 defend, indemnify, and save harmless the City of Seattle and its officers, officials,
4 employees, and agents, while acting within the scope of their employment, from any and
5 all costs, claims, demands, judgments, damages, or liability of any kind, including
6 injuries to persons or damages to property, that arise out of, or in any way result from, or
7 are connected to, or are due to any acts or omissions, or intentional misconduct, of the
8 STATE or the STATE's contractors, consultants, or agents including any and all claims
9 and litigation arising out of, or resulting from, any state or federal environmental review
10 process in any way relating to the PROJECT. The STATE's obligations under this
11 paragraph also extend to claims asserted by third parties against the City of Seattle arising
12 out of, or in any way resulting from, any state or federal environmental review process in
13 any way related to the PROJECT or the PROGRAM, and all of the foregoing protection,
14 defense, indemnity and hold harmless obligations shall extend to claims asserted by State
15 agencies other than the Washington State Department of Transportation. The STATE
16 further agrees that the City of Seattle shall have no liability to the STATE, which in any
17 way arises out of the City of Seattle's decision making processes in agreeing to go
18 forward with the PROJECT, and the STATE shall not be required to indemnify, defend,
19 or save harmless the City of Seattle if the claim, suit, or action for injuries, death, or
20 damages is caused by the sole negligence of the City of Seattle. Where such claims, suits,
21 or actions result from the concurrent negligence of the Parties, the indemnity provisions
22 provided herein shall be valid and enforceable only to the extent of the STATE's own
23 negligence. In the event of any claims, demands, actions, or lawsuits, the STATE upon
24 notice from the City of Seattle, shall assume all costs of defense thereof, including legal
25 fees incurred by the City of Seattle, and of all resulting judgments that may be obtained
26 against the City of Seattle, to the extent of the STATE's liability. In the event that the
27 City of Seattle incurs attorneys' fees, costs, or other legal expenses to enforce the
28 indemnity provisions of this Agreement, the SCL Holgate to King Stage 1, UT 01343
29 Agreement, and the SPU Holgate to King Stage 1, UT 01342 Agreement, all such fees,
30 costs, and expenses shall be recoverable by the City of Seattle. Environmental protection
31 and indemnification, as provided elsewhere in this Agreement, shall be in addition to the
32 foregoing general indemnification.

33 16.2.2 Indemnity. To the extent permitted by law, the City of Seattle shall
34 protect, defend, indemnify, and save harmless the STATE and its officers, officials,
35 employees, and agents, while acting within the scope of their employment, from any and
36 all costs, claims, demands, judgments, damages, or liability of any kind, including
37 injuries to persons or damages to property, that arise out of, or in any way result from, or
38 are connected to, or are due to any acts or omissions, or intentional misconduct, of the
39 City of Seattle or the City of Seattle's contractors, consultants, or agents. The City of
40 Seattle shall not be required to indemnify, defend, or save harmless the STATE if the
41 claim, suit, or action for injuries, death, or damages is caused by the sole negligence of
42 the STATE. Where such claims, suits, or actions result from the concurrent negligence
43 of the Parties, the indemnity provisions provided herein shall be valid and enforceable
44 only to the extent of the City of Seattle's own negligence. In the event of any claims,
45 demands, actions, or lawsuits, the City of Seattle upon notice from the STATE, shall



1 assume all costs of defense thereof, including legal fees incurred by the STATE, and of
2 all resulting judgments that may be obtained against the STATE, to the extent of the City
3 of Seattle's liability. In the event that the STATE incurs attorneys' fees, costs, or other
4 legal expenses to enforce the indemnity provisions of this Agreement, the SCL Holgate to
5 King Stage 1, UT 01343 Agreement, and the SPU Holgate to King Stage 1, UT 01342
6 Agreement, all such fees, costs, and expenses shall be recoverable by the STATE.

7 16.2.3 Title 51 RCW. Solely with respect to claims for indemnification under this
8 Agreement, including environmental indemnification, the STATE and the City of Seattle
9 waive, as to each other only, and expressly not for the benefit of their employees or third
10 parties, their immunity under Title 51 RCW, the Industrial Insurance Act, and
11 acknowledge that this waiver has been mutually negotiated by the Parties. The STATE
12 and the City of Seattle agree that their respective indemnity obligations extend to any
13 claim, demand, or cause of action brought by, or on behalf of, any of their respective
14 employees or agents. The STATE agrees that in the event that any employee or agent of
15 the STATE's contractors, subcontractors, consultants, or agents asserts a claim against
16 the City of Seattle, the STATE waives any right it may have to assert its Title 51
17 immunity as a defense against a City of Seattle claim to the STATE that otherwise would
18 be covered by the STATE's indemnity obligations to the City of Seattle.

19 16.2.4 Survival of Indemnification Obligations. Any liability of the STATE or
20 the City of Seattle arising under any indemnity provision of this Agreement shall survive
21 termination of this Agreement, whether or not any claim giving rise to such liability shall
22 have accrued.

23
24 **17. INSURANCE**
25

26 17.1 The STATE shall require in writing that the STATE's contractors, and each of
27 their sub-contractors of any tier where not covered by contractor provided insurance,
28 include "The City of Seattle" as an additional insured for primary and non-contributory
29 limits of liability for Commercial General Liability, Commercial Automobile Liability
30 and (if required) Contractor's Pollution Liability as established in the construction
31 contract documents, including Products and Completed Operations coverage following
32 the completion of each PROJECT stage. STATE standard insurance specification
33 paragraph 1-07.18 (Public Liability and Property Damage Insurance) applicable to the
34 construction contract documents protecting both the STATE and the CITY for the
35 PROJECT shall be amended for coverages, minimum limits of liability and/or terms and
36 conditions as may be mutually agreed upon by the STATE and the CITY.
37

38 17.2 The STATE's contractors and subcontractors of any tier shall cause certification
39 of insurance meeting the requirements herein to be issued to "The City of Seattle, Risk
40 Management Division, P.O. Box 94669, Seattle, WA 98124-4669." Such certification
41 shall not be mailed, but shall be delivered electronically to fax number (206) 470-1279 or
42 as an e-mail attachment in PDF format to riskmanagement@seattle.gov.
43
44



1
2 **18. THIRD PARTY BENEFICIARY**
3

4 18.1 The STATE shall require the STATE’s contractors, consultants, and designers
5 and each of their subcontractors to perform the STATE’s work contemplated by this
6 Agreement, the SCL Holgate to King Stage 1, UT 01343 Agreement, and the SPU
7 Holgate to King Stage 1, UT 01342 Agreement at no cost to the City of Seattle; and
8 because a portion of the PROJECT will be conducted on City of Seattle Street Right-of-
9 Way and on or for the benefit of City of Seattle infrastructure, the contracts between the
10 STATE and its contractors, consultants, and designers will include the following:
11

12 “With respect to any and all of the City of Seattle’s interests, including, but not
13 limited to, excavation, restoration and traffic control responsibilities of the
14 STATE, the STATE and the contractor acknowledge that the City of Seattle is an
15 intended third party beneficiary and agree to include the City of Seattle as a third
16 party beneficiary of the STATE’s contracts and will accordingly include the City
17 of Seattle in the indemnification and insurance provisions contained in the
18 STATE’s contracts. The STATE and CITY do not intend that this paragraph be
19 interpreted to create any obligation, liability, or benefit to any third party, other
20 than the STATE and the City of Seattle for purposes of design and construction of
21 the PROJECT as described in this Agreement, the SCL Holgate to King Stage 1,
22 UT 01343 Agreement, and the SPU Holgate to King Stage 1, UT 01342
23 Agreement.”
24
25

26 **19. LIENS**
27

28 19.1 In the event that any City of Seattle-owned property interest becomes subject to
29 any claims for mechanics’, artisans’ or materialmen’s liens, or other encumbrances
30 chargeable to, or through, the STATE that the STATE does not contest in good faith, the
31 STATE shall cause such lien, claim, or encumbrance to be discharged or released of
32 record (by payment, posting of bond, court deposit, or other appropriate means), without
33 cost to the City of Seattle, and shall indemnify the City of Seattle against all costs and
34 expenses (including attorneys’ fees) incurred in discharging and releasing such claim,
35 lien, or encumbrance prior to completion of the PROJECT.
36
37

38 **20. DISPUTE RESOLUTION**
39

40 20.1 The CITY and the STATE shall make good faith efforts to resolve any dispute
41 arising under or in connection with this Agreement. The dispute resolution process
42 outlined in this Section applies to disputes arising under or in connection with the terms
43 of this Agreement, the SCL Holgate to King Stage 1, UT 01343 Agreement, and the SPU
44 Holgate to King Stage 1, UT 01342 Agreement. Disputes arising out of the CITY’s
45 regulatory decisions shall be decided in accordance with the appeal or enforcement
46 procedures applicable to the respective regulatory decisions.



1
2 20.2 Dispute Resolution Representatives.

3
4 20.2.1 The Dispute Resolution Representatives for the Parties are as follows:

5
6 For the STATE: Holgate to King Stage 1 Design Project Engineer or, if
7 applicable, Construction Project Engineer,
8 Alaskan Way Viaduct & Seawall Replacement Program
9 Washington State Department of Transportation
10 999 3rd Avenue, Suite 2424
11 Seattle, WA 98104

12
13 For the CITY: City Dispute Resolution Representative:
14 South Holgate to South King Street Viaduct
15 Replacement Project Manager, of if applicable, City
16 Construction Project Engineer
17 P.O. Box 34996
18 700 Fifth Avenue, Suite 3800
19 Seattle, WA 98124-4996

20
21 Seattle Light Dispute Resolution Representative:
22 SCL AWV Project Manager
23 P.O. Box 34023
24 700 Fifth Avenue, Suite 3200
25 Seattle, WA 98124-4023

26
27 Seattle Public Utilities Dispute Resolution
28 Representative:
29 SPU AWV Project Manager
30 P.O. Box 34018
31 700 Fifth Avenue, Suite 4900
32 Seattle, WA 98124-4018

33
34 20.3 Dispute Resolution Process. The Dispute Resolution Representatives established
35 above shall use their best efforts to resolve disputes between the Parties. If these
36 individuals are unable to resolve a dispute, the Deputy Director of the Seattle Department
37 of Transportation and the Deputy Regional Program Administrator for the Washington
38 State Department of Transportation Urban Corridors Office shall review the matter and
39 attempt to resolve it. If they are unable to resolve the dispute, the matter shall be
40 reviewed by the Director of the Seattle Department of Transportation and the Washington
41 State Deputy Secretary of Transportation. The Parties agree to exhaust each of these
42 procedural steps before seeking to resolve disputes in a court of law or any other forum.
43
44



1 **21. REMEDIES; ENFORCEMENT**

2
3 21.1 Subject to the Dispute Resolution provisions in Section 20, the City of Seattle and
4 the STATE shall have, in addition to any remedies available at law or equity, the right to
5 demand specific performance of this Agreement, the SPU Holgate to King Stage 1, UT
6 01342 Agreement, or the SCL Holgate to King Stage 1, UT 01343 Agreement.
7

8
9 **22. DESIGNATED REPRESENTATIVES**

10
11 22.1 The Designated Representatives for each Party are as follows:

12
13 STATE:

14 Deputy Program Director, Engineering and Operations
15 Alaskan Way Viaduct & Seawall Replacement Program
16 Washington State Department of Transportation
17 999 3rd Avenue, Suite 2424
18 Seattle, WA 98104
19

20 CITY:

21 SDOT Major Projects AWV Project Manager
22 Seattle Department of Transportation
23 P.O. Box 34996
24 700 Fifth Avenue, Suite 3800
25 Seattle, WA 98124-4996
26
27

28 **23. EFFECTIVENESS AND DURATION**

29
30 23.1 This Agreement shall be effective as of the date the last Party signs and, unless
31 sooner terminated pursuant to the terms hereof, shall remain in effect until final
32 completion of all Parties' obligations contained or referred to in this Agreement, the SCL
33 Holgate to King Stage 1, UT 01343 Agreement, and the SPU Holgate to King Stage 1,
34 UT 0342 Agreement.
35
36

37 **24. NOTICE**

38
39 24.1 Except for the Dispute Resolution Process in Section 20 above, for which notice
40 shall be given to the officials listed in Section 20.2, all notices, demands, requests,
41 consents and approvals that may or are required to be given by either Party to the other
42 Party shall be in writing and shall be deemed to have been duly given (i) upon actual
43 receipt or refusal to accept delivery if delivered personally to the Designated
44 Representative, (ii) upon actual receipt or refusal to accept delivery if sent by a nationally
45 recognized overnight delivery service to the Designated Representative, or (iii) upon
46 actual receipt if electronically transmitted to the Designated Representative with



1 confirmation sent by another method specified in this Section. Notice of a change of
2 Designated Representative or the address for the Designated Representative shall be
3 given as provided in this Section.
4
5

6 **25. TERMINATION**
7

8 25.1 This Agreement may be terminated by either Party upon thirty (30) days written
9 notice. Said notice shall set forth the reasons for termination, including reasons of
10 convenience, and the effective date of termination
11

12 25.2 Termination of this Agreement, the SCL Holgate to King Stage 1, UT 01343
13 Agreement, or the SPU Holgate to King Stage 1, UT 01342 Agreement shall not relieve
14 the Parties of any obligations that are unsatisfied at the time of termination, nor shall it
15 relieve the Parties of any obligations that are intended to survive termination of this
16 Agreement, the SCL Holgate to King Stage 1, UT 01343 Agreement, or the SPU Holgate
17 to King Stage 1, UT 0342 Agreement. Further, the Parties agree that, in the event the
18 STATE exercises its right to terminate pursuant to this Section after construction of the
19 PROJECT begins, then the STATE, at its cost and expense, shall modify the PROJECT,
20 in consultation with the CITY, to provide for the continued service, operation, and
21 maintenance of existing infrastructure and PROJECT Infrastructure, and the STATE shall
22 ensure that the modified PROJECT is completed.
23
24

25 **26. CONFIDENTIALITY OF INFORMATION AND RECORDS**
26

27 26.1 It is understood that certain information about the infrastructure is deemed by the
28 CITY to be sensitive and may be confidential under state or federal law. The STATE
29 agrees that all documents and information collected from field activities known to include
30 confidential information will be maintained in a locked file at the project office and
31 access will be controlled by its consultants. Furthermore, confidential information will
32 only be provided to the selected contractor in conformed documents following contract
33 award if such information is considered necessary for construction. The CITY will
34 provide clear written guidelines that specifically define the information that is deemed
35 sensitive and/or confidential.
36

37 26.2 Should any of those confidential or sensitive documents become the subject of a
38 request for public disclosure under chapter 42.56 RCW, the STATE shall use its best
39 efforts to immediately notify the CITY of such request and the date by which the STATE
40 anticipates responding, which date shall in no event be less than fifteen (15) calendar
41 days after STATE's first notice of the disclosure request to the CITY. The CITY must
42 then within a reasonable time of receipt of said notice in writing to the STATE (a)
43 specifically identify each record, or part thereof, and (b) fully explain why such
44 records(s) are exempt from disclosure under chapter 42.56 RCW or any other law so that
45 the STATE may respond to the records requester. The STATE shall withhold or redact



1 those public records which the CITY reasonably claims are exempt from disclosure based
2 upon the CITY's information. The CITY at its sole expense may seek a judicial
3 declaration or injunction with respect to the public records request. The CITY further
4 agrees that it will, at its sole expense, defend the non-disclosure of that information it
5 claims is exempt from disclosure and indemnify the STATE for any and all penalties
6 assessed and costs that the STATE incurs, if any.

7
8 26.3 The provisions of this Section survive the termination of this Agreement.
9

10 **27. GENERAL PROVISIONS**

11
12
13 27.1 This Agreement shall be effective independently from any and all permits that
14 may be issued by the CITY.

15 27.2 Each Party shall ensure that its employees, agents, and contractors comply with
16 the obligations of this Agreement.

17 27.3 The Parties shall not be deemed to be in default under this Agreement if
18 performance is rendered impossible by war, riots, or civil disturbances, or by floods or
19 other natural catastrophes beyond the Parties' control; the unforeseeable unavailability of
20 labor or materials; or labor stoppages or slow downs or power outages exceeding back-up
21 power supplies. This Agreement shall not be terminated or the Parties penalized for such
22 noncompliance, provided that each Party takes immediate and diligent steps to bring
23 itself back into compliance and to comply as soon as practicable under the circumstances
24 without unduly endangering the health, safety, or integrity of the Party's employees or
25 property, or the health, safety, or integrity of the public, street rights-of-way, public
26 property, or private property.

27 27.4 This Agreement including the definition of the PROJECT as more particularly
28 described in the Project Description attached as Exhibit A may be amended only by a
29 written instrument, duly authorized by the CITY and the STATE, and executed by their
30 duly authorized representatives.

31 27.5 No failure to exercise, and no delay in exercising, on the part of either Party
32 hereto, any rights, power, or privilege hereunder shall operate as a waiver thereof, except
33 as expressly provided herein.

34 27.6 This Agreement, together with the SCL Holgate to King Stage 1. UT 01343
35 Agreement and the SPU Holgate to King Stage 1, UT 01342 Agreement with the attached
36 Exhibits and the documents, terms and provisions incorporated in any of the foregoing,
37 constitute the entire agreement of the Parties with respect to the PROJECT, and
38 supersede any and all prior negotiations and understandings with respect hereto.

39 27.7 Section and subsection headings are intended as information only, and shall not
40 be construed with the substance of the section or subsection they caption.



1 27.8 All exhibits or other attachments are by this reference hereby incorporated into
2 this Agreement.

3 27.9 This Agreement may be executed in counterparts, each of which shall be deemed
4 an original, and all counterparts together shall constitute but one and the same instrument.

5 27.10 This Agreement shall be interpreted, construed, and enforced in accordance with
6 the laws of the State of Washington. The venue for any action under this Agreement
7 shall be in the Superior Court for King County, Washington.

8
9
10



1 IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the last
2 date written below.

3
4 CITY OF SEATTLE

WASHINGTON STATE
DEPARTMENT OF
TRANSPORTATION

5
6
7
8
9 By _____
10 Grace Crunican
11 Director of Transportation

By _____
John White
Program Director
Alaskan Way Viaduct and Seawall
Replacement Program

12
13
14
15 Date: _____

Date: _____

16
17
18 APPROVED AS TO FORM:

19
20
21 _____
By (print)

22
23
24
25
26 _____
Signature
Assistant Attorney General

27
28
29
30 Date: _____
31
32



GCA 5934
Exhibit A
Project Description

Alaskan Way Viaduct & Seawall Replacement Program
S. Holgate Street to S. King Street Viaduct Replacement Project, Stage 1:

The S. Holgate Street to S. King Street Viaduct Replacement Project, Stage 1 (PROJECT) is depicted on the Approved Plans and summarized as follows. All the stages of the S. Holgate Street to South King Street project together will replace about 40 percent of the existing viaduct. Stage 1 of construction for this project begins in summer 2009 with the relocation of communications, electrical, gas, water and other utilities throughout the project area. This work will set the stage for viaduct demolition and the ultimate road and bridge construction.

- Installation of approximately 2000 lineal feet of 26 kV electrical ductbank and seven vaults, including a new six-way 900 amp 26 kV switch in proposed panel vault #3, along the west side of East Marginal Way and Alaskan Way South from a point near South Massachusetts Street northward to the existing entrance to Port of Seattle Terminal 46;
- Installation of approximately 220 lineal feet of 954kcmil overhead 26 kV circuit electrical lines near East Marginal Way at the southern edge of the project;
- Installation of approximately 1600 lineal feet of 397kcmil overhead 26 kV circuit electrical lines through portions of Terminal 46 and along the west side of Alaskan Way South from Terminal 46 to South King Street; temporary tie back into the existing overhead 397kcmil on Port Property. This line is to be relocated to its permanent configuration in S. Holgate Street to S. King Street Viaduct Replacement Project, Stage 2;
- Installation of thirteen new overhead electrical poles to support the new 26 kV overhead electrical system;
- Demolition of approximately 4000 lineal feet of existing overhead 26 kV circuit electrical lines on the eastern edge of South Alaskan Way;
- Installation of water service lines to Terminal 46;
- Replacement of approximately 935 feet of restrained-joint watermains in South Royal Brougham Way, South Atlantic Street and South Alaskan Way;
- Installation of cathodic protection system on new watermains to include joint-bonding, magnesium anodes, and electrolysis test stations;
- Installation of approximately 350 feet of steel casing pipe for watermains crossing railroad tracks;
- Installation of communications vaults and ductbanks in South Royal Brougham Way, South Atlantic Street, East Marginal Way, South Dearborn Street, Railroad Way South and South Alaskan Way;
- Removal of existing communication lines from the viaduct structure. Temporary installation of an inverted syphon, approximately 65 feet long, on the existing



storm drainage system to allow the construction of new combined sewer, communications and water casing pipe at South Atlantic Street; and

- Installation of approximately 150 feet of steel casing pipe crossing the railroad for the future installation of re-routed combined sewer;
- Restoration of pavement associated with the utilities work.

- Other work to be done during Stage 1 includes:
 - temporary street lighting,
 - temporary erosion control,
 - temporary groundwater treatment and re-injection systems, and
 - temporary traffic control.



GCA 5934

Exhibit B – Project Property

1-22175 – Phillips/U-Park:

Fee- Legal Description

A triangular parcel of land being all of Lots 1 and 2 and a portion of Lot 3, Block 328, Map of Seattle Tide Lands, according to the official maps thereof on file in the office of the commissioner of Public Lands in Olympia, Washington, together bounded and described as follows:

Beginning at the north corner of said Block 328;
Thence southerly along the west line of said block a distance of 164.033 feet to a point in the westerly boundary line of Lot 3 in said block;
Thence north 89°01' east a distance of 98.25 feet, more or less, to a point in the easterly boundary line of said Block 328;
Thence north 30°30' west along the easterly boundary line of said block to the point of beginning.

1-12648 Trager Site:

Fee- Legal Description

Beginning at a point on the West line of Lot 4, Block 328 Map of Seattle Tideland, as shown on the official maps on file in the office of the Commissioner of Public Lands at Olympia, Washington, 25 feet North of the Southwest corner thereof; Thence East along the North line of Dearborn Street as now established, 145.30 feet more or less, to the Westerly margin of Railroad Way 97.80 feet to a point on the line between the old North and South docks; Thence South 89°01'00" West along said last mentioned line a distance of 98.25 feet, more or less, to the West line of Lot 3 in said block, Thence South along the West line of Lots 3 and 4 in said block, a distance of 82.63 feet, more or less to the point of beginning.

1-22178 WOSCA:

West Fee- Legal Description

That portion of the hereinafter tract of land lying within Parcel "A" described as follows:

**ATTACHMENT 1
EXHIBIT B**



Beginning at a point opposite Highway Engineer's Station 179+82± on the line survey of SR 99, S. Hinds St. to S. Dearborn St. and 342.44 feet Easterly therefrom, said point being on the Southerly line of said Parcel "A"; thence Northwesterly and Northerly to a point opposite Highway Engineer's Station 192+80± on the line survey of SR 99, S. Dearborn St. to Pine St. and 234.04 feet Easterly therefrom, said point being on the Northerly line of said Parcel "A"; thence Westerly to a point opposite said Highway Engineer's Station and 125 feet Easterly therefrom, said point also being the Northwest corner of said Parcel "A"; thence Southerly to a point opposite Highway Engineer's Station 179+21± on said line survey and 145 feet Easterly therefrom, said point being the Southwest corner of said Parcel "A"; thence Northeasterly to the point of beginning.

PARCEL A:

Lot 7 and the south 45 feet of Lot 6, Block 328;
Lots 1 through 7, inclusive, and Lots 13 through 19, inclusive, Block 329;
All in Seattle Tide Lands, as shown on the Official Maps on file in the office of Commissioner of Public Lands, in Olympia, Washington;

TOGETHER WITH that portion of vacated Dearborn Street lying between said Blocks 328 and 329, as vacated under City of Seattle Ordinance Number 9122;
EXCEPT that portion of Lot 7 of said Block 329, lying within the Plat of H.H. Dearborn's Replat of Block 329, according to the plat thereof recorded in Volume 9 of Plats, page 81, in King County, Washington;
AND EXCEPT the east 101.90 feet of Lots 14 through 19, inclusive, of said Block 329;
AND EXCEPT that portion of Lots 6 and 7, of said Block 328, and of Lots 1 through 5, inclusive, of said Block 329 and of vacated Dearborn Street lying between said Blocks 328 and 329, described as follows:

Beginning at the intersection of the southwesterly margin of Railroad Way South and the south margin of Dearborn Street as acquired by the City of Seattle under Ordinance Number 9189;

Thence west along said south margin 5 feet;

Thence southeasterly 47.93 feet to a point on the south line of Lot 6 of said Block 328, said point being 15 feet west from the southeast corner of said Lot 6;

Thence southerly 44.57 feet to a point being west 14.5 feet and north 40 feet from the southeast corner of Lot 7 of said Block 328;

Thence south along a line parallel with the east line of Blocks 328 and 329 and vacated Dearborn Street, 233.60 feet to a curve to the left, having a radius of 566 feet;

Thence southerly and southeasterly along said curve an arc distance of 95.35 feet to a point on the south line of Lot 3 of said Block 329, said point being 6.49 feet west from the southeast corner thereof;

Thence continuing along said curve to the left an arc distance of 1.92 feet to a point on a reverse curve having a radius of 418.24 feet;



Thence southerly along said curve to the right an arc distance of 71.89 feet to a point of tangency, said point being on the east line of Lot 5 of said Block 329, 46.58 feet north of the southeast corner thereof;

Thence north along the east line of Blocks 328, 329 and vacated Dearborn Street, 431.68 feet to the southwesterly margin of Railroad Way South;

Thence northwesterly along said southwesterly margin 68.40 feet to the point of beginning;

TOGETHER WITH Lots 1 through 8, inclusive, vacated Plummer Street and vacated alley adjoining, all in the plat of H.H. Dearborn's Replat of Block 329, according to the plat thereof recorded in Volume 9 of Plats, page 81, in King County, Washington.

1-18458 – Team Track:

Fee - Legal Description

Parcel A

That portion of Lots 1 to 11, inclusive, and Lot 17, Block 331, Seattle Tide Lands, in King County, Washington, as shown on the official maps on file in the Office of the Commissioner of Public Lands at Olympia, Washington, lying westerly of the following described line; Beginning at a point on the north line of Lot 1, said Block 331 lying 246.05 feet west from the northeast corner of Block 330, Seattle Tide Lands; Thence south $17^{\circ}20'41''$ west 246.56 feet to the beginning of a tangent curve concave southeasterly with a radius of 515.20 feet; Thence southwesterly along said curve $14^{\circ}07'37''$ an arc distance of 127.02 feet to the south line of Lot 17 of said Block 331; Thence westerly 38 feet, more or less, along the south lines of Lots 17 and 6 to a point 15 feet southeasterly of the Union Pacific Railroad Company's Railroad Tracks; Thence southwesterly 320 feet, more or less, to a point on the south line of Lot 11 lying 120.47 feet westerly of the southeast corner of Lot 11 and the terminus of said line.

Parcel B

A parcel of land being a portion of Lots 7 through 16, inclusive, Block 331, Seattle Tide Lands, in King County, Washington, as shown on the official maps on file in the Office of the Commissioner of Public Lands at Olympia, Washington, said portion being bounded as described as follows:

Beginning at the southeast corner of Lot 11 of said Block 331, said corner being on the north margin of Atlantic Street; Thence along said north margin of Atlantic Street, south $89^{\circ}59'28''$ west, 120.47 feet, more or less, to a point that is 15.0 feet normally distant southeasterly from the centerline of Track ICC-432 of the Oregon-Washington Railroad & Navigation Company, as now constructed and operated; Thence northeasterly, parallel



with and/or concentric with and 15.0 feet normally distant southeasterly from the centerlines of Tracks ICC-432, ICC-409, and ICC-410, 320.0 feet, more or less, to a point on the northerly line of Lot 7 of said Block 331; Thence along said northerly line and along the northerly line of Lot 16 of said Block 331, north 89°58'54" east, 38.0 feet, more or less, to the northwesterly corner of a parcel of land conveyed by Union Pacific Land Resources Corporation to American Warehouse Company by Warranty Deed dated August 10, 1977 and recorded under Recording Number 7710190028,

Thence along the westerly boundary line of said conveyed parcel, the following three (3) courses:

- 1) southerly, along a non-tangent curve to the left, the center of which bears east, having a radius of 706.78 feet, through a central angle of 3°11'14", an arc distance of 39.32 feet;
- 2) westerly, 1.30 feet;
- 3) southerly, 30.70 feet to the southwest corner of said conveyed parcel;

Thence southerly, along the westerly boundary line of a parcel of land as conveyed by Union Pacific Railroad Company to Evelyn M. Bernard and Arthur F. Bernard, and Donald J. Fortune and Edith M. Fortune, by Contract Agreement Number 89205, dated April 9, 1937, 230.0 feet to said north line of Atlantic Street; Thence along said north line, south 89°59'28" west, 23.5 feet, more or less, to the point of beginning.

EXCEPT that portion conveyed to the City of Seattle Department of Transportation by Deed recorded under Recording Number 20030612003261.

U.S. Coast Guard 1-22292:

Temporary Easement Area - Legal Description

The following described tract of land lying within the below described "Parcel A":

Beginning at a point opposite Highway Engineer's Station (hereinafter referred to as HES) 171+46.23 on the line survey of SR 99 S. Atlantic St. Vic. to S. Dearborn St. and 69.91 feet westerly there from;

Thence westerly to a point opposite HES 171+10.43 on said line survey and 184.72 feet westerly there from;

Thence northerly to a point opposite HES 171+44+/- on said line survey and 195.05 feet westerly there from;

Thence easterly to a point opposite HES 171+72.50 on said line survey and 102.27 feet westerly there from;



Thence southerly to the point of beginning.

PARCEL A:

That portion of the northeast quarter of Section 7 and the southeast quarter of Section 6, all in Township 24 North, Range 4 East, W.M., in King County, Washington, being portions of Seattle Dock Company's Replat of Lots 10 to 16, inclusive, of Block 369, Seattle Tide Lands, according to the plat thereof recorded in Volume 10 of Plats, page 61, in King County, Washington, and of vacated Mill Street, of vacated Centennial Place, of vacated Moran Place, of vacated alley between Blocks 5 and 6 of said replat, and of vacated Seattle Terminal railway track, all more particularly described as follows:

Beginning at the centerline intersection of South Atlantic Street and Alaskan Way South;
Thence south $17^{\circ}14'15''$ west a distance of 777.07 feet to the centerline intersection of South Massachusetts Street and Alaskan Way South;
Thence northwesterly along the centerline of South Massachusetts Street a distance of 434.71 feet;
Thence north $23^{\circ}09'23''$ east a distance of 50.00 feet to the northerly margin of said South Massachusetts Street and the TRUE POINT OF BEGINNING, said point being the TRUE POINT OF BEGINNING of the tract excepted from premises conveyed to the Port of Seattle under deed recorded under Recording Number 5895684;
Thence northwesterly along said northerly margin a distance of 703.31 feet to the east line of the east waterway;
Thence north $0^{\circ}00'00''$ east along said east line a distance of 232.35 feet to the inner harbor line;
Thence north $58^{\circ}03'34''$ east along said inner harbor line a distance of 138.40 feet;
Thence north $17^{\circ}14'15''$ east continuing along said inner harbor line a distance of 115.37 feet;
Thence north $90^{\circ}00'00''$ east a distance of 1,099.38 feet to the westerly margin of Alaskan Way South;
Thence south $17^{\circ}14'15''$ west along said westerly margin a distance of 36.56 feet to the most easterly corner of said excepted tract;
Thence south $89^{\circ}37'37''$ west along the line of said excepted tract; a distance of 15.30 feet;
Thence north $0^{\circ}27'45''$ west a distance of 4.50 feet;
Thence north $89^{\circ}57'35''$ west a distance of 157.37 feet;
Thence south $0^{\circ}03'05''$ west a distance of 269.04 feet;
Thence north $89^{\circ}55'00''$ west a distance of 68.15 feet;
Thence south $4^{\circ}23'28''$ west a distance of 220.56 feet;
Thence north $89^{\circ}56'07''$ west a distance of 261.36 feet;
Thence south $23^{\circ}09'23''$ west a distance of 189.51 feet to the TRUE POINT OF BEGINNING,



TOGETHER WITH that portion of South Massachusetts Street adjoining vacated under City of Seattle Ordinance #108079 and recorded under Recording Number 7903270847 which attached by operation of law.

TOGETHER WITH that portion of the northeast quarter of Section 7 and the southeast quarter of Section 6, all in Township 24 North, Range 4 East, W.M., in King County, Washington, being portions of Seattle Dock Company's Replat of Lots 10 to 16, inclusive, of Block 369, Seattle Tide Lands, according to the plat thereof recorded in Volume 10 of Plats, page 61, in King County, Washington, and of vacated Moran Place, and of vacated Seattle Terminal railway track, all more particularly described as follows: Beginning at the intersection of the northerly margin of South Massachusetts Street with the westerly margin of Railroad Avenue (Alaskan Way);

Thence north 66°45'14" west along the northerly margin of said Massachusetts Street a distance of 361.59 feet;

Thence north 23°09'23" east a distance of 189.51 feet;

Thence south 89°56'07" east a distance of 261.36 feet;

Thence north 4°23'28" east a distance of 220.56 feet;

Thence south 89°55'00" east a distance of 68.15 feet;

Thence north 0°03'05" east a distance of 269.04 feet;

Thence south 89°57'35" east a distance of 157.37 feet;

Thence south 0°27'45" east a distance of 4.50 feet;

Thence north 89°37'37" east a distance of 15.30 feet to the westerly margin of Railroad Avenue (Alaskan Way);

Thence south 17°14'15" west along said westerly margin a distance of 653.80 feet to a point of curve;

Thence along the arc of a curve to the right, said curve having a radius of 1430.33 feet, through a central angle 7°35'00", a distance of 189.31 feet to the TRUE POINT OF BEGINNING.

Port of Seattle - Terminal 46:

***Partial Fee Simple Tract - Legal Description
(Including temporary Seattle City Light Facilities)***

All that portion of the hereinafter described Parcel G lying easterly of the following described line:

Beginning at a point opposite Highway Engineer's Station (hereinafter referred to as HES) 171+46.23 on the SR 99 line survey of SR 99, S. Atlantic St. Vic. to S. Dearborn St. and 69.91 feet westerly therefrom;

Thence northwesterly to a point opposite HES 171+72.50 on said line survey and 102.27 feet northwesterly therefrom;

Thence northerly, to a point opposite HES 172+55.94 on said line survey and 107.61 feet

GCA 5934, Exhibit B

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**ATTACHMENT 1
EXHIBIT B**



westerly therefrom;
Thence northeasterly, to a point opposite HES 172+82.31, on said line survey and 92.77 feet westerly therefrom;
Thence northerly to a point opposite HES 173+64.42 on said line survey and 101.47 feet westerly therefrom;
Thence northerly, to a point opposite HES 173+72.22, on said line survey and 102.30 feet westerly therefrom;
Thence northerly to a point opposite HES 173+94.82 on said line survey and 101.76 feet westerly therefrom;
Thence northerly, to a point opposite HES 177+12.54, on said line survey and 94.17 feet westerly therefrom;
Thence easterly to a point opposite HES 177+15± on said line survey and 86.63 feet westerly therefrom, said point being on the southerly boundary of a tract of land conveyed in deed recorded under King County Recording Number 6437098;
Thence easterly, to a point opposite HES 177+16 on said line survey and 83 feet westerly therefrom;
Thence northerly, to a point opposite HES 177+27.46, on said line survey and 86.56 feet westerly therefrom;
Thence northeasterly, to a point opposite HES 177+47.48, on said line survey and 76 feet westerly therefrom;
Thence northerly to a point opposite HES 177+80.61 on said line survey and 86.28 feet westerly therefrom;
Thence northerly, to a point opposite HES 177+95.24, on said line survey and 90.82 feet westerly therefrom;
Thence northeasterly to a point opposite HES 178+12.41 on said line survey and 86.95 feet westerly therefrom;
Thence northeasterly to a point opposite HES 178+35 on said line survey and 81.85 feet westerly therefrom;
Thence northeasterly, to a point opposite HES 179+07.32, on said line survey and 65.56 feet westerly therefrom;
Thence northerly, to a point opposite HES 180+20.82, on said line survey and 69.24 feet westerly therefrom;
Thence northwesterly to a point opposite HES 180+37.39 on said line survey and 71.44 feet northwesterly therefrom;
Thence northerly to a point opposite HES 180+52.39 on said line survey and 73.44 feet northwesterly therefrom;
Thence northerly, to a point opposite HES 182+19.08, on said line survey and 95.61 feet westerly therefrom;
Thence northerly to a point opposite HES 184+49.82, on said line survey and 93.18 feet westerly therefrom;
Thence northerly, to a point opposite HES 186+49.82, on said line survey and 87.84 feet westerly therefrom;
Thence northerly, to a point opposite HES 189+67 on said line survey and 89.33 feet westerly therefrom;



Thence northerly to a point opposite HES 192+00 on said line survey and 82.66 feet westerly therefrom;
Thence northerly, to a point opposite HES 192+80.95, on the SR 99 line survey of SR 99, S. Dearborn St. to Pine St. and 80.35 feet westerly therefrom;
Thence northerly, to a point opposite HES 193+80.68, on said line survey and 78.42 feet westerly therefrom;
Thence northerly to a point opposite HES 199+83± on said line survey and 83.21 feet westerly therefrom; said point being on the southerly boundary of a tract of land conveyed in deed recorded under King County Recording Number 6437099;
Thence easterly along said southerly boundary to a point opposite said HES and 55 feet westerly therefrom, said point also being the southeasterly corner of that tract of land conveyed in deed under King County Recording No. 64737099;
Thence northerly, parallel with said line survey, to a point opposite HES 202+30 thereon and the end of this line description.

Temporary Construction Easement #1 - Legal Description

A tract of land lying within the hereinafter described Parcel G described as follows:

Beginning at a point opposite Highway Engineer's Station (hereinafter referred to as HES) 171+71.67 on the SR 99 line survey of SR 99, S. Atlantic St. Vic. to S. Dearborn St. and 111.04 feet westerly therefrom,
Thence northwesterly to a point opposite HES 172+22.42 on said line survey and 215.35 feet westerly therefrom;
Thence northerly to a point opposite HES 173+99.96 on said line survey and 305 feet westerly therefrom;
Thence northerly, parallel with said line survey, to a point opposite HES 174+39.96 thereon;
Thence southeasterly to a point opposite said HES and 115 feet westerly therefrom;
Thence southerly to the point of beginning.

***Temporary Construction Easement #2 - Legal Description
(Seattle City Light Temporary Construction Easement)***

A tract of land lying within the hereinafter described Parcel G described as follows:

Beginning at a point opposite Highway Engineer's Station (hereinafter referred to as HES) 173+64.42 on the SR 99 line survey of SR 99, S. Atlantic St. Vic. to S. Dearborn St. and 101.47 feet westerly therefrom;
Thence northerly to a point opposite HES 174+31.62 on said line survey and 161.29 feet westerly therefrom;
Thence northeasterly to a point opposite HES 174+36.74 on said line survey and 161.23



feet westerly therefrom;
Thence northeasterly to a point opposite HES 174+39.96 on said line survey and 161.21 feet westerly therefrom;
Thence northeasterly to a point opposite HES 177+15.44 on said line survey and 159.65 feet westerly therefrom;
Thence northeasterly to a point opposite HES 178+97.19 on said line survey and 74.95 feet westerly therefrom;
Thence northeasterly to a point opposite HES 180+37.39 on said line survey and 71.44 feet westerly therefrom;
Thence southerly to a point opposite HES 180+20.82 on said line survey and 69.24 feet westerly therefrom;
Thence southwesterly to a point opposite HES 179+07.32 on said line survey and 65.56 feet westerly therefrom;
Thence southwesterly to a point opposite HES 178+35 on said line survey and 81.85 feet westerly therefrom;
Thence southwesterly to a point opposite HES 177+36.08 on said line survey and 127.97 feet westerly therefrom;
Thence southerly to a point opposite HES 177+16± on said line survey and 121.88 feet westerly therefrom, said point being on the westerly boundary of a tract of land conveyed in deed recorded under King County Recording Number 6437098;
Thence westerly to a point opposite HES 177+10.94 on said line survey and 139.68 feet westerly therefrom;
Thence Southwesterly to a point opposite HES 175+67.97 on said line survey and 140.88 feet westerly therefrom;
Thence southwesterly to a point opposite HES 174+39.96 on said line survey and 141.95 feet westerly therefrom;
Thence southerly to a point opposite HES 173+94.82 on said line survey and 101.76 feet westerly therefrom;
Thence southwesterly to a point opposite HES 173+72.22 on said line survey and 102.30 feet westerly therefrom;
Thence southwesterly to the point of beginning.

Temporary Construction Easement #3 - Legal Description

A tract of land lying within the hereinafter described Parcel G described as follows:

Beginning at a point opposite Highway Engineer's Station (hereinafter referred to as HES) 171+70 +/- on the SR 99 line survey of SR 99, S. Atlantic St. Vic. to S. Dearborn St. and 110.98 feet westerly therefrom, said point also being on the southerly line of said Parcel G;
Thence northeasterly to a point opposite HES 171+71.67 on said line survey and 111.04 feet westerly therefrom;
Thence northeasterly to a point opposite HES 174+39.96 on said line survey and 115 feet



westerly therefrom;
Thence northeasterly parallel with said line survey to a point opposite HES 177+06.08 thereon;
Thence easterly to a point opposite HES 177+12.54 on said line survey and 94.17 feet westerly therefrom;
Thence southwesterly to a point opposite HES 173+94.82 on said line survey and 101.76 feet westerly therefrom;
Thence southwesterly to a point opposite HES 173+72.22 on said line survey and 102.30 feet westerly therefrom;
Thence southwesterly to a point opposite HES 173+64.42 on said line survey and 101.47 feet westerly therefrom;
Thence southerly to a point opposite HES 172+82.31 on said line survey and 92.77 feet westerly therefrom;
Thence southwesterly to a point opposite HES 172+55.94 on said line survey and 107.61 feet westerly therefrom;
Thence southerly to a point opposite HES 171+72.50 on said line survey and 102.27 feet westerly therefrom;
Thence westerly to the point of beginning.

Temporary Construction Easement #6 - Legal Description

A tract of land, lying within the hereinafter described Parcel G, described as follows:

Beginning at a point opposite Highway Engineer's Station (hereinafter referred to as HES) 174+39.96 on the SR 99 line survey of SR 99, S. Atlantic St. Vic. to S. Dearborn St. and 176.21 feet westerly therefrom;
Thence northerly to a point opposite HES 177+18.81 on said line survey and 174.63 feet westerly therefrom;
Thence northeasterly to a point opposite HES 179+00.69 on said line survey and 89.86 feet westerly therefrom;
Thence northerly to a point opposite HES 180+37.77 on said line survey and 86.44 feet westerly therefrom;
Thence easterly to a point opposite HES 180+52.39 on said line survey and 73.44 feet westerly therefrom;
Thence southerly to a point opposite HES 180+37.39 on said line survey and 71.44 feet westerly therefrom;
Thence southerly to a point opposite HES 178+97.19 on said line survey and 74.95 feet westerly therefrom;
Thence southwesterly to a point opposite HES 177+15.44 on said line survey and 159.65 feet westerly therefrom;
Thence southerly to a point opposite HES 174+39.96 on said line survey and 161.21 feet westerly therefrom;
Thence westerly to the point of beginning.



PARCEL G (Port of Seattle Terminal 46)

Lots 1 through 18, inclusive, Block 367, Lots 1 through 19, inclusive, Block 368, and Lots 1 through 9, inclusive, Block 369, Seattle Tide Lands, as shown on the official maps on file in the Office of the Commissioner of Public Lands at Olympia, Washington;

TOGETHER WITH that portion of South Jackson Street adjoining, vacated by Ordinance Number 92426 of the City of Seattle, and attaching thereto by operation of law;

AND TOGETHER WITH that portion of South Dearborn Street as vacated in City of Seattle Ordinance Number 9122;

AND TOGETHER WITH that portion of vacated South Connecticut Street as vacated by Ordinances 72934 and 100285 as recorded under Recording Number 7110060503, which attaches by operation of law;

AND TOGETHER WITH that portion of vacated Mill Street which attaches by operation of law and was vacated by Ordinance 37911;

AND TOGETHER WITH all that portion lying within Black's Replat of Portions of Lots 18 and 19, Block 368, Seattle Tide Lands, according to the plat thereof recorded in Volume 11 of Plats, page 10, in King County, Washington;

AND TOGETHER WITH that portion of vacated South Connecticut Street as vacated by Ordinances 72934 and 100285 as recorded under Recording Number 7110060503, which attaches by operation of law;

EXCEPTING THEREFROM that portion of Lot 4 and 5, Block 367, conveyed to the municipality of Metropolitan Seattle, a municipal corporation, by Quit Claim Deed recorded under Recording Number 6437099 and subsequently conveyed to King County by Recording Number 9312282785.

AND EXCEPTING THEREFROM that portion of Lot 1, Block 369 described as follows:

Beginning on the north line of said Lot 1 at a point distant 75 feet westerly along said north line from the northeast corner of said Lot 1;

Thence southerly at right angles to said north line a distance of 28 feet;

Thence easterly at right angles to said last described line a distance of 37 feet;

Thence northeasterly at right angles to said last-described line a distance of 12 feet;

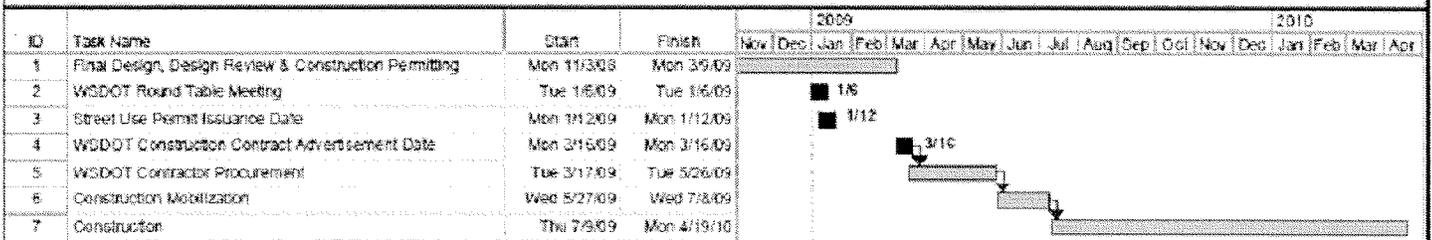
Thence northeasterly a distance of 22.62 feet to an intersection with the north line of said Lot 1 at a point distant 22 feet westerly from the northeast corner of said Lot 1;

Thence westerly along said north line to a point of beginning.



Exhibit C - Project Schedule

SR 99 Viaduct Replacement from South Holgate Street to South King Street Stage 1



MEMORANDUM OF AGREEMENT
NO. UT 01343
SR 99 ALASKAN WAY VIADUCT
SCL FACILITIES WORK – FOR SR 99 SOUTH HOLGATE STREET TO
SOUTH KING STREET VIADUCT REPLACEMENT PROJECT,
STAGE 1

THIS Memorandum of Agreement No. UT 01343, for SCL Facilities Work – SR 99 South Holgate Street to South King Street Viaduct Replacement Project, Stage 1 (“SCL Holgate to King Stage 1 Agreement”) is made and entered into between the State of Washington Department of Transportation, hereinafter the “STATE,” and the City of Seattle, hereinafter the CITY, (managed by Seattle City Light, hereinafter “SCL”), collectively the “Parties” and individually the “Party.”

WHEREAS, the Alaskan Way Viaduct (the Viaduct) and Seawall are at risk of sudden and catastrophic failure in an earthquake and are nearing the end of their useful lives; and

WHEREAS, the STATE and the Federal Highway Administration (FHWA), in consultation with the CITY, are proposing improvements to State Route 99 (SR 99) a, non-limited access highway which include the Viaduct and the seawall; and

WHEREAS, in March, 2007, the Governor, the King County Executive, and the Mayor of Seattle pledged to advance a series of key SR 99 projects (Moving Forward Projects) that will facilitate the removal and/or repair of key portions of SR 99, which are: Yesler Way Vicinity Stabilization Project, Electrical Line Relocation (formerly known as Electrical Utility Relocation Phase 1 under agreement No. UT01148), Battery Street Tunnel Fire and Life Safety Upgrades, SR 99 Lenora to Battery Street Tunnel Improvements, the SR 99 South Holgate Street to South King Street Viaduct Replacement Project, and Transit Enhancements and Other Improvements; and

WHEREAS, in January 2009, the Governor, the King County Executive and the Mayor of Seattle reached an agreement recommending a solution for replacing the existing viaduct structure in the central waterfront area (Central Waterfront Decision); and,

WHEREAS, taken together, the Moving Forward Projects and the Central Waterfront Decision are known as the PROGRAM; and

WHEREAS, the STATE intends to remove a portion of the viaduct structure as part of one of the Moving Forward Projects, the SR 99 South Holgate Street to South King Street Viaduct Replacement Project by December 31, 2012. The South Holgate Street to South King Street Viaduct Replacement Project will replace the Viaduct's south end with a new side-by-side surface and aerial roadway that connects to the existing Viaduct, provide new SR 99 on- and off-ramps near S. King Street, create an underpass below SR 99 on



the north side of South Atlantic Street, and build new bicycle/pedestrian paths on the east and west sides of SR 99. The South Holgate Street to South King Street Project Viaduct Replacement Project will be carried out in stages. Stage 1 of the South Holgate Street to South King Street Viaduct Replacement Project (the "PROJECT" as defined under section 2.19 and Exhibit A of the SDOT Holgate to King Stage 1 No. GCA_5934 Agreement is the subject of this Agreement; and

WHEREAS, the PROJECT will require the relocation and/or protection of significant existing electrical facilities, and construction of new facilities and services; and

WHEREAS, the Parties agree that the STATE will perform the design and construction of the SCL Facilities Work, as well as the procurement of any and all construction materials that are required to meet schedule requirements; and

WHEREAS, concurrently with this SCL Holgate to King Stage 1 Agreement No. UT 01343, the STATE and CITY are entering into a Memorandum of Agreement, No. GCA 5934, for Property, Environmental Remediation, Permitting, and Construction Coordination Agreement for SR 99 Viaduct Removal from South Holgate to South King Street Stage 1 ("SDOT Holgate to King Stage 1 Agreement"); and

WHEREAS, concurrently with this SCL Holgate to King Stage 1 Agreement No. UT 01343, the STATE and CITY, through Seattle Public Utilities, are entering into a Memorandum of Agreement, No. UT01342, for SPU Facilities Work – SR 99 Viaduct Removal from South Holgate to South King Street Stage 1, ("SPU Holgate to King Stage 1 Agreement");

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performances contained herein, or attached and incorporated and made a part hereof,

IT IS MUTUALLY AGREED AS FOLLOWS:

1. INTENT

1.1 The Parties agree to do the following throughout the PROJECT as defined below:

a. The Parties agree to work cooperatively with each other and shall make reasonable, good faith efforts to timely and expeditiously complete the PROJECT, as provided in this SCL Holgate to King Stage 1 Agreement No. UT 01343, including, but not limited to, the selection of a preferred design alternative; development of preliminary engineering and final design with consideration of long-term operation and maintenance costs in addition to construction cost, plans and specifications, and cost estimates; execution of any necessary utility easements; and procurement of any required materials included in the construction contract for SCL Facilities relocations.



b. The STATE will provide complete design submittals, construction submittals, construction changes and additional information as required by SCL in a timely manner that will allow SCL adequate review periods to review and comment on the proposed plans and make reasonable efforts to allow the PROJECT to proceed on schedule. The STATE shall timely incorporate and/or address to the STATE's and SCL's satisfaction, any SCL comments on the design submittals or additional information provided by the STATE, including revisions to the Approved Plans, pursuant to Section 5 herein.

c. SCL agrees to provide sufficient staff and resources for timely reviews of the PROJECT design as agreed upon in this SCL Holgate to King Stage 1 Agreement.

d. SCL shall provide clear and complete design review for SCL purposes in accordance with Section 7 of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934. Both Parties shall endeavor to identify and address issues as early as possible during the design process and to communicate clearly with one another.

e. Both Parties shall participate in regularly scheduled coordination meetings to address issues that may affect the PROJECT scope, schedule or budget.

f. The STATE and SCL agree to document key design-related decisions to ensure that issues are resolved to the STATE's and SCL's satisfaction, pursuant to Section 5 herein, so that the STATE can proceed with the design of the PROJECT. These decisions will be evidenced through the use of a Concurrence Letter signed by both Parties.

g. The STATE agrees to take the lead in consulting and coordinating with all other utilities affected by the PROJECT.

h. The STATE acknowledges that it bears the sole responsibility for all regulatory permitting of the PROJECT and shall design and construct the PROJECT in compliance with all applicable federal, state and local laws and regulations, and in accordance with the provisions of the SDOT Holgate to King Stage 1 Agreement.

i. The STATE, in conjunction with its consultants and subject to SCL approval for SCL purposes, will continue to develop a feasible end to end, permanent relocation solution acceptable to SCL for the SCL Facilities that would minimize or eliminate the need for multiple relocations and meet operational standards, capacity equivalents and ongoing maintenance and safety requirements.

2. DEFINITIONS

2.1 Approved Plans means the construction plans and provisions that evidence the CITY's determination, through the processes described in Section 7, of the SDOT Holgate to King Stage 1 Agreement, that the plans conform to the Street Use Code and other requirements and that plan review comments are resolved to both Parties'



satisfaction. Approved Plans are included in the STATE's advertisement for bids, or supplementation thereto, and evidence the agreement between the STATE and its contractors for construction of the PROJECT.

2.2 AWV means the Alaskan Way Viaduct on State Route 99, a non-limited access highway, over a portion of a CITY Street Right-of-way and located partially in the City of Seattle.

2.3 Betterment means any upgrading of the SCL Facilities being relocated, or the design and construction of any new SCL Facilities, that is not attributable to the PROJECT or PROGRAM and is made solely for the benefit of and at the election of SCL. Examples of work that will not constitute a Betterment, so that SCL shall not bear cost responsibility, are:

- a) If existing devices or materials are no longer regularly manufactured or cannot be obtained in time to meet the PROJECT schedule, needs or requests by the STATE, then devices or materials of equivalent standards although not identical, of the next highest grade or size; or
- b) Upgrades to SCL Facilities necessary to meet current code requirements and SCL published standards; or
- c) Work required by SCL to maintain current service and capacity; or
- d) Work required by current design and construction practices regularly followed by SCL in its own work and/or considered an industry design or construction standard.

2.4 Business Days means Monday through Friday, inclusive, except for official City of Seattle and STATE holidays.

2.5 CITY means the City of Seattle, a Washington municipal corporation, acting through SDOT.

2.6 City of Seattle means the CITY.

2.7 Concurrence Letter means one or more letters, drafted by either the STATE or SCL, and signed by both, evidencing key design-related decisions to ensure that issues are resolved to the STATE and SCL's satisfaction.

2.8 Contract Award means the STATE's written decision accepting the lowest responsive bid for construction of the PROJECT.

2.9 Defective Work means design or construction work or materials that fail to comply with the Approved Plans, City of Seattle approved modifications to the Approved Plans, and/or the laws, rules, regulations and standards as specified in this Agreement.

2.10 Designated Representative means the SCL official listed in Section 4.2 of this SCL Holgate to King Stage 1 Agreement.



2.11 Engineer of Record means the engineer licensed in the State of Washington who has been designated by the STATE as the prime engineer for the PROJECT, having overall responsibility for the adequacy of the design and the coordination of the design work of other engineers and whose professional seal is on the Approved Plans.

2.12 Infrastructure means the portions of SPU Facilities, SCL Facilities and roadway improvements constructed or modified as part of the PROJECT, to be owned, operated and/or maintained by the CITY.

2.13 Letter of Acceptance means the written document prepared by the CITY and delivered to the STATE that signifies the City of Seattle's approval of the PROJECT Infrastructure built by the STATE's contractor; the CITY's issuance and STATE's acknowledgment of the Letter of Acceptance effects transfer of Infrastructure ownership and obligations for operation and maintenance as agreed by the Parties.

2.14 Letter of Plan Approval means the letter provided to the STATE by the CITY following the completion of the plan review process, signifying that the final plans and specifications have been approved by the City of Seattle.

2.15 New Work means the design and construction by or at the direction of SCL of a new utility other than (a) as part of a relocation associated with the PROGRAM, or (b) to provide service to the PROJECT. New Work shall be entirely the financial obligation of SCL.

2.16 Plans, Specifications, and Estimate ("PS&E") means the portion of the PROJECT engineering after the Preliminary Engineering, which advances the PROJECT design by preparing contract-ready documents and the engineer's cost estimate. At this stage the specifications are written and tailored to the plans so that all work can be measured and has a pay item. The cost estimate is formalized using the established specifications, pay items and quantity takeoffs, for 60% through 100% completion of the total design effort.

2.17 Preliminary Engineering means the portion of the PROJECT engineering succeeding conceptual engineering, which advances the PROJECT design to address Type, Size, and Location ("TS&L") for all components of the PROJECT including the final SPU Facilities and SCL Facilities. Typically this effort includes work that advances the design from nominally 30% up to nominally 60% of the total design effort.

2.18 PROGRAM means all of the projects, collectively, implemented by the STATE that remove and replace the AWV and the Seawall.

2.19 PROJECT means the SR 99 South Holgate Street to South King Street Viaduct Replacement Project, Stage 1, as described in Exhibit A of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934.



2.20 Project Schedule means the schedule of design, permitting and construction events identified in Exhibit C to the SDOT Holgate to King Stage 1 Agreement No. GCA 5934 and agreed to by the Parties, as it may be amended from time to time by agreement of the Parties.

2.21 SCL means Seattle City Light.

2.22 SCL Facilities means the electrical facilities impacted by, or constructed as part of the PROJECT that are owned by the CITY or to be owned by the CITY.

2.23 SCL Facilities Work means work required to design, construct and protect the SCL Facilities as part of the PROJECT.

2.24 SDOT means the Seattle Department of Transportation.

2.25 SDOT Holgate to King Stage 1 Agreement means the Memorandum of Agreement, No. GCA 5934, SR-99 Alaskan Way Viaduct, Property, Environmental Remediation, Permitting, and Construction Coordination Agreement – SR 99 Viaduct Removal from South Holgate Street to South King Street Stage 1 between the STATE and the City of Seattle acting through SDOT.

2.26 Specialty Work means the construction and installation of all 13.8kV or above rated equipment and associated materials and Infrastructure needed to accomplish the SCL Facilities Work.

2.27 SPU means Seattle Public Utilities.

2.28 SPU Holgate to King Stage 1 Agreement means the Memorandum of Agreement, No. UT 01342, for SPU Facilities Work – SR 99 Viaduct Removal from South Holgate to South King Street Stage 1, between the STATE and the City of Seattle acting by and through Seattle Public Utilities.

2.29 STATE means the State of Washington Department of Transportation.

2.30 STATE Designated Representative means the State of Washington official listed in Section 4.2 of this Agreement.

2.31 Temporary Construction Easements means temporary easements required to construct the PROJECT.

3. STATE AND SCL RESPONSIBILITIES FOR SCL FACILITIES WORK

3.1 STATE RESPONSIBILITIES

3.1.1 The STATE agrees to perform and complete, subject to SCL review and approval for SCL purposes, the following with the aid of consultants and contractors:



- a. Preliminary Engineering;
- b. Plans, Specifications, and Estimate (PS&E);
- c. Construction and construction administration;
- d. Procurement of all materials needed for construction;
- e. Community outreach and public relations;
- f. Preparation and submittal of permit applications required by Title 15 of the Seattle Municipal Code, the Street Use Permit, and this Agreement.; and
- g. Testing of specified materials used during construction.

In addition, the STATE agrees to seek input and approval from SCL in the early stages of the Preliminary Engineering and PS&E throughout the design process, to ensure that the design conforms to SCL standards.

3.1.2 The STATE shall obtain all permits and approvals required by federal, state and local laws and requirements, for the SCL Facilities Work, including SCL crew work, and shall provide for review by SCL all permits that need to be obtained on SCL's behalf.

3.1.3 The STATE shall perform all SCL Facilities Work indicated in the Approved Plans and any SCL-approved revisions to the Approved Plans, unless specifically designated on the plans as work done by others.

3.1.4 The STATE shall protect existing SCL Facilities, including those installed in earlier phases of the PROGRAM. Pre and post construction condition of the SCL Facilities within the PROJECT area will be verified and documented through joint inspections and may include CCTV of ductbanks and conduits. The STATE, at its own expense, shall repair any damage attributable to the PROJECT.

3.1.5 The STATE shall provide SCL with an overall schedule for the SCL Facilities Work, and shall coordinate with SCL to schedule shutdowns and SCL crew work. Schedule updates will be promptly communicated to SCL upon receipt by the STATE.

3.1.6 The STATE shall take the lead in holding meetings with SCL to develop qualification criteria for potential construction contractors for Specialty Work. Qualification criteria will be incorporated into the contract bid document. The STATE shall consult with SCL on the contractors and subcontractors bidder qualifications for Specialty Work. SCL shall provide comments to the STATE on known bidder qualifications. The STATE shall not allow unqualified contractors to perform Specialty Work

3.1.7 The STATE shall provide all labor, materials, equipment, and tools required to excavate, provide trench support systems, and handle and dispose of all spoils (including contaminated soils, groundwater, and other debris), and provide a safe workplace for SCL staff per applicable State and Federal laws, and City of Seattle standards, for the SCL Facilities Work in accordance with the Approved Plans and any SCL-approved revisions to the Approved Plans. The STATE will not provide personal protective equipment for SCL staff.



3.1.8 The STATE shall provide SCL with material submittals for SCL review per SCL Material Standards and, or City of Seattle Standard Specifications, and shall respond in a timely manner to all SCL review comments on Change Orders, contractor submittals, and design discrepancies, pursuant to Sections 6, 7 and 10 of the SDOT Holgate to King Stage 1 Agreement and Sections 5 and 8 herein.

3.1.9 If there are two (2) or more manufacturers listed in the SCL Material Standards and the STATE's contractor chooses to utilize a manufacturer not listed, the contractor shall follow the Material Evaluation Procedure found in the SCL Material Standards. The contractor shall provide, to the STATE, a Material Evaluation Form for approval determination with supporting documentation that the proposed material or equipment meets or exceeds SCL requirements, and, as appropriate, a sample of material or equipment for SCL evaluation. The STATE will forward the request along with supporting documentation and sample to SCL for evaluation. SCL will review the submittal and respond to the STATE within fifteen (15) business days. Rejection of proposed equipment manufacturers by SCL will be based upon failure to meet SCL technical specifications, or lack of history demonstrating product use within the electrical power industry in the United States. If there is only one (1) manufacturer listed in the SCL Material Standards, the STATE'S contractor shall utilize that manufacturer.

3.1.10 The STATE agrees to ensure there will be two (2) manufacturers of cable included in the listing of proprietary items and will make certain that one (1) of these two (2) manufacturers will be utilized.

3.1.11 The STATE shall resolve field problems found by SCL's On-Site Inspector pursuant to Section 11 herein.

3.1.12 The STATE shall initiate and coordinate pre-final and final inspections of the SCL Facilities Work and follow through with completion of items listed on SCL's punch list which will be based on the Approved Plans, and any SCL-approved revisions to the Approved Plans, for the SCL Facilities Work. These inspections include a visual inspection of the SCL Facilities. Final inspection of the SCL Facilities will be pursuant to Section 12 of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934.

3.1.13 The STATE shall prepare and deliver to SCL record drawings of all SCL Facilities Work, for SCL's permanent records, within six (6) months of joint execution of the Letter of Acceptance. The STATE's contractor shall record the as-built condition of the SCL Facilities built by the STATE by maintaining "redline" drawings throughout construction, and shall provide the "redline" drawings to SCL as SCL Facilities become operational.

3.1.14 Prior to the start of construction, unless otherwise agreed in writing by the Parties, the STATE shall convey to SCL Temporary Construction Easements over the Port of



Seattle and STATE-owned Property. The Temporary Construction Easements shall be conveyed by recorded deed to the City of Seattle using the approved easement format attached and identified as Exhibit A, and pursuant to the requirements and procedures set forth in Section 14 herein.

3.1.15 The STATE shall require its contractor to develop, submit and regularly update, a detailed construction schedule that includes sufficient detail on SCL Facilities Work that SCL may review and comment upon.

3.1.16 The STATE shall require its contractors to obtain their own electrical clearances when required. Individual clearance holders will be required to go through a training session based on System Operation Center (SOC) guidelines to familiarize themselves with the SCL requirements for holding and maintaining a clearance on the SCL electrical system. SCL will provide the STATE's contractor an outline of procedures and guidelines to follow at all times during the clearance and the STATE will ensure that such guidelines and procedures are followed. Chief Dispatcher, Dana Wheelock or his designee at 206-706-0241, will be the contact for SCL. SCL's Power Line Clearance Coordinator reserves the right to review the contractor crew's qualifications and direct the STATE to replace those employees who are not qualified and competent.

3.1.17 The STATE recognizes that SCL requires advance notice of 26.kV power outages needed for construction to schedule crews, notify customers and accommodate other previously scheduled outage requests. The STATE shall submit a request in writing, thirty (30) days prior to any necessary outages specifying the electrical boundaries, the date the outage will begin and the date the SCL Facilities can be energized and put into service. SCL shall accommodate such requests unless prohibited by operational necessity, a previously scheduled outage conflicts with the outage requested by the STATE, or emergency conditions prohibit the outage or limit the availability of crews. If denied, SCL shall assist the STATE in finding another outage window. If granted, SCL shall outline any conditions related to such outage to the STATE.

3.2 SCL RESPONSIBILITIES

3.2.1 SCL shall review contractor submittals relating to the SCL Facilities Work within ten (10) business days of SCL receipt, and respond in a timely manner to requests for information, utility conflicts, and other similar issues affecting the SCL Facilities Work. SCL will notify the STATE if a submittal will require longer than ten (10) business days to review.

3.2.2 SCL, at its expense, will provide all 26kV transformers for the PROJECT. SCL will be provided thirty (30) business days notice prior to the STATE contractor needing them.



3.2.3 Subject to the terms and conditions set forth in section 3.1.16 above, SCL agrees to coordinate and execute any required outages requested by the STATE for the PROJECT.

3.2.4 To the extent necessary, SCL agrees to lead the coordination of the PROJECT with all applicable electric utility regulatory agencies.

3.2.5 SCL will be included in the PROJECT's quality assurance and evaluation processes for SCL Facilities Work as further defined in Sections 7, 11 and 12 herein.

3.2.6 SCL staff and consultants will consult with the STATE construction project engineer during the evaluation of the quality of the SCL Facilities being built by the STATE's contractor. The presence and contribution of SCL staff and consultants is for the sole benefit of SCL and shall not in any way relieve the STATE from its obligation to comply with this SCL Holgate to King Stage 1 Agreement, and all permits, statutes, laws, regulations and ordinances.

3.2.7 Following each inspection and ultimately the final inspection of the SCL Facilities Work, SCL shall prepare a punch list for corrective action. The punch list will be based on the Approved Plans, and any SCL-approved revisions to the Approved Plans, for the SCL Facilities Work.

4. NOTICES AND DESIGNATED REPRESENTATIVES

4.1 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 to the Designated Representatives.

4.2 The Designated Representatives for each Party are as follows:

Deputy Program Director, Engineering and Operations
Alaskan Way Viaduct & Seawall Replacement Program
Washington State Department of Transportation
999 3rd Avenue, Suite 2424
Seattle, WA 98104

Project Manager, Alaskan Way Viaduct & Seawall Replacement Program
Seattle City Light
P.O. Box 34018
700 Fifth Avenue, Suite 4900
Seattle, WA 98124-4018

5. DESIGN & PLAN SUBMITTAL, REVIEW AND RESPONSE PROCESS



5.1 The STATE and SCL shall comply with all provisions outlined in Section 7 of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934. The STATE will facilitate the design as provided herein and will allow SCL adequate time for detailed review. SCL will meet agreed-upon timelines for review. The STATE will address and resolve each SCL comment to SCL's and the STATE's satisfaction. In the event comments are not mutually resolved, the dispute resolution process of Section 19 may be initiated

6. FUNDING OF SCL FACILITIES WORK

6.1 The STATE shall pay for all costs associated with the design and construction of the SCL Facilities Work, except for Betterments or New Work as defined in Section 2, performed by the STATE or its contractor, as set forth in the Approved Plans, and any SCL-approved revisions to the Approved Plans, without reimbursement from SCL, including Change Orders pursuant to Section 8. No delay costs shall be paid for by SCL.

6.2 SCL shall be responsible for the additional incremental cost of any Betterment as provided in and based on an engineering estimate provided by the STATE's consultant and negotiated between SCL and the STATE. In addition, SCL shall be responsible for actual cost of any New Work requested by SCL and agreed upon by the STATE. Any Betterment or New Work will be the subject of an amendment to this Agreement. The Agreement amendment shall specify the invoicing and payment procedures under this Section 6.2.

6.3 SCL will be responsible for costs associated with SCL labor, SCL consultants, and SCL administrative overhead, subject to the exceptions and limitations outlined below:

6.3.1 The STATE will develop a proposed recommended construction sequence and provide it to SCL for review. When SCL receives the proposed recommended construction sequence, it will develop with the STATE a mutually agreeable estimate of the SCL crew time required, which estimate shall be the maximum SCL crew time provided for the PROJECT at SCL's cost or expense.

6.3.2 In the event the STATE's contractor requests or requires SCL crew time in excess of or addition to this estimate, the STATE or the contractor shall pay SCL for such time.

6.3.3 Responsibility for the cost of SCL crew time necessary to accommodate changes to the approved plans will be negotiated separate from this Agreement.

6.3.4 Responsibility for the cost of SCL crew time necessary to accommodate changes to the construction sequence due to unexpected field conditions will be negotiated separate from this Agreement.



6.4 SCL Financial Contribution. SCL will be required to provide staff in the performance of their roles and responsibilities as outlined above. The costs associated with SCL staff time will be calculated and the amount will be a credit to SCL as part of its financial contribution to the PROGRAM.

7. CONSTRUCTION MANAGEMENT, INSPECTION AND CONTRACT ADMINISTRATION

7.1 The STATE shall comply with all provisions contained within Section 10 of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934, regarding Construction Management, Inspection Coordination and Contract Administration for the PROJECT, such provisions shall apply equally to this SCL Holgate to King Stage 1 Agreement.

8. CHANGE ORDERS

8.1 During construction, within three (3) Business Days of receiving a proposed change to the PROJECT ("Change Order"), the STATE's construction project engineer shall transmit the scope and cost estimate for the proposed change to SCL for review, comment, and written approval. Before executing the Change Order, in a non-emergency situation and unless otherwise agreed by the Parties, the STATE will allow SCL sufficient time to review, comment and approve or disapprove in writing any changes to the Approved Plans and any SCL-approved revisions to the Approved Plans that affect SCL Facilities. SCL will assign any change a high priority and provide a timely response commensurate with the complexity of the proposed change. The STATE shall pay for all Change Orders that are not Betterments or New Work. No delay costs shall be paid by SCL.

8.2 SCL may request additions and changes to the construction contract through the STATE. The STATE shall comply with the requested elective changes provided that the changes are within the general scope of the PROJECT and comply with the PROJECT permits, State and/or Federal law and applicable rules, codes and/or regulations. The STATE retains the right to reject requested elective changes if incorporating such elective changes would result in a delay in the schedule. Such additions and changes may lead to Change Orders, or they may lead to Betterments.

8.2.1 If requested elective changes are minor in nature and the STATE agrees to comply with the changes, SCL and the STATE will approve, in writing, the request by signing a "Minor Change Request and Approval Form," using the template shown as Exhibit B. SCL agrees to reimburse the STATE for the costs associated with the elective changes. SCL agrees to fund these minor changes to an accumulative amount not to exceed Fifty Thousand Dollars (\$50,000.00) for the PROJECT.

8.2.2 The STATE will invoice SCL for the agreed upon changes as the work is performed by the STATE or its contractor. If and when applicable, these billings shall not be more frequent than one (1) per month and no less than one (1) per



10.2 The STATE shall ensure that SCL's access to existing and newly installed SCL electrical facilities or infrastructure, is maintained twenty-four (24) hours a day, seven (7) days a week, unless different arrangements have been agreed to in advance and in writing by the Parties. For purposes of this SCL Holgate to King Stage 1 Agreement, "access" shall mean that the vaults, vault openings, handholes, power poles, ductbanks, substation equipment or substation entrances shall not be blocked, covered or otherwise inaccessible to SCL.

10.3 SCL shall have the right to enter the PROJECT site at any time to operate and maintain the electrical system or observe the SCL Facilities Work performed by the contractor, or to perform the SCL Facilities Work for which SCL is responsible.

10.4 Under no circumstances shall the STATE, its contractor, or anyone other than SCL personnel enter any energized SCL Facilities or operate any portion of the existing or new SCL Facilities, without SCL personnel approval and supervision.

11. SCL ACCESS AND INSPECTION

11.1 The STATE shall provide SCL with twenty-four (24) hour, seven (7) days a week, safe access to any construction and staging areas that relate to the SCL Facilities Work. SCL staff, other than SCL's on-site inspector will notify the STATE in advance of their arrival on site except in the case of emergency as defined under Section 9.2.

11.2 The STATE agrees and acknowledges that SCL shall have an on-site inspector available during the construction of SCL Facilities for SCL's quality assurance. The STATE agrees and acknowledges the SCL's on-site inspector shall (a) have timely and complete access to the construction work associated with the SCL Facilities Work; (b) be timely informed of all relevant construction timelines associated with such work; and (c) have the authority to, but not be required to, reject and have corrected and/or replaced any construction or materials deemed to be deficient, or which deviate from the Approved Plans or any SCL-approved revisions to the Approved Plans. In such instances, SCL's on-site inspector, or SCL's project manager will immediately direct comments and issues to the STATE's construction project engineer or designated representative, which will be followed up in writing as soon as possible but no later than ten (10) Business Days of the date of any inspection. The STATE shall promptly address each comment or issue presented by SCL to the STATE's and SCL's satisfaction. SCL staff will continue to be supervised by SCL management.

11.3 The STATE will allow SCL's on-site inspector or designated representative, to consult with and inquire of the STATE construction project engineer, attend all meetings, and have timely and complete access to all documentation as to all matters concerning the SCL Facilities Work. SCL shall not provide direction, directly or indirectly, to the STATE's consultant(s) or contractor.

11.4 The STATE shall provide SCL with timely notice upon commencement and completion of all material stages of the SCL Facilities Work and shall invite SCL to



inspect such work upon completion of any material stage. The SCL on-site inspector shall be invited to the weekly construction meeting prior to any work being started on SCL Facilities. The STATE shall provide at least five (5) Business Days notice for each inspection. SCL shall submit a complete list of any concerns or deficiencies to the STATE within ten (10) Business Days of the date of any inspection. The STATE shall timely address each comment or issue presented by SCL to the STATE's and SCL's satisfaction. Both Parties agree to act as expeditiously as possible to assure a timely resolution of any deficiencies.

11.5 SCL shall observe the work performed by the STATE for quality assurance. SCL will notify the STATE if defective SCL Facilities Work is observed, such as improper installation or unsafe conditions.

11.6 Any and all services, including direction, provided by SCL pursuant to this section shall be subject to all limitations on the CITY's liability contained in the SDOT Holgate to King Stage 1 Agreement No. GCA 5934, including but not limited to Section 16, Risk Allocation.

12. SCL FACILITIES FINAL INSPECTION AND ACCEPTANCE

12.1 The STATE shall comply with all provisions of the SDOT Holgate to King Stage 1 Agreement regarding Final Inspection, Project Acceptance and interim use and operation of SCL Facilities including but not limited to all provisions in Section 12 therein, and such provisions shall apply equally to this SCL Holgate to King Stage 1 Agreement.

12.2 SCL Facilities shall not be placed into interim use or operation, unless or until: (a) SCL has participated in an inspection of the SCL Facilities; (b) any deficiencies or Defective Work have been resolved or corrected to the STATE'S and SCL's satisfaction; and (c) SCL confirms with the STATE in writing that SCL's minimum inspection and testing requirements for the SCL Facilities have been met.

13. OWNERSHIP OF IMPROVEMENTS AND WARRANTIES

13.1 Upon completion of the SCL Facilities Work and upon SCL's acceptance of such work as outlined in Section 12 herein, and complies with all provisions of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934, Section 12 therein, the STATE shall transfer ownership of the SCL Facilities to SCL, shall warrant good title to the SCL Facilities constructed by the STATE, and shall transfer all right, title and interest it may have in the SCL Facilities to SCL. SCL shall be responsible for all future operation and maintenance of the SCL Facilities at its sole cost and expense, except that the STATE shall remain liable for any latent defects or warranty claims.

13.2 In addition, for any design, permitting or construction of the SCL Facilities Work undertaken by the STATE, the STATE shall require its construction contractors to



provide SCL with the following warranties, each of which shall be for a minimum of one year, unless the industry standard is longer: (1) any guaranty or warranty furnished as a normal trade practice in connection with the purchase (by the contractor or a subcontractor) of any equipment, materials or items incorporated in the SCL Facilities Work; and (2) any guaranty or warranty for workmanship furnished as a normal trade practice.

14. ACQUISITION AND TRANSFER OF EASEMENTS

14.1 The STATE is responsible for identifying and acquiring, at its sole cost and expense, Temporary Construction Easements located on the Port of Seattle property and the STATE's proposed right-of-way acquisition along the Port of Seattle's Terminal 46 Alaskan Way South frontage necessary for the SCL Facilities Work both subject to the terms and conditions of the approved easement format attached and identified as Exhibit A. The proposed right-of way acquisition along the Port of Seattle's Terminal 46 Alaskan Way South frontage is known as Port of Seattle - Terminal 46: Partial Fee Simple Tract and is legally described in Exhibit B to the SDOT MOA. The Temporary Construction Easement located on the Port of Seattle property will be acquired in the name of both the City of Seattle and the STATE. Any extension of the temporary term will be subject to the STATE's and SCL's approval. At the end of the term, unless extended by mutual agreement, the STATE will pay to relocate the SCL Facility to a location acceptable to SCL.

15. ENVIRONMENTAL REMEDIATION

15.1 The STATE shall comply with all provisions of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934, regarding Environmental Remediation, including but not limited to all provisions in Section 4 therein, and such provisions shall apply equally to this SCL Holgate to King Stage 1 Agreement.

16. RISK ALLOCATION

16.1 The STATE shall comply with all provisions of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934, regarding Risk Allocation and Indemnification, including but not limited to all provisions in Section 16 therein, and such provisions shall apply equally to this SCL Holgate to King Stage 1 Agreement.

17. INSURANCE

17.1 The STATE shall comply with all provisions of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934, regarding Insurance, including but not limited to all provisions in Section 17 therein, and such provisions shall apply equally to this SCL Holgate to King Stage 1 Agreement.



18. THIRD PARTY BENEFICIARY

18.1 The STATE shall comply with all provisions of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934, regarding Third Party Beneficiary, including but not limited to all provisions in Section 18 therein, and such provisions shall apply equally to this SCL Holgate to King Stage 1 Agreement.

19. DISPUTE RESOLUTION

19.1 SCL and the STATE shall make good faith efforts to resolve any dispute arising under or in connection with this Agreement.

19.2 Dispute Resolution Representatives. The Dispute Resolution Representatives for the Parties are as follows:

For the STATE: Holgate to King Street Stage 1 Project Design Project Engineer or, if appropriate, Construction Project Engineer,
Alaskan Way Viaduct & Seawall Replacement Program
Washington State Department of Transportation
999 3rd Avenue, Suite 2424
Seattle, WA 98104

For SCL: SCL AWV Project Manager
P.O. Box 34023
700 Fifth Avenue, Suite 3200
Seattle, WA 98124-4023

19.3 Dispute Resolution Process. The designated representatives established under Section 19.2 shall use their best efforts to resolve disputes between the Parties. If these individuals are unable to resolve a dispute, Chris Heimgartner of Seattle City Light and the Deputy Regional Program Administrator for the Washington State Department of Transportation Urban Corridors Office shall review the matter and attempt to resolve it. If they are unable to resolve the dispute, the matter shall be reviewed by the Superintendent of Seattle City Light and the Washington State Deputy Secretary of Transportation. The Parties agree to exhaust each of these procedural steps before seeking to resolve disputes in a court of law or any other forum.

20. REMEDIES; ENFORCEMENT

20.1 The provisions of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934, regarding Remedies; Enforcement, including but not limited to Section 21 therein, shall apply equally to this SCL Holgate to King Stage 1 Agreement.



21. TERMINATION

21.1 The Term of this SCL Holgate to King Stage 1 Agreement shall be the Term provided in Section 25 of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934, and the provisions of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934, regarding Termination, including but not limited to Section 25 therein, shall apply equally to this SCL Holgate to King Stage 1 Agreement.

22. CONFIDENTIALITY OF INFORMATION AND RECORDS

22.1 The provisions of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934, regarding Confidentiality of Information and Records, including but not limited to Section 26 therein, shall apply equally to this SCL Holgate to King Stage 1 Agreement.

23. GENERAL PROVISIONS

23.1 The General Provisions set forth in the SDOT Holgate to King Stage 1 Agreement No. GCA 5934, including but not limited to Section 27 therein, shall apply equally to this SCL Holgate to King Stage 1 Agreement.



IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the last day and year written below.

SEATTLE CITY LIGHT

By: _____

Print: _____

Title: _____

Date: _____

**WASHINGTON STATE
DEPARTMENT OF
TRANSPORTATION**

By: _____

Print: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

By (print)

Signature
Assistant Attorney General

Date: _____



UT 01343 – Exhibit A
Port of Seattle Property TCE Approved Easement Format

After recording return document to:

State of Washington
Department of Transportation
Real Estate Services Office
PO Box 47338
Olympia, WA 98504-7338

PLEASE MAKE NO MARK IN THE MARGIN SPACE - RESERVED FOR COUNTY AUDITOR'S USE

Document Title: Temporary Easement
Grantor(s): Port of Seattle, a Washington municipal corporation
Grantee(s): State of Washington, Department of Transportation & City of Seattle
Legal Description:
Additional Legal Description is on Page 8 of Document
Assessor's Tax Parcel Number:

TEMPORARY EASEMENT

State Route 99, S. Atlantic St. Vic to S. Dearborn St

This NON-EXCLUSIVE TEMPORARY EASEMENT is made this _____ day of _____, 20___, between, the PORT OF SEATTLE, a Washington Municipal Corporation, hereinafter called the Grantor; and the State of Washington, Department of Transportation, under the imminent threat of the Grantee's exercise of its rights of Eminent Domain and the CITY OF SEATTLE, a municipal corporation, collectively, hereinafter called the Grantees; WITNESSTH:

That the Grantor, for and in consideration of the sum of TEN DOLLARS AND NO/100, (\$10.00) and other good and valuable consideration, receipt of which is hereby acknowledged, hereby convey and grant to the Grantees, its successors and/or assigns, a non-exclusive temporary easement (the "Easement") for the right, privilege and authority to install,

RES-325
Revised 09/05

Page 1 of (10) Pages

FA No. N/A
Project No. RW5042
Parcel No.

ATTACHMENT 2
EXHIBIT A



TEMPORARY COSTRUCTION EASEMENT

construct, erect, alter, improve, repair, energize, operate and maintain aerial and underground electric distribution facilities at depths not exceeding 15 feet; which may consist of vaults, manholes, handholes, ducts, conduits, cables, poles, wires and other necessary or convenient appurtenances (collectively hereinafter "Utility Facilities"), and subject to the provisions set forth in this agreement. All such Utility Facilities are to be located across, over, upon and under the following described lands (the "Easement Area"):

Said lands being situated in King County, State of Washington, and described as follows:

See Exhibit A attached hereto and made a part hereof.

Together with the right at all times to the Grantees, its successors and/or assigns, of ingress to and egress from said lands across adjacent lands of the Grantor for the purpose of installing, constructing, reconstructing, repairing, renewing, altering, changing, patrolling, energizing and operating said Utility Facilities, and the right at any time to remove all or any part of said Utility Facilities from said lands.

- 1) TERM. The term of this Easement shall begin August 1, 2009 (Commencement Date) and shall terminate August 1, 2012 (Termination Date). Use of the Easement Area, unless extended pursuant to §2 below, shall be limited to a three (3) year period (Construction Period). Grantee shall provide at least thirty (30) days written notice to the Grantor prior to commencement of the Construction Period. The Construction Period shall commence upon initiation of Grantee's construction within the Easement Area, but no sooner than August 1, 2009 and shall remain in force for the length of the Construction Period or until completion of construction and restoration of the property, whichever occurs first.
- 2) EXTENSION. If the Grantee requires additional use of the Easement Area past the Termination Date, Grantee shall be entitled to two (2) extension periods of thirty (30) days. As a condition of each such extension, Grantee shall pay an amount of SIX THOUSAND FOUR HUNDRED SIXTY-FIVE and 38/100 (\$6,465.38) Dollars for each extension period that Grantee uses the Easement Area beyond the Construction Period, which extension fee shall be payable on or before the first day of each month during each extension period. The extension fee for any partial month shall be prorated based upon the actual number of days that Grantee uses the Easement Area during such month. Grantee shall provide thirty (30) days written notice to the Grantor

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TEMPORARY COSTRUCTION EASEMENT

prior to any thirty (30) day extension period. Following expiration of any extensions, this Easement shall automatically terminate without further action by Grantor(s) or Grantee.

3) **PERSONAL PROPERTY.** Prior to the Construction Period all personal property and improvements located in the Easement Area shall be temporarily removed by Grantor. Grantor shall be responsible for the reinstallation of the removed personal property after the Construction Period. In the event Grantor fails to remove all personal property from the Easement Area prior to the Construction Period, Grantee is hereby authorized to remove all personal property within the Easement Area at the expense of Grantor, however, Grantee shall have no obligation to restore or replace said property.

4) **PURPOSE AND USES.**

- a. As used in this Section 4, "Grantee" shall include Grantee's employees, contractors, agents, invitees, and consultants.
- b. **Grantee's Access.** Grantee shall have twenty-four hour access to the Easement Area across, over or from Grantor's property for the purposes and uses stated above. Grantee's rights of ingress and egress shall include the right to limit or eliminate parking in the vicinity of the Easement Area in order to facilitate necessary and convenient access to the Utility Facilities.
- c. **Utility Facilities.** Without limiting the generality of the purposes and uses stated above, Grantee, at its own expense, shall have the right to replace any of the Utility Facilities within the Easement Area with utility facilities of the same or larger diameter and capacity and to install additional and/or replacement utility facilities within the Easement Area.

5) **GRANTOR'S OBLIGATIONS AND ACTIVITIES IN EASEMENT AREA**

Subject to the conditions set forth below, Grantor shall have the right to use the Easement Area in any way and for any legal purpose not inconsistent with the rights herein granted to Grantee and the terms and conditions of this Easement. As used in this Section 5, "Grantor" shall include Grantor's employees, contractors, tenants, lessees, agents, invitees, and consultants:

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provide SCL with the following warranties, each of which shall be for a minimum of one year, unless the industry standard is longer: (1) any guaranty or warranty furnished as a normal trade practice in connection with the purchase (by the contractor or a subcontractor) of any equipment, materials or items incorporated in the SCL Facilities Work; and (2) any guaranty or warranty for workmanship furnished as a normal trade practice.

14. ACQUISITION AND TRANSFER OF EASEMENTS

The STATE is responsible for identifying and acquiring, at its sole cost and expense, Temporary Construction Easements located on the Port of Seattle property and the STATE's proposed right-of-way acquisition along the Port of Seattle's Terminal 46 Alaskan Way South frontage necessary for the SCL Facilities Work both subject to the terms and conditions of the approved easement format attached and identified as Exhibit A. The proposed right-of way acquisition along the Port of Seattle's Terminal 46 Alaskan Way South frontage is known as Port of Seattle - Terminal 46: Partial Fee Simple Tract and is legally described in Exhibit B to the SDOT MOA. The Temporary Construction Easement located on the Port of Seattle property will be acquired in the name of both the City of Seattle and the STATE. Any extension of the temporary term will be subject to the STATE's and SCL's approval. At the end of the term, unless extended by mutual agreement, the STATE will pay to relocate the SCL Facility to a location acceptable to SCL.

15. ENVIRONMENTAL REMEDIATION

15.1 The STATE shall comply with all provisions of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934, regarding Environmental Remediation, including but not limited to all provisions in Section 4 therein, and such provisions shall apply equally to this SCL Holgate to King Stage 1 Agreement.

16. RISK ALLOCATION

15.1 The STATE shall comply with all provisions of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934, regarding Risk Allocation and Indemnification, including but not limited to all provisions in Section 16 therein, and such provisions shall apply equally to this SCL Holgate to King Stage 1 Agreement.

17. INSURANCE

17.1 The STATE shall comply with all provisions of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934, regarding Insurance, including but not limited to all provisions in Section 17 therein, and such provisions shall apply equally to this SCL Holgate to King Stage 1 Agreement.



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- a. Subsurface Improvements. Grantor agrees that no other utility facility, such as conduits, cable, pipelines, vaults, poles, posts, whether public or private, will be installed with five (5) horizontal feet of Utility Facilities. All crossings must maintain a vertical clearance of no less than twelve (12) inches from said Utility Facilities.
- b. Excavation. Grantor shall not make any excavation, boring, or tunneling within the Easement Area without the prior written permission of Grantee. All work performed adjacent to the Easement Area with be performed in compliance with WAC 296.24.960.
- c. Blasting. Grantor shall not blast or discharge any explosives, nor permit the same, within fifty (50) feet of Grantee's Utility Facilities or other equipment on or in the Easement Area.
- d. Aerial and Surface Improvements. Grantor shall not (a) erect, construct, plant, or allow to remain any buildings, walls, fences, rockeries, trees, shrubbery, or obstruction or structure of any kind or (b) place any fill material, or obstruction of any kind within the Easement Area, without prior written permission of the Grantee, and subject to the following conditions:
 - i. Grantor shall not, nor permit others to place, any fill material over Utility Facilities within the Easement Area without Grantee's prior written approval. Such approval may not be unreasonably withheld, but may include such restrictions and conditions as are appropriate to protect existing and future planned Utility Facilities.
 - ii. If Grantor intends to carry out construction work in the Easement Area, Grantor shall request Grantee's approval by submitting detailed work plans to Grantee no less than ninety (90) days prior to the commencement of the proposed work. Grantee shall provide said approval, including such restrictions and conditions as reasonably appropriate to protect any Utility Facilities and operations; including future planned utility facilities, or a written objection specifying the grounds therefore, within thirty (30) days of submittal of Grantor's work plans. Grantee's authorization shall not be unreasonably denied,

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but may include such restrictions and conditions as are appropriate to protect existing and future planned Utility Facilities.

- e. Emergency Response. In an Emergency, Grantor shall cooperate immediately with the requests of Grantee, to facilitate Grantee's response to the situation in order to protect Utility Facilities and public health, safety and welfare.

- 6) INDEMNIFICATION. Grantee is to be responsible, as provided by law, for any damage to the Grantor through its negligence in the construction, maintenance and operation of said Utility Facilities across, over, upon and under the property of said Grantor.

- 7) COMPLIANCE WITH LAWS. The Grantee and the Grantor in the exercise of their respective rights under this Easement shall comply with all applicable federal, state and local laws, ordinances, and regulations, including environmental laws and regulations.

- 8) NOTICES. Wherever in this agreement written notices are to be given or made, they will be served, personally delivered or sent by certified or overnight mail addressed to the parties at the address listed below unless a different address has been designated in writing and delivered to the other party. The Grantee agrees to accept service of process at said address. Such service shall be deemed personal service.

GRANTOR(S):

PORT OF SEATTLE
Attn:
PO Box
Seattle, WA 98104

&

TOTAL TERMINALS INTERNATIONAL, LLC
Attn:
401 Alaskan Way
Seattle, WA 98104



TEMPORARY COSTRUCTION EASEMENT

GRANTEE:

DEPARTMENT OF TRANSPORTATION
Attn: Director Property Management
Transportation Building
P.O. Box 47338
Olympia, WA 98504-7338

&

CITY OF SEATTLE
Attn: SCL Manager of Real Estate
PO Box 34023
Seattle, WA 98124-4018

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TEMPORARY EASEMENT

STATE OF WASHINGTON)
 : SS
County of _____)

On this _____ day of _____, 20____, before me personally appeared _____ to me known to be the _____ of Total Terminals International, LLC, a Washington limited liability company that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that _____ are authorized to execute said instrument.

GIVEN under my hand an official seal the day and year last above written.

Notary Seal

Notary (print name)_____
Notary Public in and for the State of Washington,
residing at _____
My Appointment expires _____



TEMPORARY EASEMENT

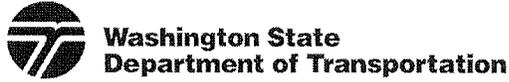
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Seattle City Light
Minor Change Request & Approval
For SCL-requested minor changes costing \$20,000 or less

Section Completed by SCL

WSDOT Contract Number	Contract Title	
Summary Minor Change Description		Date
SCL Representative Requesting Minor Change		Phone Number
Impacted SCL Systems		SCL Activity Number
Minor Change Description (attach drawings and other descriptive materials as necessary):		
Reason for Request:		

Section Completed by WSDOT

Change Order Number	Prime Contractor	Date
Project Engineer		Phone Number
Minor Change Cost Calculation:		
Total Authorized Minor Change Cost (not to exceed without prior approval by WSDOT and SCL)		\$

Terms and provisions of Memorandum of Agreement Number UT01343, as amended, apply.

Approvals

Seattle City Light Signature _____ Date _____



UT 01343
Exhibit B



Washington State
Department of Transportation

Seattle City Light
Minor Change Request & Approval
For SCL-requested minor changes costing \$20,000 or less

WSDOT Project Engineer's Signature _____ Date _____



MEMORANDUM OF AGREEMENT
NO. UT 01342
SR 99 ALASKAN WAY VIADUCT
SPU FACILITIES WORK – FOR SR 99 SOUTH HOLGATE STREET TO
SOUTH KING STREET VIADUCT REPLACEMENT PROJECT,
STAGE 1

THIS Memorandum of Agreement No. UT 01342, for SPU Facilities Work – SR99 South Holgate Street to South King Street Viaduct Replacement Project, Stage 1 (“SPU Holgate to King Stage 1 Agreement”) is made and entered into between the State of Washington Department of Transportation, hereinafter the “STATE,” and the City of Seattle, hereinafter, the “CITY” (managed by Seattle Public Utilities, hereinafter “SPU”), collectively the “Parties” and individually the “Party.”

WHEREAS, the Alaskan Way Viaduct (the Viaduct) and Seawall are at risk of sudden and catastrophic failure in an earthquake and are nearing the end of their useful lives; and

WHEREAS, the STATE and the Federal Highway Administration (FHWA), in consultation with the CITY, are proposing improvements to State Route 99 (SR 99) a non-limited access highway which includes the Viaduct and the seawall; and

WHEREAS, in March 2007, the Governor, the King County Executive, and the Mayor of Seattle pledged to advance a series of key SR 99 projects (Moving Forward Projects) that will facilitate the removal and/or repair of key portions of SR 99, which are: Yesler Way Vicinity Stabilization Project, Electrical Line Relocation (formerly known as Electrical Utility Relocation Phase 1 under agreement No. UT01148), Battery Street Tunnel Fire and Life Safety Upgrades, SR 99 Lenora to Battery Street Tunnel Improvements, the SR 99 South Holgate to South King Street Viaduct Replacement Project), and Transit Enhancements and Other Improvements; and

WHEREAS, in January 2009, the Governor, the King County Executive, and the Mayor of Seattle reached an agreement recommending a solution for replacing the existing viaduct structure in the central waterfront area (Central Waterfront Decision); and

WHEREAS, taken together, the Moving Forward Projects and the Central Waterfront Decision are known as the PROGRAM; and

WHEREAS, the STATE intends to remove a portion of the viaduct structure as part of one of the Moving Forward Projects, the South Holgate Street to South King Street Viaduct Replacement Project, by December 31, 2012. The South Holgate Street to South King Street Viaduct Replacement Project will replace the Viaduct's south end with a new side-by-side surface and aerial roadway that connects to the existing Viaduct, provide new SR 99 on- and off-ramps near S. King Street, create an underpass below SR 99 on the north side of South Atlantic Street, and build new bicycle/pedestrian paths on the east and west sides of SR 99. The South Holgate Street to South King Street Viaduct



Replacement Project will be carried out in stages. Stage 1 of the South Holgate Street to South King Street Viaduct Replacement Project (the “PROJECT” as defined under section 2.19 and Exhibit A of the SDOT Holgate to King Stage 1 No. GCA 5934 Agreement) is the subject of this Agreement; and

WHEREAS, the PROJECT will require the relocation and/or protection of significant existing water, drainage and wastewater facilities, and construction of new facilities and services; and

WHEREAS, the Parties agree that the STATE will perform the design and construction of the SPU Facilities Work, as well as the procurement of any construction materials that are required to meet schedule requirements; and

WHEREAS, concurrently with this SPU Holgate to King Stage 1 Agreement No. UT 01342, the STATE and CITY are entering into a Memorandum of Agreement No. GCA 5934 for Property, Environmental Remediation, Permitting, and Construction Coordination Agreement for SR 99 Viaduct Removal from South Holgate to South King Street Stage 1 (“SDOT Holgate to King Stage 1 Agreement”); and

WHEREAS, concurrently with this SPU Holgate to King Stage 1 Agreement, the STATE and CITY, through Seattle City Light (SCL), are entering into a Memorandum of Agreement, No. UT01343, for Preliminary Engineering, Final Design, Procurement of Materials and Construction for Electrical Utility Relocation – SR 99 Viaduct Removal from South Holgate to South King Street Stage 1 (“SCL Holgate to King Stage 1 Agreement”);

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performances contained herein, or attached and incorporated and made a part hereof,

IT IS MUTUALLY AGREED AS FOLLOWS:

1. INTENT

1.1 The Parties agree to do the following throughout the PROJECT as defined below:

a. The Parties agree to work cooperatively with each other and shall make reasonable, good faith efforts to timely and expeditiously complete the PROJECT, as provided in this SPU Holgate to King Stage 1 Agreement No. UT 01342, including, but not limited to, the selection of a preferred design alternative; development of preliminary engineering and final design with consideration of long-term operation and maintenance costs in addition to construction cost, plans and specifications, and cost estimates; execution of any necessary utility easements; and procurement of any required materials included in the construction contract for SPU Facilities relocations.



b. The STATE shall provide complete design submittals, construction submittals, construction changes and additional information as required by SPU in a timely manner that will allow SPU adequate review periods to review and comment on the proposed plans and make reasonable efforts to allow the PROJECT to proceed on schedule. The STATE shall timely incorporate and/or address, to the STATE's and SPU's satisfaction any SPU comments on the design submittals or additional information provided by the STATE, including revisions to the Approved Plans, pursuant to Section 5 herein.

c. SPU agrees to provide sufficient staff and resources for timely reviews of the PROJECT design as agreed upon in this SPU Holgate to King Stage 1 Agreement.

d. SPU shall provide clear and complete design review for SPU purposes in accordance with Section 7 of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934. Both Parties shall endeavor to identify and address issues as early as possible during the design process and to communicate clearly with one another.

e. Both Parties shall participate in regularly scheduled coordination meetings to address issues that may affect the PROJECT scope, schedule or budget.

f. The STATE and SPU agree to document key design-related decisions to ensure that issues are resolved to the STATE's and SPU's satisfaction, pursuant to Section 5 herein, so that the STATE can proceed with the design of the PROJECT. These decisions will be evidenced through the use of a Concurrence Letter signed by both Parties.

g. The STATE agrees to take the lead in consulting and coordinating with all other utilities affected by the PROJECT.

h. The STATE acknowledges that it bears the sole responsibility for all regulatory permitting of the PROJECT and shall design and construct the PROJECT in compliance with all applicable federal, state and local laws and regulations, and in accordance with the provisions of the SDOT Holgate to King Stage 1 Agreement.

2. DEFINITIONS

2.1 Approved Plans means the construction plans and provisions that evidence the CITY's determination, through the processes described in Section 7 of the SDOT Holgate to King Stage 1 Agreement, that the plans conform to the Street Use Code and other requirements and that plan review comments are resolved to both Parties' satisfaction; Approved Plans are included in the STATE's advertisement for bids, or supplementation thereto, and evidence the agreement between the STATE and its contractors for construction of the PROJECT.

2.2 AWV means the Alaskan Way Viaduct on State Route 99, a non-limited access highway, over a portion of a CITY Street Right of way and located partially in the City of Seattle.



2.3 Betterment means any upgrading of the SPU Facilities being relocated, or the design and construction of any new SPU Facilities, that is not attributable to the PROJECT or PROGRAM and is made solely for the benefit of and at the election of SPU. Examples of work that will not constitute a Betterment, so that SPU shall not bear cost responsibility, are:

a) If existing devices or materials are no longer regularly manufactured or cannot be obtained in time to meet the PROJECT schedule, needs or requests by the STATE, then devices or materials of equivalent standards although not identical, of the next highest grade or size; or

b) Upgrades to SPU Facilities necessary to meet current code requirements and SPU published standards; or

c) Work required by SPU to maintain current service and capacity; or

d) Work required by current design and construction practices regularly followed by SPU in its own work and/or considered an industry design or construction standard.

2.4 Business Days means Monday through Friday, inclusive, except for official City of Seattle and STATE holidays.

2.5 CITY means the City of Seattle, a Washington municipal corporation, acting through SDOT.

2.6 City of Seattle means the CITY.

2.7 Concurrence Letter means one or more letters, drafted by either the STATE or SPU, and signed by both, evidencing key design-related decisions to ensure that issues are resolved to the STATE and SPU's satisfaction.

2.8 Contract Award means the STATE's written decision accepting the lowest responsive bid for construction of the PROJECT.

2.9 Defective Work means design or construction work or materials that fail to comply with the Approved Plans, City of Seattle approved modifications to the Approved Plans, and/or the laws, rules, regulations and standards as specified in this Agreement.

2.10 Designated Representative means the SPU official listed in Section 4.2 of this SPU Holgate to King Stage 1 Agreement.

2.11 Engineer of Record means the engineer licensed in the State of Washington who has been designated by the STATE as the prime engineer for the PROJECT, having overall responsibility for the adequacy of the design and the coordination of the design work of other engineers and whose professional seal is on the Approved Plans.

2.12 Infrastructure means the portions of SPU Facilities, SCL Facilities and roadway improvements constructed or modified as part of the PROJECT, to be owned, operated and/or maintained by the CITY.



2.13 Letter of Acceptance means the written document prepared by the CITY and delivered to the STATE that signifies the City of Seattle's approval of the PROJECT Infrastructure built by the STATE's contractor; the CITY's issuance and STATE's acknowledgment of the Letter of Acceptance effects transfer of Infrastructure ownership and obligations for operation and maintenance as agreed by the Parties.

2.14 Letter of Plan Approval means the letter provided to the STATE by the CITY following the completion of the plan review process, signifying that the final plans and specifications have been approved by the City of Seattle.

2.15 New Work means the design and construction by or at the direction of SPU of a new utility other than (a) as part of a relocation associated with the PROGRAM or (b) to provide service to the PROJECT. New Work shall be entirely the financial obligation of SPU.

2.16 Plans, Specifications, and Estimate ("PS&E") means the portion of the PROJECT engineering after the Preliminary Engineering, which advances the PROJECT design by preparing contract-ready documents and the engineer's cost estimate. At this stage the specifications are written and tailored to the plans so that all work can be measured and has a pay item. The cost estimate is formalized using the established specifications, pay items and quantity takeoffs, for 60% through 100% completion of the total design effort.

2.17 Preliminary Engineering means the portion of the PROJECT engineering succeeding conceptual engineering, which advances the PROJECT design to address Type, Size, and Location ("TS&L") for all components of the PROJECT including the final SCL Facilities and SPU Facilities. Typically this effort includes work that advances the design from nominally 30% up to nominally 60% of the total design effort.

2.18 PROGRAM means all of the projects, collectively, implemented by the STATE that remove and replace the AWV and the Seawall.

2.19 PROJECT means the SR99 South Holgate Street to South King Street Viaduct Replacement Project, Stage 1, as described in Exhibit A of SDOT Holgate to King Stage 1 Agreement No. GCA 5934.

2.20 Project Schedule means the schedule of design, permitting and construction events identified in **Exhibit C** to the SDOT Holgate to King Stage 1 Agreement No. GCA 5934 and agreed to by the Parties, as it may be amended from time to time by agreement of the Parties.

2.21 SCL means Seattle City Light.

2.22 SCL Holgate to King Stage 1 Agreement means the Memorandum of Agreement, No. UT 01343, for SCL Facilities Work – SR 99 Viaduct Removal from South Holgate to



South King Street Stage 1, between the STATE and the City of Seattle acting by and through Seattle City Light.

2.23 SDOT means the Seattle Department of Transportation.

2.24 SDOT Holgate to King Stage 1 Agreement means the Memorandum of Agreement, No. GCA 5934, SR-99 Alaskan Way Viaduct, Property, Environmental Remediation, Permitting, and Construction Coordination Agreement – SR 99 Viaduct Removal from South Holgate Street to South King Street Stage 1 between the STATE and the City of Seattle acting through SDOT.

2.25 SPU means Seattle Public Utilities.

2.26 SPU Facilities means the water, drainage and wastewater facilities impacted by, or constructed by the PROJECT that are owned by or to be owned by the City.

2.27 SPU Facilities Work means work required to design, construct and protect the SPU Facilities as part of the PROJECT.

2.28 STATE means the State of Washington Department of Transportation.

2.29 STATE Designated Representative means the State of Washington official listed in Section 4.2 of this Agreement.

3. STATE AND SPU RESPONSIBILITIES FOR SPU FACILITIES WORK

3.1 STATE RESPONSIBILITIES

3.1.1 The STATE agrees to perform and complete, subject to SPU review and approval for SPU purposes, the following with the aid of consultants and contractors:

- a. Preliminary Engineering;
- b. Plans, Specifications, and Estimate (PS&E);
- c. Construction and construction administration;
- d. Procurement of all materials needed for construction;
- e. Community outreach and public relations;
- f. Preparation and submittal of permit applications required by Title 15 of the Seattle Municipal Code, the Street Use Permit, and this Agreement; and
- g. Testing of specified materials used during construction.

In addition, the STATE agrees to seek input and approval from SPU in the early stages of the Preliminary Engineering and PS&E throughout the design process, to ensure that the design conforms to SPU standards.



3.1.2 The STATE shall obtain all permits and approvals required by federal, state and local laws and requirements, for the SPU Facilities Work, including SPU crew work, and shall provide for review by SPU all permits that need to be obtained on SPU's behalf.

3.1.3 The STATE shall perform all SPU Facilities Work indicated in the Approved Plans and any SPU-approved revisions to the Approved Plans, unless specifically designated on the plans as work done by others.

3.1.4 The STATE shall protect existing SPU Facilities, including those installed in earlier phases of the PROGRAM. Pre and post construction condition of the SPU Facilities within the PROJECT area will be verified and documented through inspection. The STATE, at its own expense, shall repair any damage attributable to the PROJECT.

3.1.5 The STATE shall provide SPU with an overall schedule for the SPU Facilities Work, and shall coordinate with SPU to schedule shutdowns and SPU crew work. Schedule updates will be promptly communicated to SPU upon receipt by the STATE.

3.1.6 The STATE shall provide all labor, materials, equipment, and tools required to excavate, provide trench support systems, and handle and dispose of all spoils (including contaminated soils, groundwater, and other debris), and provide a safe workplace for SPU staff per applicable State and Federal laws, and City of Seattle standards, for the SPU Facilities Work in accordance with the Approved Plans and any SPU-approved revisions of the Approved Plans. The STATE will not provide personal protective equipment for SPU staff.

3.1.7 The STATE shall, at its own expense, prepare and implement all traffic control plans, public communication plans, dewatering plans, Temporary Erosion and Sedimentation Control (TESC) Plans and other plans that pertain to implementation of the PROJECT. SPU will provide input and assistance as necessary.

3.1.8 The STATE shall provide SPU with material submittals for SPU review per City of Seattle standard specifications and shall respond in a timely manner to all SPU review comments on Change Orders, contractor submittals, and design discrepancies, pursuant to Sections 6, 7 and 10 of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934, and Sections 5 and 8 herein.

3.1.9 The STATE shall resolve field problems found by SPU's on-site inspector pursuant to Section 11 herein.

3.1.10 The STATE shall initiate and coordinate pre-final and final inspections of the SPU Facilities Work and follow through with completion of items listed on SPU's punch list which will be based on the Approved Plans and any SPU-approved revisions to the Approved Plans for the SPU Facilities Work. These inspections include CCTV of new storm and sewer pipelines and visual inspection of new structures. Final inspection of the water system shall be after the new water mains have been connected and hydrants, etc.



are to grade. Final inspection of the SPU Facilities Work will be pursuant to Section 12 of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934 and Section 12 herein.

3.1.11 The STATE shall prepare and deliver to SPU record drawings of all SPU Facilities Work, for SPU's permanent records, within six (6) months of joint execution of the Letter of Acceptance. The STATE's contractor shall record the as-built condition of SPU Facilities built by the STATE by maintaining "redline" drawings throughout construction, and shall provide the "redline" drawings to SPU as SPU Facilities become operational.

3.1.12 The STATE shall require its contractor to develop, submit and regularly update, a detailed construction schedule that includes sufficient detail on SPU Facilities Work that SPU may review and comment upon.

3.1.13 The drainage siphon installed as part of this PROJECT is a temporary system intended to be replaced in the Holgate to King Stage 2 Project. If Stage 2 is delayed or cancelled, the STATE shall retain ownership and maintenance responsibilities until a standard (non-siphon) system is restored at STATE'S expense

3.1.14 The STATE shall coordinate design of utilities in subsequent PROGRAM stages with the PROJECT to optimize design and avoid conflicts. The STATE shall be prepared to modify the design of the PROJECT, if both Parties determine the modifications are necessary and reasonable, to prevent conflicts that would require installation of pumped SPU drainage facilities in subsequent phases of the PROGRAM, which otherwise could flow by gravity. If the Parties cannot agree on how to proceed with any modification, the issues shall be resolved using the dispute resolution process established in Section 20 of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934.

3.2 SPU RESPONSIBILITIES

3.2.1 SPU shall review contractor submittals relating to the SPU Facilities Work within ten (10) Business Days of SPU receipt, unless City of Seattle standard specifications allow a longer response term, and respond in a timely manner to requests for information, utility conflicts, and other similar issues affecting the SPU Facilities Work.

3.2.2 For new water main connections, SPU shall perform the pipework to connect the new water main to the existing water system per City of Seattle Standard Plan No. 300. The STATE will provide SPU with at least fourteen (14) calendar days notice prior to scheduling any SPU crew work and shall provide longer notice to the extent possible through regular construction scheduling meetings. SPU will make every effort to complete the work within twenty-four (24) hours of the time the STATE has requested the work to be done.

3.2.3 For new drainage and wastewater system connections, SPU shall core drill and install all tees per City of Seattle standard specification 7-17.3(2)C, Plugs and Connections. The STATE will notify SPU fourteen (14) calendar days prior to the need



for this work. SPU will make every effort to complete the work within twenty-four (24) hours of the time the STATE has requested the work to be done.

3.2.4 SPU will be included in the PROJECT's quality assurance and evaluation processes for SPU Facilities as further defined in Section 7 herein. SPU shall perform periodic inspection on joint bonding installed on new water mains and test isolation couplings at connections of new water mains to existing water mains. SPU shall also perform tests on all cathodic test stations on the new water mains for electrical continuity. SPU shall obtain water samples from the new water mains after they have been chlorinated and flushed by the STATE or its contractor in accordance with City of Seattle standards and shall perform tests on the water sample for purity.

3.2.5 SPU staff and consultants will consult with the STATE construction project engineer during the evaluation of the quality of the SPU Facilities being built by the STATE's contractor. The presence and contribution of SPU staff and consultants is for the sole benefit of SPU and shall not in any way relieve the STATE from its duty to comply with this SPU Holgate to King Stage 1 Agreement, and all permits, statutes, laws, regulations and ordinances.

3.2.6 SPU shall perform all shutdowns of its water system to its affected customers and shall notify these customers of such planned service interruptions.

3.2.7 SPU shall timely perform all connections, valve operations, and disconnections for permanent and temporary water systems as needed.

3.2.8 Following each inspection and ultimately the final inspection of the SPU Facilities Work, SPU shall prepare a punch list for corrective action for the SPU Facilities Work, based on the final inspection of the SPU Facilities Work pursuant to Section 12 herein. The punch list will be based on the Approved Plans and any SPU-approved revisions to the Approved Plans for the SPU Facilities Work.

4. NOTICES AND DESIGNATED REPRESENTATIVES

4.1 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 to the Designated Representatives.

4.2 The Designated Representatives for each Party are as follows:

Deputy Program Director, Engineering and Operations
Alaskan Way Viaduct & Seawall Replacement Program
Washington State Department of Transportation
999 3rd Avenue, Suite 2424
Seattle, WA 98104



Project Manager, Alaskan Way Viaduct & Seawall Replacement Program
Seattle Public Utilities
P.O. Box 34018
700 Fifth Avenue, Suite 4900
Seattle, WA 98124-4018

5. DESIGN & PLAN SUBMITTAL, REVIEW AND RESPONSE PROCESS

5.1 The STATE and SPU shall comply with all provisions outlined in Section 7 of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934. The STATE will facilitate the design as provided herein and will allow SPU adequate time for detailed review. SPU will meet agreed-upon timelines for review. The STATE will address and resolve each SPU comment to SPU's and the STATE's satisfaction. In the event comments are not mutually resolved, the dispute resolution process may be initiated pursuant to Section 18 herein.

6. FUNDING OF SPU FACILITIES WORK

6.1 The STATE shall pay for all costs associated with the design and construction of the SPU Facilities Work, except for Betterments or New Work as defined in Section 2, performed by the STATE or its contractor, as set forth in the Approved Plans and any SPU-approved revisions to the Approved Plans, without reimbursement from SPU, including Change Orders pursuant to Section 8. No delay costs shall be paid for by SPU.

6.2 SPU shall be responsible for the additional incremental cost of any Betterment as provided in and based on an engineering estimate provided by the STATE's consultant and negotiated between SPU and the STATE. In addition, SPU shall be responsible for the actual cost of any New Work requested by SPU and agreed upon by the STATE. Any Betterment or New Work will be the subject of an amendment to this Agreement.

6.3 SPU will be responsible for costs associated with SPU labor, SPU consultants, and SPU administrative overhead, subject to the exceptions and limitations outlined below:

6.3.1 The STATE will develop a proposed recommended construction sequence and provide it to SPU for review. When SPU receives the proposed recommended construction sequence, it will develop with the STATE a mutually agreeable estimate of the SPU crew time required, which estimate shall be the maximum SPU crew time provided for the PROJECT at SPU's cost or expense.

6.3.2 In the event the STATE's contractor requests or requires SPU crew time in excess of or in addition to this estimate, the STATE or the contractor shall pay SPU for such time.



6.3.3 Responsibility for the cost of SPU crew time necessary to accommodate changes to the approved plans will be negotiated separate from this Agreement.

6.3.4 Responsibility for the cost of SPU crew time necessary to accommodate changes to the construction sequence due to unexpected field conditions will be negotiated separate from this Agreement.

6.4 SPU Financial Contribution. SPU will be required to provide staff in the performance of their roles and responsibilities as outlined above. The costs associated with SPU staff time will be calculated and the amount will be a credit to SPU as part of their financial contribution to the PROGRAM.

7. CONSTRUCTION MANAGEMENT, INSPECTION AND CONTRACT ADMINISTRATION

7.1 The STATE shall comply with all provisions contained within Section 10 of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934, regarding Construction Management, Inspection and Contract Administration for the PROJECT, and such provisions shall apply equally to this SPU Holgate to King Stage 1 Agreement.

8. CHANGE ORDERS

8.1 During construction, within three (3) Business Days of receiving a proposed change to the PROJECT ("Change Order"), the STATE's construction project engineer shall transmit the scope and cost estimate for the proposed change to SPU for review, comment, and written approval. Before executing the Change Order, in a non-emergency situation and unless otherwise agreed by the Parties, the STATE will allow SPU sufficient time to review, comment, and approve or disapprove in writing any changes to the Approved Plans and any SPU-approved revisions to the Approved Plans that affect SPU Facilities. SPU will assign any change a high priority and provide a timely response commensurate with the complexity of the proposed change. The STATE shall pay for all Change Orders that are not Betterments or New Work. No delay costs shall be paid by SPU.

8.2 SPU may request additions and changes to the construction contract through the STATE. The STATE shall comply with the requested elective change provided that the change is within the general scope of the PROJECT and complies with the PROJECT permits, State and/or Federal law and applicable rules, codes and/or regulations. The STATE retains the right to reject requested elective changes if incorporating such elective changes would result in a delay in the schedule. Such additions and changes may lead to Change Orders, or they may lead to Betterments.

8.2.1 If requested elective changes are minor in nature and the STATE agrees to comply with the changes, SPU and the STATE will approve, in writing, the request by signing a "Minor Change Request and Approval Form," using the template shown as Exhibit A. SPU agrees to reimburse the STATE for the costs



associated with the changes. SPU agrees to fund these minor changes to an accumulative amount not to exceed Ten Thousand Dollars (\$10,000.00) for the PROJECT.

8.2.2 The STATE will invoice SPU for the agreed upon changes as the work is performed by the STATE or its contractor. If and when applicable, these billings shall not be more frequent than one (1) per month and no less than one (1) per quarter, and upon receipt of a billing, SPU agrees to make payment within thirty (30) Business Days.

8.2.3 If, during the construction of the PROJECT, the “not to exceed amount,” as identified in Section 8.2.1, is expended, SPU and the STATE agree to amend Section 8.2.1 of this Agreement to continue funding the minor change requests.

8.3 The STATE will make available to the SPU all Change Order documentation that affects SPU Facilities Work.

9. SPU’S RIGHT TO CORRECT NON-CONFORMING, UNAUTHORIZED AND DEFECTIVE WORK

9.1 If the STATE or its contractor fails to remedy, or fails to properly remedy, non-conforming, unauthorized or Defective Work within the time specified by SPU, which is not to be less than ten (10) Business Days, SPU may, but is not required to correct and remedy such work by any means as SPU may deem necessary, including the use of SPU staff or contractors.

9.2 If the STATE or its contractor fails to comply with a written notice to remedy what SPU determines to be an emergency situation, SPU may, but is not required to, have the non-conforming or Defective Work corrected immediately, have such work removed and replaced, or have work the STATE or its contractor refuses to correct completed. An emergency situation shall mean a condition that calls for immediate action to respond to danger to health, safety or property.

9.3 Direct and indirect costs incurred by SPU attributable to correcting and remedying non-conforming or Defective Work, or work the STATE or its contractor failed or refused to perform, shall be paid by the STATE to SPU within thirty (30) days after receipt of an invoice with appropriate documentation of such costs.

9.4 Except in an emergency situation as defined under Section 9.2, disagreements between SPU and the STATE on what constitutes non-conforming, unauthorized or Defective Work shall be resolved using the dispute resolution process established in Section 20 of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934 prior to SPU performing any work.



10. PROTECTION OF SPU FACILITIES ACCESS

10.1 Neither the STATE nor its contractor shall require SPU to interrupt water service without (a) written notice to SPU at least fourteen (14) calendar days prior to the planned interruption and (b) SPU's written approval. SPU may restrict water service interruptions to the extent necessary to maintain water system operations and adequate water supply to customers. Under no circumstances shall the STATE, its contractor, or anyone other than SPU personnel, damage, repair, modify or operate any portion of the existing water system including but not limited to water services, water mains, valves, test stations, and meters.

10.2 The STATE shall ensure that SPU's access to existing and newly installed hydrants, meters, valves, or similar surface water system facilities, and drainage and wastewater system facilities, is maintained twenty-four (24) hours a day, seven (7) days a week, unless different arrangements have been agreed to in advance and in writing by the Parties. For purposes of this SPU Holgate to King Stage 1 Agreement, "access" shall mean that the hydrants, meters, valves, or similar surface water system facilities, and drainage and wastewater system facilities shall not be blocked, covered or otherwise inaccessible to SPU.

10.3 SPU shall have the right to enter the PROJECT site at any time to operate and maintain the water system or the drainage and wastewater system, to inspect or observe the SPU Facilities Work performed by the contractor, or to perform the SPU Facilities Work for which SPU is responsible.

10.4 In the event that the STATE needs entry into any SPU Facility or property held under the jurisdiction of SPU, the STATE shall obtain SPU permission.

11. SPU ACCESS AND INSPECTION

11.1 The STATE shall provide SPU with twenty-four (24) hour, seven (7) days a week, safe access to any construction and staging areas that relate to the SPU Facilities Work. SPU staff, other than SPU's on-site inspector, will notify the STATE in advance of their arrival on site except in the case of emergency as defined under Section 9.2.

11.2 The STATE agrees and acknowledges that SPU shall have an on-site inspector available during the construction of SPU Facilities for SPU's quality assurance. The STATE agrees and acknowledges the SPU's on-site inspector shall (a) have timely and complete access to the construction work associated with the SPU Facilities Work; (b) be timely informed of all relevant construction timelines associated with such work; and (c) have the authority to, but not be required to, reject and have corrected and/or replaced any construction or materials deemed to be deficient, or which deviate from the Approved Plans and any SPU-approved revisions to the Approved Plans. In such



instances, SPU's on-site inspector, or SPU's project manager will immediately direct comments and issues to the STATE's construction project engineer or designated representative, which will be followed up in writing as soon as possible but no later than ten (10) Business Days of the date of any inspection. The STATE shall promptly address each comment or issue presented by SPU to the STATE's and SPU's satisfaction. SPU staff will continue to be supervised by SPU management.

11.3 The STATE will allow SPU's on-site inspector or Designated Representative, to consult with and inquire of the STATE construction project engineer, attend all meetings, and have timely and complete access to all documentation as to all matters concerning the PROJECT. SPU shall not provide direction, directly or indirectly, to the STATE's consultant(s) or contractor.

11.4 The STATE shall provide SPU with timely notice upon commencement and completion of all material stages of the SPU Facilities Work and shall invite SPU to inspect such work upon completion of any material stage. The SPU on-site inspector shall be invited to the weekly construction meeting prior to any work being started on SPU Facilities. The STATE shall provide at least five (5) Business Days notice for each inspection. SPU shall submit a complete list of any concerns or deficiencies to the STATE within ten (10) Business Days of the date of any inspection. The STATE shall timely address each comment or issue presented by SPU to the STATE's and SPU's satisfaction. Both Parties agree to act as expeditiously as possible to assure a timely resolution of any deficiencies.

11.5 SPU shall observe the work performed by the STATE for quality assurance. SPU will notify the STATE if defective SPU Facilities Work is observed, such as improper installation or unsafe conditions.

11.6 Any and all services, including direction, provided by SPU pursuant to this section shall be subject to all limitations on the CITY's liability contained in the SDOT Holgate to King Stage 1 Agreement No. GCA 5934, including but not limited to Section 16, Risk Allocation.

12. FINAL INSPECTION AND ACCEPTANCE OF SPU FACILITIES WORK

12.1 The STATE shall comply with all provisions of the SDOT Holgate to King Stage 1 Agreement regarding Final Inspection, Project Acceptance, and interim use and operation of SPU Facilities including but not limited to all provisions in Section 12 therein, and such provisions shall apply equally to this SPU Holgate to King Stage 1 Agreement.

12.2 SPU Facilities shall not be placed into interim use or operation, unless or until: (a) SPU has participated in an inspection of the SPU Facilities; (b) any deficiencies or Defective Work have been resolved or corrected to the STATE's and SPU's satisfaction; and (c) SPU confirms with the STATE in writing that SPU's minimum inspection and



testing requirements for the SPU Facilities have been met, including completion of the Washington State Department of Health Completion Report for water mains.

13. OWNERSHIP OF IMPROVEMENTS AND WARRANTIES

13.1 Upon completion of the SPU Facilities Work and upon SPU's acceptance of such work as outlined in Section 12 herein, and in compliance with all provisions of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934 Section 12 therein, the STATE shall transfer ownership of the SPU Facilities to SPU, shall warrant good title to the SPU Facilities constructed by the STATE, and shall transfer all right, title and interest it may have in the SPU Facilities to SPU. SPU shall be responsible for all future operation and maintenance of the SPU Facilities at its sole cost and expense, except that the STATE shall remain liable for any latent defects or warranty claims.

13.2 In addition, for any design, permitting or construction of the SPU Facilities Work undertaken by the STATE, the STATE shall require its construction contractors to provide SPU with the following warranties, each of which shall be for a minimum of one year, unless the industry standard is longer: (1) any guaranty or warranty furnished as a normal trade practice in connection with the purchase (by the contractor or a subcontractor) of any equipment, materials or items incorporated in the SPU Facilities Work; and (2) any guaranty or warranty for workmanship furnished as a normal trade practice.

14. ENVIRONMENTAL REMEDIATION

14.1 The STATE shall comply with all provisions of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934, regarding Environmental Remediation, including but not limited to all provisions in Section 4 therein, and such provisions shall apply equally to this SPU Holgate to King Stage 1 Agreement.

15. RISK ALLOCATION

15.1 The STATE shall comply with all provisions of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934, regarding Risk Allocation and Indemnification, including but not limited to all provisions in Section 16 therein, and such provisions shall apply equally to this SPU Holgate to King Stage 1 Agreement.

16. INSURANCE

16.1 The STATE shall comply with all provisions of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934 regarding Insurance, including but not limited to all provisions in Section 17 therein, and such provisions shall apply equally to this SPU Holgate to King Stage 1 Agreement.



17. THIRD PARTY BENEFICIARY

17.1 The STATE shall comply with all provisions of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934 regarding Third Party Beneficiary, including but not limited to all provisions in Section 18 therein, and such provisions shall apply equally to this SPU Holgate to King Stage 1 Agreement.

18. DISPUTE RESOLUTION

18.1 SPU and the STATE shall make good faith efforts to resolve any dispute arising under or in connection with this Agreement.

18.2 Dispute Resolution Representatives. The Dispute Resolution Representatives for the Parties are as follows:

For the STATE: Holgate to King Stage 1 Project Design Project
Engineer or, if appropriate, Construction Project
Engineer,
Alaskan Way Viaduct & Seawall Replacement Program
Washington State Department of Transportation
999 3rd Avenue, Suite 2424
Seattle, WA 98104

For SPU: Seattle Public Utilities Dispute Resolution
Representative:
SPU AWV Project Manager
P.O. Box 34018
700 Fifth Avenue, Suite 4900
Seattle, WA 98124-4018

18.3 Dispute Resolution Process. The designated representatives established under Section 18.2, shall use their best efforts to resolve disputes between the Parties. If these individuals are unable to resolve a dispute, the Deputy Director of Seattle Public Utilities' Project Delivery Branch and the Deputy Regional Program Administrator for the Washington State Department of Transportation Urban Corridors Office shall review the matter and attempt to resolve it. If they are unable to resolve the dispute, the matter shall be reviewed by the Director of the Seattle Public Utilities and the Washington State Deputy Secretary of Transportation. The Parties agree to exhaust each of these procedural steps before seeking to resolve disputes in a court of law or any other forum.



19. REMEDIES; ENFORCEMENT

19.1 The provisions of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934 regarding Remedies; Enforcement, including but not limited to Section 21 therein, shall apply equally to this SPU Holgate to King Stage 1 Agreement.

20. TERMINATION

20.1 The Term of this SPU Holgate to King Stage 1 Agreement shall be the Term provided in Section 25 of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934, and the provisions of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934 regarding Termination, including but not limited to Section 25 therein, shall apply equally to this SPU Holgate to King Stage 1 Agreement.

21. CONFIDENTIALITY OF INFORMATION AND RECORDS

21.1 The provisions of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934 regarding Confidentiality of Information and Records, including but not limited to Section 26 therein, shall apply equally to this SPU Holgate to King Stage 1 Agreement.

22. GENERAL PROVISIONS

22.1 The General Provisions set forth in the SDOT Holgate to King Stage 1 Agreement No. GCA 5934, including but not limited to Section 27 therein, shall apply equally to this SPU Holgate to King Stage 1 Agreement.



IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the last day and year written below.

SEATTLE PUBLIC UTILITIES

By: _____

Print: _____

Title: _____

Date: _____

**WASHINGTON STATE
DEPARTMENT OF
TRANSPORTATION**

By: _____

Print: _____

Title: _____

Date: _____

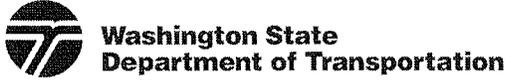
APPROVED AS TO FORM:

By (print)

Signature
Assistant Attorney General

Date: _____





Seattle Public Utilities
Minor Change Request & Approval
For SPU-requested minor changes costing \$10,000 or less

Section Completed by SPU

WSDOT Contract Number	Contract Title	
Summary Minor Change Description		Date
SPU Representative Requesting Minor Change		Phone Number
Impacted SPU Systems		SPU Activity Number
Minor Change Description (attach drawings and other descriptive materials as necessary):		
Reason for Request:		

Section Completed by WSDOT

Change Order Number	Prime Contractor	Date
Project Engineer		Phone Number
Minor Change Cost Calculation:		
Total Authorized Minor Change Cost (not to exceed without prior approval by WSDOT and SPU)		\$

Terms and provisions of Memorandum of Agreement Number UT 01342, as amended, apply.

Approvals

Seattle Public Utilities Signature _____ Date _____



UT 01342
Exhibit A



Washington State
Department of Transportation

Seattle Public Utilities
Minor Change Request & Approval
For SPU-requested minor changes costing \$10,000 or less

WSDOT Project Engineer's Signature _____ Date _____





Seattle Department of Transportation

Gregory J. Nickels, Mayor

Grace Crunican, Director

Memorandum

June 10, 2009

CITY CLERK

2009 JUN 10 PM 1:07

FILED
CITY OF SEATTLE

To: The Office of the City Clerk

From: Robert M. Chandler, Manager, Alaskan Way Viaduct/Seawall Replacement Program

Enclosed are the original final agreements executed pursuant to Ordinance 122978 for the City's official records.

- No. UT 01342 Stage 1, S. Holgate Street to S. King Street SPU MOA
- No. UT 01343 Stage 1, S. Holgate Street to S. King Street, SCL MOA
- No. GCA 5934 Stage 1, S. Holgate Street to S. King Street SDOT MOA

CC: Gavin Patterson, Seattle Public Utilities
Jodi Rian, Seattle City Light



Key Tower, 700 5th Avenue, Suite 3900, Seattle, WA 98104-5043
Tel: (206) 684-ROAD (684-7623), TTY/TDD (206) 684-4009, FAX: (206) 684-5180

Internet address: <http://www.seattle.gov/transportation>

An equal employment opportunity employer.

Accommodations for people with disabilities provided on request.

1 MEMORANDUM OF AGREEMENT
2 NO. GCA 5934
3 SR 99 ALASKAN WAY VIADUCT
4 PROPERTY, ENVIRONMENTAL REMEDIATION, DESIGN REVIEW,
5 PERMITTING, AND CONSTRUCTION COORDINATION
6 AGREEMENT
7 FOR SR 99 SOUTH HOLGATE STREET TO SOUTH KING STREET
8 VIADUCT REPLACEMENT PROJECT, STAGE 1
9

10 THIS Property, Environmental Remediation, Design Review, Permitting, and
11 Construction Coordination Agreement, No. GCA 5934 for the South Holgate Street to
12 South King Street Viaduct Replacement Project Stage 1 (“Agreement”) is made and
13 entered into between the State of Washington Department of Transportation, hereinafter
14 the “STATE,” and the City of Seattle hereinafter the “CITY” (managed by the Seattle
15 Department of Transportation, hereinafter “SDOT”), collectively the “Parties” and
16 individually the “Party.”
17

18 WHEREAS, the Alaskan Way Viaduct (AWV or Viaduct) and seawall are at risk of
19 sudden and catastrophic failure in an earthquake and are nearing the end of their useful
20 lives; and
21

22 WHEREAS, the STATE and the Federal Highway Administration (FHWA), in
23 consultation with the CITY, are proposing improvements to State Route 99 (SR 99), a
24 non-limited access highway which includes the Viaduct, and the seawall; and
25

26 WHEREAS, in March 2007, the Governor, the King County Executive and the Mayor of
27 Seattle pledged to advance a series of key SR 99 projects (Moving Forward Projects) that
28 will facilitate the removal and/or repair of key portions of SR 99, which are: Yesler Way
29 Vicinity Stabilization Project, Electrical Line Relocation (formerly known as Electrical
30 Utility Relocation Phase 1 under agreement No. GCA 5680), Battery Street Tunnel Fire
31 and Life Safety Upgrades, SR 99 Lenora to Battery Street Tunnel Improvements, the SR
32 99 South Holgate Street to South King Street Viaduct Replacement Project, and Transit
33 Enhancements and Other Improvements; and
34

35 WHEREAS, in January 2009, the Governor, the King County Executive and the Mayor
36 of Seattle reached an agreement recommending a solution for replacing the existing
37 viaduct structure in the central waterfront area (Central Waterfront Decision); and,
38

39 WHEREAS, taken together, the Moving Forward Projects and the Central Waterfront
40 Decision are known as the Program; and
41

42 WHEREAS, the STATE intends to remove a portion of the viaduct structure as part of
43 one of the Moving Forward Projects, the SR 99 South Holgate Street to South King Street
44 Viaduct Replacement Project by December 31, 2012. The South Holgate Street to South
45 King Street Viaduct Replacement Project will replace the Viaduct’s south end with a new

1 side-by-side surface and aerial roadway that connects to the existing Viaduct, provide
2 new SR 99 on- and off-ramps near South King Street, create an underpass below SR 99
3 on the north side of South Atlantic Street, and build new bicycle/pedestrian paths on the
4 east and west sides of SR 99. The South Holgate Street to South King Street Viaduct
5 Replacement Project will be carried out in stages. Stage 1 of the South Holgate Street to
6 South King Street Viaduct Replacement Project (the "PROJECT" as defined under
7 section 1.22 and Exhibit A) is the subject of this Agreement; and

8
9 WHEREAS, concurrently with this GCA 5934 ("SDOT Agreement" or "this
10 Agreement"), the STATE and CITY, through Seattle City Light (SCL), are entering into
11 an agreement, UT 01343 (SCL Holgate to King Stage 1 Agreement); and

12
13 WHEREAS, concurrently with this SDOT Agreement, GCA 5934, the STATE and
14 CITY, through its Seattle Public Utilities Department (SPU), are entering into an
15 agreement, UT 01342 (SPU Holgate to King Stage 1 Agreement); and

16
17 WHEREAS, the PROJECT will in some instances require the use of existing CITY Street
18 Right-of-Way; and

19
20 WHEREAS, the CITY will own and/or maintain significant Infrastructure to be
21 constructed as part of the PROJECT; and

22
23 WHEREAS, the Parties wish to establish protocols and procedures for property
24 acquisition, environmental remediation, design review, permitting, and construction
25 coordination to govern their relationship during the course of the PROJECT,

26
27 NOW, THEREFORE, pursuant to RCW 47.24.020 and in consideration of the terms,
28 conditions, covenants, and performances contained herein, or attached and incorporated
29 and made a part hereto,

30
31 IT IS MUTUALLY AGREED AS FOLLOWS:

32
33
34 **1. DEFINITIONS**

35
36 Words not otherwise defined, which have well-known technical or construction industry
37 meanings, are used in accordance with such recognized meanings.

38
39 1.1 Approved Plans means the construction plans and provisions that evidence the
40 CITY's determination, through the processes described in Section 7 of this Agreement,
41 that the plans conform to the Street Use Code and other requirements; and that plan
42 review comments are resolved to both Parties' satisfaction; Approved Plans are included
43 in the STATE's advertisement for bids, or supplementation thereto, and evidence the
44 agreement between the STATE and its contractors for construction of the PROJECT.

- 1 1.2 AWV means the Alaskan Way Viaduct on State Route 99, a non-limited-access
2 highway over a portion of CITY Street Right-of-Way and located partially in the City of
3 Seattle.
4
- 5 1.3 Business Days means Monday through Friday, inclusive, except for official City
6 of Seattle and state holidays.
7
- 8 1.4 CITY means the City of Seattle, a Washington municipal corporation
9
- 10 1.5 City Construction Project Engineer means the person designated by the SDOT to
11 act as the City's coordinator and primary representative in matters arising during the
12 course of construction as set forth in this Agreement.
13
- 14 1.6 CITY Designated Representative means the CITY official listed in Section 22.1
15 of this Agreement.
16
- 17 1.7 City of Seattle means CITY.
18
- 19 1.8 CITY Street Right-of-Way means public street right-of-way under the jurisdiction
20 of the SDOT pursuant to Title 15 of the Seattle Municipal Code.
21
- 22 1.9 Defective Work means design or construction work or materials that fail to
23 comply with the Approved Plans, CITY-approved modifications to the Approved Plans,
24 or the laws, rules, regulations or standards as specified in this Agreement.
25
- 26 1.10 DPD means the City of Seattle Department of Planning and Development.
27
- 28 1.11 Engineer of Record means the engineer licensed in the State of Washington who
29 has been commissioned by the STATE as the prime engineer of the PROJECT, having
30 overall responsibility for the adequacy of the design and the coordination of the design
31 work of other engineers and whose professional seal is on the Approved Plans.
32
- 33 1.12 Environmental Compliance Assurance Procedure (ECAP) means procedures
34 incorporated into the WSDOT *Construction Manual* M41-01.05 dated July 2008 (Section
35 1-2.2k(1)) and the WSDOT *Environmental Procedures Manual* M31-11.05 (Sections 610
36 and 690) dated October 2008, as modified by this Agreement, which provide guidance
37 on compliance with Environmental Laws and environmental Remediation. The purpose
38 of the ECAP is to recognize and eliminate environmental violations during the
39 construction phase on STATE construction sites and to ensure prompt notification to
40 STATE management and agencies. For purposes of the ECAP, violations are defined as
41 actions that are not in compliance with environmental standards, permits, or laws.
- 42 1.13 Environmental Law(s) means any environmentally related local, state or federal
43 law, regulation, ordinance or order (including without limitation any final order of any
44 court of competent jurisdiction of which the STATE has knowledge), now or hereafter in
45 effect including, but not limited to: the Federal Clean Air Act; the Federal Water
46 Pollution Control Act; the Federal Safe Drinking Water Act; the Federal Comprehensive

1 Environmental Response Compensation and Liability Act, as amended by the Superfund
2 Amendments and Reauthorization Act of 1986; the Federal Resource Conservation and
3 Recovery Act, as amended by the Solid and Hazardous Waste Amendments of 1984; the
4 Federal Occupational Safety and Health Act; the Federal Emergency Planning and Right-
5 to-Know Act of 1986; the Federal Hazardous Materials Transportation Control Act of
6 1980; the Federal Clean Water Act of 1977; the Federal Insecticide, Fungicide and
7 Rodenticide Act; the Federal Waste Management Recovery and Recycling Act; the
8 Washington Hazardous Waste Management Act; the Washington Hazardous Waste Fees
9 Act; Washington Model Toxics Control Act; the Washington Nuclear Energy and
10 Radiation Act; the Washington Radioactive Waste Storage and Transportation Act; the
11 Washington Underground Petroleum Storage Tanks Act; and any regulations
12 promulgated thereunder from time to time.

13

14 1.14 Hazardous Substance(s) means any substance, or substance containing any
15 component, now or hereafter designated as a hazardous, dangerous, toxic or harmful
16 substance, material or waste, subject to regulation under any federal, state or local law,
17 regulation or ordinance relating to environmental protection, contamination or cleanup
18 including, but not limited to, those substances, materials and wastes listed in the United
19 States Department of Transportation Hazardous Materials Table (49 C.F.R. §172.101) or
20 by the United States Environmental Protection Agency as hazardous substances (40
21 C.F.R. pt. 302 and amendments thereto) or in the Washington Hazardous Waste
22 Management Act (Ch. 70.105 RCW) or the Washington Model Toxics Control Act (Chs.
23 70.105D RCW and 82.21 RCW), petroleum products and their derivatives, and such
24 other substances, materials and wastes as become regulated or subject to cleanup
25 authority under any Environmental Law.

26

27 1.15 Infrastructure means the portions of SPU Facilities, SCL Facilities and roadway
28 improvements constructed or modified as part of the PROJECT to be owned, operated
29 and/or maintained by the CITY.

30

31 1.16 Letter of Acceptance means the written document prepared by the CITY and
32 delivered to the STATE that signifies the City of Seattle's approval of the CITY
33 Infrastructure built by the STATE's contractor; the CITY's issuance and STATE's
34 acknowledgment of the Letter of Acceptance effects transfer of Infrastructure ownership
35 and obligations for operation and maintenance as agreed by the Parties.

36

37 1.17 Letter of Plan Approval means the letter provided to the STATE by the CITY
38 following the completion of the plan review process, signifying that the plans and
39 specifications have been approved by the City of Seattle.

40

41 1.18 MTCA means the Washington Model Toxics Control Act (Chs. 70.105D RCW
42 and 82.21 RCW).

43

44

45

- 1 1.19 Plan Review Package means clear and complete plans, specifications, and the
2 necessary assumptions, studies, models and calculations upon which the design was
3 based, and corrections previously requested by the CITY.
4
- 5 1.20 100% Plan Review Package means the Plan Review Package submitted to the
6 City of Seattle concurrent with STATE's final internal review of the construction contract
7 plans and contract provisions that shall evidence the agreement between the STATE and
8 its contractors for construction of the PROJECT.
9
- 10 1.21 PROGRAM means all of the projects, collectively, implemented by the STATE
11 that remove and replace the AWV and seawall.
12
- 13 1.22 PROJECT means the SR 99 South Holgate Street to South King Street Viaduct
14 Replacement Project, Stage 1, as described in Exhibit A, Project Description.
15
- 16 1.23 Project Engineer means the person appointed by the STATE to lead the
17 PROJECT during design and/or construction or his or her designee.
18
- 19 1.24 Project Property means all real property interests acquired by the STATE for the
20 PROJECT as described in Exhibit B, Project Property.
21
- 22 1.25 Project Schedule means the schedule of design, permitting and construction
23 events presented in Exhibit C, Project Schedule, and agreed to by the Parties, as it may be
24 amended from time to time by agreement of the Parties.
25
- 26 1.26 Remediation means the same as Remedy or Remedial Action defined in MTCA
27 which includes any action or expenditure consistent with the purposes of MTCA to
28 identify, eliminate, or minimize any threat or potential threat posed by Hazardous
29 Substances to human health or the environment including any investigative and
30 monitoring activities with respect to any release or threatened release of a Hazardous
31 Substance and any assessments to determine the risk or potential risk to human health or
32 the environment.
33
- 34 1.27 Round Table Meeting means a meeting typically held five weeks following the
35 submittal of the 100% Plan Review Package to the City of Seattle and STATE, and
36 commonly attended by the STATE's PROJECT team and STATE reviewers to resolve
37 and address STATE comments on the 100% Plan Review Package.
38
- 39 1.28 SCL means Seattle City Light.
40
- 41 1.29 SCL Facilities means the electrical facilities impacted by, or constructed as part of,
42 the PROJECT that are owned or to be owned by the CITY.
43
44
- 45 1.30 SDOT means the Seattle Department of Transportation.
46

1 1.31 SPU means Seattle Public Utilities.

2
3 1.32 SPU Facilities means the water, drainage and wastewater facilities impacted by,
4 or constructed as part of, the PROJECT that are owned or to be owned by the CITY.

5
6 1.33 STATE means the State of Washington Department of Transportation.

7
8 1.34 STATE Designated Representative means the STATE official listed in Section
9 22.1 of this Agreement.

10
11 1.35 Street Use Permit means written authorization secured by the STATE from the
12 Director of SDOT for use of the CITY Street Right-of-Way pursuant to Title 15 of the
13 Seattle Municipal Code.

14
15 1.36 Submittal Control Document means a list of all documents or reports that are
16 required by the Approved Plans or construction contract documents or applicable law to
17 be provided to or submitted to the STATE and the CITY.

18
19 1.37 WSDOT means Washington State Department of Transportation.

20
21
22 **2. OBJECTIVES OF AGREEMENT**

23
24 2.1 This Agreement is prepared by the STATE and CITY to govern relationships
25 between them during the course of the PROJECT to be constructed by the STATE, as
26 described in Exhibit A, Project Description.

27
28 **3. PROPERTY ACQUISITION**

29
30 3.1 Acquisition

31
32 3.1.1 The STATE has or will acquire, at its expense, all property and interests
33 that it deems necessary for the PROJECT. The Project Property is depicted on Exhibit B
34 attached hereto.

35
36 3.1.2 The STATE is responsible, at its expense, for performance of all
37 appraisals, appraisal review, title review, surveys, property investigation, relocation
38 assistance and all other investigations and services in connection with the acquisition of
39 the Project Property.

40
41 3.1.3 The STATE is responsible for identification and investigation of
42 Hazardous Substances on Project Property following procedures set in the current
43 WSDOT *Environmental Procedures Manual M 31-1.05* dated October 2008 and
44 WSDOT *Right of Way Manual M 26-01* dated October 2006. The STATE shall provide
45 to SDOT's Real Property and Environmental Manager, as soon as received by, or
46 prepared by or for the benefit of, the STATE, copies of all documentation of

1 environmental investigation concerning the Project Property, remedial actions, reports,
2 studies or other documentation, including, but not limited to, (1) documents relating to
3 due diligence and/or all appropriate inquiry, environmental assessments, and remedial,
4 removal or cleanup activities related to the Project Property; (2) documents relating to
5 allegations, orders, claims, regulatory demands, or losses relating to the alleged existence
6 or migration of any Hazardous Substance from or on any parcel of Project Property; and
7 (3) any alleged violation of any Environmental Law or other information relating to
8 environmental condition of the Project Property.
9

10 3.1.4 The STATE is responsible for acquiring and transferring to the CITY
11 easement rights for SCL Facilities by temporary construction easement (“Temporary
12 Construction Easement”). The acquisition and transfer provisions pertaining to the
13 Temporary Construction Easements are provided in the SCL Holgate to King Stage 1, UT
14 01343 Agreement.
15

16 4. ENVIRONMENTAL REMEDIATION DURING CONSTRUCTION

17
18 4.1 STATE Responsibilities. The STATE shall be responsible for identification,
19 investigation and Remediation of Hazardous Substances found within the limits of the
20 PROJECT during its environmental due diligence of the Project Property and will
21 identify areas of known Hazardous Substances in the Plan Review Packages circulated
22 for CITY review and approval. In addition, the STATE shall be responsible for
23 identification, investigation and Remediation of Hazardous Substances discovered during
24 construction. Provisions for Remediation of known Hazardous Substances, approved
25 Remediation plans, and provisions for Remediation of Hazardous Substances discovered
26 during construction shall be included in the Plan Review Packages and Approved Plans.
27 Nothing in this Agreement is intended to alter the legal obligations of the STATE with
28 respect to hazardous substances that may remain in place after completion of the
29 PROJECT.
30

31 4.2 Environmental Remediation will be in accordance with Environmental Law. The
32 STATE shall follow the Model Toxics Control Act (MTCA) and associated procedures
33 approved by the Washington State Department of Ecology for Remedial Action, and the
34 STATE will undertake Remediation using environmental professional judgment that
35 achieves an overall effectiveness comparable to the substantial equivalent of a
36 Washington State Department of Ecology conducted or supervised Remedial Action
37 appropriate to the specific site conditions and contaminants with no environmental
38 restrictions or covenants unless agreed to by the CITY in writing. The STATE is not
39 obligated to implement the public notification and documentation procedures common to
40 the substantial equivalent of a Washington State Department of Ecology conducted or
41 supervised Remedial Action.
42

43 4.3 The STATE shall not use soil found to exceed MTCA cleanup levels or that
44 exhibits visual and/or olfactory indications of Hazardous Substance as earth fill or trench
45 backfill within the PROJECT. There shall be no requirements or agreements affecting the
46 City Street Right-of-Way concerning ongoing monitoring of soil or groundwater relating

1 to Hazardous Substances unless agreed to by the CITY in writing prior to Remedial
2 Action.

3
4 4.4 Under certain circumstances, and in consultation with the CITY, the STATE may
5 conduct additional Remediation of contaminated areas, including areas outside the limits
6 of the PROJECT. These circumstances may include, but are not limited to:

7
8 4.4.1 Instances in which Remediation may be necessary to prevent adverse
9 water quality impacts and/or to comply with other State and Federal permit
10 conditions;

11 4.4.2 Instances that in the judgment of the STATE Project Engineer require
12 immediate Remediation to protect public health and safety;

13 4.4.3 Where regulatory agencies with jurisdiction require additional
14 Remediation;

15 4.4.4 Where additional Remediation is necessary to prevent recontamination of
16 the limits of the PROJECT, address subsurface utility facilities located or planned
17 within or near the limits of the PROJECT or within the Project Property, or
18 address disturbance or exacerbation of existing contamination; and

19 4.4.5 Where additional Remediation is necessary to meet mutually acceptable
20 risk management standards in accordance with STATE and CITY protocols.

21
22 4.5 All work shall comply with the WSDOT *Environmental Procedures Manual M*
23 *31-11* and WSDOT *Construction Manual M41-01*, Environmental Law, except as
24 modified by this Agreement.

25
26 4.6 The STATE will include the CITY in its ECAP when unanticipated
27 contamination is found within the limits of the PROJECT. Notification procedures will
28 include notifying the CITY orally followed by written notification.

29
30 4.7 The STATE's Project Engineer will determine, in consultation with the CITY,
31 Remediation of known and unanticipated Hazardous Substances within the limits of the
32 PROJECT. In instances where the CITY disputes the STATE's plan(s) for Remediation
33 in connection with the Project Property, the CITY and STATE will resolve the dispute
34 through the dispute resolution process in Section 20 of this Agreement.

35
36 4.8 The STATE shall prepare plans in consultation with the CITY for Remediation of
37 known and unanticipated Hazardous Substances in connection with the CITY Street
38 Right-of-Way, and shall obtain CITY concurrence prior to implementing Remedial
39 Actions. In instances where the CITY finds the STATE's plans for Remediation
40 unacceptable, the CITY or STATE may request resolution through the dispute resolution
41 process in Section 20 of this Agreement.

42
43 4.9 Prior to the start of construction, and after the contractor has been selected, the
44 STATE will initiate and host an environmental preconstruction meeting. The STATE will
45 invite City of Seattle staff, STATE staff and the STATE contractor to discuss known

1 contamination, environmental procedures, environmental Remediation and permit
2 conditions that apply to the PROJECT.

3
4 4.10 The STATE will obtain all required permits and approvals for Remediation.

5
6 4.11 Remediation work shall not proceed in areas outside of the limits of the
7 PROJECT unless the STATE has obtained written permission of the property owner and
8 appropriate permits to work on property that is not part of the PROJECT. The STATE
9 shall make reasonable efforts to obtain permission of the property owner. The STATE
10 may utilize the assistance of the State Department of Ecology as provided in the MTCA
11 regulations.

12
13 4.12 The STATE shall provide the CITY with copies of environmental close-out
14 reports for Remediation activities.

15
16 4.13 All costs associated with testing, handling, storing, removing, transporting,
17 disposing, or treating Hazardous Substances that are excavated in connection with the
18 PROJECT will be paid by the STATE. In addition, STATE shall be responsible for all
19 costs associated with Remediation of any releases that are caused or exacerbated by its
20 own employees or contractors. The STATE shall be identified as the generator for these
21 Hazardous Substances.

22
23 4.14 The CITY will provide to the STATE all records regarding any known areas
24 where Hazardous Substances may be located within the limits of the PROJECT,
25 including but not limited to environmental investigation reports for properties located in
26 the PROJECT. The reports shall be provided for the STATE's information only, shall not
27 be relied upon by the STATE, and the CITY's provision of these records shall not
28 constitute a representation or warranty as to the accuracy of the information contained in
29 the reports.

30
31 4.15 The STATE will provide to the CITY all records regarding any known areas
32 where Hazardous Substances may be located within the limits of the PROJECT and
33 Project Property, including but not limited to environmental investigation reports for the
34 Project Property. In addition, the STATE will notify and provide information regarding
35 any contamination encountered during construction. Reports provided by the STATE are
36 for information only, and shall not be relied upon by the CITY, and the STATE's
37 provision of these records shall not constitute a representation or warranty as to the
38 accuracy of the information contained in the reports.

39 40 **5. RIGHT-OF-WAY USE**

41
42 5.1 The CITY authorizes the STATE to use CITY Street Right-of-Way for the
43 PROJECT, subject to the provisions of Street Use Permits and the conditions contained in
44 this Agreement. The STATE's use of CITY Street Right-of-Way shall comply with the
45 Seattle Municipal Code and all other applicable laws, including but not limited to the

1 Shoreline Management Act, the National Environmental Policy Act and the State
2 Environmental Policy Act.

3
4 5.2 The STATE shall obtain Street Use Permits for the use of CITY Street Right-of-
5 Way for the PROJECT. The Parties agree that the requirements of and conditions
6 applicable to the Street Use Permits issued for CITY Street Right-of-Way in connection
7 with the PROJECT will also apply to the Project Property. The STATE agrees to abide
8 by and comply with all such requirements and conditions and to include all such
9 requirements and conditions in its contracts with contractors.

10
11 5.3 The STATE shall apply for and obtain all necessary federal, state and City of
12 Seattle-issued permits and approvals prior to commencing any work on the PROJECT,
13 including but not limited to all permits, approvals or permission for exploratory
14 investigations, testing, site preparations, demolition and construction.

15
16 5.4 The STATE acknowledges the right of the CITY to exercise its police power
17 pursuant to general law and applicable statutes for the protection of the health, safety, and
18 welfare of its citizens and their properties. Nothing in this Agreement shall be construed
19 as waiving the CITY's rights to exercise its police power or to preclude exercising such
20 regulatory power in connection with this PROJECT.

21
22
23 **6. FUTURE DESIGN MODIFICATIONS AND CHANGE MANAGEMENT**
24 **PROCEDURES**

25
26 6.1 The STATE shall consult the CITY with regard to all aspects of planning, design
27 and construction of the PROJECT.

28
29 6.2 The STATE shall neither make nor implement revisions or deviations from the
30 Approved Plans without first obtaining the review and concurrence of the CITY.

31
32
33 **7. DESIGN, PLAN REVIEW & PERMITS**

34
35 7.1 This Agreement addresses the design and plan review process for SDOT, SCL,
36 and SPU and the process for issuance of Street Use Permits by SDOT; it does not address
37 plan review or permits issued by other departments of the City of Seattle.

38
39 7.2 The Parties agree to work cooperatively with each other and in good faith to
40 implement procedures to attempt to accomplish the following:

41
42 7.2.1 Enable timely and expeditious completion of the PROJECT design in
43 accordance with the Project Schedule, Exhibit C.

44
45 7.2.2 Facilitate thorough review of all stages of design to ascertain that the
46 design of Infrastructure is in compliance with City of Seattle policy and

1 regulations, and standards and specifications. This includes the STATE's
2 preparing plans and documentation in a form that meets CITY standards for
3 review, the CITY's consolidating and reconciling its comments, and the STATE's
4 addressing all CITY comments from each stage of review in the material
5 submitted for the following review.
6

7 7.2.3 Enable both Parties to comply with all laws and procedures governing
8 their actions. For example, procedures must enable the STATE to comply with
9 STATE procedures regarding review of its final Approved Plans for advertising
10 while at the same time enabling the CITY to comply with SMC Title 15.
11

12 7.3 The STATE will take the lead in coordinating regular communications and
13 meetings between the CITY and the STATE in this endeavor.
14

15 7.4 The CITY shall not give direction to the STATE's consultants or contractors
16 during the design and review of Plan Review Packages.
17

18 7.5 The STATE agrees to prepare a PROJECT design in collaboration with SDOT,
19 SCL, and SPU staff and shall submit Plan Review Packages pursuant to the procedures
20 outlined in this Agreement.
21

22 7.6 The STATE agrees to seek and incorporate input from the CITY in the early
23 stages of preliminary engineering, preparation of Plan Review Packages, and throughout
24 the PROJECT design and permitting process. The STATE agrees that design of
25 Infrastructure will include consideration of long-term operation and maintenance costs, in
26 addition to up-front design and construction costs.
27

28 7.7 The STATE's design and construction shall comply with the following
29 requirements:
30

31 7.7.1 The design and construction of CITY Infrastructure shall conform to all
32 City of Seattle laws, rules, regulations and standards and all applicable federal and
33 state laws, rules, regulations and standards, including but not limited to the
34 following, except as otherwise provided in this Agreement:
35

36 7.7.1.1 The Seattle Municipal Code

37 7.7.1.2 The City of Seattle Standard Specifications for Road, Bridge and
38 Municipal Construction

39 7.7.1.3 The City of Seattle Standard Plans for Municipal Construction,

40 7.7.1.4 SDOT, SCL, DPD and SPU Director's Rules, including the City of
41 Seattle Right of Way Improvements Manual, 2005-22.

42 7.7.1.5 SCL Material Standards

43 7.7.1.6 SCL Construction Guidelines
44

45 7.7.2 The STATE will consult with the CITY on any requested deviation from
46 City of Seattle standards.

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7.7.3 The Parties agree that the STATE shall submit plans for Infrastructure prepared in accordance with SR 99 Alaskan Way Viaduct and Seawall Replacement CADD manual revision 1.0, dated June 2006.

7.7.4 The Parties agree that the Approved Plans shall be stamped by the STATE's Engineer of Record. The STATE is responsible for ensuring that permit applications and plans meet City of Seattle regulatory standards.

7.8 After a complete Street Use Permit application and a 100% Plan Review Package have been submitted to the CITY, SDOT shall coordinate its review and issuance of Street Use Permits. This work includes coordinating pre-application reviews, receiving and distributing materials among City of Seattle reviewers, collating and tracking review comments, and working with other CITY departments to resolve conflicting comments or requirements.

7.9 The Parties agree to the following measures to facilitate timely review.

7.9.1 The STATE agrees to establish and provide to the CITY a target schedule for the STATE's submittal to the CITY of the Plan Review Packages as soon as such schedule is available. The STATE shall notify the CITY of any proposed schedule modifications. If the STATE determines that it cannot meet the anticipated dates, the STATE shall provide to the CITY's Designated Representative a revised submittal schedule as soon as possible after delay is known or anticipated.

The STATE shall notify the CITY's Designated Representative fifteen (15) Business Days prior to the scheduled Plan Review Package to confirm that the Plan Review Package will be transmitted as scheduled or to establish a deferred date so that CITY staff can be appropriately scheduled for the review.

7.9.2 The STATE shall prepare and timely submit plans to the CITY and provide corrections and additional information as requested by the CITY in a manner that will allow CITY departments sufficient time to review the Street Use Permit application and the plans. The times for review for each Plan Review Package are stated in the table below. The CITY agrees to fifteen (15) Business Days for review of 30% Plan Review Packages, twenty-five (25) Business Days for review of the 60% Plan Review Packages and the 90% Plan Review Packages and fifteen (15) Business Days for the 100% Plan Review Packages. However, the number of Business Days for review will increase if the STATE submits multiple Plan Review Packages to the CITY for concurrent review in accordance with the table below, or as otherwise agreed by the Parties.

1

Submittal Phase	Number of Business Days per Number of Plan Review Packages Under Review		
	One	Two	Three
30% Plan Review Package	15 days	25 days	25 days
60% Plan Review Package	25 days	40 days	45 days
90% Plan Review Package	25 days	40 days	45 days
100% Plan Review Package	15 days	15 days	20 days

2

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In the event that more than three Plan Review Packages are under review at the same time, the Parties agree to negotiate a reasonable review time for the Plan Review Package being submitted.

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7.10 The Parties agree that the plan submittal to the CITY will take place as follows, and the plans will be prepared to meet the following requirements.

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7.10.1 The CITY review period begins with the receipt by the CITY's Designated Representative of the Plan Review Package and ends when the CITY'S final comment document is submitted to the STATE electronically in a Microsoft Excel document format. The CITY is solely responsible for assigning appropriate CITY staff to review and provide comment within the established timeframes.

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7.10.2 Following its review of 30% plans, SDOT shall prepare and deliver to the STATE a preliminary draft of Street Use Permit conditions. SDOT shall update the preliminary draft permit conditions sufficiently in advance of dates scheduled for 60%, 90% and 100% Plan Review Package submittals to enable incorporation of the draft conditions into the STATE's construction contract documents.

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7.10.3 The STATE shall deliver the Plan Review Packages as further described in this Agreement. If the CITY receives a submittal from the STATE that does not contain all the requirements of a Plan Review Package, the CITY will notify the STATE that the submittal is incomplete. To expedite the process and to the extent possible, the CITY will attempt to begin review of an incomplete submittal. However, the STATE shall submit the information needed to complete the Plan Review Package as soon as possible and shall highlight any changes made since the incomplete submittal.

32

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7.11 The CITY's Designated Representative shall work with the CITY departments to identify deficiencies in the Plan Review Packages. The CITY departments shall reconcile conflicting comments, and SDOT shall incorporate the comments in a single document.

36

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38

7.12 The CITY shall assist the STATE in determining appropriate responses to comments and resolution of deficiencies noted in its comments.

1 7.13 The STATE shall provide initial written responses to all comments within two (2)
2 weeks of receiving the CITY's comments to a Plan Review Package and shall incorporate
3 all responses into the next succeeding Plan Review Package.
4

5 7.14 The STATE and CITY shall hold a comment resolution meeting immediately
6 after comments are received and responded to. Any unresolved comments shall be
7 forwarded to a comment resolution team composed of CITY and STATE staff. In the
8 event the team cannot resolve all issues, they will be elevated to appropriate levels of
9 management.
10

11 7.15 The STATE and CITY agree to follow a process as set forth in this Agreement to
12 facilitate both the STATE's compliance with STATE procedures governing preparation
13 of bid packages and SDOT procedures for issuing Street Use Permits. The process shall
14 include the following steps:
15

16 7.15.1 The STATE shall not submit its 100% Plan Review Package to the CITY
17 until it has ascertained that all the CITY's previous review comments have been
18 reconciled.
19

20 7.15.2 The CITY will determine, following the 100% submittal within the
21 timeframe stated in the table above, whether all comments on the 90% Plan
22 Review Package have been addressed. At the conclusion of this determination,
23 the CITY shall notify the STATE in writing either that the 100% Review Package
24 has been approved by the CITY or that STATE has not addressed all the CITY's
25 90% comments. In such case, the CITY shall submit to the STATE clear
26 instructions for addressing the outstanding issues.
27

28 7.15.3 The STATE shall invite the CITY to participate in its Round-Table
29 Meeting to enable full discussion of the implications and consequences of
30 changes proposed by STATE to the 100% Plan Review Package..
31

32 7.15.4 SDOT shall issue its Street Use Permit within five (5) Business Days
33 following the Round-Table Meeting if the plans conform to the requirements of
34 the Street Use Code. If any issues remain for resolution, the Street Use Permit
35 will include a condition stating that the permittee shall not begin construction
36 until remaining review comments have been resolved. The STATE shall engage
37 CITY reviewers in resolution of review comments and, if required, elevate
38 unresolved comments in accordance with the dispute resolution procedures in
39 Section 20 of this Agreement.
40

41 7.15.5 The STATE shall work with the CITY to ensure that all comments on
42 the 100% Plan Review Package are adequately incorporated into the STATE's
43 advertisement for bid, or are otherwise addressed to the Parties' satisfaction. This
44 process will include comment resolution with CITY reviewers, a meeting with the
45 STATE and CITY resolution teams, and, if required, elevation of unresolved
46 comments to the executive management teams for the STATE and CITY.

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7.15.6 The CITY will coordinate a final check of the 100% Plan Review Package to confirm that the 100% Plan Review Package adequately addresses the CITY comments, that all conditions have been satisfied to the CITY's satisfaction and that plans conform to the requirements of the Street Use Code. Upon such confirmation, the CITY will issue to the STATE a Letter of Plan Approval signifying that the STATE has addressed the plan review comments and marking completion of the design and plan review process. No construction is authorized until this letter is issued by the CITY. The Street Use Permit and Letter of Plan Approval are not a representation or assurance that the design or plans comply with applicable laws, regulations, ordinances or codes, nor shall the Street Use Permit or Letter of Plan Approval be construed to authorize any failure to comply with any of the foregoing.

7.16 The STATE shall neither make nor implement any revisions or deviations from the Approved Plans without first obtaining the review and concurrence of the CITY.

8. PROJECT SERVICES AND FUNDING

8.1 The STATE shall provide necessary funding for all PROJECT costs without reimbursement from the City of Seattle, except for the City of Seattle cost responsibilities established in this Agreement, in SCL Agreement UT 01343, in SPU Agreement UT 01342, and any subsequent agreements.

8.2 The STATE will reimburse SDOT pursuant to the terms of Agreement GCA 5730, entitled Project Services Agreement for State Route 99 Alaskan Way Viaduct and Seawall Replacement Program and SR 519/I-90 Intermodal Access Project – IC Improvements (“Project Services Agreement”).

8.3 The categories of services to be provided by SDOT are: project management, project controls and coordination, design review and consultation, permit development and coordination, right of way services, and services to support construction activities.

9. PARTICIPATION BY MINORITY AND WOMEN'S BUSINESS ENTERPRISES

9.1 The STATE and the CITY agree that it is good public policy to utilize the services of minority-owned and women-owned business enterprises in the construction of public works projects, to the fullest extent permitted by law.

9.2 In furtherance of the foregoing public policy for the PROJECT, the STATE has agreed to include Disadvantaged Business Enterprise (DBE) provisions in its construction contract for the PROJECT.

1 **10. CONSTRUCTION MANAGEMENT, INSPECTION AND CONTRACT**
2 **ADMINISTRATION**

3
4 10.1 The STATE will advertise the PROJECT for construction bids in accordance with
5 the current Washington State Department of Transportation Standard Specifications for
6 Road, Bridge, and Municipal Construction and the STATE's construction contract
7 documents, both as amended.

8
9 10.2 The STATE shall act as the sole authority in the administration of the PROJECT
10 construction contract. The STATE will designate a STATE Project Engineer to
11 administer and manage the construction contract for the PROJECT to ensure work is
12 constructed in accordance with the Approved Plans, the terms and conditions of the Street
13 Use Permits, this Agreement, the SCL Holgate to King Stage 1 Agreement, and the SPU
14 Holgate to King Stage 1 Agreement. The STATE may utilize a consultant(s) in providing
15 some or all of these services.

16
17 10.3 The STATE shall allow the CITY to consult with and make inquiries of the
18 STATE Project Engineer or designee, attend all meetings, and have access to all
19 documentation as to all matters concerning the PROJECT. The CITY shall not provide
20 direction, directly or indirectly, to the STATE's consultant(s) or contractors. Except in
21 the instances listed below, the CITY shall direct all communications to the STATE's
22 Project Engineer or designee, including communications regarding compliance with
23 Street Use Permits, quality of construction and contractor performance. The STATE will
24 manage any requests from the CITY that have contractual or scope-of-work impacts and
25 will coordinate responses. The CITY will communicate with STATE's consultants or
26 contractors (1) where authorized to do so by the STATE's Designated Representative; (2)
27 to arrange for regulatory permitting and inspections made pursuant to permits issued by
28 the CITY other than Street Use Permits, e.g. electrical permits or other permits obtained
29 from the CITY by the consultant or contractor; and (3) for the Street Use Permits, if
30 necessary because of a threat to health or safety.

31
32 10.4 The CITY will provide qualified staff and consultants during construction. CITY
33 staff and consultants will communicate with the STATE Project Engineer or designee in
34 evaluating the conformity of Infrastructure with the Approved Plans and will
35 immediately notify the Project Engineer or designee of any compliance issues.
36 Notwithstanding any act or omission by the CITY pursuant to this subsection, the STATE
37 shall not be relieved of any of its authority over, and responsibility for, the PROJECT, as
38 provided for in Section 10.2 of this Agreement or elsewhere in this Agreement.

39
40 10.5 SDOT will provide a City Construction Project Engineer tasked to: (1) coordinate
41 the use of City of Seattle inspectors, crews and consultants, (2) communicate with the
42 STATE Project Engineer regarding the CITY's positions relating to regulatory
43 compliance, changes in design, the CITY's participation in reviewing contractor
44 submittals, and the use of CITY resources, (3) coordinate the final inspection and
45 acceptance of Infrastructure with representatives from CITY departments, and (4) report
46 on construction progress and issues to City of Seattle department managers.

1
2 10.6 The CITY may observe testing and provide a written evaluation to the STATE
3 regarding whether the materials or facilities tested meet with the requirements of the
4 Approved Plans and construction contract documents. The STATE shall endeavor to
5 provide five (5) Business Days notice of all testing required by the Approved Plans, and
6 the CITY will be provided a copy of certified test reports. Testing and inspection of
7 CITY Infrastructure shall conform to the requirements of the CITY Standard
8 Specifications for Road, Bridge and Municipal Construction
9

10 10.7 The CITY shall provide for Street Use Permit inspections pursuant to Title 15 of
11 the Seattle Municipal Code, the Street Use Permit, and this Agreement.
12

13 10.8 The STATE's construction contract documents shall require the contractor to
14 prepare and submit a Submittal Control Document for review and approval by the
15 STATE, SPU, SCL and the SDOT by the date required by the construction contract
16 documents. The STATE, SPU, SCL and SDOT shall jointly prepare an agency draft of
17 the Submittal Control Document prior to contract award and identify which submittals
18 are to be provided for review and/or joint approval relating to Infrastructure. This Parties'
19 draft shall be used to assist in determining if the contractor's Submittal Control
20 Document is complete.
21

22 10.9 The CITY shall review all documents and reports included in the approved
23 Submittal Control Document, within ten (10) business days of the CITY's receipt, unless
24 the City of Seattle Standard Specifications for Road, Bridge and Municipal Construction
25 allow for a longer review period, and respond in a timely manner to requests for
26 information.
27

28 10.10 The STATE's Project Engineer will review and approve or reject all submittals
29 not requiring SPU, SCL or the SDOT approval.
30

31 10.11 Any and all services provided by the CITY are subject to all limitations on the
32 CITY's liability contained in this Agreement, including, but not limited to, those
33 contained in Section 16, Risk Allocation.
34
35

36 **11. MAINTENANCE OF TRAFFIC**

37

38 11.1 The Parties agree that it is the goal of this PROJECT to maintain local motorized
39 and non-motorized traffic in safe corridors within the construction site while minimizing
40 impact to the existing street system. To achieve this goal, the Parties shall formulate plans
41 to maintain traffic flow during construction of the PROJECT. The Parties agree to
42 develop an outreach plan specifically focused on maintenance-of-traffic issues. This
43 outreach plan will elicit input from affected stakeholders in the vicinity of the PROJECT.
44 Key stakeholders will be determined by the Parties.
45

1 11.2 The Parties shall formulate maintenance-of-traffic plans to provide for each of the
2 following:

3
4 11.2.1 Safe routing for pedestrian and bicycle traffic during construction in a
5 facility separated from motorized traffic through the construction site.

6
7 11.2.2 Access to the Port of Seattle and holding and queuing space for traffic
8 destined for Colman Dock.

9
10 11.2.3 Over-legal truck movements.

11
12 11.2.4 Minimizing impacts to traffic on 1st Avenue South.

13
14 11.2.5 Transit movement and access to transit in the corridor during construction.

15
16 11.2.6 Maintenance of traffic coordination with concurrent transportation
17 construction projects.

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20 **12. FINAL INSPECTION AND PROJECT ACCEPTANCE**

21
22 12.1 Throughout construction of the PROJECT, CITY staff and consultants shall assist
23 the STATE Project Engineer in evaluating the quality of Infrastructure built by the
24 STATE's contractor. The STATE shall notify the CITY upon substantial completion of
25 the PROJECT work and shall invite the CITY to participate in a joint pre-final inspection
26 of the completed Infrastructure. The CITY shall timely inspect the completed
27 Infrastructure and shall exercise its right to approve or reject construction or materials
28 which are deficient, or which deviate from the Approved Plans, or any CITY- approved
29 revisions to the Approved Plans. The CITY shall submit a written response within ten
30 (10) Business Days of the date of the pre-final inspection, notifying the STATE of the
31 CITY's willingness to accept the completed Infrastructure, or rejecting the completed
32 Infrastructure. In the event that the completed Infrastructure is rejected, such response
33 shall include written notice of any known deficiencies and Defective Work so that the
34 STATE can use the response in its preparation of a contract punchlist.

35
36 12.2 The STATE shall timely address each deficiency and Defective Work identified
37 by the CITY during the pre-final inspection and shall resolve all deficiencies and
38 Defective Work to comply with CITY standards, CITY-Approved Plans, or any approved
39 revisions to the Approved Plans. If disagreements arise between the CITY and the
40 STATE on what constitutes Defective Work or a deficiency or whether the Infrastructure
41 constructed for the benefit of the CITY meets agreed upon requirements, the
42 disagreement shall be resolved using the dispute resolution process established in Section
43 20 of this Agreement. The CITY shall assist the STATE Project Engineer in determining
44 appropriate remedies for each deficiency and for Defective Work. Both Parties agree to
45 act as expeditiously as possible to assure a timely resolution of deficiencies and Defective
46 Work.

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12.3 Once the STATE's Project Engineer determines that the STATE has remedied all deficiencies and Defective Work identified by the CITY during the pre-final inspection, the Project Engineer shall invite the CITY to timely participate in a joint final inspection of the completed Infrastructure. The CITY shall submit a written response within ten (10) Business Days of the date of the final inspection notifying the STATE of the CITY's willingness to accept the completed Infrastructure for ownership and operation, or notifying the STATE of any remaining deficiencies or Defective Work.

12.4 The CITY agrees, upon satisfactory completion of the PROJECT work, receipt of the STATE's Notice of Substantial Completion to the STATE's contractor, successfully placing City of Seattle utilities into operation, receipt from the STATE of one color set of the Red-Line Plans, pursuant to Section 13.6, to deliver a Letter of Acceptance, subject to any contractor claims caused by the negligent acts or omissions of the STATE in administering the PROJECT contract. The Letter of Acceptance shall signify the CITY's acceptance of Infrastructure to be owned by the CITY, and shall signify the STATE's transfer of Infrastructure to be owned by the CITY. The Letter of Acceptance shall be jointly executed by the Parties. The CITY may, at its discretion, issue one Letter of Acceptance for all SCL, SPU and SDOT Infrastructure built by the STATE for the PROJECT.

12.5 Once the terms outlined in Section 12.4 are satisfied, the CITY will deliver to the STATE a signed Letter of Acceptance within ten (10) Business Days. Following receipt of the Letter of Acceptance from the CITY, the STATE will sign the Letter of Acceptance within ten (10) Business Days, completing joint execution of the document.

12.6 In instances where CITY Infrastructure must be placed into use and operation prior to the STATE Project Engineer's notice of substantial completion, and after the CITY has determined that this Infrastructure meets with the minimum inspection and testing requirements necessary for placing the Infrastructure into use, the CITY will notify the STATE in writing that it is assuming responsibility for and cost of the interim use and operation of the Infrastructure until the STATE completes the PROJECT work and the CITY accepts the Infrastructure.

12.7 The CITY will write a Letter of Acceptance at the end of the PROJECT unless both Parties agree to phase Infrastructure acceptance by geographic areas. The Parties may mutually agree to perform the pre-final inspection and final inspection procedures of this Section, and the CITY may issue a Letter of Acceptance for portions of the PROJECT. A Letter of Acceptance shall only be issued for geographic areas in which the STATE has completed all PROJECT work and has satisfied the requirements of Section 12.4 for each geographic area. Roadway restoration will not be complete until all roadways are fully open to public vehicular and pedestrian use.

1
2 **13. RED-LINES AND RECORD DRAWINGS**
3

4 13.1 The STATE shall prepare the final construction documentation in general
5 conformance with WSDOT's *Construction Manual*, WSDOT manual M4-01. The
6 STATE shall maintain one set of Approved Plans as the official contract drawings and
7 provisions to which the STATE shall make drawings and notations in either red ink or
8 red pencil to show the constructed configuration of all Infrastructure that deviates from
9 the design and contract requirements shown in the Approved Plans as typically recorded
10 per STATE and City of Seattle standard practices. These documents shall be referred to
11 as the Red-Line Plans.
12

13 13.2 The Red-Line Plans shall be kept current throughout construction with accurate
14 and comprehensive information detailing the constructed configuration of the
15 Infrastructure. The Red-Line Plans shall reflect the same level of detail as the Approved
16 Plans, and shall provide the drawing accuracy necessary for public and private utility
17 purveyors to locate their respective utilities in accordance with state law.
18

19 13.3 The STATE may choose to delegate preparation and maintenance of the Red-Line
20 Plans to its construction contractors. However, the STATE remains responsible for the
21 quality, condition and completion of Red-Line Plans. If the STATE chooses to delegate
22 these responsibilities, the STATE's construction contracts shall require contractors to
23 provide the STATE and the CITY access to the Red-Line Plans during the working hours
24 established in the STATE contract.
25

26 13.4 The STATE Project Engineer and the City Construction Project Engineer shall
27 jointly review the Red-Line Plans monthly to evaluate whether the Red-Line Plans reflect
28 a current, accurate and comprehensive record of the constructed configuration of the
29 Infrastructure. If the STATE Project Engineer or the City Construction Project Engineer
30 determine that the Red-Line Plans are not current, accurate or comprehensive, the
31 STATE shall immediately revise the Red-Line Plans to remedy deficiencies.
32

33 13.5 Prior to placing Infrastructure into service during the course of construction, the
34 STATE shall provide the CITY with color photocopies of portions of the Red-Line Plans
35 showing the constructed configuration of the Infrastructure being placed into service.
36

37 13.6 The STATE shall submit one color set of the completed Red-Line Plans prior to
38 the Parties executing the Letter of Acceptance provided for in Section 12.
39

40 13.7 At the conclusion of construction, the STATE shall prepare digital drawings
41 showing the constructed configuration of the Infrastructure in an AutoCAD digital format
42 (Record Drawings). The Record Drawings shall comply with the digital and graphical
43 standards of the City of Seattle Inter-Departmental CADD Standards. The STATE shall
44 provide the CITY with two (2) full-scale bond copies plus the digital files of the Record
45 Drawings within six (6) months after the Parties execute the Letter of Acceptance.
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14. WARRANTIES

12-month Warranty of Work

14.1 The STATE warrants that all PROJECT Infrastructure being accepted by the CITY for ownership, operation and maintenance: (1) meet with the requirements of the Approved Plans, and all CITY-approved modifications to the Approved Plans made during the course of construction; (2) are constructed in accordance with City-issued permits; (3) are free of defects in material and workmanship; and (4) are free of defects in design(s). This twelve- (12-) month Warranty of Work shall apply to any corrective work required to address non-conforming and Defective Work that is discovered and communicated by the CITY to the STATE for a period of twelve (12) months following the CITY's Letter of Acceptance of PROJECT Infrastructure.

14.2 The STATE's Warranty of Work on City of Seattle Infrastructure and facilities begin when the STATE's contractor's warranty of work begins, except that in no instance shall the STATE's Warranty of Work to the CITY begin until the CITY and the STATE have jointly executed the Letter of Acceptance.

14.3 If within the Warranty of Work period, the CITY discovers and gives written notice to the STATE of non-conforming or Defective Work in the accepted Infrastructure, the STATE shall promptly investigate the work the CITY believes is non-conforming or defective. The STATE shall promptly remedy non-conforming or Defective Work. Disagreements between the CITY and the STATE on what constitutes non-conforming or Defective Work shall be resolved using the dispute resolution process established in Section 20. The STATE shall diligently prosecute the corrective work and shall procure materials using the fastest means available as necessary to minimize the loss of use and operation of the accepted Infrastructure. Corrective work shall be completed within the time frame specified by the CITY and mutually agreed upon by the STATE.

14.4 If, during construction, the CITY encounters an emergency situation caused by non-conforming or Defective Work, it must immediately notify the STATE. The STATE will take immediate corrective action. If, after the warranty period begins, the CITY encounters an emergency situation caused by non-conforming or Defective Work, it may have to immediately correct it. Direct and indirect costs incurred by the CITY, attributable to correcting an emergency situation associated with non-conforming or Defective Work, shall be paid by the STATE to the CITY.

Transfer of Title and Warranty of Title

14.5 All right and title to the Infrastructure accepted by the CITY will be transferred by the STATE to the CITY as of the date of the State's signature acknowledging the CITY's Letter of Acceptance pursuant to the provisions of Section 12. Neither the STATE nor its

1 contractors shall hold a property right in any of the Infrastructure accepted by the CITY
2 for ownership, including the materials and equipment comprising the Infrastructure.

3 14.6 The STATE shall warrant good and merchantable title to all materials, supplies,
4 equipment and items installed or incorporated into the accepted Infrastructure. The
5 STATE shall further warrant that all Infrastructure transferred to, and accepted by, the
6 CITY is free from claims, liens and charges.

7
8 **Manufacturers' Warranties**

9
10 14.7 The STATE shall provide the CITY all manufacturers' and suppliers' guarantees
11 and warranties furnished to the STATE's contractor as a customary trade practice in
12 connection with the contractor's purchase of any equipment, materials, or items
13 incorporated into the Infrastructure. The STATE shall further warrant that it has the right
14 to transfer such warranties and guarantees furnished to the STATE through its
15 construction contract to the CITY and that such transfer shall not adversely affect such
16 warranties and guarantees. These guarantees and warranties shall not relieve the STATE
17 from its obligations under Warranty of Work.

18
19 **Warranty Inspections**

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21 14.8 During the warranty period, the CITY shall have the right to inspect the accepted
22 Infrastructure for non-conforming and Defective Work, and will promptly report any
23 such work to the STATE for remedy through corrective work. The CITY shall bear the
24 cost of these inspections.

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27 **15. PUBLIC OUTREACH**

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29 15.1 The STATE agrees to lead and manage the public outreach effort for the
30 PROJECT. In recognition of the CITY's experience in working with the Seattle
31 community, the STATE will solicit CITY input and work with the CITY in all public
32 outreach activities. The STATE will not publicly distribute outreach information,
33 planning materials and documents without first obtaining the CITY's review. However,
34 the STATE shall be free to comply with any public records request received under
35 chapter 42.56 RCW for such materials, provided that prior to releasing any sensitive or
36 confidential material, the STATE shall first provide written notice to the CITY in
37 accordance with Section 26 of this Agreement.

38
39
40 **16. RISK ALLOCATION**

41 **16.1 Limits of Liability.**

42 **16.1.1 No CITY Liability for Assistance, Inspection, Review, or Approvals.** The
43 review or approval of any of the STATE's PROJECT plans or specifications, or the
44 inspection of the STATE's work, or any assistance provided to the STATE by the CITY
45 is for the CITY's sole benefit and shall not constitute an opinion or representation by the

1 CITY as to any compliance with any law, ordinance, rule, or regulation or any adequacy
2 for other than the CITY's own purposes; and such assistance, inspection, review or
3 approval shall not create or form the basis of any liability on the part of the CITY or any
4 of its officials, officers, employees, or agents for any injury, damage, or other liability
5 resulting from, or relating to, any inadequacy, error, or omission therein or any failure to
6 comply with applicable law, ordinance, rule, or regulation; and such assistance,
7 inspection, review, or approval shall not relieve the STATE of any of its obligations
8 under this Agreement, the SCL Holgate to King Stage 1, UT 01343 Agreement, and the
9 SPU Holgate to King Stage 1, UT 01342 Agreement or under applicable law.

10 16.1.2 No CITY Liability for Delay, Consequential, or Liquidated Damages. The
11 CITY shall not be liable in damages for any failure to act within any time limits
12 established by law or for any other delay in issuing permits, other approvals, or
13 concurrences to the STATE or the STATE's contractors, nor shall the CITY have any
14 liability for consequential or liquidated damages, and, to the maximum extent allowed by
15 law, the STATE shall protect, defend, indemnify, and save harmless the CITY, and its
16 officials, officers, employees, and agents, from any and all costs, claims, demands,
17 judgments, damages, or liability of any kind caused by, resulting from, relating to, or
18 connected to delays in issuing permits, other approvals, or concurrences.

19 16.1.3 No CITY Liability for Third Party Claims of Diminution in Value of
20 Property. The CITY shall not be liable in damages for any third party claims alleging
21 diminution in value of property, including, but not limited to, claims of elimination or
22 impairment of rights to light and air and quiet enjoyment, or alleging a taking of property
23 rights, nor shall the CITY have any liability for related consequential or liquidated
24 damages, and, to the maximum extent allowed by law, the STATE shall protect, defend,
25 indemnify, and save harmless the CITY, and its officials, officers, employees, and agents,
26 from any and all costs, claims, demands, judgments, damages, or liability of any kind
27 caused by, resulting from, relating to, or connected to the third party claims of diminution
28 in value of property arising out of the PROJECT.

29 16.1.4 STATE Contractor's Bonds. The STATE shall require its construction
30 contractors to provide performance bonds to the STATE and to maintain those bonds at
31 all times pertinent to the respective contractor's obligations under its contracts. The
32 penal sums of those bonds shall be commercially reasonable and consistent with the
33 limits set for similar projects. Such bonds shall be executed by an approved Surety that is
34 registered with the Washington State Insurance Commissioner, and that appears on the
35 current Authorized Insurance List in the State of Washington published by the Office of
36 the Insurance Commissioner, and that shall be conditioned upon the faithful performance
37 of the contract by the contractor. The STATE shall ensure faithful completion of the
38 PROJECT by use of the STATE's contractor bonds or other means; and in the event of
39 any claim for payment is presented to the CITY for any PROJECT work, the STATE
40 upon timely notice and investigation, resulting in STATE responsibility under this
41 Agreement, the SCL Holgate to King Stage 1, UT 01343 Agreement, and the SPU
42 Holgate to King Stage 1, UT 01342 Agreement shall promptly pay such claim.

43

1 16.2 General Indemnification.

2 16.2.1 I ndemnity. To the extent permitted by law, the STATE shall protect,
3 defend, indemnify, and save harmless the City of Seattle and its officers, officials,
4 employees, and agents, while acting within the scope of their employment, from any and
5 all costs, claims, demands, judgments, damages, or liability of any kind, including
6 injuries to persons or damages to property, that arise out of, or in any way result from, or
7 are connected to, or are due to any acts or omissions, or intentional misconduct, of the
8 STATE or the STATE's contractors, consultants, or agents including any and all claims
9 and litigation arising out of, or resulting from, any state or federal environmental review
10 process in any way relating to the PROJECT. The STATE's obligations under this
11 paragraph also extend to claims asserted by third parties against the City of Seattle arising
12 out of, or in any way resulting from, any state or federal environmental review process in
13 any way related to the PROJECT or the PROGRAM, and all of the foregoing protection,
14 defense, indemnity and hold harmless obligations shall extend to claims asserted by State
15 agencies other than the Washington State Department of Transportation. The STATE
16 further agrees that the City of Seattle shall have no liability to the STATE, which in any
17 way arises out of the City of Seattle's decision making processes in agreeing to go
18 forward with the PROJECT, and the STATE shall not be required to indemnify, defend,
19 or save harmless the City of Seattle if the claim, suit, or action for injuries, death, or
20 damages is caused by the sole negligence of the City of Seattle. Where such claims, suits,
21 or actions result from the concurrent negligence of the Parties, the indemnity provisions
22 provided herein shall be valid and enforceable only to the extent of the STATE's own
23 negligence. In the event of any claims, demands, actions, or lawsuits, the STATE upon
24 notice from the City of Seattle, shall assume all costs of defense thereof, including legal
25 fees incurred by the City of Seattle, and of all resulting judgments that may be obtained
26 against the City of Seattle, to the extent of the STATE's liability. In the event that the
27 City of Seattle incurs attorneys' fees, costs, or other legal expenses to enforce the
28 indemnity provisions of this Agreement, the SCL Holgate to King Stage 1, UT 01343
29 Agreement, and the SPU Holgate to King Stage 1, UT 01342 Agreement, all such fees,
30 costs, and expenses shall be recoverable by the City of Seattle. Environmental protection
31 and indemnification, as provided elsewhere in this Agreement, shall be in addition to the
32 foregoing general indemnification.

33 16.2.2 I ndemnity. To the extent permitted by law, the City of Seattle shall
34 protect, defend, indemnify, and save harmless the STATE and its officers, officials,
35 employees, and agents, while acting within the scope of their employment, from any and
36 all costs, claims, demands, judgments, damages, or liability of any kind, including
37 injuries to persons or damages to property, that arise out of, or in any way result from, or
38 are connected to, or are due to any acts or omissions, or intentional misconduct, of the
39 City of Seattle or the City of Seattle's contractors, consultants, or agents. The City of
40 Seattle shall not be required to indemnify, defend, or save harmless the STATE if the
41 claim, suit, or action for injuries, death, or damages is caused by the sole negligence of
42 the STATE. Where such claims, suits, or actions result from the concurrent negligence
43 of the Parties, the indemnity provisions provided herein shall be valid and enforceable
44 only to the extent of the City of Seattle's own negligence. In the event of any claims,
45 demands, actions, or lawsuits, the City of Seattle upon notice from the STATE, shall

1 assume all costs of defense thereof, including legal fees incurred by the STATE, and of
2 all resulting judgments that may be obtained against the STATE, to the extent of the City
3 of Seattle's liability. In the event that the STATE incurs attorneys' fees, costs, or other
4 legal expenses to enforce the indemnity provisions of this Agreement, the SCL Holgate to
5 King Stage 1, UT 01343 Agreement, and the SPU Holgate to King Stage 1, UT 01342
6 Agreement, all such fees, costs, and expenses shall be recoverable by the STATE.

7 16.2.3 Title 51 RCW. Solely with respect to claims for indemnification under this
8 Agreement, including environmental indemnification, the STATE and the City of Seattle
9 waive, as to each other only, and expressly not for the benefit of their employees or third
10 parties, their immunity under Title 51 RCW, the Industrial Insurance Act, and
11 acknowledge that this waiver has been mutually negotiated by the Parties. The STATE
12 and the City of Seattle agree that their respective indemnity obligations extend to any
13 claim, demand, or cause of action brought by, or on behalf of, any of their respective
14 employees or agents. The STATE agrees that in the event that any employee or agent of
15 the STATE's contractors, subcontractors, consultants, or agents asserts a claim against
16 the City of Seattle, the STATE waives any right it may have to assert its Title 51
17 immunity as a defense against a City of Seattle claim to the STATE that otherwise would
18 be covered by the STATE's indemnity obligations to the City of Seattle.

19 16.2.4 Survival of Indemnification Obligations. Any liability of the STATE or
20 the City of Seattle arising under any indemnity provision of this Agreement shall survive
21 termination of this Agreement, whether or not any claim giving rise to such liability shall
22 have accrued.

23 17. INSURANCE

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26 17.1 The STATE shall require in writing that the STATE's contractors, and each of
27 their sub-contractors of any tier where not covered by contractor provided insurance,
28 include "The City of Seattle" as an additional insured for primary and non-contributory
29 limits of liability for Commercial General Liability, Commercial Automobile Liability
30 and (if required) Contractor's Pollution Liability as established in the construction
31 contract documents, including Products and Completed Operations coverage following
32 the completion of each PROJECT stage. STATE standard insurance specification
33 paragraph 1-07.18 (Public Liability and Property Damage Insurance) applicable to the
34 construction contract documents protecting both the STATE and the CITY for the
35 PROJECT shall be amended for coverages, minimum limits of liability and/or terms and
36 conditions as may be mutually agreed upon by the STATE and the CITY.

37
38 17.2 The STATE's contractors and subcontractors of any tier shall cause certification
39 of insurance meeting the requirements herein to be issued to "The City of Seattle, Risk
40 Management Division, P.O. Box 94669, Seattle, WA 98124-4669." Such certification
41 shall not be mailed, but shall be delivered electronically to fax number (206) 470-1279 or
42 as an e-mail attachment in PDF format to riskmanagement@seattle.gov.

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2 **18. THIRD PARTY BENEFICIARY**
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4 18.1 The STATE shall require the STATE's contractors, consultants, and designers
5 and each of their subcontractors to perform the STATE's work contemplated by this
6 Agreement, the SCL Holgate to King Stage 1, UT 01343 Agreement, and the SPU
7 Holgate to King Stage 1, UT 01342 Agreement at no cost to the City of Seattle; and
8 because a portion of the PROJECT will be conducted on City of Seattle Street Right-of-
9 Way and on or for the benefit of City of Seattle infrastructure, the contracts between the
10 STATE and its contractors, consultants, and designers will include the following:
11

12 "With respect to any and all of the City of Seattle's interests, including, but not
13 limited to, excavation, restoration and traffic control responsibilities of the
14 STATE, the STATE and the contractor acknowledge that the City of Seattle is an
15 intended third party beneficiary and agree to include the City of Seattle as a third
16 party beneficiary of the STATE's contracts and will accordingly include the City
17 of Seattle in the indemnification and insurance provisions contained in the
18 STATE's contracts. The STATE and CITY do not intend that this paragraph be
19 interpreted to create any obligation, liability, or benefit to any third party, other
20 than the STATE and the City of Seattle for purposes of design and construction of
21 the PROJECT as described in this Agreement, the SCL Holgate to King Stage 1,
22 UT 01343 Agreement, and the SPU Holgate to King Stage 1, UT 01342
23 Agreement."
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26 **19. LIENS**
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28 19.1 In the event that any City of Seattle-owned property interest becomes subject to
29 any claims for mechanics', artisans' or materialmen's liens, or other encumbrances
30 chargeable to, or through, the STATE that the STATE does not contest in good faith, the
31 STATE shall cause such lien, claim, or encumbrance to be discharged or released of
32 record (by payment, posting of bond, court deposit, or other appropriate means), without
33 cost to the City of Seattle, and shall indemnify the City of Seattle against all costs and
34 expenses (including attorneys' fees) incurred in discharging and releasing such claim,
35 lien, or encumbrance prior to completion of the PROJECT.
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38 **20. DISPUTE RESOLUTION**
39

40 20.1 The CITY and the STATE shall make good faith efforts to resolve any dispute
41 arising under or in connection with this Agreement. The dispute resolution process
42 outlined in this Section applies to disputes arising under or in connection with the terms
43 of this Agreement, the SCL Holgate to King Stage 1, UT 01343 Agreement, and the SPU
44 Holgate to King Stage 1, UT 01342 Agreement. Disputes arising out of the CITY's
45 regulatory decisions shall be decided in accordance with the appeal or enforcement
46 procedures applicable to the respective regulatory decisions.

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20.2 Dispute Resolution Representatives.

20.2.1 The Dispute Resolution Representatives for the Parties are as follows:

For the STATE: Holgate to King Stage 1 Design Project Engineer or, if applicable, Construction Project Engineer, Alaskan Way Viaduct & Seawall Replacement Program Washington State Department of Transportation 999 3rd Avenue, Suite 2424 Seattle, WA 98104

For the CITY: City Dispute Resolution Representative: South Holgate to South King Street Viaduct Replacement Project Manager, of if applicable, City Construction Project Engineer P.O. Box 34996 700 Fifth Avenue, Suite 3800 Seattle, WA 98124-4996

Seattle Light Dispute Resolution Representative: SCL AWV Project Manager P.O. Box 34023 700 Fifth Avenue, Suite 3200 Seattle, WA 98124-4023

Seattle Public Utilities Dispute Resolution Representative: SPU AWV Project Manager P.O. Box 34018 700 Fifth Avenue, Suite 4900 Seattle, WA 98124-4018

20.3 Dispute Resolution Process. The Dispute Resolution Representatives established above shall use their best efforts to resolve disputes between the Parties. If these individuals are unable to resolve a dispute, the Deputy Director of the Seattle Department of Transportation and the Deputy Regional Program Administrator for the Washington State Department of Transportation Urban Corridors Office shall review the matter and attempt to resolve it. If they are unable to resolve the dispute, the matter shall be reviewed by the Director of the Seattle Department of Transportation and the Washington State Deputy Secretary of Transportation. The Parties agree to exhaust each of these procedural steps before seeking to resolve disputes in a court of law or any other forum.

1 **21. REMEDIES; ENFORCEMENT**

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21.1 Subject to the Dispute Resolution provisions in Section 20, the City of Seattle and the STATE shall have, in addition to any remedies available at law or equity, the right to demand specific performance of this Agreement, the SPU Holgate to King Stage 1, UT 01342 Agreement, or the SCL Holgate to King Stage 1, UT 01343 Agreement.

9 **22. DESIGNATED REPRESENTATIVES**

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22.1 The Designated Representatives for each Party are as follows:

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STATE:

13

Deputy Program Director, Engineering and Operations
Alaskan Way Viaduct & Seawall Replacement Program
Washington State Department of Transportation
999 3rd Avenue, Suite 2424
Seattle, WA 98104

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CITY:

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SDOT Major Projects AWV Project Manager
Seattle Department of Transportation
P.O. Box 34996
700 Fifth Avenue, Suite 3800
Seattle, WA 98124-4996

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23. EFFECTIVENESS AND DURATION

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23.1 This Agreement shall be effective as of the date the last Party signs and, unless sooner terminated pursuant to the terms hereof, shall remain in effect until final completion of all Parties' obligations contained or referred to in this Agreement, the SCL Holgate to King Stage 1, UT 01343 Agreement, and the SPU Holgate to King Stage 1, UT 0342 Agreement.

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24. NOTICE

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24.1 Except for the Dispute Resolution Process in Section 20 above, for which notice shall be given to the officials listed in Section 20.2, all notices, demands, requests, consents and approvals that may or are required to be given by either Party to the other Party shall be in writing and shall be deemed to have been duly given (i) upon actual receipt or refusal to accept delivery if delivered personally to the Designated Representative, (ii) upon actual receipt or refusal to accept delivery if sent by a nationally recognized overnight delivery service to the Designated Representative, or (iii) upon actual receipt if electronically transmitted to the Designated Representative with

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1 confirmation sent by another method specified in this Section. Notice of a change of
2 Designated Representative or the address for the Designated Representative shall be
3 given as provided in this Section.
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6 **25. TERMINATION**

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8 25.1 This Agreement may be terminated by either Party upon thirty (30) days written
9 notice. Said notice shall set forth the reasons for termination, including reasons of
10 convenience, and the effective date of termination

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12 25.2 Termination of this Agreement, the SCL Holgate to King Stage 1, UT 01343
13 Agreement, or the SPU Holgate to King Stage 1, UT 01342 Agreement shall not relieve
14 the Parties of any obligations that are unsatisfied at the time of termination, nor shall it
15 relieve the Parties of any obligations that are intended to survive termination of this
16 Agreement, the SCL Holgate to King Stage 1, UT 01343 Agreement, or the SPU Holgate
17 to King Stage 1, UT 0342 Agreement. Further, the Parties agree that, in the event the
18 STATE exercises its right to terminate pursuant to this Section after construction of the
19 PROJECT begins, then the STATE, at its cost and expense, shall modify the PROJECT,
20 in consultation with the CITY, to provide for the continued service, operation, and
21 maintenance of existing infrastructure and PROJECT Infrastructure, and the STATE shall
22 ensure that the modified PROJECT is completed.
23
24

25 **26. CONFIDENTIALITY OF INFORMATION AND RECORDS**

26

27 26.1 It is understood that certain information about the infrastructure is deemed by the
28 CITY to be sensitive and may be confidential under state or federal law. The STATE
29 agrees that all documents and information collected from field activities known to include
30 confidential information will be maintained in a locked file at the project office and
31 access will be controlled by its consultants. Furthermore, confidential information will
32 only be provided to the selected contractor in conformed documents following contract
33 award if such information is considered necessary for construction. The CITY will
34 provide clear written guidelines that specifically define the information that is deemed
35 sensitive and/or confidential.
36

37 26.2 Should any of those confidential or sensitive documents become the subject of a
38 request for public disclosure under chapter 42.56 RCW, the STATE shall use its best
39 efforts to immediately notify the CITY of such request and the date by which the STATE
40 anticipates responding, which date shall in no event be less than fifteen (15) calendar
41 days after STATE's first notice of the disclosure request to the CITY. The CITY must
42 then within a reasonable time of receipt of said notice in writing to the STATE (a)
43 specifically identify each record, or part thereof, and (b) fully explain why such
44 records(s) are exempt from disclosure under chapter 42.56 RCW or any other law so that
45 the STATE may respond to the records requester. The STATE shall withhold or redact

1 those public records which the CITY reasonably claims are exempt from disclosure based
2 upon the CITY's information. The CITY at its sole expense may seek a judicial
3 declaration or injunction with respect to the public records request. The CITY further
4 agrees that it will, at its sole expense, defend the non-disclosure of that information it
5 claims is exempt from disclosure and indemnify the STATE for any and all penalties
6 assessed and costs that the STATE incurs, if any.

7
8 26.3 The provisions of this Section survive the termination of this Agreement.

9
10
11 **27. GENERAL PROVISIONS**

12
13 27.1 This Agreement shall be effective independently from any and all permits that
14 may be issued by the CITY.

15 27.2 Each Party shall ensure that its employees, agents, and contractors comply with
16 the obligations of this Agreement.

17 27.3 The Parties shall not be deemed to be in default under this Agreement if
18 performance is rendered impossible by war, riots, or civil disturbances, or by floods or
19 other natural catastrophes beyond the Parties' control; the unforeseeable unavailability of
20 labor or materials; or labor stoppages or slow downs or power outages exceeding back-up
21 power supplies. This Agreement shall not be terminated or the Parties penalized for such
22 noncompliance, provided that each Party takes immediate and diligent steps to bring
23 itself back into compliance and to comply as soon as practicable under the circumstances
24 without unduly endangering the health, safety, or integrity of the Party's employees or
25 property, or the health, safety, or integrity of the public, street rights-of-way, public
26 property, or private property.

27 27.4 This Agreement including the definition of the PROJECT as more particularly
28 described in the Project Description attached as Exhibit A may be amended only by a
29 written instrument, duly authorized by the CITY and the STATE, and executed by their
30 duly authorized representatives.

31 27.5 No failure to exercise, and no delay in exercising, on the part of either Party
32 hereto, any rights, power, or privilege hereunder shall operate as a waiver thereof, except
33 as expressly provided herein.

34 27.6 This Agreement, together with the SCL Holgate to King Stage 1. UT 01343
35 Agreement and the SPU Holgate to King Stage 1, UT 01342 Agreement with the attached
36 Exhibits and the documents, terms and provisions incorporated in any of the foregoing,
37 constitute the entire agreement of the Parties with respect to the PROJECT, and
38 supersede any and all prior negotiations and understandings with respect hereto.

39 27.7 Section and subsection headings are intended as information only, and shall not
40 be construed with the substance of the section or subsection they caption.

1 27.8 All exhibits or other attachments are by this reference hereby incorporated into
2 this Agreement.

3 27.9 This Agreement may be executed in counterparts, each of which shall be deemed
4 an original, and all counterparts together shall constitute but one and the same instrument.

5 27.10 This Agreement shall be interpreted, construed, and enforced in accordance with
6 the laws of the State of Washington. The venue for any action under this Agreement
7 shall be in the Superior Court for King County, Washington.

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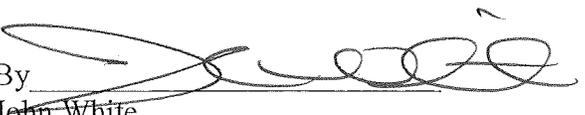
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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the last date written below.

CITY OF SEATTLE

WASHINGTON STATE
DEPARTMENT OF
TRANSPORTATION

By 
Grace Crunican
Director of Transportation

By 
John White
Program Director
Alaskan Way Viaduct and Seawall
Replacement Program

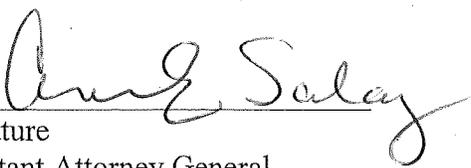
Date: 5/20/09
gc

Date: 6/2/09

APPROVED AS TO FORM:

Ann E. Salay

By (print)


Signature
Assistant Attorney General

Date: 6-1-09

GCA 5934
Exhibit A
Project Description

Alaskan Way Viaduct & Seawall Replacement Program
S. Holgate Street to S. King Street Viaduct Replacement Project, Stage 1:

The S. Holgate Street to S. King Street Viaduct Replacement Project, Stage 1 (PROJECT) is depicted on the Approved Plans and summarized as follows. All the stages of the S. Holgate Street to South King Street project together will replace about 40 percent of the existing viaduct. Stage 1 of construction for this project begins in summer 2009 with the relocation of communications, electrical, gas, water and other utilities throughout the project area. This work will set the stage for viaduct demolition and the ultimate road and bridge construction.

- Installation of approximately 2000 lineal feet of 26 kV electrical ductbank and seven vaults, including a new six-way 900 amp 26 kV switch in proposed panel vault #3, along the west side of East Marginal Way and Alaskan Way South from a point near South Massachusetts Street northward to the existing entrance to Port of Seattle Terminal 46;
- Installation of approximately 220 lineal feet of 954kcmil overhead 26 kV circuit electrical lines near East Marginal Way at the southern edge of the project;
- Installation of approximately 1600 lineal feet of 397kcmil overhead 26 kV circuit electrical lines through portions of Terminal 46 and along the west side of Alaskan Way South from Terminal 46 to South King Street; temporary tie back into the existing overhead 397kcmil on Port Property. This line is to be relocated to its permanent configuration in S. Holgate Street to S. King Street Viaduct Replacement Project, Stage 2;
- Installation of thirteen new overhead electrical poles to support the new 26 kV overhead electrical system;
- Demolition of approximately 4000 lineal feet of existing overhead 26 kV circuit electrical lines on the eastern edge of South Alaskan Way;
- Installation of water service lines to Terminal 46;
- Replacement of approximately 935 feet of restrained-joint watermains in South Royal Brougham Way, South Atlantic Street and South Alaskan Way;
- Installation of cathodic protection system on new watermains to include joint-bonding, magnesium anodes, and electrolysis test stations;
- Installation of approximately 350 feet of steel casing pipe for watermains crossing railroad tracks;
- Installation of communications vaults and ductbanks in South Royal Brougham Way, South Atlantic Street, East Marginal Way, South Dearborn Street, Railroad Way South and South Alaskan Way;
- Removal of existing communication lines from the viaduct structure. Temporary installation of an inverted syphon, approximately 65 feet long, on the existing

storm drainage system to allow the construction of new combined sewer, communications and water casing pipe at South Atlantic Street; and

- Installation of approximately 150 feet of steel casing pipe crossing the railroad for the future installation of re-routed combined sewer;
- Restoration of pavement associated with the utilities work.

- Other work to be done during Stage 1 includes:
 - temporary street lighting,
 - temporary erosion control,
 - temporary groundwater treatment and re-injection systems, and
 - temporary traffic control.

GCA 5934

Exhibit B – Project Property

1-22175 – Phillips/U-Park:

Fee- Legal Description

A triangular parcel of land being all of Lots 1 and 2 and a portion of Lot 3, Block 328, Map of Seattle Tide Lands, according to the official maps thereof on file in the office of the commissioner of Public Lands in Olympia, Washington, together bounded and described as follows:

Beginning at the north corner of said Block 328;
Thence southerly along the west line of said block a distance of 164.033 feet to a point in the westerly boundary line of Lot 3 in said block;
Thence north 89°01' east a distance of 98.25 feet, more or less, to a point in the easterly boundary line of said Block 328;
Thence north 30°30' west along the easterly boundary line of said block to the point of beginning.

1-12648 Trager Site:

Fee- Legal Description

Beginning at a point on the West line of Lot 4, Block 328 Map of Seattle Tidelands, as shown on the official maps on file in the office of the Commissioner of Public Lands at Olympia, Washington, 25 feet North of the Southwest corner thereof; Thence East along the North line of Dearborn Street as now established, 145.30 feet more or less, to the Westerly margin of Railroad Way 97.80 feet to a point on the line between the old North and South docks; Thence South 89°01'00" West along said last mentioned line a distance of 98.25 feet, more or less, to the West line of Lot 3 in said block, Thence South along the West line of Lots 3 and 4 in said block, a distance of 82.63 feet, more or less to the point of beginning.

1-22178 WOSCA:

West Fee- Legal Description

That portion of the hereinafter tract of land lying within Parcel "A" described as follows:

Beginning at a point opposite Highway Engineer's Station 179+82± on the line survey of SR 99, S. Hinds St. to S. Dearborn St. and 342.44 feet Easterly therefrom, said point being on the Southerly line of said Parcel "A"; thence Northwesterly and Northerly to a point opposite Highway Engineer's Station 192+80± on the line survey of SR 99, S. Dearborn St. to Pine St. and 234.04 feet Easterly therefrom, said point being on the Northerly line of said Parcel "A"; thence Westerly to a point opposite said Highway Engineer's Station and 125 feet Easterly therefrom, said point also being the Northwest corner of said Parcel "A"; thence Southerly to a point opposite Highway Engineer's Station 179+21± on said line survey and 145 feet Easterly therefrom, said point being the Southwest corner of said Parcel "A"; thence Northeasterly to the point of beginning.

PARCEL A:

Lot 7 and the south 45 feet of Lot 6, Block 328;

Lots 1 through 7, inclusive, and Lots 13 through 19, inclusive, Block 329;

All in Seattle Tide Lands, as shown on the Official Maps on file in the office of Commissioner of Public Lands, in Olympia, Washington;

TOGETHER WITH that portion of vacated Dearborn Street lying between said Blocks 328 and 329, as vacated under City of Seattle Ordinance Number 9122;

EXCEPT that portion of Lot 7 of said Block 329, lying within the Plat of H.H. Dearborn's Replat of Block 329, according to the plat thereof recorded in Volume 9 of Plats, page 81, in King County, Washington;

AND EXCEPT the east 101.90 feet of Lots 14 through 19, inclusive, of said Block 329;

AND EXCEPT that portion of Lots 6 and 7, of said Block 328, and of Lots 1 through 5, inclusive, of said Block 329 and of vacated Dearborn Street lying between said Blocks 328 and 329, described as follows:

Beginning at the intersection of the southwesterly margin of Railroad Way South and the south margin of Dearborn Street as acquired by the City of Seattle under Ordinance Number 9189;

Thence west along said south margin 5 feet;

Thence southeasterly 47.93 feet to a point on the south line of Lot 6 of said Block 328, said point being 15 feet west from the southeast corner of said Lot 6;

Thence southerly 44.57 feet to a point being west 14.5 feet and north 40 feet from the southeast corner of Lot 7 of said Block 328;

Thence south along a line parallel with the east line of Blocks 328 and 329 and vacated Dearborn Street, 233.60 feet to a curve to the left, having a radius of 566 feet;

Thence southerly and southeasterly along said curve an arc distance of 95.35 feet to a point on the south line of Lot 3 of said Block 329, said point being 6.49 feet west from the southeast corner thereof;

Thence continuing along said curve to the left an arc distance of 1.92 feet to a point on a reverse curve having a radius of 418.24 feet;

Thence southerly along said curve to the right an arc distance of 71.89 feet to a point of tangency, said point being on the east line of Lot 5 of said Block 329, 46.58 feet north of the southeast corner thereof;

Thence north along the east line of Blocks 328, 329 and vacated Dearborn Street, 431.68 feet to the southwesterly margin of Railroad Way South;

Thence northwesterly along said southwesterly margin 68.40 feet to the point of beginning;

TOGETHER WITH Lots 1 through 8, inclusive, vacated Plummer Street and vacated alley adjoining, all in the plat of H.H. Dearborn's Replat of Block 329, according to the plat thereof recorded in Volume 9 of Plats, page 81, in King County, Washington.

1-18458 – Team Track:

Fee - Legal Description

Parcel A

That portion of Lots 1 to 11, inclusive, and Lot 17, Block 331, Seattle Tide Lands, in King County, Washington, as shown on the official maps on file in the Office of the Commissioner of Public Lands at Olympia, Washington, lying westerly of the following described line; Beginning at a point on the north line of Lot 1, said Block 331 lying 246.05 feet west from the northeast corner of Block 330, Seattle Tide Lands; Thence south $17^{\circ}20'41''$ west 246.56 feet to the beginning of a tangent curve concave southeasterly with a radius of 515.20 feet; Thence southwesterly along said curve $14^{\circ}07'37''$ an arc distance of 127.02 feet to the south line of Lot 17 of said Block 331; Thence westerly 38 feet, more or less, along the south lines of Lots 17 and 6 to a point 15 feet southeasterly of the Union Pacific Railroad Company's Railroad Tracks; Thence southwesterly 320 feet, more or less, to a point on the south line of Lot 11 lying 120.47 feet westerly of the southeast corner of Lot 11 and the terminus of said line.

Parcel B

A parcel of land being a portion of Lots 7 through 16, inclusive, Block 331, Seattle Tide Lands, in King County, Washington, as shown on the official maps on file in the Office of the Commissioner of Public Lands at Olympia, Washington, said portion being bounded as described as follows:

Beginning at the southeast corner of Lot 11 of said Block 331, said corner being on the north margin of Atlantic Street; Thence along said north margin of Atlantic Street, south $89^{\circ}59'28''$ west, 120.47 feet, more or less, to a point that is 15.0 feet normally distant southeasterly from the centerline of Track ICC-432 of the Oregon-Washington Railroad & Navigation Company, as now constructed and operated; Thence northeasterly, parallel with and/or concentric with and 15.0 feet normally distant southeasterly from the

centerlines of Tracks ICC-432, ICC-409, and ICC-410, 320.0 feet, more or less, to a point on the northerly line of Lot 7 of said Block 331; Thence along said northerly line and along the northerly line of Lot 16 of said Block 331, north 89°58'54" east, 38.0 feet, more or less, to the northwesterly corner of a parcel of land conveyed by Union Pacific Land Resources Corporation to American Warehouse Company by Warranty Deed dated August 10, 1977 and recorded under Recording Number 7710190028,

Thence along the westerly boundary line of said conveyed parcel, the following three (3) courses:

- 1) southerly, along a non-tangent curve to the left, the center of which bears east, having a radius of 706.78 feet, through a central angle of 3°11'14", an arc distance of 39.32 feet;
- 2) westerly, 1.30 feet;
- 3) southerly, 30.70 feet to the southwest corner of said conveyed parcel;

Thence southerly, along the westerly boundary line of a parcel of land as conveyed by Union Pacific Railroad Company to Evelyn M. Bernard and Arthur F. Bernard, and Donald J. Fortune and Edith M. Fortune, by Contract Agreement Number 89205, dated April 9, 1937, 230.0 feet to said north line of Atlantic Street; Thence along said north line, south 89°59'28" west, 23.5 feet, more or less, to the point of beginning.

EXCEPT that portion conveyed to the City of Seattle Department of Transportation by Deed recorded under Recording Number 20030612003261.

U.S. Coast Guard 1-22292:

Temporary Easement Area - Legal Description

The following described tract of land lying within the below described "Parcel A":

Beginning at a point opposite Highway Engineer's Station (hereinafter referred to as HES) 171+46.23 on the line survey of SR 99 S. Atlantic St. Vic. to S. Dearborn St. and 69.91 feet westerly there from;
Thence westerly to a point opposite HES 171+10.43 on said line survey and 184.72 feet westerly there from;
Thence northerly to a point opposite HES 171+44+/- on said line survey and 195.05 feet westerly there from;
Thence easterly to a point opposite HES 171+72.50 on said line survey and 102.27 feet westerly there from;
Thence southerly to the point of beginning.

PARCEL A:

That portion of the northeast quarter of Section 7 and the southeast quarter of Section 6, all in Township 24 North, Range 4 East, W.M., in King County, Washington, being portions of Seattle Dock Company's Replat of Lots 10 to 16, inclusive, of Block 369, Seattle Tide Lands, according to the plat thereof recorded in Volume 10 of Plats, page 61, in King County, Washington, and of vacated Mill Street, of vacated Centennial Place, of vacated Moran Place, of vacated alley between Blocks 5 and 6 of said replat, and of vacated Seattle Terminal railway track, all more particularly described as follows:

Beginning at the centerline intersection of South Atlantic Street and Alaskan Way South;
Thence south $17^{\circ}14'15''$ west a distance of 777.07 feet to the centerline intersection of South Massachusetts Street and Alaskan Way South;
Thence northwesterly along the centerline of South Massachusetts Street a distance of 434.71 feet;
Thence north $23^{\circ}09'23''$ east a distance of 50.00 feet to the northerly margin of said South Massachusetts Street and the TRUE POINT OF BEGINNING, said point being the TRUE POINT OF BEGINNING of the tract excepted from premises conveyed to the Port of Seattle under deed recorded under Recording Number 5895684;
Thence northwesterly along said northerly margin a distance of 703.31 feet to the east line of the east waterway;
Thence north $0^{\circ}00'00''$ east along said east line a distance of 232.35 feet to the inner harbor line;
Thence north $58^{\circ}03'34''$ east along said inner harbor line a distance of 138.40 feet;
Thence north $17^{\circ}14'15''$ east continuing along said inner harbor line a distance of 115.37 feet;
Thence north $90^{\circ}00'00''$ east a distance of 1,099.38 feet to the westerly margin of Alaskan Way South;
Thence south $17^{\circ}14'15''$ west along said westerly margin a distance of 36.56 feet to the most easterly corner of said excepted tract;
Thence south $89^{\circ}37'37''$ west along the line of said excepted tract; a distance of 15.30 feet;
Thence north $0^{\circ}27'45''$ west a distance of 4.50 feet;
Thence north $89^{\circ}57'35''$ west a distance of 157.37 feet;
Thence south $0^{\circ}03'05''$ west a distance of 269.04 feet;
Thence north $89^{\circ}55'00''$ west a distance of 68.15 feet;
Thence south $4^{\circ}23'28''$ west a distance of 220.56 feet;
Thence north $89^{\circ}56'07''$ west a distance of 261.36 feet;
Thence south $23^{\circ}09'23''$ west a distance of 189.51 feet to the TRUE POINT OF BEGINNING,
TOGETHER WITH that portion of South Massachusetts Street adjoining vacated under City of Seattle Ordinance #108079 and recorded under Recording Number 7903270847 which attached by operation of law.

TOGETHER WITH that portion of the northeast quarter of Section 7 and the southeast quarter of Section 6, all in Township 24 North, Range 4 East, W.M., in King County, Washington, being portions of Seattle Dock Company's Replat of Lots 10 to 16, inclusive, of Block 369, Seattle Tide Lands, according to the plat thereof recorded in Volume 10 of Plats, page 61, in King County, Washington, and of vacated Moran Place, and of vacated Seattle Terminal railway track, all more particularly described as follows: Beginning at the intersection of the northerly margin of South Massachusetts Street with the westerly margin of Railroad Avenue (Alaskan Way); Thence north $66^{\circ}45'14''$ west along the northerly margin of said Massachusetts Street a distance of 361.59 feet; Thence north $23^{\circ}09'23''$ east a distance of 189.51 feet; Thence south $89^{\circ}56'07''$ east a distance of 261.36 feet; Thence north $4^{\circ}23'28''$ east a distance of 220.56 feet; Thence south $89^{\circ}55'00''$ east a distance of 68.15 feet; Thence north $0^{\circ}03'05''$ east a distance of 269.04 feet; Thence south $89^{\circ}57'35''$ east a distance of 157.37 feet; Thence south $0^{\circ}27'45''$ east a distance of 4.50 feet; Thence north $89^{\circ}37'37''$ east a distance of 15.30 feet to the westerly margin of Railroad Avenue (Alaskan Way); Thence south $17^{\circ}14'15''$ west along said westerly margin a distance of 653.80 feet to a point of curve; Thence along the arc of a curve to the right, said curve having a radius of 1430.33 feet, through a central angle $7^{\circ}35'00''$, a distance of 189.31 feet to the TRUE POINT OF BEGINNING.

Port of Seattle - Terminal 46:

***Partial Fee Simple Tract - Legal Description
(Including temporary Seattle City Light Facilities)***

All that portion of the hereinafter described Parcel G lying easterly of the following described line:

Beginning at a point opposite Highway Engineer's Station (hereinafter referred to as HES) 171+46.23 on the SR 99 line survey of SR 99, S. Atlantic St. Vic. to S. Dearborn St. and 69.91 feet westerly therefrom;
Thence northwesterly to a point opposite HES 171+72.50 on said line survey and 102.27 feet northwesterly therefrom;
Thence northerly, to a point opposite HES 172+55.94 on said line survey and 107.61 feet westerly therefrom;
Thence northeasterly, to a point opposite HES 172+82.31, on said line survey and 92.77 feet westerly therefrom;

Thence northerly to a point opposite HES 173+64.42 on said line survey and 101.47 feet westerly therefrom;
Thence northerly, to a point opposite HES 173+72.22, on said line survey and 102.30 feet westerly therefrom;
Thence northerly to a point opposite HES 173+94.82 on said line survey and 101.76 feet westerly therefrom;
Thence northerly, to a point opposite HES 177+12.54, on said line survey and 94.17 feet westerly therefrom;
Thence easterly to a point opposite HES 177+15± on said line survey and 86.63 feet westerly therefrom, said point being on the southerly boundary of a tract of land conveyed in deed recorded under King County Recording Number 6437098;
Thence easterly, to a point opposite HES 177+16 on said line survey and 83 feet westerly therefrom;
Thence northerly, to a point opposite HES 177+27.46, on said line survey and 86.56 feet westerly therefrom;
Thence northeasterly, to a point opposite HES 177+47.48, on said line survey and 76 feet westerly therefrom;
Thence northerly to a point opposite HES 177+80.61 on said line survey and 86.28 feet westerly therefrom;
Thence northerly, to a point opposite HES 177+95.24, on said line survey and 90.82 feet westerly therefrom;
Thence northeasterly to a point opposite HES 178+12.41 on said line survey and 86.95 feet westerly therefrom;
Thence northeasterly to a point opposite HES 178+35 on said line survey and 81.85 feet westerly therefrom;
Thence northeasterly, to a point opposite HES 179+07.32, on said line survey and 65.56 feet westerly therefrom;
Thence northerly, to a point opposite HES 180+20.82, on said line survey and 69.24 feet westerly therefrom;
Thence northwesterly to a point opposite HES 180+37.39 on said line survey and 71.44 feet northwesterly therefrom;
Thence northerly to a point opposite HES 180+52.39 on said line survey and 73.44 feet northwesterly therefrom;
Thence northerly, to a point opposite HES 182+19.08, on said line survey and 95.61 feet westerly therefrom;
Thence northerly to a point opposite HES 184+49.82, on said line survey and 93.18 feet westerly therefrom;
Thence northerly, to a point opposite HES 186+49.82, on said line survey and 87.84 feet westerly therefrom;
Thence northerly, to a point opposite HES 189+67 on said line survey and 89.33 feet westerly therefrom;
Thence northerly to a point opposite HES 192+00 on said line survey and 82.66 feet westerly therefrom;
Thence northerly, to a point opposite HES 192+80.95, on the SR 99 line survey of SR 99, S. Dearborn St. to Pine St. and 80.35 feet westerly therefrom;

Thence northerly, to a point opposite HES 193+80.68, on said line survey and 78.42 feet westerly therefrom;

Thence northerly to a point opposite HES 199+83± on said line survey and 83.21 feet westerly therefrom; said point being on the southerly boundary of a tract of land conveyed in deed recorded under King County Recording Number 6437099;

Thence easterly along said southerly boundary to a point opposite said HES and 55 feet westerly therefrom, said point also being the southeasterly corner of that tract of land conveyed in deed under King County Recording No. 64737099;

Thence northerly, parallel with said line survey, to a point opposite HES 202+30 thereon and the end of this line description.

Temporary Construction Easement #1 - Legal Description

A tract of land lying within the hereinafter described Parcel G described as follows:

Beginning at a point opposite Highway Engineer's Station (hereinafter referred to as HES) 171+71.67 on the SR 99 line survey of SR 99, S. Atlantic St. Vic. to S. Dearborn St. and 111.04 feet westerly therefrom,

Thence northwesterly to a point opposite HES 172+22.42 on said line survey and 215.35 feet westerly therefrom;

Thence northerly to a point opposite HES 173+99.96 on said line survey and 305 feet westerly therefrom;

Thence northerly, parallel with said line survey, to a point opposite HES 174+39.96 thereon;

Thence southeasterly to a point opposite said HES and 115 feet westerly therefrom;
Thence southerly to the point of beginning.

Temporary Construction Easement #2 - Legal Description (Seattle City Light Temporary Construction Easement)

A tract of land lying within the hereinafter described Parcel G described as follows:

Beginning at a point opposite Highway Engineer's Station (hereinafter referred to as HES) 173+64.42 on the SR 99 line survey of SR 99, S. Atlantic St. Vic. to S. Dearborn St. and 101.47 feet westerly therefrom;

Thence northerly to a point opposite HES 174+31.62 on said line survey and 161.29 feet westerly therefrom;

Thence northeasterly to a point opposite HES 174+36.74 on said line survey and 161.23 feet westerly therefrom;

Thence northeasterly to a point opposite HES 174+39.96 on said line survey and 161.21 feet westerly therefrom;

Thence northeasterly to a point opposite HES 177+15.44 on said line survey and 159.65 feet westerly therefrom;

Thence northeasterly to a point opposite HES 178+97.19 on said line survey and 74.95 feet westerly therefrom;
Thence northeasterly to a point opposite HES 180+37.39 on said line survey and 71.44 feet westerly therefrom;
Thence southerly to a point opposite HES 180+20.82 on said line survey and 69.24 feet westerly therefrom;
Thence southwesterly to a point opposite HES 179+07.32 on said line survey and 65.56 feet westerly therefrom;
Thence southwesterly to a point opposite HES 178+35 on said line survey and 81.85 feet westerly therefrom;
Thence southwesterly to a point opposite HES 177+36.08 on said line survey and 127.97 feet westerly therefrom;
Thence southerly to a point opposite HES 177+16± on said line survey and 121.88 feet westerly therefrom, said point being on the westerly boundary of a tract of land conveyed in deed recorded under King County Recording Number 6437098;
Thence westerly to a point opposite HES 177+10.94 on said line survey and 139.68 feet westerly therefrom;
Thence Southwesterly to a point opposite HES 175+67.97 on said line survey and 140.88 feet westerly therefrom;
Thence southwesterly to a point opposite HES 174+39.96 on said line survey and 141.95 feet westerly therefrom;
Thence southerly to a point opposite HES 173+94.82 on said line survey and 101.76 feet westerly therefrom;
Thence southwesterly to a point opposite HES 173+72.22 on said line survey and 102.30 feet westerly therefrom;
Thence southwesterly to the point of beginning.

Temporary Construction Easement #3 - Legal Description

A tract of land lying within the hereinafter described Parcel G described as follows:

Beginning at a point opposite Highway Engineer's Station (hereinafter referred to as HES) 171+70 +/- on the SR 99 line survey of SR 99, S. Atlantic St. Vic. to S. Dearborn St. and 110.98 feet westerly therefrom, said point also being on the southerly line of said Parcel G;
Thence northeasterly to a point opposite HES 171+71.67 on said line survey and 111.04 feet westerly therefrom;
Thence northeasterly to a point opposite HES 174+39.96 on said line survey and 115 feet westerly therefrom;
Thence northeasterly parallel with said line survey to a point opposite HES 177+06.08 thereon;
Thence easterly to a point opposite HES 177+12.54 on said line survey and 94.17 feet westerly therefrom;
Thence southwesterly to a point opposite HES 173+94.82 on said line survey and 101.76

feet westerly therefrom;
Thence southwesterly to a point opposite HES 173+72.22 on said line survey and 102.30 feet westerly therefrom;
Thence southwesterly to a point opposite HES 173+64.42 on said line survey and 101.47 feet westerly therefrom;
Thence southerly to a point opposite HES 172+82.31 on said line survey and 92.77 feet westerly therefrom;
Thence southwesterly to a point opposite HES 172+55.94 on said line survey and 107.61 feet westerly therefrom;
Thence southerly to a point opposite HES 171+72.50 on said line survey and 102.27 feet westerly therefrom;
Thence westerly to the point of beginning.

Temporary Construction Easement #6 - Legal Description

A tract of land, lying within the hereinafter described Parcel G, described as follows:

Beginning at a point opposite Highway Engineer's Station (hereinafter referred to as HES) 174+39.96 on the SR 99 line survey of SR 99, S. Atlantic St. Vic. to S. Dearborn St. and 176.21 feet westerly therefrom;
Thence northerly to a point opposite HES 177+18.81 on said line survey and 174.63 feet westerly therefrom;
Thence northeasterly to a point opposite HES 179+00.69 on said line survey and 89.86 feet westerly therefrom;
Thence northerly to a point opposite HES 180+37.77 on said line survey and 86.44 feet westerly therefrom;
Thence easterly to a point opposite HES 180+52.39 on said line survey and 73.44 feet westerly therefrom;
Thence southerly to a point opposite HES 180+37.39 on said line survey and 71.44 feet westerly therefrom;
Thence southerly to a point opposite HES 178+97.19 on said line survey and 74.95 feet westerly therefrom;
Thence southwesterly to a point opposite HES 177+15.44 on said line survey and 159.65 feet westerly therefrom;
Thence southerly to a point opposite HES 174+39.96 on said line survey and 161.21 feet westerly therefrom;
Thence westerly to the point of beginning.

PARCEL G (Port of Seattle Terminal 46)

Lots 1 through 18, inclusive, Block 367, Lots 1 through 19, inclusive, Block 368, and Lots 1 through 9, inclusive, Block 369, Seattle Tide Lands, as shown on the official maps on file in the Office of the Commissioner of Public Lands at Olympia, Washington;

TOGETHER WITH that portion of South Jackson Street adjoining, vacated by Ordinance Number 92426 of the City of Seattle, and attaching thereto by operation of law;
AND TOGETHER WITH that portion of South Dearborn Street as vacated in City of Seattle Ordinance Number 9122;
AND TOGETHER WITH that portion of vacated South Connecticut Street as vacated by Ordinances 72934 and 100285 as recorded under Recording Number 7110060503, which attaches by operation of law;
AND TOGETHER WITH that portion of vacated Mill Street which attaches by operation of law and was vacated by Ordinance 37911;
AND TOGETHER WITH all that portion lying within Black's Replat of Portions of Lots 18 and 19, Block 368, Seattle Tide Lands, according to the plat thereof recorded in Volume 11 of Plats, page 10, in King County, Washington;
AND TOGETHER WITH that portion of vacated South Connecticut Street as vacated by Ordinances 72934 and 100285 as recorded under Recording Number 7110060503, which attaches by operation of law;
EXCEPTING THEREFROM that portion of Lot 4 and 5, Block 367, conveyed to the municipality of Metropolitan Seattle, a municipal corporation, by Quit Claim Deed recorded under Recording Number 6437099 and subsequently conveyed to King County by Recording Number 9312282785.
AND EXCEPTING THEREFROM that portion of Lot 1, Block 369 described as follows:

Beginning on the north line of said Lot 1 at a point distant 75 feet westerly along said north line from the northeast corner of said Lot 1;
Thence southerly at right angles to said north line a distance of 28 feet;
Thence easterly at right angles to said last described line a distance of 37 feet;
Thence northeasterly at right angles to said last-described line a distance of 12 feet;
Thence northeasterly a distance of 22.62 feet to an intersection with the north line of said Lot 1 at a point distant 22 feet westerly from the northeast corner of said Lot 1;
Thence westerly along said north line to a point of beginning.

MEMORANDUM OF AGREEMENT
NO. UT 01343
SR 99 ALASKAN WAY VIADUCT
SCL FACILITIES WORK – FOR SR 99 SOUTH HOLGATE STREET TO
SOUTH KING STREET VIADUCT REPLACEMENT PROJECT,
STAGE 1

THIS Memorandum of Agreement No. UT 01343, for SCL Facilities Work – SR 99 South Holgate Street to South King Street Viaduct Replacement Project, Stage 1 (“SCL Holgate to King Stage 1 Agreement”) is made and entered into between the State of Washington Department of Transportation, hereinafter the “STATE,” and the City of Seattle, hereinafter the CITY, (managed by Seattle City Light, hereinafter “SCL”), collectively the “Parties” and individually the “Party.”

WHEREAS, the Alaskan Way Viaduct (the Viaduct) and Seawall are at risk of sudden and catastrophic failure in an earthquake and are nearing the end of their useful lives; and

WHEREAS, the STATE and the Federal Highway Administration (FHWA), in consultation with the CITY, are proposing improvements to State Route 99 (SR 99) a, non-limited access highway which include the Viaduct and the seawall; and

WHEREAS, in March, 2007, the Governor, the King County Executive, and the Mayor of Seattle pledged to advance a series of key SR 99 projects (Moving Forward Projects) that will facilitate the removal and/or repair of key portions of SR 99, which are: Yesler Way Vicinity Stabilization Project, Electrical Line Relocation (formerly known as Electrical Utility Relocation Phase 1 under agreement No. UT01148), Battery Street Tunnel Fire and Life Safety Upgrades, SR 99 Lenora to Battery Street Tunnel Improvements, the SR 99 South Holgate Street to South King Street Viaduct Replacement Project, and Transit Enhancements and Other Improvements; and

WHEREAS, in January 2009, the Governor, the King County Executive and the Mayor of Seattle reached an agreement recommending a solution for replacing the existing viaduct structure in the central waterfront area (Central Waterfront Decision); and,

WHEREAS, taken together, the Moving Forward Projects and the Central Waterfront Decision are known as the PROGRAM; and

WHEREAS, the STATE intends to remove a portion of the viaduct structure as part of one of the Moving Forward Projects, the SR 99 South Holgate Street to South King Street Viaduct Replacement Project by December 31, 2012. The South Holgate Street to South King Street Viaduct Replacement Project will replace the Viaduct's south end with a new side-by-side surface and aerial roadway that connects to the existing Viaduct, provide new SR 99 on- and off-ramps near S. King Street, create an underpass below SR 99 on

b. The STATE will provide complete design submittals, construction submittals, construction changes and additional information as required by SCL in a timely manner that will allow SCL adequate review periods to review and comment on the proposed plans and make reasonable efforts to allow the PROJECT to proceed on schedule. The STATE shall timely incorporate and/or address to the STATE's and SCL's satisfaction, any SCL comments on the design submittals or additional information provided by the STATE, including revisions to the Approved Plans, pursuant to Section 5 herein.

c. SCL agrees to provide sufficient staff and resources for timely reviews of the PROJECT design as agreed upon in this SCL Holgate to King Stage 1 Agreement.

d. SCL shall provide clear and complete design review for SCL purposes in accordance with Section 7 of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934. Both Parties shall endeavor to identify and address issues as early as possible during the design process and to communicate clearly with one another.

e. Both Parties shall participate in regularly scheduled coordination meetings to address issues that may affect the PROJECT scope, schedule or budget.

f. The STATE and SCL agree to document key design-related decisions to ensure that issues are resolved to the STATE's and SCL's satisfaction, pursuant to Section 5 herein, so that the STATE can proceed with the design of the PROJECT. These decisions will be evidenced through the use of a Concurrence Letter signed by both Parties.

g. The STATE agrees to take the lead in consulting and coordinating with all other utilities affected by the PROJECT.

h. The STATE acknowledges that it bears the sole responsibility for all regulatory permitting of the PROJECT and shall design and construct the PROJECT in compliance with all applicable federal, state and local laws and regulations, and in accordance with the provisions of the SDOT Holgate to King Stage 1 Agreement.

i. The STATE, in conjunction with its consultants and subject to SCL approval for SCL purposes, will continue to develop a feasible end to end, permanent relocation solution acceptable to SCL for the SCL Facilities that would minimize or eliminate the need for multiple relocations and meet operational standards, capacity equivalents and ongoing maintenance and safety requirements.

2. DEFINITIONS

2.1 Approved Plans means the construction plans and provisions that evidence the CITY's determination, through the processes described in Section 7, of the SDOT Holgate to King Stage 1 Agreement, that the plans conform to the Street Use Code and other requirements and that plan review comments are resolved to both Parties'

2.11 Engineer of Record means the engineer licensed in the State of Washington who has been designated by the STATE as the prime engineer for the PROJECT, having overall responsibility for the adequacy of the design and the coordination of the design work of other engineers and whose professional seal is on the Approved Plans.

2.12 Infrastructure means the portions of SPU Facilities, SCL Facilities and roadway improvements constructed or modified as part of the PROJECT, to be owned, operated and/or maintained by the CITY.

2.13 Letter of Acceptance means the written document prepared by the CITY and delivered to the STATE that signifies the City of Seattle's approval of the PROJECT Infrastructure built by the STATE's contractor; the CITY's issuance and STATE's acknowledgment of the Letter of Acceptance effects transfer of Infrastructure ownership and obligations for operation and maintenance as agreed by the Parties.

2.14 Letter of Plan Approval means the letter provided to the STATE by the CITY following the completion of the plan review process, signifying that the final plans and specifications have been approved by the City of Seattle.

2.15 New Work means the design and construction by or at the direction of SCL of a new utility other than (a) as part of a relocation associated with the PROGRAM, or (b) to provide service to the PROJECT. New Work shall be entirely the financial obligation of SCL.

2.16 Plans, Specifications, and Estimate ("PS&E") means the portion of the PROJECT engineering after the Preliminary Engineering, which advances the PROJECT design by preparing contract-ready documents and the engineer's cost estimate. At this stage the specifications are written and tailored to the plans so that all work can be measured and has a pay item. The cost estimate is formalized using the established specifications, pay items and quantity takeoffs, for 60% through 100% completion of the total design effort.

2.17 Preliminary Engineering means the portion of the PROJECT engineering succeeding conceptual engineering, which advances the PROJECT design to address Type, Size, and Location ("TS&L") for all components of the PROJECT including the final SPU Facilities and SCL Facilities. Typically this effort includes work that advances the design from nominally 30% up to nominally 60% of the total design effort.

2.18 PROGRAM means all of the projects, collectively, implemented by the STATE that remove and replace the AWW and the Seawall.

2.19 PROJECT means the SR 99 South Holgate Street to South King Street Viaduct Replacement Project, Stage 1, as described in Exhibit A of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934.

- a. Preliminary Engineering;
- b. Plans, Specifications, and Estimate (PS&E);
- c. Construction and construction administration;
- d. Procurement of all materials needed for construction;
- e. Community outreach and public relations;
- f. Preparation and submittal of permit applications required by Title 15 of the Seattle Municipal Code, the Street Use Permit, and this Agreement.; and
- g. Testing of specified materials used during construction.

In addition, the STATE agrees to seek input and approval from SCL in the early stages of the Preliminary Engineering and PS&E throughout the design process, to ensure that the design conforms to SCL standards.

3.1.2 The STATE shall obtain all permits and approvals required by federal, state and local laws and requirements, for the SCL Facilities Work, including SCL crew work, and shall provide for review by SCL all permits that need to be obtained on SCL's behalf.

3.1.3 The STATE shall perform all SCL Facilities Work indicated in the Approved Plans and any SCL-approved revisions to the Approved Plans, unless specifically designated on the plans as work done by others.

3.1.4 The STATE shall protect existing SCL Facilities, including those installed in earlier phases of the PROGRAM. Pre and post construction condition of the SCL Facilities within the PROJECT area will be verified and documented through joint inspections and may include CCTV of ductbanks and conduits. The STATE, at its own expense, shall repair any damage attributable to the PROJECT.

3.1.5 The STATE shall provide SCL with an overall schedule for the SCL Facilities Work, and shall coordinate with SCL to schedule shutdowns and SCL crew work. Schedule updates will be promptly communicated to SCL upon receipt by the STATE.

3.1.6 The STATE shall take the lead in holding meetings with SCL to develop qualification criteria for potential construction contractors for Specialty Work. Qualification criteria will be incorporated into the contract bid document. The STATE shall consult with SCL on the contractors and subcontractors bidder qualifications for Specialty Work. SCL shall provide comments to the STATE on known bidder qualifications. The STATE shall not allow unqualified contractors to perform Specialty Work

3.1.7 The STATE shall provide all labor, materials, equipment, and tools required to excavate, provide trench support systems, and handle and dispose of all spoils (including contaminated soils, groundwater, and other debris), and provide a safe workplace for SCL staff per applicable State and Federal laws, and City of Seattle standards, for the SCL Facilities Work in accordance with the Approved Plans and any SCL-approved revisions to the Approved Plans. The STATE will not provide personal protective equipment for SCL staff.

Seattle and STATE-owned Property. The Temporary Construction Easements shall be conveyed by recorded deed to the City of Seattle using the approved easement format attached and identified as Exhibit A, and pursuant to the requirements and procedures set forth in Section 14 herein.

3.1.15 The STATE shall require its contractor to develop, submit and regularly update, a detailed construction schedule that includes sufficient detail on SCL Facilities Work that SCL may review and comment upon.

3.1.16 The STATE shall require its contractors to obtain their own electrical clearances when required. Individual clearance holders will be required to go through a training session based on System Operation Center (SOC) guidelines to familiarize themselves with the SCL requirements for holding and maintaining a clearance on the SCL electrical system. SCL will provide the STATE's contractor an outline of procedures and guidelines to follow at all times during the clearance and the STATE will ensure that such guidelines and procedures are followed. Chief Dispatcher, Dana Wheelock or his designee at 206-706-0241, will be the contact for SCL. SCL's Power Line Clearance Coordinator reserves the right to review the contractor crew's qualifications and direct the STATE to replace those employees who are not qualified and competent.

3.1.17 The STATE recognizes that SCL requires advance notice of 26.kV power outages needed for construction to schedule crews, notify customers and accommodate other previously scheduled outage requests. The STATE shall submit a request in writing, thirty (30) days prior to any necessary outages specifying the electrical boundaries, the date the outage will begin and the date the SCL Facilities can be energized and put into service. SCL shall accommodate such requests unless prohibited by operational necessity, a previously scheduled outage conflicts with the outage requested by the STATE, or emergency conditions prohibit the outage or limit the availability of crews. If denied, SCL shall assist the STATE in finding another outage window. If granted, SCL shall outline any conditions related to such outage to the STATE.

3.2 SCL RESPONSIBILITIES

3.2.1 SCL shall review contractor submittals relating to the SCL Facilities Work within ten (10) business days of SCL receipt, and respond in a timely manner to requests for information, utility conflicts, and other similar issues affecting the SCL Facilities Work. SCL will notify the STATE if a submittal will require longer than ten (10) business days to review.

3.2.2 SCL, at its expense, will provide all 26kV transformers for the PROJECT. SCL will be provided thirty (30) business days notice prior to the STATE contractor needing them.

5.1 The STATE and SCL shall comply with all provisions outlined in Section 7 of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934. The STATE will facilitate the design as provided herein and will allow SCL adequate time for detailed review. SCL will meet agreed-upon timelines for review. The STATE will address and resolve each SCL comment to SCL's and the STATE's satisfaction. In the event comments are not mutually resolved, the dispute resolution process of Section 19 may be initiated

6. FUNDING OF SCL FACILITIES WORK

6.1 The STATE shall pay for all costs associated with the design and construction of the SCL Facilities Work, except for Betterments or New Work as defined in Section 2, performed by the STATE or its contractor, as set forth in the Approved Plans, and any SCL-approved revisions to the Approved Plans, without reimbursement from SCL, including Change Orders pursuant to Section 8. No delay costs shall be paid for by SCL.

6.2 SCL shall be responsible for the additional incremental cost of any Betterment as provided in and based on an engineering estimate provided by the STATE's consultant and negotiated between SCL and the STATE. In addition, SCL shall be responsible for actual cost of any New Work requested by SCL and agreed upon by the STATE. Any Betterment or New Work will be the subject of an amendment to this Agreement. The Agreement amendment shall specify the invoicing and payment procedures under this Section 6.2.

6.3 SCL will be responsible for costs associated with SCL labor, SCL consultants, and SCL administrative overhead, subject to the exceptions and limitations outlined below:

6.3.1 The STATE will develop a proposed recommended construction sequence and provide it to SCL for review. When SCL receives the proposed recommended construction sequence, it will develop with the STATE a mutually agreeable estimate of the SCL crew time required, which estimate shall be the maximum SCL crew time provided for the PROJECT at SCL's cost or expense.

6.3.2 In the event the STATE's contractor requests or requires SCL crew time in excess of or addition to this estimate, the STATE or the contractor shall pay SCL for such time.

6.3.3 Responsibility for the cost of SCL crew time necessary to accommodate changes to the approved plans will be negotiated separate from this Agreement.

6.3.4 Responsibility for the cost of SCL crew time necessary to accommodate changes to the construction sequence due to unexpected field conditions will be negotiated separate from this Agreement.

quarter, and upon receipt of a billing, SCL agrees to make payment within thirty (30) business days .

8.2.3 If, during the construction of the PROJECT, the “not to exceed amount” as identified in Section 8.2.1 is expended, SCL and the STATE agree to amend Section 8.2.1 of this Agreement to continue funding the minor change requests.

8.3 The STATE will make available to the SCL all Change Order documentation that affects the SCL Facilities Work.

9. SCL’S RIGHT TO CORRECT NON-CONFORMING, UNAUTHORIZED AND DEFECTIVE WORK

9.1 If the STATE or its contractor fails to remedy, or fails to properly remedy, non-conforming, unauthorized or Defective Work within the time specified by SCL, which is not to be less than ten (10) Business Days, SCL may, but is not required to, correct and remedy such work by any means as SCL may deem necessary, including the use of SCL staff or contractors.

9.2 If the STATE, or its contractor, fails to comply with a written notice to remedy what SCL determines to be an emergency situation, SCL may, but is not required to, have the non-conforming or Defective Work corrected immediately, have such work removed and replaced, or have work the STATE, or its contractor, refuses to correct completed. An emergency situation shall mean a condition that calls for immediate action to respond to danger to health, safety or property.

9.3 Direct and indirect costs incurred by SCL attributable to correcting and remedying unauthorized, non-conforming or Defective Work, or work the STATE or its contractor, failed or refused to perform, shall be paid by the STATE to SCL within thirty (30) days after receipt of an invoice with appropriate documentation of such costs

9.4 Except in an emergency situation as defined under Section 9.2, disagreements between SCL and the STATE on what constitutes non-conforming, unauthorized or Defective Work shall be resolved using the dispute resolution process established in Section 20 of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934 prior to SCL performing any work.

10. PROTECTION OF SCL FACILITIES ACCESS

10.1 Neither the STATE nor its contractor shall require SCL to interrupt electrical service without (a) written notice to SCL at least fourteen (14) calendar days prior to the planned interruption and (b) SCL’s written approval. SCL may restrict electrical service interruptions to the extent necessary to maintain electrical system operations and adequate power supply to customers.

inspect such work upon completion of any material stage. The SCL on-site inspector shall be invited to the weekly construction meeting prior to any work being started on SCL Facilities. The STATE shall provide at least five (5) Business Days notice for each inspection. SCL shall submit a complete list of any concerns or deficiencies to the STATE within ten (10) Business Days of the date of any inspection. The STATE shall timely address each comment or issue presented by SCL to the STATE's and SCL's satisfaction. Both Parties agree to act as expeditiously as possible to assure a timely resolution of any deficiencies.

11.5 SCL shall observe the work performed by the STATE for quality assurance. SCL will notify the STATE if defective SCL Facilities Work is observed, such as improper installation or unsafe conditions.

11.6 Any and all services, including direction, provided by SCL pursuant to this section shall be subject to all limitations on the CITY's liability contained in the SDOT Holgate to King Stage 1 Agreement No. GCA 5934, including but not limited to Section 16, Risk Allocation.

12. SCL FACILITIES FINAL INSPECTION AND ACCEPTANCE

12.1 The STATE shall comply with all provisions of the SDOT Holgate to King Stage 1 Agreement regarding Final Inspection, Project Acceptance and interim use and operation of SCL Facilities including but not limited to all provisions in Section 12 therein, and such provisions shall apply equally to this SCL Holgate to King Stage 1 Agreement.

12.2 SCL Facilities shall not be placed into interim use or operation, unless or until: (a) SCL has participated in an inspection of the SCL Facilities; (b) any deficiencies or Defective Work have been resolved or corrected to the STATE'S and SCL's satisfaction; and (c) SCL confirms with the STATE in writing that SCL's minimum inspection and testing requirements for the SCL Facilities have been met.

13. OWNERSHIP OF IMPROVEMENTS AND WARRANTIES

13.1 Upon completion of the SCL Facilities Work and upon SCL's acceptance of such work as outlined in Section 12 herein, and complies with all provisions of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934, Section 12 therein, the STATE shall transfer ownership of the SCL Facilities to SCL, shall warrant good title to the SCL Facilities constructed by the STATE, and shall transfer all right, title and interest it may have in the SCL Facilities to SCL. SCL shall be responsible for all future operation and maintenance of the SCL Facilities at its sole cost and expense, except that the STATE shall remain liable for any latent defects or warranty claims.

13.2 In addition, for any design, permitting or construction of the SCL Facilities Work undertaken by the STATE, the STATE shall require its construction contractors to

18. THIRD PARTY BENEFICIARY

18.1 The STATE shall comply with all provisions of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934, regarding Third Party Beneficiary, including but not limited to all provisions in Section 18 therein, and such provisions shall apply equally to this SCL Holgate to King Stage 1 Agreement.

19. DISPUTE RESOLUTION

19.1 SCL and the STATE shall make good faith efforts to resolve any dispute arising under or in connection with this Agreement.

19.2 Dispute Resolution Representatives. The Dispute Resolution Representatives for the Parties are as follows:

For the STATE: Holgate to King Street Stage 1 Project Design Project Engineer or, if appropriate, Construction Project Engineer,
Alaskan Way Viaduct & Seawall Replacement Program
Washington State Department of Transportation
999 3rd Avenue, Suite 2424
Seattle, WA 98104

For SCL: SCL AWV Project Manager
P.O. Box 34023
700 Fifth Avenue, Suite 3200
Seattle, WA 98124-4023

19.3 Dispute Resolution Process. The designated representatives established under Section 19.2 shall use their best efforts to resolve disputes between the Parties. If these individuals are unable to resolve a dispute, Chris Heimgartner of Seattle City Light and the Deputy Regional Program Administrator for the Washington State Department of Transportation Urban Corridors Office shall review the matter and attempt to resolve it. If they are unable to resolve the dispute, the matter shall be reviewed by the Superintendent of Seattle City Light and the Washington State Deputy Secretary of Transportation. The Parties agree to exhaust each of these procedural steps before seeking to resolve disputes in a court of law or any other forum.

20. REMEDIES; ENFORCEMENT

20.1 The provisions of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934, regarding Remedies; Enforcement, including but not limited to Section 21 therein, shall apply equally to this SCL Holgate to King Stage 1 Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the last day and year written below.

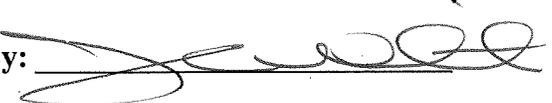
SEATTLE CITY LIGHT

By: 

Jorge Carrasco
Superintendent

Date: 5/29/09

**WASHINGTON STATE
DEPARTMENT OF
TRANSPORTATION**

By: 

Print: JOHN H. WHITE
Title: PROGRAM DIRECTOR

Date: 6/2/09

APPROVED AS TO FORM:

Ann E. Salay

By (print)


Signature
Assistant Attorney General

Date: 6-1-09

UT 01343 – Exhibit A
Port of Seattle Property TCE Approved Easement Format

After recording return document to:

State of Washington
Department of Transportation
Real Estate Services Office
PO Box 47338
Olympia, WA 98504-7338

PLEASE MAKE NO MARK IN THE MARGIN SPACE - RESERVED FOR COUNTY AUDITOR'S USE

Document Title: Temporary Easement
Grantor(s): Port of Seattle, a Washington municipal corporation
Grantee(s): State of Washington, Department of Transportation & City of Seattle
Legal Description:
Additional Legal Description is on Page 8 of Document
Assessor's Tax Parcel Number:

TEMPORARY EASEMENT

State Route 99, S. Atlantic St. Vic to S. Dearborn St

This NON-EXCLUSIVE TEMPORARY EASEMENT is made this ____ day of _____, 20____, between, the PORT OF SEATTLE, a Washington Municipal Corporation, hereinafter called the Grantor; and the State of Washington, Department of Transportation, under the imminent threat of the Grantee's exercise of its rights of Eminent Domain and the CITY OF SEATTLE, a municipal corporation, collectively, hereinafter called the Grantees; WITNESSTH:

That the Grantor, for and in consideration of the sum of TEN DOLLARS AND NO/100, (\$10.00) and other good and valuable consideration, receipt of which is hereby acknowledged, hereby convey and grant to the Grantees, its successors and/or assigns, a non-exclusive temporary easement (the "Easement") for the right, privilege and authority to install,

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Revised 09/05

Page 1 of (10) Pages

FA No. N/A
Project No. RW5042
Parcel No.

EXHIBIT A

TEMPORARY COSTRUCTION EASEMENT

construct, erect, alter, improve, repair, energize, operate and maintain aerial and underground electric distribution facilities at depths not exceeding 15 feet; which may consist of vaults, manholes, handholes, ducts, conduits, cables, poles, wires and other necessary or convenient appurtenances (collectively hereinafter "Utility Facilities"), and subject to the provisions set forth in this agreement. All such Utility Facilities are to be located across, over, upon and under the following described lands (the "Easement Area"):

Said lands being situated in King County, State of Washington, and described as follows:

See Exhibit A attached hereto and made a part hereof.

Together with the right at all times to the Grantees, its successors and/or assigns, of ingress to and egress from said lands across adjacent lands of the Grantor for the purpose of installing, constructing, reconstructing, repairing, renewing, altering, changing, patrolling, energizing and operating said Utility Facilities, and the right at any time to remove all or any part of said Utility Facilities from said lands.

- 1) **TERM.** The term of this Easement shall begin August 1, 2009 (Commencement Date) and shall terminate August 1, 2012 (Termination Date). Use of the Easement Area, unless extended pursuant to §2 below, shall be limited to a three (3) year period (Construction Period). Grantee shall provide at least thirty (30) days written notice to the Grantor prior to commencement of the Construction Period. The Construction Period shall commence upon initiation of Grantee's construction within the Easement Area, but no sooner than August 1, 2009 and shall remain in force for the length of the Construction Period or until completion of construction and restoration of the property, whichever occurs first.
- 2) **EXTENSION.** If the Grantee requires additional use of the Easement Area past the Termination Date, Grantee shall be entitled to two (2) extension periods of thirty (30) days. As a condition of each such extension, Grantee shall pay an amount of SIX THOUSAND FOUR HUNDRED SIXTY-FIVE and 38/100 (\$6,465.38) Dollars for each extension period that Grantee uses the Easement Area beyond the Construction Period, which extension fee shall be payable on or before the first day of each month during each extension period. The extension fee for any partial month shall be prorated based upon the actual number of days that Grantee uses the Easement Area during such month. Grantee shall provide thirty (30) days written notice to the Grantor

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UT 01343 – Exhibit A

Parcel No.

EXHIBIT A

TEMPORARY COSTRUCTION EASEMENT

prior to any thirty (30) day extension period. Following expiration of any extensions, this Easement shall automatically terminate without further action by Grantor(s) or Grantee.

3) **PERSONAL PROPERTY.** Prior to the Construction Period all personal property and improvements located in the Easement Area shall be temporarily removed by Grantor. Grantor shall be responsible for the reinstallation of the removed personal property after the Construction Period. In the event Grantor fails to remove all personal property from the Easement Area prior to the Construction Period, Grantee is hereby authorized to remove all personal property within the Easement Area at the expense of Grantor, however, Grantee shall have no obligation to restore or replace said property.

4) **PURPOSE AND USES.**

- a. As used in this Section 4, "Grantee" shall include Grantee's employees, contractors, agents, invitees, and consultants.
- b. **Grantee's Access.** Grantee shall have twenty-four hour access to the Easement Area across, over or from Grantor's property for the purposes and uses stated above. Grantee's rights of ingress and egress shall include the right to limit or eliminate parking in the vicinity of the Easement Area in order to facilitate necessary and convenient access to the Utility Facilities.
- c. **Utility Facilities.** Without limiting the generality of the purposes and uses stated above, Grantee, at its own expense, shall have the right to replace any of the Utility Facilities within the Easement Area with utility facilities of the same or larger diameter and capacity and to install additional and/or replacement utility facilities within the Easement Area.

5) **GRANTOR'S OBLIGATIONS AND ACTIVITIES IN EASEMENT AREA**

Subject to the conditions set forth below, Grantor shall have the right to use the Easement Area in any way and for any legal purpose not inconsistent with the rights herein granted to Grantee and the terms and conditions of this Easement. As used in this Section 5, "Grantor" shall include Grantor's employees, contractors, tenants, lessees, agents, invitees, and consultants:

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UT 01343 – Exhibit A

Parcel No.

EXHIBIT A

TEMPORARY COSTRUCTION EASEMENT

- a. Subsurface Improvements. Grantor agrees that no other utility facility, such as conduits, cable, pipelines, vaults, poles, posts, whether public or private, will be installed with five (5) horizontal feet of Utility Facilities. All crossings must maintain a vertical clearance of no less than twelve (12) inches from said Utility Facilities.

- b. Excavation. Grantor shall not make any excavation, boring, or tunneling within the Easement Area without the prior written permission of Grantee. All work performed adjacent to the Easement Area with be performed in compliance with WAC 296.24.960.

- c. Blasting. Grantor shall not blast or discharge any explosives, nor permit the same, within fifty (50) feet of Grantee's Utility Facilities or other equipment on or in the Easement Area.

- d. Aerial and Surface Improvements. Grantor shall not (a) erect, construct, plant, or allow to remain any buildings, walls, fences, rockeries, trees, shrubbery, or obstruction or structure of any kind or (b) place any fill material, or obstruction of any kind within the Easement Area, without prior written permission of the Grantee, and subject to the following conditions:
 - i. Grantor shall not, nor permit others to place, any fill material over Utility Facilities within the Easement Area without Grantee's prior written approval. Such approval may not be unreasonably withheld, but may include such restrictions and conditions as are appropriate to protect existing and future planned Utility Facilities.

 - ii. If Grantor intends to carry out construction work in the Easement Area, Grantor shall request Grantee's approval by submitting detailed work plans to Grantee no less than ninety (90) days prior to the commencement of the proposed work. Grantee shall provide said approval, including such restrictions and conditions as reasonably appropriate to protect any Utility Facilities and operations; including future planned utility facilities, or a written objection specifying the grounds therefore, within thirty (30) days of submittal of Grantor's work plans. Grantee's authorization shall not be unreasonably denied, but may include such restrictions and conditions as are appropriate to protect existing and future planned Utility Facilities.

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Parcel No.

EXHIBIT A

TEMPORARY COSTRUCTION EASEMENT

- e. Emergency Response. In an Emergency, Grantor shall cooperate immediately with the requests of Grantee, to facilitate Grantee's response to the situation in order to protect Utility Facilities and public health, safety and welfare.
- 6) INDEMNIFICATION. Grantee is to be responsible, as provided by law, for any damage to the Grantor through its negligence in the construction, maintenance and operation of said Utility Facilities across, over, upon and under the property of said Grantor.
- 7) COMPLIANCE WITH LAWS. The Grantee and the Grantor in the exercise of their respective rights under this Easement shall comply with all applicable federal, state and local laws, ordinances, and regulations, including environmental laws and regulations.
- 8) NOTICES. Wherever in this agreement written notices are to be given or made, they will be served, personally delivered or sent by certified or overnight mail addressed to the parties at the address listed below unless a different address has been designated in writing and delivered to the other party. The Grantee agrees to accept service of process at said address. Such service shall be deemed personal service.

GRANTOR(S):

PORT OF SEATTLE
Attn:
PO Box
Seattle, WA 98104

&

TOTAL TERMINALS INTERNATIONAL, LLC
Attn:
401 Alaskan Way
Seattle, WA 98104

GRANTEE:

DEPARTMENT OF TRANSPORTATION
Attn: Director Property Management
Transportation Building

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TEMPORARY COSTRUCTION EASEMENT

P.O. Box 47338
Olympia, WA 98504-7338

&

CITY OF SEATTLE
Attn: SCL Manager of Real Estate
PO Box 34023
Seattle, WA 98124-4018

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EXHIBIT A

TEMPORARY EASEMENT

STATE OF WASHINGTON)

: SS

County of _____)

On this _____ day of _____ 20____, before me personally appeared _____ to me known to be the _____ of Total Terminals International, LLC, a Washington limited liability company that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that _____ are authorized to execute said instrument.

GIVEN under my hand an official seal the day and year last above written.

Notary Seal

Notary (print name) _____
Notary Public in and for the State of Washington,
residing at _____
My Appointment expires _____

TEMPORARY EASEMENT

EXHIBIT A

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Parcel No.

EXHIBIT A

UT 01343
Exhibit B



Washington State
Department of Transportation

Seattle City Light
Minor Change Request & Approval
For SCL-requested minor changes costing \$20,000 or less

WSDOT Project Engineer's Signature _____ Date _____

MEMORANDUM OF AGREEMENT
NO. UT 01342
SR 99 ALASKAN WAY VIADUCT
SPU FACILITIES WORK – FOR SR 99 SOUTH HOLGATE STREET TO
SOUTH KING STREET VIADUCT REPLACEMENT PROJECT,
STAGE 1

THIS Memorandum of Agreement No. UT 01342, for SPU Facilities Work – SR99 South Holgate Street to South King Street Viaduct Replacement Project, Stage 1 (“SPU Holgate to King Stage 1 Agreement”) is made and entered into between the State of Washington Department of Transportation, hereinafter the “STATE,” and the City of Seattle, hereinafter, the “CITY” (managed by Seattle Public Utilities, hereinafter “SPU”), collectively the “Parties” and individually the “Party.”

WHEREAS, the Alaskan Way Viaduct (the Viaduct) and Seawall are at risk of sudden and catastrophic failure in an earthquake and are nearing the end of their useful lives; and

WHEREAS, the STATE and the Federal Highway Administration (FHWA), in consultation with the CITY, are proposing improvements to State Route 99 (SR 99) a non-limited access highway which includes the Viaduct and the seawall; and

WHEREAS, in March 2007, the Governor, the King County Executive, and the Mayor of Seattle pledged to advance a series of key SR 99 projects (Moving Forward Projects) that will facilitate the removal and/or repair of key portions of SR 99, which are: Yesler Way Vicinity Stabilization Project, Electrical Line Relocation (formerly known as Electrical Utility Relocation Phase 1 under agreement No. UT01148), Battery Street Tunnel Fire and Life Safety Upgrades, SR 99 Lenora to Battery Street Tunnel Improvements, the SR 99 South Holgate to South King Street Viaduct Replacement Project), and Transit Enhancements and Other Improvements; and

WHEREAS, in January 2009, the Governor, the King County Executive, and the Mayor of Seattle reached an agreement recommending a solution for replacing the existing viaduct structure in the central waterfront area (Central Waterfront Decision); and

WHEREAS, taken together, the Moving Forward Projects and the Central Waterfront Decision are known as the PROGRAM; and

WHEREAS, the STATE intends to remove a portion of the viaduct structure as part of one of the Moving Forward Projects, the South Holgate Street to South King Street Viaduct Replacement Project, by December 31, 2012. The South Holgate Street to South King Street Viaduct Replacement Project will replace the Viaduct's south end with a new side-by-side surface and aerial roadway that connects to the existing Viaduct, provide new SR 99 on- and off-ramps near S. King Street, create an underpass below SR 99 on the north side of South Atlantic Street, and build new bicycle/pedestrian paths on the east and west sides of SR 99. The South Holgate Street to South King Street Viaduct

Replacement Project will be carried out in stages. Stage 1 of the South Holgate Street to South King Street Viaduct Replacement Project (the "PROJECT" as defined under section 2.19 and Exhibit A of the SDOT Holgate to King Stage 1 No. GCA 5934 Agreement) is the subject of this Agreement; and

WHEREAS, the PROJECT will require the relocation and/or protection of significant existing water, drainage and wastewater facilities, and construction of new facilities and services; and

WHEREAS, the Parties agree that the STATE will perform the design and construction of the SPU Facilities Work, as well as the procurement of any construction materials that are required to meet schedule requirements; and

WHEREAS, concurrently with this SPU Holgate to King Stage 1 Agreement No. UT 01342, the STATE and CITY are entering into a Memorandum of Agreement No. GCA 5934 for Property, Environmental Remediation, Permitting, and Construction Coordination Agreement for SR 99 Viaduct Removal from South Holgate to South King Street Stage 1 ("SDOT Holgate to King Stage 1 Agreement"); and

WHEREAS, concurrently with this SPU Holgate to King Stage 1 Agreement, the STATE and CITY, through Seattle City Light (SCL), are entering into a Memorandum of Agreement, No. UT01343, for Preliminary Engineering, Final Design, Procurement of Materials and Construction for Electrical Utility Relocation – SR 99 Viaduct Removal from South Holgate to South King Street Stage 1 ("SCL Holgate to King Stage 1 Agreement"),

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performances contained herein, or attached and incorporated and made a part hereof,

IT IS MUTUALLY AGREED AS FOLLOWS:

1. INTENT

1.1 The Parties agree to do the following throughout the PROJECT as defined below:

a. The Parties agree to work cooperatively with each other and shall make reasonable, good faith efforts to timely and expeditiously complete the PROJECT, as provided in this SPU Holgate to King Stage 1 Agreement No. UT 01342, including, but not limited to, the selection of a preferred design alternative; development of preliminary engineering and final design with consideration of long-term operation and maintenance costs in addition to construction cost, plans and specifications, and cost estimates; execution of any necessary utility easements; and procurement of any required materials included in the construction contract for SPU Facilities relocations.

b. The STATE shall provide complete design submittals, construction submittals, construction changes and additional information as required by SPU in a timely manner that will allow SPU adequate review periods to review and comment on the proposed plans and make reasonable efforts to allow the PROJECT to proceed on schedule. The STATE shall timely incorporate and/or address, to the STATE's and SPU's satisfaction any SPU comments on the design submittals or additional information provided by the STATE, including revisions to the Approved Plans, pursuant to Section 5 herein.

c. SPU agrees to provide sufficient staff and resources for timely reviews of the PROJECT design as agreed upon in this SPU Holgate to King Stage 1 Agreement.

d. SPU shall provide clear and complete design review for SPU purposes in accordance with Section 7 of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934. Both Parties shall endeavor to identify and address issues as early as possible during the design process and to communicate clearly with one another.

e. Both Parties shall participate in regularly scheduled coordination meetings to address issues that may affect the PROJECT scope, schedule or budget.

f. The STATE and SPU agree to document key design-related decisions to ensure that issues are resolved to the STATE's and SPU's satisfaction, pursuant to Section 5 herein, so that the STATE can proceed with the design of the PROJECT. These decisions will be evidenced through the use of a Concurrence Letter signed by both Parties.

g. The STATE agrees to take the lead in consulting and coordinating with all other utilities affected by the PROJECT.

h. The STATE acknowledges that it bears the sole responsibility for all regulatory permitting of the PROJECT and shall design and construct the PROJECT in compliance with all applicable federal, state and local laws and regulations, and in accordance with the provisions of the SDOT Holgate to King Stage 1 Agreement.

2. DEFINITIONS

2.1 Approved Plans means the construction plans and provisions that evidence the CITY's determination, through the processes described in Section 7 of the SDOT Holgate to King Stage 1 Agreement, that the plans conform to the Street Use Code and other requirements and that plan review comments are resolved to both Parties' satisfaction; Approved Plans are included in the STATE's advertisement for bids, or supplementation thereto, and evidence the agreement between the STATE and its contractors for construction of the PROJECT.

2.2 AWV means the Alaskan Way Viaduct on State Route 99, a non-limited access highway, over a portion of a CITY Street Right of way and located partially in the City of Seattle.

2.3 Betterment means any upgrading of the SPU Facilities being relocated, or the design and construction of any new SPU Facilities, that is not attributable to the PROJECT or PROGRAM and is made solely for the benefit of and at the election of SPU. Examples of work that will not constitute a Betterment, so that SPU shall not bear cost responsibility, are:

a) If existing devices or materials are no longer regularly manufactured or cannot be obtained in time to meet the PROJECT schedule, needs or requests by the STATE, then devices or materials of equivalent standards although not identical, of the next highest grade or size; or

b) Upgrades to SPU Facilities necessary to meet current code requirements and SPU published standards; or

c) Work required by SPU to maintain current service and capacity; or

d) Work required by current design and construction practices regularly followed by SPU in its own work and/or considered an industry design or construction standard.

2.4 Business Days means Monday through Friday, inclusive, except for official City of Seattle and STATE holidays.

2.5 CITY means the City of Seattle, a Washington municipal corporation, acting through SDOT.

2.6 City of Seattle means the CITY.

2.7 Concurrence Letter means one or more letters, drafted by either the STATE or SPU, and signed by both, evidencing key design-related decisions to ensure that issues are resolved to the STATE and SPU's satisfaction.

2.8 Contract Award means the STATE's written decision accepting the lowest responsive bid for construction of the PROJECT.

2.9 Defective Work means design or construction work or materials that fail to comply with the Approved Plans, City of Seattle approved modifications to the Approved Plans, and/or the laws, rules, regulations and standards as specified in this Agreement.

2.10 Designated Representative means the SPU official listed in Section 4.2 of this SPU Holgate to King Stage 1 Agreement.

2.11 Engineer of Record means the engineer licensed in the State of Washington who has been designated by the STATE as the prime engineer for the PROJECT, having overall responsibility for the adequacy of the design and the coordination of the design work of other engineers and whose professional seal is on the Approved Plans.

2.12 Infrastructure means the portions of SPU Facilities, SCL Facilities and roadway improvements constructed or modified as part of the PROJECT, to be owned, operated and/or maintained by the CITY.

2.13 Letter of Acceptance means the written document prepared by the CITY and delivered to the STATE that signifies the City of Seattle's approval of the PROJECT Infrastructure built by the STATE's contractor; the CITY's issuance and STATE's acknowledgment of the Letter of Acceptance effects transfer of Infrastructure ownership and obligations for operation and maintenance as agreed by the Parties.

2.14 Letter of Plan Approval means the letter provided to the STATE by the CITY following the completion of the plan review process, signifying that the final plans and specifications have been approved by the City of Seattle.

2.15 New Work means the design and construction by or at the direction of SPU of a new utility other than (a) as part of a relocation associated with the PROGRAM or (b) to provide service to the PROJECT. New Work shall be entirely the financial obligation of SPU.

2.16 Plans, Specifications, and Estimate ("PS&E") means the portion of the PROJECT engineering after the Preliminary Engineering, which advances the PROJECT design by preparing contract-ready documents and the engineer's cost estimate. At this stage the specifications are written and tailored to the plans so that all work can be measured and has a pay item. The cost estimate is formalized using the established specifications, pay items and quantity takeoffs, for 60% through 100% completion of the total design effort.

2.17 Preliminary Engineering means the portion of the PROJECT engineering succeeding conceptual engineering, which advances the PROJECT design to address Type, Size, and Location ("TS&L") for all components of the PROJECT including the final SCL Facilities and SPU Facilities. Typically this effort includes work that advances the design from nominally 30% up to nominally 60% of the total design effort.

2.18 PROGRAM means all of the projects, collectively, implemented by the STATE that remove and replace the AWW and the Seawall.

2.19 PROJECT means the SR99 South Holgate Street to South King Street Viaduct Replacement Project, Stage 1, as described in Exhibit A of SDOT Holgate to King Stage 1 Agreement No. GCA 5934.

2.20 Project Schedule means the schedule of design, permitting and construction events identified in **Exhibit C** to the SDOT Holgate to King Stage 1 Agreement No. GCA 5934 and agreed to by the Parties, as it may be amended from time to time by agreement of the Parties.

2.21 SCL means Seattle City Light.

2.22 SCL Holgate to King Stage 1 Agreement means the Memorandum of Agreement, No. UT 01343, for SCL Facilities Work – SR 99 Viaduct Removal from South Holgate to

South King Street Stage 1, between the STATE and the City of Seattle acting by and through Seattle City Light.

2.23 SDOT means the Seattle Department of Transportation.

2.24 SDOT Holgate to King Stage 1 Agreement means the Memorandum of Agreement, No. GCA 5934, SR-99 Alaskan Way Viaduct, Property, Environmental Remediation, Permitting, and Construction Coordination Agreement – SR 99 Viaduct Removal from South Holgate Street to South King Street Stage 1 between the STATE and the City of Seattle acting through SDOT.

2.25 SPU means Seattle Public Utilities.

2.26 SPU Facilities means the water, drainage and wastewater facilities impacted by, or constructed by the PROJECT that are owned by or to be owned by the City.

2.27 SPU Facilities Work means work required to design, construct and protect the SPU Facilities as part of the PROJECT.

2.28 STATE means the State of Washington Department of Transportation.

2.29 STATE Designated Representative means the State of Washington official listed in Section 4.2 of this Agreement.

3. STATE AND SPU RESPONSIBILITIES FOR SPU FACILITIES WORK

3.1 STATE RESPONSIBILITIES

3.1.1 The STATE agrees to perform and complete, subject to SPU review and approval for SPU purposes, the following with the aid of consultants and contractors:

- a. Preliminary Engineering;
- b. Plans, Specifications, and Estimate (PS&E);
- c. Construction and construction administration;
- d. Procurement of all materials needed for construction;
- e. Community outreach and public relations;
- f. Preparation and submittal of permit applications required by Title 15 of the Seattle Municipal Code, the Street Use Permit, and this Agreement; and
- g. Testing of specified materials used during construction.

In addition, the STATE agrees to seek input and approval from SPU in the early stages of the Preliminary Engineering and PS&E throughout the design process, to ensure that the design conforms to SPU standards.

3.1.2 The STATE shall obtain all permits and approvals required by federal, state and local laws and requirements, for the SPU Facilities Work, including SPU crew work, and shall provide for review by SPU all permits that need to be obtained on SPU's behalf.

3.1.3 The STATE shall perform all SPU Facilities Work indicated in the Approved Plans and any SPU-approved revisions to the Approved Plans, unless specifically designated on the plans as work done by others.

3.1.4 The STATE shall protect existing SPU Facilities, including those installed in earlier phases of the PROGRAM. Pre and post construction condition of the SPU Facilities within the PROJECT area will be verified and documented through inspection. The STATE, at its own expense, shall repair any damage attributable to the PROJECT.

3.1.5 The STATE shall provide SPU with an overall schedule for the SPU Facilities Work, and shall coordinate with SPU to schedule shutdowns and SPU crew work. Schedule updates will be promptly communicated to SPU upon receipt by the STATE.

3.1.6 The STATE shall provide all labor, materials, equipment, and tools required to excavate, provide trench support systems, and handle and dispose of all spoils (including contaminated soils, groundwater, and other debris), and provide a safe workplace for SPU staff per applicable State and Federal laws, and City of Seattle standards, for the SPU Facilities Work in accordance with the Approved Plans and any SPU-approved revisions of the Approved Plans. The STATE will not provide personal protective equipment for SPU staff.

3.1.7 The STATE shall, at its own expense, prepare and implement all traffic control plans, public communication plans, dewatering plans, Temporary Erosion and Sedimentation Control (TESC) Plans and other plans that pertain to implementation of the PROJECT. SPU will provide input and assistance as necessary.

3.1.8 The STATE shall provide SPU with material submittals for SPU review per City of Seattle standard specifications and shall respond in a timely manner to all SPU review comments on Change Orders, contractor submittals, and design discrepancies, pursuant to Sections 6, 7 and 10 of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934, and Sections 5 and 8 herein.

3.1.9 The STATE shall resolve field problems found by SPU's on-site inspector pursuant to Section 11 herein.

3.1.10 The STATE shall initiate and coordinate pre-final and final inspections of the SPU Facilities Work and follow through with completion of items listed on SPU's punch list which will be based on the Approved Plans and any SPU-approved revisions to the Approved Plans for the SPU Facilities Work. These inspections include CCTV of new storm and sewer pipelines and visual inspection of new structures. Final inspection of the water system shall be after the new water mains have been connected and hydrants, etc.

are to grade. Final inspection of the SPU Facilities Work will be pursuant to Section 12 of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934 and Section 12 herein.

3.1.11 The STATE shall prepare and deliver to SPU record drawings of all SPU Facilities Work, for SPU's permanent records, within six (6) months of joint execution of the Letter of Acceptance. The STATE's contractor shall record the as-built condition of SPU Facilities built by the STATE by maintaining "redline" drawings throughout construction, and shall provide the "redline" drawings to SPU as SPU Facilities become operational.

3.1.12 The STATE shall require its contractor to develop, submit and regularly update, a detailed construction schedule that includes sufficient detail on SPU Facilities Work that SPU may review and comment upon.

3.1.13 The drainage siphon installed as part of this PROJECT is a temporary system intended to be replaced in the Holgate to King Stage 2 Project. If Stage 2 is delayed or cancelled, the STATE shall retain ownership and maintenance responsibilities until a standard (non-siphon) system is restored at STATE'S expense

3.1.14 The STATE shall coordinate design of utilities in subsequent PROGRAM stages with the PROJECT to optimize design and avoid conflicts. The STATE shall be prepared to modify the design of the PROJECT, if both Parties determine the modifications are necessary and reasonable, to prevent conflicts that would require installation of pumped SPU drainage facilities in subsequent phases of the PROGRAM, which otherwise could flow by gravity. If the Parties cannot agree on how to proceed with any modification, the issues shall be resolved using the dispute resolution process established in Section 20 of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934.

3.2 SPU RESPONSIBILITIES

3.2.1 SPU shall review contractor submittals relating to the SPU Facilities Work within ten (10) Business Days of SPU receipt, unless City of Seattle standard specifications allow a longer response term, and respond in a timely manner to requests for information, utility conflicts, and other similar issues affecting the SPU Facilities Work.

3.2.2 For new water main connections, SPU shall perform the pipework to connect the new water main to the existing water system per City of Seattle Standard Plan No. 300. The STATE will provide SPU with at least fourteen (14) calendar days notice prior to scheduling any SPU crew work and shall provide longer notice to the extent possible through regular construction scheduling meetings. SPU will make every effort to complete the work within twenty-four (24) hours of the time the STATE has requested the work to be done.

3.2.3 For new drainage and wastewater system connections, SPU shall core drill and install all tees per City of Seattle standard specification 7-17.3(2)C, Plugs and Connections. The STATE will notify SPU fourteen (14) calendar days prior to the need

for this work. SPU will make every effort to complete the work within twenty-four (24) hours of the time the STATE has requested the work to be done.

3.2.4 SPU will be included in the PROJECT's quality assurance and evaluation processes for SPU Facilities as further defined in Section 7 herein. SPU shall perform periodic inspection on joint bonding installed on new water mains and test isolation couplings at connections of new water mains to existing water mains. SPU shall also perform tests on all cathodic test stations on the new water mains for electrical continuity. SPU shall obtain water samples from the new water mains after they have been chlorinated and flushed by the STATE or its contractor in accordance with City of Seattle standards and shall perform tests on the water sample for purity.

3.2.5 SPU staff and consultants will consult with the STATE construction project engineer during the evaluation of the quality of the SPU Facilities being built by the STATE's contractor. The presence and contribution of SPU staff and consultants is for the sole benefit of SPU and shall not in any way relieve the STATE from its duty to comply with this SPU Holgate to King Stage 1 Agreement, and all permits, statutes, laws, regulations and ordinances.

3.2.6 SPU shall perform all shutdowns of its water system to its affected customers and shall notify these customers of such planned service interruptions.

3.2.7 SPU shall timely perform all connections, valve operations, and disconnections for permanent and temporary water systems as needed.

3.2.8 Following each inspection and ultimately the final inspection of the SPU Facilities Work, SPU shall prepare a punch list for corrective action for the SPU Facilities Work, based on the final inspection of the SPU Facilities Work pursuant to Section 12 herein. The punch list will be based on the Approved Plans and any SPU-approved revisions to the Approved Plans for the SPU Facilities Work.

4. NOTICES AND DESIGNATED REPRESENTATIVES

4.1 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 to the Designated Representatives.

4.2 The Designated Representatives for each Party are as follows:

Deputy Program Director, Engineering and Operations
Alaskan Way Viaduct & Seawall Replacement Program
Washington State Department of Transportation
999 3rd Avenue, Suite 2424
Seattle, WA 98104

Project Manager, Alaskan Way Viaduct & Seawall Replacement Program
Seattle Public Utilities
P.O. Box 34018
700 Fifth Avenue, Suite 4900
Seattle, WA 98124-4018

5. DESIGN & PLAN SUBMITTAL, REVIEW AND RESPONSE PROCESS

5.1 The STATE and SPU shall comply with all provisions outlined in Section 7 of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934. The STATE will facilitate the design as provided herein and will allow SPU adequate time for detailed review. SPU will meet agreed-upon timelines for review. The STATE will address and resolve each SPU comment to SPU's and the STATE's satisfaction. In the event comments are not mutually resolved, the dispute resolution process may be initiated pursuant to Section 18 herein.

6. FUNDING OF SPU FACILITIES WORK

6.1 The STATE shall pay for all costs associated with the design and construction of the SPU Facilities Work, except for Betterments or New Work as defined in Section 2, performed by the STATE or its contractor, as set forth in the Approved Plans and any SPU-approved revisions to the Approved Plans, without reimbursement from SPU, including Change Orders pursuant to Section 8. No delay costs shall be paid for by SPU.

6.2 SPU shall be responsible for the additional incremental cost of any Betterment as provided in and based on an engineering estimate provided by the STATE's consultant and negotiated between SPU and the STATE. In addition, SPU shall be responsible for the actual cost of any New Work requested by SPU and agreed upon by the STATE. Any Betterment or New Work will be the subject of an amendment to this Agreement.

6.3 SPU will be responsible for costs associated with SPU labor, SPU consultants, and SPU administrative overhead, subject to the exceptions and limitations outlined below;

6.3.1 The STATE will develop a proposed recommended construction sequence and provide it to SPU for review. When SPU receives the proposed recommended construction sequence, it will develop with the STATE a mutually agreeable estimate of the SPU crew time required, which estimate shall be the maximum SPU crew time provided for the PROJECT at SPU's cost or expense.

6.3.2 In the event the STATE's contractor requests or requires SPU crew time in excess of or in addition to this estimate, the STATE or the contractor shall pay SPU for such time.

6.3.3 Responsibility for the cost of SPU crew time necessary to accommodate changes to the approved plans will be negotiated separate from this Agreement.

6.3.4 Responsibility for the cost of SPU crew time necessary to accommodate changes to the construction sequence due to unexpected field conditions will be negotiated separate from this Agreement.

6.4 SPU Financial Contribution. SPU will be required to provide staff in the performance of their roles and responsibilities as outlined above. The costs associated with SPU staff time will be calculated and the amount will be a credit to SPU as part of their financial contribution to the PROGRAM.

7. CONSTRUCTION MANAGEMENT, INSPECTION AND CONTRACT ADMINISTRATION

7.1 The STATE shall comply with all provisions contained within Section 10 of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934, regarding Construction Management, Inspection and Contract Administration for the PROJECT, and such provisions shall apply equally to this SPU Holgate to King Stage 1 Agreement.

8. CHANGE ORDERS

8.1 During construction, within three (3) Business Days of receiving a proposed change to the PROJECT ("Change Order"), the STATE's construction project engineer shall transmit the scope and cost estimate for the proposed change to SPU for review, comment, and written approval. Before executing the Change Order, in a non-emergency situation and unless otherwise agreed by the Parties, the STATE will allow SPU sufficient time to review, comment, and approve or disapprove in writing any changes to the Approved Plans and any SPU-approved revisions to the Approved Plans that affect SPU Facilities. SPU will assign any change a high priority and provide a timely response commensurate with the complexity of the proposed change. The STATE shall pay for all Change Orders that are not Betterments or New Work. No delay costs shall be paid by SPU.

8.2 SPU may request additions and changes to the construction contract through the STATE. The STATE shall comply with the requested elective change provided that the change is within the general scope of the PROJECT and complies with the PROJECT permits, State and/or Federal law and applicable rules, codes and/or regulations. The STATE retains the right to reject requested elective changes if incorporating such elective changes would result in a delay in the schedule. Such additions and changes may lead to Change Orders, or they may lead to Betterments.

8.2.1 If requested elective changes are minor in nature and the STATE agrees to comply with the changes, SPU and the STATE will approve, in writing, the request by signing a "Minor Change Request and Approval Form," using the template shown as Exhibit A. SPU agrees to reimburse the STATE for the costs

associated with the changes. SPU agrees to fund these minor changes to an accumulative amount not to exceed Ten Thousand Dollars (\$10,000.00) for the PROJECT.

8.2.2 The STATE will invoice SPU for the agreed upon changes as the work is performed by the STATE or its contractor. If and when applicable, these billings shall not be more frequent than one (1) per month and no less than one (1) per quarter, and upon receipt of a billing, SPU agrees to make payment within thirty (30) Business Days.

8.2.3 If, during the construction of the PROJECT, the “not to exceed amount,” as identified in Section 8.2.1, is expended, SPU and the STATE agree to amend Section 8.2.1 of this Agreement to continue funding the minor change requests.

8.3 The STATE will make available to the SPU all Change Order documentation that affects SPU Facilities Work.

9. SPU’S RIGHT TO CORRECT NON-CONFORMING, UNAUTHORIZED AND DEFECTIVE WORK

9.1 If the STATE or its contractor fails to remedy, or fails to properly remedy, non-conforming, unauthorized or Defective Work within the time specified by SPU, which is not to be less than ten (10) Business Days, SPU may, but is not required to correct and remedy such work by any means as SPU may deem necessary, including the use of SPU staff or contractors.

9.2 If the STATE or its contractor fails to comply with a written notice to remedy what SPU determines to be an emergency situation, SPU may, but is not required to, have the non-conforming or Defective Work corrected immediately, have such work removed and replaced, or have work the STATE or its contractor refuses to correct completed. An emergency situation shall mean a condition that calls for immediate action to respond to danger to health, safety or property.

9.3 Direct and indirect costs incurred by SPU attributable to correcting and remedying non-conforming or Defective Work, or work the STATE or its contractor failed or refused to perform, shall be paid by the STATE to SPU within thirty (30) days after receipt of an invoice with appropriate documentation of such costs.

9.4 Except in an emergency situation as defined under Section 9.2, disagreements between SPU and the STATE on what constitutes non-conforming, unauthorized or Defective Work shall be resolved using the dispute resolution process established in Section 20 of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934 prior to SPU performing any work.

10. PROTECTION OF SPU FACILITIES ACCESS

10.1 Neither the STATE nor its contractor shall require SPU to interrupt water service without (a) written notice to SPU at least fourteen (14) calendar days prior to the planned interruption and (b) SPU's written approval. SPU may restrict water service interruptions to the extent necessary to maintain water system operations and adequate water supply to customers. Under no circumstances shall the STATE, its contractor, or anyone other than SPU personnel, damage, repair, modify or operate any portion of the existing water system including but not limited to water services, water mains, valves, test stations, and meters.

10.2 The STATE shall ensure that SPU's access to existing and newly installed hydrants, meters, valves, or similar surface water system facilities, and drainage and wastewater system facilities, is maintained twenty-four (24) hours a day, seven (7) days a week, unless different arrangements have been agreed to in advance and in writing by the Parties. For purposes of this SPU Holgate to King Stage 1 Agreement, "access" shall mean that the hydrants, meters, valves, or similar surface water system facilities, and drainage and wastewater system facilities shall not be blocked, covered or otherwise inaccessible to SPU.

10.3 SPU shall have the right to enter the PROJECT site at any time to operate and maintain the water system or the drainage and wastewater system, to inspect or observe the SPU Facilities Work performed by the contractor, or to perform the SPU Facilities Work for which SPU is responsible.

10.4 In the event that the STATE needs entry into any SPU Facility or property held under the jurisdiction of SPU, the STATE shall obtain SPU permission.

11. SPU ACCESS AND INSPECTION

11.1 The STATE shall provide SPU with twenty-four (24) hour, seven (7) days a week, safe access to any construction and staging areas that relate to the SPU Facilities Work. SPU staff, other than SPU's on-site inspector, will notify the STATE in advance of their arrival on site except in the case of emergency as defined under Section 9.2.

11.2 The STATE agrees and acknowledges that SPU shall have an on-site inspector available during the construction of SPU Facilities for SPU's quality assurance. The STATE agrees and acknowledges the SPU's on-site inspector shall (a) have timely and complete access to the construction work associated with the SPU Facilities Work; (b) be timely informed of all relevant construction timelines associated with such work; and (c) have the authority to, but not be required to, reject and have corrected and/or replaced any construction or materials deemed to be deficient, or which deviate from the Approved Plans and any SPU-approved revisions to the Approved Plans. In such

instances, SPU's on-site inspector, or SPU's project manager will immediately direct comments and issues to the STATE's construction project engineer or designated representative, which will be followed up in writing as soon as possible but no later than ten (10) Business Days of the date of any inspection. The STATE shall promptly address each comment or issue presented by SPU to the STATE's and SPU's satisfaction. SPU staff will continue to be supervised by SPU management.

11.3 The STATE will allow SPU's on-site inspector or Designated Representative, to consult with and inquire of the STATE construction project engineer, attend all meetings, and have timely and complete access to all documentation as to all matters concerning the PROJECT. SPU shall not provide direction, directly or indirectly, to the STATE's consultant(s) or contractor.

11.4 The STATE shall provide SPU with timely notice upon commencement and completion of all material stages of the SPU Facilities Work and shall invite SPU to inspect such work upon completion of any material stage. The SPU on-site inspector shall be invited to the weekly construction meeting prior to any work being started on SPU Facilities. The STATE shall provide at least five (5) Business Days notice for each inspection. SPU shall submit a complete list of any concerns or deficiencies to the STATE within ten (10) Business Days of the date of any inspection. The STATE shall timely address each comment or issue presented by SPU to the STATE's and SPU's satisfaction. Both Parties agree to act as expeditiously as possible to assure a timely resolution of any deficiencies.

11.5 SPU shall observe the work performed by the STATE for quality assurance. SPU will notify the STATE if defective SPU Facilities Work is observed, such as improper installation or unsafe conditions.

11.6 Any and all services, including direction, provided by SPU pursuant to this section shall be subject to all limitations on the CITY's liability contained in the SDOT Holgate to King Stage 1 Agreement No. GCA 5934, including but not limited to Section 16, Risk Allocation.

12. FINAL INSPECTION AND ACCEPTANCE OF SPU FACILITIES WORK

12.1 The STATE shall comply with all provisions of the SDOT Holgate to King Stage 1 Agreement regarding Final Inspection, Project Acceptance, and interim use and operation of SPU Facilities including but not limited to all provisions in Section 12 therein, and such provisions shall apply equally to this SPU Holgate to King Stage 1 Agreement.

12.2 SPU Facilities shall not be placed into interim use or operation, unless or until: (a) SPU has participated in an inspection of the SPU Facilities; (b) any deficiencies or Defective Work have been resolved or corrected to the STATE's and SPU's satisfaction; and (c) SPU confirms with the STATE in writing that SPU's minimum inspection and

testing requirements for the SPU Facilities have been met, including completion of the Washington State Department of Health Completion Report for watermains.

13. OWNERSHIP OF IMPROVEMENTS AND WARRANTIES

13.1 Upon completion of the SPU Facilities Work and upon SPU's acceptance of such work as outlined in Section 12 herein, and in compliance with all provisions of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934 Section 12 therein, the STATE shall transfer ownership of the SPU Facilities to SPU, shall warrant good title to the SPU Facilities constructed by the STATE, and shall transfer all right, title and interest it may have in the SPU Facilities to SPU. SPU shall be responsible for all future operation and maintenance of the SPU Facilities at its sole cost and expense, except that the STATE shall remain liable for any latent defects or warranty claims.

13.2 In addition, for any design, permitting or construction of the SPU Facilities Work undertaken by the STATE, the STATE shall require its construction contractors to provide SPU with the following warranties, each of which shall be for a minimum of one year, unless the industry standard is longer: (1) any guaranty or warranty furnished as a normal trade practice in connection with the purchase (by the contractor or a subcontractor) of any equipment, materials or items incorporated in the SPU Facilities Work; and (2) any guaranty or warranty for workmanship furnished as a normal trade practice.

14. ENVIRONMENTAL REMEDIATION

14.1 The STATE shall comply with all provisions of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934, regarding Environmental Remediation, including but not limited to all provisions in Section 4 therein, and such provisions shall apply equally to this SPU Holgate to King Stage 1 Agreement.

15. RISK ALLOCATION

15.1 The STATE shall comply with all provisions of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934, regarding Risk Allocation and Indemnification, including but not limited to all provisions in Section 16 therein, and such provisions shall apply equally to this SPU Holgate to King Stage 1 Agreement.

16. INSURANCE

16.1 The STATE shall comply with all provisions of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934 regarding Insurance, including but not limited to all provisions in Section 17 therein, and such provisions shall apply equally to this SPU Holgate to King Stage 1 Agreement.

17. THIRD PARTY BENEFICIARY

17.1 The STATE shall comply with all provisions of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934 regarding Third Party Beneficiary, including but not limited to all provisions in Section 18 therein, and such provisions shall apply equally to this SPU Holgate to King Stage 1 Agreement.

18. DISPUTE RESOLUTION

18.1 SPU and the STATE shall make good faith efforts to resolve any dispute arising under or in connection with this Agreement.

18.2 Dispute Resolution Representatives. The Dispute Resolution Representatives for the Parties are as follows:

For the STATE: Holgate to King Stage 1 Project Design Project Engineer or, if appropriate, Construction Project Engineer,
Alaskan Way Viaduct & Seawall Replacement Program
Washington State Department of Transportation
999 3rd Avenue, Suite 2424
Seattle, WA 98104

For SPU: Seattle Public Utilities Dispute Resolution Representative:
SPU AWV Project Manager
P.O. Box 34018
700 Fifth Avenue, Suite 4900
Seattle, WA 98124-4018

18.3 Dispute Resolution Process. The designated representatives established under Section 18.2, shall use their best efforts to resolve disputes between the Parties. If these individuals are unable to resolve a dispute, the Deputy Director of Seattle Public Utilities' Project Delivery Branch and the Deputy Regional Program Administrator for the Washington State Department of Transportation Urban Corridors Office shall review the matter and attempt to resolve it. If they are unable to resolve the dispute, the matter shall be reviewed by the Director of the Seattle Public Utilities and the Washington State Deputy Secretary of Transportation. The Parties agree to exhaust each of these procedural steps before seeking to resolve disputes in a court of law or any other forum.

19. REMEDIES; ENFORCEMENT

19.1 The provisions of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934 regarding Remedies; Enforcement, including but not limited to Section 21 therein, shall apply equally to this SPU Holgate to King Stage 1 Agreement.

20. TERMINATION

20.1 The Term of this SPU Holgate to King Stage 1 Agreement shall be the Term provided in Section 25 of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934, and the provisions of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934 regarding Termination, including but not limited to Section 25 therein, shall apply equally to this SPU Holgate to King Stage 1 Agreement.

21. CONFIDENTIALITY OF INFORMATION AND RECORDS

21.1 The provisions of the SDOT Holgate to King Stage 1 Agreement No. GCA 5934 regarding Confidentiality of Information and Records, including but not limited to Section 26 therein, shall apply equally to this SPU Holgate to King Stage 1 Agreement.

22. GENERAL PROVISIONS

22.1 The General Provisions set forth in the SDOT Holgate to King Stage 1 Agreement No. GCA 5934, including but not limited to Section 27 therein, shall apply equally to this SPU Holgate to King Stage 1 Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the last day and year written below.

SEATTLE PUBLIC UTILITIES

By: Ray Hoffman

Print: RAY HOFFMAN

Title: ACTING DIRECTOR

Date: 5/15/09

**WASHINGTON STATE
DEPARTMENT OF
TRANSPORTATION**

By: John H. White

Print: JOHN H. WHITE

Title: PROGRAM DIRECTOR

Date: 6/2/09

APPROVED AS TO FORM:

Ann E. Salay

By (print)

Ann E. Salay
Signature
Assistant Attorney General

Date: 6-1-09

UT 01342
Exhibit A



Washington State
Department of Transportation

Seattle Public Utilities
Minor Change Request & Approval
For SPU-requested minor changes costing \$10,000 or less

WSDOT Project Engineer's Signature _____ Date _____

FISCAL NOTE FOR CAPITAL PROJECTS ONLY

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Seattle Department of Transportation, Seattle Public Utilities, Seattle City Light	Bob Chandler 684-7595	Stephen Barham 733-9084

Legislation Title: AN ORDINANCE relating to the Alaskan Way Viaduct for SR 99 Viaduct Replacement from South Holgate to South King Street Stage 1 Project; authorizing execution of three Memoranda of Agreement between the Washington State Department of Transportation and the City of Seattle.

Summary and background of the Legislation:

The proposed Council Bill authorizes execution of three separate agreements between the City and the Washington State Department of Transportation (“WSDOT”) that will fund and provide for full City participation in the first stage of the project to remove the existing Alaskan Way Viaduct from South Holgate to South King Street. The several stages of the project will replace about 40 percent of the existing viaduct. Stage 1 of construction for this project begins in summer 2009 with the relocation of communications, electrical, gas, water and other utilities throughout the project area. This work will be a step toward viaduct demolition and the ultimate road and bridge construction. Stage 1 includes the following work:

- Installation of approximately 2000 lineal feet of 26 kV electrical ductbank and seven vaults, including a new six-way 900 amp 26 kV switch in proposed panel vault #3, along the west side of East Marginal Way and South Alaskan Way from a point near South Massachusetts Street northward to the existing entrance to Port of Seattle Terminal 46.
- Installation of approximately 220 lineal feet of 954kcmil overhead 26 kV circuit electrical lines near East Marginal Way at the southern edge of the project.
- Installation of approximately 1600 lineal feet of 397kcmil overhead 26 kV circuit electrical lines through portions of Terminal 46 and along the west side of South Alaskan Way from Terminal 46 to South King Street and temporary tie back into the existing overhead 397kcmil on Port Property. This line is to be relocated to its permanent configuration in S. Holgate Street to S. King Street Viaduct Replacement Project, Stage 2.
- Installation of thirteen new overhead electrical poles to support the new 26 kV overhead electrical system.
- Demolition of approximately 4000 lineal feet of existing overhead 26 kV circuit electrical lines on the eastern edge of Alaskan Way South.
- Installation of water service lines to Terminal 46.



- Replacement of approximately 935 feet of restrained-joint watermains in South Royal Brougham Way, South Atlantic Street and Alaskan Way South.
- Installation of cathodic protection system on new watermains to include joint-bonding, magnesium anodes, and electrolysis test stations.
- Installation of approximately 350 feet of steel casing pipe for watermains crossing railroad tracks.
- Installation of communications duct bank from South Atlantic Street to Railroad Way South.
- Removal of existing communication lines from the viaduct structure.
- Temporary installation of an inverted syphon, approximately 65 feet long, on the existing storm drainage system to allow the construction of new combined sewer, communications and water casing pipe at South Atlantic Street.
- Installation of approximately 150 feet of steel casing pipe crossing the railroad for the future installation of re-routed combined sewer.
- Restoration of pavement associated with the utilities work.

- Other work to be done during Stage 1 includes:
 - temporary street lighting,
 - temporary erosion control,
 - temporary groundwater treatment and re-injection systems, and
 - temporary traffic control.

The three agreements authorized by this Bill govern different elements of the relationship between the City and WSDOT as follows:

- Property, Environmental Remediation, Permitting, Design Review and Construction Coordination (to be signed by the Seattle Department of Transportation, “SDOT”)
- Seattle City Light Facilities Work (to be signed by Seattle City Light, “SCL”)
- Seattle Public Utilities Facilities Work (to be signed by Seattle Public Utilities, “SPU”)

Under the agreements, WSDOT is responsible for paying for most of the Project costs. The City is responsible for paying its staff and consultant costs, including administrative overhead, and is also responsible for paying for any betterments.

SDOT’s cost for this work in 2009 is anticipated to be \$440,556. Funding and appropriation exist in SDOT’s 2009 Adopted Budget for the Alaskan Way Viaduct and Seawall Replacement project budget to support the work.

SCL’s total cost for the Stage 1 work is anticipated to be \$333,000; this includes City Light labor and overtime costs associated with the first stage of the SR-99 South Holgate to South King Street Project. Funding and appropriation exist in SCL’s 2009 Adopted and 2010 Endorsed



budgets for the Utility Relocation for Alaskan Way Viaduct and Seawall Replacement Project to support this work.

SPU's cost for work on this Project in 2009 is anticipated to be \$390,000, consisting of \$250,000 from Water Fund and \$140,000 from the Drainage and Wastewater Fund. Funding and appropriation exist in SPU's budget for the Alaskan Way Viaduct and Seawall Replacement project to support this work.

Project Name:	Project I.D.	Project Location:	Start Date:	End Date
Alaskan Way Viaduct and Seawall Replacement (SDOT)	TC366050	SR 99 / Battery St	1Q 2001	TBD
Utility Relocations for the Alaskan Way Viaduct and Seawall Project (SCL)	8307	SR 99 / Battery St	1Q 2002	4Q 2016
Utility Relocation due to Alaskan Way Viaduct and Seawall Replacement – DWF (SPU)	C4102-DWF	SR99 / Battery St	1Q 2004	4Q 2017
Utility Relocation due to Alaskan Way Viaduct and Seawall Replacement – WF (SPU)	C4102-WF	SR99 / Battery St	1Q 2004	4Q 2017

- *Please check any of the following that apply:*

 This legislation creates, funds, or anticipates a new CIP Project. *(Please note whether the current CIP is being amended through this ordinance, or provide the Ordinance or Council Bill number of the separate legislation that has amended/is amending the CIP.)*

 This legislation does not have any financial implications. *(Stop here and delete the remainder of this document prior to saving and printing.)*

 x **This legislation has financial implications.**

Please see the following attachments to this fiscal note for details:

- Attachment A: Seattle Department of Transportation
- Attachment B: Seattle City Light
- Attachment C: Seattle Public Utilities
- Attachment D: Map of Stage 1 Project



Attachment A

Fiscal Note for Viaduct Removal from South Holgate to South King Street Stage 1 SDOT MOA

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Seattle Department of Transportation	Bob Chandler 684-7595	Stephen Barham 733-9084

The agreement between the City and WSDOT that will be signed by SDOT will govern the State and City responsibilities related to property acquisition, environmental remediation; design review, permitting; inspection and acceptance of work; dispute resolution; risk allocation; insurance; and other general provisions for the removal of the Alaskan Way Viaduct from South Holgate Street to South King Street.

The property acquisition, design, and construction will be done at the State's expense. The City's cost to support this work, as described in the agreement, is anticipated to be \$440,556 in 2009 for management of SDOT resources, design review, permitting, inspection, and construction support activities. Funding and appropriation exist in the 2009 Adopted Budget for the Alaskan Way Viaduct and Seawall Replacement project to support the work.

Future costs to support this work are estimated at \$286,059 for 2010. No costs are expected for Phase 1 in 2011 and beyond. Spending and funding sources for the Alaskan Way Viaduct and Seawall Replacement project in the 2009-2014 Adopted CIP had not been allocated in future years due to the uncertainty of costs associated with the larger project. Now that a recommendation for the Central Waterfront has been made, future appropriations and allocations will be developed as part of the 2010 Proposed Budget and CIP process.

Project Name:	Project I.D.	Project Location:	Start Date:	End Date
Alaskan Way Viaduct and Seawall Replacement	TC366050	SR 99 / Battery St	1Q 2001	TBD



Attachment B**Fiscal Note for Viaduct Removal from South Holgate to South King Street Stage 1 SCL MOA**

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Seattle City Light	Dave Smith 684-4290	Karl Stickel 684-8085

The agreement between the City and WSDOT that will be signed by SCL will outline the expectations, roles and responsibilities concerning the engineering and construction processes; procurement of materials; final acceptance and approval of contractor built infrastructure and project funding.

The total cost for the Stage 1 work is anticipated to be \$333,000; this includes City Light labor and overtime costs associated with the first stage of the SR 99 South Holgate to South King Street Project.

Project Name:	Project I.D.	Project Location:	Start Date:	End Date
Utility Relocations for the Alaskan Way Viaduct and Seawall Project	8307	SR 99 / Battery St	1Q 2002	4Q 2016



Attachment C

Fiscal Note for Viaduct Removal from South Holgate to South King Street Stage 1 SPU MOA

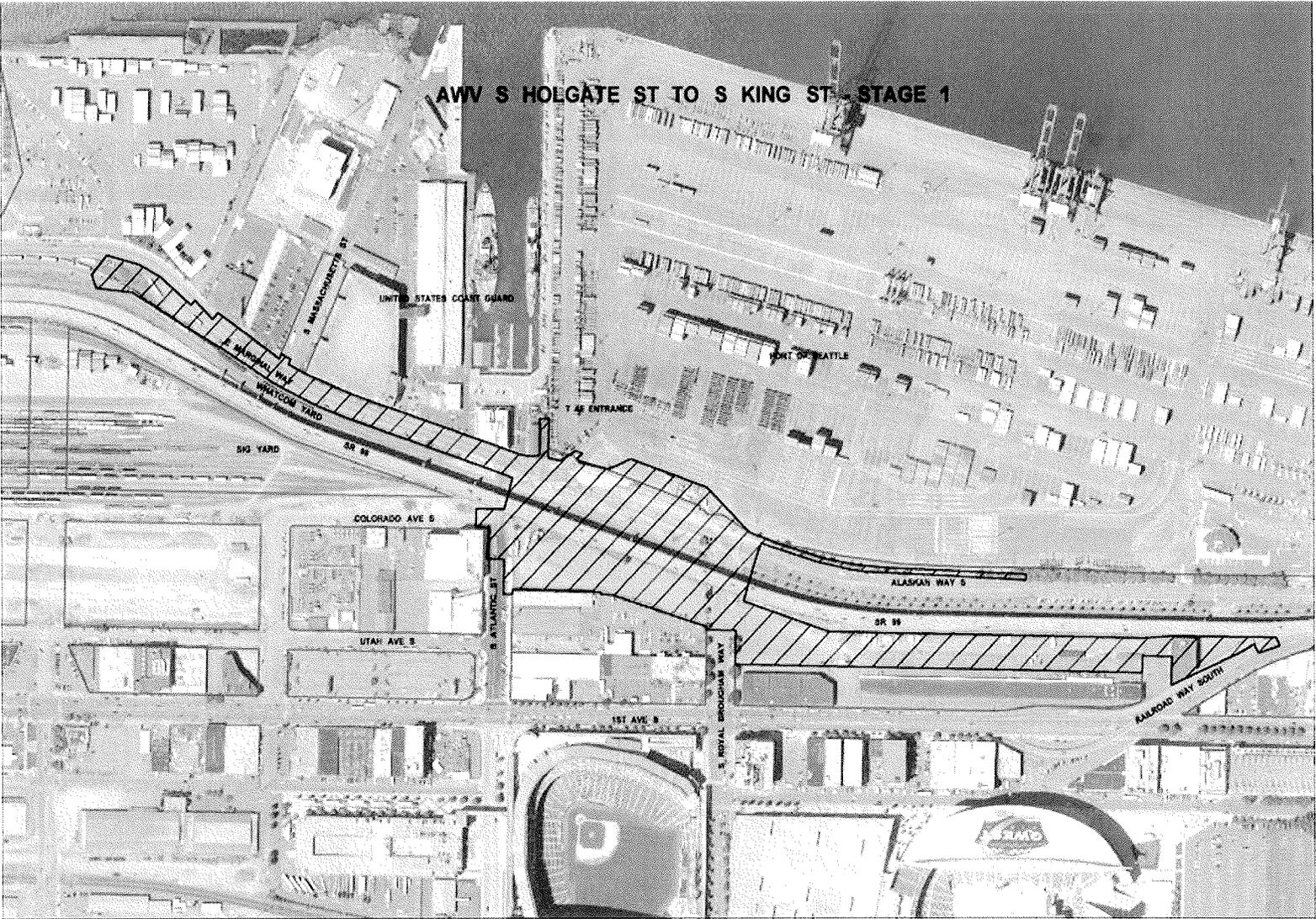
Department:	Contact Person/Phone:	DOF Analyst/Phone:
Seattle Public Utilities	Gavin Patterson 684-0126	John McCoy 615-0768

The agreement between the City and WSDOT that will be signed by SPU will govern the expectations, roles and responsibilities concerning the engineering and construction processes; final acceptance and approval of contractor built infrastructure and project funding.

The total SPU cost to support the Stage 1 work, as described in the agreement, is anticipated to be \$390,000 in 2009. Future costs to support this work are estimated at \$150,000 for 2010. No costs are expected for Phase 1 in 2011 and beyond.

Project Name:	Project I.D.	Project Location:	Start Date:	End Date
Utility Relocation due to Alaskan Way Viaduct and Seawall Replacement - DWF	C4102-DWF	SR 99 / Battery St	1Q 2004	4Q 2017
Utility Relocation due to Alaskan Way Viaduct and Seawall Replacement - WF	C4102-WF	SR 99 / Battery St	1Q 2004	4Q 2017





AWV S HOLGATE ST TO S KING ST - STAGE 1

ATTACHMENT D to Fiscal Note





City of Seattle

Gregory J. Nickels, Mayor

Office of the Mayor

April 21, 2009

Honorable Richard Conlin
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Conlin:

I am pleased to transmit the attached proposed Council Bill authorizing execution of three separate agreements between the City and the Washington State Department of Transportation (WSDOT) to fund and provide for full City participation in the relocation of utility lines preceding removal of the SR 99 viaduct structure between South Holgate and South King Streets. The project moves Seattle City Light (SCL) and Seattle Public Utilities (SPU) utility facilities, largely at the State's expense, from the area near the southern portion of the existing Alaskan Way Viaduct structure into other locations to allow anticipated construction. Relocation of SCL, SPU, and other utility installations in the viaduct corridor, some of which has already begun pursuant to earlier agreements, sets the stage for viaduct demolition and the construction of the new roadway.

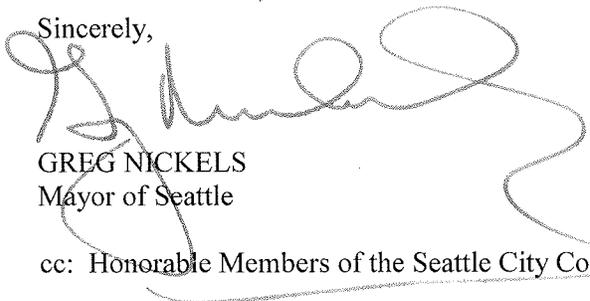
The three agreements authorized by this Bill govern different elements of the relationship between the City and WSDOT as follows:

- Property, Environmental Remediation, Design Review, Permitting, and Construction Coordination (to be signed by the Seattle Department of Transportation, ("SDOT");
- SCL Facilities Work (to be signed by SCL); and
- SPU Facilities Work (to be signed by SPU)

The Project is planned to take approximately 12 months, beginning in May 2009 and ending in April 2010. Staff from SDOT, SCL and SPU have worked closely with WSDOT to plan for this project and have made significant outreach efforts with affected communities.

Completion of the project will mark a significant step in accomplishing an important goal not only for the City, but for the entire region and the State of Washington. Thank you for your consideration of this legislation. Should you have questions, please contact Bob Chandler at 684-7595.

Sincerely,



GREG NICKELS
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

600 Fourth Avenue, 7th Floor, P.O. Box 94749, Seattle, WA 98124-4749

Tel: (206) 684-4000, TDD: (206) 615-0476 Fax: (206) 684-5360, Email: mayors.office@seattle.gov

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STATE OF WASHINGTON – KING COUNTY

--SS.

239430
CITY OF SEATTLE, CLERKS OFFICE

No. TITLE ONLY

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

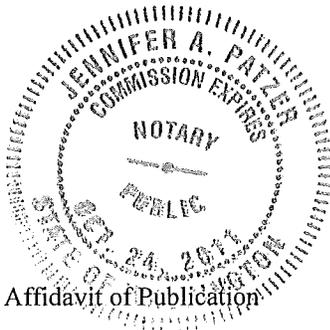
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:122978-122980

was published on

05/28/09

The amount of the fee charged for the foregoing publication is the sum of \$ 49.53, which amount has been paid in full.



Affidavit of Publication

[Signature]
Subscribed and sworn to before me on
05/28/09 *[Signature]*
Notary public for the State of Washington,
residing in Seattle

State of Washington, King County

City of Seattle

TITLE-ONLY PUBLICATION

The full text of the following ordinances, passed by the City Council on May 11, 2009, and published here by title only, will be mailed upon request, or can be accessed at <http://clerk.ci.seattle.wa.us>. For further information, contact the Seattle City Clerk at 684-8344.

ORDINANCE NO. 122980

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

ORDINANCE NO. 122979

AN ORDINANCE authorizing the Fleets and Facilities Department to execute a Lease Amendment with LBA Realty Fund II Company IV, LLC, on behalf of the Human Services Department's Aging & Disability Services Division.

ORDINANCE NO. 122978

AN ORDINANCE relating to the Alaskan Way Viaduct for SR 99 Viaduct Replacement from South Holgate to South King Street Stage 1 Project; authorizing execution of three Memoranda of Agreement between the Washington State Department of Transportation and the City of Seattle.

Publication ordered by JUDITH PIPPIN,
City Clerk

Date of publication in the Seattle Daily
Journal of Commerce, May 28, 2009.

6/28(239430)