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**Memorandum of Agreement  
GCA 6868  
For SR 519/I-90 Intermodal Access – I/C Improvements Project  
Transfer of Real Property Interests  
and City Infrastructure  
to the  
City Of Seattle**

**THIS MEMORANDUM OF AGREEMENT** GCA 6868 for State Route 519/I-90 Intermodal Access – I/C Improvements Project Transfer of Real Property Interests and City Infrastructure to the City of Seattle (“Agreement”) is made and entered into between the State of Washington Department of Transportation, hereinafter the “State,” and the City of Seattle by and through its Seattle Department of Transportation, hereinafter the “City,” collectively the “Parties” and individually the “Party.”

WHEREAS, the State improved State Route 519 (SR 519) and Interstate 90 (I-90) in accordance with two State contracts, the SR 519 Intermodal Access Phase 1, Atlantic Street – Contract C005983, herein referred to as the “Phase 1 Project,” and the SR 519/I-90 Intermodal Access Project – I/C Improvements Phase 2 – Contract C007597, herein referred to as the “Phase 2 Project,” (collectively, as the “Project”); and

WHEREAS, the Project has been designed and constructed to increase mobility and safety for freight trains, vehicles, and pedestrians in Seattle’s South Downtown Neighborhood by improving connections between Interstate 5 (I-5), I-90, and the Seattle Central Waterfront; and

WHEREAS, the transfer of certain City infrastructure, which was funded, designed and constructed for the City by the State, will take place pursuant to the terms of this Agreement; and

WHEREAS, the State designed and constructed the City infrastructure in conformance with City of Seattle ordinances, rules, regulations, and standards; and

WHEREAS, the City provided the staff and was provided the opportunity to review the design, inspect construction, and attend pre-final and final inspections for the Project; and

WHEREAS, the State designed and constructed the Phase 1 Project using the design-bid-build method of project delivery; and

WHEREAS, the Parties entered into a turnback agreement, SR 519 City/Town Turnback Agreement TB 1-0145, dated January 12, 2001, that transferred jurisdiction of certain City streets to the State during the construction period for the Phase 1 Project; and

WHEREAS, SR 519 City / Town Turnback Agreement TB 1-0145 also described the division of responsibility in the ownership, maintenance and reconstruction of SR 519 and certain City

1 streets upon completion of the Phase 1 Project construction and provided for transfer of rights of  
2 way and highway and/or street facilities for the Phase 1 Project; and  
3

4 WHEREAS, construction of the Phase 1 Project was completed on December 10, 2007; and  
5

6 WHEREAS, the State designed and constructed the Phase 2 Project using the design-build  
7 method of project delivery; and  
8

9 WHEREAS, infrastructure located on City Street Right of Way included in the Phase 2 Project  
10 was constructed in accordance with the requirements of Street Use Permit No. 70313 issued on  
11 October 9, 2008, Street Use Permit No. 89021 issued on March 17, 2009, Street Use Permit No.  
12 90131 issued on April 13, 2009, Street Use Permit No. 92519 issued on May 27, 2009, and Street  
13 Use Permit No. 93329 issued on June 11, 2009; and  
14

15 WHEREAS, construction of the Phase 2 Project was completed on August 20, 2010 following  
16 City transmittal of a letter to the State on August 12, 2010 indicating that the Phase 2 Project had  
17 been completed by the State's contractor to the City's satisfaction; and  
18

19 WHEREAS, GM 1355, General Maintenance Agreement, SR 519 Phase 1, entered into in 2002  
20 and amended by the Parties in 2013 governs the responsibilities for maintenance of certain  
21 infrastructure constructed as part of the Project; and  
22

23 WHEREAS, GM 1407, Agreement for Signal Maintenance and Operations, WSDOT / City of  
24 Seattle, entered into in 2003 and amended by the Parties in 2007, 2013 and 2014 governs  
25 responsibilities for maintenance of signal and illumination systems constructed by the Project;  
26  
27  
28

29 **NOW, THEREFORE**, pursuant to RCW 36.75.090, RCW 47.52.210, the above recitals that are  
30 incorporated herein as if fully set forth below, and in consideration of the terms, conditions,  
31 covenants, and performances contained herein, or attached and incorporated and made a part  
32 hereof,  
33

34 **IT IS MUTUALLY AGREED AS FOLLOWS:**  
35

36 **1. PURPOSE**  
37

38 1.1 The purpose of this Agreement is to:  
39

- 40 a) transfer ownership to the City of Project Transfer Property (as defined below)  
41 acquired by the State for the Project;
- 42 b) return jurisdiction to the City of Turnback Property (as defined below) transferred  
43 to the State for the construction of the Phase 1 Project in 2001;
- 44 c) transfer ownership to the City of City Infrastructure (as defined below)  
45 constructed as part of the Project; and

1 d) supersede SR 519 City / Town Turnback Agreement TB 1-0145, which is by this  
2 reference terminated by the Parties upon full execution of this Agreement.  
3

## 4 5 6 **2. DEFINITIONS**

7  
8 Words not otherwise defined, which have well-known technical or construction industry  
9 meanings, are used in accordance with such recognized meanings.  
10

11 2.1 Approved Plans means the right of way and limited access plans, drawings, calculations,  
12 amendments to standard specifications, special provisions, technical specifications, any revisions  
13 required for the Channelization Plan for Approval Package (as defined in the State's  
14 Construction Contract with the design-builder), and all applicable technical memoranda  
15 approved by the City of Seattle.  
16

17 2.2 City means the City of Seattle, a Washington municipal corporation.  
18

19 2.3 City Infrastructure means facilities constructed by the State to be transferred to the City  
20 as part of the Project, including, but not limited to, all the following: roadway structures, utility  
21 facilities; transportation facilities, including pavement and landscaping as described in Exhibit K,  
22 City Infrastructure, attached hereto, but excluding infrastructure serving WSDOT's bridge  
23 hydrant system, including three bridge fire hydrants, deluge valves and vaults, deluge controls,  
24 wet and dry water pipes and water services as shown on Exhibit L, Bridge Hydrant System,  
25 attached hereto.  
26

27 2.4 City Street Right of Way or City of Seattle Street Right of Way means public street right  
28 of way under the jurisdiction of the Seattle Department of Transportation pursuant to Title 15 of  
29 the Seattle Municipal Code.  
30

31 2.5 Construction Contract(s) means the SR 519 Intermodal Access Phase 1 Atlantic Street  
32 Contract (C005983) and the SR 519/I-90 Intermodal Access Project – I/C Improvements Phase 2  
33 Contract (C007597) entered into by the State for the construction of infrastructure subject to this  
34 Agreement.  
35

36 2.6 Contractor means the entity responsible pursuant to a Construction Contract to build  
37 infrastructure subject to this Agreement and includes the design-builder for the Phase 2 Project.  
38

39 2.7 Defective Work means design or construction work or materials that fail to comply with  
40 the Approved Plans, City-approved modifications to the Approved Plans, or the laws, rules,  
41 regulations, or standards as specified in, or otherwise applicable to, a Construction Contract(s).  
42

43 2.8 Environmental Law(s) means any environmentally related local, state or federal law,  
44 regulation, ordinance or order (including without limitation any final order of any court of  
45 competent jurisdiction of which the State has knowledge), now or hereafter in effect including,

1 but not limited to: the Federal Clean Air Act; the Federal Water Pollution Control Act; the  
2 Federal Safe Drinking Water Act; the Federal Comprehensive Environmental Response  
3 Compensation and Liability Act, as amended by the Superfund Amendments and  
4 Reauthorization Act of 1986; the Federal Resource Conservation and Recovery Act, as amended  
5 by the Solid and Hazardous Waste Amendments of 1984; the Federal Occupational Safety and  
6 Health Act; the Federal Emergency Planning and Right-to-Know Act of 1986; the Federal  
7 Hazardous Materials Transportation Control Act of 1980; the Federal Clean Water Act of 1977;  
8 the Federal Insecticide, Fungicide and Rodenticide Act; the Federal Waste Management  
9 Recovery and Recycling Act; the Washington Hazardous Waste Management Act; the  
10 Washington Hazardous Waste Fees Act; Washington Model Toxics Control Act (MTCA); the  
11 Washington Nuclear Energy and Radiation Act; the Washington Radioactive Waste Storage and  
12 Transportation Act; the Washington Underground Petroleum Storage Tanks Act; and any  
13 regulations promulgated thereunder from time to time.

14  
15 2.9 Hazardous Materials mean any (a) petroleum products or by-products; (b) all hazardous  
16 or toxic substances, wastes or materials or pollutants, including hazardous substances as defined  
17 by Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability  
18 Act of 1980, as amended, or the Washington Water Pollution Control Act, RCW 90.48.010 et  
19 seq., the Hazardous Waste Management Statute, RCW 70.105.010 et seq., the Washington Toxic  
20 Substance Control Act RCW 70.105B.010 et seq., the Washington Model Toxics Control Act,  
21 RCW 70.105D.010 et seq., and the Toxic Substance Control Act, 15 U.S.C. Section 2601 et seq.,  
22 and in the regulations promulgated pursuant to said laws, all as amended from time to time.

23  
24 2.10 Hazardous Substance(s) means any substance, or substance containing any component,  
25 now or hereafter designated as a hazardous, dangerous, toxic or harmful substance, material or  
26 waste, subject to regulation under any, federal, state or local law, regulation or ordinance relating  
27 to environmental protection, contamination or cleanup including, but not limited to, those  
28 substances, materials and wastes listed in the United States Department of Transportation  
29 Hazardous Materials Table (49 C.F.R. §172.101) or by the United States Environmental  
30 Protection Agency as hazardous substances (40 C.F.R. pt. 302 and amendments thereto) or in the  
31 Washington Hazardous Waste Management Act (Ch. 70.105 RCW) or the Washington Model  
32 Toxics Control Act (Chs. 70.105D RCW and 82.21 RCW), petroleum products and their  
33 derivatives, and such other substances, materials and wastes as become regulated or subject to  
34 cleanup authority under any Environmental Law.

35  
36 2.11 Physical Completion means the day all of the construction Work was physically  
37 completed on each applicable phase of the Project, including all punch list work as well as initial  
38 landscaping plantings.

39  
40 2.12 Project means SR 519 Intermodal Access Phase 1, Atlantic Street – Contract C005983,  
41 herein referred to as the “Phase 1 Project,” and the SR 519/I-90 Intermodal Access Project – I/C  
42 Improvements Phase 2 – Contract C007597 , herein referred to as the “Phase 2 Project,”  
43 collectively the “Project” in the location generally depicted on Exhibit A, Vicinity Map, attached  
44 hereto.

1 2.13 Project Conveyance Property means all portions of Project Property identified for transfer  
2 from the State to the City in the locations depicted on Exhibit B, Project Conveyance Properties,  
3 attached hereto.

4  
5 2.14 Project Property means all real property interests, including Project Transfer Property and  
6 Turnback Property, acquired by the State and used for the Project,

7  
8 2.15 Project Transfer Property means property acquired by the State from third parties and  
9 identified by the State and the City for transfer from the State to the City, subject to continuing  
10 transportation use as depicted on Exhibit C, Project Transfer Properties, attached hereto.

11  
12 2.16 SDOT means the Seattle Department of Transportation.

13  
14 2.17 Street Use Permit(s) means written authorization secured by the State from the Director  
15 of the Seattle Department of Transportation for use of the City Street Right of Way pursuant to  
16 Title 15 of the Seattle Municipal Code.

17  
18 2.18 Turnback Property means those portions of City Street Right of Way identified by the  
19 terms of SR 519 City / Town Turnback Agreement TB 1-0145. City Turnback Property will be  
20 returned to the City pursuant to the terms of this Agreement as depicted on Exhibit D, Turnback  
21 Properties, attached hereto and to the terms of the Project Conveyance Property Quitclaim Deed,  
22 attached hereto as Exhibit G.

23  
24 2.19 Work means the provision of all labor, materials, equipment, supplies and everything  
25 needed to successfully complete the Project.

### 26 27 28 **3. PROJECT PROPERTY ACQUISITION AND TRANSFER**

29  
30 3.1 The State has acquired, at its expense, the parcels of Project Property shown on Exhibit E,  
31 (labeled Ownerships, Right of Way and Easements) Property Rights Acquired by the State, and  
32 Exhibit F, Right of Way and Limited Access Plan.

33  
34 3.2 The State performed all appraisals, appraisal review, title review, surveys, property  
35 investigation, relocation assistance and all other investigations and services in connection with  
36 the acquisition of Project Property. For each parcel of Project Transfer Property, the State  
37 delivered to the City those documents in the possession of the State requested by the City for  
38 review of environmental condition and condition of title.

39  
40 3.3 Subject to the terms of this Agreement, the State shall execute and deliver, and the City  
41 shall accept, a Project Conveyance Property quitclaim deed in the form of the deed attached  
42 hereto as Exhibit G, Quitclaim Deed with deed Exhibits A and B, attached hereto, conveying the  
43 Project Transfer Property and the State's interest in the City Turnback Property.  
44

1 3.4 The Parties agree that the State will convey and quitclaim the Project Conveyance  
2 Property subject to the rights, conditions, and ownership reserved by the State described in  
3 Exhibit B to the Quitclaim Deed.  
4  
5

#### 6 4. ENVIRONMENTAL MATTERS 7

8 4.1 The State represents that it evaluated the potential for the presence of Hazardous  
9 Materials and Hazardous Substances on all Project Property acquired for use by the Project  
10 following procedures set forth in the WSDOT *Environmental Procedures Manual M 31-11* and  
11 WSDOT *Right of Way Manual M 26-01* that were in effect on the date of property acquisition  
12 and in compliance with all applicable laws. The State represents that it conducted additional  
13 studies that the State determined were appropriate and represents that the State has provided the  
14 City with all documentation in the State's possession addressing Hazardous Substance  
15 assessment, disposal and remediation for Project Property required to comply with the  
16 requirements of the State's environmental procedures and right of way manuals.  
17

18 4.2 The City has received environmental investigation reports, Phase I Environmental Site  
19 Assessment reports and soil and groundwater environmental sample data submitted by the State  
20 during Environmental Assessment (EA) development of the Project construction activities.  
21

22 4.3 Throughout the term of this Agreement, the State shall continue to provide the City's  
23 Real Property and Environmental Manager copies of all additional environmental documentation  
24 developed, received or located by the State relating in any way to the environmental condition or  
25 environmental investigation of Project Transfer Property, whether received by or prepared by or  
26 for the benefit of the State, including, but not limited to: (1) records regarding Hazardous  
27 Materials and Hazardous Substances identified on Project Transfer Property; (2) documents  
28 relating to environmental assessments, environmental sampling results, reports, studies, and  
29 remedial, removal or cleanup activities related to the Project Transfer Property; (3) documents  
30 relating to allegations, orders, claims, regulatory demands, or losses relating to the alleged  
31 existence or migration of any Hazardous Materials and Hazardous Substance from or onto any  
32 parcel of Project Transfer Property; and (4) any alleged violation of any Environmental Law or  
33 other information relating to environmental condition of the Project Transfer Property.  
34

35 4.4 Throughout the term of this Agreement, each Party shall make every effort to notify the  
36 other Party in writing within ten (10) business days, after becoming aware of any notice, claim,  
37 allegation, or other action seeking environmental response or remediation, payment, damages, or  
38 determination of liability or potential liability relating in any way to Hazardous Materials and  
39 Hazardous Substances in connection with the Project Transfer Property or City Turnback  
40 Property. The Party initiating notice under the provisions of this section shall promptly provide  
41 to the other Party copies of the notice, claim, allegation, or other action and all related  
42 documentation related to resolution of the action.  
43  
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45

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3 **5. TURNBACK PROPERTY**

4 5.1 Transfer of operation and maintenance responsibilities for the City Turnback Property, as  
5 shown on Exhibit D, from the State to the City shall become effective upon execution of this  
6 Agreement.

7  
8 **6. CITY INFRASTRUCTURE**  
9

10 6.1 The State and City agreed, with certain limited exceptions addressed in GM 1355,  
11 General Maintenance Agreement, SR 519 Phase 1 as amended, that the design and construction  
12 of City Infrastructure would conform to City of Seattle ordinances, rules, regulations, and  
13 standards, and applicable federal and state laws, rules, regulations, and standards, in effect at the  
14 time construction was completed on the Project, including but not limited to the following:  
15

16 6.1.1 The Seattle Municipal Code

17 6.1.2 The City of Seattle Standard Specifications for Road, Bridge and Municipal  
18 Construction, 2008 edition

19 6.1.3 City of Seattle Standard Plans for Municipal Construction, 2008 edition

20 6.1.4 SDOT, Seattle City Light, Seattle Department of Planning and Development  
21 (DPD), and Seattle Public Utilities Director's Rules, including the City of Seattle Right  
22 of Way Improvements Manual effective on the date of Phase 1 Project and 2005-22 for  
23 Phase 2 Project.  
24

25 6.2 The State was the sole authority for planning, design, and construction administration of  
26 the Project. The City provided qualified staff and consultants during design who reviewed plans  
27 and other material for conformance with City standards and for issuance of Street Use Permits,  
28 and during construction communicated with State officials in evaluating the conformity of the  
29 construction of City Infrastructure with Approved Plans and Street Use Permits and performed  
30 certain other work.  
31

32 6.3 The Parties conducted joint pre-final and final inspections of the City Infrastructure  
33 constructed as part of the Phase 1 Project and the State issued a letter of Physical Completion for  
34 the Phase 1 Project to its contractor on December 10, 2007.  
35

36 6.4 The Parties conducted joint pre-final and final inspections of the City Infrastructure  
37 constructed as part of the Phase 2 Project at substantial completion of the Phase 2 Project. The  
38 City provided a letter to the State on August 12, 2010 indicating that the Phase 2 Project Work  
39 had been completed to the City's satisfaction. The State granted Physical Completion for the  
40 Phase 2 Project to its contractor on August 20, 2010.  
41

42 6.5 The Parties agree that the City shall repair landscaping in the pedestrian plaza area at the  
43 location shown in Exhibit I, Pedestrian Plaza Landscaping Repair, attached hereto. The City  
44 shall perform general maintenance, plant replacement, mulching and repair of irrigation systems,  
45 including installation, replacement and parts.

1  
2 6.6 The State, in consideration of the City executing this Agreement and accepting full  
3 operation and maintenance of the area outlined in Exhibit I, agrees to pay the City a one-time,  
4 lump sum amount of Twenty Three Thousand, Two Hundred Fifty Eight Dollars and Fifty Cents  
5 (\$23,258.50) upon request by the City.  
6

7 6.7 The City agrees to accept rearranged City streets as shown on Exhibit D and other  
8 improvements completed as part of the Project in the locations shown on Exhibit K, including  
9 right of way and other property rights associated with transfer and conveyance of the Project  
10 Transfer Property and Turnback Property and to relieve the State from all responsibilities in the  
11 ownership, operation, maintenance and reconstruction of these features subject to the Quitclaim  
12 Deed attached as Exhibit G.  
13

14 6.8 All City Infrastructure constructed by the State on the Project Transfer Property and City  
15 Turnback Property in the locations depicted on Exhibit K shall be transferred by the State and  
16 accepted by the City, subject to correction of any Defective Work, damage, or contractor claims  
17 caused by the acts or omissions of the State, and subject to the terms of this Agreement, upon the  
18 date when this Agreement is fully executed and the quitclaim deed has been recorded.  
19

20 6.9 All right and title to City Infrastructure accepted by the City will be transferred by the  
21 State to the City upon recording of the quitclaim deed. Neither the State nor its Contractors shall  
22 hold a property right in any of the City Infrastructure accepted by the City for ownership,  
23 including the materials and equipment comprising the infrastructure.  
24  
25

## 26 **7. WARRANTIES**

27

28 7.1 Three (3) year Warranty of Work - The State warrants that the bridge rails, bearings,  
29 expansion joints, MSE walls, and the structural elevator enclosure work included in plans  
30 transmitted to the City as identified in Exhibit J, City Infrastructure Subject to Three Year  
31 Warranty Provisions, attached hereto:  
32

- 33 a) meet with the requirements of the Approved Plans, the Construction Contracts, and all  
34 City-approved modifications to the Construction Contracts and Approved Plans made  
35 during the course of construction;
- 36 b) are constructed in accordance with City-issued permits;
- 37 c) are free of defects in material and workmanship; and
- 38 d) are free of defects in design(s).  
39

40 This three (3) year Warranty of Work applies to non-conforming and Defective Work that is  
41 discovered and communicated by the City to the State for a period of three (3) years following  
42 August 20, 2010 as specified in the Project Construction Contracts and Section 6.4 above.  
43

44 7.2 Twelve month (12) Warranty of Work - The State warrants for a period of twelve (12)  
45 months from, August 20, 2010, as specified in the Phase 2 Project Construction Contract and



1 Section 6.4 above, that all City Infrastructure and Work not specifically listed as included within  
2 the three-year Warranty of Work:

- 3 a) meets with the requirements of the Approved Plans, the Construction Contracts, and  
4 all City-approved modifications to the Approved Plans and the Construction Contracts  
5 made during the course of construction;
- 6 b) is constructed in accordance with City-issued permits;
- 7 c) is free of defects in material and workmanship; and
- 8 d) is free of defects in design(s).

9  
10 The Twelve (12) month Warranty of Work shall apply to any corrective Work required to  
11 address non-conforming and Defective Work that is discovered and communicated by the City to  
12 the State within the warranty period.

13  
14 7.3 Nonconforming or Defective Work - If, within the Warranty of Work periods, the City  
15 discovers and gives written notice to the State of non-conforming or Defective Work in the City  
16 Infrastructure, the State shall investigate the Work the City believes is non-conforming or  
17 defective. If the State agrees that there is non-conforming or Defective Work within the  
18 Warranty of Work period as applicable for the Phase 2 Project, the State shall promptly address  
19 non-conforming or Defective Work. The State shall diligently prosecute the corrective Work and  
20 shall procure materials as necessary and as provided by law to minimize the loss of use and  
21 operation of the City Infrastructure. Corrective work shall be completed within the time frame  
22 specified by the City if mutually agreed upon by the State.

23  
24 Warranties of Work shall also apply to non-conforming or Defective Work inherent in corrective  
25 work. Warranties of Work for corrective work shall remain effective for the periods established  
26 in this Section 7.

27  
28 7.4 Manufacturer's and Supplier's Guarantees and Warranties - The State shall deliver to the  
29 City all manufacturer's and supplier's guarantees and warranties furnished to the State or  
30 furnished to the State's Contractors as a customary trade practice in connection with the  
31 Contractors' purchase of any equipment, materials, or items incorporated into the City  
32 Infrastructure. These guarantees and warranties shall not relieve the State from its obligations  
33 under Warranties of Work.

34  
35 7.5 Right to Inspect - During the warranty periods, the City can inspect the City  
36 Infrastructure for non-conforming and Defective Work, and will promptly report any such non-  
37 conforming or Defective Work discovered to the State for remedy through corrective work. The  
38 City shall bear the cost of these inspections.

39  
40  
41

## 8. RISK ALLOCATION

1  
2  
3 8.1 No City Liability for Assistance, Inspection, Review, or Approvals - The review or  
4 approval of any of the State's project plans or specifications, or the inspection of the Work, or  
5 any assistance provided to the State by the City is for the City's sole benefit and shall not  
6 constitute an opinion or representation by the City as to any compliance with any law, ordinance,  
7 rule, or regulation or any adequacy for other than the City's own purposes; and such assistance,  
8 inspection, review or approval shall not create or form the basis of any liability on the part of the  
9 City or any of its officials, officers, employees, or agents for any injury, damage, or other  
10 liability resulting from, or relating to, any inadequacy, error, or omission therein or any failure to  
11 comply with applicable law, ordinance, rule, or regulation; and such assistance, inspection,  
12 review, or approval shall not relieve the State of any of its obligations under this Agreement or  
13 under applicable law.

14  
15 8.2 Notwithstanding any act or omission by the City pursuant to its role as described in  
16 Section 6.2 of this Agreement, the State shall not be relieved of any of its authority over, or  
17 responsibility for, the Project.

18  
19 8.3 Environmental Indemnification for Project Transfer Property

20  
21 8.3.1 To the extent permitted by law and subject to Section 8.5, the Parties shall protect,  
22 defend, indemnify, and save the officers, officials, employees, and agents of the other  
23 Party, while acting within the scope of their employment, from any and all future costs,  
24 claims, demands, judgments, damages, or liability of any kind, including responses and  
25 remediation costs, administrative costs, fines, charges, penalties, cost recovery or similar  
26 actions brought by a governmental or private party, including third party tort liability  
27 from injuries to persons or damages to property, arising, directly or indirectly, from any  
28 presence or release of any Hazardous Materials or Hazardous Substance remaining  
29 within, or from the Project Transfer Property, to the extent the release or presence of any  
30 Hazardous Material or Hazardous Substance arises out of, or in any way results from, or  
31 is connected to, or is due to its own acts or omissions, including any and all claims and  
32 litigation arising out of, or resulting from, any state or federal environmental review  
33 process in any way relating to the Project Transfer Property. In the event that a Party  
34 incurs reasonable attorneys' fees, costs, or other legal expenses to enforce the indemnity  
35 provisions of this section of the Agreement, all such fees, costs, and expenses shall be  
36 recoverable by that Party.

37  
38 8.3.2 The State agrees to indemnify, defend, and hold harmless the City in any matters  
39 or claims arising out of, or in any way resulting from, any local, state or federal  
40 environmental review process carried out under the State Environmental Policy Act or  
41 the National Environmental Policy Act and in any way related to the Project.

42  
43 8.4 General Environmental Indemnification for Turnback Property - The State hereby agrees  
44 to defend, indemnify, hold harmless the City, and release the City, from and against any and all  
45 claims, causes of action, demands, and liability, arising at any time in the past, present or future,

1 caused by or resulting from activities by or on behalf of the State on Turnback Property, or the  
2 use, disposal, transportation, generation and/or sale of Hazardous Materials and Hazardous  
3 Substances by or on behalf of the State, including, but not limited to, any costs, liabilities,  
4 damages, expenses, assessments, penalties, fines, losses, judgments associated with the presence  
5 of any Hazardous Substance or Hazardous Material on City Turnback Property. In the event that  
6 the City of Seattle incurs reasonable attorneys' fees, costs, or other legal expenses to enforce the  
7 indemnity provisions of this section of the Agreement, all such fees, costs, and expenses shall be  
8 recoverable by the City of Seattle.

9  
10 8.5 Environmental Indemnification for State Parcel 1-15948 – State Parcel 1-15948 means  
11 the property located at 1411 Fourth Avenue S, the former Fisher Property & Rittenburg Property,  
12 legally described as Lot3, Block 287, Map of Seattle Tide Lands, as shown on the official maps  
13 on file in the Office of the Commissioner of Public Lands at Olympia, Washington.

14  
15 The State acknowledges that State Parcel 1-1594 shown on Exhibit H, Underground Storage  
16 Tank, attached hereto, was the site of an undocumented underground storage tank (UST).  
17 Although the State arranged for removal and remediation of the UST during construction, the  
18 documentation of the remediation effort does not meet the testing protocol required by the  
19 Washington State Department of Ecology for removal of the site from its Leaking Underground  
20 Storage Tank Listing. The State therefore agrees to the following:

21  
22 The State hereby defends, releases and indemnifies, protects and holds harmless the City of  
23 Seattle and its officers, officials, employees, and agents working within the scope of their  
24 employment from all liability and claims (including but not limited to liability and claims  
25 for response and remediation costs, administrative costs, fines, charges, penalties, and cost  
26 recovery or similar actions brought by a governmental or private party, including third  
27 party tort liability) arising, directly or indirectly, from any presence or release of any  
28 Hazardous Substance remaining within or transported from the underground storage tank  
29 property on State Parcel 1-1594, and such State obligations take effect immediately,  
30 continue in full force and effect into the future regardless of subsequent property transfer.  
31 In the event that the City of Seattle incurs reasonable attorneys' fees, costs, or other legal  
32 expenses to enforce the indemnity provisions of this Agreement, all such fees, costs, and  
33 expenses shall be recoverable by the City of Seattle.

34  
35 The indemnification for State Parcel 1-1594 shall be incorporated into the State's deed for  
36 transfer of the Project Transfer Property to the City.

## 37 38 39 **9. DISPUTES** 40

41 9.1 The City and the State shall make good faith efforts to resolve any dispute arising under  
42 or in connection with this Agreement. The dispute resolution process outlined in this Section  
43 applies to disputes arising under or in connection with the terms of this Agreement.  
44

1 9.2 Dispute Resolution Process. The designated representatives established herein under  
2 Section 11, Notice and Document Delivery, shall use their best efforts to resolve disputes  
3 between the Parties. If these individuals are unable to resolve a dispute, the Deputy Director of  
4 the Seattle Department of Transportation and the Program Administrator for the Washington  
5 State Department of Transportation Alaskan Way Viaduct and Seawall Replacement Program  
6 shall review the matter and attempt to resolve it. If they are unable to resolve the dispute, the  
7 matter shall be reviewed by the Director of the Seattle Department of Transportation and the  
8 Washington State Deputy Secretary of Transportation. Provided that the Parties exhaust each of  
9 the procedural steps in this section prior to filing any lawsuit, the Parties reserve the right to seek  
10 any remedy available.

## 11 12 13 **10. NOTICE AND DOCUMENT DELIVERY**

14  
15 10.1 Any notice required or permitted to be given pursuant to this Agreement shall be in  
16 writing, and shall be sent postage prepaid by U.S. Mail, return receipt requested, to the following  
17 addresses unless otherwise indicated by the Parties to this Agreement:

18 To the State:

19  
20 Washington State Dept. of Transportation  
21 Alaskan Way Viaduct & Seawall Replacement Program  
22 & SR 519/I-90 Intermodal Access Project  
23 999 Third Avenue, Suite 2424  
24 Seattle, WA 98104

25  
26 and

27  
28 Washington State Dept. of Transportation  
29 Dave McCormick  
30 Assistant Regional Administrator for Maintenance Operations  
31 Northwest Region  
32 PO Box 330310  
33 Seattle, WA 98133-9710

34  
35 To the City:

36 South End Program Manager  
37 Major Projects Division  
38 Seattle Department of Transportation  
39 700 – 5<sup>th</sup> Avenue, Suite 3900  
40 P.O. Box 34996  
41 Seattle, WA 98124-4996  
42

1 10.2 Any documents required to be delivered to SDOT's Real Property and Environmental  
2 Manager pursuant to Section 4.3 shall be delivered to The Seattle Municipal Tower, 701 Fifth  
3 Avenue, Suite 3900, to the attention of Larry Huggins.  
4

## 5 6 **11. EFFECTIVENESS AND DURATION**

7  
8 11.1 This Agreement shall be effective as of the date the last Party signs and, unless sooner  
9 terminated pursuant to the terms hereof, shall remain in effect until December 31, 2018, subject  
10 to the survival clause under Section 13.7.  
11

## 12 **12. TERMINATION**

13  
14  
15 12.1 This Agreement may be terminated by either Party upon sixty (60) calendar days written  
16 notice. Said notice shall set forth the reasons for termination, including reasons of convenience,  
17 and the effective date of termination.

18  
19 12.2 Termination of this Agreement shall not relieve the Parties of any obligations that are  
20 unsatisfied at the time of termination, nor shall it relieve the Parties of any obligations that are  
21 intended to survive termination of this Agreement.  
22

## 23 **13. GENERAL LEGAL PROVISIONS**

24  
25  
26 13.1 This Agreement shall be effective independently from any and all permits that were  
27 issued by the City of Seattle in its governmental capacity.  
28

29 13.2 Each Party shall ensure that its employees, agents, and contractors comply with the  
30 obligations of this Agreement.  
31

32 13.3 The Parties shall not be deemed to be in default under this Agreement if performance is  
33 rendered impossible by war, riots, or civil disturbances, or by floods or other natural catastrophes  
34 beyond the Parties' control; the unforeseeable unavailability of labor or materials; or labor  
35 stoppages or slowdowns or power outages exceeding back-up power supplies. This Agreement  
36 shall not be terminated or the Parties penalized for such noncompliance, provided that each Party  
37 takes immediate and diligent steps to bring itself back into compliance and to comply as soon as  
38 practicable under the circumstances without unduly endangering the health, safety, or integrity of  
39 the Party's employees or property, or the health, safety, or integrity of the public, street rights-of-  
40 way, public property, or private property.  
41

42 13.4 This Agreement may be amended only by a written instrument, duly authorized by the  
43 City and the State, and executed by their duly authorized representatives.  
44

1 13.5 No failure to exercise, and no delay in exercising, on the part of either Party hereto, any  
2 rights, power, or privilege hereunder shall operate as a waiver thereof, except as expressly  
3 provided herein.  
4

5 13.6 This Agreement with the attached Exhibits and the documents referenced in any of the  
6 foregoing, including but not limited to GM 1355 as amended from time to time, constitute the  
7 entire Agreement of the Parties with respect to the transfer of Project Conveyance Property,  
8 Project Transfer Property, Turnback Property and City Infrastructure and supersedes the  
9 provisions of SR 519 City / Town Turnback Agreement TB 1-0145.  
10

11 13.7 The covenants, agreements, indemnities, representations and warranties made by the  
12 State in this Agreement shall survive the property transfers contemplated by this Agreement  
13 unimpaired and shall not merge into any deed or deeds and the recordation thereof.  
14

15 13.8 Section and subsection headings are intended as information only, and shall not be  
16 construed with the substance of the section or subsection they caption.  
17

18 13.9 All exhibits or other attachments are by this reference hereby incorporated into this  
19 Agreement.  
20

21 13.10 This Agreement may be executed in counterparts, each of which shall be deemed an  
22 original, and all counterparts together shall constitute but one and the same instrument.  
23

24 13.11 This Agreement shall be interpreted, construed, and enforced in accordance with the laws  
25 of the State of Washington. The venue for any action under this Agreement shall be in the  
26 Superior Court for King County, Washington. Each Party shall be responsible for its own  
27 attorneys' fees and costs.  
28  
29  
30  
31

1 **IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement as of the latest  
2 Party signature date written below.

3  
4 CITY OF SEATTLE, acting by and through its  
5 DEPARTMENT OF TRANSPORTATION  
6 TRANSPORTATION

STATE OF WASHINGTON  
DEPARTMENT OF

7  
8  
9  
10 \_\_\_\_\_

11 By

12  
13 \_\_\_\_\_

14 Director of Transportation

\_\_\_\_\_

By

Todd V. Trepanier, P.E  
Program Administrator  
Alaskan Way Viaduct and Seawall  
Replacement Program

15  
16  
17  
18  
19 \_\_\_\_\_

20 Date

\_\_\_\_\_

Date

21  
22 APPROVED AS TO FORM:

23  
24  
25 \_\_\_\_\_

26 By

27 Assistant Attorney General

28  
29  
30  
31 \_\_\_\_\_

32 Date

33