ATTACHMENT 2

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MEMORANDUM OF AGREEMENT
UT 01476
SR 99 ALASKAN WAY VIADUCT REPLACEMENT
SCL FACILITIES WORK AGREEMENT
FOR SR99 BORED TUNNEL PROJECT

THIS Memorandum of Agreement, UT 01476, SR 99 Alaskan Way Viaduct Replacement, SCL Facilities Work Agreement for SR99 Bored Tunnel Project ("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 (AWV) 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), currently a non-limited access highway that includes the AWV; 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. GCA 5680), 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 recommended replacement of the existing AWV structure in the central waterfront area with a bored tunnel; and,

WHEREAS, in October 2009 the Governor and the Mayor executed a Memorandum of Agreement, GCA 6366, which described the basic roles and responsibilities for the implementation of the Alaskan Way Viaduct and Seawall Replacement (AWVSR) Program; and

WHEREAS, the AWVSR Program (PROGRAM) consists of a four-lane bored tunnel and improvements to City streets, the City waterfront, and transit; and the Moving Forward Projects; and

WHEREAS, the PROJECT, the subject of this Agreement, is the part of the PROGRAM that replaces SR 99 from South Royal Brougham Street to Roy Street that consists of designing and constructing a four-lane bored tunnel from South King Street to Thomas Street, north and south tunnel portals and access streets; re-establishment of the City street grid in the vicinity of the portals and associated utility relocations; and

WHEREAS, Battery Street Tunnel decommissioning and Alaskan Way Viaduct demolition will be addressed in a future agreement; and

WHEREAS, in January 2009, the Governor, the King County Executive and the Mayor of Seattle recommended replacement of the existing AWV structure in the central waterfront area with a bored tunnel; and

WHEREAS, the CITY and STATE agree to work collaboratively toward the successful completion of the PROJECT and endeavor to open the tunnel by the end of 2015 and demolish the Alaskan Way viaduct in 2016; and

WHEREAS, the PROJECT is consistent with the CITY of Seattle's adopted Comprehensive Plan; and

WHEREAS, the CITY and the STATE will deliver the PROJECT within the financial commitments made in the Memorandum of Agreement, GCA 6366, executed by the PARTIES on October 24, 2009; and

WHEREAS, concurrently with this UT 01476 Agreement, the STATE and CITY, through its Seattle Public Utilities Department (SPU), are entering into an agreement, UT 01474; and

WHEREAS, concurrently with this UT 01476 Agreement, the STATE and CITY, through the Seattle Department of Transportation (SDOT), are entering into an agreement, GCA 6486; and

WHEREAS, the CITY will own and/or maintain significant infrastructure to be constructed as part of the PROJECT; and

WHEREAS, some or all of the work covered by this Agreement may be accomplished by executed "Task Order" documents; and

WHEREAS, the PROJECT will require the removal of existing City electrical, water, drainage and wastewater facilities that have alignments intersecting or that directly conflict with the tunnel portals and tunnel portal excavations ("Conflicting Facilities"), and the construction of new facilities and service connections, (excluding temporary construction and permanent electrical services for the PROJECT) to a permanent and final location to replace the Conflicting Facilities (together, the "Relocation Work"); and

WHEREAS, the PROJECT will also require the planning, operational and construction management practices, monitoring and other work to avoid and/or remedy damage ("Deformation Mitigation Work"); and

WHEREAS, together the SCL Facilities Relocation Work and the SCL Facilities Deformation Mitigation Work will comprise the "SCL Facilities Work" of the PROJECT;

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. DEFINITIONS

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

1.1 Approved Plans means the construction plans and provisions that evidence the CITY's determinations, made through the processes described in Sections 6 and 7 and Exhibit B of GCA 6486, that the plans conform to the criteria established in GCA 6486 and this Agreement; Approved Plans are included in the contract documents evidencing the agreement between the STATE and its contractors for construction of a given element of the PROJECT.

1.2 AWV means the Alaskan Way Viaduct structure on State Route 99, currently a non-limited-access highway over a portion of CITY Street Right-of-Way.

1.3 Betterment means any upgrading of the SCL Facilities, 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:

1.3.1 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

1.3.2 Upgrades to SCL Facilities necessary to meet current code requirements and SCL published standards; or

1.3.3 Work required by SCL to maintain current service and capacity; or

1.3.4 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.

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

1.5 CITY means the City of Seattle, a Washington municipal corporation.

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

1.7 CITY Facilities means SCL Facilities, SDOT Facilities, SPU Facilities and facilities impacted by, or constructed as part of, the PROJECT that are owned or will be owned by any other CITY agency.

1.8 CITY Infrastructure means the portions of SPU Facilities, SCL Facilities and City Street Right-of-Way improvements constructed or modified as part of the PROJECT to be owned, operated and maintained by the CITY.

1.9 City of Seattle means CITY.

1.10 City Standards means all City of Seattle laws, rules, regulations and standards and all applicable federal and state laws, rules, regulations and standards, including but not limited to the following, except as otherwise provided in this Agreement, UT 01474 and GCA 6486:

The Seattle Municipal Code;
The City of Seattle Standard Specifications for Road, Bridge and Municipal Construction;
The City of Seattle Standard Plans for Municipal Construction;
SDOT, SCL, DPD and SPU Director's Rules, including the City of Seattle Right of Way Improvements Manual, 2005-22 and any revisions to the Manual;
SCL Material Standards; and
SCL Construction Guidelines.

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

1.12 Conceptual Relocation Plan means a work product that defines the general scope of Relocation Work including a planning level estimate of design and construction costs, as further described in Section 3 herein.

1.13 Conflicting Facilities means all SCL Facilities and all SPU Facilities identified by the STATE that have alignments intersecting or that directly conflict with the final configuration of the proposed SR 99 bored tunnel portals and tunnel portal excavations.

1.14 Contract Award means the STATE's written decision accepting bid for construction of a Project.

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

1.16 Deformation means any 3-dimensional displacement or combination of displacements. This definition includes, but is not limited to, the terms "tilt," "strain," "settlement," "heave," "lateral movement," and related terminology that are common industry terminology for deformation in specific situations. Where such industry terminology is used for convenience herein, it does not imply that the broad definition of deformation has been limited.

1.17 Deformation Mitigation Work means any planning, operational and construction management practices, monitoring and temporary or permanent SCL Facilities Work including

maintenance of service undertaken to avoid damage as a result of Deformation and remedy such damage should it occur, as further described in Section 4 herein.

1.18 DPD means the City of Seattle Department of Planning and Development.

1.19 Engineer of Record means the engineer licensed in the State of Washington who has been commissioned by the STATE as the prime engineer of 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.

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

1.21 Letter of Acceptance means the written document that signifies the CITY's acceptance of CITY Infrastructure to be owned by the CITY, and shall signify the STATE's transfer of CITY Infrastructure to be owned by the CITY. The Letter of Acceptance will not transfer any interest in real property. The Letter of Acceptance shall be jointly executed by the PARTIES. A Letter of Acceptance for SPU Facilities requires SPU approval and a Letter of Acceptance for SCL Facilities requires SCL approval.

1.22 Letter of Plan Approval means the letter provided to the STATE by the CITY following the completion of the plan review process described in Exhibit B to GCA 6486, signifying that the plans and specifications identified in the letter are the Approved Plans. A Letter of Plan Approval for SPU Facilities requires SPU approval and a Letter of Plan Approval for SCL Facilities requires SCL approval as part of the Procedures outlined in Exhibit B of the SDOT Agreement GCA 6486.

1.23 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 PROJECT, or (b) to provide service to the PROJECT. New Work shall be entirely the financial obligation of SCL.

1.24 Private Utilities mean utility uses, excluding facilities owned and operated by the CITY, whether approved or not through franchise agreements and/or Street Use Permits by the CITY and governed and enforced through City Ordinance.

1.25 Procedures mean *Design Review, Construction Management, Inspection and Record Drawing Procedures*, attached as Exhibit B to GCA 6486.

1.26 PROJECT means the Proposed Bored Tunnel Project, the part of the PROGRAM that replaces SR 99 from South Royal Brougham Street to Roy Street and that consists of designing and constructing a four-lane bored tunnel from South King Street to Thomas Street, north and south tunnel portals and access streets, re-establishment of the City street grid in the vicinity of the portals (Battery Street Tunnel decommissioning and Alaskan Way Viaduct demolition are not part of the PROJECT and will be addressed in a future agreement);and associated utility relocations. PROJECT description is attached as Exhibit A to GCA 6486.

1.27 PROGRAM means all the projects, collectively, implemented by the STATE and the CITY that remove and replace the AWV and seawall.

1.28 Relocation Work means the removal or abandonment of each Conflicting Facility, the installation or reconstruction of each Conflicting Facility to its permanent and final location and work necessary to continue service to SCL customers during construction.

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

1.30 SCL means Seattle City Light.

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

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

1.33 SDOT means the Seattle Department of Transportation.

1.34 SDOT Facilities means the streets and roadway facilities impacted by, or constructed as part of, the PROJECT that are owned or will be owned by the CITY.

1.35 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.

1.36 SPU means Seattle Public Utilities.

1.37 SPU Facilities means the water, drainage and wastewater facilities impacted by, or constructed as part of, the PROJECT that are owned or will be owned by the CITY.

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

1.39 STATE means the State of Washington Department of Transportation.

1.40 State Project Engineer means the persons appointed by the STATE to lead the PROJECT during design and/or construction or his or her designee.

1.41 Task Force means a group consisting of STATE, CITY, contractor, and other stakeholder staff meeting regularly to review and reach decisions relating to a particular subject, e.g., traffic, structures.

1.42 Task Order means a document executed by the PARTIES under this Agreement authorizing work by one PARTY to be done on behalf of the other PARTY and that defines the scope and the obligations of the PARTIES for the given element of work. All terms and conditions of the Agreement shall apply to each Task Order.

1.43 Utility Easement means a non-exclusive permanent right over real property for the operation, maintenance, repair and replacement of the SCL Facilities, in the form attached as Exhibit A.

1.44 Utility Service Work means any facilities required to provide temporary Utility services for construction of the PROJECT; and any work needed to obtain permanent SCL services to the bored tunnel or SCL customers.

1.45 WSDOT means Washington State Department of Transportation.

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

2. GENERAL RESPONSIBILTIES

2.1 The PARTIES shall manage risk, produce design and conduct construction in a manner that maximizes cumulative public benefits and minimizes cumulative public costs as mutually agreed to by the PARTIES.

2.2 This Agreement in conjunction with GCA 6486 and UT 01474 is prepared by the STATE and CITY to govern relationships between the PARTIES and establish each PARTY's responsibilities regarding the PROJECT.

2.3 The PARTIES understand that environmental review of the proposed PROJECT is underway at the date of this agreement and agree that if an alternative other than the Proposed

Bored Tunnel is selected, this agreement may be terminated pursuant to the provisions of Section 21 herein.

2.4 The PARTIES shall work collaboratively to resolve issues in a manner that endeavors to open the Proposed Bored Tunnel to the public on schedule.

2.5 The design and construction of CITY Facilities, including repair, shall comply with City Standards.

2.6 Each PARTY shall provide the funding and resources necessary to fulfill the responsibility of that PARTY as established in this Agreement.

2.7 The PARTIES agree to work cooperatively with each other and make reasonable, good faith efforts to timely and expeditiously complete the PROJECT, as provided in this Agreement, including, but not limited to, the selection of a preferred SR 99 design alternative; development of preliminary engineering and final design and construction. In order to optimize design and minimize conflicts, the STATE shall coordinate design and construction of the various contracts making up the PROJECT with design of subsequent PROGRAM stages, and with construction of previous stages of the PROGRAM. The STATE shall be prepared to modify design of the contracts making up the PROJECT, the subsequent PROGRAM stage and/or previous phase if both PARTIES determine the modifications are necessary and reasonable, to minimize conflicts.

2.8 The STATE shall pay for all costs associated with the SCL Facilities Deformation Mitigation Work, including but not limited to design; design review; purchase of materials; construction; inspection; preparation of record drawings; CITY crew time and costs; any temporary SCL services required for construction of the PROJECT; and any work needed to obtain permanent SCL services to the bored tunnel or SCL customers; regardless of whether such SCL Facilities Deformation Mitigation Work is performed by the SCL or other CITY staff, 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, but excluding Betterments or New Work as defined in this Agreement. No delay costs shall be paid for by SCL.

2.9 The STATE is responsible for designing and constructing the PROJECT except for the CITY's responsibility to relocate Conflicting Facilities as provided in Section 2.10 of UT 01474 and UT 01476. The STATE is responsible for taking measures to minimize, limit, and mitigate damage to private property and CITY Facilities that may result from the PROJECT construction, including damage that may result from tunnel-induced Deformation. The STATE is responsible for remedying such damage should it occur.

2.10 SCL is responsible for relocating SCL Conflicting Facilities. SCL's relocation responsibility is limited to the final relocation of each SCL Conflicting Facility unless otherwise agreed to by the PARTIES during the PARTIES' evaluation of the Conceptual Relocation Plan.

2.11 The PARTIES agree that it is in the public interest for one PARTY to implement portions of the other PARTY's PROJECT responsibilities. Therefore, this Agreement establishes a Task Order process for use by a PARTY to authorize the other PARTY to conduct work on its behalf, and as may be documented through each Task Order pursuant to Section 9 of this Agreement and Section 4 in GCA 6486, agree to reimburse the other PARTY for such services.

2.12 The terms, conditions, and requirements of GCA 6486 and this Agreement shall apply to each Task Order performed as part of the PROJECT.

2.13 The PARTIES agree to document design-related decisions through the use of concurrence letters executed by both PARTIES.

2.14 The STATE agrees to take the lead in consulting and coordinating with all utility owners affected by the PROJECT.

2.15 The PARTIES shall apply for and obtain all necessary federal, state and City of Seattle-issued permits and approvals for the work for which they are responsible prior to commencing work that requires such permits, including but not limited to all permits, approvals or permission for exploratory investigations, testing, site preparations, demolition and construction.

2.16 The PARTIES shall comply with the regulatory requirements and agree to meet operational and customer service requirements of each existing SCL Facility.

2.17 The PARTIES shall minimize utility service interruptions to SCL customers.

2.18 To the extent necessary, SCL agrees to lead the coordination of the PROJECT with all applicable electrical regulatory agencies.

3. RESPONSIBILITIES REGARDING SCL CONFLICTING FACILITIES

3.1 The STATE shall identify all Conflicting Facilities.

3.2 SCL shall inform the STATE of any additional Conflicting Facilities. In the event that SCL builds new Conflicting Facilities, SCL shall inform the STATE.

3.3 The STATE is responsible for preparing Conceptual Relocation Plans that documents a feasible and efficient approach to relocating Conflicting Facilities in a manner that accommodates the PROJECT. The STATE's Conceptual Relocation Plans shall include:

- 3.3.1 The STATE's conceptual design of the PROJECT; and
- 3.3.2 Identification of Conflicting Facilities; and
- 3.3.3 The STATE's conceptual design of the Relocation Work that is feasible and efficient, that is in compliance with City Standards, and that demonstrates compatibility with existing infrastructure to remain; and
- 3.3.4 Plan view drawings developed in collaboration with SCL; incorporating SCL comments and input; drafted on roll plots in accordance with

AWVSR Program CADD standards presented at an engineering scale of one inch equals 40 feet; showing the existing configuration of Conflicting Facilities, proposed configuration of relocated CITY Infrastructure, and all CITY Facilities; and that confirms no apparent conflicts with other utilities or infrastructure; and

3.3.5 Identification of Conflicting Facilities that require multiple relocations in order to accommodate the PROJECT along with the circumstances that creates the need for such multiple relocations; and

3.3.6 Potential conflicts, constraints, and deviations from City Standards; and

3.3.7 A conceptual-level construction cost estimate of all costs to construct the Relocation Work shown in the Conceptual Relocation Plan. All costs shall be developed on a per-unit cost to install basis for the separate types, sizes and segments of Relocation Work. The costs shall be developed on the basis of typical construction costs in the area; and

3.3.8 A conceptual schedule for relocation of Conflicting Facilities. The schedule shall be coordinated with the proposed design and construction schedule for other work within the PROJECT; and

3.3.9 A contracting strategy for design and construction of each component of Relocation Work; and

3.3.10 In instances where Relocation Work will be performed by the STATE through a Design-Build Contract, the STATE shall confirm and modify as necessary the Conceptual Relocation Plan in a manner consistent with the Design-Builder's conceptual design and coordinated with the Design-Builder's staging plans.

3.4 The STATE agrees to provide the Conceptual Relocation Plan(s) to SCL in a timely manner that accommodates the PROJECT schedule. SCL agrees to promptly provide either its comments on, or approval of, the Conceptual Relocation Plan(s). SCL's responsibility for the Relocation Work begins when the PARTIES have written mutual agreement in the form of a Task Order or letter of concurrence regarding the scope of Relocation Work and each PARTY's responsibilities, including multiple utility relocation responsibilities.

3.5 The PARTIES shall use the Conceptual Relocation Plan(s) as the basis for establishing the scope, schedule and estimated cost of design and construction services to be documented in Task Orders under this Agreement

3.6 In instances where the STATE's revisions to the PROJECT design differ so significantly from the Conceptual Relocation Plan(s) as to render all or portions of SCL's design or construction work obsolete, the STATE shall reimburse SCL for the accrued costs of the obsolete work.

3.7 The STATE is responsible for avoiding damage to SCL Facilities and remedying any damage that occurs to SCL Facilities, including those installed as part of the PROJECT or PROGRAM.

4. STATE RESPONSIBILITIES REGARDING SCL FACILITIES DEFORMATION MITIGATION WORK

4.1 The STATE will assess potential impacts of Deformation on private property and CITY Facilities including CITY streets, CITY telecommunications facilities and SCL Facilities. Where the CITY has established deformation criteria for its facilities, these criteria will be used. Otherwise, criteria will be derived using accepted engineering practice and shall be mutually agreed upon by the PARTIES.

4.2 SCL shall review the STATE's estimate of susceptibility or vulnerability of its facilities to Deformation and provide comments. Such comments shall be provided to assist the STATE only, and shall not be interpreted as waiving or limiting in any way the STATE's responsibility for Deformation Mitigation Work or other damages.

4.3 The STATE, with SCL input, shall develop and implement a plan for Deformation Mitigation Work. SCL's input shall be provided to assist the STATE only, and shall not be interpreted as waiving or limiting in any way the STATE's responsibility for Deformation Mitigation Work or other damages.

4.4 As a component of the Deformation Mitigation Work, the STATE shall implement a construction monitoring Task Force responsible for the planning and implementation of the instrumentation and monitoring program and processing data, evaluating results, and developing recommendations to mitigate deformation. SCL shall participate on the task force and inform the STATE on feasibility and functionality of the Deformation Mitigation Work on SCL Facilities.

4.5 SCL shall provide input to the STATE regarding construction monitoring and deformation management activities when these activities pertain to SCL Facilities. SCL shall provide the STATE all necessary access to SCL Facilities for the purposes of design or implementation of mitigation measures. SCL may perform mitigation measures on behalf of the STATE in a manner and schedule that supports the STATE's PROJECT requirements. SCL's input, advice, participation, and access shall be provided to assist the STATE only, and shall not be interpreted as waiving or limiting in any way the STATE's responsibility for Deformation Mitigation or other damages.

4.6 The STATE is responsible for repairing, replacing or otherwise remedying, loss of function or capacity of SCL Facilities as a consequence of Deformation.

4.7 The STATE's monitoring program shall measure and document Deformation that occurs between initiation of construction and completion of the monitoring period. In addition to soil monitoring points, the STATE shall include pre- and post-construction survey of accessible portions of electrical facilities where excessive Deformation is anticipated such as Alaskan Way south of Yesler Way and 6th Avenue north of Denny Way.

5. DESIGN, PLAN REVIEW, CHANGE MANAGEMENT

5.1 Where the STATE is performing the design of SCL Facilities Work, the STATE and SCL shall comply with all provisions outlined in Section 7 and Exhibit B of GCA 6486.

5.2 In the event the STATE designates as limited access any area in or near the tunnel portals on which a SCL Facility exists or will be relocated, the PARTIES agree to make every effort to develop a design that minimizes the need for regular, on-going maintenance access or avoids placing the SCL Facility within limited access boundaries.

5.3 The STATE agrees to incorporate qualification criteria mutually agreed upon by the PARTIES for construction contractors in the performance of Specialty Work 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.

6. CONSTRUCTION MANAGEMENT, INSPECTION AND CONTRACT ADMINISTRATION

6.1 The PARTIES shall comply with all provisions contained within Section 14 of GCA 6486, regarding Construction Management, Inspection and Contract Administration for the PROJECT, and such provisions shall apply equally to this Agreement.

6.2 Where SCL staff or crews are performing work requested by the STATE, 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.

6.3 The STATE agrees to provide advance notice of service outages needed for construction to schedule crews, notify customers and accommodate other previously scheduled outage requests in accordance with CITY Standards.

7. MONITORING AND DEFORMATION MITIGATION

7.1 The PARTIES agree to comply with all provisions contained within Section 12 of the GCA 6486, regarding Monitoring and Deformation Mitigation for the PROJECT, and such provisions shall apply equally to this Agreement

8. NOTICES AND DESIGNATED REPRESENTATIVES

8.1 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.

8.2 The Designated Representatives for each PARTY are as follows:

STATE:
Program Administrator
Alaskan Way Viaduct & Seawall Replacement Program
Washington State Department of Transportation
999 3rd Avenue, Suite 2424
Seattle, WA 98104

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

9. FUNDING OF SCL FACILITIES WORK AND TASK ORDERS

9.1 The PARTIES agree to comply with all provisions contained within Section 4 of GCA 6486, regarding Task Orders, and such provisions shall apply equally to this Agreement.

9.2 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 SDOT Agreement GCA 6486, and SPU Agreement UT 01474.

9.3 Each PARTY shall fund work for which it is responsible pursuant to this Agreement.

9.4 The STATE will request, obtain and fund any temporary and permanent utility services required for the PROJECT ("Utility Service Work") through separate utility service agreements with SCL.

9.5 While SDOT is the City lead agency for the PROJECT, the STATE understands and agrees that all PROJECT decisions that are likely to result in expenditure of SCL funds, and all PROJECT decisions that may have operational, maintenance, or access impacts to SCL Facilities, require concurrence of SCL.

10. SCL'S RIGHT TO CORRECT NON-CONFORMING, UNAUTHORIZED AND DEFECTIVE WORK

10.1 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.

10.2 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, unauthorized 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.

10.3 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 45 calendar days after receipt of an invoice, as further defined in Exhibit B of GCA 6486.

10.4 Except in an emergency situation as defined under Section 10.2, 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 19 herein prior to SCL performing any work.

10.5 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 GCA 6486, including but not limited to Section 16, Risk Allocation.

11. SCL ACCESS AND INSPECTION OF SCL FACILITIES WORK

11.1 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.

11.2 The STATE shall ensure the SCL has the right to safe access to their facilities at any time to operate and maintain existing and newly installed SCL Facilities or to inspect or perform SCL Facilities Work. For purposes of this 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. With the exception of SCL's on-site inspector, SCL staff will notify the STATE in advance of their arrival on site except in the case of emergency in accordance with site access procedures to be developed by the PARTIES.

11.3 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.

11.4 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 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 SCL's satisfaction. SCL staff will continue to be supervised by SCL management.

11.5 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.

11.6 The STATE shall provide SCL with timely notice prior to 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 STATE shall timely address each comment or issue presented by SCL to SCL's satisfaction. Both PARTIES agree to act as expeditiously as possible to assure a timely resolution of any deficiencies.

11.7 SCL shall observe the work on SCL Facilities performed by the STATE to satisfy SCL's needs for quality assurance. SCL will notify the STATE if SCL observes defective SCL Facilities Work, such as improper installation or unsafe conditions.

12. FINAL INSPECTION AND PROJECT ACCEPTANCE

12.1 The PARTIES agree to comply with all provisions contained within Section 15 of GCA 6486, regarding Final Inspection and Project Acceptance, and such provisions shall apply equally to this Agreement

12.2 SCL Facilities shall not be placed into interim use or operation, or transferred to the City, 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 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. WARRANTIES

13.1 The PARTIES agree to comply with all provisions contained within Section 17 of GCA 6486, regarding Warranties, and such provisions shall apply equally to this Agreement

14. ACQUISITION AND TRANSFER OF EASEMENTS AND FRANCHISES

14.1 SCL is responsible for identifying and acquiring, at its sole cost and expense, all property rights needed to complete Relocation Work, except for property otherwise required for the PROJECT.

14.2 The STATE is responsible for identifying and acquiring, at its sole cost and expense, all property rights needed to complete SCL Facilities Deformation Mitigation Work.

14.3 The PARTIES recognize that their property acquisition responsibilities include the performance of all appraisal, appraisal review, title review, surveys, property investigation, relocation assistance and all other investigations and services in connection with the acquisition of the permanent easement rights necessary for the SCL Facilities, including, without limitation, identification and investigation of Hazardous Substances as provided in Section 5 of the GCA 6486. The STATE shall provide to SCL, as soon as available to the STATE, all reports and documents prepared or obtained in connection with any of the reviews and investigations described above.

14.4 Where the State is acquiring easement rights for SCL Deformation Mitigation Work, unless the PARTIES otherwise agree in writing, prior to commencement of construction, the STATE shall convey to the CITY the easement rights referred to in Section 14.6 by conveying them substantially in the form as, and containing the same conditions as, the approved Utility Easement form attached and identified as Exhibit A. The Utility Easements conveyed to the CITY shall not be subject to any lien, encumbrance or exception of title of any kind.

14.5 The legal descriptions will be developed based on the Approved Plans. The PARTIES acknowledge that due to unforeseen field conditions the location of one or more of the easements may need to change after commencement of construction. In that case, the STATE shall provide SCL with documents, reports and information identified in Subsection 14.3 above, relevant to the new or modified easement area. All requirements and conditions pertaining to the original permanent easement shall apply to all amendments and modifications.

14.6 Where SCL Facilities are located in or near an area which the STATE designates as a limited access facility as defined by RCW 47.52.010, the STATE will ensure that SCL continues to be allowed access to its facilities.

14.6.1 The STATE's limited ac cess facility designation for the tunnel shall contain a vertical and horizontal boundary.

14.6.2 The STATE a grees that any limited access facility designation for the tunnel will allow SCL to access its SCL Facilities.

14.6.3 The ar ea between the limited access facility boundaries and the CITY street shall continue to be CITY Street Right-of-Way.

14.6.4 To the extent possible, limited access facility boundaries will be defined in a manner that places SCL Facilities of a significant size, or that are difficult to relocate, outside of the limited access boundaries.

14.6.5 I n the event the STATE designates as limited access facility any area in or near the tunnel portals on which a SCL Facility exists or will be relocated, the STATE agrees to provide SCL a SCL franchise/utility permit in the form attached hereto as Exhibit B, pursuant to the requirements of Section 14 herein and will make every effort to develop a design that minimizes the need for regular, on-going maintenance access as reasonably feasible.

15. ENVIRONMENTAL REMEDIATION

15.1 The PARTIES shall comply with all provisions of GCA 6486, regarding Environmental Remediation, including but not limited to all provisions in Section 5 therein, and such provisions shall apply equally to this Agreement.

16. RISK ALLOCATION

16.1 The PARTIES shall comply with all provisions of the GCA 6486, regarding Risk Allocation and Indemnification, including but not limited to all provisions in Section 19 therein, and such provisions shall apply equally to this Agreement.

17. INSURANCE

17.1 The PARTIES shall comply with all provisions of the GCA 6486, regarding Insurance, including but not limited to all provisions in Section 20 therein, and such provisions shall apply equally to this Agreement.

18. THIRD PARTY BENEFICIARY

18.1 The PARTIES shall comply with all provisions of GCA 6486, regarding Third PARTY Beneficiary, including but not limited to all provisions in Section 21 therein, and such provisions shall apply equally to this Agreement.

19. DISPUTE RESOLUTION

19.1 Good Faith. SCL and the STATE shall make good faith efforts to resolve any dispute arising under or in connection with this Agreement. The dispute resolution process outlined in this Section applies to disputes arising under or in connection with the terms of this Agreement. In the event that the Parties cannot resolve a disagreement arising under or in connection with this Agreement, the PARTIES shall follow the dispute resolution steps set forth below.

19.2 Notice. A PARTIES Designated Representative, as defined in Section 8 above, shall notify the other PARTIES Designated Representative in writing of any problem or dispute that a PARTY believes needs resolution. The written notice shall include (a) a description of the issue to be resolved; (b) a description of the differences between the PARTIES on the issue; and (c) a summary of any steps taken to resolve the issue.

19.3 Meeting. Upon receipt of a written notice of request for dispute resolution, the STATE project engineer and the SCL project manager shall meet within ten (10) Business Days and attempt to resolve the dispute. Any resolution of the dispute requires the agreement of all Designated Representatives attending the meeting or who requested to attend the meeting.

19.4 Notice of Second Level Meeting. If the PARTIES have not resolved the dispute within five (5) Business Days after the meeting, at any time thereafter either PARTY may request that the dispute be elevated to the next level by notifying the other PARTIES Designated Representative in writing, requesting that the dispute be raised to the Second Level Meeting. The written notification shall include a) a description of the remaining issues to be resolved; b) a description of the differences between the PARTIES on the issues, c) a summary of the steps already taken to resolve the issues, and d) the resolution of any issues that were initially involved in the dispute.

19.5 Second Level Meeting. Upon receiving a written request that the dispute be elevated to the next level, a meeting shall be held within ten (10) Business Days between the WSDOT project director and the Customer Service and Energy Delivery Officer of Seattle City Light to resolve the dispute. Any resolution of the dispute requires the agreement of all Representatives attending the meeting or who requested to attend the meeting.

19.6 Notice of Third Level Meeting. If the PARTIES have not resolved the dispute within five (5) Business Days after the Second Level Meeting, at any time thereafter either PARTY may request that the dispute be elevated to the next level by notifying the other PARTIES Designated Representative in writing, requesting that the dispute be raised to the Third Level Meeting. The written notification shall include a) a description of the remaining issues to be resolved; b) a description of the differences between the PARTIES on the issues, c) a summary of the steps already taken to resolve the issue, and d) the resolution of any issues that were initially involved in the dispute.

19.7 Third Level Meeting. Elevate to the Executive Committee. Upon receiving a written request that the dispute be elevated to the third level, a meeting shall be held within ten (10) Business Days between the WSDOT Program Administrator and Superintendent of Seattle City Light to resolve the dispute. Any resolution of the dispute requires the agreement of all Representatives attending the meeting or who requested to attend the meeting.

19.8 Court of Law. If the PARTIES have not resolved the dispute within five (5) Business Days after the third level meeting, at any time thereafter either PARTY may seek relief under this Agreement in a court of law. The PARTIES agree that they have no right to relief in a court of law until they have completed the dispute resolution process outlined in this Section.

19.9 A PARTIES request to utilize this Dispute Resolution process is not evidence that either PARTY is in breach of this Agreement, and does not relieve any PARTY from complying with its obligations under this Agreement.

20. REMEDIES; ENFORCEMENT

20.1 The PARTIES agree that provisions of GCA 6486, regarding Remedies; Enforcement, including but not limited to Section 24 therein, shall apply equally to this Agreement.

21. TERMINATION

21.1 This Agreement may be terminated as provided in Section 28 of GCA 6486 regarding Termination which shall apply equally to this Agreement.

22. CONFIDENTIALITY OF INFORMATION AND RECORDS

22.1 The provisions of the SDOT Bored Tunnel Agreement, regarding Confidentiality of Information and Records, including but not limited to Section 29 therein, shall apply equally to this SCL Bored Tunnel Agreement. In addition, the Federal Energy Regulatory Commission (FERC) and the North American Electric Reliability Corporation (NERC) require that SCL limit access and disclosure of certain sensitive Critical Energy Infrastructure Information. Therefore, SCL shall require the STATE and its contractors who have access to documents marked "confidential" or "proprietary" to sign the Non-Disclosure Agreement attached hereto as Exhibit C.

23. EFFECTIVENESS AND DURATION

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, GCA 6486, and the SPU Agreement, UT 01474.

24. GENERAL PROVISIONS

24.1 The General Provisions set forth in the GCA 6486, including but not limited to Section 30 therein, shall apply equally to this 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
Seattle City Light

Date: _____

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

By: _____
Ronald J. Paananen
Program Administrator
Alaskan Way Viaduct and Seawall Replacement Program

Date: _____

APPROVED AS TO FORM:

_____
By (print)

_____
Signature
Assistant Attorney General

Date: _____

MEMORANDUM OF AGREEMENT

UT 01476
SR 99 ALASKAN WAY VIADUCT REPLACEMENT
SCL FACILITIES WORK AGREEMENT
FOR SR 99 BORED TUNNEL PROJECT

EXHIBIT A
EASEMENT DEED
TEMPLATE

AFTER RECORDING RETURN TO:

ATTN: REAL ESTATE SERVICES
SEATTLE CITY LIGHT
P.O. BOX 34023
SEATTLE, WA 98124-4023

Document Title: Easement Deed
Reference Number of Related Document:
Grantor(s):
Grantee(s): City of Seattle
Legal Description: TBD
Additional Legal Description is on Page ____ of document
Assessor's Tax Parcel Number: TBD

EASEMENT DEED

[Insert summary description of vicinity]

This NON-EXCLUSIVE PERMANENT EASEMENT is made this _____ day of _____ _____, 20___, between, _____, herein after referred to as the Grantor, and the City of Seattle, a municipal corporation, hereinafter referred to as the Grantee; 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 conveys and grants to the Grantee, its successors and assigns, a non-exclusive permanent easement for the right, privilege and authority to install, construct, erect, alter, improve, repair, energize, operate and maintain underground electric distribution and transmission facilities at depths not exceeding 15 feet, which consist of transformers, vaults, manholes, cabinets, containers, ducts, conduits, cables, wires and other necessary or convenient appurtenances necessary to make said underground installations an integrated electric system, hereinafter "electrical system." All such electric system is to be located upon, under, and across the following described lands:

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

See Attachment 1 attached hereto and made a part hereof.

Together with the right at all times to the Grantee, its successors and 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 electric system, and the right at any time to remove all or any part of said electric system from said lands. However, prior to construction or reconstruction, Grantee will notify Grantor and provide a plan for Grantor's review and approval. Such approval shall not be unreasonably withheld.

The Grantor, its successors and assigns, hereby covenants and agrees that no permanent structure or fire hazards will be erected or permitted within the above described Easement Area without prior written approval from the Grantee, its successors or assigns; that no digging or other construction activity will be done or permitted within the Easement Area which will in any manner disturb the electric system or its solidity or unearth any portion thereof; and that no blasting or discharge of any explosives will be permitted within fifty (50) feet of said electric system and appurtenances.

The Grantor agrees that any excavation or work performed within, above, or that in any way affects the Easement Area, will be designed and constructed in such a manner that does not during or after construction, materially damage in any way any part or element of the electric system or the access, operation or repair thereof. Any such work shall comply with Seattle City Light Construction Guideline U2-10/NDK-50, incorporated herein by reference.

The Grantor shall furnish Grantee with two copies of all plans and specifications for any new proposed work or improvements located within the Easement Area.

The Grantee shall furnish Grantor with two copies of all plans and specifications for any new proposed work or improvements located within the Easement Area.

The Grantor shall notify Grantee at least five (5) days prior to commencing any construction work within the Easement Area.

The Grantee shall notify Grantor at least five (5) days prior to commencing any construction work within the Easement Area. No notice is required for inspection and maintenance within the Easement Area.

The Grantor acknowledges that Grantee may have an on-site inspector, as it determines necessary, during any excavation and/or construction work within the Easement Area. The inspector shall (a) have timely and complete access to Easement Area work; (b) be timely informed of all relevant construction timelines associated with such work; and (c) have the

authority to reject and have corrected and/or replaced any construction or materials deemed to be deficient or which deviate from the plans and specifications as it relates to the electric system.

Grantee is to be responsible, as provided by law, for any damages to the Grantor, through its negligence in the construction, maintenance and operation of said electric system across, over, upon and under the property of said Grantor.

The rights, title, privileges and authority hereby granted shall continue and be in force until such time as Grantee, its successors and assigns, shall permanently remove all said electric system from said lands or shall permanently abandon said electric system, at which time all such rights, title, privileges and authority hereby granted shall terminate.

The Grantee, its successors and assigns, agrees to comply with all civil rights and anti-discrimination requirements of Chapter 49.60 RCW as to the lands herein described.

The lands herein described are not required for State highway purposes and are conveyed pursuant to the provisions of RCW 47.12.063.

Wherever in this Easement 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 addresses listed below unless a different address has been designated in writing and delivered to the other party.

GRANTOR:

GRANTEE:

City of Seattle
Attn: Seattle City Light Real Property Services
700 Fifth Avenue, Suite 3900
Seattle, WA 98124

GRANTOR

_____

[Insert signatory's name]

CITY OF SEATTLE, Seattle Public Utilities
a municipal corporation

By: _____
Authorized Signatory Date

STATE OF WASHINGTON)
): ss
County of _____)

On this _____ day of _____, 20_____, before me personally appeared _____, Grantor, known to me, ,and executed the foregoing instrument, acknowledging said instrument to be the free and voluntary act and deed of the State of Washington, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

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

_____

Notary (print name)_____

Notary Public in and for the State of Washington, residing at _____

My Appointment Expires _____

Easement Area:

TBD

A.

MEMORANDUM OF AGREEMENT
UT 01476
SR 99 ALASKAN WAY VIADUCT REPLACEMENT
SCL FACILITIES WORK AGREEMENT
FOR SR99 BORED TUNNEL PROJECT

EXHIBIT B
Franchise/Utility Permit Conditions for Utility Facilities located within Limited Access Areas designated for the AWVSRP

Introduction

Below are the terms and conditions that will apply to Franchises / Utility Permits issued to SCL and SPU associated with areas designated new Limited Access Facility for the Proposed Bored Tunnel Project (Project).

The exact location of the Limited Access limits is still not completely defined, and SPU and SCL will likely have pre-existing infrastructure that will fall within the Limited Access area. In addition, there are utilities that will be replaced or relocated that may be installed in areas of Limited Access, though there is a strong preference to limit these occurrences. The Franchise/Utility Permit conditions outlined below would not apply to the building of utility new facilities within the Limited Access areas.

Utility Permit Conditions

The Washington State Department of Transportation ("STATE") hereby grants to the _____ ("CITY") the non-exclusive permission to use a portion of the _____, situated in Seattle, Washington. The rights herein granted are subject to all other easements and permits affecting the lands subject to this Permit.

1. Background. The Proposed Bored Tunnel Project (Project) replaces State Route 99 from South Royal Brougham Way to Roy Street and consists of designing and constructing a four-lane bored tunnel from South King Street to Thomas Street; north and south tunnel portals and access streets; re-establishment of the CITY street grid in the vicinity of the portals; and associated utility relocations. The Project is located in Seattle, which is a very densely developed urban environment, with utility infrastructure that has been woven into the fabric of the CITY. There is no alternative but to have the portals associated with the Project emerge into CITY street right of way where CITY owned Utility Facilities currently reside. The cost of purchasing right of way outside of these CITY streets is prohibitive, and the STATE has no choice but to declare portions of the CITY right of way as a Limited Access Facility as part of this Project. This Permit addresses the situation where CITY owned Utility Facilities will have to be modified, incorporated, or replaced in newly-designated Limited Access Facility, which was once CITY street right of way that formed part of STATE Route 99 as provided in RCW 47.24.010 and RCW 47.24.020. The STATE has endeavored to limit the scope of instances where CITY-owned Utility Facilities are relocated into Limited Access Facility or where the Limited Access Facility incorporates existing CITY-owned Utility Facilities.

2. Purpose. The purpose of the Permit is to provide for the location, operation, maintenance, replacement, modification, and repair of all existing CITY Utility Facilities, including, but not limited

to, wires, pipelines, fibers, cables, communications devices and associated facilities and equipment both at or below-grade owned by the CITY. The location of the Utility Facilities is within portions of the areas legally described in Exhibit A, and depicted on Exhibit B, each of which is attached and incorporated by reference.

3. Reservation. This Permit shall not be deemed or held to be an exclusive one and shall not prohibit the STATE from granting rights of like or other nature to other public or private utilities, nor shall it prevent the STATE from using any of its roads, streets, or public places, or affect its right to full supervision and control over all or any part of them, none of which is hereby surrendered.

4. Term. The Permit shall have a duration of fifty (50) years, and shall be renewed upon request in writing to the STATE and shall contain the same terms and conditions as this permit, unless otherwise requested by the City and approved by the STATE. The Permit, and shall be transferable to any third party fulfilling the function of CITY, and the third party shall have all of the same rights, obligations, and benefits herein provided to CITY.

5. Permitted Users. The STATE acknowledges that CITY may choose to allow its agents, contractors, employees, lessees, successors and assigns use of the lands subject to this Permit for the intended purpose. The rights, title, privileges and authority hereby granted in this Permit shall continue and be in force until such time as the CITY, its successors and assigns, shall permanently remove all Utility Facilities from the area or permanently abandon the Utility Facilities.

6. Relocation of Utility Facilities. Due to the fact that there are no reasonable alternative locations within which to relocate the CITY-owned utility facilities, and further due to the STATE's obligations to mitigate damages and limit Project costs, there may be a need to relocate the CITY-owned Utility Facilities within the STATE's Limited Access Facility. Whenever necessary for the construction, repair, improvement, alteration, or relocation of any portion of Project in Limited Access as determined by the STATE, or if the STATE shall determine that the removal of any or all Utility Facilities from the said lands is necessary, incidental, or convenient to the construction, repair, improvement, alteration, or relocation of the public road or street located in the STATE's Limited Access Facility, the CITY shall, upon written notice by the STATE, relocate or remove any or all of such Utility Facilities from the Limited Access Facility as may be required by the STATE. The STATE agrees to pay the full reasonable costs of such relocations and agrees to give the CITY 3 years advance notice of the needed relocations in order for the CITY to adequately plan, design and construct the relocations. In the event CITY fails to remove or relocate the Utility Facilities within a reasonable time, the STATE may undertake such removal or relocation, at the sole expense of the STATE and with all necessary coordination with the CITY.

7. Maintenance, Replacement, Repair, and Modification. All maintenance, replacement, repair, and modification of the Utility Facilities by CITY, for that area depicted on Exhibit B, shall be done in such manner as will cause the least interference with any of the STATE's performance in the operation and maintenance of XXX. All costs for such work shall be at the sole expense of the CITY, unless the need for such work is caused by the STATE. Any replacement or modification of existing Utility Facilities, within the area depicted on Exhibit B, that require the placement of above-ground facilities, shall require the issuance of an additional Utility Permit by the STATE for such construction of above-ground facilities,, which permit shall not be unreasonably withheld, and shall conform with the Control Zone guidelines referenced in WAC 468-34-170 and WAC 468-34-350.

8. Restoration of Highway. Except as set forth in paragraph 6 above, the CITY agrees, at its own expense, to restore paving, grading, landscaping and other improvements damaged by CITY's activities under this Permit to at least as good a condition as such paving, grading, landscaping and

other improvements were in immediately prior to the CITY's commencement of work. All material and workmanship shall conform to the Washington State Department of Transportation Standard Specification for Road, Bridge and Municipal Construction, as it may exist at that time, and may be subject to inspection by the STATE. Upon failure, neglect, or refusal of the CITY to timely restore the highway as required of the CITY, the STATE may undertake and perform such restoration, at the sole cost and expense of the CITY.

9. Emergency Access to CITY-Owned Utility Facilities. In the event of an emergency, the CITY will have 24 hour access to CITY-owned Utility Facilities located in STATE Limited Access. In an emergency, the STATE shall cooperate with the requests of the CITY, to facilitate CITY's response to the situation in order to protect the public health, safety and welfare. In situations of non-emergency, the CITY will have access to CITY-owned Utility Facilities as outlined in paragraph 10.

10. Construction and Maintenance of Utility Facilities in Non-Emergency Situations.

A. The CITY has the right to install, construct, alter, repair, operate, improve and maintain all CITY-owned Utility Facilities, including appurtenances associated with this Permit. The CITY has the right to replace any of the permitted Utility Facilities with facilities of the similar size or configuration, in the same location as the originally-permitted Utility Facilities without requesting a change to this Permit.

B. The CITY shall provide the STATE fifteen (15) business days written notice prior to commencement of maintenance activities under this Permit, and at least forty-five (45) business days written notice prior to commencement of construction activities under this Permit. In both cases, the CITY shall submit to the STATE work plans depicting the work to be performed by the CITY and shall coordinate with the STATE (WSDOT NW Region Maintenance Engineer) during these time periods. The STATE will make all reasonable effort to provide a letter of authorization to the CITY within fifteen (15) business days for maintenance activities and sixty (60) business days for construction activities.

C. Prior to the beginning of construction, a preconstruction conference shall be held, at which time the STATE, the CITY, and appropriate engineers and inspectors shall be present.

D. A copy of this Permit must be posted on the job site, and protected from the elements, at all times during any construction authorized by this Permit.

E. In the event any milepost, right of way marker, fence or guard rail is located within the limits of CITY's construction and will be disturbed during construction, these items will be carefully removed prior to construction and reset or replaced at the conclusion of construction to the satisfaction of the STATE. All signs and traffic control devices must be maintained in operation during construction.

F. Prior to construction, the CITY shall contact the STATE representative to ascertain the location of survey control monuments within the project limits. In the event any monuments will be altered, damaged or destroyed by the project, appropriate action will be taken by the STATE, prior to construction, to reference or reset the monuments. Any monuments altered, damaged or destroyed by the CITY's operation will be reset or replaced by the STATE at the sole expense of the CITY.

G. During the construction and/or maintenance of the utilities, the CITY shall comply with the "Manual on Uniform Traffic Control Devices for Streets and Highways" as it may exist at that time, as well as any applicable Washington statues or regulation. Any closure or restriction of the Limited Access Facility requested by the CITY pursuant to this Permit shall require the CITY to submit a traffic control plan for the STATE's timely approval. The timely approval will be commensurate with the scope of the work proposed. Except in case of emergency, no work pursuant to this Permit can be performed on the XXX until the STATE has approved the traffic control plan.

H. Should the CITY choose to perform the work outlined herein with other than its own forces, a representative of the CITY shall be present at all times unless otherwise agreed to by the STATE representative. All contact between the STATE and the CITY's contractor shall be through the representative of the CITY. Where the CITY chooses to perform the work with its own forces, it may elect to appoint one of its own employees engaged in the construction as its representative. Failure to comply with this provision shall be grounds for restricting any further work by the CITY within the STATE right of way until said requirement is met. The CITY, at its own expense, shall adequately police and supervise all construction work by itself, its contractor, subcontractor, agent, and others, so as not to endanger or injure any person or property.

I. Except in an emergency or unless authorized by the STATE, work shall be restricted to between the hours of 9:00 a.m. and 3:30 p.m. and the hours of 7:00 p.m. and 5:00 a.m., and no work shall be allowed on the right of way on holidays.

J. All trenches, boring or jacking pits, etc., shall be backfilled as soon as possible and not left open during non-working hours unless covered with material of sufficient strength to withstand traffic loads, or protected by an alternate method approved by the STATE.

K. All slopes, slope treatment, top soil, ditches, pipes, etc., disturbed by this operation shall be restored to their original cross section and condition. All open trenches shall be marked by warning signs, barricades, lights, and if necessary, flagmen shall be employed for the purpose of protecting the traveling public.

L. The responsibility of the CITY for proper performance, safe conduct, and adequate policing and supervision of the work shall not be lessened or otherwise affected by STATE approval of plans, specifications, or work or by the presence at the work site of STATE representatives, or by compliance by the CITY with any requests for recommendations made by such representatives.

11. STATE's Construction and Maintenance of XXX. The STATE shall inform the CITY in writing no less than forty-five (45) days in advance of planned work to coordinate with the CITY regarding the planned STATE work. Such writing shall include submittal of the STATE's work plans.

A. In the event that construction and maintenance of XXX within the proximity of the CITY-owned Utility Facilities becomes necessary, it is expressly understood that, upon request from the STATE's representative, the CITY will promptly identify and locate by suitable field markings any and all of their underground Utility Facilities in accordance with RCW 19.122.030.

B. The CITY shall provide comments and requests in writing to the STATE regarding the STATE's planned work within fifteen (15) business days of submittal of the STATE's work plans for maintenance activities, and within forty five (45) business days for construction activities. The STATE shall endeavor to resolve and incorporate CITY comments, and will coordinate with the CITY regarding their comments and concerns.

C. The CITY may have an on-site inspector, as it deems necessary, during any excavation or construction work within the permitted area. The inspector shall have complete access to area work and be timely informed of all relevant construction timelines associated with such work.

D. CITY Construction Guidelines will be followed when considering the placement of other utility facilities in the vicinity of CITY-owned Utility Facilities. No other utility facilities, whether public or private, will be installed within five (5) horizontal feet or eighteen (18) vertical inches of the utility facilities without informing and coordinating with the CITY. Where possible, sewer and storm drains shall be laid at a lower invert elevation than water mains.

E. No permanent structure will be erected or permitted within the area without coordination with the CITY.

F. No construction of buildings, fences, walls, or placement of trees, shrubbery, obstruction, or fill material will be placed within the boundaries of area covered by this permit without prior notification and coordination with the CITY. No digging or other construction activity will be undertaken adjacent to the CITY-owned Utility Facilities without prior notification and coordination with the CITY.

G. No blasting or discharge of any explosives will be undertaken within 50 ft of CITY-owned Utility Facilities without prior notification and coordination with the CITY.

12. Hold Harmless/Indemnification. The CITY, its successors and assigns agree to indemnify, defend and hold the STATE, its officers and employees harmless from all claims, demands, damages, expenses or suits that: (1) arise out of or are incident to any negligence by the CITY, its agents, contractors or employees in the use of the highway right of way pursuant to this Permit, or (2) are caused by the breach of any of the conditions of the Permit by the CITY, its contractors, agents or employees. Nothing herein shall require the CITY to indemnify and hold harmless the STATE and its officers and employees from claims, demands, damages, expenses or suits based solely upon the conduct or negligence of the STATE, its agents, officers, employees and contractors; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the STATE, its agents, or employees, and (b) the CITY, its agents or employees, including those actions covered by RCW4.24.115, the foregoing obligations shall be valid and enforceable only to the extent of CITY's negligence. The STATE, its successors and assigns, agree to indemnify, defend and hold the CITY, its officers and employees harmless from all claims, demands, damages, expenses or suits that: (1) arise out of or are incident to any negligence by the STATE, its agents, contractors or employees in the use of the highway right of way pursuant to this Permit, or (2) are caused by the breach of any of the conditions of the Permit by the STATE, its contractors, agents or employees. Nothing herein shall require the STATE to indemnify and hold harmless the CITY and its officers and employees from claims, demands, damages, expenses or suits based solely upon the conduct or negligence of the CITY, its agents, officers, employees and contractors; and provided further that if the claims or suits are caused by or result from the concurrent negligence of

(a) the CITY, its agents, or employees, and (b) the STATE, its agents or employees, including those actions covered by RCW 4.24.115, the foregoing obligations shall be valid and enforceable only to the extent of STATE's negligence.

In Witness whereof, the parties have executed this Permit as of the _____ day of _____ 2010.

Accepted on Behalf of SCL

By:_____

STATE OF WASHINGTON
Department of Transportation

By:_____

MEMORANDUM OF AGREEMENT

UT 01476
SR 99 ALASKAN WAY VIADUCT REPLACEMENT
SCL FACILITIES WORK AGREEMENT
FOR SR99 BORED TUNNEL PROJECT

EXHIBIT C
NON-DISCLOSURE AGREEMENT

City of Seattle
Non-Disclosure Agreement

This Non-Disclosure Agreement ("Agreement") is made and entered into as of _____ 2010, between **The City of Seattle,** by and through its **City Light Department** ("Disclosing Party") and _____.("Recipient Party"), Disclosing Party and Recipient agree as follows:

1. DEFINITIONS

"Confidential Information" shall mean: (i) all information disclosed in tangible form by Disclosing Party and marked "confidential" or "proprietary." (ii) Any oral information designated as Confidential Information by the Disclosing Party at the time the oral information is provided.

2. PURPOSE

The Recipient shall use the Confidential Information only for the following purposes:

a. to evaluate _____

_____

3. OBLIGATION OF CONFIDENTIALITY

The Recipient will use the same degree of care, but not less than a reasonable degree of care to prevent the unauthorized use, dissemination or publication of the Confidential Information as the Recipient uses to protect its own confidential or proprietary information of a like nature. The Recipient shall limit the use of and access to Disclosing Party's Confidential Information to the Recipient's employees or independent contractors who need to know such Confidential Information, for the purpose set forth in Section 2 above and who have entered into binding obligations of confidentiality substantially similar to the obligations set forth herein.

4. CONFIDENTIALITY PERIOD

The Recipient's obligations to protect Confidential Information hereunder shall expire three (3) years from the date of each such disclosure of Confidential Information.

5. EXCEPTIONS

The Recipient has no obligation of confidentiality to any Confidential Information that:

a. is or becomes a matter of public knowledge through no fault of the Recipient; or

b. was in the Recipient's possession or known by it prior to receipt from Disclosing Party; or

c. was rightfully disclosed to the Recipient by another party without restriction; or

d. is independently developed by the Recipient without access to Disclosing Party's Confidential Information.

The Recipient may disclose Confidential Information pursuant to any statutory or regulatory requirement or court order, provided that Disclosing Party is, to the extent legally permitted, given ten (10) days advance notice of any proposed disclosure, in order for Disclosing Party to pursue a protective order. If a protective order is not obtained by Disclosing Party at the conclusion of this ten (10) day period, the Recipient may disclose the requested Confidential Information without further liability.

6. EQUITABLE RELIEF

The Recipient acknowledges and agrees that due to the unique nature of Disclosing Party's Confidential Information, there may be no adequate remedy at law for any breach of its obligation. Recipient further acknowledges that any such breach may allow the Recipient or third parties to unfairly compete with the Disclosing Party resulting in irreparable harm to the Disclosing Party, and therefore, upon any such breach or threat thereof, Disclosing Party shall be entitled to seek appropriate equitable relief. The Recipient will notify Disclosing Party in writing immediately upon the occurrence of any such unauthorized release or other breach.

7. INTELLECTUAL PROPERTY RIGHTS

Recipient does not acquire any intellectual property rights under this Agreement or through any disclosure hereunder, except the limited right to use such Confidential Information in accordance with this Agreement.

8. Return of Information

At any time, the Disclosing Party may request the return or the destruction, of all tangible Confidential Information previously delivered to the Recipient. Upon receipt of such request, all such Confidential Information, including without limitation any copies, summaries or compilations of such information,

still in the Recipient's possession or under its control shall be promptly returned or destroyed, as requested.

9. GENERAL

This Agreement supersedes all prior discussions and writing with respect to the subject matter hereof. No waiver or modification of this Agreement will be binding upon either party unless made in writing and signed by a duly authorized representative of each party and no failure or delay in enforcing any right will be deemed a waiver of such right. The parties understand that nothing herein requires either party to proceed with any proposed transaction or relationship in connection with which the Confidential Information may be disclosed. In the event that any of the provisions of this Agreement shall be held by a court of competent jurisdiction to be unenforceable, the remaining portions hereof shall remain in full force and effect. This Agreement shall be governed by the laws of the State of Washington without regard to conflicts of laws provisions thereof, and each party submits to the jurisdiction and venue of the Washington state or federal court serving the King County area with respect to the subject matter of this Agreement. The headings to the Sections of this Agreement are included merely for reference and shall not affect the meaning of the language included therein. This Agreement is written in the English language only, which language shall be controlling in all respects. If applicable, this Agreement may be executed in counterparts or by facsimile, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement.

WHEREFORE, the Parties acknowledge that they have read and understood this Agreement and voluntarily accept the duties and obligations set forth herein.

Disclosing Party	Recipient Party
The City of Seattle, by and through its **City Light Department**	_____
By: _____	By: _____
Title:	Title:
Address: 700 Fifth Avenue, Suite 3200 PO Box 34023 Seattle, WA 98124-4023	Address: