MEMORANDUM OF AGREEMENT
UT 01474
SR 99 ALASKAN WAY VIADUCT REPLACEMENT
SPU FACILITIES WORK AGREEMENT
FOR SR99 BORED TUNNEL PROJECT

THIS Memorandum of Agreement, UT 01474, SR 99 Alaskan Way Viaduct Replacement, SPU Facilities Work Agreement for SR 99 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 Public Utilities, hereinafter "SPU"), 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, 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 01474 Agreement, the STATE and CITY, through Seattle City Light (SCL), are entering into an agreement, UT 01476; and

WHEREAS, concurrently with this UT 01474 Agreement, the STATE and CITY, through the Seattle Department of Transportation, 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 SPU Facilities Relocation Work and the SPU Facilities Deformation Mitigation Work will comprise the "SPU 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 SPU Facilities, or the design and construction of any new SPU Facilities that is not attributable to the PROJECT or PROGRAM and is made solely for the benefit of and at the election of SPU. Examples of work that will not constitute a Betterment, so that SPU shall not bear cost responsibility, are:

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

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

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

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, GCA 6486 and UT 01476:

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 SPU 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 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 SPU 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 SPU.

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, and the installation or reconstruction of each Conflicting Facility to its permanent and final location and work necessary to continue service to SPU 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 SPU means Seattle Public Utilities.

1.36 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.

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

1.38 STATE means the Washington State Department of Transportation.

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

1.40 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.

1.41 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.

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

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

1.44 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 01476 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 SPU 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 SPU services required for construction of the PROJECT; and any work needed to obtain permanent SPU services to the bored tunnel or SPU customers; regardless of whether such SPU Facilities Deformation Mitigation Work is performed by the SPU or other CITY staff, the STATE, or its contractor, as set forth in the Approved Plans, and any SPU-approved revisions to the Approved Plans, without reimbursement from SPU, including change orders, but excluding Betterments or New Work as defined in this Agreement. No delay costs shall be paid for by SPU.

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 SPU is responsible for relocating SPU Conflicting Facilities. SPU's relocation responsibility is limited to the final relocation of each SPU 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 SPU Facility.

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

2.18 By entering into this Agreement, the CITY is not waiving its position that the CITY and/or its citizens and property owners cannot be held responsible for any or all cost overruns related to the portions of the PROJECT for which the STATE is responsible.

3. RESPONSIBILITIES REGARDING SPU CONFLICTING FACILITIES

3.1 The STATE shall identify all Conflicting Facilities.

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

3.3 The STATE is responsible for preparing Conceptual Relocation Plans that document 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 SPU; incorporating SPU 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 construction staging plans.

3.4 The STATE agrees to provide the Conceptual Relocation Plan(s) to SPU in a timely manner that accommodates the PROJECT schedule. SPU agrees to promptly provide either its comments on, or approval of, the Conceptual Relocation Plan(s). SPU's responsibility for the Relocation Work begins when the PARTIES have written mutual agreement, in the form of a Task Order or a 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 the SPU's design or construction work obsolete, the STATE shall reimburse SPU for the accrued costs of the obsolete work.

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

4. STATE RESPONSIBILITIES REGARDING SPU 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 SPU 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 SPU 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 SPU input, shall develop and implement a plan for Deformation Mitigation Work. SPU'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. SPU shall participate on the task force and inform the STATE on feasibility and functionality of the Deformation Mitigation Work on SPU Facilities.

4.5 SPU shall provide input to the STATE regarding construction monitoring and deformation management activities when these activities pertain to SPU Facilities. SPU shall provide the STATE all necessary access to SPU Facilities for the purposes of design or implementation of mitigation measures. SPU may perform mitigation measures on behalf of the STATE in a manner and schedule that supports the STATE's PROJECT requirements. SPU'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 SPU Facilities as a consequence of Deformation or exceedance of watermain total displacement criteria as set forth in Section 4.8 of this Agreement, except that the STATE's responsibility to repair, replace or otherwise remedy the loss of function or capacity of SPU watermains shall end two (2) years after substantial completion of Design-Build Contract or earlier if the PARTIES agree that monitoring indicates that the rate of Deformation is not significant and further monitoring is unwarranted.

4.7 The STATE's monitoring program shall measure and documents Deformation that occurs between initiation of construction and completion of the monitoring period. As part of the monitoring program, the STATE agrees to conduct pre-construction video inspection surveys of gravity systems and leak surveys of water mains. Additionally, along with soil monitoring points, the STATE shall include pre-construction survey of accessible portions of the watermains and services, such as valves stems and meters. These points shall be monitored in the event that adjacent monitoring points approach the total displacement criteria for water mains or differential Deformation indicates a risk to services. For locations where direct monitoring of watermains and services is not provided, the STATE shall use spatial interpolation methodologies, to be agreed upon by the PARTIES, to estimate settlement at any point within

the Deformation zone of influence using all available and pertinent monitoring points. In the absence of direct monitoring points, the PARTIES agree that the displacement values determined by spatial interpolation shall be considered an acceptable estimate of watermain displacement attributable to the PROJECT for the purpose of determining that an exceedance has or has not occurred.

4.8 The STATE agrees to perform Deformation Mitigation Work on watermains that are subject to displacement in excess of the criteria established in the tables below.

Table 1. Maximum Total Displacement Criteria

Max Total Displacement at any one point (inches)

Pipe Size	4"	6"	8"	10"	12"	16"	20"	24"	30"	36"
Ductile Iron Pipe	5.5	4.0	3.7	2.5	1.5	1.2	1.0	1.0	1.0	0.9
Cast Iron	N/A	2.86	2.28	N/A	1.66	1.24	0.92	0.68	0.50	N/A

4.9 For cast iron watermains, unless otherwise agreed by the PARTIES, the STATE shall be responsible to replace the impacted watermain to the nearest joint or appurtenance where the interpolated amount of Deformation is half the maximum total displacement criteria. Actual field conditions will be considered in determining the total pipe replacement.

4.10 For ductile iron watermains, unless otherwise agreed by the PARTIES, the STATE shall be responsible to repair or realign the impacted watermain to the nearest joint or appurtenance where the interpolated amount of Deformation is half the maximum total displacement criteria. Actual field conditions will be considered in determining the total pipe repair or realignment.

5. DESIGN, PLAN REVIEW, CHANGE MANAGEMENT

5.1 Where the STATE is performing the design of SPU Facilities Work, the STATE and SPU 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 facility any area in or near the tunnel portals on which a SPU 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 SPU Facility within limited access boundaries.

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 SPU 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 SPU staff per applicable State and Federal laws, and City of Seattle standards, for the SPU Facilities Work in accordance with the Approved Plans and any SPU-approved revisions to the Approved Plans. The STATE will not provide personal protective equipment for SPU 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

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

9. FUNDING OF SPU 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 within Section 4 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 SCL Agreement UT 01476.

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 SPU.

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 SPU funds, and all PROJECT decisions that may have operational, maintenance, or access impacts to SPU Facilities, require concurrence of SPU.

10. SPU'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 SPU, which is not to be less than ten (10) Business Days, SPU may, but is not required to, correct and remedy such work by any means as SPU may deem necessary, including the use of SPU staff or contractors.

10.2 If the STATE or its contractor fails to comply with a written notice to remedy what SPU determines to be an emergency situation, SPU may, but is not required to, have the non-conforming, 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 SPU 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 SPU 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 SPU 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 SPU performing any work.

10.5 Any and all services, including direction, provided by SPU pursuant to this section shall be subject to all limitations on the CITY's liability contained in GCA 6486, including but not limited to Section 16, Risk Allocation.

11. SPU ACCESS AND INSPECTION OF SPU FACILITIES WORK

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

11.2 The STATE shall ensure the SPU has the right to safe access to their facilities at any time to operate and maintain existing and newly installed SPU Facilities or to inspect or perform SPU Facilities Work. For purposes of this Agreement, "access" shall mean that the hydrants, meter, valves, or similar surface water system facilities, and drainage and wastewater system facilities shall not be blocked, covered or otherwise inaccessible to SPU. With the exception of SPU's on-site inspector, SPU 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 The STATE agrees and acknowledges that SPU shall have an on-site inspector available during the construction of SPU Facilities for SPU's quality assurance. The STATE agrees and acknowledges SPU's on-site inspector shall (a) have timely and complete access to the construction work associated with the SPU Facilities Work; (b) be timely informed of all relevant construction timelines associated with such work; and (c) have the authority to, but not be required to, reject and have corrected and/or replaced any construction or materials deemed to be deficient, or which deviate from the Approved Plans or any SPU-approved revisions to the Approved Plans. In such instances, SPU's on-site inspector, or SPU's project manager, will immediately direct comments and issues to the STATE's construction Project Engineer or designated representative, which will be followed up in writing as soon as possible but no later than ten (10) Business Days of the date of any inspection. The STATE shall promptly address each comment or issue presented by SPU to SPU's satisfaction. SPU staff will continue to be supervised by SPU management.

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

11.5 The STATE shall provide SPU with timely notice prior to commencement and completion of all material stages of the SPU Facilities Work and shall invite SPU to inspect such work upon completion of any material stage. The STATE shall timely address each comment or

issue presented by SPU to SPU's satisfaction. Both PARTIES agree to act as expeditiously as possible to assure a timely resolution of any deficiencies.

11.6 SPU shall observe the work on SPU Facilities performed by the STATE to satisfy SPU's needs for quality assurance. SPU will notify the STATE if SPU observes defective SPU 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 SPU Facilities shall not be placed into interim use or operation, or transferred to the City, unless or until: (a) SPU has participated in an inspection of the SPU Facilities; (b) any deficiencies or Defective Work have been resolved or corrected to SPU's satisfaction; and (c) SPU confirms with the STATE in writing that SPU's minimum inspection and testing requirements for the SPU Facilities have been met, including completion of the Washington State Department of Health Completion Report for watermains.

13. 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 FRANCHISE/UTILITY PERMITS

14.1 SPU 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 SPU 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 SPU Facilities, including, without limitation, identification and investigation of Hazardous Substances as provided in Section 5 of the GCA 6486. The STATE shall provide to SPU, 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 SPU Facilities 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 substantially in the form of, 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 SPU 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 SPU 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 SPU continues to be allowed access to its facilities.

14.6.1 The STATE's limited access 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 SPU to access its SPU 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 SPU Facilities of a significant size, or that are difficult to relocate, outside of the limited access facility boundaries.

14.6.5 I n the event the STATE designates as a limited access facility any area in or near the tunnel portals on which a SPU Facility exists or will be relocated, the STATE agrees to provide SPU a SPU 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. SPU 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 PARTY's Designated Representative, as defined in Section 8 above, shall notify the other PARTY's 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 WSDOT project engineer and the SPU 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 Project Director of WSDOT and the SPU Project Delivery Branch Deputy Director 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 PARTY's 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. 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 AWV Program Administrator and Director of Seattle Public Utilities 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 PARTY's 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 SPU Bored Tunnel Agreement.

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 and GCA 6486, UT 01474, and UT 01476.

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 PUBLIC UTILITIES

_____

By:
Ray Hoffman
Director

Date: _____

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

By: _____
Print: _____
Title: _____

Date: _____

APPROVED AS TO FORM:

_____
By (print)

_____
Signature
Assistant Attorney General

Date: _____

MEMORANDUM OF AGREEMENT

UT 01474
SR 99 ALASKAN WAY VIADUCT REPLACEMENT
SPU FACILITIES WORK AGREEMENT
FOR SR 99 BORED TUNNEL PROJECT

EXHIBIT A
EASEMENT DEED
TEMPLATE

(Permanent Easement to City of Seattle, SPU)

AFTER RECORDING RETURN TO:

SPU Real Property Services
PO Box 34018
Seattle, WA 98124-4018

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

SR 99, _____[insert summary description of vicinity]

This NON-EXCLUSIVE PERMANENT EASEMENT is made this _____ day of _____ _____, 20___, between_____, hereinafter referred to as the Grantor and the City of Seattle, a municipal corporation, acting through and by Seattle Public Utilities, 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 over, under, upon and across the hereinafter described lands and premises.

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

See Exhibit A attached hereto and made a part hereof ("Easement Area")

This Easement Deed includes the following rights, privileges, authorities and obligations:

A. Purpose and Uses

1. As used in this Section A, "Grantor" shall include Grantor's employees, contractors, tenants, lessees, agents, invitees, consultants, successors and assigns. As used in this Section A, "Grantee" shall include Grantee's employees, contractors, agents, invitees, consultants, successors and assigns.

2. Grantee shall have the right to use the Easement Area to install, construct, alter, repair, operate, improve and maintain water, sewer or drainage infrastructure including appurtenances (collectively hereinafter "Utility Facilities") and the right at any time to remove all or any part of said Utility Facilities from said lands.

3. Grantee's Access. Grantee shall have twenty-four hour access to the Easement Area across, over or from Grantor's property for the purposes and uses stated above. Grantee's rights of ingress and egress shall include the right to limit or eliminate parking in the vicinity of the Easement Area in order to facilitate necessary and convenient access to the Utility Facilities.

4. Utility Facilities. Without limiting the generality of the purpose and use stated above, Grantee, at its own expense, shall have the right to replace any of the Utility Facilities within the Easement Area with utility facilities of the same or larger diameter and capacity and to install additional or replacement utility facilities within the Easement Area.

5. Grantee shall have the right without prior institution of any suit or proceeding at law, at such times as may be necessary, to enter upon said Easement Area for the purposes herein described, without incurring any legal obligation or liability therefor.

6. Restoration of Easement Area. Grantee will restore the Easement Area following any maintenance, repair, replacement or construction of the Utility Facilities, to match the Easement Area's existing condition, prior to Utility Facilities construction, as nearly as practicable. In the event Grantee fails to restore the Easement Area as described following any maintenance, repair, replacement or construction of the Utility Facilities, Grantor shall have the right to restore the same at the Grantee's expense.

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

B. Grantor's Obligations and Activities in Easement Area

1. As used in this Section B, "Grantor" shall include Grantor's employees, contractors, tenants, lessees, agents, invitees, consultants, successors and assigns. As used in this Section B, "Grantee" shall include Grantee's employees, contractors, agents, invitees, consultants, successors and assigns.

2. Subject to the conditions set forth below, Grantor shall have the right to use the Easement Area in any way and for any legal purpose, including the granting of utility franchises, not inconsistent with the rights herein granted to Grantee and the terms and conditions of this Easement Deed.

3. Grantor hereby agrees that no building, fence, wall, rockery, trees, shrubbery or obstruction of any kind shall be erected or planted, or any fill material placed within the boundaries of said Easement Area without prior written permission of the Grantee.

4. Grantor shall not nor permit others to place any fill material over Utility Facilities within the Easement Area without Grantee's prior written approval. Such approval may not be unreasonably withheld, but may include such restrictions and conditions as are appropriate to protect existing and future planned Utility Facilities.

5. If Grantor intends to either carry out construction work in the Easement Area, or permit others to do so, Grantor shall request Grantee's approval by submitting detailed work plans to Grantee no less than ninety (90) days prior to the commencement of the proposed work. Grantee shall provide said approval, including such restrictions and conditions as reasonably appropriate to protect any Utility Facilities and operations, including future planned utility facilities, or written objections, specifying the grounds therefore, within thirty (30) days of submittal of Grantor's work plans. Grantee's authorization shall not be unreasonably denied and may include such restrictions and conditions as are appropriate to protect existing and future planned Utility Facilities.

6. In the event Grantor erects or plants any building, fence, wall, rockery, trees, shrubbery or obstruction of any kind in the Easement Area in violation of Section B.3 or places fill material over Utility Facilities in violation of B.4, Grantee shall have the right to remove the same at the Grantor's expense. In the event such improvements are destroyed or damaged by Grantee or its Utility Facilities, Grantee shall not be responsible for the restoration or repair of such improvements.

7. Grantor hereby agrees that no other utility facilities, whether public or private, will be installed within five (5) horizontal feet of the Utility Facilities. All utility crossings

must maintain a minimum vertical clearance of no less than eighteen (18) inches from the Utility Facilities. Where possible, sewer and storm drains shall be laid at a lower invert elevation than water mains.

8. Grantor shall not blast or discharge any explosives within 50 feet of the Easement Area, nor permit the same, without prior written permission of the Grantee.

9. Parking of vehicles or storage of materials over water meter or valve boxes is not allowed.

C. Indemnification

Grantee is to be responsible, as provided by law, for any damage to the Grantor through its negligence in the construction, replacement, maintenance and operation of the Utility Facilities across, upon and under the property of said Grantor, but nothing herein shall require Grantee to indemnify Grantor for that portion of any such liability attributable to the negligence of the Grantor or to the negligence of others. Grantor shall be responsible for any damage to the Grantee through its negligence.

D. Compliance with Laws

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

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

E. Venue

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

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 _____

Exhibit A

Easement Area:

[Insert legal description of the Easement Area]

MEMORANDUM OF AGREEMENT
UT 01474
SR 99 ALASKAN WAY VIADUCT REPLACEMENT
SPU 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 SPU

By:_____

STATE OF WASHINGTON
Department of Transportation

By:_____