CB 117101
#1

ORDINANCE _____

AN ORDINANCE relating to the State Route 99 Alaskan Way Viaduct and Seawall Replacement Program; entering into certain agreements with the State of Washington as provided in RCW 39.34.080, RCW chapter 47.12, and other applicable law; and ratifying and confirming certain prior acts.

WHEREAS, in the 1950s, the City of Seattle and the Washington State Department of Transportation jointly designed and built the Alaskan Way Viaduct to accommodate passenger and freight mobility into the foreseeable future; and

WHEREAS, in 2001 the Nisqually earthquake damaged the Alaskan Way Viaduct and Seawall; and

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

WHEREAS, various studies have determined that it is not fiscally responsible to retrofit the viaduct, and that retrofitting would cause significant construction impacts; and

WHEREAS, in March 2007, the Washington State Governor, the King County Executive, and the Mayor of Seattle pledged to advance a series of key State Route 99 projects (Moving Forward Projects) that will facilitate the removal and/or repair of key portions of SR 99, including the Yesler Way Vicinity Stabilization Project, Electrical Line Relocation, the SR 99 South Holgate Street to South King Street Viaduct Replacement Project, and Transit Enhancements and Other Improvements; and

WHEREAS, in 2008 the State and City agreed to guiding principles for replacing the Alaskan Way Viaduct: improve public safety; provide efficient movement of people and goods now and in the future; maintain or improve downtown Seattle, regional, Port of Seattle and state economies; enhance Seattle's waterfront, downtown and adjacent neighborhoods as a place for people; create solutions that are fiscally responsible; and improve the health of the environment; and

WHEREAS, in 2008 the State and the City considered feedback from 16 meetings of a stakeholder advisory committee made up of representatives from business, labor, environmental, and neighborhood interests, and more than one thousand public comments collected during quarterly public meetings and more than 50 community briefings; and

WHEREAS, in January 2009, the Governor of Washington, the Mayor of Seattle and the King County Executive jointly recommended replacing the Alaskan Way Viaduct with a bored tunnel beneath downtown Seattle; and

CITY CLERK

WHEREAS, the Washington State Legislature passed Engrossed Substitute Senate Bill 5768 and the Governor signed the bill into law designating and funding the preferred Bored Tunnel Program as the replacement for the Alaskan Way Viaduct, pending the completion of environmental review; and

WHEREAS, the proposed Alaskan Way Viaduct and Seawall Replacement (AWVSR) Program consists of a four-lane bored tunnel and improvements to City streets, the waterfront, and transit, and the Moving Forward Projects; and

WHEREAS, in October 2009, the City Council passed and the Mayor signed Ordinance Number: 123133, which established the Bored Tunnel Alternative as the City's preferred alternative and which authorized a memorandum of agreement between the State of Washington and the City of Seattle; and

WHEREAS, that agreement contemplated that the State and City would negotiate further agreements detailing the State and City's relative rights and responsibilities in the State highway project; and

WHEREAS, In August 2010, the City Council passed Resolution Number: 31235, which expressed the City Council's intent to authorize additional agreements with the State if:

1) The State awarded a contract consistent with the Draft Design-Build Contract;

2) The State demonstrated it could complete all elements of WSDOT's Program within the Program Budget;

3) The State provided the City with clear documentation identifying all changes between the Draft Design-Build Contract and the awarded construction contract; and

4) The State Legislature has not enacted legislation to overturn WSDOT's responsibility for Program costs, including cost overruns, as set out in the proposed agreements between the State and City; and

WHEREAS those conditions have been met; and,

WHEREAS Resolution 31235 also restated the City's policy that the State is solely responsible for all costs, including any cost overruns, related to implementing WSDOT's Program; and

WHEREAS the City and State have negotiated final versions of interlocal agreements, which are attached to this ordinance as Exhibit A, Attachments 1, 2 , and 3 ("The Agreements");

2011 CITY CLERK

WHEREAS in a letter dated January 28, 2011, the State has offered to enter into the Agreements as legally binding contracts between the State and the City; and

WHEREAS the City's timely acceptance of the Agreements by enactment of this ordinance will protect the City's vital interests;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. In a letter dated January 28, 2011, (Exhibit A to this Ordinance), the State of Washington has offered to enter into and be legally bound by the Agreements, in the form of Attachments 1, 2 and 3 to Exhibit A, if the City accepts the Agreements by ordinance as provided in RCW 39.34.080, Chapter RCW 47.12, and other applicable law. The Agreements" are:

1. MEMORANDUM OF AGREEMENT NO. GCA 6486, SR 99 ALASKAN WAY VIADUCT, PROPERTY, ENVIRONMENTAL REMEDIATION, DESIGN REVIEW, PERMITTING, AND CONSTRUCTION COORDINATION AGREEMENT FOR SR 99 BORED TUNNEL PROJECT, attached as Attachment 1 to Exhibit A;

2. MEMORANDUM OF AGREEMENT UT 01476 SR 99 ALASKAN WAY VIADUCT REPLACEMENT BORED TUNNEL PROJECT SPU FACILITIES WORK, attached as Attachment 2 to Exhibit A; and

3. MEMORANDUM OF AGREEMENT UT 01474 SR 99 ALASKAN WAY VIADUCT REPLACEMENT BORED TUNNEL PROJECT SCL FACILITIES WORK, attached as Attachment 3 to Exhibit A.

Section 2. Acceptance of the Agreements. By enacting this ordinance, the City of Seattle accepts the offer made by the State and agrees that the City shall be legally bound by the

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Agreements attached as Exhibit A, Attachments 1, 2, and 3. The Agreements, having been accepted by the legislative authority of the City of Seattle by this ordinance as provided in RCW 39.34.080, RCW Chapter 47.12, and other applicable law, shall be effective as of the effective date of this ordinance.

Section 3. Signature as a Ministerial Act. The City Clerk is authorized to sign the Agreements as a ministerial act evidencing the City's acceptance of the Agreements.

Section 4. As provided in Seattle City Charter Article V, Section 7, the Mayor shall see that the Agreements are faithfully kept and performed.

Section 5. Authority to Amend the Agreements. Section 30.4 of Exhibit A, Attachment 1 provides:

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

For purposes of Section 30.4, "duly authorized by the City" means expressly authorized by ordinance and the City's "duly authorized representative" means the person identified in that authorizing ordinance.

Section 6. The City Council is authorized to decide whether to issue the notice referenced in Section 2.3 of each Agreement. That decision shall be made at an open public meeting held after issuance of the Final Environmental Impact Statement.

Section 7. Any act consistent with the authority of this ordinance taken after the passage of this ordinance and prior to its effective date is hereby ratified and confirmed.

CITY CLERK

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

Passed by the City Council the 7th day of Feb., 2011, and signed by me in open session in authentication of its passage this 7th day of Feb., 2011.

President _____ of the City Council

Approved by me this ____ day of _____, 20__.

Michael McGinn, Mayor

Filed by me this ____ day of _____, 20__.

City Clerk

VETO

(Seal)

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Exhibit A Letter from State of Washington to the City of Seattle dated January 28, 2011.

Attachments to Exhibit A:

1. MEMORANDUM OF AGREEMENT NO. GCA 6486, SR 99 ALASKAN WAY VIADUCT, PROPERTY, ENVIRONMENTAL REMEDIATION, DESIGN REVIEW, PERMITTING, AND CONSTRUCTION COORDINATION AGREEMENT FOR SR 99 BORED TUNNEL PROJECT.

2. MEMORANDUM OF AGREEMENT UT 01476 SR 99 ALASKAN WAY VIADUCT REPLACEMENT BORED TUNNEL PROJECT SPU FACILITIES WORK.

3. MEMORANDUM OF AGREEMENT UT 01474 SR 99 ALASKAN WAY VIADUCT REPLACEMENT BORED TUNNEL PROJECT SCL FACILITIES WORK.

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Washington State Department of Transportation
Paula J. Hammond, P.E.
Secretary of Transportation

Alaskan Way Viaduct & Seawall Replacement Program
999 Third Avenue, #2424, MS NB82-230
Seattle, WA 98104-4019

206-267-6840 / Fax 206-382-5291
TTY: 1-800-833-6388
www.wsdot.wa.gov

January 28, 2011

Councilmember Richard Conlin, President
City of Seattle
PO Box 34025
Seattle, WA 98124-4025

Monica Martinez Simmons, City Clerk
City of Seattle
PO Box 94728
Seattle, WA 98124-4728

Subject: Memorandums of Agreement Between the City of Seattle and Washington State Department of Transportation for the SR 99 Bored Tunnel Project

Dear Council President Conlin and City Clerk Simmons:

The Washington State Department of Transportation (WSDOT) and City of Seattle have worked together to develop mutually agreeable agreements regarding how we will work together to advance the proposed bored tunnel project to replace the seismically vulnerable Alaskan Way Viaduct. These agreements address utility design and relocation on behalf of Seattle Public Utilities and Seattle City Light, and property, environmental remediation, design review, permitting, and construction coordination with the Seattle Department of Transportation.

The negotiated agreements are attached as Attachments 1, 2 and 3 to this letter. By this letter, WSDOT offers to enter into and be legally bound by the agreements. The agreements have been signed by myself as an authorized representative of the state.

Please accept the WSDOT's offer and agree to enter into and be legally bound by these agreements by enacting an ordinance as provided in RCW 39.34.080, RCW Chapter 47.12, or other applicable law. We agree that the City of Seattle and WSDOT will be legally bound by the agreements as of the effective date of an ordinance passed by the City Council.

Sincerely,

Ronald J. Paananen, P.E.
WSDOT Program Administrator
Alaskan Way Viaduct Replacement Program

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Attachment 1: Memorandum of Agreement No. GCA 6486
SR 99 Alaskan Way Viaduct
Property, Environmental Remediation, Design Review, Permitting, and Construction Coordination Agreement For SR 99 Bored Tunnel Project

Attachment 2: Memorandum of Agreement UT 01476
SR 99 Alaskan Way Viaduct Replacement
SCL Facilities Work Agreement For SR99 Bored Tunnel Project

Attachment 3: Memorandum of Agreement UT 01474
SR 99 Alaskan Way Viaduct Replacement
SPU Facilities Work Agreement For SR99 Bored Tunnel Project

cc: Marty Loesch, Governor's Office, Director of External Affairs & Senior Counsel
Paula Hammond, WSDOT, Secretary of Transportation
Dave Dye, WSDOT, Deputy Secretary of Transportation and COO
Bryce Brown, Assistant Attorney General, WA State
Kimberly Farley, AWV Office, Director of Operations

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Attachment 1

Memorandum of Agreement No. GCA 6486

SR 99 Alaskan Way Viaduct

Property, Environmental Remediation, Design Review, Permitting, and Construction Coordination Agreement For SR 99 Bored Tunnel Project

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MEMORANDUM OF AGREEMENT
NO. GCA 6486
SR 99 ALASKAN WAY VIADUCT
PROPERTY, ENVIRONMENTAL REMEDIATION, DESIGN REVIEW, PERMITTING, AND CONSTRUCTION COORDINATION AGREEMENT
FOR SR 99 BORED TUNNEL PROJECT

THIS Property, Environmental Remediation, Design Review, Permitting, and Construction Coordination Agreement, No. GCA 6486 for the SR 99 Bored Tunnel Project ("Agreement" or "SDOT Agreement" or "GCA 6486 Agreement") is made and entered into, as provided in RCW 39.34.080, RCW 47.12.040 and other applicable law, between the Washington State Department of Transportation, hereinafter the "STATE," and the City of Seattle hereinafter the "CITY" (managed by the Seattle Department of Transportation, hereinafter "SDOT"), 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

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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 PARTIES are entering into this Agreement on the assumption that the PROGRAM can and will be completed at or below the current WSDOT PROGRAM budget; 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 AWV in 2016; and

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

WHEREAS, review of the PROJECT pursuant to the State and City environmental policy laws is currently underway and the PARTIES recognize that changes in the alternative chosen would require a new agreement; 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 GCA 6486 Agreement, the STATE and CITY, through Seattle City Light (SCL), are entering into an agreement, UT 01476; and

WHEREAS, concurrently with this GCA 6486 Agreement, the STATE and CITY, through its Seattle Public Utilities Department (SPU), are entering into an agreement, UT 01474; and

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

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

WHEREAS, some portion of SR 99 is within the PROJECT and is a City street serving as part of a State Highway under RCW 47.24.010; and

WHEREAS, the PARTIES wish to establish protocols and procedures for property acquisition, environmental remediation, design review, permitting, and construction coordination to govern their relationship during the course of the PROJECT; and

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

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

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 this Agreement, that the plans conform to the criteria established in this Agreement, UT 01474 and UT 01476; 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 Business Days means Monday through Friday, inclusive, except for official City of Seattle and state holidays.

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

1.5 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.

1.6 CITY Designated Representative means the CITY official listed in Section 25 of this Agreement.

DAS CITY CLERK

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 Interest Property means CITY Street Right-of-Way plus all other real property that the CITY owns or in which the CITY has a real property interest on the effective date of this Agreement, or in connection with the PROGRAM is to acquire ownership of or an interest in real property or a different utility-related right from the STATE, which includes, but is not limited to, Program Transfer Property. CITY Interest Property does not include real property acquired or to be acquired by the STATE for planned limited access facilities such as the bored tunnel, portals and access for which no real property interest or different utility-related right will be transferred to the CITY.

1.10 City of Seattle means CITY.

1.11 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 UT 01476:

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

1.12 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.

1.13 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. Conflicting Facilities do not include any SPU Facilities or SCL Facilities that have been relocated to or installed or reconstructed in their present location by the STATE or by order of the STATE as part of the Moving Forward projects of the Program south of Dearborn Street.

1.14 Contract Award means the STATE's written decision accepting a 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, or 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 Design-Bid-Build Contract means a project delivery method in which the STATE provides a complete design, advertises for bids, and awards a contract to the lowest responsive bidder who is responsible for completing the construction of the project.

1.18 Design-Build Contract means a project delivery method in which the STATE develops a conceptual design and requests proposals from pre-qualified contractors. The contract is awarded to the contractor with the best value responsive proposal. The contractor is responsible to complete the design and construct the project.

1.19 Design Builder means the entity with whom the STATE enters into a Design-Build Contract and who is responsible to complete the design and construct the project.

1.20 Design Submittal means plans, specifications, and design documentation representing design of a given project element in a Design-Build Contract.

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

1.22 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.

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

1.24 Environmental Law(s) means any environmentally related local, state or federal law, regulation, ordinance or order (including without limitation any final order of any

DAS CITY CLERK

court of competent jurisdiction of which the STATE has knowledge), now or hereafter in effect including, but not limited to: the Federal Clean Air Act; the Federal Water Pollution Control Act; the Federal Safe Drinking Water Act; the Federal Comprehensive Environmental Response Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986; the Federal Resource Conservation and Recovery Act, as amended by the Solid and Hazardous Waste Amendments of 1984; the Federal Occupational Safety and Health Act; the Federal Emergency Planning and Right-to-Know Act of 1986; the Federal Hazardous Materials Transportation Control Act of 1980; the Federal Clean Water Act of 1977; the Federal Insecticide, Fungicide and Rodenticide Act; the Federal Waste Management Recovery and Recycling Act; the Washington Hazardous Waste Management Act; the Washington Hazardous Waste Fees Act; Washington Model Toxics Control Act; the Washington Nuclear Energy and Radiation Act; the Washington Radioactive Waste Storage and Transportation Act; the Washington Underground Petroleum Storage Tanks Act; and any regulations promulgated thereunder from time to time.

1.25 Final Design Submittal means plans, specifications, and design documentation representing complete design of a given project element in a Design-Build Contract. The Final Design Submittal addresses and incorporates review comments from the Preliminary Design Submittal.

1.26 Final Plan Review Package means the Plan Review Package submitted to the CITY that comprises the STATE's contract documents including contract addenda and fully incorporates or otherwise addresses all CITY plan review comments and all applicable conditions of the Street Use Permit.

1.27 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.

1.28 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.

1.29 Letter of Plan Approval means the letter provided to the STATE by the CITY following the completion of the plan review process, signifying that the 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 this Agreement.

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

1.31 Plan Review Package means clear and complete plans, specifications, and the necessary assumptions, studies, models and calculations upon which the design was based, and corrections previously requested by the CITY with respect to design-bid-build projects.

1.32 100% Plan Review Package means the Plan Review Package submitted to the CITY concurrent with STATE's final internal review of the construction contract plans and contract provisions that shall evidence the agreement between the STATE and its contractors for construction of design-bid-build projects.

1.33 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.

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

1.35 PROJECT means , 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 will be addressed in a future agreement); and associated utility relocations. The PROJECT description is attached as Exhibit A.

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

1.37 Program Property means all real property interests acquired and to be acquired by the STATE for the PROGRAM.

1.38 Program Transfer Property means all Program Property identified by the STATE and the CITY for transfer from the STATE to the CITY in fee simple.

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1.39 Project Property means all real property interests acquired and to be acquired by the STATE and used for the PROJECT.

1.40 Released for Construction Submittal (RFC Submittal) means in a Design-Build Contract, plans and specifications for a given project element that are construction ready and have been certified by the Design-Builder as having met all contract requirements and received all approvals and permits. The Released for Construction Submittal addresses all review comments from the Preliminary and Final Design Submittals.

1.41 Relocation Work means the removal or abandonment of Conflicting Facilities maintenance of service for those facilities and the installation or reconstruction of Conflicting Facilities to their permanent and final location.

1.42 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.

1.43 Round Table Meeting means a meeting typically held five (5) weeks following the submittal of the 100% Plan Review Package to the CITY and STATE, and commonly attended by the STATE's Project team and STATE reviewers to resolve and address STATE comments on the 100% Plan Review Package.

1.44 SCL means Seattle City Light.

1.45 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.

1.46 SDOT means the Seattle Department of Transportation.

1.47 SDOT Facilities means the transportation facilities impacted by, or constructed as part of, the PROJECT that are owned or will be owned by the CITY.

1.48 SPU means Seattle Public Utilities.

1.49 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.

1.50 STATE means the Washington State Department of Transportation.

1.51 STATE Designated Representative means the STATE official listed in Section 25 of this Agreement.

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

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

1.54 Surplus Property means Program Property, excluding Program Transfer Property and other CITY Interest Property, that upon completion of the PROJECT has not been designated as part of the limited access or non-limited access right-of-way of State Route 99.

1.55 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.

1.56 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.

1.57 UTILITY means City of Seattle Utility Departments, Seattle City Light and Seattle Public Utilities.

1.58 WSDOT means Washington State Department of Transportation.

2. GENERAL RESPONSIBILITIES

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 UT 01474 and UT 01476 is prepared by the STATE and CITY, as provided in RCW 39.34.080, RCW 47.12.040 and other applicable law, 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 only preliminary design work and other work outlined in 23 CFR 636.109(b)(2) may proceed under this Agreement prior to issuance of a Final SEPA/NEPA Environmental Impact Statement (FEIS) and federal Record of Decision (ROD). If an alternative other than the Proposed Bored Tunnel is selected, this Agreement will be terminated pursuant to the provisions of

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Section 28 of this Agreement. If the Proposed Bored Tunnel is selected, the remaining work under this Agreement other than preliminary design work may proceed no sooner than after issuance of the ROD and only after WSDOT and the City Council each provide notice to the other that it wishes to proceed with the Agreement. WSDOT will provide Notice to Proceed 2, which authorizes final design and construction, to the Design Builder only after issuance of the ROD.

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 stage if both PARTIES determine the modifications are necessary and reasonable, to minimize design conflicts.

2.8 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 at its cost such damage should it occur.

2.9 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 SDOT 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, to agree to reimburse the other PARTY for such services.

2.10 The PARTIES agree that the STATE is responsible for funding the design and construction of a re-located surface street within the Alaskan Way right-of-way from South King Street to Pine Street, a new surface street from the intersection of Pine Street and Alaskan Way to Battery Street connecting Alaskan Way to Elliot and Western

Avenues, the demolition of the existing Alaskan Way Viaduct, and Battery Street Tunnel decommissioning. These rights-of-way and surface streets will be designed to serve all anticipated users, including automobiles, transit, freight, bicycles and pedestrians. The CITY and STATE will jointly perform the design and construction of the Viaduct demolition. Additional details regarding of the funding, design, and construction provisions for the street and Alaskan Way Viaduct demolition will be the subject of a future agreement.

2.11 The PARTIES agree that the PROGRAM will not be complete until the elements in Exhibit D are completed. The PARTIES agree that the current scope identified for certain elements of the PROGRAM is reflected in Exhibit D. Future mutual agreement of the PARTIES shall be required in order to reduce or substantially alter the scope outlined in Exhibit D. WSDOT shall provide the City with quarterly updates regarding the PROJECT and PROGRAM budget to ensure timely negotiation of scope issues.

2.12 The PARTIES recognize that the STATE proposes to toll the bored tunnel as part of the PROJECT, if the tunnel is selected as the preferred alternative. The STATE agrees to evaluate and work with the CITY (in advance of tolls being imposed, during toll implementation, and for a mutually agreeable period thereafter) to identify mitigation strategies for the effects that tolling may have with respect to diversion of vehicular traffic from the PROJECT onto CITY Streets. The STATE agrees that such evaluation and mitigation shall include effects on both vehicular traffic circulation on CITY streets as well as effects on CITY's ability to achieve its "Complete Streets" policy goals articulated in CITY's Resolution No. 30915, including but not limited to making CITY streets function well for bicycles, pedestrians, freight, transit and automobiles. Exhibit E contains the details of the Tolling Committee and is incorporated by reference herein.

3. PROPERTY ACQUISITION AND TRANSFER; SURPLUS PROPERTY

3.1 Acquisition

3.1.1 The STATE has or will acquire, at its expense, the Project Property. CITY responsibility for acquisition of real property interests or other utility-related property rights, if any, as set forth in Section 14.1 of UT 01474 and UT 01476.

3.1.2 The STATE is responsible, at its expense, for performance of all appraisals, appraisal review, title review, surveys, property investigation, relocation assistance and all other investigations and services in connection with the acquisition of the Project Property. For each parcel of Program Transfer Property, the STATE shall deliver to the CITY, as soon as practicable after a parcel is acquired and identified by the PARTIES as Program Transfer Property, all documents created, commissioned or received in connection with the STATE's acquisition of such parcel. Such documents shall include, to the extent applicable, appraisals, appraisal reviews, title reports and all documentation concerning title encumbrances, title policies, surveys, geotechnical reports, purchase agreements, term sheets, options, leases, deeds, indemnities, and all other documents and information created, commissioned or received by the STATE.

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3.1.3 The STATE is responsible for identification and investigation of Hazardous Substances on Program Property following procedures set in the WSDOT *Environmental Procedures Manual M 31-11* and WSDOT *Right of Way Manual M 26-01* that are in effect on the date of property acquisition. The STATE shall provide to SDOT's Real Property and Environmental Manager, as soon as practicable after a parcel is identified by the PARTIES as Program Transfer Property, copies of all documentation of environmental investigation concerning the Program Transfer Property, remedial actions, reports, studies or other documentation, whether received by or prepared by or for the benefit of the STATE, including, but not limited to, (1) documents relating to due diligence and/or all appropriate inquiry, environmental assessments, and remedial, removal or cleanup activities related to the Program Transfer Property; (2) documents relating to allegations, orders, claims, regulatory demands, or losses relating to the alleged existence or migration of any Hazardous Substance from or on any parcel of Program Transfer Property; and (3) any alleged violation of any Environmental Law or other information relating to environmental condition of the Program Transfer Property.

3.2 Transfer.

3.2.1 Prior to the start of PROJECT construction, the STATE and the CITY agree to enter into a separate written agreement governing transfer of Program Transfer Property to the CITY. The agreement shall identify the Program Transfer Property and provide that each transfer to the CITY shall be by quit claim deed. The agreement shall also provide the following: timing of transfer, condition of title, protection for utilities in the event of future sale, the definitions of Hazardous Substance and Environmental Law contained in this SDOT Agreement, and the following release and indemnification provision:

"The STATE hereby releases and indemnifies, protects and holds harmless the City of Seattle and its officers, officials, employees, and agents working within the scope of their employment from all liability and claims (including but not limited to liability and claims for response and remediation costs, administrative costs, fines, charges, penalties, attorney fees and cost recovery or similar actions brought by a governmental or private party, including third party tort liability) arising, directly or indirectly, from any presence or release of any Hazardous Substance remaining within or transported from the real property in which an interest is transferred."

The foregoing is not an exclusive list.

3.2.2 The PARTIES shall prepare and attach to the future agreement governing transfer of Program Transfer Property and this SDOT Agreement an exhibit containing a complete list of legal descriptions of the Program Transfer Property, which may be created and amended as necessary by the PARTIES' Designated Representatives without other approval by the PARTIES. A detailed property

description with map may be substituted for any legal description not yet available at the time the PARTIES execute the future agreement governing transfer of Program Transfer Property.

3.2.3 Whether or not any separate agreement or transfer document is made, effective beginning on the date of transfer of each real property interest from the STATE to the CITY in connection with the PROGRAM, the STATE shall release and indemnify, protect and hold harmless the City of Seattle and its officers, officials, employees, and agents working within the scope of their employment from all liability and claims (including but not limited to liability and claims for response and remediation costs, administrative costs, fines charges, penalties, attorney fees and cost recovery or similar actions brought by a governmental or private party, including third party tort liability) arising, directly or indirectly, from any presence or release of any Hazardous Substance remaining within or transported from the real property in which an interest is transferred.

3.3 Surplus Property. Prior to start of PROJECT construction, the STATE will provide a preliminary list to the CITY of all properties that appear to be Surplus Properties. Within two (2) years after final completion of the PROJECT, the STATE shall initiate its disposal of all Surplus Property pursuant to the provisions of chapter 47.12 RCW and following the procedures in the WSDOT *Right of Way Manual M 26-01.02*, dated August 2009, Chapter 11, Sections 11-7.1 – 11-7.4.2. Disposal includes any of the disposal methods described in Chapter 11, Sections 11-7.1 – 11-7.4.2. The timeline for the STATE's initiation of disposal of Surplus Property may be extended, if necessary, by the PARTIES' Designated Representatives.

3.4 Survival. The obligations set forth in this Section 3 shall survive termination of this SDOT Agreement unless otherwise expressly negotiated by the PARTIES and memorialized by written amendment to this SDOT Agreement.

4. TASK ORDERS, PAYMENT AND ADMINISTRATION

4.1 Some or all of the work undertaken pursuant to this Agreement may be governed by Task Orders. Task Orders shall be subject to the provisions of this Agreement.

4.1.1 Either PARTY may initiate a Task Order which will be jointly executed by the PARTIES.

4.1.2 The PARTIES will prepare and execute Task Orders by contract package or as otherwise agreed. All Task Orders shall be signed by the Designated Representative of the initiating PARTY and deemed executed when counter-signed by the Designated Representative of the other PARTY.

4.1.3 The general terms and conditions of this Agreement shall be applicable to all Task Orders issued under this Agreement.

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4.1.4 The form of each Task Order shall substantially conform to the Task Order Template attached as Exhibit C. Each Task Order shall contain a general description and scope of work, a schedule for completion, an itemized estimate of costs for the work, a cash flow projection and any provisions specific to the scope of work.

4.1.5 Each PARTY shall designate a manager for each Task Order. The designated Task Order managers are deemed to have the authority to modify the scope, schedule, and budget of the Task Order within the parameters of this Agreement.

4.2 Payment

4.2.1 The PARTIES shall not be obligated to reimburse any expenditure in excess of the maximum amount stated in each Task Order, unless the PARTIES have agreed to such additional reimbursements and the Task Order has been amended to describe the additional work in excess of the budgeted scope of work. The initiating PARTY shall promptly notify the other PARTY in writing as soon as it is known when the maximum funding obligation will be reached and shall also specify in writing its position regarding any remaining work covered by a Task Order which it believes was contained within the budgeted scope of work. Should its estimated costs on any Task Order exceed the amount authorized, the PARTY performing the work under the Task Order shall promptly notify the other PARTY in writing and shall specify in writing its position regarding why the estimated cost will be or has been exceeded.

4.2.2 The PARTIES shall negotiate the total authorized amount for each Task Order. Reimbursement will not be made for activities that are not covered in a Task Order. The PARTIES will establish a budget contingency for the estimated cost of the work covered under each Task Order as a part of the cost estimate for that Task Order.

5. ENVIRONMENTAL REMEDIATION DURING CONSTRUCTION

5.1 STATE Responsibilities. For CITY Interest Property the STATE shall be responsible for identification, investigation and Remediation of Hazardous Substances found within the limits of the PROJECT during its environmental due diligence of the Project Property and shall identify areas of known Hazardous Substances in conjunction with the Plan Review Packages and Design Submittals circulated for CITY review. In addition, the STATE shall be responsible for identification, investigation and Remediation of Hazardous Substances discovered during construction at CITY Interest Property. For CITY Interest Property, provisions for Remediation of known Hazardous Substances, approved Remediation plans, and provisions for Remediation of Hazardous Substances discovered during construction shall be included in the Plan Review Packages

and Design Submittals circulated for CITY review. Nothing in this Agreement is intended to alter the legal obligations of the STATE with respect to hazardous substances that may remain in place after completion of the PROJECT except for release and indemnity provisions of this Agreement.

5.2 Environmental Remediation will be in accordance with Environmental Law. At CITY Interest Property, the STATE shall follow the Model Toxics Control Act (MTCA) and associated procedures approved by the Washington State Department of Ecology for Remedial Action, and the STATE shall undertake Remediation using environmental professional judgment that achieves an overall effectiveness comparable to the substantial equivalent of a Washington State Department of Ecology conducted or supervised Remedial Action appropriate to the specific site conditions and contaminants with no environmental restrictions or covenants unless agreed to by the CITY in writing. For CITY Interest Property, the STATE is not obligated to implement public notification and documentation procedures common to the substantial equivalent of a Washington State Department of Ecology conducted or supervised Remedial Action.

5.3 At CITY Interest Property, the STATE shall not use soil found to exceed MTCA Method A cleanup levels or that exhibits visual and/or olfactory indications of Hazardous Substance as earth fill or trench backfill within the PROJECT. There shall be no requirements or agreements affecting the CITY Street Right-of-Way or other CITY Interest Property concerning ongoing monitoring of soil or groundwater relating to Hazardous Substances unless agreed to by the CITY in writing prior to Remedial Action.

5.4 At or adjacent to CITY Interest Property, under certain circumstances, and in consultation with the CITY, the STATE may conduct additional Remediation of contaminated areas, including areas outside the limits of the PROJECT. These circumstances may include, but are not limited to:

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

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

5.4.3 Where regulatory agencies with jurisdiction require additional Remediation;

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

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

5.5 All work at CITY Interest Property shall comply with the then-current WSDOT *Environmental Procedures Manual M 31-11* and WSDOT *Construction Manual M 41-*

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01, Environmental Law, and all applicable CITY regulations except as modified by this Agreement.

5.6 The STATE shall include the CITY in its ECAP when unanticipated contamination is found within the limits of the PROJECT at or adjacent to CITY Interest Property. Notification procedures will include notifying the CITY orally followed by written notification.

5.7 The STATE's Project Engineer shall determine, in consultation with the CITY, Remediation of known and unanticipated Hazardous Substances at or adjacent to CITY Interest Property within the limits of the PROJECT. In instances where the CITY disputes the STATE's plan(s) for Remediation in connection with CITY Interest Property, the CITY and STATE will resolve the dispute through the dispute resolution process in Section 23 of this Agreement.

5.8 The STATE shall prepare plans in consultation with the CITY for Remediation of known and unanticipated Hazardous Substances in connection with the CITY Street Right-of-Way and other CITY Interest Property, and shall obtain CITY concurrence prior to implementing Remedial Actions there. In instances where the CITY finds the STATE's plans for Remediation of these areas unacceptable, the CITY or STATE may request resolution through the dispute resolution process in Section 23 of this Agreement.

5.9 Prior to the start of construction, and after the contractor has been selected, the STATE shall initiate and host an environmental preconstruction meeting. The STATE shall invite City of Seattle staff, STATE staff and the STATE contractor to discuss known contamination, environmental procedures, environmental Remediation and permit conditions that apply to CITY Interest Property in connection with the PROJECT.

5.10 The STATE shall obtain all required permits and approvals for Remediation at CITY Interest Property, except for permits or approvals that this Agreement, UT 01474, or UT 01476 otherwise obligates SPU or SCL to obtain for SPU or SCL Relocation Work.

5.11 Remediation work at or adjacent to CITY Interest Property shall not proceed in areas outside of the limits of the PROJECT unless the STATE has obtained written permission of the property owner and appropriate permits to work on property that is not part of the PROJECT. The STATE shall make reasonable efforts to obtain permission of the property owner. The STATE may utilize the assistance of the State Department of Ecology as provided in the MTCA regulations.

5.12 The STATE shall provide the CITY with copies of environmental close-out reports for Remediation activities at CITY Interest Property.

5.13 All costs associated with testing, handling, storing, removing, transporting, disposing, or treating Hazardous Substances that are excavated in connection with the

PROJECT relating to CITY Interest Property shall be paid by the STATE, with the exception of such costs incurred during and directly caused by Relocation Work which SPU or SCL is obligated to fund under the terms of this Agreement, UT 01474, or UT 01476. In addition, STATE shall be responsible for all costs associated with Remediation of any releases that are caused or exacerbated by its own employees or contractors. The STATE shall be identified as the generator for these Hazardous Substances.

5.14 The CITY shall provide to the STATE all records regarding any known areas where Hazardous Substances may be located at CITY Interest Property within the limits of the PROJECT, including but not limited to environmental investigation reports for properties located in the PROJECT. The reports shall be provided for the STATE's information only, shall not be relied upon by the STATE, and the CITY's provision of these records shall not constitute a representation or warranty as to the accuracy of the information contained in the reports.

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

5.16 The STATE shall release and indemnify, protect, defend and hold harmless the City of Seattle and its officers, officials, employees, and agents, while acting within the scope of their employment, from all liability and claims (including but not limited to liability and claims for response and remediation costs, administrative costs, fines, charges, penalties, attorney fees and cost recovery or similar actions brought by a governmental or private party, including third party tort liability) arising, directly or indirectly, from any of the following: (1) any presence or release of any Hazardous Substance within or from the limits of the PROJECT, except for the presence of any Hazardous Substance as of the effective date of this Agreement within the portion of real property in which the City has a real property interest on that date or in which the City later acquires a real property interest for the purposes of the Program from an entity other than the STATE, and (2) the removal, transport or disposal in connection with the PROJECT of any Hazardous Substance for which the STATE or any person, contractor or other entity working on behalf of the STATE is a generator.

6. PERMITTING AND RIGHT-OF-WAY USE

6.1 The PARTIES shall apply for and obtain all necessary federal-, state- and CITY-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,

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approvals or permission for exploratory investigations, testing, site preparations, demolition and construction.

6.2 The CITY authorizes the STATE to use CITY Street Right-of-Way for the PROJECT, subject to issuance and provisions of Street Use Permits and the conditions contained in this Agreement. The STATE's use of CITY Street Right-of-Way shall comply with the Seattle Municipal Code and all other applicable laws, including but not limited to the Shoreline Management Act, the National Environmental Policy Act and the State Environmental Policy Act.

6. 3 The PARTIES agree that for the PROJECT, the PARTIES shall obtain Street Use Permits prior to undertaking work in the CITY Street Right-of-Way. The CITY shall provide for street use inspections pursuant to Title 15 of the Seattle Municipal Code, the Street Use Permit, and this Agreement.

6.4 The PARTIES agree to apply the conditions of the Street Use Permits issued for CITY Street Right-of-Way in connection with the PROJECT to PROJECT work outside CITY Street Right-of-Way if that work has a surface component and either is or will become CITY Street Right-of-Way or STATE right-of-way or Surplus Property upon completion of the PROJECT.

6.5 The PARTIES agree to abide by and comply with all requirements and conditions of the Street Use Permits. After a Street Use Permit is issued, the responsible PARTY will obtain Letters of Plan Approval for any subsequent revisions for amendments to design or to the Street Use Permit as set forth in the Procedures.

6.6 The Street Use Permits and Letters of Plan Approval are not a representation or assurance that the design or plans comply with applicable laws, regulations, ordinances or codes, nor shall the Street Use Permits or Letters of Plan Approval be construed to authorize any failure to comply with any of the foregoing.

6.7 The PARTIES will jointly order the relocation of any and all Private Utilities required for performance of the work on the PROJECT. The STATE shall manage the timely relocation of the Private Utilities. The STATE shall require its construction contractors to schedule and coordinate their activities with the relocation of Private Utilities. The PARTIES agree to perform their obligations under this provision, including, but not limited to, the CITY co-signing the relocation notices to the Private Utility owners and the CITY joining the STATE as an additional plaintiff in any litigation the STATE may need to pursue in order to require the Private Utilities to relocate. The STATE shall indemnify the CITY pursuant to Section 19 of this Agreement.

6.8 The PARTIES agree to establish alternative CITY regulatory process cost reimbursement in lieu of Use Fees as set forth in GCA 5739, Project Services Agreement and future amendments, as described in Section 10 of this Agreement.

7. DESIGN, PLAN REVIEW AND CHANGE MANAGEMENT

7.1 The PARTIES agree to work cooperatively with each other and shall make reasonable, good faith efforts to timely and expeditiously execute their respective roles and responsibilities related to the design and plan review and permitting called for in this Agreement.

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

7.3 Within the scope of this Agreement, the STATE agrees to consult with the CITY with regard to planning, design and construction of the PROJECT. The scope of the design and plan review by the CITY addressed by this Agreement is limited to the following elements:

7.3.1 CITY Infrastructure.

7.3.2 PROJECT work to the extent that it alters or impacts the configuration, condition or use of CITY property including CITY Facilities.

7.3.3 PROJECT work to the extent that it alters access to CITY Facilities.

7.3.4 PROJECT work in CITY Street Right-of-Way to the extent that it alters or impacts private property in a manner relevant to SMC Title 15.

7.3.5 PROJECT urban design as established in Section 8.

7.3.6 The temporary or permanent use or operation of CITY Street Right-of-Way for the PROJECT including maintenance of traffic.

7.3.7 Mitigation measures established by the STATE's review and determination of PROJECT environmental impacts pursuant to state and City environmental policy laws.

7.3.8 Private Utilities within CITY Street Right-of-Way.

7.3.9 Transit facilities within CITY Street Right-of-Way.

7.3.10 As provided in Section 5 of this Agreement, evidence of the STATE's environmental remediation-related commitments.

7.4 The CITY will conduct reviews of all stages of design to ascertain that the design of CITY Infrastructure and the design of PROJECT work and construction activity within CITY Street Right-of-Way comply with City Standards.

7.5 The PARTIES agree to prepare PROJECT designs, Plan Review Packages, and Design Submittals pursuant to the provisions established in this Agreement and the Procedures.

7.6 The PARTIES shall mutually prepare PROJECT schedules that afford the PARTIES adequate plan review and comment resolution periods sufficient to promote the quality of design consistent with the provisions of this Agreement.

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7.7 The STATE shall address all CITY plan review comments from each stage of plan review and incorporate agreed comment resolution into subsequent plan review submittals.

7.8 The PARTIES shall provide sufficient staff and resources for timely preparation and review of the PROJECT designs.

7.9 The CITY shall not give direction to the STATE's consultants or contractors during the design and review processes set forth in this Agreement and the Procedures.

7.10 Both PARTIES shall endeavor to identify and address issues as early as possible during the design process.

7.11 The STATE shall obtain the CITY's design approval for all City Infrastructure, and regulatory approval for PROJECT work within City Street Right-of-Way prior to constructing such work.

7.12 Designs and construction provisions for CITY Infrastructure shall comply with City Standards.

7.13 The PARTIES agree that design of CITY Infrastructure shall consider long-term operation and maintenance costs and requirements, and minimize potential interruptions and disruptions to CITY UTILITY customers.

7.14 The STATE shall obtain the CITY's approval prior to incorporating any deviations from City Standards into the design or construction of all CITY Infrastructure and CITY Facilities work.

7.15 The PARTIES agree that Approved Plans or Released for Construction Submittal for each component of the PROJECT shall be stamped by an engineer of record representing the PARTY preparing the Approved Plans pursuant to the requirements of state law.

7.16 The PARTIES shall first obtain the review and concurrence of the CITY prior to making or implementing revisions or deviations from the Approved Plans for any such revisions or deviations pertaining to elements listed in Section 7.3 of this Agreement.

7.17 The PARTIES acknowledge that the STATE may request the CITY to operate and maintain certain STATE-owned PROJECT facilities as may be established by separate agreement. The CITY shall, at the request of the STATE, review the design of such facilities to determine the compatibility of the design with the CITY's existing operational capabilities, standard practices, equipment and other resources required to operate and maintain such facilities.

8. URBAN DESIGN

8.1 The STATE and CITY agree to work together to develop standards that will promote appropriate urban and architectural design of the PROJECT.

8.2 The STATE and CITY have prepared the Bored Tunnel Design Goals and Objectives which were submitted to the Seattle Design Commission on January 21, 2010, Building Design Principles, which were submitted to the Seattle Design Commission on February 18, 2010, and Project Guiding Principles for the Portal Areas, which were submitted to the Seattle Design Commission on March 18, 2010.

8.3 The STATE and CITY have developed Portal Area Design Guidelines based on these Bored Tunnel Design Goals and Objectives and Guiding Principles. The Portal Area Design Guidelines include:

8.3.1 Functional highway, surface street and development configurations,

8.3.2 Landscaping concepts,

8.3.3 Architectural and urban design concepts for walls, bridges and tunnel portals,

8.3.4 Design guidance for highway appurtenances (i.e., barrier type, light standards, sign support types, etc.),

8.3.5 Conceptual designs for city streets, including sidewalks and plazas, and bicycle/pedestrian trails.

The Portal Area Design Guidelines were submitted to the Seattle Design Commission for review and comment. The final Portal Area Design Guidelines will be subject to final approval by SDOT. The Portal Area Design Guidelines will be used as the basis for the PROJECT design. The STATE agrees to develop a final design substantially in conformance with the Portal Area Design Guidelines.

8.4 The STATE has prepared Building Architectural Design Guidelines for the tunnel operations buildings based on the Building Design Principals. The tunnel operations buildings are physically part of and integrally related to the operation of the bored tunnel. The Building Architectural Design Guidelines were submitted to the Seattle Design Commission for review and comment. The final Building Architectural Design Guidelines will be subject to final approval by the SDOT. The Building Architectural Design Guidelines will be used as the basis for the PROJECT design. The STATE agrees to develop a final design substantially in conformance with the Building Architectural Design Guidelines.

8.5 The STATE agrees to create an Urban Design Task Force for the PROGRAM. The Urban Design Task Force shall include CITY, STATE and contractor representatives. This Urban Design Task Force will endeavor to resolve urban design and architectural issues.

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8.6 The following items shall be presented to the Seattle Design Commission (SDC) in accordance with Chapter 3.58 of the Seattle Municipal Code:

8.6.1 Preliminary and final tunnel operations building designs that include building blocking, stacking, façade treatments, façade materials and elevations shall be prepared in accordance with the Building Architectural Design Guidelines.

8.6.2 For areas within the design-build contract, preliminary and final portal area designs prepared in accordance with the Portal Area Design Guidelines.

8.6.3 For areas outside the design/build contract, 30%, 60% and 90% portal area design plans prepared in accordance with the Portal Area Design Guidelines.

8.7 The STATE shall endeavor to develop Tunnel Operations Building and Portal Area designs that incorporate SDC recommendations. The CITY shall verify the STATE's incorporation of SDC recommendations through the CITY review processes set forth in Section 7 in this Agreement.

8.8 Urban design issues lacking mutual agreement by the PARTIES will be referred to dispute resolution as provided in Section 23 of this Agreement..

9. SCHEDULE

9.1 The PARTIES will work together to develop schedule(s) for PROJECT work performed by the STATE or CITY.

9.2 The STATE will be responsible for developing and updating its PROJECT schedule(s) that identifies milestones for performing the work associated with the PROJECT with CITY input.

10. FUNDING AND COMPENSATION

10.1 The STATE shall provide necessary funding for all PROJECT costs as referenced in this Agreement without reimbursement from the City of Seattle, except for the CITY cost responsibilities established in this Agreement, in SCL Agreement UT01476, and in SPU Agreement UT 01474.

10.1.1 The STATE will reimburse SDOT for Project Services through the process provided for in Agreement GCA 5739, entitled Project Services Agreement for State Route 99 Alaskan Way Viaduct and Seawall Replacement Program and SR 519/I-90 Intermodal Access Project – I/C Improvements ("Project Services Agreement"), and as amended by the PARTIES to modify the process for the STATE's reimbursement of the CITY services and to extend the duration of the Project Services Agreement.

10.1.2 The categories of services that may be provided by the CITY are: project management, project controls and coordination, design review and

consultation, permit development and coordination, right of way services, and services to support construction activities.

10.2 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.

11. PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES

11.1 The STATE and the CITY agree that it is good public policy to utilize the services of Disadvantaged Business Enterprises in the construction of public works projects, to the fullest extent permitted by law.

11.2 In furtherance of the foregoing public policy, the STATE agrees to include Disadvantaged Business Enterprise (DBE) provisions in its construction contracts to the extent required by federal law for projects associated with this Agreement.

12. MONITORING AND DEFORMATION MITIGATION

12.1 The STATE agrees to assess potential impacts of Deformation on private property and CITY Facilities. Where the CITY has established deformation criteria for its Facilities, the criteria will be used in the STATE'S analysis. Otherwise, criteria will be derived using accepted engineering practice and shall be mutually agreed upon by the CITY and STATE.

12.2 The CITY shall review the STATE's estimate of susceptibility or vulnerability of CITY Facilities to Deformation and provide comments and input. Such 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 as defined in UT 01474 and UT 01476.

12.3 The STATE agrees to develop a preliminary plan for Deformation mitigation. PARTIES will work collaboratively to finalize and implement the Deformation Mitigation Work as defined in UT 01474 and UT 01476. The CITY'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.

12.4 The STATE agrees to design and implement a comprehensive instrumentation and monitoring program for open cut, cut-and-cover, and tunnel construction including pre- and post-construction condition surveys and development of an action plan for mitigating impacts of Deformation.

12.5 The STATE agrees to implement a construction monitoring Task Force responsible for the planning and implementation of the instrumentation and monitoring

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program and processing data, evaluating results, and developing recommendations to mitigate Deformation. The construction monitoring Task Force has authority to direct rapid and effective changes in construction to achieve Deformation mitigation.

12.6 The CITY shall advise the STATE and participate in construction monitoring and Deformation management activities when these activities pertain to CITY Facilities. The CITY shall provide the STATE all necessary access to CITY Facilities for the purposes of design or implementation of mitigation measures. The CITY may perform mitigation measures on behalf of the STATE in a manner and schedule that supports the STATE's project requirements. The CITY's advice, participation, and access shall be provided to assist the STATE, and shall not be interpreted as waiving or limiting in any way the STATE's responsibility for Deformation.

13. MAINTENANCE OF TRAFFIC

13.1 The PARTIES agree that it is the goal of this PROJECT to maintain local motorized and non-motorized traffic in safe corridors through the PROJECT area while minimizing impact to the existing street system. To achieve this goal, the PARTIES shall formulate plans to maintain traffic flow during construction of the PROJECT and shall comply with Approved Plans and conditions of the Street Use Permits.

13.2 The PARTIES agree to develop an outreach plan specifically focused on maintenance-of-traffic issues. This outreach plan will provide for eliciting input from affected stakeholders in the vicinity of the PROJECT. Affected stakeholders shall be determined by the PARTIES.

13.3 The STATE agrees to create a maintenance-of-traffic (MOT) Task Force for the PROGRAM. The CITY agrees to be an active member on the MOT Task Force.

13.4 The CITY agrees be a participant in all planning for haul routes, and all haul route traffic shall be regulated pursuant to the Street Use Permit and the provisions of this Agreement. Haul routes and times shall be approved by the CITY prior to the commencement of hauling, and all haul routes shall be along arterial streets designated as major truck streets and must comply with downtown traffic control zone restrictions as defined by the Seattle Municipal Code and implementing regulations.

14. CONSTRUCTION MANAGEMENT, INSPECTION, AND CONTRACT ADMINISTRATION

14.1 It is anticipated that the STATE will develop and issue multiple construction contracts to fulfill its PROJECT responsibilities. The STATE's construction contracts will be conducted in accordance with current Washington State Department of Transportation contracting practices.

14.2 The STATE shall act as the sole authority in the administration of the STATE construction contracts. The STATE shall allow the CITY to consult with and make inquiries of the STATE Project Engineer or designee, attend meetings, and have access to all documentation concerning those portions of the PROJECT subject to CITY review as described in Section 7.3 of this Agreement. The CITY shall not provide direction, directly or indirectly, to the STATE's consultant(s) or contractors. Except in the instances listed below, the CITY shall direct all communications to the STATE's Project Engineer or designee, including communications regarding compliance with Street Use Permits, quality of construction, and contractor performance.

14.3 The STATE will manage any requests from the CITY that have contractual or scope-of-work impacts and will coordinate responses. The CITY may communicate with STATE's consultants or contractors (1) where authorized to do so by the STATE's Designated Representative; (2) to arrange for regulatory permitting and inspections made pursuant to permits issued by the CITY other than Street Use Permits, e.g. electrical permits or other permits obtained from the CITY by the consultant or contractor; and (3) for the Street Use Permits, if necessary because of a threat to health or safety.

14.4 The CITY will provide qualified staff and consultants during construction. CITY staff and consultants will communicate with the STATE Project Engineer or designee in evaluating the conformity of CITY Infrastructure with the Approved Plans or Released-for-Construction Submittal and will immediately notify the STATE Project Engineer or designee of any compliance issues. Notwithstanding any act or omission by the CITY pursuant to this subsection, the STATE shall not be relieved of any of its authority over, and responsibility for, the PROJECT, as provided for in Section 14.2 of this Agreement or elsewhere in this Agreement.

14.5 The PARTIES agree to follow the Procedures. The PARTIES may amend the Procedures by written mutual agreement executed by the PARTIES' Designated Representatives without other approval by the PARTIES.

15. FINAL INSPECTION AND PROJECT ACCEPTANCE

15.1 The PARTIES agree to follow the Procedures. The PARTIES may amend the Procedures by written mutual agreement executed by the PARTIES' Designated Representatives without other approval by the PARTIES.

15.2 Following the satisfactory completion of the pre-final and final inspection processes described in the Procedures, the CITY shall submit a written response notifying the STATE that CITY Infrastructure has been constructed in accordance with the Approved Plans or Released-for-Construction Submittal.

15.3 The CITY agrees, upon satisfactory completion of the PROJECT work successfully placing City Infrastructure into operation, transfer and acceptance of any real property on or in which CITY Infrastructure is located, and receipt from the STATE of

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one color set of the Red-Line Plans, pursuant to Section 16, to deliver a Letter of Acceptance, subject to any Defective Work, damage or contractor claims caused by the negligent acts or omissions of the STATE.

15.4 The PARTIES will execute one Letter of Acceptance for each contract unless both PARTIES agree to phase CITY Infrastructure acceptance by those geographic areas or select portions of the PROJECT in which the STATE has completed all PROJECT work and has satisfied the requirements of Section 15.3. Roadway restoration will not be considered to be complete until all roadways are fully open to public vehicular and pedestrian use.

15.5 In instances where portions of CITY Infrastructure must be placed into the CITY's use and operation prior to the execution of the Letter of Acceptance, and after the CITY has determined that these portions of CITY Infrastructure meet with the minimum inspection and testing requirements necessary for placing the CITY Infrastructure into use, the CITY will notify the STATE in writing that it is assuming responsibility for and cost of the interim use and operation of the CITY Infrastructure until the terms of Section 15.3 are satisfied and the PARTIES execute the Letter of Acceptance.

16. RED-LINES AND RECORD DRAWINGS

16.1 Each PARTY is responsible for preparing construction records for the portions of PROJECT work for which it is responsible under this Agreement. Except as otherwise established in this Agreement, the STATE shall document construction in general conformance with WSDOT's *Construction Manual*, WSDOT manual M4-01 for PROJECT work that the STATE constructs including work performed on behalf of the CITY through a Task Order.

16.2 The STATE agrees to record the constructed configuration of PROJECT work that deviates from the Approved Plans as further established in the Procedures. This record shall be referred to as the red-line plans.

16.3 The STATE may choose to delegate preparation and maintenance of the red-line plans to its construction contractors. However, the STATE remains responsible for the quality, condition and completion of red-line plans. If the STATE chooses to delegate these responsibilities, the STATE's construction contracts shall require contractors to provide the STATE and the CITY access to the red-line plans during the working hours established in the STATE contract.

16.4 Each PARTY shall prepare digital drawings showing the constructed configuration of the PROJECT work for which it is responsible under this Agreement (record drawings). Each PARTY shall provide the other PARTY with the record drawings for the portions of PROJECT work for which that PARTY is responsible under this Agreement within six (6) months after the PARTIES execute a Letter of Acceptance. The PARTIES shall prepare Record Drawings in conformance with the Procedures.

17. WARRANTIES

Warranty of Work

17.1 The STATE warrants for a minimum period of twelve (12) months that all CITY Infrastructure being accepted by the CITY for ownership, operation and maintenance: (1) meets with the requirements of the Approved Plans, and all CITY-approved modifications to the Approved Plans made during the course of construction; (2) is constructed in accordance with CITY-issued permits; (3) is free of defects in material and workmanship; and (4) is free of defects in design(s). The warranty of work shall apply to any corrective work required to address non-conforming and Defective Work that is discovered and communicated by the CITY to the STATE within the warranty period. The STATE's warranty of work shall begin following the execution of the Letter of Acceptance of CITY Infrastructure or as otherwise provided in the STATE's contract, whichever occurs later.

17.2 If within the warranty of work period, the CITY discovers and gives written notice to the STATE of non-conforming or Defective Work in the accepted CITY Infrastructure, the STATE shall promptly investigate the work the CITY believes is non-conforming or defective. The STATE shall promptly remedy non-conforming or Defective Work. Disagreements between the CITY and the STATE on what constitutes non-conforming or Defective Work shall be resolved using the dispute resolution process established in Section 23 of this Agreement. The STATE shall diligently prosecute the corrective work and shall procure materials using the fastest means available as necessary to minimize the loss of use and operation of the accepted CITY Infrastructure. Corrective work shall be completed within the time frame specified by the CITY and mutually agreed upon by the STATE.

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

Transfer of Title and Warranty of Title

17.4 All right and title to the CITY Infrastructure accepted by the CITY will be transferred by the STATE to the CITY as of the date of the STATE's signature acknowledging the CITY's Letter of Acceptance pursuant to the provisions of Section 15. Neither the STATE nor its contractors shall hold a property right in any of the CITY Infrastructure accepted by the CITY for ownership, including the materials and equipment comprising the CITY Infrastructure.

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

Manufacturers' Warranties

17.6 The STATE shall provide to the CITY all manufacturers' and suppliers' guarantees and warranties furnished to the STATE's contractor as a customary trade practice in connection with the contractor's purchase of any equipment, materials, or items incorporated into the CITY Infrastructure. The STATE shall further warrant that it has the right to transfer such warranties and guarantees furnished to the STATE through its construction contract to the CITY and that such transfer shall not adversely affect such warranties and guarantees. These guarantees and warranties shall not relieve the STATE from its obligations under warranty of work.

Warranty Inspections

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

18. PUBLIC OUTREACH

18.1 The STATE agrees to lead and manage the public outreach effort for the PROJECT. In recognition of the CITY's experience in working with the Seattle community, the STATE will solicit CITY input and work with the CITY in public outreach activities. The STATE will not publicly distribute outreach information, planning materials and documents without first soliciting the CITY's review. However, the STATE shall be free to comply with any public records request received under Chapter 42.56 RCW for such materials, provided that prior to releasing any sensitive or confidential material, the STATE shall first provide written notice to the CITY in accordance with Section 27 of this Agreement and provisions in UT 01474 and UT 01476.

19. RISK ALLOCATION

19.1 Limits of Liability

19.1.1 No CITY Liability for Assistance, Inspection, Review, or Approvals. The review or approval of any of the STATE's PROJECT plans or specifications, or the inspection of the STATE's work, or any assistance provided to the STATE by the CITY is for the CITY's sole benefit and shall not constitute an opinion or representation by the CITY as to any compliance with any law, ordinance, rule, or regulation or any adequacy

for other than the CITY's own purposes; and such assistance, inspection, review or approval shall not create or form the basis of any liability on the part of the CITY or any of its officials, officers, employees, or agents for any injury, damage, or other liability resulting from, or relating to, any inadequacy, error, or omission therein or any failure to comply with applicable law, ordinance, rule, or regulation; and such assistance, inspection, review, or approval shall not relieve the STATE of any of its obligations under this Agreement, the SCL Agreement, UT 01476, and the SPU Agreement, UT 01474 or under applicable law.

19.1.2 No CITY Liability for Delay, Consequential, or Liquidated Damages. The CITY shall not be liable in damages for any failure to act within any time limits established by law or for any other delay to the STATE or the STATE's contractors, nor shall the CITY have any liability for consequential or liquidated damages, and, to the maximum extent allowed by law, the STATE shall protect, defend, indemnify, and save harmless the CITY, and its officials, officers, employees, and agents, from any and all costs, claims, demands, judgments, damages, or liability of any kind caused by, resulting from, relating to, or connected to delays. The PARTIES agree that this Agreement, the SCL Agreement, UT 01476, and the SPU Agreement, UT 01474, are not to be construed as being construction agreements.

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

19.1.4 STATE Contractor's Bonds. The STATE shall require its construction contractors to provide performance bonds to the STATE and to maintain those bonds at all times pertinent to the respective contractor's obligations under its contracts. Such bonds shall be executed by an approved Surety that is registered with the Washington State Insurance Commissioner, and that appears on the current Authorized Insurance List in the State of Washington published by the Office of the Insurance Commissioner, and that shall be conditioned upon the faithful performance of the contract by the contractor. The STATE shall ensure faithful completion of the PROJECT by use of the STATE's contractor bonds or other means, and in the event any claim for payment is presented to the CITY for any PROJECT work, the STATE upon timely notice and investigation, resulting in STATE responsibility under this Agreement, the SCL Agreement, UT 01476, or the SPU Agreement, UT 01474 shall promptly pay such claim.

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19.2 General Indemnification.

19.2.1 Indemnity. To the extent permitted by law, the STATE shall protect, defend, indemnify, and save harmless the City of Seattle and its officers, officials, employees, and agents, while acting within the scope of their employment, from any and all costs, claims, demands, judgments, damages, or liability of any kind, including injuries to persons or damages to property, that arise out of, or in any way result from, or are connected to, or are due to any acts or omissions, or intentional misconduct, of the STATE or the STATE's contractors, consultants, or agents including any and all claims and litigation arising out of, or resulting from, any state or federal environmental review process in any way relating to the PROJECT, and including any private utility relocations required for the STATE's PROJECT work. The STATE's obligations under this paragraph also extend to claims asserted by third PARTIES against the City of Seattle arising out of, or in any way resulting from NEPA or SEPA compliance related to portions of the CITY's Mercer Corridor Project West Phase reviewed in the 2010 AWV Replacement Supplemental Draft Environmental Impact Statement. The STATE's obligations under this paragraph also extend to claims asserted by third PARTIES against the City of Seattle arising out of, or in any way resulting from, any state or federal environmental review process in any way related to the PROJECT, removal of the Alaskan Way Viaduct and Battery Street Tunnel decommissioning, and all of the foregoing protection, defense, indemnity and hold harmless obligations shall extend to claims asserted by state agencies other than the Washington State Department of Transportation.

19.2.2 The STATE further agrees that the City of Seattle shall have no liability to the STATE that in any way arises out of the City of Seattle's decision making processes in agreeing to go forward with the PROJECT. The STATE shall not be required to indemnify, defend, or save harmless the City of Seattle if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of the City of Seattle. Where such claims, suits, or actions result from the concurrent negligence of the PARTIES, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the STATE's own negligence. In the event of any claims, demands, actions, or lawsuits, the STATE upon notice from the City of Seattle, shall assume all costs of defense thereof, including legal fees incurred by the City of Seattle, and of all resulting judgments that may be obtained against the City of Seattle, to the extent of the STATE's liability. In the event that the City of Seattle incurs attorneys' fees, costs, or other legal expenses to enforce the indemnity provisions of this Agreement, the SCL Agreement UT 01476, or the SPU Agreement, UT 01474, all such fees, costs, and expenses shall be recoverable by the City of Seattle. Environmental protection and indemnification, as provided elsewhere in this Agreement, shall be in addition to the foregoing general indemnification.

19.2.3 Indemnity. To the extent permitted by law, the City of Seattle shall protect, defend, indemnify, and save harmless the STATE and its officers, officials, employees, and agents, while acting within the scope of their employment, from any and all costs, claims, demands, judgments, damages, or liability of any kind, including

injuries to persons or damages to property, that arise out of, or in any way result from, or are connected to, or are due to any acts or omissions, or intentional misconduct, of the City of Seattle or the City of Seattle's contractors, consultants, or agents. The City of Seattle shall not be required to indemnify, defend, or save harmless the STATE if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of the STATE. Where such claims, suits, or actions result from the concurrent negligence of the PARTIES, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the City of Seattle's own negligence. In the event of any claims, demands, actions, or lawsuits, the City of Seattle upon notice from the STATE, shall assume all costs of defense thereof, including legal fees incurred by the STATE, and of all resulting judgments that may be obtained against the STATE, to the extent of the City of Seattle's liability. In the event that the STATE incurs attorneys' fees, costs, or other legal expenses to enforce the indemnity provisions of this Agreement, the SCL Agreement, UT 01476, and the SPU Agreement, UT 01474, all such fees, costs, and expenses shall be recoverable by the STATE.

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

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

20. INSURANCE

20.1 The STATE shall require in writing that the STATE's contractors, and each of their sub-contractors of any tier where not covered by contractor provided insurance, include "The City of Seattle" as an additional insured for primary and non-contributory limits of liability for Commercial General Liability, Commercial Automobile Liability and (if required) Contractor's Pollution Liability as established in the construction contract documents, including Products and Completed Operations coverage following the completion of each PROJECT stage.

20.2 Insurance specifications for the design-build portion of the PROJECT are contained in Article 20 of the Proposed Bored Tunnel Design Build Contract (Insurance).

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20.3 STATE standard insurance specification in Section 1-07.18 (Public Liability and Property Damage Insurance, applicable to the design-bid-build construction contract documents protecting both the STATE and the CITY for any design-bid-build portions of the PROJECT, shall be amended for coverages, minimum limits of liability and/or terms and conditions as may be mutually agreed upon by the STATE and CITY.

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

21. THIRD PARTY BENEFICIARY

21.1 The STATE shall require the STATE's contractors, consultants, and designers and each of their subcontractors to perform the STATE's work contemplated by this Agreement, the SCL Agreement, UT 01476, and the SPU Agreement, UT 01474 at no cost to the City of Seattle; and because a portion of the PROJECT will be conducted on CITY Street Right-of-Way and on or for the benefit of the City of Seattle, the contracts between the STATE and its contractors, consultants, and designers will include the following requirements:

> (1) With respect to any and all of the City of Seattle's interests, including, but not limited to, excavation, restoration, and traffic control responsibilities of the STATE, the STATE and the contractor will acknowledge that the City of Seattle is an intended third party beneficiary of the contracts; (2) the STATE and the contractor will include the City of Seattle as a named third party beneficiary of the STATE's contracts; and (3) the STATE and the contractor will include the City of Seattle in the indemnification and insurance provisions contained in the STATE's contracts. The STATE and CITY do not intend that this paragraph be interpreted to create any obligation, liability, or benefit to any third party, other than the STATE and the City of Seattle for purposes of design and construction of the PROJECT as described in this Agreement, the SCL Agreement, UT 01476, and the SPU Agreement, UT 01474.

22. LIENS

22.1 In the event that any City of Seattle-owned property interest becomes subject to any claims for mechanics', artisans' or materialmen's liens, or other encumbrances chargeable to, or through, the STATE that the STATE does not contest in good faith, the STATE shall cause such lien, claim, or encumbrance to be discharged or released of record (by payment, posting of bond, court deposit, or other appropriate means), without cost to the City of Seattle, and shall indemnify the City of Seattle against all costs and

expenses (including attorneys' fees) incurred in discharging and releasing such claim, lien, or encumbrance prior to completion of the PROJECT.

23. DISPUTE RESOLUTION

23.1 Good Faith. The CITY 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.

23.2 Notice. A PARTY's Designated Representative, as defined in Section 25 below, 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.

23.3 Meeting. Upon receipt of a written notice of request for dispute resolution, the project engineer/project manager for the PARTIES 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.

23.4 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 PARTY's Designated Representative in writing, requesting that the dispute be raised to the Second Level Meeting as described in Subsection 23.5. 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.

23.5 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 appropriate CITY program manager(s) 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.

23.6 Notice of Third Level Meeting. If the PARTIES have not resolved the dispute within five (5) Business Days after the Second Level Meeting as described in Subsection 23.5, 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 as described in Subsection 23.7. The written notification shall include a) a description of the remaining

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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.

23.7 Third Level Meeting. Elevate to the Designated Representatives.

23.8 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 23.

23.9 A PARTY's request to utilize this Section 23 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.

24. REMEDIES; ENFORCEMENT

Subject to the dispute resolution provisions in Section 23, the City of Seattle and the STATE shall have, in addition to any remedies available at law or equity, the right to demand specific performance of this Agreement, the SCL Agreement, UT 01476, and the SPU Agreement, UT 01474.

25. DESIGNATED REPRESENTATIVES

The Designated Representative for each PARTY is as follows:

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

CITY:
SDOT Deputy Director
Seattle Department of Transportation
P.O. Box 34996
700 Fifth Avenue, Suite 3800
Seattle, WA 98124-4996

26. EFFECTIVENESS AND DURATION

26.1 This Agreement shall be effective as of the date the last PARTY signs and, unless sooner terminated pursuant to the terms hereof, shall remain in effect until final

completion of all PARTIES' obligations contained or referred to in this Agreement, the SCL Agreement, UT 01476, and the SPU Agreement, UT 01474.

27. NOTICE

27.1 Except for the dispute resolution process in Section 23 above, for which notice shall be given to the officials listed in Section 25, all notices, demands, requests, consents and approvals that may be or are required to be given by either PARTY to the other PARTY shall be in writing and shall be deemed to have been duly given (i) upon actual receipt or refusal to accept delivery if delivered personally to the Designated Representative, (ii) upon actual receipt or refusal to accept delivery if sent by a nationally recognized overnight delivery service to the Designated Representative, or (iii) upon actual receipt if electronically transmitted to the Designated Representative with confirmation sent by another method specified in this Section 27. Notice of a change of Designated Representative or the address for the Designated Representative shall be given as provided in this Section 27.

28. TERMINATION AND SUSPENSION

28.1 This Agreement may be terminated pursuant to Section 2.3 or for other cause by either PARTY upon ninety (90) calendar days written notice. Said notice shall set forth the reasons for termination and the effective date of termination.

28.2 Termination of this Agreement, the SCL Agreement, UT 01476, or the SPU Agreement, UT 01474 shall not relieve the PARTIES of any obligations that are required to be performed prior to the date of termination, nor shall it relieve the PARTIES of any obligations that are intended to survive termination of this Agreement, the SCL Agreement, UT 01476, or the SPU Agreement, UT 01474. Furthermore, the PARTIES agree that, in the event the STATE exercises its right to terminate pursuant to this Section 28 or the STATE suspends the work or materially delays the work after construction of the PROJECT begins, then the STATE, at its cost and expense, shall modify the PROJECT, in consultation with the CITY, to provide for the restoration, continued service, operation, and maintenance of CITY Facilities, PROJECT infrastructure, CITY Street Right-of-Way, or any other CITY property and the STATE shall ensure that the modified PROJECT is completed. The STATE shall also ensure that all SPU and SCL utility services can continue to be provided by SPU and SCL either in substantially the same manner as occurred prior to the initiation of work, or in the manner intended by the proposed work, unless otherwise agreed to by the affected UTILITY.

29. CONFIDENTIALITY OF INFORMATION AND RECORDS

29.1 It is understood that certain information about CITY Facilities is deemed by the CITY to be sensitive and may be confidential under state or federal law. The STATE agrees that all documents and information collected from field activities known to include confidential information will be maintained in a locked file at the project office and access will be controlled by the STATE's consultants. Furthermore, confidential

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information will only be provided to the selected contractor in conformed documents following Contract Award if such information is considered necessary for construction. The CITY will provide clear written guidelines that specifically define the information that is deemed sensitive and/or confidential.

29.2 Should any of those confidential or sensitive documents become the subject of a request for public disclosure under Chapter 42.56 RCW, the STATE shall use its best efforts to immediately notify the CITY of such request and the date by which the STATE anticipates responding, which date shall in no event be less than fifteen (15) calendar days after STATE's first notice of the disclosure request to the CITY. The CITY must then within a reasonable time of receipt of said notice in writing to the STATE (a) specifically identify each record, or part thereof, and (b) fully explain why such records(s) are exempt from disclosure under Chapter 42.56 RCW or any other law so that the STATE may respond to the records requester. The STATE shall withhold or redact those public records that the CITY reasonably claims are exempt from disclosure based upon the CITY's information. The CITY at its sole expense may seek a judicial declaration or injunction with respect to the public records request. The CITY further agrees that it will, at its sole expense, defend the non-disclosure of that information it claims is exempt from disclosure and indemnify the STATE for any and all penalties assessed and costs that the STATE incurs, if any.

29.3 The provisions of this Section 29 shall survive the termination of this Agreement.

30. GENERAL PROVISIONS

30.1 This Agreement shall be effective independently from any and all permits that may be issued by the CITY.

30.2 Each PARTY shall ensure that its employees, agents, and contractors comply with the obligations of this Agreement.

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

30.4 This Agreement including the definition of the PROJECT as more particularly described in the Project Description attached as Exhibit A may be amended only by a

written instrument, duly authorized by the CITY and the STATE, and executed by their duly authorized representatives.

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

30.6 This Agreement, together with GCA 6366, the SCL Agreement, UT 01476 and the SPU Agreement, UT 01474, with the attached Exhibits and the documents, terms and provisions incorporated in any of the foregoing, constitute the entire agreement of the PARTIES with respect to the PROJECT, and supersede any and all prior negotiations and understandings with respect hereto.

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

30.8 All exhibits or other attachments are by this reference hereby incorporated into this Agreement.

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

30.10 The PARTIES acknowledge the right of each PARTY to exercise its police power pursuant to general law and applicable statutes for the protection of the health, safety, and welfare of its citizens and their properties. Nothing in this Agreement shall be construed as waiving or limiting the STATE's or CITY's rights to exercise its police power or to preclude or limit exercising any regulatory power in connection with this PROJECT.

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

30.12 A judicial determination that any term, provision, condition, or other portion of this Agreement, whether in whole or in part, is inoperative, invalid, void, or unenforceable shall not affect the remaining terms, provisions, conditions, or other portions of this Agreement, whether in whole or in part, and the remaining terms, provisions, conditions, or other portions of this Agreement, whether in whole or in part, shall remain valid and enforceable to the fullest extent permitted by law.

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

CITY OF SEATTLE

By: _____

Title: _____

Date: _____

WASHINGTON STATE

By: [illegible]

Title: Administrator, AWVBRP

Date: 1/28/2011

APPROVED AS TO FORM:

By: Bruce Brown

Title: Senior Assistant Attorney General

Date: 1-28-11

EXHIBIT A TO MEMORANDUM OF AGREEMENT NO. GCA 6486

Unless specifically defined otherwise in this document, the definitions set forth in GCA 6486 ("SDOT Agreement"), UT 01476 ("SCL Agreement") and UT 01474 ("SPU Agreement"; collectively, "Agreements") apply to terms used in this document.

The PROJECT replaces SR 99 from South Royal Brougham Street to Roy Street and consists of designing and constructing a four-lane 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 consists of the following features:

Utility Work:

- Removal and replacement of existing City electrical, communications, water, drainage and wastewater facilities and other privately owned utilities that directly conflict with the north and south tunnel portals and tunnel portal excavations.
- Utility services necessary for the operation of the tunnel and tunnel operations buildings
- New Utility improvements.

Tunnel:

- A four-lane tunnel under the City from a south portal in the vicinity of Dearborn Street and Alaskan Way to a north portal in the vicinity of 6th Avenue North and Harrison Street.
- PROJECT work will include:
    - Approximately two miles of cut-and-cover and bored tunnel providing two travel lanes in each direction.
    - Tunnel portal structures and the shoring walls and excavation associated with portal construction.
    - Tunnel operations buildings at both the north and south portals to house tunnel egress, tunnel ventilation systems, and fire and life safety systems and controls.
    - Tunnel operations, intelligent transportation, and fire and life safety systems
    - Monitoring of, and mitigation, for tunnel-induced Deformation, such as protecting utilities, and preparing structures for predicted tunnel-induced Deformation through engineered measures such as grouting and structural retrofit.
    - Repair of public and private property that may be damaged as a result of construction.

North Tunnel Access and Reconnection of the Surface Street Grid:

- SR 99 roadway and roadway structures connecting the tunnel to existing SR 99 in the vicinity of Aurora Avenue at Roy Street, associated on and off ramps, and City right of way in the vicinity of the north tunnel portal.

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- PROJECT work will include:
  - Advance traffic management systems including capability for tolling.
  - Reconnect Aurora Avenue to the City street grid at Denny Way.
  - Improvements to existing City street right-of-way including cross-corridor connections of John, Thomas, and Harrison Streets.
  - New lanes, curbs, sidewalks, traffic signals, intelligent transportation systems and signage, landscaping and street lighting.
  - Improvements to Aurora Avenue from Denny Street to Harrison Street.
  - Storm drains and other utilities in the new City street right-of way.

South Tunnel Access and Reconnection of the Surface Street Grid:

- Roadway and roadway structures connecting the tunnel south portal to SR 99 lanes being constructed as part of the Holgate to King Project in the vicinity of South Royal Brougham Way and improvements to City street right-of-way in the vicinity of the south tunnel portal.

- PROJECT work will include:
  - Removal of the south-end SR 99 temporary roadway detour built as part of Holgate to King Project.
  - Advance traffic management systems including capability for tolling.
  - New lanes, curbs, sidewalks, traffic signals, intelligent transportation systems and signage, landscaping and street lighting.
  - City street improvements including cross-corridor connections of S. Dearborn Street.
  - Restoration of 1st Avenue South from Royal Brougham Way to Railroad Way S.
  - Storm drains and other utilities in the new City street right-of-way.
  - Pedestrian plazas in the vicinity of the south tunnel portal.
  - Bicycle and pedestrian paths.

Other PROJECT work:

  - Environmental remediation.
  - Temporary sediment and erosion control
  - Traffic control and detours
  - Maintenance of utility service

MEMORANDUM OF AGREEMENT
NO. GCA 6486
EXHIBIT B

Design Review, Construction Management, Inspection, Record Drawing and Task Order Procedures

1. **Scope.** This document establishes implementing procedures called for in and otherwise necessitated by GCA 6486 (SDOT Agreement), UT 01476 (SCL Agreement) and UT 01474 (SPU Agreement).

   1.1. With respect to CITY regulatory authority, the scope of this document is limited to the issuance of SDOT Street Use Permits. References to CITY permits, standards, or regulatory authority or responsibility, including references that are not expressly limited, are not intended to extend beyond Street Use Permits or the standards, authority, or responsibility under SMC Title 15.

   1.2. Nothing in this document is intended, or shall be construed, to expand the scope of CITY responsibility regarding the PROJECT beyond the scope stated in the SDOT, SCL, and SPU Agreements.

   1.3. Within the scope described above, this document is intended to describe roles and procedural responsibilities, clarify expectations, and standardize business processes for the duration of the PROJECT. Due to the complexity of the PROJECT and adjacent PROGRAM elements, the STATE and the CITY recognize that unanticipated situations will arise that require modification of these procedures.

2. **Plan Review for Design and Permits**

   2.1. These Design and Plan Review procedures are based on the expectation that WSDOT is responsible for executing the PROJECT work either under WSDOT's direct responsibilities for PROJECT elements or where the CITY has entered into a Task Order agreement for WSDOT assistance in executing the CITY's responsibilities. In instances where the CITY executes PROJECT work, additional procedures may be needed to address design and construction coordination.

   2.2. In implementing the procedures, the goal of WSDOT and the CITY is to facilitate timely and expeditious completion of PROJECT designs that:

   - Meet PROJECT requirements and standards and commitments in the SDOT, SPU, and SCL Agreements;

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- Comply with WSDOT procedural requirements in a timely manner;
- Fulfill CITY regulatory requirements set forth in Seattle Municipal Code (SMC) Title 15 in a timely manner;
- Achieve the PROJECT schedule;
- Allow construction to proceed in a timely manner;
- Minimize PROJECT scope growth; and
- Minimize impact on CITY Facilities.

2.3. WSDOT will take the lead in coordinating regular communications and design coordination meetings with the CITY, WSDOT's consultants and contractors, and other utility owners.

2.4. WSDOT will prepare PROJECT designs affecting CITY Facilities in collaboration with SDOT, SCL, and SPU staff and agrees to seek and incorporate input from the CITY in the early stages of preliminary engineering, preparation of Plan Review Packages and Design Submittals, and throughout the PROJECT design and permitting process.

2.5. Design and construction of CITY Infrastructure will meet CITY Standards. Design of CITY Infrastructure will include consideration of long-term operation and maintenance costs, in addition to up-front design and construction costs.

2.6. The CITY will review all plans for work described in Section 7.3 of the SDOT Agreement GCA 6846.

2.7. WSDOT will coordinate and obtain written concurrence from the CITY on any requested deviation from CITY standards prior to the beginning of construction.

2.8. WSDOT and the CITY agree that WSDOT will submit plans for CITY Infrastructure prepared in accordance with SR 99 Alaskan Way Viaduct and Seawall Replacement CADD Manual, Revision 2.0, dated April 2010.

2.9. WSDOT will coordinate and obtain written concurrence from the CITY prior to implementing revisions or deviations from the Approved Plans.

2.10. The CITY will notify WSDOT in good faith when the CITY becomes aware of issues that may delay issuance of a Street Use Permit. Failure to provide such notice shall not provide grounds to challenge the issuance or non-issuance of a permit.

3. Procedures for Design-Bid-Build Contracts.

3.1. WSDOT will determine the project scope for a given design and contract package with CITY input. Changes to project scope will necessitate review by WSDOT AWVSR PROGRAM management in accordance with PROGRAM configuration management and change control procedures.

3.2. WSDOT and the CITY will collaborate to develop a target project delivery schedule to include WSDOT's Plan Review Package submittals to the CITY. WSDOT will notify the CITY of any proposed schedule modifications. If WSDOT determines that it cannot meet the anticipated dates, WSDOT will collaborate with the CITY's Designated Representative to develop a revised submittal schedule as soon as possible after delay is known or anticipated.

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

3.4. WSDOT will prepare and submit complete plans and supporting documentation to the CITY and provide corrections and additional information as needed by the CITY to allow CITY staff sufficient time to review the Street Use Permit application and the plans. The duration for review for each Plan Review Package is indicated in the tables below. Submittal of multiple Plan Review Packages to the CITY for concurrent review may increase the time required for review as indicated in the tables below, or as otherwise agreed by WSDOT and the CITY.

3.5. SDOT will coordinate CITY review of the Plan Review Packages to include receiving and distributing materials among CITY of Seattle reviewers, collating and tracking review comments, and working with other CITY departments to resolve conflicting comments or requirements.

3.6. WSDOT will submit a Street Use Permit application early during design development in order to define permit conditions for incorporation into contract documents. This application submittal will initiate the permit review and issuance process.

Table 1: Design-Bid-Build Review Periods

Submittal Phase	**CITY Review Period Number of Business Days per Number of Plan Review Packages Under Review***		
	One	Two	Three
30% Plan Review Package	15 days	25 days	25 days
Progress Plan Review Package	25 days	40 days	45 days
100% Plan Review Package	15 days	15 days	20 days
WSDOT Post-Advertisement Construction Contract Addenda Plan Review Package **	Varies – 3 to 20 days as noted below	Varies – 3 to 20 days as noted below	Varies – 3 to 20 days as noted below
Final Plan Review Package	15 days	15 days	20 days

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* In the event that more than three Plan Review Packages and/or major PROGRAM-related documents are under review at the same time, WSDOT and CITY agree to negotiate a reasonable review time for the Plan Review Packages being submitted.

** Post-Advertisement addenda review time will be based on the volume of revisions to plan sheets and specifications affecting City Facilities follows:

Table 2: Addenda Review Periods

Number of addenda added/revised plan sheets (excluding quantity tabs/structure notes)	CITY Review Period (Number of Business Days)
< 200	5
< 400	8
< 800	15
More than 800	20

3.7. The CITY's design review and Street Use Permit processes will take place as follows:

3.7.1. The CITY review period begins on the Business Day following receipt by the CITY's Designated Representative of the Plan Review Package and ends when the CITY'S final comment document is submitted to WSDOT electronically in a Microsoft Excel document format. The CITY is responsible to assign appropriate staff to review and provide comment within the established timeframes.

3.7.2. Following its review of the Progress Plan Review Package, SDOT will prepare and deliver to WSDOT draft Street Use Permit conditions. SDOT will update the draft conditions after completion of CITY's review of each subsequent Plan Review Package to enable incorporation of the draft conditions into WSDOT's construction contract documents.

3.7.3. WSDOT will deliver the Plan Review Packages as further described in this Exhibit. If the CITY receives a submittal from WSDOT that does not contain all the requirements of a Plan Review Package, the CITY will notify WSDOT that the submittal is incomplete. To expedite the process and to the extent possible, the CITY will attempt to begin review of an incomplete submittal. However, WSDOT will submit the information needed to complete the Plan Review Package as soon as possible and will highlight any changes made since submittal of the incomplete Plan Review Package. The CITY's plan review period will not commence until the receipt of a complete Plan Review Package.

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

3.7.5. The CITY will assist WSDOT in determining appropriate responses to comments and resolution of concerns noted in its comments.

3.7.6. WSDOT will provide initial written responses to all comments within ten (10) Business Days of receiving the CITY's comments to a Plan Review Package. All comments related to CITY Infrastructure shall be resolved to the CITY's satisfaction and incorporated into the succeeding Plan Review Packages.

3.7.7. WSDOT will hold a comment resolution meeting with the CITY within ten (10) Business Days after WSDOT receives and responds to the CITY comments. Any unresolved comments will be forwarded to a comment resolution team composed of CITY and WSDOT staff. In the event the team cannot resolve all issues, they will be elevated to appropriate levels of management in accordance with the dispute resolution provisions of GCA 6486, UT 01474, and UT 01476.

3.8. WSDOT and the CITY agree to follow a process to facilitate both WSDOT's compliance with both WSDOT procedures governing preparation of bid packages and SDOT procedures for issuing Street Use Permits. The process will include the following steps:

3.8.1. WSDOT will endeavor to resolve and address all CITY comments on previous Plan Review Packages to the CITY's satisfaction prior to submittal of the 100% Plan Review Package. The CITY will be responsive to requests to meet and review the design approach to resolution. WSDOT agrees to resolve and address, to the CITY's satisfaction, all CITY comments from previous Plan Review Packages that are related to CITY Infrastructure design.

3.8.2. The CITY will determine, following the receipt of the 100% Plan Review Package, whether all comments on the previous Plan Review Package have been addressed. At the conclusion of this determination, the CITY will notify WSDOT in writing either that the CITY's comments have been resolved to the CITY's satisfaction or that WSDOT has not addressed all the CITY's comments to the CITY's satisfaction. If the CITY notifies WSDOT that it has not addressed all CITY comments to the CITY's satisfaction, the CITY will submit to WSDOT proposals for addressing the outstanding issues. WSDOT will engage CITY reviewers in resolution of the remaining review comments and, either party may elevate unresolved comments in

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accordance with the dispute resolution provisions of GCA 6486, UT 01474, and UT 01476.

3.8.3. WSDOT will invite the CITY to participate in its Round Table Meeting to enable full discussion of the implications and consequences to CITY Facilities or compliance with SMC Title 15 of changes proposed by WSDOT to the 100% Plan Review Package. WSDOT will coordinate revisions made to the contract plans and provisions after WSDOT submits the 100% Plan Review Package.

3.8.4. SDOT will issue its Street Use Permit within five (5) Business Days following the Round Table Meeting if the CITY determines that the plans conform to the requirements of SMC Title 15. If any issues remain for resolution, the CITY will condition the Street Use Permit accordingly. WSDOT will engage CITY reviewers in resolution of review comments and, if resolution cannot be reached, either PARTY may elevate unresolved comments in accordance with the dispute resolution provisions of GCA 6486, UT 01474, and UT 01476.

3.8.5. If the Street Use Permit has not been issued within five (5) Business Days following the Round Table Meeting, the SDOT Director or his designee will review the cause of permit delay within one (1) Business Day, and meet with the STATE's Program Administrator or his designee to discuss the issues and develop a course of action.

3.8.6. WSDOT will work with the CITY to ensure that all comments on the 100% Plan Review Package are adequately incorporated into WSDOT's advertisement for bid, or are otherwise addressed to WSDOT's and the CITY's satisfaction and that all comments on the 100% Plan Review Package related to design of CITY Infrastructure are addressed to the CITY's satisfaction. This process will include comment resolution with CITY reviewers, a meeting with WSDOT and CITY resolution teams, and, if resolution cannot be reached, elevation of unresolved comments in accordance with the dispute resolution provisions of GCA 6486, UT 01474, and UT 01476.

3.8.6.1. WSDOT will prepare and submit post-advertisement addenda to the CITY prior to releasing addenda to prospective bidders. Addenda will clearly delineate changes that have been made to the plans and specifications. The addenda review periods will be determined by the scope and complexity of the proposed addenda with review times generally as indicated in the tables above.

3.8.6.2. WSDOT will notify the CITY when the final addendum is issued to prospective bidders. This notice will constitute the Final Plan Review

Package submittal. The CITY will review the Final Plan Review Package to confirm whether WSDOT has adequately addressed the CITY plan review comments, whether all applicable conditions of the Street Use Permit have been addressed to the CITY's satisfaction, and whether plans conform to the requirements of the SMC Title 15. Prior to bid opening, and upon the CITY's determination that a Final Plan Review Package meets requirements, the CITY will issue to WSDOT a Letter of Plan Approval that:

- Identifies the plans and specifications that have been granted the CITY's regulatory approval for construction by the CITY, and
- Signifies that WSDOT has addressed the plan review comments.

No construction may take place until the Letter of Plan Approval has been issued by the CITY.

4. Procedures for Design-Build Contracts

4.1. The procedures that follow are intended to facilitate meeting requirements, standards, and objectives for the Design-Build portions of the PROJECT.

4.2. WSDOT agrees to work with the CITY in defining and meeting the design and construction standards for the PROJECT work affecting CITY Facilities. The CITY will provide clear design guidance for elements of the PROJECT to be owned, operated or maintained by the CITY. WSDOT will include CITY design and construction standards in WSDOT's Design-Build Contract documents for CITY Facilities.

4.3. WSDOT will apply for a Street Use Permit prior to issuance of the final Request for Proposals. The CITY may review and comment on the Final RFP.

4.4. As a requirement of its Design-Build Contract(s), the Design-Builder will organize Task Forces for design development, coordination, and management of various elements of the work. The Task Forces are a primary vehicle for coordination and will provide an opportunity for WSDOT and CITY staff to provide input to the design process. Task Force meetings will also be the primary means to keep reviewers up to date on design development. Over-the-shoulder reviews will be conducted to facilitate quicker turn-around of formal plan reviews. Dependent on the need for coordination with adjacent contracts, some of the Task Forces will be designated as "corridor-wide." In addition to WSDOT and CITY staff, Task Force membership may include representatives from other stakeholders such as private utility owners, King County, the Port of Seattle, the stadiums, and adjacent contractors.

4.5. The CITY will participate in Task Forces affecting CITY Facilities and for the performance of the CITY's regulatory responsibilities. Based on current PROJECT planning, the CITY will participate in the following Task Forces:

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- Utilities
- Construction Monitoring
- Fire and Life Safety
- Maintenance of Traffic
- Road/Traffic
- Buildings
- Public Information
- Quality

4.6. Task Forces will meet on a regular basis to solicit input, coordinate design and construction activity, and assure dissemination of critical PROJECT information to all members. The Design Builder or WSDOT will be the designated lead for meetings and recording of meeting minutes. The Task Forces will work collaboratively to review and provide guidance as the Design Builder develops Design Submittals.

4.7. WSDOT and the CITY recognize that regular attendance at Task Force meetings by their respective staffs is necessary to discuss and agree upon resolutions of design issues before more formal review processes begin in order to streamline later review and minimize substantial comments when the Preliminary and Final Design plans are submitted.

4.8. Attendance at over-the-shoulder review by CITY staff members will be determined by the CITY Construction Project Engineer based in part upon the materials to be reviewed. Whenever possible three (3) Business Days notice will be given to persons who do not regularly attend Task Force meetings. The CITY will make every effort to assign staff members to over-the-shoulder review meetings who are authorized to make final decisions regarding compliance of the plans for CITY Facilities with the CITY's standards, specifications and permit requirements.

4.9. WSDOT's Design Builder will submit a Quality Management Plan (QMP) that will define the timing, content, and format of all design reviews. The QMP will also include processes and procedures for how regularly scheduled Task Force meetings will be used to support quality goals. These meetings, combined with over-the-shoulder reviews, will be an integral part of the process to discuss and resolve design issues outside of the formal review process and reduce the level of effort required to conduct the formal review process. The QMP will define how over-the-shoulder reviews will be conducted with Task Force members. Over-the-shoulder reviews are in-progress reviews of the design and provide opportunities for WSDOT, the CITY, and other stakeholders to provide comments and feedback on the design.

4.10. The design builder will be required to provide three submittals for each design element as indicated below. These submittals are intended to meet the requirements of the design and Street Use Permit plan review processes of both WSDOT and the CITY. The CITY will review design elements affecting CITY Facilities and CITY interests,

and for the performance of the CITY's regulatory responsibilities, within the scope stated in this Agreement, UT 01476 (SCL Agreement) and UT 01474 (SPU Agreement).

4.10.1. Preliminary Design Submittal. The intent of the Preliminary Design Submittal is to provide a formal opportunity for WSDOT, the CITY, the Design Builder, various design team disciplines, and other approved PROJECT stakeholders to review the construction documents in order to provide input addressing whether the plans reflect Design Builde Contract requirements for construction; whether design features are coordinated; and whether there are no fatal flaws within a given discipline or between disciplines. The contents of the Preliminary Design Submittal will vary by discipline as specified in the RFP or as mutually agreed by members of the applicable Task Force.

4.10.2. Final Design Submittal. The Final Design Submittal will be prepared when the design for a given element or area is near 100% complete. The Final Design Submittal includes plan sheets, specifications, technical memos, reports, calculations, and other pertinent data, as applicable and incorporates design changes or otherwise addresses CITY comments. As a result of the on-going discussion and resolution of design and construction issues through the regularly-scheduled Task Force meetings and over-the-shoulder reviews, it is anticipated that there will be very few revisions or changes at this stage. The Final Design Submittal will include all specifications, including but not limited to, all amendments to the WSDOT Standard Specifications for Road, Bridge and Municipal Construction, special provisions, technical requirements, and technical specifications, necessary to construct the work represented in the submittal. Following resolution of all comments, the Final Design Submittal may proceed through the written certification process described below in preparation for being released for construction.

4.10.3. Released for Construction (RFC) Submittal. At a minimum, the Design Builder will provide a preliminary and a final submittal of all plans and technical specifications and resolve all comments prior to being released for construction. Comments from the CITY concerning design of the CITY's stated requirements for CITY Infrastructure, and comments regarding compliance with SMC Title 15, will be resolved to the CITY's satisfaction. WSDOT will ensure that the RFC Submittal reflects all QA, QC, and design reviews required by the QMP and this Agreement, UT 01476 (SCL Agreement) and UT 01474 (SPU Agreement). . WSDOT will also provide a written certification from its contractor to be used to verify to WSDOT and the City that all QA procedures have been completed to ensure that all review comments have been incorporated as agreed to during the comment resolution process among WSDOT, and the Design-Builder, and that the documents are ready to be released for construction. Each sheet of the plan

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set and the cover of each set of technical specifications in the RFC Submittal will carry the Professional Engineer's stamp registered in the State of Washington and will be stamped "Released for Construction" by the contractor's Design QA Manager.

4.10.4. WSDOT will provide hard copies and electronic files (in both CADD and PDF formats) of documents pertaining to CITY Facilities or the Street Use Permit as requested by the CITY's Construction Project Engineer. The electronic drawing files will include copies of all sheet and reference files used in the RFC Submittal. All design submittals will conform to the AWVSRP Computer Aided Design & Drafting Manual. Construction will not begin until WSDOT has determined that all required government and private approvals have been obtained.

4.10.5. Design Review. The review period for the Preliminary and Final Design Submittals will be fourteen (14) calendar days from the Business Day following receipt by the CITY's Construction Project Engineer of the Plan Review Package. The review period may be extended for submittals with overlapping review periods. The CITY will provide staff to provide guidance, review and comment on the Preliminary and Final Design Submittals for CITY Infrastructure, and work that impacts CITY Facilities and for work requiring a Street Use Permit as necessary to complete the reviews within the allotted period. Reviews may be required for the entire design or discrete portions of the design. Review comments will be submitted in a manner and form as requested and approved in the Design-Builder's QMP and mutually agreed by WSDOT and the CITY. WSDOT and the CITY Construction Project Engineer will jointly determine the design elements to be reviewed by the CITY.

4.10.6. Comment Resolution. The Design-Builder will schedule and maintain minutes of all resolution meetings with WSDOT and CITY staff and other Task Force members as appropriate to document and resolve review comments. It is intended that all comments will be resolved at these meetings. The Design-Builder will incorporate comment resolutions in subsequent submittals and provide a spreadsheet explaining action taken on each comment. In the event WSDOT disagrees with any CITY comment, the CITY and WSDOT will make staff with decision making authority on the issue available at the earliest possible opportunity to resolve the matter. If resolution cannot be reached, unresolved comments will be elevated in accordance with the dispute resolution provisions of GCA 6486, UT 01474, and UT 01476.

4.10.7. Street Use Permit Issuance. Upon receipt of a Preliminary Design Submittal, SDOT will make a determination as to whether the proposed work package requires a Street Use Permit under the provisions of SMC Title 15, or Letter

of Plan Approval, and so notify WSDOT. SDOT will issue a Street Use Permit and Letter of Plan Approval for the initial RFC Submittal within three (3) days of receipt of the RFC Submittal if the CITY has determined that the plans for the PROJECT element conform to the requirements of SMC Title 15 and that WSDOT has resolved all CITY plan review comments. Upon receipt of the City-issued Street Use Permit and Letter of Plan Approval WSDOT will be authorized to proceed with construction subject to the terms and conditions of the permit.

4.10.8. If the Street Use Permit has not been issued within three (3) Business Days after receipt of the RFC Submittal, the SDOT Director or his designee will review the cause of permit delay within one (1) Business Day, and meet with the STATE's Program Administrator or his designee to discuss the issues and develop a course of action.

4.10.9. Changes to RFC Submittal. WSDOT will diligently attempt to avoid the need for plan changes after issuance of a Street Use Permit or Letter of Plan Approval. In the event such changes occur, the CITY will undertake any additional review and permit re-issuance in as expedited a manner as practicable. WSDOT will require the Design-Builder's QMP to address the process for implementing design changes, including field changes, on the RFC Submittal. Design changes will be subject to the QA and QC measures and procedures, commensurate with those applied to the original design or that portion of the PROJECT under consideration for change. WSDOT will obtain CITY concurrence for all design changes affecting CITY Facilities or permitted interests prior to implementation of the change.

4.10.10. WSDOT will require the Design Builder to document all revisions made to the Approved Plans and design documents during the construction phase of the PROJECT by preparing new, revised or supplemental documents (including plan sheets, technical specifications, calculations, reports, and narratives). The new, revised, and supplemental documents will meet all requirements for the original documents. Every revision will be assigned a number. The revision number will be assigned sequentially, with each change in a document or plan sheet identified by the revision number. The assigned number will be located both at the location of the change on the sheet and in the revision block of the document, along with an explanation of the change. Revised RFC Submittals will be reviewed by the CITY Project Construction Engineer, who will coordinate with CITY departments as required depending upon the nature of the changes and initiate amendment of the Street Use Permit if required, consistent with applicable law.

5. Construction Management, Inspection, and Acceptance Procedures

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5.1. The following procedures govern construction management, inspection, and acceptance processes of CITY Facilities constructed by WSDOT for the PROJECT and address fulfillment of the CITY's regulatory role under SMC Title 15. The procedures will be used for Design-Bid-Build Contract and Design-Build Contract project delivery methods.

5.2. WSDOT and the CITY agree to work cooperatively with each other and in good faith to implement these procedures to attempt to accomplish the following:

5.2.1. Enable timely and expeditious execution of the PROJECT in accordance with the agreed standards on schedule.

5.2.2. Facilitate thorough review of all stages of construction to ascertain that CITY Infrastructure constructed by WSDOT is in compliance with CITY policy and regulations, and standards and specifications.

5.2.3. Facilitate communications and activities pertaining to construction management, inspection and contract administration, including communications in the field, roles and responsibilities, review of proposed changes to Approved Plans and other submittals by the contractor or Design Builder, processes for pre-acceptance inspections, and acceptance of infrastructure.

5.2.4. Enable both WSDOT and the CITY to comply with all laws and procedures governing their actions.

5.3. WSDOT will develop, advertise and award multiple construction contracts to fulfill its PROJECT responsibilities. WSDOT's construction contracts will be administered in accordance with the then-current Washington State Department of Transportation Standard Specifications for Road, Bridge, and Municipal Construction and WSDOT's construction contract forms and documents.

5.4. WSDOT will construct CITY Infrastructure in the fulfillment of its PROJECT responsibilities and may also construct CITY Infrastructure on the CITY's behalf by reimbursable Task Orders. Construction of CITY Infrastructure will conform to CITY laws, rules, regulations and standards.

5.5. WSDOT will designate STATE Project Engineers to administer its construction contracts for the PROJECT and to ensure work is constructed in accordance with the Approved Plans and the terms and conditions of the Street Use Permits and GCA 6486, UT 01474, and UT 01476. WSDOT may use consultant(s) in providing some or all of construction management services. The CITY may consult with and make inquiries of the STATE Project Engineer or designee, attend all meetings and have access to all documentation pertinent to CITY Facilities and performance of its regulatory responsibilities.

5.6. The CITY will provide a City Construction Project Engineer tasked to: (1) coordinate the activities of CITY inspectors, crews and consultants; (2) communicate with the

STATE Project Engineer regarding regulatory compliance, changes in design, the CITY's participation in reviewing contractor submittals, and the use of CITY resources; (3) coordinate the final inspection and acceptance of CITY Infrastructure with representatives from CITY departments; and (4) report on construction progress and issues to CITY department managers.

5.7. The CITY will provide qualified staff and/or consultants to fulfill its inspection, construction, and administration responsibilities during construction. CITY staff will work under the general direction of the City Construction Project Engineer CITY crews, technical and inspection staff and consultants will work in an integrated manner with STATE Project Engineer staff to perform construction related tasks and evaluate conformity of construction of CITY Infrastructure with the Approved Plans. CITY inspectors and compliance officers will immediately notify the STATE Project Engineer or designee of any compliance issues.

5.8. For each PROJECT contract, WSDOT will provide the CITY with a detailed contract execution schedule that includes CITY Infrastructure work, and will coordinate with the CITY to schedule utility shutdowns, cut-overs, and other CITY crew work and inspections. At a minimum, schedule updates will be provided on a monthly basis. Schedule changes will be promptly communicated to the CITY as soon as they become known by WSDOT.

5.9. Contractor Submittals. Within thirty (30) days of contract execution, WSDOT will prepare or cause its contractor(s) to prepare and submit a preliminary Submittal Control Document for each construction contract for use by WSDOT and the CITY to plan and manage staffing requirements for review of contractor submittals relating to construction of CITY Infrastructure and fulfillment of CITY permit requirements. The Submittal Control Document will include material submittals pursuant to CITY material standards and the City of Seattle Standard Specifications for Road, Bridge and Municipal Construction. The Submittal Control Document is a construction management tool that will be expanded and elaborated as each contract progresses.

5.9.1. WSDOT will forward electronic copies of submittals for CITY review to the City Construction Project Engineer who will assign primary, and if appropriate, secondary CITY reviewers. Hard copies will be provided upon request.

5.9.2. For Design-Bid-Build components of the PROJECT, the City Construction Project Engineer will return City review comments on all documents included in the approved Submittal Control Document within ten (10) business days of the CITY's receipt, unless the CITY of Seattle Standard Specifications for Road, Bridge and Municipal Construction allow for a longer review period, and respond in a timely manner to requests for information. The CITY will notify WSDOT if a submittal will require longer than ten (10) Business Days to review.

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5.9.3. For Design-Build components of the PROJECT, the CITY Construction Project Engineer will return CITY review comments within five (5) working days to WSDOT. WSDOT will track all submittals and discuss the status of active submittal reviews with the City Construction Project Engineer on a weekly basis. The City Construction Project Engineer will act as a liaison between WSDOT and the CITY departments in resolving issues regarding disposition of submittal comments.

5.9.4. CITY reviewers will send their comments on submittals to the City Construction Project Engineer. The City Construction Project Engineer will consolidate comments if necessary and send comments to WSDOT for dissemination back to contractors. For design submittals on Design-Build Contracts, comment responses will be provided to CITY reviewers along with the revised design for submittals that need to go through another round of review pursuant to Section 4 above.

5.9.5. The CITY is responsible for providing submittal review comments within the allotted time. If additional time is needed to respond, the City Construction Project Engineer will discuss this on a case-by-case basis, and obtain WSDOT's approval for a time extension in advance of the due date.

5.9.6. Pursuant to CITY review comments, the STATE Project Engineer will provide disposition instructions for all submittals to its contractors.

5.10. Access to SPU and SCL Facilities. WSDOT will provide the CITY with twenty-four (24) hour, seven (7) days a week, safe access to CITY Facilities in all construction and staging areas for the purpose of operation, maintenance, and emergency response. CITY staff will notify WSDOT in advance of their arrival on site except in the case of emergency. In the case of emergencies, safety practice dictates that CITY staff will make every effort to notify the STATE Project Engineer immediately upon entering a PROJECT construction site or staging area.

5.11. Testing and Inspection. WSDOT will develop (or in the case of Design-Build Contracts, require its contractor to develop) a quality management plan to include an inspection and test plan describing all the proposed quality assurance inspections and tests to be performed throughout the construction process. Activity-specific inspection and test plans will be prepared during the preparatory phase for each definable feature of work. WSDOT will provide the CITY with the opportunity to review the quality management plan. The CITY will review and comment on the inspection and test plan, and any other provisions regarding CITY Infrastructure.

5.11.1. WSDOT will form quality assurance or verification teams as appropriate for the contract type. The CITY will have representation on these teams. The quality team for each contract will hold meetings to review test and

inspection results and address and rectify issues relating to inspection, substandard material quality, adjustments needed for inadequate quality assurance and quality control processes, test results demonstrating that tolerance standards are not met, disparities between quality assurance and quality verification test data, future quality concerns, and any other issues raised by WSDOT and the CITY regarding quality of construction of CITY Infrastructure.

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

5.11.3. Throughout construction of the PROJECT, CITY staff and consultants will assist the STATE Project Engineer in evaluating contract compliance of CITY Infrastructure built by WSDOT's contractors. WSDOT will coordinate with the CITY to designate mandatory inspection points (hold points) for CITY Infrastructure. No work will proceed beyond a hold point until inspection has been performed or the option to inspect has been waived by a letter or e-mail from the City Construction Project Engineer to the STATE Project Engineer. WSDOT will provide notification to the CITY twenty-four (24) hours in advance of completion of work to be inspected by the CITY so that the CITY may perform inspection if desired.

5.11.4. The CITY will notify WSDOT promptly of any Defective Work observed by CITY inspectors.

5.11.5. Testing of CITY Infrastructure will conform to the requirements of the CITY Standard Specifications for Road, Bridge and Municipal Construction. The CITY may observe testing of materials and inspect installation of CITY Infrastructure and provide a written evaluation to the STATE Project Engineer regarding whether the materials or facilities tested meet with the requirements of the Approved Plans. WSDOT will endeavor to provide five (5) Business Days notice of all testing required by the Approved Plans, and the CITY will be provided a copy of certified test reports of materials or installation of CITY Infrastructure. The CITY will exercise its right to approve or reject construction or materials of CITY Infrastructure that are deficient, or that (1) do not meet with the requirements of the Approved

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Plans; (2) are not constructed in accordance with CITY-issued permits; (3) have defects in material and workmanship; and/or (4) have defects in design(s).

5.11.6. Except as otherwise agreed, all deficiencies will be reported through the STATE Project Engineer to the respective contractor's appropriate representative for resolution. Appropriate communications will be determined for each situation. CITY inspectors will not directly communicate with WSDOT's contractors without the express authorization of the STATE Project Engineers except when public or worker safety is in question.

5.11.7. WSDOT will ensure that underground CITY Facilities are jointly inspected and any deficiencies corrected prior to final grading and placement of overlying permanent pavement.

5.12. Change Management. The following procedures will apply to work affecting CITY Facilities or work subject to CITY-issued Street Use Permits.

5.12.1. Changes necessitated by design deficiencies or unforeseen site conditions will be managed in accordance with WSDOT contracts and standard procedures. When changes are required to the Approved Plans, the STATE Project Engineer will consult with the City Construction Project Engineer to determine CITY review requirements. When CITY review is required, the City Construction Project Engineer will coordinate the timely review of the contract modification and supporting documentation. In any case, the STATE Project Engineer will obtain CITY approval prior to implementing any change order affecting CITY Facilities or work subject to CITY issued Street Use Permits.

5.12.2. Within three (3) Business Days of receiving a proposed change to Approved Plans for any CITY Infrastructure work, WSDOT or its contractor will transmit the scope for the proposed change to the CITY for review, comment, and written approval. Before executing the change order, in a non-emergency situation and unless otherwise agreed by WSDOT and the CITY, WSDOT will allow the CITY sufficient time to review, comment and approve or disapprove in writing changes to the Approved Plans. The CITY will assign any change a high priority and provide a timely response commensurate with the complexity of the proposed change.

5.12.3. The CITY may request additions and changes to the construction contract through WSDOT. WSDOT will comply with the requested changes provided that the changes are within the general scope of the PROJECT and comply with the PROJECT permits, State and/or Federal law and applicable rules, codes and/or regulations. WSDOT retains the right to reject requested changes if incorporating such changes could result in unwarranted additional

cost to the STATE or a delay in the PROJECT schedule. Such additions and changes may lead to change orders, or they may lead to Betterments or New Work. If the CITY and WSDOT agree to implement the change, the requesting CITY department and WSDOT will document the request in writing by completing and signing a concurrence letter. The CITY agrees to reimburse WSDOT for the costs associated with Betterments and additional New Work.

5.12.4. WSDOT will make available to the CITY all change order documentation that affects CITY Infrastructure.

5.13. Special Construction Considerations.

5.13.1. SCL. The following procedures apply specifically to SCL Facilities during construction.

5.13.1.1. Electrical Clearance Procedures. WSDOT contractors may need to obtain electrical clearances when it is necessary to de-energize electrical lines or system appurtenances. Individual clearance holders will be required to go through a training session based on SCL's System Operation Center (SOC) guidelines to familiarize themselves with SCL requirements for holding and maintaining a clearance on the SCL electrical system. SCL will provide WSDOT's contractor an outline of procedures and guidelines to follow at all times during the clearance and WSDOT will ensure that such guidelines and procedures are followed. Chief Dispatcher, Dana Wheelock or his designee at 206-706-0241, will be the contact for SCL. SCL's Power Line Clearance Coordinator reserves the right to review the contractor crew's qualifications and notify WSDOT. WSDOT will require the contractor to replace those sub-contractors who do not meet qualifications required under state law.

5.13.1.2. Advance Notice of Service Outages. WSDOT will submit a request in writing, thirty (30) calendar days prior to any necessary outages specifying the electrical boundaries, the date the outage will begin and the date the facilities can be re-energized and put into/back into service. SCL will accommodate such requests unless prohibited by operational necessity, a previously scheduled outage conflicts with the outage requested by WSDOT, or emergency conditions prohibit the outage or limit the availability of crews. If denied, SCL will assist WSDOT in finding another outage window. If granted, SCL will outline any conditions related to such outage to WSDOT.

5.13.2. SPU. The following special considerations apply to construction work associated with SPU Facilities.

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5.13.2.1. Testing Specific to SPU Facilities. SPU will perform periodic inspection on joint bonding installed on new water mains and test isolation couplings at connections of new water mains to existing water mains. SPU will also perform tests on all cathodic test stations on the new water mains for electrical continuity. SPU will obtain water samples from the new water mains after they have been chlorinated and flushed by a WSDOT contractor in accordance with City Standards and will perform tests on the water sample for purity.

5.13.2.2. Water main connections. SPU will perform the pipe work necessary to connect new water mains or relocated water mains to the existing water system pursuant to CITY Standard Plan No. 300. WSDOT will provide SPU with at least fourteen (14) calendar days notice prior to scheduling any SPU crew work and will provide longer notice to the extent possible through regular construction scheduling meetings. SPU will make every effort to complete the work within twenty-four (24) hours of the time WSDOT has requested the work to be done. WSDOT contractors will be required to perform site preparation and restoration work to support SPU crews, including the provision of traffic control.

5.13.2.3. New drainage and wastewater system connections. SPU will core drill and install all tees pursuant to CITY standard specification 7-17.3(2)C, Plugs and Connections. WSDOT will notify SPU fourteen (14) calendar days prior to the need for this work. SPU will make every effort to complete the work within twenty-four (24) hours of the time WSDOT has requested the work to be done. WSDOT contractors will be required to perform site preparation and restoration work to support SPU crews, including the provision of traffic control.

5.13.2.4. Valve operation and water system shutdown. SPU will perform all water valve operations, shutdowns, and disconnections of its water system to its affected customers and will notify these customers of such planned service interruptions.

5.14. Acceptance. WSDOT will notify the CITY upon completion of the construction of CITY Infrastructure and will invite the CITY to participate in a joint pre-final inspection of the completed work.

5.14.1. The CITY will timely inspect the completed CITY Infrastructure and will exercise its right to approve or reject construction or materials which are deficient, or which deviate from the Approved Plans or any CITY-approved revisions to the Approved Plans. The CITY will submit a written response within ten (10) Business Days of the date of the pre-final inspection, notifying WSDOT that CITY Infrastructure has been constructed in accordance with the Approved Plans, or rejecting the completed CITY

Infrastructure. In the event that the completed CITY Infrastructure is rejected, such response will include written notice of any known deficiencies and Defective Work so that WSDOT can use the response in its preparation of a contract punch list.

5.14.2. WSDOT will address each deficiency identified by the CITY during the pre-final inspection and will resolve all deficiencies and Defective Work to comply with the Approved Plans, or any approved revisions to the Approved Plans. If disagreements arise between the CITY and WSDOT on what constitutes Defective Work or a deficiency or whether the CITY Infrastructure meets agreed upon requirements, the disagreement will be resolved using the dispute resolution provisions of GCA 6486, UT 01474, or UT 04176. The CITY will assist the STATE Project Engineer in determining appropriate remedies for each deficiency and for Defective Work. Both WSDOT and the CITY agree to act as expeditiously as possible to assure a timely resolution of deficiencies and Defective Work.

5.14.3. Once the STATE Project Engineer determines that WSDOT has remedied all deficiencies and Defective Work identified during the pre-final inspection, the STATE Project Engineer will invite the CITY to participate in a joint final inspection of the completed CITY Infrastructure. The CITY will submit a written response within ten (10) Business Days of the date of the final inspection notifying WSDOT that CITY Infrastructure has been constructed in accordance with the Approved Plans, or notifying WSDOT of any remaining deficiencies or Defective Work.

5.14.4. Acceptance of CITY Infrastructure may be executed in stages. Letters of Acceptance and notification of interim use and operation will be executed in accordance with Section 15, Final Inspection and Project Acceptance of GCA 6486.

6. Redlines and Record Drawings.

6.1. For PROJECT work that WSDOT constructs including work performed on behalf of the CITY through a Task Order, WSDOT shall maintain one set of Approved Plans as the official contract drawings and provisions to which WSDOT shall make drawings and notations in either red ink or red pencil to show the constructed configuration of all infrastructure that deviates from the design and contract requirements shown in the Approved Plans as typically recorded pursuant to WSDOT and City of Seattle standard practices. These documents shall be referred to as the red-line plans.

6.2. The red-line plans shall be kept current throughout construction with accurate and comprehensive information detailing the constructed configuration of the infrastructure. The red-line plans shall reflect the same level of detail as the Approved

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Plans, and shall provide the drawing accuracy necessary for the CITY and private utility purveyors to locate their respective utilities in accordance with State law.

6.3. The STATE Project Engineer and the City Construction Project Engineer shall jointly review the red-line plans monthly to evaluate whether the red-line plans reflect a current, accurate and comprehensive record of the constructed configuration of the infrastructure. If the STATE Project Engineer or the City Construction Project Engineer determines that the Red-Line Plans are not current, accurate or comprehensive, WSDOT shall immediately revise the red-line plans to remedy deficiencies.

6.4. Prior to placing CITY Infrastructure into service during the course of construction, WSDOT shall provide the CITY with color photocopies of portions of the red-line plans showing the constructed configuration of the CITY Infrastructure being placed into service.

6.5. WSDOT shall submit one color set of the completed red-line plans prior to the Parties executing a Letter of Acceptance provided for in Section 15 of GCA 6486.

6.6. All record drawings for CITY Infrastructure shall comply with the digital and graphical standards of the City of Seattle Inter-Departmental CADD Standards.

6.7. A transmittal of record drawings shall include two (2) full-scale bond copies plus the digital files meeting with the requirements established above.

7. Task Order Invoicing and Payment

7.1. Invoicing. The PARTIES shall invoice each other monthly based on work progress and cost expenditures. Invoices shall be submitted to the receiving PARTY within thirty (30) calendar days after the end of the month in which the work was performed, with the exception of CITY invoicing to the STATE which may occur within sixty (60) calendar days after the end of the month in which the work was performed.

7.1.1. Invoices shall include a reference to the Task Order under which the invoiced services were authorized, the billing period, and a summary of the work performed during the billing period, total value of the invoice, total amount invoiced to date, the budgeted amount, and amount remaining. Invoices will provide an appropriate level of supported detail for the agreed approach to reimbursement. Actual cost reimbursement will be by unit cost or time and materials.

7.1.1.1. In addition to requirements of section 7.1.1, unit cost reimbursement will include a schedule of values, percent complete for each bid item, total quantity for each bid item, itemized list of materials-on-hand quantities, and itemized indirect charges/rates as appropriate.

7.1.1.2. In addition to requirements of Section 7.1.1, for work performed on a time and materials basis, the invoice will include a list of personnel, and equipment employed to complete the invoiced work and the itemized hours and rates for each person and piece of equipment, itemized materials list with cost and quantity used, and itemized indirect charges/rates as appropriate.

7.1.1.3. Billings for non-salary costs, directly identifiable with the PROJECT, shall include an itemized listing of the charges. The PARTIES shall retain copies of original invoices, expense accounts, and miscellaneous supporting data and shall supply copies of the original supporting documents and/or accounting records to the PARTY upon request.

7.1.2. To ensure prompt payment, the PARTIES will mail via United States Postal Service invoices and appropriate supporting materials to the Designated Representatives as described in Section 25 of GCA 6486 or in the appropriate Task Order.

7.1.3. Invoices must be signed by an authorized representative of the issuing PARTY who shall verify that the invoice is accurate, the services have been purchased or the work has been performed, and that the costs shown have been reasonably incurred in accordance with this Agreement, UT 01476 (SCL Agreement) or UT 01474 (SPU Agreement).

7.2. Reimbursement. Monthly progress payments for reimbursable costs under this Agreement, UT 01476 (SCL Agreement) or UT 01474 (SPU Agreement). shall be made upon the completion and documentation of the work in support of invoices as described in Section 7.1 above. Within forty-five (45) calendar days after a PARTY'S receipt of any complete and accurate invoice, the invoiced PARTY shall remit the reimbursement. The PARTIES will work cooperatively to resolve issues related to the accuracy of these invoices so as to avoid any delay in payment. Any invoiced expenditure unsupported by appropriate documentation shall be identified in writing and not included in the reimbursement; provided, however, that the presence of unsupported items within an invoice shall not delay payment of those items that are supported by appropriate documentation. It is agreed that any partial payment under a Task Order will not constitute agreement as to the appropriateness of services and that, at the time of final audit; all required adjustments will be made and reflected in a final payment.

7.3. In addition, the PARTIES may require other financial documents to verify that the amounts invoiced are included within the budgeted scope of each Task Order, including, but not limited to, (1) work statements or payroll records, (2) invoices for materials and supplies, (3) statements from professionals for services rendered, (4) certifications by the PARTIES that materials and services are satisfactorily rendered,

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and (5) itemized listings of the charges supported by copies of original bills, invoices, expense accounts, and miscellaneous supporting data retained by the PARTIES.

7.4. Monitoring and Reporting of Progress. The PARTIES are committed to working cooperatively and efficiently and will closely monitor the time required to complete work products consistent with the scope of work and budget for each Task Order. The PARTIES shall provide clear, accurate and detailed monthly progress reports to each other by the 20th of the succeeding month. The PARTIES shall further refine progress reporting, accounting and program management systems as they agree, in order to ensure useful and descriptive information that complements each PARTY'S project control system. The PARTY performing work authorized in a Task Order shall provide active, ongoing oversight to ensure that public funds are expended efficiently.

7.5. Reconciliation. The PARTIES agree to monitor and reconcile the actual versus estimated Task Order work and costs on a quarterly basis. The PARTIES will negotiate additional funding or a reduction in services relating to a Task Order to the extent that such work cannot be performed within the estimate of compensation and expense reimbursement due for the services delivered and work performed. Each PARTY will rely on information contained in the progress reports to identify changes in the work as reported on by the other PARTY in order to have the opportunity to take corrective action or clarify assumed work efforts.

7.6. The PARTIES agrees to submit a final invoice to the PARTY within ninety (90) calendar days after completion of a Task Order.

7.7. Availability of Records. All PROJECT records in support of all costs incurred and actual expenditures kept by the PARTIES shall be maintained in accordance with procedures prescribed by the Washington State Auditor's Office and the applicable Federal funding agencies. The records shall be open to inspection by the PARTIES and the Federal government during normal business hours, and shall be retained and made available for such inspection for a period of not less than six (6) years from the final payment of any federal aid funds to the PARTIES. Copies of said records shall be furnished to the PARTIES and/or the Federal government upon request. This requirement shall be included in all third-party contracts related to the work entered into by the CITY to fulfill the terms of this Agreement, UT 01476 (SCL Agreement) or UT 01474 (SPU Agreement).

7.8. Audit. If an audit is requested by the PARTIES or required by any applicable Federal agency requirements, the PARTIES agree to cooperate fully with any such audit and provide documentation as is requested in support of all costs.

MEMORANDUM OF AGREEMENT
NO. GCA 6486
SR 99 ALASKAN WAY VIADUCT
PROPERTY, ENVIRONMENTAL REMEDIATION, DESIGN REVIEW, PERMITTING, AND CONSTRUCTION COORDINATION AGREEMENT
FOR SR 99 BORED TUNNEL PROJECT

EXHIBIT C
TASK ORDER TEMPLATE

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Washington State Department of Transportation

SR 99 Proposed Bored Tunnel Project

Task Order

Task Order Title [enter short title for reference]	Task Order Number WSDOT-001 [example] [Insert "Amendment" here if this TO is an amendment to a previous TO]
Requesting Agency [enter name of agency requesting services]	Requesting Agency Account Number [enter accounting numbers/codes]
Service Agency [enter name of agency providing services]	Service Agency Account Number [enter accounting numbers/codes]
Notice to Proceed Date [enter start date]	Task Order Amount $ [enter authorized task order amount]
Completion Date [enter completion or termination date]	

Task Order Provisions

1.0 The Requesting Agency and Service Agency shall issue, conduct and administer this Task Order in compliance with all the provisions of the following Memoranda of Agreement between the State of Washington Department of Transportation and the City of Seattle: GCA 6486, UT 01474 and UT 01476.

2.0 The provisions of this Task Order can only be revised through a mutually executed amendment to this Task Order.

3.0 Background

[Insert narrative on the need for this scope of services]
[If this Task Order amends a previous task order, explain the circumstances and need for amendment]
[Denote whether City services are in direct support of known WSDOT contract work and if so which WSDOT contract]
[Denote whether WSDOT services are intended to fulfill the City's obligations to the Project or are a betterment opportunity to improve City facilities in conjunction with the project]
[Reference all other relevant project contracts, task orders and work]

4.0 Scope of Services

[Provide a narrative defining the scope of services]

[Reference any attached graphics, plans, specifications, photos or other materials that aid in defining the scope of services]
[List any services specific to the administration of this Task Order including services related to accounting, and measurement and payment services to be provided by the Service Agency]

5.0 Schedule

[Insert schedule milestone dates including the required completion date]
[Reference any attached schedule]

6.0 Task Order Amount

[Reference and attach detailed estimates for the contract amount, as may be appropriate]

7.0 Assumptions and Exclusions

[Insert any assumptions and exclusions pertinent to the development of the scope of services, schedule, and/or task order amount]

8.0 Designated Representatives

WSDOT Representative & Phone Number:
City Representative & Phone Number:

In consideration of the provisions contained herein, or attached and incorporated and made part hereof, the Requesting Agency and the Service Agency have executed this Task Order as of the last date written below.

Requesting Agency [enter agency name]	Service Agency [enter agency name]
[enter name of agency signatory] [enter title of agency signatory]	[enter name of agency signatory] [enter title of agency signatory]
Date	Date

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EXHIBIT D TO MEMORANDUM OF AGREEMENT NO. GCA 6486

1. Relocated surface street within existing City right-of-way between South King Street and Battery Street consisting of the following three segments: 1) Relocated and reconstructed Alaskan Way between King Street and Pike Street with the necessary elements to accommodate efficient and safe cross traffic movements; 2) a new surface street climbing the hill west of the Pike Place Market from the intersection of Pike Street and Alaskan Way to the intersection of Blanchard Street and Elliot Avenue, including a bridge crossing over the BNSF mainline; 3) final connections from Alaskan Way to Elliott and Western Avenues between Blanchard Street and Battery Street. These streets will be designed to serve all anticipated users, including automobiles, transit, freight, bicycles and pedestrians

2. Demolition, salvage and recycling of the existing Alaskan Way Viaduct and access ramps between S King Street and the Battery Street tunnel;

3. Demolition of the on and off ramps to the existing viaduct at Columbia and Seneca Streets and associated restoration of Columbia and Seneca Streets between Alaskan Way and First Avenue.

4. Replacement, rehabilitation or protection-in-place of the Marion Street pedestrian bridge, as determined feasible, consistent with Item #1 above, and in consideration of the demolition method(s) of the Alaskan Way Viaduct in Item #2 above.

5. North and south tunnel ventilation buildings which will be designed in accordance with Section 8 – Urban Design, as stipulated in this agreement;

6. Re-establishment of the City street grid in the vicinity of the portals: John, Thomas and Harrison Streets between Dexter Avenue N and 6th Avenue N; Denny Way between Dexter Avenue N and 6th Avenue N; S. Dearborn Street between Alaskan Way and 1st Avenue S;

7. Battery Street Tunnel decommissioning, including any associated restoration of Battery Street between the Denny Way tunnel portal and Elliot Avenue that is necessary specifically due to the tunnel decommissioning method;

8. Total WSDOT budget allocated for PROGRAM elements listed in items 1 through 7 above is estimated at: $380 million.

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NO. GCA 6486

Exhibit E

Advisory Committee on Tolling & Traffic Management

Charge: Make advisory recommendations to WSDOT, the Governor, the Legislature, the Transportation Commission, the Federal Highway Administration (FHWA), the Seattle City Council, and the Seattle Mayor on strategies for: (1) tolling the SR99 bored tunnel , (2) minimizing traffic diversion from the tunnel due to tolling, and (3) mitigating traffic diversion effects on city streets and I-5. These recommendations may be implemented by the State, City of Seattle, Port of Seattle, and/or King County as appropriate. Authority for tolling will require action by the State Legislature, while tolling rates are within the purview of the Transportation Commission.

Staffing: The Advisory Committee will be staffed by managers or policy level staff from WSDOT, SDOT, Port of Seattle, King County, and Council central staff. Staffing will be supported by technical staff from each of the agencies and/or consultant support. The role of staff will be to manage the Advisory Committee's work plan, develop a schedule, frame issues, and review and format technical data for the Advisory Committee's review. WSDOT and the City of Seattle will manage resources from the state's Alaskan Way Viaduct and Seawall Replacement Program budget to cover mutually agreeable staffing and consultant costs to support the Advisory Committee. State and City will jointly facilitate these meetings.

Membership: The Advisory Committee will be comprised of up to 15 members. The Mayor; Seattle City Council; and WSDOT will each appoint one-third of the members. All members will be confirmed by Council. Advisory Committee membership should represent the following types of interests: Freight, retail, drivers, labor, bicycle and pedestrian interests, large employer, waterfront business, adjacent and affected neighborhoods, transit riders, low-income, and others.

Timeline: The Advisory Committee will begin work in March 2011, and it will submit its initial tolling and diversion minimization recommendations by June 2012. Interim milestones will be established by the staff in conjunction with the Advisory Committee members.

The Advisory Committee is expected to continue working to refine its analysis and recommendations through December 2015 (when the deep bored tunnel is scheduled to open to traffic and toll implementation begins). The Advisory Committee will continue its work for up to one year after tolling begins to review the effects of the implemented tolling and diversion minimization strategies and to make further recommendations.

Scope of Work:

The work of the Advisory Committee will take place through an iterative process of reviewing financial goals, assessing the impact of different tolling strategies on traffic using the SR 99 bored tunnel, and evaluating a range of strategies to minimize diversion. The tasks of the committee will include:

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1. Review anticipated traffic impacts on city streets and I-5 for different tolling scenarios.

2. Explore ways to:
    a. Refine the tolling strategy for the SR 99 bored tunnel, including considering variable toll rate, and regional tolling and/or tolling of other state and city facilities.
    b. Reduce the level of toll revenue to the bored tunnel project by identifying alternative funding source(s).
    c. Optimize the tolling strategy for the SR 99 bored tunnel to balance accomplishing state funding goals while minimizing diversion of traffic.

3. Assess various strategies for minimizing and mitigating adverse effects of traffic diversion from tolled SR99 onto city streets through optimizing traffic flows and/or restricting or limiting traffic, including, but not limited to:

    a. Setting priorities for street use by time of day for various users (cars, trucks, bicycles, pedestrians, transit, parking consistent with City's complete streets policy goals;
    b. Identify opportunities for traffic calming, and other restrictions on certain modes of travel;
    c. Creating "transit first" policies through transit priority streets and other methods to improve transit speed and reliability;
    d. Using other traffic demand management measures;
    e. Funding enhanced transit services and vanpools.

4. Assess various strategies for minimizing and mitigating diversion of traffic onto I-5 and other state facilities through optimizing traffic flow and/or restricting or limiting traffic, including, but not limited to:

    a. Modifying I-5 operations, including the express lanes and on and off-ramps in the City;
    b. Extending the use of intelligent transportation systems on I-5 through the City.

5. Develop specific transportation plans for the north and south portal areas to more specifically identify street uses, traffic flows, and treatments. This work should also implement other recommendations of the Center City Strategy.

Attachment 2

Memorandum of Agreement UT 01476

SR 99 Alaskan Way Viaduct Replacement

SCL Facilities Work Agreement For SR99 Bored Tunnel Project

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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, as provided in RCW 39.34.080, RCW 47.12.040 and other applicable law, between the Washington State 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

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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.

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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. Conflicting Facilities do not include any SPU Facilities or SCL Facilities that have been relocated to or installed or reconstructed in their present location by the STATE or by order of the STATE as part of the Moving Forward projects of the Program south of South Dearborn Street.

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.

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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 Washington State 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.

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2.2 This Agreement in conjunction with GCA 6486 and UT 01474 is prepared by the STATE and CITY, as provided in RCW 39.34.080, RCW 47.12.040 and other applicable law, 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 only preliminary design work and other work outlined in 23 CFR 636.109(b)(2) may proceed under this Agreement prior to issuance of a Final SEPA/NEPA Environmental Impact Statement (FEIS) and federal Record of Decision (ROD). If an alternative other than the Proposed Bored Tunnel is selected, this Agreement will be terminated pursuant to the provisions of Section 21 of this Agreement. If the Proposed Bored Tunnel is selected, the remaining work under this Agreement other than preliminary design work may proceed no sooner than after issuance of the ROD and only after WSDOT and the City Council each provide notice to the other that it wishes to proceed with the Agreement. WSDOT will provide Notice to Proceed 2, which authorizes final design and construction, to the Design Builder only after issuance of the ROD.

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.

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3.2 In the event SCL finds additional existing Conflicting Utilities, 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

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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.

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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.

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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 access facility designation for the tunnel shall contain a vertical and horizontal boundary.

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

14.6.3 The area 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 In 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.

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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.

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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.

CITY OF SEATTLE

By: _____

Title: _____

Date: _____

WASHINGTON STATE

By: [signature]

Title: Administrator, AWVSRP

Date: 1/28/2011

APPROVED AS TO FORM:

By: Bryce Brown

Title: Senior Assistant Attorney General

Date: 1-28-11

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

DNS CITY CLERK

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

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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 _____

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Attachment 1

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

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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.

CITY CLERK

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. <u>STATE's Construction and Maintenance of XXX.</u> 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

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(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

DNS CITY CLERK

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,

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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

The City of Seattle,
by and through its **City Light Department**

By: _____

Title:

Address: 700 Fifth Avenue, Suite 3200
PO Box 34023
Seattle, WA 98124-4023

Recipient Party

_____

By: _____

Title:

Address:

Attachment 3

Memorandum of Agreement UT 01474

SR 99 Alaskan Way Viaduct Replacement

SPU Facilities Work Agreement For SR99 Bored Tunnel Project

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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, as provided in RCW 39.34.080, RCW 47.12.040 and other applicable law, between the Washington State 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

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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.

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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. Conflicting Facilities do not include any SPU Facilities or SCL Facilities that have been relocated to or installed or reconstructed in their present location by the STATE or by order of the STATE as part of the Moving Forward projects of the Program south of South Dearborn Street.

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.

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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, as provided in RCW 39.34.080, RCW 47.12.040 and other applicable law, 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 only preliminary design work and other work outlined in 23 CFR 636.109(b)(2) may proceed under this Agreement prior to issuance of a Final SEPA/NEPA Environmental Impact Statement (FEIS) and federal Record of Decision

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(ROD). If an alternative other than the Proposed Bored Tunnel is selected, this Agreement will be terminated pursuant to the provisions of Section 21 of this Agreement. If the Proposed Bored Tunnel is selected, the remaining work under this Agreement other than preliminary design work may proceed no sooner than after issuance of the ROD and only after WSDOT and the City Council each provide notice to the other that it wishes to proceed with the Agreement. WSDOT will provide Notice to Proceed 2, which authorizes final design and construction, to the Design Builder only after issuance of the ROD.

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 In the event SPU finds additional existing Conflicting Utilities, 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:

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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

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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

DNS CITY CLERK

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

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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 agrees that any limited access facility designation for the tunnel will allow SPU to access its SPU Facilities.

14.6.3 The area 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 In 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.

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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.

CITY CLERK

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.

CITY OF SEATTLE

By: _____

Title: _____

Date: _____

WASHINGTON STATE

By: [illegible]

Title: Administrator, AWVRSRP

Date: 1/28/2011

APPROVED AS TO FORM:

By: Bruce Brown

Title: Senior Assistant Attorney General

Date: 1-28-11

2011 CITY CLERK

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

CITY CLERK

(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.

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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.

CITY CLERK

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]

CITY CLERK

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

CITY CLERK

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.

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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

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(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:_____

Form revised February 6, 2008

FISCAL NOTE FOR CAPITAL PROJECTS ONLY

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Legislative	Ben Noble / 684-8160	N/A

Legislation Title: AN ORDINANCE relating to the State Route 99 Alaskan Way Viaduct and Seawall Replacement Program; entering into certain agreements with the State of Washington as provided in RCW 39.34.080, RCW chapter 47.12, and other applicable law; and ratifying and confirming certain prior acts.

Summary and background of the Legislation:

The proposed Council Bill authorizes three separate agreements between the City and the Washington State Department of Transportation ("WSDOT") that will allow for City participation in the SR 99 Bored Tunnel Project. The Project replaces SR 99 from South Royal Brougham Street to Roy Street and consists of designing and constructing a four-lane 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 agreements authorize preliminary work on the Project. Further work on the Project may not be authorized until after WSDOT and the City Council have reviewed the final environmental impact statement and given notice to proceed.

The Project consists of the following features:

Tunnel:

- A four-lane tunnel under the City from a south portal in the vicinity of Dearborn Street and Alaskan Way to a north portal in the vicinity of 6th Avenue North and Harrison Street.
- PROJECT work will include:
  - Approximately two miles of cut-and-cover and bored tunnel providing two travel lanes in each direction.
  - Tunnel portal structures and the shoring walls and excavation associated with portal construction.
  - Tunnel operations buildings at both the north and south portals to house tunnel egress, tunnel ventilation systems, and fire and life safety systems and controls.
  - Tunnel operations, intelligent transportation, and fire and life safety systems.
  - Monitoring of, and mitigation, for tunnel-induced Deformation, such as protecting utilities, and preparing structures for predicted tunnel-induced Deformation through engineered measures such as grouting and structural retrofit.
  - Repair of public and private property that may be damaged as a result of construction.

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North Tunnel Access and Reconnection of the Surface Street Grid:

- SR 99 roadway and roadway structures connecting the tunnel to existing SR 99 in the vicinity of Aurora Avenue at Roy Street, associated on and off ramps, and City right of way in the vicinity of the north tunnel portal.

- PROJECT work will include:
  - Advance traffic management systems including capability for tolling.
  - Reconnect Aurora Avenue to the City street grid at Denny Way.
  - Improvements to existing City street right-of-way including cross-corridor connections of John, Thomas, and Harrison Streets.
  - New lanes, curbs, sidewalks, traffic signals, intelligent transportation systems and signage, landscaping and street lighting.
  - Improvements to Aurora Avenue from Denny Street to Harrison Street.
  - Storm drains and other utilities in the new City street right-of way.

South Tunnel Access and Reconnection of the Surface Street Grid:

- Roadway and roadway structures connecting the tunnel south portal to SR 99 lanes being constructed as part of the Holgate to King Project in the vicinity of South Royal Brougham Way and improvements to City street right-of-way in the vicinity of the south tunnel portal.

- PROJECT work will include:
  - Removal of the south-end SR 99 temporary roadway detour built as part of Holgate to King Project.
  - Advance traffic management systems including capability for tolling.
  - New lanes, curbs, sidewalks, traffic signals, intelligent transportation systems and signage, landscaping and street lighting.
  - City street improvements including cross-corridor connections of S. Dearborn Street.
  - Restoration of 1st Avenue South from Royal Brougham Way to Railroad Way S.
  - Storm drains and other utilities in the new City street right-of-way.
  - Pedestrian plazas in the vicinity of the south tunnel portal.
  - Bicycle and pedestrian paths.

Other incidental Project work:

- Environmental remediation.
- Temporary Sediment and Erosion Control.
- Traffic control and detours.
- Maintenance of utility service.

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Utility Work:

- Removal and replacement of existing City electrical, communications, water, drainage and wastewater facilities and other privately owned utilities that directly conflict with the north and south tunnel portals and tunnel portal excavations .
- Utility services necessary for the operation of the tunnel and tunnel operations buildings
- New Utility improvements.

The three agreements authorized by this Bill govern different elements of the relationship between the City and WSDOT as follows:

- Property, Environmental Remediation, Design Review, Permitting and Construction Coordination (to be signed by the Seattle Department of Transportation, "SDOT").
- Seattle City Light Facilities Work (to be signed by Seattle City Light, "SCL").
- Seattle Public Utilities Facilities Work (to be signed by Seattle Public Utilities, "SPU").

Under the agreements, WSDOT is responsible for providing necessary funding for all project costs without reimbursement from the City of Seattle, with the exception of the relocation of SPU and SCL utilities that conflict with WSDOT's North and South Portal construction. The City is responsible for paying for any betterments.

Project Name:	Project I.D.	Project Location:	Start Date:	End Date
Alaskan Way Viaduct & Seawall Replacement (SDOT)	TC366050	ALASKAN WY VI SB/BATTERY ST TUN OFF RP	1Q 2001	4Q 2018
Alaskan Way Viaduct and Seawall Replacement - Utility Relocations (SCL)	8307	SR 99 / Battery St	1Q 2002	4Q 2018
Alaskan Way Viaduct & Seawall Replacement Program - DWF (SPU)	C4102-DWF	SR99 / Battery St	1Q 2004	4Q 2018
Alaskan Way Viaduct & Seawall Replacement Program - WF (SPU)	C4102-WF	SR99 / Battery St	1Q 2004	4Q 2018

This legislation does not appropriate City funds. City-related costs are accounted for in the 2010 Adopted Budget and 2010-2015 Adopted CIP.

Please see the following attachment to this fiscal note for details:

Attachment A: AWVSRP Program Costs

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ATTACHMENT A: AWVSRP Program Costs

Component	2009	2010	2011	2012	2013	2014	2015	2016+	Total
Central Seawall	0.8	7.8	12.6	19.9	90.6	92.0	50.2	0.0	273.9
Waterfront and Surface Street	0.1	1.1	3.2	4.0	10.8	14.0	34.2	345.7	413.0
Mercer Corridor West Phase	0.0	6.0	12.3	15.1	37.0	29.6	0.0	0.0	100.0
Parking program / Project Svcs	4.6	7.9	6.1	5.6	4.7	3.2	3.4	5.7	41.2
City Light Relocations	2.2	9.1	39.3	64.4	20.3	11.2	7.2	44.1	197.8
SPU Relocations	1.2	2.5	7.0	12.0	8.5	5.0	3.7	4.5	44.4
Partial Const. Trans. Mitigation	0.0	0.0	0.0	0.0	10.0	10.0	10.0	0.0	30.0

Notes:

1. This table consists of costs that are included in the City's Capital Improvement Program, including City-managed costs that are funded by the State and other sources. This table represents an update from the 2010-2015 Adopted CIP. However, further updates and refinements may be included in the 2011-2016 Proposed CIP.
2. Spokane Street Viaduct and Mercer East partial funding of $80 million is not included in this table.
3. Line items for utility relocation include costs associated with the tunnel and other elements of the Alaskan Way Viaduct Seawall Replacement Program (AWVSRP). These costs may be updated in the 2011-2016 Proposed CIP.

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