

1 7.7 The STATE shall address all CITY plan review comments from each stage of
2 plan review and incorporate agreed comment resolution into subsequent plan review
3 submittals.

4
5 7.8 The PARTIES shall provide sufficient staff and resources for timely preparation
6 and review of the PROJECT designs.

7
8 7.9 The CITY shall not give direction to the STATE's consultants or contractors
9 during the design and review processes set forth in this Agreement and the Procedures.

10
11 7.10 Both PARTIES shall endeavor to identify and address issues as early as possible
12 during the design process.

13
14 7.11 The STATE shall obtain the CITY's design approval for all City Infrastructure,
15 and regulatory approval for PROJECT work within City Street Right-of-Way prior to
16 constructing such work.

17
18 7.12 Designs and construction provisions for CITY Infrastructure shall comply with
19 City Standards.

20
21 7.13 The PARTIES agree that design of CITY Infrastructure shall consider long-term
22 operation and maintenance costs and requirements, and minimize potential interruptions
23 and disruptions to CITY UTILITY customers.

24
25 7.14 The STATE shall obtain the CITY's approval prior to incorporating any
26 deviations from City Standards into the design or construction of all CITY Infrastructure
27 and CITY Facilities work.

28
29 7.15 The PARTIES agree that Approved Plans or Released for Construction Submittal
30 for each component of the PROJECT shall be stamped by an engineer of record
31 representing the PARTY preparing the Approved Plans pursuant to the requirements of
32 state law.

33
34 7.16 The PARTIES shall first obtain the review and concurrence of the CITY prior to
35 making or implementing revisions or deviations from the Approved Plans for any such
36 revisions or deviations pertaining to elements listed in Section 7.3 of this Agreement.

37
38 7.17 The PARTIES acknowledge that the STATE may request the CITY to operate
39 and maintain certain STATE-owned PROJECT facilities as may be established by
40 separate agreement. The CITY shall, at the request of the STATE, review the design of
41 such facilities to determine the compatibility of the design with the CITY's existing
42 operational capabilities, standard practices, equipment and other resources required to
43 operate and maintain such facilities.

44
45

1 **8. URBAN DESIGN**

2
3 8.1 The STATE and CITY agree to work together to develop standards that will
4 promote appropriate urban and architectural design of the PROJECT.

5
6 8.2 The STATE and CITY have prepared the Bored Tunnel Design Goals and
7 Objectives which were submitted to the Seattle Design Commission on January 21, 2010,
8 Building Design Principles, which were submitted to the Seattle Design Commission on
9 February 18, 2010, and Project Guiding Principles for the Portal Areas, which were
10 submitted to the Seattle Design Commission on March 18, 2010.

11
12 8.3 The STATE and CITY have developed Portal Area Design Guidelines based on
13 these Bored Tunnel Design Goals and Objectives and Guiding Principles. The Portal
14 Area Design Guidelines include:

- 15 8.3.1 Functional highway, surface street and development configurations,
16 8.3.2 Landscaping concepts,
17 8.3.3 Architectural and urban design concepts for walls, bridges and tunnel
18 portals,
19 8.3.4 Design guidance for highway appurtenances (i.e., barrier type, light
20 standards, sign support types, etc.),
21 8.3.5 Conceptual designs for city streets, including sidewalks and plazas, and
22 bicycle/pedestrian trails.

23
24 The Portal Area Design Guidelines were submitted to the Seattle Design Commission for
25 review and comment. The final Portal Area Design Guidelines will be subject to final
26 approval by SDOT. The Portal Area Design Guidelines will be used as the basis for the
27 PROJECT design. The STATE agrees to develop a final design substantially in
28 conformance with the Portal Area Design Guidelines.

29
30 8.4 The STATE has prepared Building Architectural Design Guidelines for the tunnel
31 operations buildings based on the Building Design Principals. The tunnel operations
32 buildings are physically part of and integrally related to the operation of the bored tunnel.
33 The Building Architectural Design Guidelines were submitted to the Seattle Design
34 Commission for review and comment. The final Building Architectural Design
35 Guidelines will be subject to final approval by the SDOT. The Building Architectural
36 Design Guidelines will be used as the basis for the PROJECT design. The STATE agrees
37 to develop a final design substantially in conformance with the Building Architectural
38 Design Guidelines.

39
40 8.5 The STATE agrees to create an Urban Design Task Force for the PROGRAM.
41 The Urban Design Task Force shall include CITY, STATE and contractor
42 representatives. This Urban Design Task Force will endeavor to resolve urban design
43 and architectural issues.

44

1 8.6 The following items shall be presented to the Seattle Design Commission (SDC)
2 in accordance with Chapter 3.58 of the Seattle Municipal Code:

3 8.6.1 Preliminary and final tunnel operations building designs that include
4 building blocking, stacking, façade treatments, façade materials and elevations
5 shall be prepared in accordance with the Building Architectural Design
6 Guidelines.

7 8.6.2 For areas within the design-build contract, preliminary and final portal
8 area designs prepared in accordance with the Portal Area Design Guidelines.

9 8.6.3 For areas outside the design/build contract, 30%, 60% and 90% portal area
10 design plans prepared in accordance with the Portal Area Design Guidelines.

11
12 8.7 The STATE shall endeavor to develop Tunnel Operations Building and Portal
13 Area designs that incorporate SDC recommendations. The CITY shall verify the
14 STATE's incorporation of SDC recommendations through the CITY review processes set
15 forth in Section 7 in this Agreement.

16
17 8.8 Urban design issues lacking mutual agreement by the PARTIES will be referred
18 to dispute resolution as provided in Section 23 of this Agreement.

19 20 9. SCHEDULE

21
22 9.1 The PARTIES will work together to develop schedule(s) for PROJECT work
23 performed by the STATE or CITY.

24
25 9.2 The STATE will be responsible for developing and updating its PROJECT
26 schedule(s) that identifies milestones for performing the work associated with the
27 PROJECT with CITY input.

28 29 10. FUNDING AND COMPENSATION

30
31 10.1 The STATE shall provide necessary funding for all PROJECT costs as referenced
32 in this Agreement without reimbursement from the City of Seattle, except for the CITY
33 cost responsibilities established in this Agreement, in SCL Agreement UT01476, and in
34 SPU Agreement UT 01474.

35
36 10.1.1 The STATE will reimburse SDOT for Project Services through the
37 process provided for in Agreement GCA 5739, entitled Project Services
38 Agreement for State Route 99 Alaskan Way Viaduct and Seawall Replacement
39 Program and SR 519/I-90 Intermodal Access Project – I/C Improvements
40 (“Project Services Agreement”), and as amended by the PARTIES to modify the
41 process for the STATE's reimbursement of the CITY services and to extend the
42 duration of the Project Services Agreement.

43
44 10.1.2 The categories of services that may be provided by the CITY are:
45 project management, project controls and coordination, design review and

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

3
4 10.2 By entering into this Agreement, the CITY is not waiving its position that the
5 CITY and/or its citizens and property owners cannot be held responsible for any or all
6 cost overruns related to the portions of the PROJECT for which the STATE is
7 responsible.

8
9 **11. PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES**

10
11 11.1 The STATE and the CITY agree that it is good public policy to utilize the
12 services of Disadvantaged Business Enterprises in the construction of public works
13 projects, to the fullest extent permitted by law.

14
15 11.2 In furtherance of the foregoing public policy, the STATE agrees to include
16 Disadvantaged Business Enterprise (DBE) provisions in its construction contracts to the
17 extent required by federal law for projects associated with this Agreement.

18
19 **12. MONITORING AND DEFORMATION MITIGATION**

20
21 12.1 The STATE agrees to assess potential impacts of Deformation on private property
22 and CITY Facilities. Where the CITY has established deformation criteria for its
23 Facilities, the criteria will be used in the STATE'S analysis. Otherwise, criteria will be
24 derived using accepted engineering practice and shall be mutually agreed upon by the
25 CITY and STATE.

26
27 12.2 The CITY shall review the STATE's estimate of susceptibility or vulnerability of
28 CITY Facilities to Deformation and provide comments and input. Such input shall be
29 provided to assist the STATE only, and shall not be interpreted as waiving or limiting in
30 any way the STATE's responsibility for Deformation Mitigation Work as defined in UT
31 01474 and UT 01476.

32
33 12.3 The STATE agrees to develop a preliminary plan for Deformation mitigation.
34 PARTIES will work collaboratively to finalize and implement the Deformation
35 Mitigation Work as defined in UT 01474 and UT 01476. The CITY's input shall be
36 provided to assist the STATE only, and shall not be interpreted as waiving or limiting in
37 any way the STATE's responsibility for Deformation.

38
39 12.4 The STATE agrees to design and implement a comprehensive instrumentation
40 and monitoring program for open cut, cut-and-cover, and tunnel construction including
41 pre- and post-construction condition surveys and development of an action plan for
42 mitigating impacts of Deformation.

43
44 12.5 The STATE agrees to implement a construction monitoring Task Force
45 responsible for the planning and implementation of the instrumentation and monitoring

1 program and processing data, evaluating results, and developing recommendations to
2 mitigate Deformation. The construction monitoring Task Force has authority to direct
3 rapid and effective changes in construction to achieve Deformation mitigation.
4

5 12.6 The CITY shall advise the STATE and participate in construction monitoring and
6 Deformation management activities when these activities pertain to CITY Facilities. The
7 CITY shall provide the STATE all necessary access to CITY Facilities for the purposes
8 of design or implementation of mitigation measures. The CITY may perform mitigation
9 measures on behalf of the STATE in a manner and schedule that supports the STATE's
10 project requirements. The CITY's advice, participation, and access shall be provided to
11 assist the STATE, and shall not be interpreted as waiving or limiting in any way the
12 STATE's responsibility for Deformation.
13

14 13. MAINTENANCE OF TRAFFIC 15

16 13.1 The PARTIES agree that it is the goal of this PROJECT to maintain local
17 motorized and non-motorized traffic in safe corridors through the PROJECT area while
18 minimizing impact to the existing street system. To achieve this goal, the PARTIES shall
19 formulate plans to maintain traffic flow during construction of the PROJECT and shall
20 comply with Approved Plans and conditions of the Street Use Permits.
21

22 13.2 The PARTIES agree to develop an outreach plan specifically focused on
23 maintenance-of-traffic issues. This outreach plan will provide for eliciting input from
24 affected stakeholders in the vicinity of the PROJECT. Affected stakeholders shall be
25 determined by the PARTIES.
26

27 13.3 The STATE agrees to create a maintenance-of-traffic (MOT) Task Force for the
28 PROGRAM. The CITY agrees to be an active member on the MOT Task Force.
29

30 13.4 The CITY agrees be a participant in all planning for haul routes, and all haul route
31 traffic shall be regulated pursuant to the Street Use Permit and the provisions of this
32 Agreement. Haul routes and times shall be approved by the CITY prior to the
33 commencement of hauling, and all haul routes shall be along arterial streets designated as
34 major truck streets and must comply with downtown traffic control zone restrictions as
35 defined by the Seattle Municipal Code and implementing regulations.
36

37 14. CONSTRUCTION MANAGEMENT, INSPECTION, AND CONTRACT 38 ADMINISTRATION 39

40 14.1 It is anticipated that the STATE will develop and issue multiple construction
41 contracts to fulfill its PROJECT responsibilities. The STATE's construction contracts
42 will be conducted in accordance with current Washington State Department of
43 Transportation contracting practices.
44

1 14.2 The STATE shall act as the sole authority in the administration of the STATE
2 construction contracts. The STATE shall allow the CITY to consult with and make
3 inquiries of the STATE Project Engineer or designee, attend meetings, and have access to
4 all documentation concerning those portions of the PROJECT subject to CITY review as
5 described in Section 7.3 of this Agreement. The CITY shall not provide direction,
6 directly or indirectly, to the STATE's consultant(s) or contractors. Except in the
7 instances listed below, the CITY shall direct all communications to the STATE's Project
8 Engineer or designee, including communications regarding compliance with Street Use
9 Permits, quality of construction, and contractor performance.

10
11 14.3 The STATE will manage any requests from the CITY that have contractual or
12 scope-of-work impacts and will coordinate responses. The CITY may communicate with
13 STATE's consultants or contractors (1) where authorized to do so by the STATE's
14 Designated Representative; (2) to arrange for regulatory permitting and inspections made
15 pursuant to permits issued by the CITY other than Street Use Permits, e.g. electrical
16 permits or other permits obtained from the CITY by the consultant or contractor; and (3)
17 for the Street Use Permits, if necessary because of a threat to health or safety.

18
19 14.4 The CITY will provide qualified staff and consultants during construction. CITY
20 staff and consultants will communicate with the STATE Project Engineer or designee in
21 evaluating the conformity of CITY Infrastructure with the Approved Plans or Released-
22 for-Construction Submittal and will immediately notify the STATE Project Engineer or
23 designee of any compliance issues. Notwithstanding any act or omission by the CITY
24 pursuant to this subsection, the STATE shall not be relieved of any of its authority over,
25 and responsibility for, the PROJECT, as provided for in Section 14.2 of this Agreement
26 or elsewhere in this Agreement.

27
28 14.5 The PARTIES agree to follow the Procedures. The PARTIES may amend the
29 Procedures by written mutual agreement executed by the PARTIES' Designated
30 Representatives without other approval by the PARTIES.

31 32 15. FINAL INSPECTION AND PROJECT ACCEPTANCE

33
34 15.1 The PARTIES agree to follow the Procedures. The PARTIES may amend the
35 Procedures by written mutual agreement executed by the PARTIES' Designated
36 Representatives without other approval by the PARTIES.

37
38 15.2 Following the satisfactory completion of the pre-final and final inspection
39 processes described in the Procedures, the CITY shall submit a written response notifying
40 the STATE that CITY Infrastructure has been constructed in accordance with the
41 Approved Plans or Released-for-Construction Submittal.

42
43 15.3 The CITY agrees, upon satisfactory completion of the PROJECT work
44 successfully placing City Infrastructure into operation, transfer and acceptance of any real
45 property on or in which CITY Infrastructure is located, and receipt from the STATE of

1 one color set of the Red-Line Plans, pursuant to Section 16, to deliver a Letter of
2 Acceptance, subject to any Defective Work, damage or contractor claims caused by the
3 negligent acts or omissions of the STATE.
4

5 15.4 The PARTIES will execute one Letter of Acceptance for each contract unless
6 both PARTIES agree to phase CITY Infrastructure acceptance by those geographic areas
7 or select portions of the PROJECT in which the STATE has completed all PROJECT
8 work and has satisfied the requirements of Section 15.3. Roadway restoration will not be
9 considered to be complete until all roadways are fully open to public vehicular and
10 pedestrian use.
11

12 15.5 In instances where portions of CITY Infrastructure must be placed into the
13 CITY's use and operation prior to the execution of the Letter of Acceptance, and after the
14 CITY has determined that these portions of CITY Infrastructure meet with the minimum
15 inspection and testing requirements necessary for placing the CITY Infrastructure into
16 use, the CITY will notify the STATE in writing that it is assuming responsibility for and
17 cost of the interim use and operation of the CITY Infrastructure until the terms of Section
18 15.3 are satisfied and the PARTIES execute the Letter of Acceptance.
19

20 16. RED-LINES AND RECORD DRAWINGS

21

22 16.1 Each PARTY is responsible for preparing construction records for the portions of
23 PROJECT work for which it is responsible under this Agreement. Except as otherwise
24 established in this Agreement, the STATE shall document construction in general
25 conformance with WSDOT's *Construction Manual*, WSDOT manual M4-01 for
26 PROJECT work that the STATE constructs including work performed on behalf of the
27 CITY through a Task Order.
28

29 16.2 The STATE agrees to record the constructed configuration of PROJECT work
30 that deviates from the Approved Plans as further established in the Procedures. This
31 record shall be referred to as the red-line plans.
32

33 16.3 The STATE may choose to delegate preparation and maintenance of the red-line
34 plans to its construction contractors. However, the STATE remains responsible for the
35 quality, condition and completion of red-line plans. If the STATE chooses to delegate
36 these responsibilities, the STATE's construction contracts shall require contractors to
37 provide the STATE and the CITY access to the red-line plans during the working hours
38 established in the STATE contract.
39

40 16.4 Each PARTY shall prepare digital drawings showing the constructed
41 configuration of the PROJECT work for which it is responsible under this Agreement
42 (record drawings). Each PARTY shall provide the other PARTY with the record
43 drawings for the portions of PROJECT work for which that PARTY is responsible under
44 this Agreement within six (6) months after the PARTIES execute a Letter of Acceptance.
45 The PARTIES shall prepare Record Drawings in conformance with the Procedures.

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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.

1 17.5 The STATE shall warrant good and merchantable title to all materials, supplies,
2 equipment and items installed or incorporated into the accepted CITY Infrastructure. The
3 STATE shall further warrant that all CITY Infrastructure transferred to, and accepted by,
4 the CITY is free from claims, liens and charges.

5
6 **Manufacturers' Warranties**

7
8 17.6 The STATE shall provide to the CITY all manufacturers' and suppliers'
9 guarantees and warranties furnished to the STATE's contractor as a customary trade
10 practice in connection with the contractor's purchase of any equipment, materials, or
11 items incorporated into the CITY Infrastructure. The STATE shall further warrant that it
12 has the right to transfer such warranties and guarantees furnished to the STATE through
13 its construction contract to the CITY and that such transfer shall not adversely affect such
14 warranties and guarantees. These guarantees and warranties shall not relieve the STATE
15 from its obligations under warranty of work.

16
17 **Warranty Inspections**

18
19 17.7 During the warranty period, the CITY shall have the right to inspect the accepted
20 CITY Infrastructure for non-conforming and Defective Work, and will promptly report
21 any such work to the STATE for remedy through corrective work. The CITY shall bear
22 the cost of these inspections.

23
24 **18. PUBLIC OUTREACH**

25
26 18.1 The STATE agrees to lead and manage the public outreach effort for the
27 PROJECT. In recognition of the CITY's experience in working with the Seattle
28 community, the STATE will solicit CITY input and work with the CITY in public
29 outreach activities. The STATE will not publicly distribute outreach information,
30 planning materials and documents without first soliciting the CITY's review. However,
31 the STATE shall be free to comply with any public records request received under
32 Chapter 42.56 RCW for such materials, provided that prior to releasing any sensitive or
33 confidential material, the STATE shall first provide written notice to the CITY in
34 accordance with Section 27 of this Agreement and provisions in UT 01474 and UT
35 01476.

36
37 **19. RISK ALLOCATION**

38
39 **19.1 Limits of Liability**

40
41 19.1.1 No CITY Liability for Assistance, Inspection, Review, or Approvals. The
42 review or approval of any of the STATE's PROJECT plans or specifications, or the
43 inspection of the STATE's work, or any assistance provided to the STATE by the CITY
44 is for the CITY's sole benefit and shall not constitute an opinion or representation by the
45 CITY as to any compliance with any law, ordinance, rule, or regulation or any adequacy

1 for other than the CITY's own purposes; and such assistance, inspection, review or
2 approval shall not create or form the basis of any liability on the part of the CITY or any
3 of its officials, officers, employees, or agents for any injury, damage, or other liability
4 resulting from, or relating to, any inadequacy, error, or omission therein or any failure to
5 comply with applicable law, ordinance, rule, or regulation; and such assistance,
6 inspection, review, or approval shall not relieve the STATE of any of its obligations
7 under this Agreement, the SCL Agreement, UT 01476, and the SPU Agreement, UT
8 01474 or under applicable law.

9 19.1.2 No CITY Liability for Delay, Consequential, or Liquidated Damages. The
10 CITY shall not be liable in damages for any failure to act within any time limits
11 established by law or for any other delay to the STATE or the STATE's contractors, nor
12 shall the CITY have any liability for consequential or liquidated damages, and, to the
13 maximum extent allowed by law, the STATE shall protect, defend, indemnify, and save
14 harmless the CITY, and its officials, officers, employees, and agents, from any and all
15 costs, claims, demands, judgments, damages, or liability of any kind caused by, resulting
16 from, relating to, or connected to delays. The PARTIES agree that this Agreement, the
17 SCL Agreement, UT 01476, and the SPU Agreement, UT 01474, are not to be construed
18 as being construction agreements.

19 19.1.3 No CITY Liability for Third Party Claims of Diminution in Value of
20 Property. The CITY shall not be liable in damages for any third party claims alleging
21 diminution in value of property, including, but not limited to, claims of elimination or
22 impairment of rights to light and air and quiet enjoyment, or alleging a taking of property
23 rights, nor shall the CITY have any liability for related consequential or liquidated
24 damages, and, to the maximum extent allowed by law, the STATE shall protect, defend,
25 indemnify, and save harmless the CITY, and its officials, officers, employees, and agents,
26 from any and all costs, claims, demands, judgments, damages, or liability of any kind
27 caused by, resulting from, relating to, or connected to the third party claims of diminution
28 in value of property arising out of the PROJECT.

29 19.1.4 STATE Contractor's Bonds. The STATE shall require its construction
30 contractors to provide performance bonds to the STATE and to maintain those bonds at
31 all times pertinent to the respective contractor's obligations under its contracts—Such
32 bonds shall be executed by an approved Surety that is registered with the Washington
33 State Insurance Commissioner, and that appears on the current Authorized Insurance List
34 in the State of Washington published by the Office of the Insurance Commissioner, and
35 that shall be conditioned upon the faithful performance of the contract by the contractor.
36 The STATE shall ensure faithful completion of the PROJECT by use of the STATE's
37 contractor bonds or other means, and in the event any claim for payment is presented to
38 the CITY for any PROJECT work, the STATE upon timely notice and investigation,
39 resulting in STATE responsibility under this Agreement, the SCL Agreement, UT 01476,
40 or the SPU Agreement, UT 01474 shall promptly pay such claim.

41

1 19.2 General Indemnification.

2 19.2.1 Indemnity. To the extent permitted by law, the STATE shall protect,
3 defend, indemnify, and save harmless the City of Seattle and its officers, officials,
4 employees, and agents, while acting within the scope of their employment, from any and
5 all costs, claims, demands, judgments, damages, or liability of any kind, including
6 injuries to persons or damages to property, that arise out of, or in any way result from, or
7 are connected to, or are due to any acts or omissions, or intentional misconduct, of the
8 STATE or the STATE's contractors, consultants, or agents including any and all claims
9 and litigation arising out of, or resulting from, any state or federal environmental review
10 process in any way relating to the PROJECT, and including any private utility relocations
11 required for the STATE's PROJECT work. The STATE's obligations under this
12 paragraph also extend to claims asserted by third PARTIES against the City of Seattle
13 arising out of, or in any way resulting from NEPA or SEPA compliance related to
14 portions of the CITY's Mercer Corridor Project West Phase reviewed in the 2010 AWW
15 Replacement Supplemental Draft Environmental Impact Statement. The STATE's
16 obligations under this paragraph also extend to claims asserted by third PARTIES against
17 the City of Seattle arising out of, or in any way resulting from, any state or federal
18 environmental review process in any way related to the PROJECT, removal of the
19 Alaskan Way Viaduct and Battery Street Tunnel decommissioning, and all of the
20 foregoing protection, defense, indemnity and hold harmless obligations shall extend to
21 claims asserted by state agencies other than the Washington State Department of
22 Transportation.

23 19.2.2 The STATE further agrees that the City of Seattle shall have no liability
24 to the STATE that in any way arises out of the City of Seattle's decision making
25 processes in agreeing to go forward with the PROJECT. The STATE shall not be
26 required to indemnify, defend, or save harmless the City of Seattle if the claim, suit, or
27 action for injuries, death, or damages is caused by the sole negligence of the City of
28 Seattle. Where such claims, suits, or actions result from the concurrent negligence of the
29 PARTIES, the indemnity provisions provided herein shall be valid and enforceable only
30 to the extent of the STATE's own negligence. In the event of any claims, demands,
31 actions, or lawsuits, the STATE upon notice from the City of Seattle, shall assume all
32 costs of defense thereof, including legal fees incurred by the City of Seattle, and of all
33 resulting judgments that may be obtained against the City of Seattle, to the extent of the
34 STATE's liability. In the event that the City of Seattle incurs attorneys' fees, costs, or
35 other legal expenses to enforce the indemnity provisions of this Agreement, the SCL
36 Agreement UT 01476, or the SPU Agreement, UT 01474, all such fees, costs, and
37 expenses shall be recoverable by the City of Seattle. Environmental protection and
38 indemnification, as provided elsewhere in this Agreement, shall be in addition to the
39 foregoing general indemnification.

40 19.2.3 Indemnity. To the extent permitted by law, the City of Seattle shall
41 protect, defend, indemnify, and save harmless the STATE and its officers, officials,
42 employees, and agents, while acting within the scope of their employment, from any and
43 all costs, claims, demands, judgments, damages, or liability of any kind, including

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

16 19.2.4 Title 51 RCW. Solely with respect to claims for indemnification under
17 this Agreement, including environmental indemnification, the STATE and the City of
18 Seattle waive, as to each other only, and expressly not for the benefit of their employees
19 or third parties, their immunity under Title 51 RCW, the Industrial Insurance Act, and
20 acknowledge that this waiver has been mutually negotiated by the PARTIES. The
21 STATE and the City of Seattle agree that their respective indemnity obligations extend to
22 any claim, demand, or cause of action brought by, or on behalf of, any of their respective
23 employees or agents. The STATE agrees that in the event that any employee or agent of
24 the STATE's contractors, subcontractors, consultants, or agents asserts a claim against
25 the City of Seattle, the STATE waives any right it may have to assert its Title 51
26 immunity as a defense against a City of Seattle claim to the STATE that otherwise would
27 be covered by the STATE's indemnity obligations to the City of Seattle.

28 19.2.5 Survival of Indemnification Obligations. Any liability of the STATE or
29 the City of Seattle arising under any indemnity provision of this Agreement shall survive
30 termination of this Agreement, whether or not any claim giving rise to such liability shall
31 have accrued.

32 20. INSURANCE

33
34 20.1 The STATE shall require in writing that the STATE's contractors, and each of
35 their sub-contractors of any tier where not covered by contractor provided insurance,
36 include "The City of Seattle" as an additional insured for primary and non-contributory
37 limits of liability for Commercial General Liability, Commercial Automobile Liability
38 and (if required) Contractor's Pollution Liability as established in the construction
39 contract documents, including Products and Completed Operations coverage following
40 the completion of each PROJECT stage.

41
42 20.2 Insurance specifications for the design-build portion of the PROJECT are
43 contained in Article 20 of the Proposed Bored Tunnel Design Build Contract (Insurance).

1
2 20.3 STATE standard insurance specification in Section 1-07.18 (Public Liability and
3 Property Damage Insurance, applicable to the design-bid-build construction contract
4 documents protecting both the STATE and the CITY for any design-bid-build portions of
5 the PROJECT, shall be amended for coverages, minimum limits of liability and/or terms
6 and conditions as may be mutually agreed upon by the STATE and CITY.
7

8 20.4 The STATE's contractors and subcontractors of any tier shall cause certification
9 of insurance meeting the requirements herein to be issued to "The City of Seattle, Risk
10 Management Division, P.O. Box 94669, Seattle, WA 98124-4669." Such certification
11 shall not be mailed, but shall be delivered electronically to fax number (206) 470-1279 or
12 as an e-mail attachment in PDF format to riskmanagement@seattle.gov.
13

14 21. THIRD PARTY BENEFICIARY

15
16 21.1 The STATE shall require the STATE's contractors, consultants, and designers
17 and each of their subcontractors to perform the STATE's work contemplated by this
18 Agreement, the SCL Agreement, UT 01476, and the SPU Agreement, UT 01474 at no
19 cost to the City of Seattle; and because a portion of the PROJECT will be conducted on
20 CITY Street Right-of-Way and on or for the benefit of the City of Seattle, the contracts
21 between the STATE and its contractors, consultants, and designers will include the
22 following requirements:
23

24 (1) With respect to any and all of the City of Seattle's interests, including, but
25 not limited to, excavation, restoration, and traffic control responsibilities of
26 the STATE, the STATE and the contractor will acknowledge that the City of
27 Seattle is an intended third party beneficiary of the contracts; (2) the STATE
28 and the contractor will include the City of Seattle as a named third party
29 beneficiary of the STATE's contracts; and (3) the STATE and the contractor
30 will include the City of Seattle in the indemnification and insurance
31 provisions contained in the STATE's contracts. The STATE and CITY do not
32 intend that this paragraph be interpreted to create any obligation, liability, or
33 benefit to any third party, other than the STATE and the City of Seattle for
34 purposes of design and construction of the PROJECT as described in this
35 Agreement, the SCL Agreement, UT 01476, and the SPU Agreement, UT
36 01474.
37

38 22. LIENS

39
40 22.1 In the event that any City of Seattle-owned property interest becomes subject to
41 any claims for mechanics', artisans' or materialmen's liens, or other encumbrances
42 chargeable to, or through, the STATE that the STATE does not contest in good faith, the
43 STATE shall cause such lien, claim, or encumbrance to be discharged or released of
44 record (by payment, posting of bond, court deposit, or other appropriate means), without
45 cost to the City of Seattle, and shall indemnify the City of Seattle against all costs and

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

3
4 **23. DISPUTE RESOLUTION**

5
6 23.1 Good Faith. The CITY and the STATE shall make good faith efforts to resolve
7 any dispute arising under or in connection with this Agreement. The dispute resolution
8 process outlined in this Section applies to disputes arising under or in connection with the
9 terms of this Agreement. In the event that the PARTIES cannot resolve a disagreement
10 arising under or in connection with this Agreement, the PARTIES shall follow the
11 dispute resolution steps set forth below.

12
13 23.2 Notice. A PARTY's Designated Representative, as defined in Section 25 below,
14 shall notify the other PARTY's Designated Representative in writing of any problem or
15 dispute that a PARTY believes needs resolution. The written notice shall include (a) a
16 description of the issue to be resolved; (b) a description of the differences between the
17 PARTIES on the issue; and (c) a summary of any steps taken to resolve the issue.

18
19 23.3 Meeting. Upon receipt of a written notice of request for dispute resolution, the
20 project engineer/project manager for the PARTIES shall meet within ten (10) Business
21 Days and attempt to resolve the dispute. Any resolution of the dispute requires the
22 agreement of all Designated Representatives attending the meeting or who requested to
23 attend the meeting.

24
25 23.4 Notice of Second Level Meeting. If the PARTIES have not resolved the dispute
26 within five (5) Business Days after the meeting, at any time thereafter either PARTY may
27 request that the dispute be elevated to the next level by notifying the other PARTY's
28 Designated Representative in writing, requesting that the dispute be raised to the Second
29 Level Meeting as described in Subsection 23.5. The written notification shall include a) a
30 description of the remaining issues to be resolved; b) a description of the differences
31 between the PARTIES on the issues, c) a summary of the steps already taken to resolve
32 the issues, and d) the resolution of any issues that were initially involved in the dispute.

33
34 23.5 Second Level Meeting. Upon receiving a written request that the dispute be
35 elevated to the next level, a meeting shall be held within ten (10) Business Days between
36 the project director of WSDOT and the appropriate CITY program manager(s) to resolve
37 the dispute. Any resolution of the dispute requires the agreement of all Designated
38 Representatives attending the meeting or who requested to attend the meeting.

39
40 23.6 Notice of Third Level Meeting. If the PARTIES have not resolved the dispute
41 within five (5) Business Days after the Second Level Meeting as described in Subsection
42 23.5, at any time thereafter either PARTY may request that the dispute be elevated to the
43 next level by notifying the other PARTY's Designated Representative in writing,
44 requesting that the dispute be raised to the Third Level Meeting as described in
45 Subsection 23.7. The written notification shall include a) a description of the remaining

1 issues to be resolved; b) a description of the differences between the PARTIES on the
2 issues, c) a summary of the steps already taken to resolve the issue, and d) the resolution
3 of any issues that were initially involved in the dispute.

4
5 23.7 Third Level Meeting. Elevate to the Designated Representatives.

6
7 23.8 Court of Law. If the PARTIES have not resolved the dispute within five (5)
8 Business Days after the third level meeting, at any time thereafter either PARTY may
9 seek relief under this Agreement in a court of law. The PARTIES agree that they have no
10 right to relief in a court of law until they have completed the dispute resolution process
11 outlined in this Section 23.

12
13 23.9 A PARTY's request to utilize this Section 23 dispute resolution Process is not
14 evidence that either PARTY is in breach of this Agreement, and does not relieve any
15 PARTY from complying with its obligations under this Agreement.

16
17 **24. REMEDIES; ENFORCEMENT**

18
19 Subject to the dispute resolution provisions in Section 23, the City of Seattle and the
20 STATE shall have, in addition to any remedies available at law or equity, the right to
21 demand specific performance of this Agreement, the SCL Agreement, UT 01476, and the
22 SPU Agreement, UT 01474.

23
24 **25. DESIGNATED REPRESENTATIVES**

25
26 The Designated Representative for each PARTY is as follows:

27
28 **STATE:**

29 Program Administrator
30 Alaskan Way Viaduct & Seawall Replacement Program
31 Washington State Department of Transportation
32 999 3rd Avenue, Suite 2424
33 Seattle, WA 98104

34
35 **CITY:**

36 SDOT Deputy Director
37 Seattle Department of Transportation
38 P.O. Box 34996
39 700 Fifth Avenue, Suite 3800
40 Seattle, WA 98124-4996

41
42 **26. EFFECTIVENESS AND DURATION**

43
44 26.1 This Agreement shall be effective as of the date the last PARTY signs and, unless
45 sooner terminated pursuant to the terms hereof, shall remain in effect until final

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

3 4 **27. NOTICE**

5
6 27.1 Except for the dispute resolution process in Section 23 above, for which notice
7 shall be given to the officials listed in Section 25, all notices, demands, requests,
8 consents and approvals that may be or are required to be given by either PARTY to the
9 other PARTY shall be in writing and shall be deemed to have been duly given (i) upon
10 actual receipt or refusal to accept delivery if delivered personally to the Designated
11 Representative, (ii) upon actual receipt or refusal to accept delivery if sent by a nationally
12 recognized overnight delivery service to the Designated Representative, or (iii) upon
13 actual receipt if electronically transmitted to the Designated Representative with
14 confirmation sent by another method specified in this Section 27. Notice of a change of
15 Designated Representative or the address for the Designated Representative shall be
16 given as provided in this Section 27.

17 18 **28. TERMINATION AND SUSPENSION**

19
20 28.1 This Agreement may be terminated pursuant to Section 2.3 or for other cause by
21 either PARTY upon ninety (90) calendar days written notice. Said notice shall set forth
22 the reasons for termination and the effective date of termination.

23 28.2 Termination of this Agreement, the SCL Agreement, UT 01476, or the SPU
24 Agreement, UT 01474 shall not relieve the PARTIES of any obligations that are required
25 to be performed prior to the date of termination, nor shall it relieve the PARTIES of any
26 obligations that are intended to survive termination of this Agreement, the SCL
27 Agreement, UT 01476, or the SPU Agreement, UT 01474. Furthermore, the PARTIES
28 agree that, in the event the STATE exercises its right to terminate pursuant to this Section
29 28 or the STATE suspends the work or materially delays the work after construction of
30 the PROJECT begins, then the STATE, at its cost and expense, shall modify the
31 PROJECT, in consultation with the CITY, to provide for the restoration, continued
32 service, operation, and maintenance of CITY Facilities, PROJECT infrastructure, CITY
33 Street Right-of-Way, or any other CITY property and the STATE shall ensure that the
34 modified PROJECT is completed. The STATE shall also ensure that all SPU and SCL
35 utility services can continue to be provided by SPU and SCL either in substantially the
36 same manner as occurred prior to the initiation of work, or in the manner intended by the
37 proposed work, unless otherwise agreed to by the affected UTILITY.

38 39 **29. CONFIDENTIALITY OF INFORMATION AND RECORDS**

40
41 29.1 It is understood that certain information about CITY Facilities is deemed by the
42 CITY to be sensitive and may be confidential under state or federal law. The STATE
43 agrees that all documents and information collected from field activities known to include
44 confidential information will be maintained in a locked file at the project office and
45 access will be controlled by the STATE's consultants. Furthermore, confidential

1 information will only be provided to the selected contractor in conformed documents
2 following Contract Award if such information is considered necessary for construction.
3 The CITY will provide clear written guidelines that specifically define the information
4 that is deemed sensitive and/or confidential.
5

6 29.2 Should any of those confidential or sensitive documents become the subject of a
7 request for public disclosure under Chapter 42.56 RCW, the STATE shall use its best
8 efforts to immediately notify the CITY of such request and the date by which the STATE
9 anticipates responding, which date shall in no event be less than fifteen (15) calendar
10 days after STATE's first notice of the disclosure request to the CITY. The CITY must
11 then within a reasonable time of receipt of said notice in writing to the STATE (a)
12 specifically identify each record, or part thereof, and (b) fully explain why such
13 records(s) are exempt from disclosure under Chapter 42.56 RCW or any other law so that
14 the STATE may respond to the records requester. The STATE shall withhold or redact
15 those public records that the CITY reasonably claims are exempt from disclosure based
16 upon the CITY's information. The CITY at its sole expense may seek a judicial
17 declaration or injunction with respect to the public records request. The CITY further
18 agrees that it will, at its sole expense, defend the non-disclosure of that information it
19 claims is exempt from disclosure and indemnify the STATE for any and all penalties
20 assessed and costs that the STATE incurs, if any.
21

22 29.3 The provisions of this Section 29 shall survive the termination of this Agreement.
23

24 30. GENERAL PROVISIONS 25

26 30.1 This Agreement shall be effective independently from any and all permits that
27 may be issued by the CITY.

28 30.2 Each PARTY shall ensure that its employees, agents, and contractors comply with
29 the obligations of this Agreement.

30 30.3 The PARTIES shall not be deemed to be in default under this Agreement if
31 performance is rendered impossible by war, riots, or civil disturbances, or by floods or
32 other natural catastrophes beyond the PARTIES' control; the unforeseeable unavailability
33 of labor or materials; or labor stoppages or slowdowns or power outages exceeding back-
34 up power supplies. This Agreement shall not be terminated or the PARTIES penalized
35 for such noncompliance, provided that each PARTY takes immediate and diligent steps
36 to bring itself back into compliance and to comply as soon as practicable under the
37 circumstances without unduly endangering the health, safety, or integrity of the
38 PARTY's employees or property, or the health, safety, or integrity of the public, street
39 rights-of-way, public property, or private property.

40 30.4 This Agreement including the definition of the PROJECT as more particularly
41 described in the Project Description attached as Exhibit A may be amended only by a

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

3 30.5 No failure to exercise, and no delay in exercising, on the part of either PARTY
4 hereto, any rights, power, or privilege hereunder shall operate as a waiver thereof, except
5 as expressly provided herein.

6 30.6 This Agreement, together with GCA 6366, the SCL Agreement, UT 01476 and
7 the SPU Agreement, UT 01474, with the attached Exhibits and the documents, terms and
8 provisions incorporated in any of the foregoing, constitute the entire agreement of the
9 PARTIES with respect to the PROJECT, and supersede any and all prior negotiations and
10 understandings with respect hereto.

11 30.7 Section and subsection headings are intended as information only, and shall not
12 be construed with the substance of the section or subsection they caption.

13 30.8 All exhibits or other attachments are by this reference hereby incorporated into
14 this Agreement.

15 30.9 This Agreement may be executed in counterparts, each of which shall be deemed
16 an original, and all counterparts together shall constitute but one and the same instrument.

17 30.10 The PARTIES acknowledge the right of each PARTY to exercise its police power
18 pursuant to general law and applicable statutes for the protection of the health, safety, and
19 welfare of its citizens and their properties. Nothing in this Agreement shall be construed
20 as waiving or limiting the STATE's or CITY's rights to exercise its police power or to
21 preclude or limit exercising any regulatory power in connection with this PROJECT.

22
23 30.11 This Agreement shall be interpreted, construed, and enforced in accordance with
24 the laws of the State of Washington. The venue for any action under this Agreement
25 shall be in the Superior Court for King County, Washington.

26
27 30.12 A judicial determination that any term, provision, condition, or other portion of
28 this Agreement, whether in whole or in part, is inoperative, invalid, void, or
29 unenforceable shall not affect the remaining terms, provisions, conditions, or other
30 portions of this Agreement, whether in whole or in part, and the remaining terms,
31 provisions, conditions, or other portions of this Agreement, whether in whole or in part,
32 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

WASHINGTON STATE

By: _____

By: *[Handwritten Signature]*

Title: _____

Title: Administrator, AWVBRP

Date: _____

Date: 1/28/2011

APPROVED AS TO FORM:

By: *[Handwritten Signature]*

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.

- 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;

- 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

* 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

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:

- 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,