

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

CITY OF SEATTLE, A Washington municipal )  
corporation, ) No. 11-2-13620-5 SEA  
Plaintiff, )  
vs. ) PLAINTIFF CITY OF SEATTLE'S  
SEATTLE CITIZENS AGAINST THE ) MOTION FOR SUMMARY JUDGMENT  
TUNNEL; ELIZABETH A. CAMPBELL, in ) AND REQUEST FOR TOLLING A  
her capacity as Seattle Citizens Against the ) CHARTER TIME PERIOD  
Tunnel's Campaign Manager and the principal )  
initiative petitioner; WASHINGTON STATE )  
DEPARTMENT OF TRANSPORTATION. )  
Defendants. )

**I. INTRODUCTION AND RELIEF REQUESTED**

The sole issue for summary judgment is whether, as a matter of law, proposed Initiative 101, is beyond the scope of the initiative power. If an initiative purports to exercise a power that has been directly delegated by the state legislature to a city's governing body, it exceeds the authority conferred on the initiative process. This case does not, and cannot, address whether or

1 not the current preferred alternative to replace the existing Alaskan Way viaduct is an  
2 appropriate policy decision.

3 The City also seeks an order from the Court tolling the City Charter imposed time-period  
4 in which the City Council must act on the proposed initiative until the Court acts on this  
5 summary judgment motion.

## 6 II. STATEMENT OF FACTS

### 7 A. Background

8 In 2009, the State Legislature enacted a law directing the State to “take the necessary  
9 steps to expedite the environmental review and design processes to replace the Alaskan Way  
10 viaduct with a deep bore tunnel under First Avenue from the vicinity of the sports stadiums in  
11 Seattle to Aurora Avenue north of the Battery Street tunnel.” RCW 47.01.402(1). The legislature  
12 stated:

13 The legislature finds that the replacement of the vulnerable state route number 99  
14 Alaskan Way viaduct is a matter of urgency for the safety of Washington's  
15 traveling public and the needs of the transportation system in central Puget Sound.  
16 The state route number 99 Alaskan Way viaduct is susceptible to damage, closure,  
or catastrophic failure from earthquakes and tsunamis. Additionally, the viaduct  
serves as a vital route for freight and passenger vehicles through downtown  
Seattle.

17 *Id.*

18 In October 2009, the City enacted Ordinance 123133, authorizing execution of a  
19 Memorandum of Agreement that “outlines the responsibilities of both the City and State and  
20 expectations about the role of each in the implementation and funding of the numerous AWVSR  
21 [Alaskan Way Viaduct and Seawall Replacement] Program elements.” This Memorandum of  
22 Agreement further authorized the City and State to negotiate agreements to implement RCW  
23 47.01.402(1) and Ordinance 123133. Ordinance 123133 declared that “[i]t is the City’s policy

1 that the Alaskan Way Viaduct and Seawall Replacement (AWVSR) Program Bored Tunnel  
2 Alternative, as described in the Memorandum of Agreement attached hereto as Attachment 1, is  
3 the preferred solution for replacing the existing Alaskan Way Viaduct.” *See Appendix A*  
4 (Ordinance 123133)

5 Pursuant to RCW 47.01.402(1) and Ordinance 123133, the State and the City negotiated  
6 three agreements that the State offered to enter into as legally binding contracts between the  
7 State and the City in a letter dated January 28, 2011. *See Appendix B* (Ordinance 123542). As  
8 contemplated by the October 2009 Memorandum of Agreement, the three agreements negotiated by  
9 the State and the City address many issues, including the use of city property for the proposed deep  
10 bore tunnel project if that alternative is eventually selected to replace the Alaskan Way Viaduct.  
11 The agreements provide that the City authorizes the State to use City street right-of-way for the  
12 project. *See Memorandum of Agreement No. GCA 6486, section 6.2, at Appendix B,*  
13 *Attachment 1, p.18.* The City Council passed Ordinance 123542 accepting these agreements.  
14 By its terms, Ordinance 123542 was scheduled to take effect on March 30, 2011. *Id.* at § 8. On  
15 March 29, 2011, a referendum petition was filed with the City Clerk concerning Ordinance 123542.  
16 Declaration of Carol Shenk ¶ 2. That referendum is the subject of another lawsuit. King County  
17 Cause No. 11-2-11719-7.

18 **B. Initiatives under the Seattle City Charter.**

19 Seattle’s charter reserves to the people the rights of initiative and referendum. *See Seattle*  
20 *City Charter Art. IV, §§ 1(B)-1(H).* To begin the initiative process a registered voter must file a  
21 petition with the City Clerk in the form prescribed by the City Clerk. *See Charter Art. IV § 1(B);*  
22 *SMC chapter 2.08.* After the form is approved, signature gathering may begin. The petitioners  
23 have 180 days to collect signatures equal to 10% of the votes cast at the previous mayoral election

1 (currently 20,629 signatures). See Charter Art. IV §1(B); Shenk Dec. ¶ 3. After receiving an  
2 initiative petition with a facially sufficient number of signatures, the City Clerk transmits the  
3 signatures to the King County Elections Director for validation. Shenk Dec. ¶ 4. If there are a  
4 sufficient number of valid signatures certified to the City Clerk, the Clerk must, within 20 days,  
5 transmit the initiative petition to the City Council at a regular meeting. *Id.*<sup>1</sup> ¶ 5 The delivery of the  
6 initiative by the Clerk acts as introduction of the initiative bill in the Council. *Id.* ¶ 6

7 The Council may enact or reject the initiative bill, but may not modify or amend it. Charter  
8 Art. IV §1(C). The Council may, however, reject the initiative bill and propose a different bill on  
9 the same subject. *Id.* If the initiative bill is rejected, or the Council within 45 days fails to take  
10 action on the bill, the Council shall place the initiative on the next regularly scheduled election  
11 along with an alternative proposed by the Council, if any. Charter Art. IV §1(D).

### 12 C. Proposed Seattle Initiative 101

13 On July 29, 2010, Elizabeth Campbell filed an initiative petition form with the Seattle  
14 City Clerk. Shenk Dec. ¶ 7. On August 5, 2010, the Clerk provided Ms. Campbell with the  
15 ballot title for the initiative that had been prepared by the Seattle City Attorney. *Id.* ¶ 8. The  
16 approved ballot title for proposed Initiative 101 ('I-101') is as follows:

#### 17 THE CITY OF SEATTLE 18 INITIATIVE MEASURE NUMBER 101

19 The City of Seattle Initiative Measure Number 101 prohibits replacing the  
20 Alaskan Way Viaduct with a tunnel.

21 If enacted, the measure would prohibit the construction, operation or use of any  
22 City right-of-way or City-owned property wherever situated for a tunnel for  
vehicular traffic, or tunnel-related facility, to replace in whole or in part the  
Alaskan Way Viaduct. The measure also urges the Council to make changes in

23 <sup>1</sup> If there are insufficient valid signatures the petitioners are allowed an additional 20 days to gather more signatures.  
Charter Art. IV §1(B).

1 the City's Comprehensive Plan to retain options for addressing the Alaskan Way  
2 Viaduct, including repair or replacement of the viaduct with an elevated structure.

3 Shenk Dec. ¶ 9.

4 The two operative sections of I-101 are as follows:

5 Section 2. A new Section 15.55 of the Seattle Municipal Code is added to read as  
6 follows:

7 The construction, operation or use of any City right-of-way or City-owned  
8 property wherever situated for a tunnel for vehicular traffic, or tunnel-related  
9 facility, to replace in whole or in part the Alaskan Way Viaduct is hereby  
10 prohibited.

11 Section 3. All ordinances and/or parts of ordinances in conflict with the  
12 provisions of this measure are hereby repealed.

13 Shenk Dec. ¶ 10.

14 In February 2011, Ms. Campbell delivered petitions with signatures to the City Clerk.  
15 The City Clerk forwarded these petition signatures to King County Elections for validation.  
16 Shenk Dec. ¶ 11. On March 18, 2011, King County informed the City, and the City Clerk  
17 subsequently informed Ms. Campbell on March 21, 2011, that there were insufficient valid  
18 signatures. Shenk Dec. ¶ 12. Pursuant to the City Charter, Ms. Campbell was given another 20  
19 days to collect signatures. Shenk Dec. ¶ 13. Ms. Campbell took advantage of this opportunity  
20 and on April 13, 2011, King County verified that sufficient valid signatures had been submitted.

21 Shenk Dec. ¶ 14.

22 Pursuant to the Charter, the Clerk submitted the proposed I-101 and the sufficiency  
23 certificate to the City Council at its May 2, 2011 regular meeting. Shenk Dec. ¶ 15. This  
constituted the introduction of the initiative as an ordinance for the City Council to consider. *See*  
Charter Art. IV §1(B). Under the Charter, the City Council has until June 16<sup>th</sup> to act on the

1 proposed initiative. Charter Art. IV §1(D). The last regular council meeting before the Charter  
2 deadline is on Monday, June 13, 2011. Shenk Dec. ¶ 16.

3 The state law deadline for placing a measure on the ballot for the August 16, 2011  
4 election is March 24, 2011. See RCW 29A.04.311, 29A.04.321 (stating that the primary is on  
5 the third Tuesday in August and that local governments have until 84 days before that date to  
6 submit a matter for the ballot). If the Council does not decide to place the measure on the ballot  
7 by May 24, 2011, the next possible election for the measure is on November 8, 2011. The  
8 deadline for local governments to place a measure on the November ballot is August 16, 2011.

9 *Id.*

### 10 III. ISSUES

11 1. Because proposed I-101 is in conflict with RCW 47.12.040, is proposed I-101  
12 impermissible as beyond the scope of the initiative power?

13 2. Because the power to enact the subject of proposed I-101 has been delegated  
14 directly to the governing body of the City, is proposed I-101 impermissible as beyond the scope  
15 of the initiative power?

16 3. As there is no harm to the proponents of the initiative, because the deadline for  
17 placing a measure on the November ballot is well past the June 16, 2011 charter action deadline,  
18 should the Court toll the time-period for the City Council to act on the initiative until the Court  
19 has rendered a decision on this summary judgment motion?

### 20 IV. EVIDENCE RELIED UPON

21 The City relies upon the Declaration of Carol Shenk, Seattle City Legislative Information  
22 Manager; the documents on file with this Court; and the legal authorities cited in this motion.  
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**V. AUTHORITY**

**A. These Issues Are Ripe for Immediate Preelection Review and Should Be Resolved on Summary Judgment**

The Supreme Court has held that preelection judicial review of the validity of a local initiative is appropriate “to determine whether ‘the proposed law is beyond the scope of the initiative power.’” *City of Port Angeles v. Our Water-Our Choice*, 170 Wn.2d 1, 7, 239 P.3d 589 (2010) (quoting *Seattle Bldg. & Constr. Trades Council v. City of Seattle*, 94 Wn.2d 740, 746, 620 P.2d 82 (1980)). Preelection review is also appropriate pursuant to *Philadelphia II v. Gregoire*, 128 Wn.2d 707, 713-14, 911 P.2d 389 (1996), where the Supreme Court instructed the attorney general to bring a declaratory judgment action if the attorney general believed a proposed ballot measure was outside the scope of the initiative power.

Summary judgment on these issues is also proper because whether an initiative is “beyond the scope of the local initiative power” is a question of law. *Our Water-Our Choice*, 170 Wn.2d at 7 (citing *1000 Friends of Wash. v. McFarland*, 159 Wn.2d 165, 172, 149 P.3d 616 (2006)).

**B. Proposed I-101 conflicts with state law and is therefore beyond the Scope of the initiative power.**

In *Seattle Bldg. & Constr. Trades Coun. v. Seattle*, 94 Wn.2d 740, 620 P.2d 82 (1980), the State Supreme Court examined an initiative in a context very similar to that with proposed I-101. The court examined a proposed initiative that, in part, would adopt a provision stating:

The City of Seattle shall not modify, alter or vacate any street, alley, sidewalk or other public right of way to accommodate or facilitate construction of any highway which may directly or indirectly result in or contribute to the expansion of private motor vehicle capacity of State Route 90 or State Route 520 within the city limits of the City of Seattle.

1 *Id.* Fn 1 at 742. Compare that language with the language of proposed I-101 and one finds that  
2 the concepts are nearly identical. Proposed I-101 provides:

3 The construction, operation or use of any City right-of-way or City-owned  
4 property wherever situated for a tunnel for vehicular traffic, or tunnel-related  
5 facility, to replace in whole or in part the Alaskan Way Viaduct is hereby  
6 prohibited.

7 Shenk Dec. ¶2.

8 The court in *Seattle Bldg. & Constr. Trades Coun. v. Seattle*, declared that, “While the  
9 inhabitants of a municipality may enact legislation governing local affairs, they cannot enact  
10 legislation which conflicts with state law.” *Id.* at 747. While the highway at issue in the 1980  
11 case was a limited access highway,<sup>2</sup> the court cited RCW 47.12.040, which applies to any state  
12 highway and stated: “The State has the right to acquire any lands it needs for highway purposes  
13 from any municipality.” The Supreme Court found that the intent of the initiative was to stop the  
14 I-90 project or any similar state project across Lake Washington. The court held that “[T]his is  
15 not within the power of the City to do.” *Id.* at 748.

16 The apparent intent of I-101 is to prevent a tunnel from replacing the existing Alaskan  
17 Way Viaduct in favor of a new elevated structure. The Alaskan Way Viaduct is part of a state  
18 highway, State Route No. 99. *See* RCW 42.17.160. As such, the State has control of this project  
19 and can acquire any lands it needs to complete the project. RCW 47.12.040. Like the I-90  
20 initiative reviewed by the Supreme Court in 1980, proposed Seattle I-101 is not within the scope  
21 of the initiative power because it is in conflict with RCW 47.12.040.

22 <sup>2</sup>RCW 47.24.020(2) specifies that: “[W]ithin incorporated cities and towns the title to a state limited access highway  
23 vests in the state, and, notwithstanding any other provision of this section, the department shall exercise full  
jurisdiction, responsibility, and control over such facility as provided in chapter 47.52 RCW.” When and if the  
bored tunnel is designated as a limited access highway, this may impact the City’s control over that portion of the  
project.



1           **C. Proposed Initiative 101 Concerns Matters Directly Delegated to Seattle's**  
2           **Governing Body and Therefore Is Not Subject to Seattle's Initiative Power**

3           A proposed initiative is beyond Seattle's initiative power if the state legislature has given  
4           the power exercised by that initiative directly to the governing body. "It is well-settled that in the  
5           context of legislative interpretation, a grant of power to a city's governing body ("legislative  
6           authority" or "legislative body") means exclusively the mayor and city council and not the  
7           electorate. . . . When the legislature grants authority to the governing body of a city, that  
8           authority is not subject to repeal, amendment, or modification by the people through the initiative  
9           or referendum process." *City of Sequim v. Malkasian*, 157 Wn.2d 251, 265, 138 P.3d 943, 951  
10          (2006) (citations omitted). "Put another way, the people cannot deprive the City's legislative  
11          authority of the power to do what the constitution and/or a state statute specifically permit the  
12          legislative authority to do." *City of Port Angeles v. Our Water-Our Choice*, 145 Wn. App. 869,  
13          882, 188 P.3d 533, 539 (2008), *aff'd* 170 Wn.2d 1, 239 P.3d 589 (2010) (citing *King County v.*  
14          *Taxpayers*, 133 Wn.2d 584, 608, 949 P.2d 1260 (1997)).

15          State law provides that the legislative authority or governing body of a city is authorized to  
16          directly lease, sell, or convey by gift any land necessary for a state highway or any interest  
17          therein to the State of Washington, at such price as the legislative authority or governing body  
18          may deem in the best interests of the city. RCW 47.12.040. Proposed I-101 limits the City's  
19          governing body from transferring land to the State for a public highway and thus interferes with the  
20          authority given the governing body by RCW 473.12.040.

21          Additionally, RCW 47.28.140 provides that "when in the opinion of the governing  
22          authorities representing the [Washington State Highway] department and any . . . municipal  
23          corporation . . ., any highway, road, or street will be benefited by constructing, reconstructing, . . .  
improving or maintaining, . . . and it is in the public interest to so, the authorities may enter into

1 cooperative agreements . . . .” Proposed I-101 prohibits any transfer or use of City property to the  
2 State any replacement of the Route 99 highway with a tunnel. Thus, proposed I-101 conflicts with  
3 this state statute as well, because this statute delegates to the governing authorities the responsibility  
4 for determining when agreements should be made with the state to improve state highways. For the  
5 same reasons as above, this conflict places I-101 beyond the scope of the initiative power. *See City*  
6 *of Sequim*.

7 Proposed I-101 precludes the City from transferring property to the State or allowing the  
8 State the use of City property for a tunnel to replace the Alaskan Way Viaduct. Proposed I-101,  
9 therefore, interferes with powers expressly delegated to the City’s governing body by RCW  
10 47.12.040 and RCW 47.28.140. Because state law has directed that these powers be exercised  
11 only by the City’s governing body and not the electorate, proposed I-101 is beyond the scope of  
12 the initiative power. *See Seattle Bldg. & Constr.*, 94 Wn.2d at 747; *Malkasian*, 157 Wn.2d at  
13 265-66.

14 **D. The time for the City Council to act on the initiative should be tolled until the**  
15 **Court renders a decision on whether I-101 is valid.**

16 The deadline for placing a measure on the ballot for the August 16, 2011 election is  
17 March 24, 2011. *See* RCW 29A.04.311, 29A.04.321 (stating that the primary is on the third  
18 Tuesday in August and that local governments have until 84 days before that date to submit a  
19 matter for the ballot). However, the City Council is not required to act on I-101 until June 16,  
20 2011. The next possible election for the measure following June 16, 2011 is the November 8,  
21 2011 election. The deadline for local governments to place a measure on the November ballot is  
22 August 16, 2011. *Id.*

23 The last possible regular meeting for the City Council to act on proposed I-101 prior to  
the June 16<sup>th</sup> charter deadline is Monday, June 13. *Shenk Dec.* ¶ 16. As long as there is a court

1 decision prior to Monday August 16, 2011, the Council may still place the initiative on the  
2 November ballot.

3 There is no harm in tolling the time period for the City Council to act on the initiative.  
4 The City requests that the Court enter an order tolling the time period for the Council to act on  
5 proposed I-101 until the Court has rendered a decision on whether I-101 is beyond the scope of  
6 the initiative power. A court should allow equitable tolling when justice requires. *Cf. Millay v.*  
7 *Cam*, 135 Wash.2d 193, 205-206, 955 P.2d 791, 796-797 (1998).<sup>3</sup>

8 As long as the Court's decision on the on the merits is rendered by August 12, 2011,  
9 there is still time to place proposed I-101 on the November 8, 2011 ballot. The Court should toll  
10 the Charter time-period for the Council to act until the Court has rendered its decision on this  
11 summary judgment. *Cf. Id.*

## 12 VI. CONCLUSION

13 Proposed I-101 precludes the City from transferring property to the State or allowing the  
14 State the use of City property for a tunnel to replace the Alaskan Way Viaduct. Proposed I-101,  
15 therefore, conflicts with state law interferes with powers expressly delegated to the City's  
16 governing body by RCW 47.12.040 and RCW 47.28.140. Because proposed I-101 conflicts with  
17 state law and because the state legislature has directed that these powers be exercised only by the  
18 City's governing body and not the electorate, proposed I-101 is beyond the scope of the initiative  
19 power.


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22 <sup>3</sup> When applying equitable tolling to a statute of limitations period, a court must normally find some fraud or  
23 misrepresentation by the defendant. *See Millay v. Cam* 135 Wash.2d 193, 206, 955 P.2d 791, 797(1998). Here,  
The City merely seeks to toll the Charter time-period for Council to act until such time as the Court has rendered a  
decision on the merits in this case.

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As there is no harm to the petitioners this Court should enter an order tolling, until the Court has ruled on this summary judgment motion, the Charter time-period for the City Council to act on the proposed initiative.

DATED this 6th day of May, 2011.

PETER S. HOLMES  
Seattle City Attorney

By:   
Jeff Slayton, WSBA No. 14215  
John B. Schochet, WSBA No. 35869  
Gary E. Keese, WSBA No. 19265  
Assistant City Attorneys  
Attorneys for Plaintiff City of Seattle

## **APPENDIX A**

ORDINANCE 123133

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AN ORDINANCE relating to the SR 99 Alaskan Way Viaduct and Seawall Replacement Program; stating the City's policy with respect to an alternative for replacing the present Viaduct and Seawall, and related work; and authorizing execution of a Memorandum of Agreement between the State of Washington and the City of Seattle.

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 (SR) 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 state, the Mayor of Seattle and the King County Executive jointly recommended replacing the Alaskan Way Viaduct with a bored tunnel beneath downtown Seattle; and



1 WHEREAS, the Washington State Legislature passed Engrossed Substitute Senate Bill 5768 and  
2 the Governor signed the bill into law designating and funding the Bored Tunnel Program  
as the replacement for the Alaskan Way Viaduct; and

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

6 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

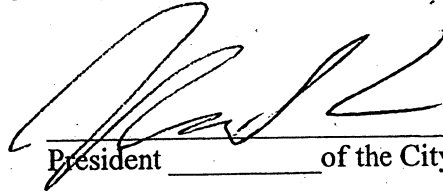
7 Section 1. It is the City's policy that the Alaskan Way Viaduct and Seawall Replacement  
8 (AWVSR) Program Bored Tunnel Alternative, as described in the Memorandum of Agreement  
9 attached hereto as Attachment 1, is the preferred solution for replacing the existing Alaskan Way  
10 Viaduct. After extensive evaluation of alternatives by public transportation agencies,  
11 consultants, stakeholders, and citizens, the City finds that the Bored Tunnel Alternative balances  
12 Seattle's land use, economic, transportation, and environmental goals, including access to and  
13 through downtown for all modes of travel, consistent with Seattle's vision for reconnecting the  
14 downtown with the central waterfront to increase opportunities for public access to and  
15 enjoyment of the shoreline and waterfront.  
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17 Section 2. The Mayor of Seattle or his designee is hereby authorized to execute, for and  
18 on behalf of the City, the Memorandum of Agreement entitled "MEMORANDUM OF  
19 AGREEMENT for the ALASKAN WAY VIADUCT AND SEAWALL REPLACEMENT  
20 PROGRAM BORED TUNNEL ALTERNATIVE" (GCA No. 6366) between the State of  
21 Washington and the City, substantially in the form attached hereto as Attachment 1. The attached  
22 agreement outlines the responsibilities of both the City and the State and expectations about the  
23 role of each in the implementation and funding of the numerous AWVSR Program elements.  
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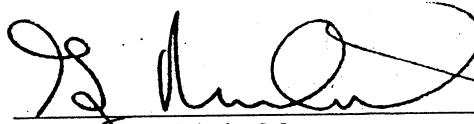
1 Section 3. This ordinance shall take effect and be in force thirty (30) days from and after  
2 its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days  
3 after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

4 Passed by the City Council the 19<sup>th</sup> day of October, 2009, and signed by me in  
5 open session in authentication of its passage this 19<sup>th</sup> day of October, 2009.

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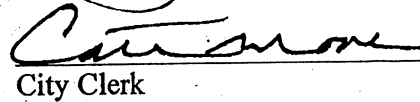
President \_\_\_\_\_ of the City Council

9 Approved by me this 27<sup>th</sup> day of October, 2009.

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Gregory J. Nickels, Mayor

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13 Filed by me this 27<sup>th</sup> day of October, 2009.

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City Clerk

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18 (Seal)

19 Attachment 1 – MEMORANDUM OF AGREEMENT for the ALASKAN WAY VIADUCT  
20 AND SEAWALL REPLACEMENT PROGRAM BORED TUNNEL ALTERNATIVE (GCA  
21 No. 6366)





ATTACHMENT 1  
MEMORANDUM OF AGREEMENT  
NO. GCA 6366  
FOR THE ALASKAN WAY VIADUCT AND  
SEAWALL REPLACEMENT PROGRAM  
BORED TUNNEL ALTERNATIVE

THIS agreement for the Alaskan Way Viaduct and Seawall Replacement (AWVSR) Program ("Agreement") is made and entered into between the State of Washington, hereinafter the "STATE," and the City of Seattle hereinafter the "CITY," collectively the "Parties" and individually the "Party."

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, the central waterfront section of the Alaskan Way Viaduct is located in and adjacent to downtown Seattle's urban core and the Seattle waterfront, an area increasingly used for tourism and recreation; and

WHEREAS, the Duwamish and Interbay industrial areas in Seattle are served by the SR 99 corridor and constitute a portion of Seattle's industrial sector which accounts for over 120,000 jobs and an estimated \$28.5 billion in annual economic activity city-wide. The SR 99 corridor provides important proximity to freight-dependent customers, distributors and suppliers; 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 conducted 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 SR 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 state, the Mayor of Seattle and the King County Executive jointly recommended replacing the Alaskan Way Viaduct with a bored tunnel beneath downtown Seattle; and

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

WHEREAS, the AWVSR 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 new surface Alaskan Way boulevard will have four through travel lanes north of Colman Dock and will have signalized intersections and function similarly to other downtown arterial streets; and

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

WHEREAS, the STATE and the CITY are committed to designing the bored tunnel and access portals to be consistent with Seattle's vision for the central waterfront, including reconnecting the downtown with the waterfront, enhancing the waterfront's environmental sustainability, increasing views of Elliott Bay and the landforms beyond, facilitating revitalization of Seattle's waterfront, maintaining transportation access to and through the waterfront, and increasing opportunities for the public to access and enjoy the shoreline and waterfront; and

WHEREAS the Port of Seattle is responsible for nearly 194,000 jobs in Washington state, \$17 billion in business revenue and tenants, half of the \$80 billion in cargo in Puget Sound ports, and is ranked the ninth largest port in the United States;

WHEREAS the Port of Seattle is funding projects that are part of or complement the AWVSR Program and which will provide capacity for future growth and improved safety, including the East Marginal Way Grade Separation Project, and the SR 519 South Seattle Intermodal Access Project Phase 2, has endorsed the bored tunnel concept, and is reviewing a proposed \$300 million investment in the AWVSR Program; and



WHEREAS King County is responsible for providing bus service, which serves an annual ridership of 100 million within a 2,134 square mile area; and

WHEREAS, King County is funding transit investments as part of the AWVSR Program, which will provide capacity for an additional 17,000 riders and include RapidRide investments, park and ride facility expansion, enhanced express and local service during peak periods, and investments in maintenance base capacity.

NOW, THEREFORE, the Parties agree to proceed with the AWVSR Program in accordance with the following principles.

IT IS MUTUALLY AGREED THAT:

Jointly the STATE and CITY intend to:

1. Continue to work collaboratively toward the successful completion of the AWVSR Program; and
2. Endeavor to open the bored tunnel to drivers by the end of 2015; and
3. Develop additional program-wide agreements (Additional Agreements), such as utility relocation, right-of-way, ownership and maintenance, and others to be consistent with this Agreement.

Responsibilities, implementation, and funding to be addressed in Additional Agreements are assigned as follows:

#### I. RESPONSIBILITIES

The STATE will be responsible for the following:

1. The Moving Forward Projects; and
2. A bored tunnel from a point just north of S. Royal Brougham Way to Harrison Street including connections to the city street system and the reconnection of John Street, Thomas Street, and Harrison Street over SR 99; and
3. A surface street from S. King Street along Alaskan Way to Elliott and Western avenues, ending at Battery Street, including replacement of the Marion Street pedestrian overpass and reconstruction of the Lenora Street pedestrian overpass; and
4. A new roadway connecting the realigned Alaskan Way to East Marginal Way S.; and
5. Alaskan Way Viaduct demolition; and
6. Battery Street Tunnel decommissioning; and
7. Partial construction transportation mitigation; and
8. Protection of public and private facilities which can safely remain in place throughout construction of the bored tunnel; and
9. Agreement with King County for transit investments associated with the AWVSR Program; and
10. Agreements with the Port of Seattle for freight mobility improvements associated with the AWVSR Program.



The CITY will be responsible for the following:

1. City utility relocations associated with the AWVSR Program; and
2. Seawall replacement along the CITY's central waterfront; and
3. A promenade or public space along the central waterfront; and
4. Other City street improvements including the west phase of the Mercer Corridor Project and partial funding for the Mercer Corridor East and Spokane Street Viaduct projects; and
5. Evaluation of a potential streetcar on First Avenue, including a segment phasing approach.

## II. IMPLEMENTATION

The Parties recognize that it may be in the public interest for one Party to implement portions of the other Party's program responsibilities. Each Party will be responsible for implementation roles, which are subject to change by agreement of the Parties, and may include, but are not limited to, the following:

The STATE shall, in accordance with the Additional Agreements:

1. Complete the following Moving Forward Projects: Electrical Line Relocations – Phase 1, S. Holgate to S. King Street Viaduct Replacement Project; SR 99 Intelligent Transportation System Projects; and establish an agreement with King County for transit service during construction; and
2. Design and construct a single bore tunnel from approximately S. Royal Brougham Way to Harrison Street, with four lanes of traffic including tunnel portals at either end; and
3. Design and construct the relocation of some CITY-owned utilities at the portal locations and bored tunnel alignment on behalf of the CITY; and
4. Design and construct new crossings of the SR 99 bored tunnel at John, Thomas, and Harrison streets; and
5. Design and construct a new City street grid between S. King and S. Atlantic streets including the realignment of Alaskan Way; and
6. Design and construct a new roadway connecting the realigned Alaskan Way to East Marginal Way; and
7. Demolish the existing Alaskan Way Viaduct from S. King Street to the Battery Street Tunnel; and
8. Decommission the Battery Street Tunnel; and
9. Complete the environmental review process for the Bored Tunnel Alternative, as required by federal and state law; and
10. Establish an agreement with the Port of Seattle to secure the \$300 million port investment for the Alaskan Way Viaduct Replacement Program including the bored tunnel project.

The CITY shall, in accordance with the Additional Agreements, and subject to appropriation of funds for these purposes:



1. Design and construct the relocation of some CITY-owned utilities required for the AWVSR Program; and
2. Design and construct a new seawall between Colman Dock and Pine Street; and
3. Design and construct a new promenade or public space along the central waterfront; and
4. Design and construct two-way Mercer Street from I-5 to Elliott Avenue, including a new Sixth Avenue from Harrison Street to Mercer Street; and
5. Design and construct a widened Spokane Street Viaduct, including a new ramp to Fourth Avenue; and
6. Evaluate a potential streetcar on First Avenue between S. Jackson Street and the Seattle Center, including a segment phasing approach; and
7. Design and construct a new four-lane connection from Elliott and Western avenues, beginning at Battery Street, to Pine Street; and
8. Design and construct a new surface road from S. King Street to Pine Street; and
9. Design and construct intelligent transportation system projects along the SR 99 corridor.

### III. FUNDING

Funding responsibilities for the estimated costs are as follows (these are preliminary cost estimates, with final funding commitments to be determined).

The STATE shall fund or procure funding for, if, and to the extent that the Washington State Legislature appropriates funds for these purposes as agreed to in the Additional Agreements, consistent with the State funding limits established in Engrossed Substitute Senate Bill 5768:

1. Bored tunnel from north of S. Royal Brougham Way to Harrison Street -- \$1.9 billion
2. Surface street connection from S. Yesler Street along Alaskan Way to Pike Street, including replacement of the Marion Street pedestrian overpass; a new connection from Pike Street to Elliot and Western avenues; reconstruction of the Lenora Street pedestrian overpass; viaduct removal; Battery Street Tunnel decommissioning -- \$290 million
3. Completion of the Moving Forward Projects including a new surface Alaskan Way from S. King to S. Yesler streets, and a new roadway connecting the realigned Alaskan Way to East Marginal Way S.-- \$600 million
4. Partial construction transportation mitigation (mitigation to offset loss of on-street parking during construction) -- \$30 million

The CITY shall fund or procure funding for, if, and to the extent that, the Seattle City Council appropriates funds for these purposes as agreed to in the Additional Agreements (the Parties acknowledge that no funds will be appropriated by the ordinance that approves this Agreement):

1. City utility relocation costs associated with the program -- \$248 million
2. Central seawall replacement -- \$225 million



3. Promenade or public space along the central waterfront -- \$123 million
4. City streets and transit pathways including the west phase of the Mercer Corridor Project and partial funding for the Mercer East and Spokane Street Viaduct projects -- \$191 million
5. Evaluation of a potential First Avenue Streetcar, including a segment phasing approach -- \$140 million (design and construction estimate)

The STATE and CITY shall jointly work with King County and the Port of Seattle to endeavor to fully secure the respective funding commitments of these contributing agencies.



IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the last day and year written below.

**CITY OF SEATTLE**

By: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**STATE OF WASHINGTON**

By: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
By (print)

\_\_\_\_\_  
Signature  
Assistant Attorney General

Date: \_\_\_\_\_

