

## **APPENDIX B**

**ORDINANCE** 123542

1  
2  
3 AN ORDINANCE relating to the State Route 99 Alaskan Way Viaduct and Seawall  
4 Replacement Program; entering into certain agreements with the State of Washington as  
5 provided in RCW 39.34.080, RCW chapter 47.12, and other applicable law; and ratifying  
6 and confirming certain prior acts.

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

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

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

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

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

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

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

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



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 preferred Bored Tunnel  
3 Program as the replacement for the Alaskan Way Viaduct, pending the completion of  
environmental review; and

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

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

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

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

- 14 1) The State awarded a contract consistent with the Draft Design-Build Contract;
- 15 2) The State demonstrated it could complete all elements of WSDOT's Program within  
16 the Program Budget;
- 17 3) The State provided the City with clear documentation identifying all changes between  
18 the Draft Design-Build Contract and the awarded construction contract; and
- 19 4) The State Legislature has not enacted legislation to overturn WSDOT's responsibility  
20 for Program costs, including cost overruns, as set out in the proposed agreements  
between the State and City; and

21 WHEREAS those conditions have been met; and,

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

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



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

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

4 NOW, THEREFORE,

5 BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

6 Section 1. In a letter dated January 28, 2011, (Exhibit A to this Ordinance), the State of  
7 Washington has offered to enter into and be legally bound by the Agreements, in the form of  
8 Attachments 1, 2 and 3 to Exhibit A, if the City accepts the Agreements by ordinance as  
9 provided in RCW 39.34.080, Chapter RCW 47.12, and other applicable law. The Agreements"  
10 are:  
11

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

16 2. MEMORANDUM OF AGREEMENT UT 01476 SR 99 ALASKAN WAY  
17 VIADUCT REPLACEMENT BORED TUNNEL PROJECT SPU FACILITIES WORK,  
18 attached as Attachment 2 to Exhibit A; and  
19

20 3. MEMORANDUM OF AGREEMENT UT 01474 SR 99 ALASKAN WAY  
21 VIADUCT REPLACEMENT BORED TUNNEL PROJECT SCL FACILITIES WORK,  
22 attached as Attachment 3 to Exhibit A.  
23

24 Section 2. Acceptance of the Agreements. By enacting this ordinance, the City of Seattle  
25 accepts the offer made by the State and agrees that the City shall be legally bound by the  
26



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

5 Section 3. Signature as a Ministerial Act. The City Clerk is authorized to sign the  
6 Agreements as a ministerial act evidencing the City's acceptance of the Agreements.  
7

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

10 Section 5. Authority to Amend the Agreements. Section 30.4 of Exhibit A, Attachment  
11 1 provides:

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

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

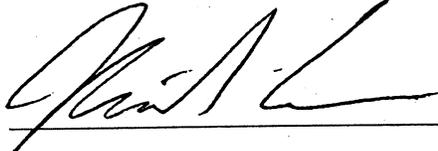
19 Section 6. The City Council is authorized to decide whether to issue the notice  
20 referenced in Section 2.3 of each Agreement. That decision shall be made at an open public  
21 meeting held after issuance of the Final Environmental Impact Statement.  
22

23 Section 7. Any act consistent with the authority of this ordinance taken after the passage  
24 of this ordinance and prior to its effective date is hereby ratified and confirmed.  
25  
26  
27



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

4 Passed by the City Council the 7<sup>th</sup> day of Feb., 2011, and signed by me in open  
5 session in authentication of its passage this 7<sup>th</sup> day of Feb., 2011.

6  
7  
8 

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

10 Approved by me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

11  
12  
13 \_\_\_\_\_  
14 Michael McGinn, Mayor

15 Filed by me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

16 

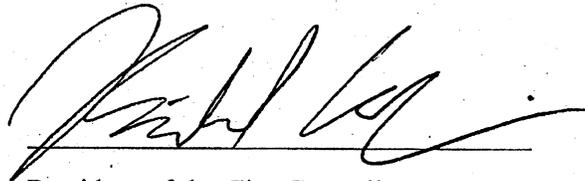
17  
18 \_\_\_\_\_  
19 City Clerk

20  
21 **VETO**

22 (Seal)

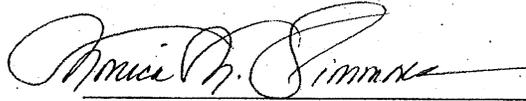


1 Council Bill reconsidered and passed by an affirmative vote of the City Council this 28th  
2 day of February, 2011, and signed by me in open session in authentication of its passage this  
3 28th day of February, 2011.

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5  
6 

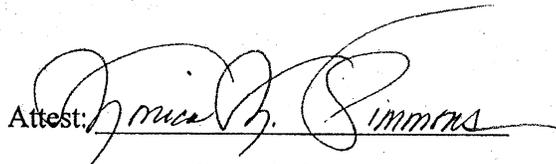
President of the City Council

7  
8  
9 Filed by me this 28th day of February, 2011.

10  
11 

12 City Clerk

13  
14  
15 I certify that the foregoing Council Bill No. 117101, after passage by the City Council, was duly  
16 presented to the Mayor; that the Mayor disapproved the Bill and returned it to the City Council  
17 with his objections in writing; that the objections of the Mayor were entered in the Journal; that  
18 the City Council voted to reconsider the Bill not fewer than five days after such publication and  
19 within 30 days after the Bill had been returned; and that upon reconsideration the City Council  
20 passed the Bill on February 28, 2011 by the affirmative vote of not less than two-thirds of all  
21 members .

22  
23 Attest: 

City Clerk



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

2  
3 Attachments to Exhibit A:

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

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

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





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

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

January 28, 2011

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

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

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

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

Dear Council President Conlin and City Clerk Simmons:

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

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

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

Sincerely,

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

Councilmember Richard Conlin, President  
Monica Martinez Simmons, City Clerk  
January 28, 2011  
Page 2 of 2

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

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

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

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

# **Attachment 1**

Memorandum of Agreement No. GCA 6486

SR 99 Alaskan Way Viaduct

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

1  
2 MEMORANDUM OF AGREEMENT  
3 NO. GCA 6486  
4 SR 99 ALASKAN WAY VIADUCT  
5 PROPERTY, ENVIRONMENTAL REMEDIATION, DESIGN REVIEW,  
6 PERMITTING, AND CONSTRUCTION COORDINATION  
7 AGREEMENT  
8 FOR SR 99 BORED TUNNEL PROJECT  
9

10  
11 THIS Property, Environmental Remediation, Design Review, Permitting, and  
12 Construction Coordination Agreement, No. GCA 6486 for the SR 99 Bored Tunnel  
13 Project ("Agreement" or "SDOT Agreement" or "GCA 6486 Agreement") is made and  
14 entered into, as provided in RCW 39.34.080, RCW 47.12.040 and other applicable law,  
15 between the Washington State Department of Transportation, hereinafter the "STATE,"  
16 and the City of Seattle hereinafter the "CITY" (managed by the Seattle Department of  
17 Transportation, hereinafter "SDOT"), collectively the "PARTIES" and individually the  
18 "PARTY."

19  
20 WHEREAS, the Alaskan Way Viaduct (AWV) and seawall are at risk of sudden and  
21 catastrophic failure in an earthquake and are nearing the end of their useful lives; and

22  
23 WHEREAS, the STATE and the Federal Highway Administration (FHWA), in  
24 consultation with the CITY, are proposing improvements to State Route 99 (SR 99),  
25 currently a non-limited access highway that includes the AWV; and

26  
27 WHEREAS, in March 2007, the Governor, the King County Executive and the Mayor of  
28 Seattle pledged to advance a series of key SR 99 projects (Moving Forward Projects) that  
29 will facilitate the removal and/or repair of key portions of SR 99, which are: Yesler Way  
30 Vicinity Stabilization Project, Electrical Line Relocation (formerly known as Electrical  
31 Utility Relocation Phase 1 under agreement No. GCA 5680), Battery Street Tunnel Fire  
32 and Life Safety Upgrades, SR 99 Lenora to Battery Street Tunnel Improvements, the SR  
33 99 South Holgate Street to South King Street Viaduct Replacement Project, and Transit  
34 Enhancements and Other Improvements; and

35  
36 WHEREAS, in January 2009, the Governor, the King County Executive and the Mayor  
37 of Seattle recommended replacement of the existing AWV structure in the central  
38 waterfront area with a bored tunnel; and

39  
40 WHEREAS, in October 2009 the Governor and the Mayor executed a Memorandum of  
41 Agreement, GCA 6366, which described the basic roles and responsibilities for the  
42 implementation of the Alaskan Way Viaduct and Seawall Replacement (AWVSR)  
43 Program; and  
44

1 WHEREAS, the AWVSR Program (PROGRAM) consists of a four-lane bored tunnel  
2 and improvements to City streets, the City waterfront and transit; and the Moving  
3 Forward Projects; and  
4  
5 WHEREAS, the PARTIES are entering into this Agreement on the assumption that the  
6 PROGRAM can and will be completed at or below the current WSDOT PROGRAM  
7 budget; and  
8  
9 WHEREAS, the PROJECT, the subject of this Agreement, is the part of the PROGRAM  
10 that replaces SR 99 from South Royal Brougham Street to Roy Street that consists of  
11 designing and constructing a four-lane bored tunnel from South King Street to Thomas  
12 Street, north and south tunnel portals and access streets; re-establishment of the City  
13 street grid in the vicinity of the portals and associated utility relocations; and  
14  
15 WHEREAS, Battery Street Tunnel decommissioning and Alaskan Way Viaduct  
16 demolition will be addressed in a future agreement; and  
17  
18 WHEREAS, the CITY and STATE agree to work collaboratively toward the successful  
19 completion of the PROJECT and endeavor to open the tunnel by the end of 2015 and  
20 demolish the AWV in 2016; and  
21  
22 WHEREAS, the PROJECT is consistent with the City of Seattle's adopted  
23 Comprehensive Plan; and  
24  
25 WHEREAS, review of the PROJECT pursuant to the State and City environmental  
26 policy laws is currently underway and the PARTIES recognize that changes in the  
27 alternative chosen would require a new agreement; and  
28  
29 WHEREAS, the CITY and the STATE will deliver the PROJECT within the financial  
30 commitments made in the Memorandum of Agreement, GCA 6366, executed by the  
31 PARTIES on October 24, 2009; and  
32  
33 WHEREAS, concurrently with this GCA 6486 Agreement, the STATE and CITY,  
34 through Seattle City Light (SCL), are entering into an agreement, UT 01476; and  
35  
36 WHEREAS, concurrently with this GCA 6486 Agreement, the STATE and CITY,  
37 through its Seattle Public Utilities Department (SPU), are entering into an agreement, UT  
38 01474; and  
39  
40 WHEREAS, the PROJECT will in some instances require the use of existing CITY Street  
41 Right-of-Way; and  
42  
43 WHEREAS, the CITY will own and/or maintain significant infrastructure to be  
44 constructed as part of the PROJECT; and  
45

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

3  
4 WHEREAS, the PARTIES wish to establish protocols and procedures for property  
5 acquisition, environmental remediation, design review, permitting, and construction  
6 coordination to govern their relationship during the course of the PROJECT; and

7  
8 WHEREAS, some or all of the work covered by this Agreement may be accomplished by  
9 executed "Task Order" documents.

10  
11 NOW, THEREFORE, in consideration of the terms, conditions, covenants, and  
12 performances contained herein, or attached and incorporated and made a part hereto,

13  
14  
15 **IT IS MUTUALLY AGREED AS FOLLOWS:**

16  
17 **1. DEFINITIONS**

18  
19 Words not otherwise defined, which have well-known technical or construction industry  
20 meanings, are used in accordance with such recognized meanings.

21  
22 1.1 Approved Plans means the construction plans and provisions that evidence the  
23 CITY's determinations, made through the processes described in Sections 6 and 7 and  
24 Exhibit B of this Agreement, that the plans conform to the criteria established in this  
25 Agreement, UT 01474 and UT 01476; Approved Plans are included in the contract  
26 documents evidencing the agreement between the STATE and its contractors for  
27 construction of a given element of the PROJECT.

28  
29 1.2 AWV means the Alaskan Way Viaduct structure on State Route 99, currently a  
30 non-limited-access highway over a portion of CITY Street Right-of-Way.

31  
32 1.3 Business Days means Monday through Friday, inclusive, except for official City  
33 of Seattle and state holidays.

34  
35 1.4 CITY means the City of Seattle, a Washington municipal corporation.

36  
37 1.5 City Construction Project Engineer means the person designated by SDOT to act  
38 as the City's coordinator and primary representative in matters arising during the course  
39 of construction as set forth in this Agreement.

40  
41 1.6 CITY Designated Representative means the CITY official listed in Section 25 of  
42 this Agreement.

43

1 1.7 CITY Facilities means SCL Facilities, SDOT Facilities, SPU Facilities and  
2 facilities impacted by, or constructed as part of, the PROJECT that are owned or will be  
3 owned by any other CITY agency.

4  
5 1.8 CITY Infrastructure means the portions of SPU Facilities, SCL Facilities and City  
6 Street Right-of-Way improvements constructed or modified as part of the PROJECT to  
7 be owned, operated and maintained by the CITY.

8  
9 1.9 CITY Interest Property means CITY Street Right-of-Way plus all other real  
10 property that the CITY owns or in which the CITY has a real property interest on the  
11 effective date of this Agreement, or in connection with the PROGRAM is to acquire  
12 ownership of or an interest in real property or a different utility-related right from the  
13 STATE, which includes, but is not limited to, Program Transfer Property. CITY Interest  
14 Property does not include real property acquired or to be acquired by the STATE for  
15 planned limited access facilities such as the bored tunnel, portals and access for which no  
16 real property interest or different utility-related right will be transferred to the CITY.

17  
18 1.10 City of Seattle means CITY.

19  
20 1.11 City Standards means all City of Seattle laws, rules, regulations and standards and  
21 all applicable federal and state laws, rules, regulations and standards, including but not  
22 limited to the following, except as otherwise provided in this Agreement, UT 01474 and  
23 UT 01476:

24 1.11.1 The Seattle Municipal Code;

25 1.11.2 The City of Seattle Standard Specifications for Road, Bridge and  
26 Municipal Construction;

27 1.11.3 The City of Seattle Standard Plans for Municipal Construction;

28 1.11.4 SDOT, SCL, DPD and SPU Director's Rules, including the City of Seattle  
29 Right of Way Improvements Manual, 2005-22 and any revisions to the Manual;

30 1.11.5 SCL Material Standards; and

31 1.11.6 SCL Construction Guidelines.

32  
33 1.12 CITY Street Right-of-Way means public street right-of-way under the jurisdiction  
34 of SDOT pursuant to Title 15 of the Seattle Municipal Code.

35  
36 1.13 Conflicting Facilities means all SCL Facilities and all SPU Facilities identified by  
37 the STATE that have alignments intersecting or that directly conflict with the final  
38 configuration of the proposed SR 99 bored tunnel portals and tunnel portal excavations.  
39 Conflicting Facilities do not include any SPU Facilities or SCL Facilities that have been  
40 relocated to or installed or reconstructed in their present location by the STATE or by  
41 order of the STATE as part of the Moving Forward projects of the Program south of  
42 Dearborn Street.

43  
44 1.14 Contract Award means the STATE's written decision accepting a bid for  
45 construction of a Project.

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

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

1.17 Design-Bid-Build Contract means a project delivery method in which the STATE provides a complete design, advertises for bids, and awards a contract to the lowest responsive bidder who is responsible for completing the construction of the project.

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

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

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

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

1.22 Engineer of Record means the engineer licensed in the State of Washington who has been commissioned by the STATE as the prime engineer of the PROJECT, having overall responsibility for the adequacy of the design and the coordination of the design work of other engineers and whose professional seal is on the Approved Plans.

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

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

1 court of competent jurisdiction of which the STATE has knowledge), now or hereafter in  
2 effect including, but not limited to: the Federal Clean Air Act; the Federal Water  
3 Pollution Control Act; the Federal Safe Drinking Water Act; the Federal Comprehensive  
4 Environmental Response Compensation and Liability Act, as amended by the Superfund  
5 Amendments and Reauthorization Act of 1986; the Federal Resource Conservation and  
6 Recovery Act, as amended by the Solid and Hazardous Waste Amendments of 1984; the  
7 Federal Occupational Safety and Health Act; the Federal Emergency Planning and Right-  
8 to-Know Act of 1986; the Federal Hazardous Materials Transportation Control Act of  
9 1980; the Federal Clean Water Act of 1977; the Federal Insecticide, Fungicide and  
10 Rodenticide Act; the Federal Waste Management Recovery and Recycling Act; the  
11 Washington Hazardous Waste Management Act; the Washington Hazardous Waste Fees  
12 Act; Washington Model Toxics Control Act; the Washington Nuclear Energy and  
13 Radiation Act; the Washington Radioactive Waste Storage and Transportation Act; the  
14 Washington Underground Petroleum Storage Tanks Act; and any regulations  
15 promulgated thereunder from time to time.

16  
17 1.25 Final Design Submittal means plans, specifications, and design documentation  
18 representing complete design of a given project element in a Design-Build Contract. The  
19 Final Design Submittal addresses and incorporates review comments from the  
20 Preliminary Design Submittal.

21  
22 1.26 Final Plan Review Package means the Plan Review Package submitted to the  
23 CITY that comprises the STATE's contract documents including contract addenda and  
24 fully incorporates or otherwise addresses all CITY plan review comments and all  
25 applicable conditions of the Street Use Permit.

26  
27 1.27 Hazardous Substance(s) means any substance, or substance containing any  
28 component, now or hereafter designated as a hazardous, dangerous, toxic or harmful  
29 substance, material or waste, subject to regulation under any federal, state or local law,  
30 regulation or ordinance relating to environmental protection, contamination or cleanup  
31 including, but not limited to, those substances, materials and wastes listed in the United  
32 States Department of Transportation Hazardous Materials Table (49 C.F.R. §172.101) or  
33 by the United States Environmental Protection Agency as hazardous substances (40  
34 C.F.R. pt. 302 and amendments thereto) or in the Washington Hazardous Waste  
35 Management Act (Ch. 70.105 RCW) or the Washington Model Toxics Control Act (Chs.  
36 70.105D RCW and 82.21 RCW), petroleum products and their derivatives, and such  
37 other substances, materials and wastes as become regulated or subject to cleanup  
38 authority under any Environmental Law.

39  
40 1.28 Letter of Acceptance means the written document that signifies the CITY's  
41 acceptance of CITY Infrastructure to be owned by the CITY, and shall signify the  
42 STATE's transfer of CITY Infrastructure to be owned by the CITY. The Letter of  
43 Acceptance will not transfer any interest in real property. The Letter of Acceptance shall  
44 be jointly executed by the PARTIES. A Letter of Acceptance for SPU Facilities requires  
45 SPU approval and a Letter of Acceptance for SCL Facilities requires SCL approval.

1  
2 1.29 Letter of Plan Approval means the letter provided to the STATE by the CITY  
3 following the completion of the plan review process, signifying that the plans and  
4 specifications identified in the letter are the Approved Plans. A Letter of Plan Approval  
5 for SPU Facilities requires SPU approval and a Letter of Plan Approval for SCL  
6 Facilities requires SCL approval as part of the Procedures outlined in Exhibit B of this  
7 Agreement.

8  
9 1.30 MTCA means the Washington Model Toxics Control Act (Chs. 70.105D RCW  
10 and 82.21 RCW).

11  
12 1.31 Plan Review Package means clear and complete plans, specifications, and the  
13 necessary assumptions, studies, models and calculations upon which the design was  
14 based, and corrections previously requested by the CITY with respect to design-bid-build  
15 projects.

16  
17 1.32 100% Plan Review Package means the Plan Review Package submitted to the  
18 CITY concurrent with STATE's final internal review of the construction contract plans  
19 and contract provisions that shall evidence the agreement between the STATE and its  
20 contractors for construction of design-bid-build projects.

21  
22 1.33 Private Utilities mean utility uses, excluding facilities owned and operated by the  
23 CITY, whether approved or not through franchise agreements and/or Street Use Permits  
24 by the CITY and governed and enforced through City Ordinance.

25  
26 1.34 Procedures mean *Design Review, Construction Management, Inspection and*  
27 *Record Drawing Procedures*, attached as Exhibit B to GCA 6486.

28  
29 1.35 PROJECT means , the part of the PROGRAM that replaces SR 99 from South  
30 Royal Brougham Street to Roy Street and that consists of designing and constructing a  
31 four-lane bored tunnel from South King Street to Thomas Street, north and south tunnel  
32 portals and access streets, re-establishment of the City street grid in the vicinity of the  
33 portals (Battery Street Tunnel decommissioning and Alaskan Way Viaduct demolition  
34 will be addressed in a future agreement); and associated utility relocations. The  
35 PROJECT description is attached as Exhibit A.

36  
37 1.36 PROGRAM means all the projects, collectively, implemented by the STATE and  
38 the CITY that remove and replace the AWV and seawall.

39  
40 1.37 Program Property means all real property interests acquired and to be acquired by  
41 the STATE for the PROGRAM.

42  
43 1.38 Program Transfer Property means all Program Property identified by the STATE  
44 and the CITY for transfer from the STATE to the CITY in fee simple.  
45

- 1 1.39 Project Property means all real property interests acquired and to be acquired by  
2 the STATE and used for the PROJECT.  
3
- 4 1.40 Released for Construction Submittal (RFC Submittal) means in a Design-Build  
5 Contract, plans and specifications for a given project element that are construction ready  
6 and have been certified by the Design-Builder as having met all contract requirements  
7 and received all approvals and permits. The Released for Construction Submittal  
8 addresses all review comments from the Preliminary and Final Design Submittals.  
9
- 10 1.41 Relocation Work means the removal or abandonment of Conflicting Facilities  
11 maintenance of service for those facilities and the installation or reconstruction of  
12 Conflicting Facilities to their permanent and final location.  
13
- 14 1.42 Remediation means the same as Remedy or Remedial Action defined in MTCA,  
15 which includes any action or expenditure consistent with the purposes of MTCA to  
16 identify, eliminate, or minimize any threat or potential threat posed by Hazardous  
17 Substances to human health or the environment including any investigative and  
18 monitoring activities with respect to any release or threatened release of a Hazardous  
19 Substance and any assessments to determine the risk or potential risk to human health or  
20 the environment.  
21
- 22 1.43 Round Table Meeting means a meeting typically held five (5) weeks following  
23 the submittal of the 100% Plan Review Package to the CITY and STATE, and commonly  
24 attended by the STATE's Project team and STATE reviewers to resolve and address  
25 STATE comments on the 100% Plan Review Package.  
26
- 27 1.44 SCL means Seattle City Light.  
28
- 29 1.45 SCL Facilities means the electrical facilities impacted by, or constructed as part  
30 of, the PROJECT that are owned or will be owned by the CITY.  
31
- 32 1.46 SDOT means the Seattle Department of Transportation.  
33
- 34 1.47 SDOT Facilities means the transportation facilities impacted by, or constructed as  
35 part of, the PROJECT that are owned or will be owned by the CITY.  
36
- 37 1.48 SPU means Seattle Public Utilities.  
38
- 39 1.49 SPU Facilities means the water, drainage and wastewater facilities impacted by,  
40 or constructed as part of, the PROJECT that are owned or will be owned by the CITY.  
41
- 42 1.50 STATE means the Washington State Department of Transportation.  
43
- 44 1.51 STATE Designated Representative means the STATE official listed in Section 25  
45 of this Agreement.

1  
2 1.52 STATE Project Engineer means the person appointed by the STATE to lead the  
3 PROJECT during design and/or construction or his or her designee.

4  
5 1.53 Street Use Permit means written authorization secured by the STATE from the  
6 Director of SDOT for use of the CITY Street Right-of-Way pursuant to Title 15 of the  
7 Seattle Municipal Code.

8  
9 1.54 Surplus Property means Program Property, excluding Program Transfer Property  
10 and other CITY Interest Property, that upon completion of the PROJECT has not been  
11 designated as part of the limited access or non-limited access right-of-way of State Route  
12 99.

13  
14 1.55 Task Force means a group consisting of STATE, CITY, contractor, and other  
15 stakeholder staff meeting regularly to review and reach decisions relating to a particular  
16 subject, e.g., traffic, structures.

17  
18 1.56 Task Order means a document executed by the PARTIES under this Agreement  
19 authorizing work by one PARTY to be done on behalf of the other PARTY and that  
20 defines the scope and the obligations of the PARTIES for the given element of work. All  
21 terms and conditions of the Agreement shall apply to each Task Order.

22  
23 1.57 UTILITY means City of Seattle Utility Departments, Seattle City Light and  
24 Seattle Public Utilities.

25  
26 1.58 WSDOT means Washington State Department of Transportation.

27  
28  
29 **2. GENERAL RESPONSIBILITIES**

30  
31 2.1 The PARTIES shall manage risk, produce design and conduct construction in a  
32 manner that maximizes cumulative public benefits and minimizes cumulative public costs  
33 as mutually agreed to by the PARTIES.

34  
35 2.2 This Agreement in conjunction with UT 01474 and UT 01476 is prepared by the  
36 STATE and CITY, as provided in RCW 39.34.080, RCW 47.12.040 and other applicable  
37 law, to govern relationships between the PARTIES and establish each PARTY's  
38 responsibilities regarding the PROJECT.

39  
40 2.3 The PARTIES understand that environmental review of the proposed PROJECT  
41 is underway at the date of this Agreement and agree that only preliminary design work  
42 and other work outlined in 23 CFR 636.109(b)(2) may proceed under this Agreement  
43 prior to issuance of a Final SEPA/NEPA Environmental Impact Statement (FEIS) and  
44 federal Record of Decision (ROD). If an alternative other than the Proposed Bored  
45 Tunnel is selected, this Agreement will be terminated pursuant to the provisions of

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

7  
8 2.4 The PARTIES shall work collaboratively to resolve issues in a manner that  
9 endeavors to open the proposed bored tunnel to the public on schedule.

10  
11 2.5 The design and construction of CITY Facilities, including repair, shall comply  
12 with City Standards.

13  
14 2.6 Each PARTY shall provide the funding and resources necessary to fulfill the  
15 responsibility of that PARTY as established in this Agreement.

16  
17 2.7 The PARTIES agree to work cooperatively with each other and make reasonable,  
18 good faith efforts to timely and expeditiously complete the PROJECT, as provided in this  
19 Agreement, including, but not limited to, the selection of a preferred SR 99 design  
20 alternative, development of preliminary engineering and final design and construction. In  
21 order to optimize design and minimize conflicts, the STATE shall coordinate design and  
22 construction of the various contracts making up the PROJECT with design of subsequent  
23 PROGRAM stages, and with construction of previous stages of the PROGRAM. The  
24 STATE shall be prepared to modify design of the contracts making up the PROJECT, the  
25 subsequent PROGRAM stage and/or previous stage if both PARTIES determine the  
26 modifications are necessary and reasonable, to minimize design conflicts.

27  
28 2.8 The STATE is responsible for designing and constructing the PROJECT except  
29 for the CITY's responsibility to relocate Conflicting Facilities as provided in Section 2.10  
30 of UT 01474 and UT 01476. The STATE is responsible for taking measures to minimize,  
31 limit, and mitigate damage to private property and CITY Facilities that may result from  
32 the PROJECT construction, including damage that may result from tunnel-induced  
33 Deformation. The STATE is responsible for remedying at its cost such damage should it  
34 occur.

35  
36 2.9 The PARTIES agree that it is in the public interest for one PARTY to implement  
37 portions of the other PARTY's PROJECT responsibilities. Therefore, this SDOT  
38 Agreement establishes a Task Order process for use by a PARTY to authorize the other  
39 PARTY to conduct work on its behalf and, as may be documented through each Task  
40 Order, to agree to reimburse the other PARTY for such services.

41  
42 2.10 The PARTIES agree that the STATE is responsible for funding the design and  
43 construction of a re-located surface street within the Alaskan Way right-of-way from  
44 South King Street to Pine Street, a new surface street from the intersection of Pine Street  
45 and Alaskan Way to Battery Street connecting Alaskan Way to Elliot and Western

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

8  
9 2.11 The PARTIES agree that the PROGRAM will not be complete until the elements  
10 in Exhibit D are completed. The PARTIES agree that the current scope identified for  
11 certain elements of the PROGRAM is reflected in Exhibit D. Future mutual agreement  
12 of the PARTIES shall be required in order to reduce or substantially alter the scope  
13 outlined in Exhibit D. WSDOT shall provide the City with quarterly updates regarding  
14 the PROJECT and PROGRAM budget to ensure timely negotiation of scope issues.

15  
16 2.12 The PARTIES recognize that the STATE proposes to toll the bored tunnel as part  
17 of the PROJECT, if the tunnel is selected as the preferred alternative. The STATE agrees  
18 to evaluate and work with the CITY (in advance of tolls being imposed, during toll  
19 implementation, and for a mutually agreeable period thereafter) to identify mitigation  
20 strategies for the effects that tolling may have with respect to diversion of vehicular  
21 traffic from the PROJECT onto CITY Streets. The STATE agrees that such evaluation  
22 and mitigation shall include effects on both vehicular traffic circulation on CITY streets  
23 as well as effects on CITY's ability to achieve its "Complete Streets" policy goals  
24 articulated in CITY's Resolution No. 30915, including but not limited to making CITY  
25 streets function well for bicycles, pedestrians, freight, transit and automobiles. Exhibit E  
26 contains the details of the Tolling Committee and is incorporated by reference herein.

### 27 **3. PROPERTY ACQUISITION AND TRANSFER; SURPLUS PROPERTY**

#### 28 29 3.1 Acquisition

30  
31 3.1.1 The STATE has or will acquire, at its expense, the Project Property.  
32 CITY responsibility for acquisition of real property interests or other utility-related  
33 property rights, if any, as set forth in Section 14.1 of UT 01474 and UT 01476.

34  
35 3.1.2 The STATE is responsible, at its expense, for performance of all  
36 appraisals, appraisal review, title review, surveys, property investigation, relocation  
37 assistance and all other investigations and services in connection with the acquisition of  
38 the Project Property. For each parcel of Program Transfer Property, the STATE shall  
39 deliver to the CITY, as soon as practicable after a parcel is acquired and identified by the  
40 PARTIES as Program Transfer Property, all documents created, commissioned or  
41 received in connection with the STATE's acquisition of such parcel. Such documents  
42 shall include, to the extent applicable, appraisals, appraisal reviews, title reports and all  
43 documentation concerning title encumbrances, title policies, surveys, geotechnical  
44 reports, purchase agreements, term sheets, options, leases, deeds, indemnities, and all  
45 other documents and information created, commissioned or received by the STATE.

1  
2 3.1.3 The STATE is responsible for identification and investigation of  
3 Hazardous Substances on Program Property following procedures set in the WSDOT  
4 *Environmental Procedures Manual M 31-11* and WSDOT *Right of Way Manual M 26-01*  
5 that are in effect on the date of property acquisition. The STATE shall provide to  
6 SDOT's Real Property and Environmental Manager, as soon as practicable after a parcel  
7 is identified by the PARTIES as Program Transfer Property, copies of all documentation  
8 of environmental investigation concerning the Program Transfer Property, remedial  
9 actions, reports, studies or other documentation, whether received by or prepared by or  
10 for the benefit of the STATE, including, but not limited to, (1) documents relating to due  
11 diligence and/or all appropriate inquiry, environmental assessments, and remedial,  
12 removal or cleanup activities related to the Program Transfer Property; (2) documents  
13 relating to allegations, orders, claims, regulatory demands, or losses relating to the  
14 alleged existence or migration of any Hazardous Substance from or on any parcel of  
15 Program Transfer Property; and (3) any alleged violation of any Environmental Law or  
16 other information relating to environmental condition of the Program Transfer Property.  
17

18 3.2 Transfer.  
19

20 3.2.1 Prior to the start of PROJECT construction, the STATE and the CITY  
21 agree to enter into a separate written agreement governing transfer of Program  
22 Transfer Property to the CITY. The agreement shall identify the Program  
23 Transfer Property and provide that each transfer to the CITY shall be by quit  
24 claim deed. The agreement shall also provide the following: timing of transfer,  
25 condition of title, protection for utilities in the event of future sale, the definitions  
26 of Hazardous Substance and Environmental Law contained in this SDOT  
27 Agreement, and the following release and indemnification provision:  
28

29 "The STATE hereby releases and indemnifies, protects and holds harmless the  
30 City of Seattle and its officers, officials, employees, and agents working within  
31 the scope of their employment from all liability and claims (including but not  
32 limited to liability and claims for response and remediation costs, administrative  
33 costs, fines, charges, penalties, attorney fees and cost recovery or similar actions  
34 brought by a governmental or private party, including third party tort liability)  
35 arising, directly or indirectly, from any presence or release of any Hazardous  
36 Substance remaining within or transported from the real property in which an  
37 interest is transferred."  
38

39 The foregoing is not an exclusive list.  
40

41 3.2.2 The PARTIES shall prepare and attach to the future agreement governing  
42 transfer of Program Transfer Property and this SDOT Agreement an exhibit  
43 containing a complete list of legal descriptions of the Program Transfer Property,  
44 which may be created and amended as necessary by the PARTIES' Designated  
45 Representatives without other approval by the PARTIES. A detailed property

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

4  
5 3.2.3 Whether or not any separate agreement or transfer document is made,  
6 effective beginning on the date of transfer of each real property interest from the  
7 STATE to the CITY in connection with the PROGRAM, the STATE shall release  
8 and indemnify, protect and hold harmless the City of Seattle and its officers,  
9 officials, employees, and agents working within the scope of their employment  
10 from all liability and claims (including but not limited to liability and claims for  
11 response and remediation costs, administrative costs, fines charges, penalties,  
12 attorney fees and cost recovery or similar actions brought by a governmental or  
13 private party, including third party tort liability) arising, directly or indirectly,  
14 from any presence or release of any Hazardous Substance remaining within or  
15 transported from the real property in which an interest is transferred.

16  
17 3.3 Surplus Property. Prior to start of PROJECT construction, the STATE will  
18 provide a preliminary list to the CITY of all properties that appear to be Surplus  
19 Properties. Within two (2) years after final completion of the PROJECT, the STATE  
20 shall initiate its disposal of all Surplus Property pursuant to the provisions of chapter  
21 47.12 RCW and following the procedures in the WSDOT *Right of Way Manual M 26-*  
22 *01.02*, dated August 2009, Chapter 11, Sections 11-7.1 – 11-7.4.2. Disposal includes any  
23 of the disposal methods described in Chapter 11, Sections 11-7.1 – 11-7.4.2. The  
24 timeline for the STATE's initiation of disposal of Surplus Property may be extended, if  
25 necessary, by the PARTIES' Designated Representatives.

26  
27 3.4 Survival. The obligations set forth in this Section 3 shall survive termination of  
28 this SDOT Agreement unless otherwise expressly negotiated by the PARTIES and  
29 memorialized by written amendment to this SDOT Agreement.

#### 30 31 4. TASK ORDERS, PAYMENT AND ADMINISTRATION

32  
33 4.1 Some or all of the work undertaken pursuant to this Agreement may be governed  
34 by Task Orders. Task Orders shall be subject to the provisions of this Agreement.

35  
36 4.1.1 Either PARTY may initiate a Task Order which will be jointly executed  
37 by the PARTIES.

38  
39 4.1.2 The PARTIES will prepare and execute Task Orders by contract package or  
40 as otherwise agreed. All Task Orders shall be signed by the Designated  
41 Representative of the initiating PARTY and deemed executed when counter-  
42 signed by the Designated Representative of the other PARTY.

43  
44 4.1.3 The general terms and conditions of this Agreement shall be applicable to  
45 all Task Orders issued under this Agreement.

1  
2 4.1.4 The form of each Task Order shall substantially conform to the Task  
3 Order Template attached as Exhibit C. Each Task Order shall contain a general  
4 description and scope of work, a schedule for completion, an itemized estimate of  
5 costs for the work, a cash flow projection and any provisions specific to the scope  
6 of work.  
7

8 4.1.5 Each PARTY shall designate a manager for each Task Order. The  
9 designated Task Order managers are deemed to have the authority to modify the  
10 scope, schedule, and budget of the Task Order within the parameters of this  
11 Agreement.  
12

#### 13 4.2 Payment

14  
15 4.2.1 The PARTIES shall not be obligated to reimburse any expenditure in  
16 excess of the maximum amount stated in each Task Order, unless the PARTIES  
17 have agreed to such additional reimbursements and the Task Order has been  
18 amended to describe the additional work in excess of the budgeted scope of work.  
19 The initiating PARTY shall promptly notify the other PARTY in writing as soon  
20 as it is known when the maximum funding obligation will be reached and shall  
21 also specify in writing its position regarding any remaining work covered by a  
22 Task Order which it believes was contained within the budgeted scope of work.  
23 Should its estimated costs on any Task Order exceed the amount authorized, the  
24 PARTY performing the work under the Task Order shall promptly notify the  
25 other PARTY in writing and shall specify in writing its position regarding why  
26 the estimated cost will be or has been exceeded.  
27

28 4.2.2 The PARTIES shall negotiate the total authorized amount for each Task  
29 Order. Reimbursement will not be made for activities that are not covered in a  
30 Task Order. The PARTIES will establish a budget contingency for the estimated  
31 cost of the work covered under each Task Order as a part of the cost estimate for  
32 that Task Order.  
33

### 34 5. ENVIRONMENTAL REMEDIATION DURING CONSTRUCTION

35  
36 5.1 STATE Responsibilities. For CITY Interest Property the STATE shall be  
37 responsible for identification, investigation and Remediation of Hazardous Substances  
38 found within the limits of the PROJECT during its environmental due diligence of the  
39 Project Property and shall identify areas of known Hazardous Substances in conjunction  
40 with the Plan Review Packages and Design Submittals circulated for CITY review. In  
41 addition, the STATE shall be responsible for identification, investigation and  
42 Remediation of Hazardous Substances discovered during construction at CITY Interest  
43 Property. For CITY Interest Property, provisions for Remediation of known Hazardous  
44 Substances, approved Remediation plans, and provisions for Remediation of Hazardous  
45 Substances discovered during construction shall be included in the Plan Review Packages

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

5  
6 5.2 Environmental Remediation will be in accordance with Environmental Law. At  
7 CITY Interest Property, the STATE shall follow the Model Toxics Control Act (MTCA)  
8 and associated procedures approved by the Washington State Department of Ecology for  
9 Remedial Action, and the STATE shall undertake Remediation using environmental  
10 professional judgment that achieves an overall effectiveness comparable to the substantial  
11 equivalent of a Washington State Department of Ecology conducted or supervised  
12 Remedial Action appropriate to the specific site conditions and contaminants with no  
13 environmental restrictions or covenants unless agreed to by the CITY in writing. For  
14 CITY Interest Property, the STATE is not obligated to implement public notification and  
15 documentation procedures common to the substantial equivalent of a Washington State  
16 Department of Ecology conducted or supervised Remedial Action.

17  
18 5.3 At CITY Interest Property, the STATE shall not use soil found to exceed MTCA  
19 Method A cleanup levels or that exhibits visual and/or olfactory indications of Hazardous  
20 Substance as earth fill or trench backfill within the PROJECT. There shall be no  
21 requirements or agreements affecting the CITY Street Right-of-Way or other CITY  
22 Interest Property concerning ongoing monitoring of soil or groundwater relating to  
23 Hazardous Substances unless agreed to by the CITY in writing prior to Remedial Action.

24  
25 5.4 At or adjacent to CITY Interest Property, under certain circumstances, and in  
26 consultation with the CITY, the STATE may conduct additional Remediation of  
27 contaminated areas, including areas outside the limits of the PROJECT. These  
28 circumstances may include, but are not limited to:

29  
30 5.4.1 Instances in which Remediation may be necessary to prevent adverse  
31 water quality impacts and/or to comply with other State and Federal permit  
32 conditions;

33 5.4.2 Instances that in the judgment of the STATE Project Engineer require  
34 immediate Remediation to protect public health and safety;

35 5.4.3 Where regulatory agencies with jurisdiction require additional  
36 Remediation;

37 5.4.4 Where additional Remediation is necessary to prevent recontamination of  
38 the limits of the PROJECT, address subsurface utility facilities located or planned  
39 within or near the limits of the PROJECT or within the Project Property, or  
40 address disturbance or exacerbation of existing contamination; and

41 5.4.5 Where additional Remediation is necessary to meet mutually acceptable  
42 risk management standards in accordance with STATE and CITY protocols.

43  
44 5.5 All work at CITY Interest Property shall comply with the then-current WSDOT  
45 *Environmental Procedures Manual M 31-11* and *WSDOT Construction Manual M 41-*

1 01, Environmental Law, and all applicable CITY regulations except as modified by this  
2 Agreement.

3

4 5.6 The STATE shall include the CITY in its ECAP when unanticipated  
5 contamination is found within the limits of the PROJECT at or adjacent to CITY Interest  
6 Property. Notification procedures will include notifying the CITY orally followed by  
7 written notification.

8

9 5.7 The STATE's Project Engineer shall determine, in consultation with the CITY,  
10 Remediation of known and unanticipated Hazardous Substances at or adjacent to CITY  
11 Interest Property within the limits of the PROJECT. In instances where the CITY  
12 disputes the STATE's plan(s) for Remediation in connection with CITY Interest  
13 Property, the CITY and STATE will resolve the dispute through the dispute resolution  
14 process in Section 23 of this Agreement.

15

16 5.8 The STATE shall prepare plans in consultation with the CITY for Remediation of  
17 known and unanticipated Hazardous Substances in connection with the CITY Street  
18 Right-of-Way and other CITY Interest Property, and shall obtain CITY concurrence prior  
19 to implementing Remedial Actions there. In instances where the CITY finds the  
20 STATE's plans for Remediation of these areas unacceptable, the CITY or STATE may  
21 request resolution through the dispute resolution process in Section 23 of this Agreement.

22

23 5.9 Prior to the start of construction, and after the contractor has been selected, the  
24 STATE shall initiate and host an environmental preconstruction meeting. The STATE  
25 shall invite City of Seattle staff, STATE staff and the STATE contractor to discuss  
26 known contamination, environmental procedures, environmental Remediation and permit  
27 conditions that apply to CITY Interest Property in connection with the PROJECT.

28

29 5.10 The STATE shall obtain all required permits and approvals for Remediation at  
30 CITY Interest Property, except for permits or approvals that this Agreement, UT 01474,  
31 or UT 01476 otherwise obligates SPU or SCL to obtain for SPU or SCL Relocation  
32 Work.

33

34 5.11 Remediation work at or adjacent to CITY Interest Property shall not proceed in  
35 areas outside of the limits of the PROJECT unless the STATE has obtained written  
36 permission of the property owner and appropriate permits to work on property that is not  
37 part of the PROJECT. The STATE shall make reasonable efforts to obtain permission of  
38 the property owner. The STATE may utilize the assistance of the State Department of  
39 Ecology as provided in the MTCA regulations.

40

41 5.12 The STATE shall provide the CITY with copies of environmental close-out  
42 reports for Remediation activities at CITY Interest Property.

43

44 5.13 All costs associated with testing, handling, storing, removing, transporting,  
45 disposing, or treating Hazardous Substances that are excavated in connection with the

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

7  
8 5.14 The CITY shall provide to the STATE all records regarding any known areas  
9 where Hazardous Substances may be located at CITY Interest Property within the limits  
10 of the PROJECT, including but not limited to environmental investigation reports for  
11 properties located in the PROJECT. The reports shall be provided for the STATE's  
12 information only, shall not be relied upon by the STATE, and the CITY's provision of  
13 these records shall not constitute a representation or warranty as to the accuracy of the  
14 information contained in the reports.

15  
16 5.15 The STATE shall provide to the CITY all records regarding any known areas  
17 where Hazardous Substances may be located at CITY Interest Property within the limits  
18 of the PROJECT and Project Property, including but not limited to environmental  
19 investigation reports for the Project Property. In addition, the STATE shall notify and  
20 provide information to the CITY regarding any contamination encountered during  
21 construction at or adjacent to CITY Interest Property. Reports provided by the STATE  
22 are for information only, and shall not be relied upon by the CITY, and the STATE's  
23 provision of these records shall not constitute a representation or warranty as to the  
24 accuracy of the information contained in the reports.

25  
26 5.16 The STATE shall release and indemnify, protect, defend and hold harmless the  
27 City of Seattle and its officers, officials, employees, and agents, while acting within the  
28 scope of their employment, from all liability and claims (including but not limited to  
29 liability and claims for response and remediation costs, administrative costs, fines,  
30 charges, penalties, attorney fees and cost recovery or similar actions brought by a  
31 governmental or private party, including third party tort liability) arising, directly or  
32 indirectly, from any of the following: (1) any presence or release of any Hazardous  
33 Substance within or from the limits of the PROJECT, except for the presence of any  
34 Hazardous Substance as of the effective date of this Agreement within the portion of real  
35 property in which the City has a real property interest on that date or in which the City  
36 later acquires a real property interest for the purposes of the Program from an entity other  
37 than the STATE, and (2) the removal, transport or disposal in connection with the  
38 PROJECT of any Hazardous Substance for which the STATE or any person, contractor  
39 or other entity working on behalf of the STATE is a generator.

## 40 6. PERMITTING AND RIGHT-OF-WAY USE

41  
42  
43 6.1 The PARTIES shall apply for and obtain all necessary federal-, state- and CITY-  
44 issued permits and approvals for the work for which they are responsible prior to  
45 commencing work that requires such permits, including but not limited to all permits,

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

3  
4 6.2 The CITY authorizes the STATE to use CITY Street Right-of-Way for the  
5 PROJECT, subject to issuance and provisions of Street Use Permits and the conditions  
6 contained in this Agreement. The STATE's use of CITY Street Right-of-Way shall  
7 comply with the Seattle Municipal Code and all other applicable laws, including but not  
8 limited to the Shoreline Management Act, the National Environmental Policy Act and the  
9 State Environmental Policy Act.

10  
11 6.3 The PARTIES agree that for the PROJECT, the PARTIES shall obtain Street Use  
12 Permits prior to undertaking work in the CITY Street Right-of-Way. The CITY shall  
13 provide for street use inspections pursuant to Title 15 of the Seattle Municipal Code, the  
14 Street Use Permit, and this Agreement.

15  
16 6.4 The PARTIES agree to apply the conditions of the Street Use Permits issued for  
17 CITY Street Right-of-Way in connection with the PROJECT to PROJECT work outside  
18 CITY Street Right-of-Way if that work has a surface component and either is or will  
19 become CITY Street Right-of-Way or STATE right-of-way or Surplus Property upon  
20 completion of the PROJECT.

21  
22 6.5 The PARTIES agree to abide by and comply with all requirements and conditions  
23 of the Street Use Permits. After a Street Use Permit is issued, the responsible PARTY  
24 will obtain Letters of Plan Approval for any subsequent revisions for amendments to  
25 design or to the Street Use Permit as set forth in the Procedures.

26  
27 6.6 The Street Use Permits and Letters of Plan Approval are not a representation or  
28 assurance that the design or plans comply with applicable laws, regulations, ordinances or  
29 codes, nor shall the Street Use Permits or Letters of Plan Approval be construed to  
30 authorize any failure to comply with any of the foregoing.

31  
32 6.7 The PARTIES will jointly order the relocation of any and all Private Utilities  
33 required for performance of the work on the PROJECT. The STATE shall manage the  
34 timely relocation of the Private Utilities. The STATE shall require its construction  
35 contractors to schedule and coordinate their activities with the relocation of Private  
36 Utilities. The PARTIES agree to perform their obligations under this provision,  
37 including, but not limited to, the CITY co-signing the relocation notices to the Private  
38 Utility owners and the CITY joining the STATE as an additional plaintiff in any litigation  
39 the STATE may need to pursue in order to require the Private Utilities to relocate. The  
40 STATE shall indemnify the CITY pursuant to Section 19 of this Agreement.

41  
42 6.8 The PARTIES agree to establish alternative CITY regulatory process cost  
43 reimbursement in lieu of Use Fees as set forth in GCA 5739, Project Services Agreement  
44 and future amendments, as described in Section 10 of this Agreement.  
45

1 7. DESIGN, PLAN REVIEW AND CHANGE MANAGEMENT

2  
3 7.1 The PARTIES agree to work cooperatively with each other and shall make  
4 reasonable, good faith efforts to timely and expeditiously execute their respective roles  
5 and responsibilities related to the design and plan review and permitting called for in this  
6 Agreement.

7  
8 7.2 This Agreement addresses design and plan review process for SDOT, SCL, and  
9 SPU and the process for issuance of SDOT Street Use Permits; it does not address plan  
10 review or permits issued by other departments of the City of Seattle.

11  
12 7.3 Within the scope of this Agreement, the STATE agrees to consult with the CITY  
13 with regard to planning, design and construction of the PROJECT. The scope of the  
14 design and plan review by the CITY addressed by this Agreement is limited to the  
15 following elements:

16 7.3.1 CITY Infrastructure.

17 7.3.2 PROJECT work to the extent that it alters or impacts the configuration,  
18 condition or use of CITY property including CITY Facilities.

19 7.3.3 PROJECT work to the extent that it alters access to CITY Facilities.

20 7.3.4 PROJECT work in CITY Street Right-of-Way to the extent that it alters  
21 or impacts private property in a manner relevant to SMC Title 15.

22 7.3.5 PROJECT urban design as established in Section 8.

23 7.3.6 The temporary or permanent use or operation of CITY Street Right-of-  
24 Way for the PROJECT including maintenance of traffic.

25 7.3.7 Mitigation measures established by the STATE's review and  
26 determination of PROJECT environmental impacts pursuant to state and City  
27 environmental policy laws.

28 7.3.8 Private Utilities within CITY Street Right-of-Way.

29 7.3.9 Transit facilities within CITY Street Right-of-Way.

30 7.3.10 As provided in Section 5 of this Agreement, evidence of the STATE's  
31 environmental remediation-related commitments.

32  
33 7.4 The CITY will conduct reviews of all stages of design to ascertain that the design  
34 of CITY Infrastructure and the design of PROJECT work and construction activity within  
35 CITY Street Right-of-Way comply with City Standards.

36  
37 7.5 The PARTIES agree to prepare PROJECT designs, Plan Review Packages, and  
38 Design Submittals pursuant to the provisions established in this Agreement and the  
39 Procedures.

40  
41 7.6 The PARTIES shall mutually prepare PROJECT schedules that afford the  
42 PARTIES adequate plan review and comment resolution periods sufficient to promote  
43 the quality of design consistent with the provisions of this Agreement.  
44