

ATG MI TPC TRANSFER

From: Greco, Theresa [GrecoT@wsdot.wa.gov]
Sent: Wednesday, May 05, 2010 11:40 AM
To: Brown, Bryce (ATG); Salay, Ann (ATG); Galvin, Daniel (ATG)
Cc: Lagerberg, Elizabeth (ATG); Paananen, Ron; Farley, Kimberly; Judd, Ron
Subject: Joint SDOT MOA 5-4-10.docx
Attachments: Exhibit B 050210 rlc edition (2).docx; JOINT_Bored_Tunnel_Utility_MOA_5-4-10.docx; MayorMcGinnAWV04232010.pdf; Joint SDOT MOA 5-4-10.docx

Good morning to all. I am sharing the latest drafts of the agreements between the City and WSDOT for the proposed bored tunnel. Attached you will find a copy of the SDOT agreement, one Utilities agreement that will eventually be two for Seattle City Light and Seattle Public Utilities, and Exhibit B (for your reference).

I know that you prefer to review the final documents but the timeline is tight and the agreements will be reviewed by Governor's office and City Council on May 17th. From our perspective, we have two provisions requested by the City that we will not agree: 1) cost overrun language, and 2) performance bond requirements. Note for review: Language highlighted in yellow reflects language we will not accept. Text in green highlight requires additional staff work (underway this week) but we are in agreement in concept.

I will contact you directly to more thoroughly brief you on the agreements. We cannot express enough thanks to **Elizabeth Lagerberg** who orchestrated development of the agreements and for **Dan Galvin** as we include language to align the agreements with the Design-Build RFP.

Bryce – I also attached the recent letter from Governor Gregoire discussing cost overruns for background -- we anticipate calling you into discussions as this matter is elevated through final discussions on the agreement.

My sincere thanks for your help and look forward to speaking with you soon.

Theresa

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Formulative Document. Not for Public Disclosure

MEMORANDUM OF AGREEMENT
NO. GCA 6486
EXHIBIT B

Project Design, Construction, and Acceptance Procedures

**Section I
Introduction**

This document establishes implementing procedures for GCA 6486 (SDOT Agreement), UT 01476 (SCL Agreement) and UT 01474 (SPU Agreement) with respect to design and plan review for Design-Bid-Build and Design-Build project delivery approaches; construction management of all WSDOT managed construction contracts; and inspection and acceptance of CITY Infrastructure for work executed by WSDOT. It is intended to describe roles and responsibilities, clarify expectations, and standardize business processes for the duration of the PROJECT. Due to the complexity of the PROJECT and adjacent PROGRAM elements, the WSDOT AND THE CITY recognize that unanticipated situations will arise that require modification of these procedures. The definitions set forth in Section 1 of GCA 6486 (SDOT Agreement), UT 01476 (SCL Agreement) and UT 01474 (SPU Agreement) apply to terms used in this document.

**Section II
Design and Plan Review**

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

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

- Meets project requirements and standards
- Complies with WSDOT procedural requirements in a timely manner
- Fulfills CITY regulatory requirements in accordance with SMC 15 in a timely manner
- Achieves the project schedule
- Allows construction to proceed in a timely manner
- Minimize project scope growth

1. General.

- 1.1. WSDOT will take the lead in coordinating regular communications and design coordination meetings with the CITY, the WSDOT's consultants and contractors, and other utility owners.
- 1.2. WSDOT will prepare a PROJECT designs affecting CITY Infrastructure in collaboration with SDOT, SCL, and SPU staff and agrees to seek and incorporate input from the CITY in the early stages of preliminary engineering, preparation of Plan Review Packages and Design Submittals, and throughout the PROJECT design and permitting process.
- 1.3. Design and construction of CITY Infrastructure will meet CITY Standards. Design of CITY Infrastructure will include consideration of long-term operation and maintenance costs, in addition to up-front design and construction costs. For Design-Build projects designed and constructed pursuant to a Request for Proposal (RFP) the WSDOT and the City agree that the order of precedence set forth at each section of the RFP will be followed.
- 1.4. The CITY will review all plans within the scope of its regulatory responsibility; its interests as owner, operator or maintainer of the infrastructure; for the provision of services by the CITY; and with respect to protection of CITY and private property potentially affected by the work.
- 1.5. WSDOT will receive concurrence from the CITY on any requested deviation from CITY of Seattle standards prior to the beginning of construction.
- 1.6. WSDOT and the City agree that the WSDOT will submit plans for CITY Infrastructure prepared in accordance with SR 99 Alaskan Way Viaduct and Seawall Replacement CADD Manual, Revision 2.0, dated April 2010.
- 1.7. WSDOT will coordinate and obtain concurrence from the CITY prior to implementing revisions or deviations from the Approved Plans.

2. Procedures for Design-Bid-Build Contracts.

- 2.1. WSDOT and the CITY will collaborate to determine the Project scope for a given design and contract package. Changes to Project scope will necessitate review by WSDOT AWVSR Program management in accordance with PROGRAM configuration management and change control procedures.
- 2.2. WSDOT and the CITY will collaborate to develop a target project delivery schedule to include the WSDOT's Plan Review Package submittals to the CITY. The WSDOT will notify the CITY of any proposed schedule modifications. If the WSDOT determines that it cannot meet the anticipated dates, the WSDOT will collaborate with the CITY's Designated Representative to develop a revised submittal schedule as soon as possible after delay is known or anticipated.

- 2.3. WSDOT will notify the CITY's Designated Representative fifteen (15) Business Days prior to the scheduled Plan Review Package to confirm that the Plan Review Package will be transmitted as scheduled or to establish a deferred date so that CITY staff can be appropriately scheduled for the review.
- 2.4. WSDOT will prepare and submit complete plans and supporting documentation to the CITY and provide corrections and additional information as needed by the CITY to allow CITY staff sufficient time to review the Street Use Permit application and the plans. The duration for review for each Plan Review Package is indicated in the table below. Submittal of multiple Plan Review Packages to the CITY for concurrent review may increase the time required for review as indicated the table below, or as otherwise agreed by the WSDOT and the City.
- 2.5. SDOT will coordinate review of the Plan Review Packages to include receiving and distributing materials among CITY of Seattle reviewers, collating and tracking review comments, and working with other CITY departments to resolve conflicting comments or requirements.
- 2.6. The WSDOT will submit a Street Use Permit Application prior to submittal of the 60% Plan Review Package. This will initiate the permit review and issuance process.

Comment [rlc1]: Need to verify this.

Table 1: Design-Bid-Build Review Periods

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

* In the event that more than three Plan Review Packages are under review at the same time, the WSDOT and the City agree to negotiate a reasonable review time for the Plan Review Packages being submitted.

**Post-Advertisement addenda review time will be based on the volume of plan sheets and specifications changed as follows:

Table 2: Addenda Review Periods

Number of addenda added/revised plan sheets (excluding quantity tabs/structure notes)	CITY Review Period (Number of Business Days)
100	3 days
200	5 days
400	8 days
800	15 Days
1200+	20 Days

2.7. The CITY review process will take place as follows

- 2.7.1. The CITY Review Period begins on the Business Day following receipt by the CITY's Designated Representative of the Plan Review Package and ends when the CITY'S final comment document is submitted to WSDOT electronically in a Microsoft Excel document format. The CITY is responsible to assign appropriate staff to review and provide comment within the established timeframes.
- 2.7.2. Following its review of the initial plans, SDOT will prepare and deliver to WSDOT a preliminary draft of Street Use Permit conditions. SDOT will update the preliminary draft permit conditions after completion of each Plan Review to enable incorporation of the draft conditions into WSDOT's construction contract documents.
- 2.7.3. WSDOT will deliver the Plan Review Packages as further described in this Agreement. If the CITY receives a submittal from WSDOT that does not contain all the requirements of a Plan Review Package, the CITY will notify WSDOT that the submittal is incomplete. To expedite the process and to the extent possible, the CITY will attempt to begin review of an incomplete submittal. However, WSDOT will submit the information needed to complete the Plan Review Package as soon as possible and will highlight any changes made since submittal of the incomplete Plan Review Package. The CITY plan review period will not commence until the receipt of a complete Plan Review Package.
- 2.7.4. The CITY's Designated Representative will work with the CITY departments to identify deficiencies in the Plan Review Packages. The CITY departments will reconcile conflicting comments, and SDOT will incorporate the comments in a single document.
- 2.7.5. The CITY will assist WSDOT in determining appropriate responses to comments and resolution of deficiencies noted in its comments.
- 2.7.6. WSDOT will provide initial written responses to all comments within - ten business days of receiving the CITY's comments to a Plan Review Package and will

incorporate all responses resolved to the CITY's satisfaction into the next succeeding Plan Review Package.

- 2.7.7. The WSDOT and CITY will hold a comment resolution within ten (10) business days after WSDOT receives and responds to the CITY comments. Any unresolved comments will be forwarded to a comment resolution team composed of CITY and WSDOT staff. In the event the team cannot resolve all issues, they will be elevated to appropriate levels of management through the process set forth in Section 23, Dispute Resolution of the SDOT Agreement.
- 2.8. WSDOT and the CITY agree to follow a process to facilitate both the WSDOT's compliance with WSDOT procedures governing preparation of bid packages and SDOT procedures for issuing Street Use Permits. The process will include the following steps:
- 2.8.1.1. WSDOT will endeavor to resolve and address all CITY comments on previous submittals to the CITY's satisfaction prior to submittal of 100% Plan Review Package. The CITY will be responsive to requests to meet and review the design approach to resolution.
- 2.8.1.2. The CITY will determine, following the submittal of the 100% Plan Review Package, whether all comments on the previous Plan Review Package have been addressed. At the conclusion of this determination, the CITY will notify the WSDOT in writing either that the 100% Plan Review Package has been approved by the CITY or that WSDOT has not addressed all the CITY's comments. In such case, the CITY will submit to the WSDOT clear instructions for addressing the outstanding issues. WSDOT will engage CITY reviewers in resolution of remaining review comments and, if required, elevate unresolved comments in accordance with the dispute resolution procedures in Section 23, Dispute Resolution of the SDOT Agreement.
- 2.8.1.3. WSDOT will invite the CITY to participate in its Round-Table Meeting to enable full discussion of the implications and consequences of changes proposed by WSDOT to the 100% Plan Review Package. WSDOT will coordinate revisions made to the contract plans and provisions after WSDOT submits the 100% Plan Review Package.
- 2.8.1.4. SDOT will issue its Street Use Permit within five (5) Business Days following the Round-Table Meeting if the plans conform to the requirements of the Street Use Code. If any issues remain for resolution, the Street Use Permit will condition the permit accordingly. WSDOT will engage CITY reviewers in resolution of review comments and, if resolution cannot be reached, elevate unresolved comments in accordance with the dispute resolution procedures in Section 23, Dispute Resolution of the SDOT Agreement or Legislative Action provides relief.

2.8.1.5. WSDOT will work with the CITY to ensure that all comments on the 100% Plan Review Package are adequately incorporated into the WSDOT's advertisement for bid, or are otherwise addressed to the WSDOT AND THE CITY' satisfaction. This process will include comment resolution with CITY reviewers, a meeting with WSDOT and CITY resolution teams, and, if resolution cannot be reached, elevation of unresolved comments in accordance with the dispute resolution procedures in Section 23, Dispute Resolution of the SDOT Agreement. Hostages will be then be traded.

2.8.1.6. WSDOT will prepare and submit Post-advertisement Construction Contract Addenda to the CITY prior to issuing addenda. The addenda review periods will be determined by the scope and complexity of the proposed addenda with review times generally as indicated in Section 2.6 above.

2.8.1.7. WSDOT will notify the CITY when the final addendum is issued to prospective bidders. This notice will consummate the Final Plan Review Package submittal. The CITY will review the Final Plan Review Package to confirm whether WSDOT has adequately addressed the CITY plan review comments that all applicable conditions of the Street Use Permit have been addressed to the CITY's satisfaction and that plans conform to the requirements of the Title 15 of the Seattle Municipal Code. Prior to Bid Opening, and upon the CITY's determination that a Final Plan Review Package meets requirements, the CITY will issue to WSDOT a Letter of Plan Approval that

- identifies the plans and specifications that have been approved for construction by the CITY,
- signifies that WSDOT has addressed the plan review comments

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

- END OF SECTION -

3. Procedures for Design-Build Contracts

- 3.1. The Design-Build contract approach is intended to streamline the project delivery method by more closely integrating the design and construction processes. Because the same party is responsible for both activities, sequential processes that are normal in the design-bid-build practices can be executed concurrently allowing for schedule improvements. The process also encourages innovation and generally improved project constructability. A key element for success in a design-build contract is owner involvement and collaboration in the design process. This requires active participation with the designers as the design and construction progresses. This management approach demands that decisions be made quickly. The procedures that follow are intended to assure WSDOT and the CITY project requirements, standards, and objectives are met without delaying progress on the design and construction.
- 3.2. The WSDOT agrees to work with the CITY in defining and meeting the design and construction standards for the PROJECT. The CITY will provide clear design guidance for elements of the PROJECT to be owned, operated or maintained by the CITY of Seattle. The WSDOT will include CITY design and construction standards in the WSDOT's Design-Build contract documents for CITY Infrastructure.
- 3.3. WSDOT will apply for a Street Use Permit prior to issuance of the final Request for Proposals. The CITY will review and comment on the Final RFP.
- 3.4. **Design Task Forces and Over-the-Shoulder Reviews.** As a requirement of its Design-Build contract(s), WSDOT will organize Task Forces for design development, coordination, and management of various elements of the work. The Task Forces are a primary vehicle for coordination with the owner(s) and stakeholders and will provide an opportunity for WSDOT and CITY staff to influence and provide input to the design process. Task Force meetings will also be the primary means to keep reviewers up to date on design development. Over-the-shoulder reviews will be conducted to facilitate quicker turn-around of formal plan reviews. Dependent on the need for coordination with adjacent contracts, some of the Task Forces will be designated as "corridor-wide." In addition to WSDOT and CITY staff, Task Force membership may include representation from other stakeholders such as private utility owners, King County, the Port of Seattle, the stadiums, and adjacent contractors.
- 3.5. The CITY will participate in Task Forces affecting CITY Infrastructure, CITY interests, and for the performance of the CITY's regulatory responsibilities. Based on current project planning, the CITY will participate in the following Task Forces:

- Utilities
- Construction Monitoring
- Fire and Life Safety
- Maintenance of Traffic

Comment [rlc2]: Need to get details on this section.

Road/Traffic
Buildings
Public Information
Quality
Urban Design?

Comment [rlc3]: This one has not been specified yet. Not sure it is needed given the scope of the DB contract.

- 3.6. Task Forces will meet on a regular basis to solicit input, coordinate design and construction activity, and assure dissemination of critical project information to all members. The Design-Builder or WSDOT will be the designated lead for meetings and recording of meeting minutes. The task forces will work collaboratively to review and provide guidance as the Design-Builder develops Design Submittals.
- 3.7. WSDOT and the CITY recognize that regular attendance at task force meetings by their respective staffs is necessary to discuss and agree upon resolutions of design issues before more formal review processes begin in order to streamline later review and minimize substantial comments when the Preliminary and Final Design plans are submitted.
- 3.8. Attendance at over-the-shoulder review by CITY staff members will be determined by the CITY Construction Project Engineer based in part upon the materials to be reviewed. Whenever possible three (3) business days notice will be given to persons who do not regularly attend Task Force meetings. The CITY will make every effort to assign staff members to over-the-shoulder review meetings who are authorized to make final decisions regarding compliance of the plans with the CITY's standards, specifications and permit requirements.
- 3.9. WSDOT's Design-Build contractor will submit a Quality Management Plan (QMP) that will define the timing, content, and format of all design reviews. The QMP will also include processes and procedures for how regular (weekly) scheduled Task Force meetings will be used to support quality goals. These meetings, combined with over-the-shoulder reviews, will be an integral part of the process to discuss and resolve design issues outside of the formal review process and reduce the level of effort required to conduct the formal review process. The QMP will define how over-the-shoulder reviews will be conducted with Task Force members. The over the-shoulder reviews are not intended to be hold points that restrict the progress of design. They are in-progress reviews of the design and provide opportunities for WSDOT, the CITY, and other stakeholders to provide comments and feedback on the design.
- 3.10. The Design-Builder will be required to provide three submittals for each design element as indicated below. These submittals are intended to meet the requirements of the design and permit plan review processes of both WSDOT and the City.
 - 3.10.1. Preliminary Design Submittal. The intent of the Preliminary Design Submittal is to provide a formal opportunity for WSDOT, the CITY, the Design-Builder, various design team disciplines, and other approved Project stakeholders to review the construction documents in order to ensure that the design is progressing

appropriately and proceeding in the right direction. The plans reflect Design-Builder requirements for construction; design features are coordinated; and there are no fatal flaws within a given discipline or between disciplines. The contents of the Preliminary Design Submittal will vary by discipline as specified in the RFP or as mutually agreed by members of the applicable task force.

- 3.10.2. Final Design Submittal. The Final Design Submittal will be prepared when the design for a given element or area is 100 percent complete. The Final Design Submittal includes plan sheets, specifications, technical memos, reports, calculations, and other pertinent data, as applicable. As a result of the on-going discussion and resolution of design and construction issues through the regularly-scheduled task force meetings and over-the-shoulder reviews, it is anticipated that there will be very few revisions or changes at this stage. The Final Design Submittal will include all specifications, including but not limited to, all Amendments to the Standard Specifications, Special Provisions, Technical Requirements, and Technical Specifications, necessary to construct the Work represented in the submittal. Following resolution of all comments, the Final Design Submittal may proceed through the written certification process described below in preparation for being Released for Construction.
- 3.10.3. Released for Construction (RFC) Document Review. At a minimum, the Design-Builder will provide a preliminary and a final submittal of all plans and Technical Specifications and resolve all comments prior to being Released for Construction. Any deviation from the mandatory standards and technical requirements will be approved by WSDOT with the CITY's concurrence prior to a submittal being Released for Construction. WSDOT will ensure that the RFC Documents reflect all QA, QC, and design reviews required by the QMP and the Contract. WSDOT will also provide a written certification from its contractor to be used to verify to WSDOT and the City that all QA procedures have been completed to ensure that all review comments have been incorporated as agreed to during the comment resolution process among WSDOT, and the Design-Builder, and that the documents are ready to be Released for Construction. Each sheet of the plan set and the cover of each set of Technical Specifications in the RFC Documents will carry the Professional Engineer's stamp registered in the State of Washington and will be stamped "Released for Construction" by the contractor's Design QA Manager.
- 3.10.4. WSDOT will provide hard copies and electronic files (in both CADD and PDF formats) of documents pertaining to CITY Infrastructure or the Street Use Permit as requested by the CITY's Construction Project Engineer. The electronic drawing files will include copies of all sheet and reference files used in the RFC Documents. All design submittals will conform to the AWVSRP Computer Aided Design & Drafting Manual. Construction will not begin until WSDOT is assured that all required government and private approvals have been obtained.
- 3.10.5. Design Review. The review period for the Preliminary and Final Design Submittals will be 14 calendar days from receipt of the submittal. The review

period may be extended for submittals that are received between November 15 and January 1 and for submittals with overlapping review periods. The CITY will provide staff to provide guidance, review and comment on the Preliminary and Final Design Submittals for elements of the Project to be owned, operated, or maintained by the CITY and for work requiring a Street Use Permit as necessary to complete the reviews within the allotted period. Reviews may be required for the entire design or discrete portions of the design. A CITY Review Period begins on the Business Day following receipt by the CITY's Designated Representative of the Plan Review Package. Review comments will be submitted in a manner and form as requested and approved in the Design-Builder's QMP and mutually agreed by WSDOT and the CITY.

3.10.6. Comment Resolution. The Design-Builder will schedule and maintain minutes of all resolution meetings with WSDOT and CITY staff and other Task Force Members as appropriate to document and resolve review comments. It is intended that all comments will be resolved at these meetings. If agreement is not reached on any specific comment, it will be resolved as described in the QMP. The Design-Builder will incorporate comment resolutions in subsequent submittals and provide a spreadsheet explaining action taken on each comment. In the event WSDOT disagrees with any CITY comment, the CITY and WSDOT will make staff with decision making authority on the issue available at the earliest possible opportunity to resolve the matter. If resolution cannot be reached, unresolved comments will be elevated in accordance with the dispute resolution procedures in Section 23, Dispute Resolution of GCA 6486.

3.10.7. Street Use Permit Amendments. Upon receipt of the Preliminary Design Submittal, SDOT will make a determination as to whether the proposed work package requires amendment to the Street Use Permit and Letter of Plan Approval and so notify WSDOT. When the work package requires a permit amendment, SDOT will issue the amendment and amended Letter of Plan Approval within three (3) business days of receipt of RFC documents. If upon receipt of the plans and accompanying documentation by the CITY Construction Project Engineer, the CITY will determine if there are any remaining unresolved comments or unfulfilled permit requirements or conditions. If there are issues, the CITY will notify the WSDOT of the specific issues to be resolved within one Business Day of receipt. Upon issuance, the amended permit and Letter of Plan approval will be authorization for WSDOT to proceed with construction subject to the terms and conditions of the permit.

3.10.8. Design Changes. WSDOT will diligently attempt to avoid the need for plan changes after issuance of RFC documents this stage of review. In the event such changes occur, the CITY will undertake any additional review and permit re-issuance in as expedited a manner as practicable. WSDOT will require the Design-Builder's QMP to address the process for implementing design changes, including field changes, on Design and RFC Documents. Design changes will be subject to the QA and QC measures and procedures, commensurate with those applied to the

original design or that portion of the Project under consideration for change. WSDOT will obtain CITY concurrence for all design changes affecting CITY Infrastructure or permitted interests prior to implementation of the change.

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

- END OF SECTION -

4. Construction Management, Inspection, and Acceptance Procedures

- 4.1. The following procedures govern construction management, inspection, and acceptance processes of CITY Infrastructure constructed by WSDOT for the PROJECT and address fulfillment of the CITY's regulatory role under SMC Title 15. The procedures will be used for Design-Bid-Build and Design-Build project delivery methods.
- 4.2. WSDOT and the CITY agree to work cooperatively with each other and in good faith to implement these procedures to attempt to accomplish the following:
 - 4.2.1. Enable timely and expeditious execution of the PROJECT in accordance with the agreed standards on schedule.
 - 4.2.2. Facilitate thorough review of all stages of construction to ascertain that CITY Infrastructure constructed by WSDOT is in compliance with CITY of Seattle policy and regulations, and standards and specifications.
 - 4.2.3. Facilitate communications and activities pertaining to construction management, inspection and contract administration, including communications in the field, roles and responsibilities, review of proposed changes to Approved Plans and other submittals by the contractor or Design Builder, processes for pre-acceptance inspections, and acceptance of infrastructure.
 - 4.2.4. Enable both WSDOT and the CITY to comply with all laws and procedures governing their actions.
- 4.3. WSDOT will develop, advertise and award multiple construction contracts to fulfill its PROJECT responsibilities. WSDOT's construction contracts will be administered in accordance with the current Washington State Department of Transportation Standard Specifications for Road, Bridge, and Municipal Construction and WSDOT's construction contract forms and documents.
- 4.4. WSDOT will construct CITY Infrastructure in the fulfillment of its PROJECT responsibilities and may also construct CITY Infrastructure on the CITY's behalf by reimbursable Task Orders. Construction of CITY Infrastructure will conform to CITY of Seattle laws, rules, regulations and standards.
- 4.5. WSDOT will designate State Construction Project Engineers to administer its construction contracts for the PROJECT and to ensure work is constructed in accordance with the Approved Plans and the terms and conditions of the Street Use Permits and GCA 6486, (SDOT Agreement, UT 01474 (SCL Agreement), and UT01476 (SPU Agreement). WSDOT may use consultant(s) in providing some or all of construction management services. The CITY may consult with and make inquiries of the WSDOT Project Engineer or designee, attend all meetings, and have access to all documentation pertinent to CITY Infrastructure and performance of its regulatory responsibilities.

GCA 6486, Exhibit B: Project Design, Construction, and Acceptance Procedures

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- 4.6. The CITY will provide a CITY Construction Project Engineer tasked to: (1) coordinate the activities of CITY of Seattle inspectors, crews and consultants; (2) communicate with the WSDOT Project Engineer regarding the CITY's positions relating to regulatory compliance, changes in design, the CITY's participation in reviewing contractor submittals, and the use of CITY resources; (3) coordinate the final inspection and acceptance of CITY Infrastructure with representatives from CITY departments; and (4) report on construction progress and issues to CITY of Seattle department managers.
- 4.7. The CITY will provide qualified staff and/or consultants to fulfill its inspection, construction, and administration responsibilities during construction. CITY staff will work under the general direction of the CITY's Construction Project Engineer(s). CITY crews, technical and inspection staff and consultants will work in an integrated manner with the WSDOT Construction Project Engineer staff to perform construction related tasks and evaluate conformity of construction of CITY Infrastructure with the Approved Plans. CITY inspectors and compliance officers will immediately notify the Project Engineer or designee of any compliance issues.
- 4.8. For each project, WSDOT will provide the CITY with a detailed contract execution schedule that includes CITY Infrastructure Work, and will coordinate with the CITY to schedule utility shutdowns, cut-overs, and other CITY crew work and inspections. At a minimum, schedule updates will be provided on a monthly basis. Schedule changes will be promptly communicated to CITY as soon as they become known by WSDOT.
- 4.9. Contractor Submittals. Within 30 days of contract execution, WSDOT will prepare or cause its contractor(s) to prepare and submit a preliminary Submittal Control Document for each construction contract for use by WSDOT and the CITY to plan and manage staffing requirements for review of contractor submittals relating to construction of CITY Infrastructure and fulfillment of CITY permit requirements. The Submittal Control Document will include material submittals per CITY Material Standards and the CITY of Seattle Standard Specifications. The Submittal Control Document is a construction management tool that will be expanded and elaborated as each project progresses.
- 4.9.1. WSDOT will forward electronic copies of submittals for CITY review to the CITY Construction Project Engineer who will assign primary, and if appropriate, secondary CITY reviewers. Hard copies will be provided upon request.
- 4.9.2. For Design-Bid-Build Projects, the CITY Construction Project Engineer will be responsible for ensuring that all documents included in the approved Submittal Control Document are reviewed within ten (10) business days of the CITY's receipt, unless the CITY of Seattle Standard Specifications for Road, Bridge and Municipal Construction allow for a longer review period, and respond in a timely manner to requests for information. The CITY will notify the WSDOT if a submittal will require longer than ten (10) Business Days to review.

Comment [ric4]: Will the CITY have one lead PROJECT wide or will there be more than one Construction Project Engineer assigned?

- 4.9.3. For Design-Build Projects, the CITY Construction Project Engineer will be responsible for ensuring that CITY reviews are completed within five (5) working days and that the review comments are fully communicated back to WSDOT. WSDOT will track all submittals and discuss the status of active submittal reviews with the CITY Construction Project Engineer on a weekly basis. The CITY's Construction Project Engineer will act as a liaison between the WSDOT and the City Departments in resolving issues regarding disposition of submittal comments.
- 4.9.4. CITY reviewers will send their comments on submittals to the CITY Construction Project Engineer. The CITY Construction Project Engineer will consolidate comments if necessary and send comments to WSDOT for dissemination back to contractors. For design submittals on Design-Build contracts, comment responses will be provided to CITY reviewers along with the revised design for submittals that need to go through another round of review per Section 3 above.
- 4.9.5. The CITY is responsible for providing submittal review comments within the allotted time. If additional time is needed to respond, the CITY Construction Project Engineer will discuss this on a case-by-case basis, and obtain WSDOT's approval for a time extension in advance of the due date. In the absence of an approved time extension, a lack of response to a submittal by a CITY reviewer within the allotted time will be interpreted to be an acceptance on the part of the CITY.
- 4.9.6. Pursuant to CITY review comments, WSDOT's Construction Project Engineer will provide disposition instructions for all submittals to its contractors.
- 4.10. Access to SPU and SCL Facilities. WSDOT will provide the CITY with twenty-four (24) hour, seven (7) days a week, safe access to CITY Facilities in all construction and staging areas for the purpose of operation, maintenance, and emergency response. CITY staff will notify the WSDOT in advance of their arrival on site except in the case of emergency. In the case of emergencies, safety dictates that CITY staff will make every effort to notify the WSDOT Construction Project Engineer immediately upon entering a PROJECT construction site or staging area.
- 4.11. Testing and Inspection. WSDOT will develop (or in the case of Design-Build contracts, require its contractor to develop) a quality management plan to include an inspection and test plan describing all the proposed quality assurance inspections and tests to be performed throughout the construction process. Activity-specific inspection and test plans will be prepared during the preparatory phase for each definable feature of work. WSDOT will provide the CITY with the opportunity to review the quality management plan. The CITY will review and comment on the inspection and test plan, and any other provisions regarding CITY Infrastructure.
- 4.11.1. WSDOT will form quality assurance or verification teams as appropriate for the contract type. The CITY will have representation on these teams. The quality team for each contract will hold meetings to review test and inspection results and

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

- 4.11.2. WSDOT will provide the CITY with timely notice prior to commencement and completion of all material stages of the CITY Infrastructure Work and will invite the CITY to inspect such work upon completion of any material stage. The CITY on-site inspector will be invited to the weekly construction meeting prior to any work being started on CITY Facilities. The WSDOT will provide at least five (5) Business Days notice for each inspection. CITY will submit a complete list of any concerns or deficiencies to the WSDOT within ten (10) Business Days of the date of any inspection. The WSDOT will timely address each comment or issue presented by CITY to CITY's satisfaction. Both WSDOT and the City agree to act as expeditiously as possible to assure a timely resolution of any deficiencies.
- 4.11.3. Throughout construction of the PROJECT, CITY staff and consultants will assist the WSDOT Construction Project Engineer in evaluating contract compliance of CITY Infrastructure built by WSDOT's contractors. WSDOT will coordinate with the CITY to designate mandatory inspection points (hold points) for CITY Infrastructure. No work will proceed beyond a hold point until inspection has been performed or the option to inspect has been waived by a letter or e-mail from the CITY to the WSDOT. The WSDOT will provide notification to the CITY 24 hours in advance of completion of work to be inspected by the CITY so that the CITY may perform inspection if desired.
- 4.11.4. The CITY will assist WSDOT and communicate regularly if any non-observations of non-conformance with Approved Plans re made in the field to ensure that the CITY infrastructure will be acceptable prior to any major finish work, such as final street paving, in order to avoid any re-work by the Design Builder. It is in the best interest of all WSDOT and the City to work collaboratively and solve problems quickly to avoid the completion of work that is will not be acceptable.
- 4.11.5. Testing of CITY Infrastructure will conform to the requirements of the CITY Standard Specifications for Road, Bridge and Municipal Construction. The CITY may observe testing of materials and inspect installation of CITY Infrastructure and provide a written evaluation to the WSDOT regarding whether the materials or facilities tested meet with the requirements of the Approved Plans. WSDOT will endeavor to provide five (5) Business Days notice of all testing required by the Approved Plans, and the CITY will be provided a copy of certified test reports of materials or installation of CITY Infrastructure. The CITY will exercise its right to approve or reject construction or materials of CITY Infrastructure that are deficient, or that (1) do not meet with the requirements of the Approved Plans; (2) are not

constructed in accordance with CITY-issued permits; (3) have defects in material and workmanship; and/or (4) have defects in design(s).

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

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

4.12. Change Management. The following procedures will apply to work affecting CITY Infrastructure or CITY issued permit conditions executed through WSDOT contracts.

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

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

4.12.3. The CITY may request additions and changes to the construction contract through WSDOT. WSDOT will comply with the requested changes provided that the changes are within the general scope of the PROJECT and comply with the PROJECT permits, WSDOT and/or Federal law and applicable rules, codes and/or regulations. WSDOT retains the right to reject requested changes if incorporating such changes could result in unwarranted additional cost to the STATE or a delay in the project schedule. Such additions and changes may lead to Change Orders, or they may lead to Betterments or New Work. If the CITY and WSDOT agree to implement the change, the requesting CITY department and WSDOT will document

the request in writing by completing and signing a concurrence letter. The CITY agrees to reimburse the WSDOT for the costs associated with Betterments and additional New Work.

4.12.4. WSDOT will make available to the CITY all Change Order documentation that affects CITY Infrastructure.

4.13. Special Construction Considerations.

4.13.1. Construction Monitoring. The WSDOT will implement a Construction Monitoring Program including the following elements for each PROJECT.

4.13.1.1. Where the project may affect CITY or privately owned infrastructure, WSDOT will conduct pre- and post-construction surveys to document the condition of structures and certain utilities. Pre- and post- condition surveys will include CCTV of gravity drainage pipes and sewers and leak surveys of water lines before and after construction that would potentially be damaged by Deformation due to tunneling. Surveys of other CITY Infrastructure will be conducted on a case by case basis based on risk assessment.

4.13.1.2. WSDOT will design and implement a comprehensive instrumentation and monitoring program for open cut, cut-and-cover, and tunnel construction, and develop an action plan for mitigating impacts of ground deformation in consultation and coordination with the CITY. Pursuant to Task Orders implemented under the provisions of GCA 6486 (SDOT Agreement), UT 01476 (SCL Agreement) and UT 01474 (SPU Agreement), the CITY will provide staff to participate in and advise the Construction Monitoring Task Force and work crews to act on system management actions to reduce and/or mitigate construction impacts.

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

4.13.2.1. Electrical Clearance Procedures. WSDOT contractors may need to obtain electrical clearances when it is necessary to de-energize electrical lines or system appurtenances. Individual clearance holders will be required to go through a training session based on SCL's System Operation Center (SOC) guidelines to familiarize themselves with SCL requirements for holding and maintaining a clearance on the SCL electrical system. SCL will provide WSDOT's contractor an outline of procedures and guidelines to follow at all times during the clearance and WSDOT will ensure that such guidelines and

procedures are followed. Chief Dispatcher, Dana Wheelock or his designee at 206-706-0241, will be the contact for SCL. SCL's Power Line Clearance Coordinator reserves the right to review the contractor crew's qualifications and direct WSDOT to replace those employees who do not meet qualifications required under State law.

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

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

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

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

4.13.3.3. New drainage and wastewater system connections. SPU will core drill and install all tees per CITY of Seattle standard specification 7-17.3(2)C, Plugs and Connections. WSDOT will notify SPU fourteen (14) calendar days prior to

the need for this work. SPU will make every effort to complete the work within twenty-four (24) hours of the time the WSDOT has requested the work to be done. WSDOT contractors will be required to perform site preparation and restoration work to support SPU crews to include traffic control.

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

4.14. Acceptance. WSDOT will notify the CITY upon completion of the construction of CITY Infrastructure and will invite the CITY to participate in a joint Pre-final Inspection of the completed work.

4.14.1. The CITY will timely inspect the completed CITY Infrastructure and will exercise its right to approve or reject construction or materials which are deficient, or which deviate from the Approved Plans, or any CITY-approved revisions to the Approved Plans. The CITY will submit a written response within ten (10) Business Days of the date of the pre-final inspection, notifying WSDOT that CITY Infrastructure has been constructed in accordance with the Approved Plans, or rejecting the completed CITY Infrastructure. In the event that the completed CITY Infrastructure is rejected, such response will include written notice of any known deficiencies and Defective Work so that the WSDOT can use the response in its preparation of a contract punchlist.

4.14.2. WSDOT will address each deficiency identified by the CITY during the pre-final inspection and will resolve all deficiencies and Defective Work to comply with the Approved Plans, or any approved revisions to the Approved Plans. If disagreements arise between the CITY and the WSDOT on what constitutes Defective Work or a deficiency or whether the CITY Infrastructure meets agreed upon requirements, the disagreement will be resolved using the dispute resolution process established in Section 23, Dispute Resolution of GCA 6486. The CITY will assist the WSDOT Construction Project Engineer in determining appropriate remedies for each deficiency and for Defective Work. Both WSDOT and the City agree to act as expeditiously as possible to assure a timely resolution of deficiencies and Defective Work.

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

4.14.4. Acceptance of CITY Infrastructure may be executed in stages. Letters of Acceptance and Letters of Acceptance for Interim Use and Operation will be executed in accordance with Section 15, Final Inspection and Project Acceptance of GCA 6486.

- END OF SECTION -

DRAFT

5. Redlines and Record Drawings.

5.1. NEED TO GET FINAL EDITION OF THIS FROM THE PARTIES

- END OF SUFFERING THIS WEEKEND -

DRAFT

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MEMORANDUM OF AGREEMENT

UT 01474/ UT 01476
SR 99 ALASKAN WAY VIADUCT REPLACEMENT
BORED TUNNEL PROJECT
UTILITY FACILITIES WORK

THIS Memorandum of Agreement, UT 01474/ 01476, SR 99 Alaskan Way Viaduct Replacement, Bored Tunnel, UTILITY Facilities Work (“UTILITY Bored Tunnel Agreement”) is made and entered into between the State of Washington Department of Transportation, hereinafter the “STATE,” and the City of Seattle, hereinafter the CITY, (managed by Seattle City Light/Seattle Public Utilities, hereinafter “UTILITY”), collectively the “Parties” and individually the “Party.”

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

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

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

WHEREAS, the January 2009 letter of agreement between the parties affirmed that the State would be responsible for the bored tunnel project, and that “the allocation of specific project responsibility to each jurisdiction carries with it the responsibility for project management, environmental work, design, construction, and project cost overruns”; and

WHEREAS, in October 2009 the Governor and the Mayor executed a Memorandum of Agreement, GCA 6366, which described the basic roles and responsibilities for the implementation of the AWVSR Program.

Comment [SLS1]: To be changed to SPU or SCL in each agreement

Comment [SLS2]: Will be SCL or SPU

Comment [W3]: Joint Language

Comment [W4]: Joint

Comment [W5]: Joint

Comment [W6]: Joint

Comment [W7]: City

Comment [W8]: Joint

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1
2 WHEREAS, the AWVSR Program (PROGRAM) consists of a four-lane bored tunnel and
3 improvements to City streets, the City waterfront, and transit; and the Moving Forward Projects;
4 and

Comment [W9]: Joint

5
6 WHEREAS, the Proposed Bored Tunnel Project (PROJECT), the subject of this Agreement, is
7 the part of the PROGRAM that replaces SR 99 from South Royal Brougham Street to Mercer
8 Street that consists of designing and constructing a four-lane bored tunnel from South King
9 Street to Thomas Street, north and south tunnel portals and access streets; re-establishment of the
10 City street grid in the vicinity of the portals (Bentley Street Tunnel decommissioning and
11 Alaskan Way Viaduct demolition will be addressed in a future agreement); and associated utility
12 relocations; and

Comment [W10]: Joint

13
14 WHEREAS, the Washington State Legislature passed Engrossed Substitute Senate Bill 5768 and
15 the Governor signed the bill into law designating and funding a Bored Tunnel Program as the
16 replacement for the Alaskan Way Viaduct; and

Comment [W11]: Joint

17
18 WHEREAS, in January 2009, the Governor, the King County Executive and the Mayor of
19 Seattle recommended replacement of the existing AWV structure in the central waterfront area
20 with a bored tunnel; and

Comment [W12]: Joint

21
22 WHEREAS, RCW 47.01.402, which became law July 1, 2009, provides that State funding for
23 the PROJECT is not to exceed two billion eight hundred million dollars (\$2,800,000,000.00) of
24 which no more four hundred million shall be from tolls, and

Comment [W13]: City

25
26 WHEREAS, RCW 47.01.402(6)(b) provides that any costs in excess of two billion eight hundred
27 million dollars (\$2,800,000,000.00) shall be borne by property owners in the Seattle area who
28 benefit from replacement of the existing viaduct with the deep bore tunnel, and

Comment [W14]: City

29
30 WHEREAS, the CITY and STATE agree to jointly pursue the implementation and completion of
31 the PROJECT and endeavor to open the tunnel by 2015 and demolish the Alaska Way viaduct in
32 2016; and

Comment [W15]: Joint

33
34 WHEREAS, the PROJECT is consistent with the CITY of Seattle's adopted Comprehensive
35 Plan; and

Comment [W16]: Joint

36
37 WHEREAS, review of the PROJECT pursuant to the State and City environmental policy laws
38 is currently underway and the parties recognize that changes in the alternative chosen would
39 require a new agreement, and

Comment [W17]: City

40
41 WHEREAS, the CITY and the STATE will deliver the PROJECT within the financial
42 commitments made in the Memorandum of Agreement, GCA 6366, executed by the PARTIES
43 on October 24, 2009; and

Comment [W18]: Joint

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1
2 WHEREAS, concurrently with this GCA 6486 Agreement, the STATE and CITY, through
3 Seattle City Light (SCL), are entering into an agreement, UT 01474; and

Comment [RF19]: Joint

4
5 WHEREAS, concurrently with this , GCA 6486, the STATE and CITY, through its Seattle
6 Public Utilities Department (SPU), are entering into an agreement, UT 01476; and

Comment [g20]: Joint

7
8 WHEREAS, the PROJECT will in some instances require the use of existing CITY Street Right-
9 of-Way; and

Comment [W21]: Joint

10
11 WHEREAS, the CITY will own and/or maintain significant infrastructure to be constructed as
12 part of the PROJECT; and

Comment [W22]: Joint

13
14 WHEREAS, some portion of SR 99 is within the PROJECT and is a city street serving as part of
15 a State Highway under RCW 47.24.010; and

Comment [W23]: Joint

16
17 WHEREAS, the Parties wish to establish protocols and procedures for property acquisition,
18 environmental remediation, design review, permitting, and construction coordination to govern
19 their relationship during the course of the PROJECT;

Comment [W24]: City

20
21 WHEREAS, some or all of the work covered by this Agreement may be accomplished by
22 executed "Task Order" documents;

Comment [W25]: Joint

23
24 WHEREAS, concurrently with this UTILITY Bored Tunnel Agreement, the STATE and CITY,
25 through the Seattle Department of Transportation, are entering into an agreement, GCA 6486;
26 and

Comment [g26]: Joint

27
28 WHEREAS, the PROJECT will require the removal of existing City electrical, water, drainage
29 and wastewater facilities that directly conflict with the tunnel portals and tunnel portal
30 excavations ("Conflicting Facilities"), and the construction of new facilities and service
31 connections, (excluding temporary construction and permanent electrical services for the
32 PROJECT) to one final location to replace the conflicting facilities (together, the "Relocation
33 Work"); and

Comment [rlc27]: Not sure these should be recitals. Need to edited to be consistent with accepted terminology Also reflects the "one relocation" position of City. Needs Management decision on "one relocation"

34
35
36 WHEREAS, together the Relocation Work and the UTILITY Facilities Deformation Mitigation
37 Work will comprise the "UTILITY Facilities Work" of the PROJECT; and

38
39 NOW, THEREFORE, pursuant to RCW 47.28.140 and RCW 47.01.401 and in consideration of
40 the terms, conditions, covenants, and performances contained herein, or attached and
41 incorporated and made a part hereto;

Comment [W28]: WSDOT

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

Comment [g29]: City

3
4 IT IS MUTUALLY AGREED AS FOLLOWS:

5
6 **1. DEFINITIONS**

7
8 Words not otherwise defined, which have well-known technical or construction industry
9 meanings, are used in accordance with such recognized meanings;

Comment [g30]: City

10
11 1.1 Approved Plans means the construction plans and provisions that evidence the CITY's
12 determination, through the processes described in Section 8 and Exhibit B of this Agreement,
13 that the plans including Released for Construction Submittal Plans for Design Build contracts
14 conform to the Street Use Code and other requirements, and that plan review comments are
15 resolved to both Parties' satisfaction; Approved Plans are included in the contract documents
16 evidencing the agreement between the STATE and its contractors for construction of a given
17 element of the PROJECT;

Comment [g31]: Joint

18
19 1.2 AWV means the Alaskan Way Viaduct structure on State Route 99, currently a non-
20 limited-access highway over a portion of CITY Street Right-of-Way and located partially in the
21 City of Seattle;

Comment [g32]: Joint

22
23 1.3 Betterment means any upgrading of the UTILITY Facilities, or the design and
24 construction of any new UTILITY Facilities that is not attributable to the PROJECT or
25 PROGRAM and is made solely for the benefit of and at the election of UTILITY. Examples of
26 work that will not constitute a Betterment, so that UTILITY shall not bear cost responsibility,
27 are:

Comment [g33]: Joint

28 1.3.1 If existing devices or materials are no longer regularly manufactured or cannot be
29 obtained in time to meet the PROJECT schedule, needs or requests by the STATE, then devices
30 or materials of equivalent standards although not identical, of the next highest grade or size; or

31 1.3.2 Upgrades to UTILITY Facilities necessary to meet current code requirements and
32 UTILITY published standards; or

33 1.3.3 Work required by UTILITY to maintain current service and capacity; or

34 1.3.4 Work required by current design and construction practices regularly followed by
35 UTILITY in its own work and/or considered an industry design or construction standard.

36
37 1.4 Business Days means Monday through Friday, inclusive, except for official City of
38 Seattle and state holidays and City-mandated furlough days;

Comment [g34]: City

39
40 1.5 CITY means the City of Seattle, a Washington municipal corporation;

Comment [g35]: Joint

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1 1.6 City Construction Project Engineer means the person designated by SDOT to act as the
2 City's coordinator and primary representative in matters arising during the course of construction
3 as set forth in this Agreement.

Comment [g36]: Joint

5 1.7 CITY Designated Representative means the CITY official listed in Section xx of this
6 Agreement.

Comment [g37]: Joint

8 1.8 CITY Infrastructure means the portions of SPU Facilities, SCL Facilities and City Street
9 Right-of-Way improvements constructed or modified as part of the PROJECT to be owned,
10 operated and maintained by the CITY.

Comment [g38]: Joint

12 1.9 CITY Interest Property means CITY Street Right-of-Way plus all other real property that
13 the CITY owns or in which the CITY has a real property interest on the effective date of this
14 Agreement. In addition, City Interest Property means any property or property interest that will,
15 at the completion of the PROJECT, be transferred by the STATE to the CITY. CITY Interest
16 Property does not include real property acquired or to be acquired by the STATE for planned
17 limited access facilities such as the bored tunnel, portals and access for which no real property
18 interest will be transferred to the CITY.

Comment [g39]: Joint

20 1.10 City of Seattle means CITY.

Comment [g40]: Joint

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

Comment [RF41]: Joint

25 The Seattle Municipal Code
26 The City of Seattle Standard Specifications for Road, Bridge and Municipal Construction
27 The City of Seattle Standard Plans for Municipal Construction,
28 SDOT, SCL, DPD and SPU Director's Rules, including the City of Seattle Right of Way
29 Improvements Manual, 2005-22.
30 SCL Material Standards
31 SCL Construction Guidelines

Comment [RF42]: Joint

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

Comment [g43]: Joint

36 1.13 Conceptual Relocation Plan means a work product that defines the general scope of
37 Utility relocations including a planning level estimate of design and construction costs.

Comment [g44]: Joint

39 1.14 Conflicting Facilities means all SCL Facilities and all SPU Facilities identified by the
40 STATE that directly conflict with the bored tunnel portals and tunnel portal excavations.

Comment [RF45]: Joint

42 1.15 Contract Award means the STATE's written decision accepting bid for construction of a
43 Project.

Comment [g46]: Joint

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- 1
2 1.16 Damage means loss of function, capacity, or aesthetic quality. For the purposes of this
3 Agreement, "Damage" shall not be construed to include reduction of design life of any structure
4 or utility.
- 5
6 1.17 Damage means any direct or indirect consequence of the PROJECT that causes harm to,
7 or reduces value or usefulness of, CITY Infrastructure, private property, CITY property or other
8 public property, including but not limited to structural damage or physical failure; loss of
9 function, capacity or aesthetic quality; reduced service capacity, including intended future
10 capacity; reduced service life; a measurable reduction of design life of an SPU Facility or an
11 SCL Facility; water main movement in excess of established thresholds; or any other impact to
12 an SPU Facility or an SCL Facility such as stress or Deformation.
- 13
14 1.18 Defective Work means design or construction work or materials that fail to comply with
15 the Approved Plans, CITY-approved modifications to the Approved Plans, or the laws, rules,
16 regulations or standards as specified in this Agreement.
- 17
18 1.19 Deformation means any 3-dimensional displacement, for a structure (such as tilt of a
19 structure), and strain (relative displacements of structures or the ground) and includes any
20 settlement, heave, lateral movement, and related are used as being common industry
21 terminology. Where such industry terminology is used for convenience herein, it does not imply
22 that the broad definition of deformation has been limited.
- 23
24 1.20 Deformation Mitigation Work means any planning, operational and construction
25 management practices, monitoring and temporary or permanent UTILITY Facilities Work
26 undertaken to avoid and/or remedy Damage to UTILITY Facility as a result of Deformation.
- 27
28 1.21 Design-Bid-Build Contract means a project delivery method in which the STATE
29 provides a complete design, advertises for bids, and awards a contract to the lowest responsive
30 bidder who is responsible for completing the construction of the project.
- 31
32 1.22 Design-Build Contract means a project delivery method in which the STATE develops a
33 conceptual design and requests proposals from pre-qualified contractors. The contract is
34 awarded to the contractor with the best value responsive proposal. The contractor is responsible
35 to complete the design and construct the project.
- 36
37 1.23 Design Builder means the entity with whom the STATE enters into a Design-Build
38 contract and who is responsible to complete the design and construct the project.
- 39
40 1.24 DPD means the City of Seattle Department of Planning and Development.
- 41
42 1.25 Engineer of Record means the engineer licensed in the State of Washington who has been
43 commissioned by the STATE as the prime engineer of the PROJECT, having overall

Comment [g47]: WSDOT

Comment [g48]: City

Comment [RF49]: Joint

Comment [g50]: Joint

Comment [g51]: Joint

Comment [RF52]: Joint

Comment [RF53]: Joint

Comment [RF54]: Joint

Comment [RF55]: Joint

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1 responsibility for the adequacy of the design and the coordination of the design work of other
2 engineers and whose professional seal is on the Approved Plans.

Comment [RF56]: Joint

3
4 1.26 Environmental Compliance Assurance Procedure (ECAP) means procedures incorporated
5 into the ~~current~~ WSDOT *Construction Manual* M41-01.05 ~~dated July 2008~~ (Section 1-2.2k(1))
6 and the WSDOT *Environmental Procedures Manual* M31-11.05 (Sections 610 and 690) dated
7 ~~October 2008~~, as modified by this Agreement, which provide guidance on compliance with
8 Environmental Laws and environmental Remediation. The purpose of the ECAP is to recognize
9 and eliminate environmental violations during the construction phase on STATE construction
10 sites and to ensure prompt notification to STATE management and agencies. For purposes of the
11 ECAP, violations are defined as actions that are not in compliance with environmental standards,
12 permits, or laws.

Comment [g57]: Joint

13 1.27 Environmental Law(s) means any environmentally related local, state or federal law,
14 regulation, ordinance or order (including without limitation any final order of any court of
15 competent jurisdiction of which the STATE has knowledge), now or hereafter in effect
16 including, but not limited to: the Federal Clean Air Act; the Federal Water Pollution Control Act;
17 the Federal Safe Drinking Water Act; the Federal Comprehensive Environmental Response
18 Compensation and Liability Act, as amended by the Superfund Amendments and
19 Reauthorization Act of 1986; the Federal Resource Conservation and Recovery Act, as amended
20 by the Solid and Hazardous Waste Amendments of 1984; the Federal Occupational Safety and
21 Health Act; the Federal Emergency Planning and Right-to-Know Act of 1986; the Federal
22 Hazardous Materials Transportation Control Act of 1980; the Federal Clean Water Act of 1977;
23 the Federal Insecticide, Fungicide and Rodenticide Act; the Federal Waste Management
24 Recovery and Recycling Act; the Washington Hazardous Waste Management Act; the
25 Washington Hazardous Waste Fees Act; Washington Model Toxics Control Act; the Washington
26 Nuclear Energy and Radiation Act; the Washington Radioactive Waste Storage and
27 Transportation Act; the Washington Underground Petroleum Storage Tanks Act; and any
28 regulations promulgated thereunder from time to time.

Comment [RF58]: Joint

29
30 1.28 Final Design Submittal means plans, specifications, and design documentation
31 representing complete design of a given project element in a Design-Build Contract. The Final
32 Design Submittal addresses and incorporates review comments from the Preliminary Design
33 Submittal.

Comment [RF59]: Joint

34
35 1.29 Final Plan Review Package means the Plan Review Package submitted to the CITY that
36 is comprised of the STATE's contract documents including contract addenda and fully
37 incorporates or otherwise addresses all CITY plan review comments and all applicable
38 conditions of the Street Use Permit.

Comment [RF60]: Joint

39
40 1.30 Hazardous Substance(s) means any substance, or substance containing any component,
41 now or hereafter designated as a hazardous, dangerous, toxic or harmful substance, material or
42 waste, subject to regulation under any federal, state or local law, regulation or ordinance relating

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1 to environmental protection, contamination or cleanup including, but not limited to, those
2 substances, materials and wastes listed in the United States Department of Transportation
3 Hazardous Materials Table (49 C.F.R. §172.101) or by the United States Environmental
4 Protection Agency as hazardous substances (40 C.F.R. pt. 302 and amendments thereto) or in the
5 Washington Hazardous Waste Management Act (Ch. 70.105 RCW) or the Washington Model
6 Toxics Control Act (Chs. 70.105D RCW and 82.21 RCW), petroleum products and their
7 derivatives, and such other substances, materials and wastes as become regulated or subject to
8 cleanup authority under any Environmental Law.

Comment [RF61]: Joint

10 1.31 Letter of Acceptance means the written document that signifies the CITY's acceptance of
11 CITY Infrastructure to be owned by the CITY, and shall signify the STATE's transfer of CITY
12 Infrastructure to be owned by the CITY. The Letter of Acceptance will not transfer any interest
13 in real property. The Letter of Acceptance shall be jointly executed by the Parties. A Letter of
14 Acceptance for SPU Facilities requires SPU approval and a Letter of Acceptance for SCL
15 Facilities requires SCL approval.

Comment [g62]: Joint

17 1.32 Letter of Plan Approval means the letter provided to the STATE by the CITY following
18 the completion of the plan review process, signifying that the plans and specifications identified
19 in the letter are the Approved Plans.

Comment [g63]: Joint

21 1.33 MTCA means the Washington Model Toxics Control Act (Chs. 70.105D RCW and 82.21
22 RCW).

Comment [RF64]: Joint

24 1.34 New Work means the design and construction by or at the direction of UTILITY of a new
25 utility other than (a) as part of a relocation associated with the PROJECT, or (b) to provide
26 service to the PROJECT. New Work shall be entirely the financial obligation of UTILITY.

Comment [RF65]: Joint

28 1.35 Preliminary Engineering means the portion of the Project engineering which advances the
29 Project design to address Type, Size, and Location ("TS&L") for all components of the Project.
30 Design will have advanced sufficiently to define alignments and identify conflicts. Preliminary
31 engineering will include an estimate for final design and a preliminary cost for construction.

Comment [RF66]: Joint

33 1.36 Plan Review Package means clear and complete plans, specifications, and the necessary
34 assumptions, studies, models and calculations upon which the design was based, and corrections
35 previously requested by the CITY with respect to Design Bid Build Projects.

Comment [RF67]: Joint

37 1.37 100% Plan Review Package means the Plan Review Package submitted to the CITY
38 concurrent with STATE's final internal review of the construction contract plans and contract
39 provisions that shall evidence the agreement between the STATE and its contractors for
40 construction of Design Bid Build Projects.

Comment [RF68]: Joint

42 1.38 Plans, Specifications, and Estimate ("PS&E") means the portion of the PROJECT
43 engineering after the Preliminary Engineering, which advances the PROJECT design by

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1 preparing contract-ready documents and the engineer's cost estimate. At this stage the
2 specifications are written and tailored to the plans so that all work can be measured and has a pay
3 item. The cost estimate is formalized using the established specifications, pay items and quantity
4 takeoffs, for 60% through 100% completion of the total design effort.

Comment [RF69]: Joint

6 1.39 Preliminary Design Submittal means in a Design-Build Contract, a formal opportunity for
7 the STATE, the Design-Builder, various design team disciplines, and other approved Project
8 stakeholders to review the construction documents in order to ensure that the design is
9 progressing appropriately and proceeding in the right direction; the plans reflect Design-Builder
10 requirements for construction; design features are coordinated; and there are no fatal flaws
11 within a given discipline or between disciplines.

Comment [g70]: Joint

13 1.40 Private Utilities means utility uses, excluding facilities owned and operated by the CITY,
14 approved through franchise agreements and/or Street Use Permits by the CITY and governed and
15 enforced through City Ordinance.

Comment [g71]: Joint

17 1.41 PROJECT means the Proposed Bored Tunnel Project, the part of the PROGRAM that
18 replaces SR 99 from South Royal Brougham Street to ~~Marine~~ Street and that consists of
19 designing and constructing a four-lane bored tunnel from South King Street to Thomas Street,
20 north and south tunnel portals and access streets, re-establishment of the City street grid in the
21 vicinity of the portals (~~Battery Street Tunnel decommissioning and Alaskan Way Viaduct
22 demolition will be addressed in a future agreement~~); and associated utility relocations.

Comment [g72]: Joint. This definition does not currently include the demolition of the Alaskan Way Viaduct and the decommissioning of the Battery Street Tunnel.

24 1.42 PROGRAM means the AWVSR Program which consists of a four-lane bored tunnel and
25 improvements to City streets, the City waterfront, and transit; and the Moving Forward Projects
26 as defined in GCA 6366.

Comment [RF73]: Joint

28 1.43 Project Engineer means the persons appointed by the STATE to lead the PROJECT
29 during design and/or construction or his or her designee.

Comment [RF74]: Joint

31 1.44 Released for Construction Submittal means in a Design-Build Contract, plans and
32 specifications for a given project element that are construction ready and have been certified by
33 the Design-Builder as having met all contract requirements and received all approvals and
34 permits. The Released for Construction submittal addresses all review comments from the
35 Preliminary and Final Design submittals.

Comment [RF75]: Joint

37 1.45 Relocation Work means the removal or abandonment of each Conflicting Facility and the
38 installation or reconstruction of each Conflicting Facility to its permanent and final location.

Comment [RF76]: Joint

40 1.46 Remediation means the same as Remedy or Remedial Action defined in MTCA which
41 includes any action or expenditure consistent with the purposes of MTCA to identify, eliminate,
42 or minimize any threat or potential threat posed by Hazardous Substances to human health or the
43 environment including any investigative and monitoring activities with respect to any release or

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- 1 threatened release of a Hazardous Substance and any assessments to determine the risk or
2 potential risk to human health or the environment. Comment [RF77]: Joint
3
- 4 1.47 Round Table Meeting means a meeting typically held five (5) weeks following the
5 submittal of the 100% Plan Review Package to the CITY and STATE, and commonly attended
6 by the STATE's Project team and STATE reviewers to resolve and address STATE comments
7 on the 100% Plan Review Package. Comment [RF78]: Joint
8
- 9 1.48 SCL means Seattle City Light. Comment [RF79]: Joint
10
- 11 1.49 SCL Facilities means the electrical facilities impacted by, or constructed as part of, the
12 PROJECT that are owned or to be owned by the CITY. Comment [RF80]: Joint
13
- 14 1.50 SCL Facilities Work means work required to design, construct and protect the SCL
15 Facilities as part of the PROJECT. Comment [g81]: Joint
16
- 17 1.51 SDOT means the Seattle Department of Transportation. Comment [RF82]: Joint
18
19
- 20 1.52 Specialty Work means the construction and installation of all 13.8kV or above rated
21 equipment and associated materials and infrastructure needed to accomplish the SCL Facilities
22 Work. Comment [g83]: Joint
23
- 24 1.53 SPU means Seattle Public Utilities. Comment [g84]: Joint
25
- 26 1.54 SPU Facilities means the water, drainage and wastewater facilities impacted by, or
27 constructed as part of, the PROJECT that are owned or to be owned by the CITY. Comment [RF85]: Joint
28
- 29 1.55 SPU Facilities Work means work required to design, construct and protect the SPU
30 Facilities as part of the PROJECT.
31
- 32 1.56 STATE means the State of Washington Department of Transportation and may include
33 its Contractors, Subcontractors, Agents and Assigns. Comment [RF86]: Joint
34
- 35 1.57 STATE Designated Representative means the State of Washington official listed in
36 Section 2.2 of this Agreement.
37
- 38 1.58 Street Use Permit means written authorization secured by the STATE from the Director
39 of SDOT for use of the CITY Street Right-of-Way pursuant to Title 15 of the Seattle Municipal
40 Code. Comment [RF87]: Joint
41

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1 1.59 Submittal Control Document means a list of all documents or reports that are required by
2 the Approved Plans or construction contract documents or applicable law to be provided to or
3 submitted to the STATE and the CITY.

Comment [RF88]: Joint

4
5 1.60 Task Force means a group consisting of State, City, contractor, and other stakeholder
6 staff meeting regularly to review and reach decisions relating to a particular subject, e.g., traffic,
7 structures.

Comment [g89]: Joint

8
9 1.61 Task Order means a document executed by the PARTIES under this Agreement
10 authorizing work by one party to be done on behalf of the other party and that defines the scope
11 and the obligations of the PARTIES for the given element of work. All terms and conditions of
12 the Agreement shall apply to each Task Order.

Comment [g90]: Joint

13
14 1.62 UTILITY Facilities means SPU Facilities and SCL Facilities.

Comment [g91]: Joint

15
16 1.63 UTILITY Facilities Work means SPU Facilities Work and SCL Facilities Work.

Comment [g92]: Joint

17
18 1.64 UTILITY Easement means a non-exclusive permanent easement over real property for
19 the operation, maintenance, repair and replacement of the relocated UTILITY Facilities, in the
20 form attached as Exhibit A.

Comment [g93]: Confirm definition with RES

21
22 1.65 Utility Service Work means any facilities required to provide temporary Utility services
23 for construction of the PROJECT; and any work needed to obtain permanent UTILITY services
24 to the bored tunnel or UTILITY customers.

Comment [g94]: Joint

25
26 1.66 WSDOT means Washington State Department of Transportation.

27
28 Words not otherwise defined, which have well-known technical or construction industry
29 meanings, are used in accordance with such recognized meanings.

Comment [W95]: Joint

30 31 32 2. GENERAL RESPONSIBILITIES

33
34 2.1 The Parties shall manage risk, produce design and conduct construction in a manner that
35 maximizes cumulative public benefits and minimizes cumulative public costs as mutually agreed
36 to by the Parties.

Comment [W96]: Joint

37
38 2.2 This Agreement in conjunction with GCA 6486 and UT 01476 is prepared by the STATE
39 and CITY to govern relationships between the Parties and establish each Party's responsibilities
40 regarding the PROJECT as described in Exhibit A, Project Description.

Comment [W97]: Joint

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1 2.3 The Parties understand that environmental review of the proposed PROJECT is underway
2 at the date of this agreement and agree that if an alternative other than the Proposed Bored
3 Tunnel is selected, this agreement shall not be applicable.

Comment [W98]: City

4
5 2.4 The Parties shall work collaboratively to resolve issues in a manner that endeavors to
6 open the Proposed Bored Tunnel to the public on schedule.

Comment [W99]: Joint

7
8 2.5 The design and construction of CITY infrastructure, including infrastructure repair, shall
9 comply with City of Seattle codes, rules, regulations and standards.

Comment [W100]: Joint

10
11 2.6 Each Party shall provide the funding and resources necessary to fulfill the responsibility
12 of that Party as established in this Agreement.

Comment [W101]: Joint

13
14 2.7 The Parties agree to work cooperatively with each other and make reasonable, good faith
15 efforts to timely and expeditiously complete the PROJECT, as provided in this Agreement,
16 including, but not limited to, the selection of a preferred SR 99 design alternative; development
17 of preliminary engineering and final design and construction. In order to optimize design and
18 minimize conflicts, the STATE shall coordinate design and construction of the various contracts
19 making up the PROJECT with design of subsequent PROGRAM stages, and with construction of
20 previous stages of the PROGRAM. The STATE shall be prepared to modify design of the
21 contracts making up the PROJECT, the subsequent PROGRAM stage and/or previous phase if
22 both Parties determine the modifications are necessary and reasonable, to minimize conflicts.

Comment [W102]: Joint

23
24
25 2.8 The STATE shall pay for all costs associated with the UTILITY Facilities Deformation
26 Mitigation Work, including but not limited to design; design review; purchase of materials;
27 construction; inspection; preparation of record drawings; CITY crew time and costs; any
28 temporary UTILITY services required for construction of the PROJECT; and any work needed
29 to obtain permanent UTILITY services to the bored tunnel or UTILITY customers; regardless of
30 whether such UTILITY Facilities Deformation Mitigation Work is performed by the UTILITY
31 or other CITY staff, the STATE, or its contractor, as set forth in the Approved Plans, and any
32 UTILITY-approved revisions to the Approved Plans, without reimbursement from UTILITY,
33 including Change Orders pursuant to Section 8 of this UTILITY Bored Tunnel Agreement, but
34 excluding Betterments or New Work as defined in Section 2 of this UTILITY Bored Tunnel
35 Agreement. No delay costs shall be paid for by UTILITY.

Comment [g103]: Joint

36
37 2.9 The STATE is responsible for designing and constructing the Proposed Bored Tunnel
38 portion of the Project. The STATE will take reasonable measures to minimize, limit, and
39 mitigate Damage to private property and CITY infrastructure including CITY streets, CITY
40 telecommunications facilities and CITY utilities that may result from the Proposed Bored Tunnel
41 construction, including Damage that may result from tunnel-induced deformation. WSDOT is
42 responsible for remedy such Damage should it occur.

Comment [W104]: Joint - Damage definition pending

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1 2.10 CITY is responsible for relocating those existing CITY utilities that have alignments
2 intersecting the final configuration of the proposed SR 99 bored tunnel portals and tunnel portal
3 excavations. CITY's relocation responsibility is limited to the final relocation of each UTILITY
4 Conflicting Facility found to be in direct conflict with the tunnel portals or portal excavations.
5 During preliminary design, the Parties will jointly identify UTILITY Conflicting Facilities that
6 will need to be relocated more than once.

Comment [W105]: City

8 2.11 The Parties agree that it is in the public interest for one Party to implement portions of the
9 other Party's Project responsibilities. Therefore, this SDOT Agreement establishes a Task Order
10 process for use by a Party to authorize the other Party to conduct work on its behalf, and as may
11 be documented through each Task Order, agree to reimburse the other Party for such services.

Comment [W106]: Joint

13 2.12 The general terms and conditions of GCA 6486 and this agreement apply to each Task
14 Order performed as part of the PROJECT, unless otherwise specified in an executed Task Order.

Comment [W107]: Joint

16 2.13 For UTILITY Facilities Work which the STATE will design and construct, the STATE
17 and UTILITY agree to document key design-related decisions to ensure that issues are resolved
18 to PARTIES satisfaction, pursuant to Section 5 herein, so that the STATE can proceed with the
19 design of the PROJECT. These decisions will be evidenced through the use of a concurrence
20 letter signed by both PARTIES.

Comment [g108]: Joint

22 2.14 The STATE agrees to take the lead in consulting and coordinating with utilities affected
23 by the PROJECT.

Comment [RF109]: Joint

25 2.15 The PARTIES shall apply for and obtain all necessary federal, state and City of Seattle-
26 issued permits and approvals for the work for which they are responsible prior to commencing
27 work that requires such permits, including but not limited to all permits, approvals or permission
28 for exploratory investigations, testing, site preparations, demolition and construction.

Comment [W110]: Joint

30 2.16 The PARTIES shall comply with the regulatory requirements and agree to meet
31 operational and customer service requirements of each existing UTILITY Facility.

Comment [RF111]: Joint

33 2.17 The [REDACTED] shall minimize utility service interruptions to UTILITY customers.

Comment [g112]: Joint

35 2.18 To the extent necessary, SCL agrees to lead the coordination of the PROJECT with all
36 applicable electrical regulatory agencies.

Comment [P113]: Joint - SCL only

37
38 **3. RESPONSIBILITIES REGARDING SCL AND SPU RELOCATIONS (PORTALS)**

39
40 3.1 The STATE shall identify all SCL Facilities and all SPU Facilities that directly conflict
41 with the bored tunnel portals and tunnel portal excavations ("Conflicting Facilities").

Comment [RF114]: Joint

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1 3.2 UTILITY shall inform the STATE of any additional Conflicting Facilities or New Work
2 and confirm that each UTILITY Facility which the STATE has identified as a Conflicting
3 Facility does in fact directly conflict with the bored tunnel portals or bored tunnel portal
4 excavations.

Comment [RF115]: Joint

6 3.3 STATE is responsible to prepare conceptual relocation plan (preliminary engineering) in
7 consultation with the CITY that defines the Relocation Work and provides planning level
8 schedule and cost estimates.

Comment [RF116]: Needs resolution

10 3.4 The STATE shall protect UTILITY Facilities, including those installed as part of the
11 PROJECT or PROGRAM.

Comment [g117]: Joint

13 3.5 UTILITY is responsible for relocating each identified Conflicting Facility one time, to its
14 final and permanent relocation, which work is Relocation Work.

Comment [RF118]: City

16 3.6 Interim or temporary relocations required in order to move a Conflicting Facility to its
17 final and permanent location, including but not limited to relocations necessary to stage any
18 PROJECT construction, is not Relocation Work, and shall be the responsibility of the STATE.

Comment [RF119]: City- Staff to resolve
Comment [RF119]: City- Staff to resolve
Comment [RF119]: City- Staff to resolve

20 **4. RESPONSIBILITIES REGARDING UTILITY FACILITIES DEFORMATION**
21 **MITIGATION**

23 4.1 The STATE will undertake an assessment of potential impacts of Deformation on private
24 property and CITY infrastructure including CITY streets, CITY telecommunications facilities
25 and CITY utilities. Where the CITY has established deformation criteria for its Utilities, the
26 criteria will be used in analysis. Otherwise, criteria will be derived using accepted engineering
27 practice.

Comment [g120]: Joint

29 4.2 The UTILITY shall review the STATE's estimate of susceptibility or vulnerability of its
30 facilities to Deformation and provide comments/input.

Comment [g121]: Joint

32 4.3 The STATE shall develop a preliminary plan for UTILITY Facilities Deformation
33 Mitigation. PARTIES will work collaboratively to finalize and implement the UTILITY
34 Facilities Deformation Mitigation plan.

Comment [g122]: Joint

36 4.4 As a component of the UTILITY Facilities Deformation Mitigation plan, the STATE will
37 implement a construction monitoring Task Force responsible for the planning and
38 implementation of the instrumentation and monitoring program and processing data, evaluating
39 results, and developing recommendations to mitigate deformation.

Comment [g123]: Joint

41 4.6 The CITY will advise the STATE and participate in construction monitoring and
42 deformation management activities when these activities pertain to CITY Infrastructure. The
43 CITY will provide the STATE all necessary access to CITY Infrastructure for the purposes of

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1 design or implementation of mitigation measures. The CITY may perform mitigation measures
2 on behalf of the STATE in a manner and schedule that supports the STATE's project
3 requirements.

Comment [g124]: Joint

4
5 **5. DESIGN, PLAN REVIEW, CHANGE MANAGEMENT**
6

7 5.1 The STATE and UTILITY shall comply with all provisions outlined in Section 6 of the
8 SDOT SR 99 Bored Tunnel Agreement. The PARTIES shall facilitate the design as provided
9 herein and shall allow UTILITY adequate time for detailed design review. UTILITY will meet
10 agreed-upon timelines for review. The PARTIES shall address and resolve each design review
11 comment to UTILITY's and the STATE's satisfaction. In the event the PARTIES are unable to
12 mutually resolve comments, the PARTIES shall initiate the dispute resolution process pursuant
13 to Section 23 of the SDOT SR 99 Bored Tunnel Agreement.

Comment [g125]: Joint

14
15 5.2 In the event the STATE designates as a Limited Access Facility any area in or near the
16 tunnel portals on which a UTILITY Facility exists or will be relocated, the PARTIES agree to
17 make every effort to develop a design that minimizes the need for regular, on-going maintenance
18 access.

Comment [g126]: Joint

19
20 5.3 The STATE agrees to incorporate qualification criteria mutually agreed upon by the
21 PARTIES for construction contractors in the performance of Specialty Work into the contract
22 bid document. The STATE shall consult with UTILITY on the contractors and subcontractors
23 bidder qualifications for Specialty Work. UTILITY shall provide comments to the STATE on
24 known bidder qualifications. The STATE shall not allow unqualified contractors to perform
25 Specialty Work.

Comment [g127]: Joint - SCL only

26
27
28
29
30
31 **6. CONSTRUCTION MANAGEMENT, INSPECTION AND CONTRACT**
32 **ADMINISTRATION**
33

34 6.1 The PARTIES shall comply with all provisions contained within Section 14 of GCA
35 6486, regarding Construction Management, Inspection and Contract Administration for the
36 PROJECT, and such provisions shall apply equally to this Agreement.

Comment [g128]: Joint

37
38 6.2 Where UTILITY staff or crews are performing work requested by the STATE, the
39 STATE shall provide all labor, materials, equipment, and tools required to excavate, provide
40 trench support systems, and handle and dispose of all spoils (including contaminated soils,
41 groundwater, and other debris), and provide a safe workplace for UTILITY staff per applicable
42 State and Federal laws, and City of Seattle standards, for the UTILITY Facilities Work in

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1 accordance with the Approved Plans and any UTILITY-approved revisions to the Approved
2 Plans. The STATE will not provide personal protective equipment for UTILITY staff.

Comment [g129]: Joint

3
4 6.3 The STATE agrees to provide advance notice of service outages needed for construction
5 to schedule crews, notify customers and accommodate other previously scheduled outage
6 requests in accordance with UTILITY procedures.

Comment [g130]: Joint

7
8 **7. MONITORING**

9
10 7.1 The PARTIES agree to comply with all provisions contained within Section 12 of the
11 SDOT Bored Tunnel Agreement, regarding Monitoring for the PROJECT, and such provisions
12 shall apply equally to this Agreement.

Comment [g131]: Joint

13
14 **8. NOTICES AND DESIGNATED REPRESENTATIVES**

15
16 8.1 Any notice required or permitted to be given pursuant to this Agreement shall be in
17 writing and shall be sent postage prepaid by U.S. Mail to the Designated Representatives.

18
19 8.2 The Designated Representatives for each Party are as follows:

20
21 STATE:
22 Program Administrator
23 Alaskan Way Viaduct & Seawall Replacement Program
24 Washington State Department of Transportation
25 999 3rd Avenue, Suite 2424
26 Seattle, WA 98104

Comment [RF132]: Joint

27
28 CITY:
29 Project Manager, Alaskan Way Viaduct & Seawall Replacement Program
30 Seattle City Light
31 P.O. Box 34018
32 700 Fifth Avenue, Suite 4900
33 Seattle, WA 98124-4018

Comment [RF133]: Joint

34
35 **9. FUNDING OF UTILITY FACILITIES WORK AND TASK ORDERS**

36
37 9.1 The STATE shall provide necessary funding for all PROJECT costs without
38 reimbursement from the City of Seattle, except for the City of Seattle cost responsibilities
39 established in this Agreement, in SDOT Agreement GCA 6486, [add respective UTILITY
40 Agreement].

Comment [g134]: Need to identify specific UT agreement for SPU and SCL.

41
42 9.2 If for any reason PROJECT costs exceed the State funding limit established by RCW
43 47.01.402, the STATE shall have the sole responsibility for obtaining any needed additional

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1 spending authority without recourse to any funding device that burdens Seattle area taxpayers or
2 property owners or the City of Seattle.

Comment [W135]: City

3
4 9.3 Each PARTY shall fund work for which it is responsible pursuant to this agreement.

Comment [g136]: Joint

5
6 9.4 The STATE will request, obtain and fund any temporary and permanent utility services
7 required for the PROJECT through separate utility service agreements with UTILITY.

Comment [g137]: Joint

8
9 9.5 While SDOT is the City lead agency for the PROJECT, the STATE understands and
10 agrees that all PROJECT decisions that are likely to result in expenditure of UTILITY funds, and
11 all PROJECT decisions that may have operational, maintenance, or access impacts to UTILITY
12 Facilities, require concurrence of UTILITY.

Comment [RF138]: Joint

13
14 **10. UTILITY'S RIGHT TO CORRECT NON-CONFORMING, UNAUTHORIZED
15 AND DEFECTIVE WORK**

16
17 10.1 If the STATE or its contractor fails to remedy, or fails to properly remedy, non-
18 conforming, unauthorized or Defective Work within the time specified by UTILITY, which is
19 not to be less than ten (10) Business Days, UTILITY may, but is not required to, correct and
20 remedy such work by any means as UTILITY may deem necessary, including the use of
21 UTILITY staff or contractors.

Comment [RF139]: Joint

22
23 10.2 If the STATE or its contractor fails to comply with a written notice to remedy what
24 UTILITY determines to be an emergency situation, UTILITY may, but is not required to, have
25 the non-conforming, unauthorized or Defective Work corrected immediately, have such work
26 removed and replaced, or have work the STATE or its contractor refuses to correct completed.
27 An emergency situation shall mean a condition that calls for immediate action to respond to
28 danger to health, safety or property.

Comment [RF140]: Joint

29
30 10.3 Direct and indirect costs incurred by UTILITY attributable to correcting and remedying
31 unauthorized, non-conforming or Defective Work, or work the STATE or its contractor failed or
32 refused to perform, shall be paid by the STATE to UTILITY within thirty (30) calendar days
33 after receipt of an invoice with appropriate documentation of such costs.

Comment [RF141]: Joint

34
35 10.4 Except in an emergency situation as defined under Section 10.2, disagreements between
36 UTILITY and the STATE on what constitutes non-conforming, unauthorized or Defective Work
37 shall be resolved using the dispute resolution process established in Section 10.3 herein prior to
38 UTILITY performing any work.

Comment [RF142]: Joint

39
40 10.5 Any and all services, including direction, provided by UTILITY pursuant to this section
41 shall be subject to all limitations on the CITY's liability contained in the SDOT Bored Tunnel
42 Agreement, including but not limited to Section 10.4 Risk Allocation.

Comment [RF143]: Joint

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1
2 **11. UTILITY ACCESS AND INSPECTION OF UTILITY FACILITIES WORK**
3

4 11.1 Neither the STATE nor its contractor shall require UTILITY to interrupt electrical
5 service without (a) written notice to UTILITY at least fourteen (14) calendar days prior to the
6 planned interruption and (b) UTILITY's written approval. UTILITY may restrict electrical
7 service interruptions to the extent necessary to maintain electrical system operations and
8 adequate power supply to customers.
9

Comment [SLS144]: Will insert the equivalent for SPU from the SPU H2K2 agreement.

Comment [RF145]: Joint

10 11.2 The STATE shall ensure the UTILITY has the right to safe access to their facilities at any
11 time to operate and maintain existing and newly installed UTILITY Facilities or to inspect or
12 perform UTILITY Facilities Work. For purposes of this Agreement, "access" shall mean that the
13 vaults, vault openings, handholes, power poles, ductbanks, substation equipment or substation
14 entrances shall not be blocked, covered or otherwise inaccessible to SCL. UTILITIES staff other
15 than UTILITIES' on-site inspector will notify the STATE in advance of their arrival on site
16 except in the case of emergency in accordance with site access procedures to be developed by the
17 PARTIES.
18

Comment [SLS146]: For SPU – hydrants, meter, valves, or similar surface water system facilities, and drainage and wastewater system facilities.

Comment [g147]: Joint

19 11.3 Under no circumstances shall the STATE, its contractor, or anyone other than UTILITY
20 personnel enter any energized UTILITY Facilities or operate any portion of the existing or new
21 UTILITY Facilities, without UTILITY personnel approval and supervision.
22

Comment [RF148]: Joint

23 11.4 The STATE agrees and acknowledges that UTILITY shall have an on-site inspector
24 available during the construction of UTILITY Facilities for UTILITY's quality assurance. The
25 STATE agrees and acknowledges the UTILITY's on-site inspector shall (a) have timely and
26 complete access to the construction work associated with the UTILITY Facilities Work; (b) be
27 timely informed of all relevant construction timelines associated with such work; and (c) have
28 the authority to, but not be required to, reject and have corrected and/or replaced any
29 construction or materials deemed to be deficient, or which deviate from the Approved Plans or
30 any SCL-approved revisions to the Approved Plans. In such instances, UTILITY's on-site
31 inspector, or UTILITY's project manager, will immediately direct comments and issues to the
32 STATE's construction project engineer or designated representative, which will be followed up
33 in writing as soon as possible but no later than ten (10) Business Days of the date of any
34 inspection. The STATE shall promptly address each comment or issue presented by UTILITY
35 to UTILITY's satisfaction. UTILITY staff will continue to be supervised by UTILITY
36 management.
37

Comment [RF149]: Joint

38 11.5 The STATE will allow UTILITY's on-site inspector or Designated Representative to
39 consult with and inquire of the STATE construction project engineer, attend all meetings, and
40 have timely and complete access to all documentation as to all matters concerning the UTILITY
41 Facilities Work. UTILITY shall not provide direction, directly or indirectly, to the STATE's
42 consultant(s) or contractor.
43

Comment [RF150]: Joint

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1 11.6 The STATE shall provide UTILITY with timely notice prior to commencement and
2 completion of all material stages of the UTILITY Facilities Work and shall invite UTILITY to
3 inspect such work upon completion of any material stage. The STATE shall timely address each
4 comment or issue presented by UTILITY to UTILITY's satisfaction. Both Parties agree to act as
5 expeditiously as possible to assure a timely resolution of any deficiencies.

Comment [RF151]: Joint

7 11.7 UTILITY shall observe the work performed by the STATE for quality assurance.
8 UTILITY will notify the STATE if defective UTILITY Facilities Work is observed, such as
9 improper installation or unsafe conditions.

Comment [RF152]: Joint

11 12. FINAL INSPECTION AND PROJECT ACCEPTANCE

13 12.1 The PARTIES agree to comply with all provisions contained within Section 15 of the
14 GCA 6486, regarding Final Inspection and Project Acceptance, and such provisions shall apply
15 equally to this Agreement.

Comment [g153]: Joint

17 12.2 UTILITY Facilities shall not be placed into interim use or operation, or transferred to the
18 City, unless or until: (a) UTILITY has participated in an inspection of the UTILITY Facilities;
19 (b) any deficiencies or Defective Work have been resolved or corrected to UTILITY's
20 satisfaction; and (c) UTILITY confirms with the STATE in writing that UTILITY's minimum
21 inspection and testing requirements for the UTILITY Facilities have been met, including
22 completion of the Washington State Department of Health Completion Report for water mains.

Comment [SLS154]: For SPU only

Comment [RF155]: Joint

24 13. WARRANTIES

26 13.1 The PARTIES agree to comply with all provisions contained within Section 17 of the
27 GCA 6486, regarding Final Inspection and Project Acceptance, and such provisions shall apply
28 equally to this Agreement.

Comment [g156]: Joint

29 14. ACQUISITION AND TRANSFER OF EASEMENTS AND FRANCHISE

31 14.1 The UTILITY is responsible for identifying and acquiring, at its sole cost and expense,
32 all property rights needed to complete Relocation Work, except for property otherwise required
33 for the PROJECT.

Comment [g157]: Joint

34 14.2 The STATE is responsible for identifying and acquiring, at its sole cost and expense, all
35 property rights needed to complete UTILITY Facilities Deformation Mitigation Work.

Comment [g158]: Joint

37 14.3 The PARTIES recognize that their property acquisition responsibilities include the
38 performance of all appraisal, appraisal review, title review, surveys, property investigation,
39 relocation assistance and all other investigations and services in connection with the acquisition
40 of the permanent easement rights necessary for the UTILITY Facilities, including, without
41 limitation, identification and investigation of Hazardous Substances as provided in Section 4 of
42 the GCA 6486. The STATE shall provide to UTILITY, as soon as available to the STATE, all

HIGHLIGHTED TEXT = Elevate to Leadership
GREEN HIGHLIGHT = Staff to resolve

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1 reports and documents prepared or obtained in connection with any of the reviews and
2 investigations described above.

Comment [g159]: Joint

3
4 14.4 Where the State is acquiring easement rights for UTILITY Facilities Deformation
5 Mitigation Work, unless the Parties otherwise agree in writing, prior to commencement of
6 construction, the STATE shall convey to the CITY the easement rights referred to in Section 14.6
7 by conveying them substantially in the form as, and containing the same conditions as, the
8 approved Utility Easement form attached and identified as Exhibit A. The Utility Easements
9 conveyed to the CITY shall not be subject to any lien, encumbrance or exception of title of any
10 kind.

Comment [RF160]: Joint

11
12 14.5 The legal descriptions will be developed based on the Approved Plans. The Parties
13 acknowledge that due to unforeseen field conditions the location of one or more of the easements
14 may need to change after commencement of construction. In that case, the STATE shall provide
15 UTILITY with documents, reports and information identified in Subsection 14.3 above, relevant
16 to the new or modified easement area. All requirements and conditions pertaining to the original
17 permanent Utility Easements shall apply to all amendments and modifications.

Comment [g161]: Joint - RES needs to review

18
19 14.6 Where UTILITY Facilities are located in or near an area which the STATE designates as
20 a Limited Access Facility, the STATE will ensure that UTILITY continues to be allowed access
21 to its UTILITIES.

Comment [RF162]: TBD - RES needs to review

22 14.6.1 The STATE's Limited Access Facility designation for the tunnel shall contain a
23 vertical and horizontal boundary.

24 14.6.2 The STATE agrees that any Limited Access Facility designation for the tunnel
25 will end at a maximum of three (3) feet above the tunnel in order to allow UTILITY to access its
26 UTILITY Facilities.

27 14.6.3 The area between the Limited Access Facility boundaries and the CITY street
28 shall continue to be CITY Street Right-of-Way.

29 14.6.4 In the event the STATE designates as a Limited Access Facility any area in or
30 near the tunnel portals on which a UTILITY Facility exists or will be relocated, the STATE
31 agrees to provide UTILITY a UTILITY franchise in the form attached hereto as Exhibit D,
32 pursuant to the requirements of Section 14 herein [OR provide for access to operate and maintain
33 24/7.] and will make every effort to develop a design that minimizes the need for regular, on-
34 going maintenance access.

Comment [SLS163]: Still just a placeholder.
Need more discussion with WSDOT.

Comment [RF164]: May need elevation

35 36 37 15. ENVIRONMENTAL REMEDIATION

38
39 15.1 The PARTIES shall comply with all provisions of GCA 6486, regarding Environmental
40 Remediation, including but not limited to all provisions in Section 5 therein, and such provisions
41 shall apply equally to this Agreement.

Comment [RF165]: Joint

42 43 16. RISK ALLOCATION

JOINT EDITION UT 01474/UT 01476 WSDOT/UTILITY Memorandum of Agreement
Bored Tunnel
Page 20 of 23

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1
2 16.1 The PARTIES shall comply with all provisions of the GCA 6486, regarding Risk
3 Allocation and Indemnification, including but not limited to all provisions in Section 19 therein,
4 and such provisions shall apply equally to this Agreement.

Comment [RF166]: TBD

5
6 **17. INSURANCE**

7
8 17.1 The PARTIES shall comply with all provisions of the GCA 6486, regarding Insurance,
9 including but not limited to all provisions in Section 20 therein, and such provisions shall apply
10 equally to this Agreement.

Comment [RF167]: Joint

11
12 **18. THIRD PARTY BENEFICIARY**

13
14 18.1 The PARTIES shall comply with all provisions of GCA 6486, regarding Third Party
15 Beneficiary, including but not limited to all provisions in Section 21 therein, and such provisions
16 shall apply equally to this Agreement.

Comment [RF168]: Joint

17
18
19 **19. DISPUTE RESOLUTION**

20
21 19.1 Dispute Resolution Representatives. The Dispute Resolution Representatives for the
22 Parties are as follows:

23
24 For the STATE: Bored Tunnel Project Design Project Engineer or, if
25 appropriate, Construction Project Engineer,
26 Alaskan Way Viaduct & Seawall Replacement Program
27 Washington State Department of Transportation
28 999 3rd Avenue, Suite 2424
29 Seattle, WA 98104

30
31 For UTILITY: UTILITY AWV Project Manager
32 P.O. Box 34023
33 700 Fifth Avenue, Suite 3200
34 Seattle, WA 98124-4023

35
36 19.2 Dispute Resolution Process. The designated representatives established under Section 19.2
37 shall use their best efforts to resolve disputes between the Parties. If these individuals are unable
38 to resolve a dispute, Customer Service and Energy Delivery Officer of Seattle City Light and the
39 Alaskan Way Viaduct Program Administrator for the Washington State Department of
40 Transportation shall review the matter and attempt to resolve it. If they are unable to resolve the
41 dispute, the matter shall be reviewed by the Superintendent of Seattle City Light and the
42 Washington State Deputy Secretary of Transportation. The Parties agree to exhaust each of these
43 procedural steps before seeking to resolve disputes in a court of law or any other forum.

Comment [g169]: Joint

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1
2 **20. REMEDIES; ENFORCEMENT**

3
4 20.1 The PARTIES agree that provisions of GCA 6486, regarding Remedies; Enforcement,
5 including but not limited to Section 24 therein, shall apply equally to this Agreement.

Comment [g170]: Joint

6
7 **21. TERMINATION**

8
9 21.1 The Term of this Agreement shall be the Term provided in Section 28 of GCA 6486
10 regarding Termination.

Comment [g171]: Joint

11
12 **22. CONFIDENTIALITY OF INFORMATION AND RECORDS**

13
14 22.1 The provisions of the SDOT Bored Tunnel Agreement, regarding Confidentiality of
15 Information and Records, including but not limited to Section 27 therein, shall apply equally to
16 this UTILITY Bored Tunnel Agreement. In addition, the Federal Energy Regulatory
17 Commission (FERC) and the North American Electric Reliability Corporation (NERC) require
18 that SCL limit access and disclosure of certain sensitive Critical Energy Infrastructure
19 Information. Therefore, SCL shall require the STATE and its contractors who have access to
20 documents marked "confidential" or "proprietary" to sign the Non-Disclosure Agreement
21 attached hereto as Exhibit C.

Comment [SLS172]: Joint - SCL only

22
23 **23. EFFECTIVENESS AND DURATION**

24
25 23.1 This Agreement shall be effective as of the date the last PARTY signs and, unless sooner
26 terminated pursuant to the terms hereof, shall remain in effect until final completion of all
27 PARTIES' obligations contained or referred to in this Agreement and GCA 6486, the SCL
28 Agreement, UT 01474, and the SCL Agreement, UT 01476.

Comment [RF173]: Joint

29
30 **24. GENERAL PROVISIONS**

31
32 24.1 The General Provisions set forth in the GCA 6486, including but not limited to Section
33 30 therein, shall apply equally to this Agreement.
34

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1 IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the last day
2 and year written below.
3

4
5 **SEATTLE CITY LIGHT**

**WASHINGTON STATE
DEPARTMENT OF
TRANSPORTATION**

6 _____
7
8

9
10 **By:**
11 Jorge Carrasco
12 Superintendent:

By: _____
Print: _____
Title: _____

13
14 Date: _____

Date: _____

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APPROVED AS TO FORM:

By (print)

Signature
Assistant Attorney General

Date: _____

CHRISTINE O. GREGOIRE
Governor



STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

P.O. Box 40002 * Olympia, Washington 98504-0002 * (360) 753-6780 * www.governor.wa.gov

April 23, 2010

The Honorable Mike McGinn
Mayor, City of Seattle
Post Office Box 94749
Seattle, WA 98124-4749

Dear Mayor *McGinn*

I received your correspondence related to the Alaskan Way Viaduct Replacement Project. Eight years after the Nisqually Earthquake revealed the dangerous condition of the Alaskan Way Viaduct, King County, the City of Seattle and Washington State joined together to replace the aging and unsafe Viaduct with a new tunnel. The Alaskan Way Viaduct Replacement Project will preserve our ability to move freight and people through the region and will allow Seattle to open up its waterfront.

I am pleased that you have restated your support for the commitments made by the City of Seattle to facilitate the efficient and timely completion of the Alaskan Way Viaduct Replacement Project. Thank you for directing representatives of the City to work with us to complete various agreements that are currently being discussed describing what city permits are required and how utility relocation will be coordinated and executed.

I share your concern about cost overruns. The Washington State Department of Transportation (WSDOT) is committed to completing this project on-time and on-budget, as it has with the first four projects that are part of the overall Alaskan Way Viaduct Replacement Project. Just last week, you joined me in announcing the completion of the SR519 project on budget and a year early. To support our mutual goal of controlling costs, I have put in place stringent management and oversight of the nine projects that make up the Alaskan Way Viaduct Replacement Project. These steps are being taken as a direct result of lessons learned from other large infrastructure projects around the country. The lessons learned make it clear that a thorough understanding of the risks, proactive management, and strong oversight need to be in place for successful project delivery. Cost control measures that are currently underway include:

As you know, I have established a program oversight committee made up of elected officials and executives from the state, City of Seattle, Port of Seattle, and King County. Thank you for agreeing to participate in this effort. We will receive quarterly updates from our agency staff, and I expect us to manage issues, such as cost overruns, if they arise.

The cost estimate that was developed for the proposed bored tunnel used a nationally recognized process that accounts for potential risks that may be realized during construction. The \$1.9 billion bored tunnel estimate includes \$415 million to fund risk and inflation, and was developed with input from independent subject matter experts. The cost estimate is also based on a thorough understanding of the conditions that will be encountered during this project. WSDOT has taken over 70 samples of the ground conditions, up to depths of 300 feet, and conducted surveys of over 300 buildings and structures along the proposed alignment.



The Honorable Mike McGinn
April 23, 2010
Page 2

The project is reporting directly to the office of the Secretary of Transportation, who reports directly to me. This structure ensures that critical decisions are made at the highest levels of the agency, and the full resources and experience of the agency are available to the project.

WSDOT is using a contracting approach, known as design-build, to deliver the proposed bored tunnel. This approach has been used successfully on a number of projects including the successful SR 519 project. In a design-build process, the state establishes the budget, performance measures and guidelines, and then executes a contract with one entity. This contract identifies exactly how the risks between the state and design-build team will be shared, limiting the potential for added costs. The contract allocates the responsibility for both designing and constructing the tunnel to one team. The design-build approach helps to eliminate the typical problems that can result in cost overruns, and takes full advantage of the private sector's expertise and innovations.

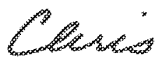
An external Strategic and Technical Advisory Team has been established to provide WSDOT with outside expertise. This group of management and tunnel experts has over 295 years of collective experience successfully delivering projects around the world. This team provides regular guidance to WSDOT on issues related to risk management, construction methods and oversight.

We have several additional oversight groups in place, with each receiving regular updates and working to resolve issues that could cause cost increases or schedule delays. The Seattle City Council has established a special committee as their venue for oversight of the program. I understand that WSDOT and SDOT are already providing bi-monthly updates to the Council, including on the status of agreement negotiations. The program oversight committee will also receive quarterly updates on cost, schedule, budget, management issues, and contracting so that we proactively manage issues that may affect project delivery.

To be clear, the number one cause of cost overruns is delay. We must take advantage of the most favorable environment for construction bids in decades and move forward with this project as scheduled. As you know, the apparent low bid for the replacement of the first portion of the viaduct came in \$40 million under the engineers' estimate. Every month of delay could cost the taxpayers millions in additional costs. I am sure you agree that accumulating unnecessary additional expenditures is unacceptable. I hope you will work together with me to ensure we do not delay and as a result, incur additional costs to the project. To that end, I remain committed to the agreement I signed with then Mayor Nickels and Executive Sims regarding our respective responsibility for the portions of the Alaskan Way Viaduct Replacement Project that each of our governments has agreed to undertake.

Replacing the Alaskan Way Viaduct is critically important to the state's economy, our regional transportation system and the vitality of Seattle's waterfront. The current structure is aging and vulnerable to collapse should another earthquake occur. After years of planning, public input and debate, we have come together on a solution that is funded and ready for construction. It is time now to work together to get the job done on-time, on-budget and without any costly delay.

Sincerely,



Christine O. Gregoire
Governor

*I look forward
to working with you.*

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MEMORANDUM OF AGREEMENT
NO. GCA 6486

SR 99 ALASKAN WAY VIADUCT

PROPERTY, ENVIRONMENTAL REMEDIATION, DESIGN REVIEW,
PERMITTING, AND CONSTRUCTION COORDINATION
AGREEMENT
FOR SR 99 BORED TUNNEL PROJECT

Comment [RF1]: City Language

THIS Property, Environmental Remediation, Design Review, Permitting, and Construction Coordination Agreement, No. GCA 6486 for the SR 99 Bored Tunnel Project ("Agreement" or "SDOT Agreement") is made and entered into between the State of Washington Department of Transportation, hereinafter the "STATE," and the City of Seattle hereinafter the "CITY" (managed by the Seattle Department of Transportation, hereinafter "SDOT"), collectively the "PARTIES" and individually the "PARTY,"

Comment [g2]: City

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

Comment [RF4]: Joint

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

Comment [W5]: Joint

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

Comment [W6]: Joint

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

Comment [W7]: Joint

WHEREAS, the January 2009 letter of agreement between the PARTIES affirmed that the State would be responsible for the bored tunnel project, and that "the allocation of specific project responsibility to each jurisdiction carries with it the responsibility for project management, environmental work, design, construction, and project cost overruns"; and

Comment [W8]: City - Not acceptable to WSDOT

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WHEREAS, in October 2009 the Governor and the Mayor executed a Memorandum of Agreement, GCA 6366, which described the basic roles and responsibilities for the implementation of the AWVSR Program;

Comment [W9]: Joint

WHEREAS, the AWVSR Program (PROGRAM) consists of a four-lane bored tunnel and improvements to City streets, the City waterfront, and transit; and the Moving Forward Projects; and

Comment [W10]: Joint

WHEREAS, the Proposed Bored Tunnel Project (PROJECT), the subject of this Agreement, is the part of the PROGRAM that replaces SR 99 from South Royal Brougham Street to Mercer Street that consists of designing and constructing a four-lane bored tunnel from South King Street to Thomas Street, north and south tunnel portals and access streets; re-establishment of the City street grid in the vicinity of the portals (Battery Street Tunnel decommissioning and Alaskan Way Viaduct demolition will be addressed in a future agreement); and associated utility relocations; and

Comment [W11]: Joint

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

Comment [W12]: Joint

WHEREAS, RCW 47.01.402, which became law July 1, 2009, provides that State funding for the PROJECT is not to exceed two billion eight hundred million dollars (\$2,800,000,000.00) of which no more four hundred million shall be from tolls; and

Comment [W13]: City - Not Acceptable to WSDOT

WHEREAS, RCW 47.01.402(6)(b) provides that any costs in excess of two billion eight hundred million dollars (\$2,800,000,000.00) shall be borne by property owners in the Seattle area who benefit from replacement of the existing AWV with the deep bore tunnel; and

Comment [W14]: City - Not Acceptable to WSDOT

WHEREAS, the CITY and STATE agree to jointly pursue the implementation and completion of the PROJECT and endeavor to open the tunnel by 2015 and demolish the Alaskan Way Viaduct in 2016; and

Comment [W15]: Joint

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

Comment [W16]: Joint

WHEREAS, review of the PROJECT pursuant to the State and City environmental policy laws is currently underway and the PARTIES recognize that changes in the alternative chosen would require a new agreement; and

Comment [W17]: Joint

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GREEN HIGHLIGHT = Staff to resolve

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1 WHEREAS, the CITY and the STATE will deliver the PROJECT within the financial
2 commitments made in the Memorandum of Agreement, GCA 6366, executed by the
3 PARTIES on October 24, 2009; and

Comment [W18]: Joint

5 WHEREAS, concurrently with this GCA 6486 Agreement, the STATE and CITY,
6 through Seattle City Light (SCL), are entering into an agreement, UT 01474; and

Comment [W19]: Joint

8 WHEREAS, concurrently with this , GCA 6486, the STATE and CITY, through its
9 Seattle Public Utilities Department (SPU), are entering into an agreement, UT 01476; and

Comment [W20]: Joint

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

Comment [W21]: Joint

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

Comment [W22]: Joint

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

Comment [W23]: Joint

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

Comment [W24]: City

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

Comment [W25]: Joint

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

Comment [W26]: City - Need to choose

30 NOW, THEREFORE, pursuant to RCW 47.28.140 and RCW 47.01.401 and in
31 consideration of the terms, conditions, covenants, and performances contained herein, or
32 attached and incorporated and made a part hereto;

Comment [W27]: WSDOT - Need to choose

35 **IT IS MUTUALLY AGREED AS FOLLOWS:**

37 **1. DEFINITIONS**

Comment [W28]: WSDOT

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

Comment [g29]: Joint

41
42 1.1 Approved Plans means the construction plans and provisions that evidence the
43 CITY's determination, through the processes described in Section 8 and Exhibit B of this
44 Agreement, that the plans including Released for Construction Submittal Plans for

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1 Design Build contracts conform to the Street Use Code and other requirements, and that
2 plan review comments are resolved to both PARTIES' satisfaction; Approved Plans are
3 included in the contract documents evidencing the agreement between the STATE and its
4 contractors for construction of a given element of the PROJECT.

Comment [g30]: Joint

6 1.2 AWV means the Alaskan Way Viaduct structure on State Route 99, currently a
7 non-limited-access highway over a portion of CITY Street Right-of-Way and located
8 ~~partially~~ in the City of Seattle.

Comment [g31]: Joint - requires clean up

10 1.3 Betterment means any upgrading of SDOT Facilities that is made solely for the
11 benefit of and at the election of SDOT. Betterments will be the cost responsibility of
12 SDOT.

Comment [g32]: Joint

14 1.4 Business Days means Monday through Friday, inclusive, except for official City
15 of Seattle and state holidays.

Comment [g33]: Joint

17 1.5 CITY means the City of Seattle, a Washington municipal corporation.

Comment [g34]: Joint

19 1.6 City Construction Project Engineer means the person designated by SDOT to act
20 as the City's coordinator and primary representative in matters arising during the course
21 of construction as set forth in this Agreement.

Comment [g35]: Joint

23 1.7 CITY Designated Representative means the CITY official listed in Section 25 of
24 this Agreement.

Comment [g36]: Joint

26 1.8 CITY Infrastructure means the portions of SPU Facilities, SCL Facilities and City
27 Street Right-of -Way improvements constructed or modified as part of the PROJECT to
28 be owned, operated and maintained by the CITY.

Comment [g37]: Joint

30 1.9 CITY Interest Property means CITY Street Right-of-Way plus all other real
31 property that the CITY owns or in which the CITY has a real property interest on the
32 effective date of this Agreement, or in connection with the PROGRAM is to acquire
33 ownership of or an interest in real property ~~or a different utility-related right~~ from the
34 STATE, which includes, but is not limited to Program Transfer Property. CITY Interest
35 Property does not include real property acquired or to be acquired by the STATE for
36 planned limited access facilities such as the bored tunnel, portals and access for which no
37 real property interest or ~~different utility-related right~~ will be transferred to the CITY.

39 1.10 City of Seattle means CITY.

Comment [g38]: Joint

41 1.11 City Standards means all City of Seattle laws, rules, regulations and standards and
42 all applicable federal and state laws, rules, regulations and standards, including but not
43 limited to the following, except as otherwise provided in this Agreement, UT 01474 and
44 UT 01476.

Comment [RF39]: Joint

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1 The Seattle Municipal Code
2 The City of Seattle Standard Specifications for Road, Bridge and Municipal
3 Construction
4 The City of Seattle Standard Plans for Municipal Construction,
5 SDOT, SCL, DPD and SPU Director's Rules, including the City of Seattle Right
6 of Way Improvements Manual, 2005-22.
7 SCL Material Standards
8 SCL Construction Guidelines

Comment [RF40]: Joint

10 1.12 CITY Street Right-of-Way means public street right-of-way under the jurisdiction
11 of SDOT pursuant to Title 15 of the Seattle Municipal Code.

Comment [g41]: Joint

13 1.13 Conceptual Relocation Plan means a work product that defines the general scope
14 of Utility relocations including a planning level estimate of design and construction costs.

Comment [g42]: WSDOT

16 1.14 Conflicting Facilities means all SCL Facilities and all SPU Facilities identified by
17 the STATE that directly conflict with the bored tunnel portals and tunnel portal
18 excavations.

Comment [RF43]: City - Add to SDOT?

20 1.15 Contract Award means the STATE's written decision accepting bid for
21 construction of a Project.

Comment [g44]: Joint

23 1.16 Damage means loss of function, capacity, or aesthetic quality. For the purposes
24 of this Agreement, "damage" shall not be construed to include reduction of design life of
25 any structure or utility.

Comment [g45]: WSDOT

27 1.16 Damage means any direct or indirect consequence of the PROJECT that causes
28 harm to, or reduces value or usefulness of, CITY Infrastructure, private property, CITY
29 property or other public property, including but not limited to structural damage or
30 physical failure; loss of function, capacity or aesthetic quality; reduced service capacity,
31 including intended future capacity; reduced service life; a measurable reduction of design
32 life of an SPU Facility or an SCL Facility; water main movement in excess of established
33 thresholds; or any other impact to an SPU Facility or an SCL Facility such as stress or
34 Deformation.

Comment [g46]: City

36 1.17 Defective Work means design or construction work or materials that fail to
37 comply with the Approved Plans, CITY-approved modifications to the Approved Plans,
38 or the laws, rules, regulations or standards as specified in this Agreement.

Comment [g47]: Joint

40 1.18 Deformation means any 3-dimensional displacement, for a structure (such as tilt
41 of a structure), and strain (relative displacements of structures or the ground) and includes
42 any settlement, heave, lateral movement, and related are used as being common industry
43 terminology. Where such industry terminology is used for convenience herein, it does not
44 imply that the broad definition of deformation has been limited.

Comment [g48]: Joint

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1
2 1.19 Design-Bid-Build Contract means a project delivery method in which the STATE
3 provides a complete design, advertises for bids, and awards a contract to the lowest
4 responsive bidder who is responsible for completing the construction of the project.

Comment [g49]: Joint

5
6 1.20 Design-Build Contract means a project delivery method in which the STATE
7 develops a conceptual design and requests proposals from pre-qualified contractors. The
8 contract is awarded to the contractor with the best value responsive proposal. The
9 contractor is responsible to complete the design and construct the project.

Comment [g50]: Joint

10
11 1.21 Design Builder means the entity with whom the STATE enters into a Design-
12 Build contract and who is responsible to complete the design and construct the project.

Comment [RF51]: Joint

13
14 1.22 DPD means the City of Seattle Department of Planning and Development.

Comment [g52]: Joint

15
16 1.23 Engineer of Record means the engineer licensed in the State of Washington who
17 has been commissioned by the STATE as the prime engineer of the PROJECT, having
18 overall responsibility for the adequacy of the design and the coordination of the design
19 work of other engineers and whose professional seal is on the Approved Plans.

Comment [g53]: Joint

20
21 1.24 Environmental Compliance Assurance Procedure (ECAP) means procedures
22 incorporated into the ~~current~~ WSDOT *Construction Manual* M41-01.05 ~~dated July 2008~~
23 (Section 1-2.2k(1)) and the WSDOT *Environmental Procedures Manual* M31-11.05
24 (Sections 610 and 690) ~~dated October 2008~~, as modified by this Agreement, which
25 provide guidance on compliance with Environmental Laws and environmental
26 Remediation. The purpose of the ECAP is to recognize and eliminate environmental
27 violations during the construction phase on STATE construction sites and to ensure
28 prompt notification to STATE management and agencies. For purposes of the ECAP,
29 violations are defined as actions that are not in compliance with environmental standards,
30 permits, or laws.

Comment [g54]: Joint

31 1.24 Environmental Law(s) means any environmentally related local, state or federal
32 law, regulation, ordinance or order (including without limitation any final order of any
33 court of competent jurisdiction of which the STATE has knowledge), now or hereafter in
34 effect including, but not limited to: the Federal Clean Air Act; the Federal Water
35 Pollution Control Act; the Federal Safe Drinking Water Act; the Federal Comprehensive
36 Environmental Response Compensation and Liability Act, as amended by the Superfund
37 Amendments and Reauthorization Act of 1986; the Federal Resource Conservation and
38 Recovery Act, as amended by the Solid and Hazardous Waste Amendments of 1984; the
39 Federal Occupational Safety and Health Act; the Federal Emergency Planning and Right-
40 to-Know Act of 1986; the Federal Hazardous Materials Transportation Control Act of
41 1980; the Federal Clean Water Act of 1977; the Federal Insecticide, Fungicide and
42 Rodenticide Act; the Federal Waste Management Recovery and Recycling Act; the
43 Washington Hazardous Waste Management Act; the Washington Hazardous Waste Fees
44 Act; Washington Model Toxics Control Act; the Washington Nuclear Energy and

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GREEN HIGHLIGHT = Staff to resolve

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1 Radiation Act; the Washington Radioactive Waste Storage and Transportation Act; the
2 Washington Underground Petroleum Storage Tanks Act; and any regulations
3 promulgated thereunder from time to time.

Comment [g55]: Joint

4
5 1.25 Final Design Submittal means plans, specifications, and design documentation
6 representing complete design of a given project element in a Design-Build Contract. The
7 Final Design Submittal addresses and incorporates review comments from the
8 Preliminary Design Submittal.

Comment [RF56]: Joint

9
10 1.26 Final Plan Review Package means the Plan Review Package submitted to the
11 CITY that is comprised of the STATE's contract documents including contract addenda
12 and fully incorporates or otherwise addresses all CITY plan review comments and all
13 applicable conditions of the Street Use Permit.

Comment [RF57]: Move to Exhibit

14
15 1.27 Hazardous Substance(s) means any substance, or substance containing any
16 component, now or hereafter designated as a hazardous, dangerous, toxic or harmful
17 substance, material or waste, subject to regulation under any federal, state or local law,
18 regulation or ordinance relating to environmental protection, contamination or cleanup
19 including, but not limited to, those substances, materials and wastes listed in the United
20 States Department of Transportation Hazardous Materials Table (49 C.F.R. §172.101) or
21 by the United States Environmental Protection Agency as hazardous substances (40
22 C.F.R. pt. 302 and amendments thereto) or in the Washington Hazardous Waste
23 Management Act (Ch. 70.105 RCW) or the Washington Model Toxics Control Act (Chs.
24 70.105D RCW and 82.21 RCW), petroleum products and their derivatives, and such
25 other substances, materials and wastes as become regulated or subject to cleanup
26 authority under any Environmental Law.

Comment [g58]: Joint

27
28 1.28 Letter of Acceptance means the written document that signifies the CITY's
29 acceptance of CITY Infrastructure to be owned by the CITY, and shall signify the
30 STATE's transfer of CITY Infrastructure to be owned by the CITY. The Letter of
31 Acceptance will not transfer any interest in real property. The Letter of Acceptance shall
32 be jointly executed by the PARTIES. A Letter of Acceptance for SPU Facilities requires
33 SPU approval and a Letter of Acceptance for SCL Facilities requires SCL approval.

Comment [g59]: Joint

34
35 1.29 Letter of Plan Approval means the letter provided to the STATE by the CITY
36 following the completion of the plan review process, signifying that the plans and
37 specifications identified in the letter are the Approved Plans.

Comment [g60]: Joint

38
39 1.30 MTCA means the Washington Model Toxics Control Act (Chs. 70.105D RCW
40 and 82.21 RCW).

Comment [g61]: Joint

41
42 1.31 New Work means the design and construction by or at the direction of UTILITY
43 of a new utility other than (a) as part of a relocation associated with the PROJECT, or (b)

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1 to provide service to the PROJECT. New Work shall be entirely the financial obligation
2 of UTILITY.

Comment [RF62]: Is this needed in SDOT?

3
4 1.32 Preliminary Engineering means the portion of the Project engineering which
5 advances the Project design to address Type, Size, and Location (“TS&L”) for all
6 components of the Project. Design will have advanced sufficiently to define alignments
7 and identify conflicts. Preliminary engineering will include an estimate for final design
8 and a preliminary cost for construction.

Comment [g63]: Joint

9
10 1.33 Plan Review Package means clear and complete plans, specifications, and the
11 necessary assumptions, studies, models and calculations upon which the design was
12 based, and corrections previously requested by the CITY with respect to Design Bid
13 Build Projects.

Comment [g64]: Joint

14
15 1.34 100% Plan Review Package means the Plan Review Package submitted to the
16 CITY concurrent with STATE’s final internal review of the construction contract plans
17 and contract provisions that shall evidence the agreement between the STATE and its
18 contractors for construction of Design Bid Build Projects.

Comment [RF65]: Joint

19
20 1.35 Plans, Specifications, and Estimate (“PS&E”) means the portion of the PROJECT
21 engineering after the Preliminary Engineering, which advances the PROJECT design by
22 preparing contract-ready documents and the engineer’s cost estimate. At this stage the
23 specifications are written and tailored to the plans so that all work can be measured and
24 has a pay item. The cost estimate is formalized using the established specifications, pay
25 items and quantity takeoffs, for 60% through 100% completion of the total design effort.

Comment [RF66]: Joint

26
27 1.36 Preliminary Design Submittal means in a Design-Build Contract, a formal
28 opportunity for the STATE, the Design-Builder, various design team disciplines, and
29 other approved Project stakeholders to review the construction documents in order to
30 ensure that the design is progressing appropriately and proceeding in the right direction;
31 the plans reflect Design-Builder requirements for construction; design features are
32 coordinated; and there are no fatal flaws within a given discipline or between disciplines.

Comment [g67]: Joint

33
34 1.37 Private Utilities means utility uses, excluding facilities owned and operated by the
35 CITY, approved through franchise agreements and/or Street Use Permits by the CITY
36 and governed and enforced through City Ordinance.

Comment [g68]: Joint

37
38 1.38 PROJECT means the Proposed Bored Tunnel Project, the part of the PROGRAM
39 that replaces SR 99 from South Royal Brougham Street to ~~Market~~ Street and that consists
40 of designing and constructing a four-lane bored tunnel from South King Street to Thomas
41 Street, north and south tunnel portals and access streets, re-establishment of the City
42 street grid in the vicinity of the portals ~~(Battery Street Tunnel decommissioning and~~
43 ~~Alaskan Way Viaduct demolition will be addressed in a future agreement)~~, and associated
44 utility relocations.

Comment [g69]: Joint. This definition does not currently include the demolition of the Alaskan Way Viaduct and the decommissioning of the Battery Street Tunnel.

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1
2 1.39 PROGRAM means the AWVSR Program which consists of a four-lane bored
3 tunnel and improvements to City streets, the City waterfront, and transit; and the Moving
4 Forward Projects as defined in GCA 6366.

Comment [RF70]: Joint

5
6 Program Property means all real property interests acquired and to be acquired by the
7 STATE for the PROGRAM.

8
9 Program Transfer Property means all Program Property identified by the STATE and the
10 CITY for transfer from the STATE to the CITY in fee simple.

11
12 Project Property means all real property interests acquired and to be acquired by the
13 STATE and used for the PROJECT.

14
15 1.40 Project Engineer means the persons appointed by the STATE to lead the
16 PROJECT during design and/or construction or his or her designee.

Comment [RF71]: Joint

17
18 1.41 Released for Construction Submittal means in a Design-Build Contract, plans and
19 specifications for a given project element that are construction ready and have been
20 certified by the Design-Builder as having met all contract requirements and received all
21 approvals and permits. The Released for Construction Submittal addresses all review
22 comments from the Preliminary and Final Design Submittals.

Comment [RF72]: Joint

23
24 Relinquishment Property

Comment [g73]: TBD

25
26 1.42 Remediation means the same as Remedy or Remedial Action defined in MTCA
27 which includes any action or expenditure consistent with the purposes of MTCA to
28 identify, eliminate, or minimize any threat or potential threat posed by Hazardous
29 Substances to human health or the environment including any investigative and
30 monitoring activities with respect to any release or threatened release of a Hazardous
31 Substance and any assessments to determine the risk or potential risk to human health or
32 the environment.

Comment [RF74]: Joint

33
34 1.43 Round Table Meeting means a meeting typically held five (5) weeks following
35 the submittal of the 100% Plan Review Package to the CITY and STATE, and commonly
36 attended by the STATE's Project team and STATE reviewers to resolve and address
37 STATE comments on the 100% Plan Review Package.

Comment [RF75]: Joint

38
39 1.43 SCL means Seattle City Light.

Comment [RF76]: Joint

40
41 1.44 SCL Facilities means the electrical facilities impacted by, or constructed as part
42 of, the PROJECT that are owned or to be owned by the CITY.

Comment [RF77]: Joint

43

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- 1 1.45 SCL Facilities Work means work required to design, construct and protect the
2 SCL Facilities as part of the PROJECT. Comment [g78]: Joint
- 3
4 1.46 SDOT means the Seattle Department of Transportation. Comment [RF79]: Joint
- 5
6 1.47 SPU means Seattle Public Utilities. Comment [RF80]: Joint
- 7
8 1.48 SPU Facilities means the water, drainage and wastewater facilities impacted by,
9 or constructed as part of, the PROJECT that are owned or to be owned by the CITY. Comment [RF81]: Joint
- 10
11 1.49 SPU Facilities Work means work required to design, construct and protect the
12 SPU Facilities as part of the PROJECT.
- 13
14 1.50 STATE means the State of Washington Department of Transportation and may
15 include its Contractors, Subcontractors, Agents and Assigns. Comment [RF82]: Joint
- 16
17 1.51 STATE Designated Representative means the STATE official listed in Section 25
18 of this Agreement. Comment [RF83]: Joint
- 19
20 1.52 Street Use Permit means written authorization secured by the STATE from the
21 Director of SDOT for use of the CITY Street Right-of-Way pursuant to Title 15 of the
22 Seattle Municipal Code. Comment [RF84]: Joint
- 23
24 1.53 Submittal Control Document means a list of all documents or reports that are
25 required by the Approved Plans or construction contract documents or applicable law to
26 be provided to or submitted to the STATE and the CITY. Comment [RF85]: Joint
- 27
28 Surplus Property means Program Property, excluding Program Transfer Property and
29 other CITY Interest Property, that upon completion of the PROJECT has not been
30 designated as part of the limited access or non-limited access right-of-way of State Route
31 99.
- 32
33 1.54 Task Force means a group consisting of State, City, contractor, and other
34 stakeholder staff meeting regularly to review and reach decisions relating to a particular
35 subject, e.g., traffic, structures. Comment [g86]: Joint
- 36
37 1.55 Task Order means a document executed by the PARTIES under this Agreement
38 authorizing work by one party to be done on behalf of the other party and that defines the
39 scope and the obligations of the PARTIES for the given element of work. All terms and
40 conditions of the Agreement shall apply to each Task Order. Comment [g87]: Joint
- 41
42 1.56 WSDOT means Washington State Department of Transportation. Comment [RF88]: Joint
- 43

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

Comment [W89]: Joint

3
4
5 **2. GENERAL RESPONSIBILITIES**

6
7 2.1 The PARTIES shall manage risk, produce design and conduct construction in a
8 manner that maximizes cumulative public benefits and minimizes cumulative public costs
9 as mutually agreed to by the PARTIES.

Comment [W90]: Joint Language

10
11 2.2 This Agreement in conjunction with UT 01474 and UT 01476 is prepared by the
12 STATE and CITY to govern relationships between the PARTIES and establish each
13 Party's responsibilities regarding the PROJECT as described in Exhibit A, Project
14 Description.

Comment [W91]: Joint

15
16 2.3 The PARTIES understand that environmental review of the proposed PROJECT
17 is underway at the date of this agreement and agree that if an alternative other than the
18 Proposed Bored Tunnel is selected, this agreement shall not be applicable.

Comment [W92]: City

19
20 2.4 The PARTIES shall work collaboratively to resolve issues in a manner that
21 endeavors to open the Proposed Bored Tunnel to the public on schedule.

Comment [W93]: Joint

22
23 2.5 The design and construction of CITY infrastructure, including infrastructure
24 repair, shall comply with City of Seattle codes, rules, regulations and standards.

Comment [W94]: Joint

25
26 2.6 Each Party shall provide the funding and resources necessary to fulfill the
27 responsibility of that Party as established in this Agreement.

Comment [W95]: Joint

28
29 2.7 The PARTIES agree to work cooperatively with each other and make reasonable,
30 good faith efforts to timely and expeditiously complete the PROJECT, as provided in this
31 Agreement, including, but not limited to, the selection of a preferred SR 99 design
32 alternative; development of preliminary engineering and final design and construction. In
33 order to optimize design and minimize conflicts, the STATE shall coordinate design and
34 construction of the various contracts making up the PROJECT with design of subsequent
35 PROGRAM stages, and with construction of previous stages of the PROGRAM. The
36 STATE shall be prepared to modify design of the contracts making up the PROJECT, the
37 subsequent PROGRAM stage and/or previous phase if both PARTIES determine the
38 modifications are necessary and reasonable, to minimize conflicts.

Comment [W96]: Joint

39
40 2.8 The PARTIES agree to work cooperatively with each other and make reasonable,
41 good faith efforts to timely and expeditiously complete the PROJECT, as provided in this
42 Agreement, including, but not limited to, the selection of a preferred SR 99 design
43 alternative; development of preliminary engineering and final design and construction.

Comment [W97]: Joint

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1 2.9 The STATE is responsible for designing and constructing the Proposed Bored
2 Tunnel portion of the Project. The STATE will take reasonable measures to minimize,
3 limit, and mitigate Damage to private property and CITY infrastructure including CITY
4 streets, CITY telecommunications facilities and CITY utilities that may result from the
5 Proposed Bored Tunnel construction, including Damage that may result from tunnel-
6 induced deformation. WSDOT is responsible for remedy such Damage should it occur.

Comment [W98]: Joint - Damage definition pending

8 2.10 The CITY is responsible for relocating those existing UTILITY Facilities that
9 have alignments intersecting the final configuration of the proposed SR 99 bored tunnel
10 portals and tunnel portal excavations.

Comment [JRB99]: Remove from the SDOT MoA and just use in UTILITY MoAs.

11
12 2.11 The PARTIES agree that it is in the public interest for one PARTY to implement
13 portions of the other PARTY's PROJECT responsibilities. Therefore, this Agreement
14 establishes a Task Order process for use by a PARTY to authorize the other PARTY to
15 conduct work on its behalf, and as may be documented through each Task Order, agree to
16 reimburse the other PARTY for such services.

17
18 2.12 During conceptual and preliminary design of the PROJECT, the PARTIES shall
19 jointly identify Conflicting Facilities and plan for the relocation of these Conflicting
20 Utilities. The STATE agrees to prepare a Conceptual Utility Relocation Plan that
21 documents a feasible conceptual approach to relocating Conflicting Facilities in a manner
22 that accommodates the PROJECT. The PARTIES shall mutually determine the feasibility
23 of the Conceptual Utility Relocation Plan. The Conceptual Utility Relocation Plan shall
24 include:

Comment [JRB100]: Just include in UTILITY MoAs.

25
26 2.12.1 The STATE's conceptual design of the PROJECT.

27 2.12.2 Identification of Conflicting Facilities.

28 2.12.3 The STATE's request for UTILITY to relocate Conflicting Facilities
29 based on the STATE's conceptual design of the PROJECT.

30 2.12.4 A feasible conceptual design that demonstrates compatibility with
31 existing infrastructure to remain.

32 2.12.5 Plan view drawings drafted to an engineering scale of 1 inch equals 40
33 feet showing the existing configuration of Conflicting Facilities, proposed
34 configuration of relocated CITY Infrastructure, and all existing infrastructure to
35 remain adjacent to relocated CITY Infrastructure.

36 2.12.6 Roadway and utility cross-sections necessary to demonstrate the
37 feasibility of the conceptual design.

38 2.12.7 Utility profiles and elevations necessary to demonstrate the feasibility of
39 the conceptual design.

40 2.12.8 Identification of Conflicting Facilities that require multiple relocations
41 in order to accommodate the PROJECT along with the circumstances that cause
42 the need for such multiple relocations.

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1 2.12.9 A schedule for relocation of Conflicting Facilities that is coordinated
2 with the proposed design and construction schedule for other work within the
3 PROJECT.

4 2.12.10 A contracting strategy for design and construction of each Conflicting
5 Facility identified for relocation including a proposal for Task Orders necessary
6 for UTILITY to authorize the STATE to perform services on its behalf.

7 2.12.11 An estimate of design services to be performed by the STATE on behalf
8 of the UTILITY.

9 2.12.12 An estimate of construction costs commensurate with the level of
10 conceptual design.

11 2.12.13 [what else???

12
13 2.13 UTILITY shall review and comment on the Conceptual Utility Relocation Plan.
14 The PARTIES shall address UTILITY's comments on the Conceptual Utility Relocation
15 Plan to the PARTIES' mutual satisfaction.

16
17 2.14 The PARTIES shall use the final Conceptual Utility Relocation Plan as the basis
18 for negotiating each PARTY's design, construction and funding responsibilities for
19 multiple utility relocations.

20
21 2.15 UTILITY's responsibility for the design and construction of Conflicting Facilities
22 relocations begins when the PARTIES have written mutual agreement regarding the
23 content of the Conceptual Utility Relocation Plan and each PARTY's responsibilities for
24 multiple utility relocations.

25
26 2.16 The PARTIES shall use the Conceptual Utility Relocation Plan as the basis for
27 establishing the STATE's scope, schedule and estimated costs of design and construction
28 services to be documented in Task Orders under this Agreement.

29
30 2.17 In instances where the STATE's revisions to the PROJECT design differ so
31 significantly from the conceptual design presented in the Conceptual Utility Relocation
32 Plan as to render UTILITY's relocation design or construction work obsolete, the STATE
33 shall reimburse UTILITY for the accrued costs of obsolete work.

34
35 **3. PROPERTY ACQUISITION AND TRANSFER; RELINQUISHMENT;
36 SURPLUS PROPERTY**

Comment [W101]: TBD

37
38 3.1 Acquisition

39
40 3.1.1 The STATE has or will acquire, at its expense, the Project Property. The
41 CITY will acquire, at its expense, any utility-related property right necessary for the
42 relocation of SPU or SCL Facilities that cannot be accommodated within Project Property
43 or existing CITY right of way.

44

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1 3.1.2 The STATE is responsible, at its expense, for performance of all
2 appraisals, appraisal review, title review, surveys, property investigation, relocation
3 assistance and all other investigations and services in connection with the acquisition of
4 the Project Property. For each parcel of Program Transfer Property, the STATE shall
5 deliver to the CITY, as soon as practicable after a parcel is acquired and identified by the
6 PARTIES as Program Transfer Property, all documents created, commissioned or
7 received in connection with the STATE's acquisition of such parcel. Such documents
8 shall include, to the extent applicable, appraisals, appraisal reviews, title reports and all
9 documentation concerning title encumbrances, title policies, surveys, geotechnical
10 reports, purchase agreements, term sheets, options, leases, deeds, indemnities, and all
11 other documents and information created, commissioned or received by the STATE.

Comment [HMc102]: Hannah and Theresa to verify that the documentation listed here matches the requirements in WSDOT's ROW Manual. If it does, consider just referencing ROW Manual.

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

Comment [HMc103]: Theresa to share with WSDOT environmental team.

29
30 3.2 Transfer

31
32 3.2.1 On or before December 31, 2011, the STATE and the CITY shall enter
33 into a separate written agreement governing transfer of Program Transfer Property to the
34 CITY. The agreement shall provide that each transfer to the CITY shall be by deed. The
35 agreement shall also provide the following: timing of transfer, condition of title,
36 protection for utilities in the event of future sale, the following release and
37 indemnification provision:

38
39 "The STATE hereby releases and indemnifies, protects and holds harmless the
40 City of Seattle and its officers, officials, employees, and agents working within
41 the scope of their employment from all liability and claims (including but not
42 limited to liability and claims for response and remediation costs, administrative
43 costs, fines, charges, penalties, attorney fees and cost recovery or similar actions
44 brought by a governmental or private party, including third party tort liability)

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1 arising, directly or indirectly, from any presence or release of any Hazardous
2 Substance remaining within or transported from the real property in which an
3 interest is transferred.”

4
5 and the definitions of Hazardous Substance and Environmental Law contained in this
6 SDOT Agreement. The foregoing is not an exclusive list.

7
8 [3.2.2] Whether or not any separate agreement or transfer document is made,
9 effective beginning on the date of transfer of each real property interest from the STATE
10 to the CITY in connection with the PROGRAM, the STATE shall release and indemnify,
11 protect and hold harmless the City of Seattle and its officers, officials, employees, and
12 agents working within the scope of their employment from all liability and claims
13 (including but not limited to liability and claims for response and remediation costs,
14 administrative costs, fines, charges, penalties, attorney fees and cost recovery or similar
15 actions brought by a governmental or private party, including third party tort liability)
16 arising, directly or indirectly, from any presence or release of any Hazardous Substance
17 remaining within or transported from the real property in which an interest is transferred.

Comment [HMc104]: Theresa to share with
WSDOT environmental team.

18
19 3.3 Surplus Property. Within two (2) years after completion of the PROJECT, the
20 STATE shall complete its disposal of all Surplus Property following the procedures in the
21 WSDOT *Right of Way Manual M 26-01.02*, dated August 2009, Chapter 11, Sections 11-
22 7.1 – 11-7.4.2. Disposal includes any of the disposal methods described in Chapter 11,
23 Sections 11-7.1 – 11-7.4.2. The parties may agree to extend the two year period if
24 disposal of surplus property is not reasonably feasible.

25
26 3.4 Survival. The obligations set forth in this Section 3 shall survive termination of
27 this SDOT Agreement unless otherwise expressly negotiated by the PARTIES and
28 memorialized by written amendment to this SDOT Agreement.

29
30 3.5 Where UTILITY Facilities are located in or near an area which the STATE
31 designates as a Limited Access Facility, the STATE will ensure that UTILITY continues
32 to be allowed access to its UTILITIES.

33 3.5.1 The STATE's Limited Access Facility designation for the tunnel shall
34 contain a vertical and horizontal boundary.

35 3.5.2 The STATE agrees that any Limited Access Facility designation for the
36 tunnel will allow UTILITY to access its UTILITY Facilities.

37 3.5.3 The area between the Limited Access Facility boundaries and the CITY
38 street shall continue to be CITY Street Right-of-Way.

39 3.5.4 In the event the STATE designates as a Limited Access Facility any area
40 in or near the tunnel portals on which a UTILITY Facility exists or will be relocated, the
41 STATE agrees to provide UTILITY a UTILITY franchise in the form attached hereto as
42 Exhibit A, pursuant to the requirements of Section 14 herein [OR provide for access to
43 operate and maintain 24/7.] and will make every effort to develop a design that
44 minimizes the need for regular, on-going maintenance access as reasonably feasible.

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1
2
3 THIS SECTION TO BE PREPARED BY Theresa and Hannah

Comment [g105]: Needs elevation

4
5 **4. TASK ORDERS**

6
7 4.1 Some or all of the work undertaken pursuant to this Agreement may be governed
8 by Task Orders. Each Task Order shall be substantially similar to Exhibit C and shall
9 document the scope of services, schedule of services, itemized estimate of costs, and any
10 provisions specific to the scope of services. Task Orders shall be subject to the
11 provisions of this Agreement. Either PARTY may initiate a Task Order which will be
12 jointly executed by the PARTIES.

Comment [g106]: Joint

13
14 4.2 Partial Task Order payments, if any, shall be made upon invoice from the Party
15 providing services, to cover actual direct and related indirect costs incurred at rates
16 established in each Task Order. It is agreed that any such partial payment will not
17 constitute agreement as to the appropriateness of services and that, at the time of final
18 audit, all required adjustments will be made and reflected in a final payment. The Party
19 providing services shall submit itemized invoices within sixty (60) calendar days of the
20 end of the calendar month in which the services were performed. Invoices for partial
21 payment shall not be submitted more frequently than once per month. The invoices shall
22 substantially conform to the invoice requirements shown in Exhibit D. The PARTIES
23 agree to make payment for services completed and invoiced within thirty (30) calendar
24 days of receiving an invoice.

Comment [W107]: Joint

25
26 4.3 Audit Requirements for Task Order Activity

27 THIS SECTION TO BE PREPARED BY Theresa and Hannah

28
29
30 4.4 Task Order Closeout Requirement

31 THIS SECTION TO BE PREPARED BY Theresa and Hannah

32
33
34 **5. ENVIRONMENTAL REMEDIATION DURING CONSTRUCTION**

Comment [g108]: Joint

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 the Plan
40 Review Packages circulated for CITY review and in Design-Build Contract-related
41 documentation, including Preliminary and Final Design Submittals, that are relevant to
42 CITY Interest Property. In addition, the STATE shall be responsible for identification,
43 investigation and Remediation of Hazardous Substances discovered during construction
44 at CITY Interest Property. For CITY Interest Property, provisions for Remediation of

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1 known Hazardous Substances, approved Remediation plans, and provisions for
2 Remediation of Hazardous Substances discovered during construction shall be included
3 in the Plan Review Packages and Approved Plans and in Design-Build Contract-related
4 documentation, including Preliminary and Final Design Submittals, that are relevant to
5 CITY Interest Property. Nothing in this Agreement is intended to alter the legal
6 obligations of the STATE with respect to hazardous substances that may remain in place
7 after completion of the PROJECT except for release and indemnity provisions of this
8 Agreement.

Comment [RF109]: Joint

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

Comment [RF110]: Joint

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

Comment [RF111]: Joint

28
29 5.4 At or adjacent to CITY Interest Property, under certain circumstances, and in
30 consultation with the CITY, the STATE may conduct additional Remediation of
31 contaminated areas, including areas outside the limits of the PROJECT. These
32 circumstances may include, but are not limited to:

Comment [RF112]: Joint

33
34 5.4.1 Instances in which Remediation may be necessary to prevent adverse
35 water quality impacts and/or to comply with other State and Federal permit
36 conditions;

37 5.4.2 Instances that in the judgment of the STATE Project Engineer require
38 immediate Remediation to protect public health and safety;

39 5.4.3 Where regulatory agencies with jurisdiction require additional
40 Remediation;

41 5.4.4 Where additional Remediation is necessary to prevent recontamination of
42 the limits of the PROJECT, address subsurface utility facilities located or planned
43 within or near the limits of the PROJECT or within the Project Property, or
44 address disturbance or exacerbation of existing contamination; and

HIGHLIGHTED TEXT = Elevate to Leadership

GREEN HIGHLIGHT = Staff to resolve

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1 5.4.5 Where additional Remediation is necessary to meet mutually acceptable
2 risk management standards in accordance with STATE and CITY protocols,

Comment [RF113]: Joint

3
4 5.5 All work at CITY Interest Property shall comply with the then-current WSDOT
5 *Environmental Procedures Manual M 31-11* and WSDOT *Construction Manual M41-01*,
6 Environmental Law, and all applicable CITY regulations except as modified by this
7 Agreement,

Comment [RF114]: Joint

8
9 5.6 The STATE shall include the CITY in its ECAP when unanticipated
10 contamination is found within the limits of the PROJECT at or adjacent to CITY Interest
11 Property. Notification procedures will include notifying the CITY orally followed by
12 written notification,

Comment [RF115]: Joint

13
14 5.7 The STATE's Project Engineer shall determine, in consultation with the CITY,
15 Remediation of known and unanticipated Hazardous Substances at or adjacent to CITY
16 Interest Property within the limits of the PROJECT. In instances where the CITY
17 disputes the STATE's plan(s) for Remediation in connection with CITY Interest
18 Property, the CITY and STATE will resolve the dispute through the dispute resolution
19 process in Section 21 of this Agreement,

Comment [RF116]: Joint

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

Comment [RF117]: Joint

28
29 5.9 Prior to the start of construction, and after the contractor has been selected, the
30 STATE shall initiate and host an environmental preconstruction meeting. The STATE
31 shall invite City of Seattle staff, STATE staff and the STATE contractor to discuss
32 known contamination, environmental procedures, environmental Remediation and permit
33 conditions that apply to CITY Interest Property in connection with the PROJECT,

Comment [RF118]: Joint

34
35 5.10 The PARTIES shall obtain all required permits and approvals for Remediation at
36 CITY Interest Property,

Comment [RF119]: Joint

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

Comment [RF120]: Joint

44

HIGHLIGHTED TEXT = Elevate to Leadership

GREEN HIGHLIGHT = Staff to resolve

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1 5.12 The STATE shall provide the CITY with copies of environmental close-out
2 reports for Remediation activities at CITY Interest Property.

Comment [RF121]: Joint

3
4 5.13 All costs associated with testing, handling, storing, removing, transporting,
5 disposing, or treating Hazardous Substances that are excavated in connection with the
6 PROJECT relating to CITY Interest Property shall be paid by the STATE. In addition,
7 STATE shall be responsible for all costs associated with Remediation of any releases that
8 are caused or exacerbated by its own employees or contractors. The STATE shall be
9 identified as the generator for these Hazardous Substances.

Comment [RF122]: Joint

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

Comment [RF123]: Joint

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

Comment [RF124]: Joint

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

Comment [RF125]: Joint

43
44 **6. PERMITTING AND RIGHT-OF-WAY USE**

HIGHLIGHTED TEXT = Elevate to Leadership

GREEN HIGHLIGHT = Staff to resolve

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1
2 6.1 The PARTIES shall apply for and obtain all necessary federal, state and City of
3 Seattle-issued permits and approvals for the work for which they are responsible prior to
4 commencing work that requires such permits, including but not limited to all permits,
5 approvals or permission for exploratory investigations, testing, site preparations,
6 demolition and construction.
7
8 6.2 The CITY authorizes the STATE to use CITY Street Right-of-Way for the
9 PROJECT, subject to issuance and provisions of Street Use Permits and the conditions
10 contained in this Agreement. The STATE's use of CITY Street Right-of-Way shall
11 comply with the Seattle Municipal Code and all other applicable laws, including but not
12 limited to the Shoreline Management Act, the National Environmental Policy Act and the
13 State Environmental Policy Act.
14
15 6.3 The PARTIES agree that for both design-build and design-bid-build portions of
16 the PROJECT, the PARTIES shall obtain Street Use Permit consistent with the
17 provisions in Section 5 of this Agreement prior to undertaking work in the CITY Street
18 Right of Way.
19
20 6.4 Conditions applicable to the Street Use Permits issued for CITY Street Right-of-
21 Way in connection with the PROJECT will apply to Project work outside the current
22 Right of Way.
23
24 6.5 The PARTIES agrees to abide by and comply with all requirements and
25 conditions of the Street Use Permit. After the Street Use Permit is issued, the responsible
26 PARTY will obtain Letters of Plan Approval for any subsequent revisions for
27 advancement of design or amendments to the Street Use Permit as set forth in the
28 Procedures.
29
30 6.6 The Street Use Permit and Letters of Plan Approval are not a representation or
31 assurance that the design or plans comply with applicable laws, regulations, ordinances or
32 codes, nor shall the Street Use Permit or Letter of Plan Approval be construed to
33 authorize any failure to comply with any of the foregoing.
34
35 6.7 The STATE shall be responsible for ordering and managing the relocation of any
36 and all private utilities required for performance of the work on the PROJECT, and the
37 STATE shall require its construction contractors to schedule and coordinate their
38 activities with the relocation of private utilities so that neither the construction contractors
39 nor the private utilities are adversely impacted by the other's activities. The city shall
40 assist and cooperate with the state as the state performs its obligations under this
41 provision, including, but not limited, the CITY co-signing the state relocation notices to
42 the private utility owners and the city joining the state as an additional plaintiff in any
43 litigation the state may need to pursue in order to require the private utilities to relocate.
44 The STATE shall protect, defend, indemnify, and save harmless the CITY and CITY

Comment [W126]: Joint

Comment [g127]: Joint

Comment [g128]: Joint

Comment [RF129]: Joint

Comment [RF130]: Needs clarification for application to Limited Access

Comment [g131]: Joint

Comment [g132]: Joint

Comment [g133]: Joint

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GREEN HIGHLIGHT = Staff to resolve

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1 officers, officials, employees, and agents (while acting in their official capacities) for any
2 claims, costs, demands, judgments, or other liabilities that the CITY or its officers
3 employees or agents may incur that arise out of, result from, are connected to, or are due
4 to the orders to relocate, or to the relocation of, any and all private utilities for the
5 PROJECT

Comment [g134]: City

7. DESIGN, PLAN REVIEW AND CHANGE MANAGEMENT

7.1 The PARTIES agree to work cooperatively with each other and shall make
reasonable, good faith efforts to timely and expeditiously complete PROJECT designs

Comment [RF135]: Joint

7.2 The STATE shall consult the CITY with regard to planning, design and
construction of the PROJECT

Comment [RF136]: Joint

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

Comment [g137]: Fire Department – separate agreement?

7.4 The PARTIES agree to prepare PROJECT designs and Plan Review Packages,
and Release for Construction Submittals pursuant to the provisions established in this
Agreement and the procedures defined in Exhibit B

Comment [RF138]: Joint

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

Comment [RF139]: Joint

7.6 The PARTIES shall conduct reviews of all stages of design to ascertain that CITY
Infrastructure designs, and provisions for PROJECT construction within CITY Street
Right-of-Way comply with City Standards

Comment [g140]: Joint

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

Comment [RF141]: Joint

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

Comment [RF142]: Joint

7.9 The CITY shall not give direction to the STATE's consultants or contractors
during the design collaboration and design review

Comment [RF143]: Joint

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

Comment [RF144]: Joint

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1 7.11 The STATE shall obtain the CITY's design **approval** for all City Infrastructure,
2 and for PROJECT work within City Street Right-of-Way prior to constructing such work.

Comment [RF145]: TBD

3
4 7.12 CITY Infrastructure designs and provisions for PROJECT construction shall
5 comply with City Standards.

Comment [RF146]: Joint

6
7 7.13 The PARTIES agree that design of CITY Infrastructure shall consider long-term
8 operation and maintenance costs and requirements, and minimize potential interruptions
9 and disruptions to CITY utility customers.

Comment [RF147]: Joint

10
11 7.14 The STATE shall obtain the CITY's approval prior to incorporating any
12 deviations from City Standards into the design or construction of all City Infrastructure.

Comment [RF148]: Joint

13
14 7.15 The PARTIES agree that Approved Plans or Released for Construction Submittal
15 for each component of the PROJECT shall be **stamped** by an Engineer of Record
16 representing the PARTY preparing the Approved Plans pursuant to the requirements of
17 State law.

Comment [RF149]: Joint – stamped or sealed?

18
19 7.16 The PARTIES shall first obtain the review and concurrence of the CITY prior to
20 making or implementing revisions or deviations from the Approved Plans for any such
21 revisions or deviations pertaining to the following:

Comment [RF150]: Joint

22
23 7.16.1 CITY Infrastructure.

24 7.16.2 PROJECT work that alters or impacts the configuration, condition or
25 use of CITY property including existing and proposed CITY roadway and utility
26 facilities.

27 7.16.3 PROJECT work that alters access to existing and proposed CITY
28 roadways and utility facilities.

29 7.16.4 PROJECT work that alters or impacts private property.

30 7.16.5 PROJECT urban design as established in Section 8.

31 7.16.6 The temporary or permanent use or operation of CITY Right-of-Way
32 including maintenance of traffic.

33 7.16.7 Mitigation measures established by the STATE's review and
34 determination of PROJECT environmental impacts pursuant to State and City
35 environmental policy laws.

36 7.16.8 Private utilities within CITY right-of-way.

37 7.16.9 Transit facilities within CITY right-of-way.

Comment [RF151]: Joint

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

Comment [RF152]: Joint

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1
2 **8. URBAN DESIGN**

Comment [g153]: WSDOT

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

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

12
13 8.3 The STATE has develop visual guidelines based on these Bored Tunnel Design
14 Goals and Objectives and Guiding Principles. The visual guidelines include :

- 15 • Functional transportation and development configurations,
- 16 • Landscaping concepts,
- 17 • Architectural and design concepts for walls, bridges and tunnel portals,
- 18 • Highway appurtenances architectural concepts (ie barrier type, light standards,
19 sign support types, sidewalk patterns, etc.)
- 20 • Trail and plaza architectural concepts

21 The visual guidelines were submitted to the Seattle Design Commission for review and
22 comment. The final visual guidelines were approved by the Seattle Department of
23 Transportation. The visual guidelines will be used as the basis for the PROJECT design.

24
25 8.4 The STATE has prepared Building Architectural Design Guidelines based on
26 Building Design Principals. The Building Architectural Design Guidelines include :

- 27 • Height and scale
- 28 • Façade treatments , including those that may not fully conform with façade
29 requirements generally applicable in the zones in which they are located.

30 The Building Architectural Design Guidelines were submitted to the Seattle Design
31 Commission for review and comment. The Building Architectural Design Guidelines
32 were approved by the Seattle Department of Transportation. The Building Architectural
33 Design Guidelines will be used as the basis for the PROJECT design.

34
35 8.5 Conceptual designs that include building blocking, stacking, façade treatments,
36 façade materials and elevations shall be prepared in accordance with the Building
37 Architectural Design Guidelines and presented to the Seattle Design Commission (SDC)
38 in accordance with chapter 3.58.010 thru 3.59.080 of the Seattle Municipal Code.

Comment [sle154]: Include portal areas

Comment [sle155]: Design/builder will bring
draft designs.

39
40 8.6 The STATE shall endeavor to develop designs that incorporate SDC
41 recommendations. The CITY shall verify the STATE's incorporation of SCD
42 recommendations through the CITY review processes set forth in Section 5 in this
43 agreement.
44

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1 8.7 If SDOT and WSDOT cannot come to agreement on an urban design or
2 architectural issue or the incorporation of a SCD comment, the issue shall be referred to
3 Disputes Resolution in Section __ of this agreement.
4
5

6 **9. SCHEDULE**

Comment [W156]: WSDOT

7
8 9.1 The PARTIES will work together to develop Project Schedule(s) for work
9 associated with the PROJECT whether performed by the STATE or CITY.
10

Comment [W157]: Joint

11 9.2 The STATE will be responsible for developing and updating its PROJECT
12 Schedule(s) that identifies milestones for performing the work associated with the
13 PROJECT with CITY input.
14

Comment [RF158]: Joint

15 **10. FUNDING AND COMPENSATION**

16
17 10.1 The STATE shall provide necessary funding for all PROJECT costs as defined by
18 this Agreement without reimbursement from the City of Seattle, except for the City of
19 Seattle cost responsibilities established in this Agreement, in SCL Agreement UT01474,
20 and in SPU Agreement UT 01476. If for any reason PROJECT costs exceed the State
21 funding limit established by RCW 47.01.402, the STATE shall have the sole
22 responsibility for obtaining any needed additional spending authority without recourse to
23 any funding device that burdens Seattle area taxpayers or property owners or the City of
24 Seattle.
25

Comment [RF159]: WSDOT

26 10.1.1 The STATE will reimburse SDOT for Project Services through the
27 process provided for in Agreement GCA 5739, entitled Project Services
28 Agreement for State Route 99 Alaskan Way Viaduct and Seawall Replacement
29 Program and SR 519/I-90 Intermodal Access Project – I/C Improvements
30 (“Project Services Agreement”), and as amended by the PARTIES to modify the
31 process for the STATE’s reimbursement of the CITY services and to extend the
32 duration of the Project Services Agreement.
33

Comment [W160]: City

Comment [W161]: City

34 10.1.2 The categories of services to be provided by the CITY are: project
35 management, project controls and coordination, design review and consultation, permit
36 development and coordination, right of way services, and services to support construction
37 activities.
38

Comment [W162]: Joint

39 **11. PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES**

40
41 11.1 The STATE and the CITY agree that it is good public policy to utilize the
42 services of Disadvantaged Business Enterprises in the construction of public works
43 projects, to the fullest extent permitted by law.
44

Comment [RF163]: Joint

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1 11.2 In furtherance of the foregoing public policy, the STATE agrees to include
2 Disadvantaged Business Enterprise (DBE) provisions in its construction contracts to the
3 extent required by federal law for Projects under this Agreement.

Comment [RF164]: Joint

4 5 **12. MONITORING** 6

7 12.1 The STATE will design and implement a comprehensive instrumentation and
8 monitoring program for open cut, cut-and-cover, and tunnel construction, and the develop
9 and action plan for mitigating impacts of Deformation.

Comment [g165]: Joint

10
11 12.2 The STATE will implement a Construction Monitoring Task Force responsible
12 for the planning and implementation of the instrumentation and monitoring program and
13 processing data, evaluating results, and developing recommendations to mitigate
14 deformation. The Task Force has authority to direct rapid and effective changes in
15 construction to achieve Deformation mitigation.

Comment [g166]: Joint

16
17 12.3 The CITY will advise the STATE and participate in construction monitoring and
18 deformation management activities when these activities pertain to CITY Infrastructure.
19 The CITY will provide the STATE all necessary access to CITY Infrastructure for the
20 purposes of design or implementation of mitigation measures. The CITY may perform
21 mitigation measures on behalf of the STATE in a manner and schedule that supports the
22 STATE's project requirements.

Comment [g167]: Joint

23 24 **13. MAINTENANCE OF TRAFFIC** 25

26 13.1 The PARTIES agree that it is the goal of this PROJECT to maintain local
27 motorized and non-motorized traffic in safe corridors through the project area while
28 minimizing impact to the existing street system. To achieve this goal, the PARTIES shall
29 formulate plans to maintain traffic flow during construction of the PROJECT and shall
30 comply with Approved Plans and conditions of the Street Use Permit.

Comment [RF168]: Joint

31
32 13.2 The PARTIES agree to develop an outreach plan specifically focused on
33 maintenance-of-traffic issues. This outreach plan will elicit input from affected
34 stakeholders in the vicinity of the PROJECT. Affected stakeholders shall be determined
35 by the PARTIES.

Comment [RF169]: Joint

36
37 13.3 The STATE agrees to create a Maintenance-of-Traffic (MOT) Task Force for the
38 PROGRAM. The CITY agrees to be an active member on the Task Force.

Comment [RF170]: Joint

39
40 13.4 The CITY agrees be a participant in all planning for haul routes, and all haul route
41 traffic shall be regulated pursuant to the Street Use Permit and the provisions of this
42 agreement. Haul routes and times shall be approved by the CITY prior to the
43 commencement of hauling, and all haul routes shall be along arterial streets designated as

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1 major truck streets and must comply with downtown traffic control zone restrictions as
2 defined by the Seattle Municipal Code and implementing regulations,

Comment [RF171]: Joint

3
4 **14. CONSTRUCTION MANAGEMENT, INSPECTION AND CONTRACT**
5 **ADMINISTRATION**

6
7 14.1 It is anticipated that the STATE will develop and issue multiple construction
8 contracts to fulfill its PROJECT responsibilities. The STATE's construction contracts
9 will be conducted in accordance with current Washington State Department of
10 Transportation contracting practices,

Comment [g172]: Joint

11
12 14.2 The STATE shall act as the sole authority in the administration of the STATE
13 construction contracts. The STATE shall allow the CITY to consult with and make
14 inquiries of the STATE Project Engineer or designee, attend meetings, and have access to
15 documentation concerning the PROJECT. The CITY shall not provide direction, directly
16 or indirectly, to the STATE's consultant(s) or contractors. Except in the instances listed
17 below, the CITY shall direct all communications to the STATE's Project Engineer or
18 designee, including communications regarding compliance with Street Use Permits,
19 quality of construction and contractor performance,

Comment [g173]: Joint

20
21 14.3 The STATE will manage any requests from the CITY that have contractual or
22 scope-of-work impacts and will coordinate responses. The CITY will communicate with
23 STATE's consultants or contractors (1) where authorized to do so by the STATE's
24 Designated Representative; (2) to arrange for regulatory permitting and inspections made
25 pursuant to permits issued by the CITY other than Street Use Permits, e.g. electrical
26 permits or other permits obtained from the CITY by the consultant or contractor; and (3)
27 for the Street Use Permits, if necessary because of a threat to health or safety,

Comment [g174]: Joint

28
29 14.4 The CITY will provide qualified staff and consultants during construction. CITY
30 staff and consultants will communicate with the STATE Project Engineer or designee in
31 evaluating the conformity of CITY Infrastructure with the Approved Plans or Release for
32 Construction Submittal and will immediately notify the Project Engineer or designee of
33 any compliance issues. Notwithstanding any act or omission by the CITY pursuant to
34 this subsection, the STATE shall not be relieved of any of its authority over, and
35 responsibility for, the PROJECT, as provided for in Section 13.2 of this Agreement or
36 elsewhere in this Agreement,

Comment [g175]: Joint

37
38 14.5 The PARTIES agree to follow the process and procedure set forth in the
39 *Construction Management and Inspection Procedures* attached as Exhibit B to facilitate
40 compliance with the STATE and CITY processes. Revisions to the Procedures do not
41 require additional approval beyond execution of this Agreement,

Comment [g176]: Process to address administrative changes to Exhibit will be dealt with in City ordinance.

42 **15. FINAL INSPECTION AND PROJECT ACCEPTANCE**

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1 15.1 The PARTIES agree to follow the process and procedure set forth in the
2 *Construction Management and Inspection Procedures* attached as Exhibit B to facilitate
3 interim and final inspections and acceptance of CITY infrastructure. Revisions to the
4 Procedures do not require additional approval beyond execution of this Agreement.

Comment [g177]: Process to address administrative changes to Exhibit will be dealt with in City ordinance.

6 15.2 Following the satisfactory completion of the pre-final and final inspection
7 processes described in the *Construction Management and Inspection Procedures* attached
8 as Exhibit B, the CITY shall submit a written response notifying the STATE that CITY
9 Infrastructure has been constructed in accordance with the Approved Plans and Release
10 for Construction Submittal.

Comment [g178]: Joint

12 15.3 The CITY agrees, upon satisfactory completion of the PROJECT work
13 successfully placing City Infrastructure into operation, transfer and acceptance of any real
14 property on or in which CITY Infrastructure is located, and receipt from the STATE of
15 one color set of the Red-Line Plans, pursuant to Section 15, to deliver a Letter of
16 Acceptance, subject to any Defective Work, Damage or contractor claims caused by the
17 negligent acts or omissions of the STATE.

Comment [g179]: Joint

19 15.4 The PARTIES will execute one Letter of Acceptance for each contract unless
20 both PARTIES agree to phase CITY Infrastructure acceptance by those geographic areas
21 or select portions of the PROJECT in which the STATE has completed all PROJECT
22 work and has satisfied the requirements of Section 14.3. Roadway restoration will not be
23 considered to be complete until all roadways are fully open to public vehicular and
24 pedestrian use.

Comment [g180]: Joint

27 15.5 In instances where portions of CITY Infrastructure must be placed into the
28 CITY's use and operation prior to the execution of the Letter of Acceptance, and after the
29 CITY has determined that these portions of CITY Infrastructure meet with the minimum
30 inspection and testing requirements necessary for placing the CITY Infrastructure into
31 use, the CITY will notify the STATE in writing that it is assuming responsibility for and
32 cost of the interim use and operation of the CITY Infrastructure until the terms of Section
33 14.3 are satisfied and the PARTIES execute the Letter of Acceptance.

Comment [g181]: Joint

34 16. RED-LINES AND RECORD DRAWINGS

36 16.1 The STATE shall maintain red lines in general conformance with WSDOT's
37 *Construction Manual*, WSDOT manual M4-01. The STATE shall maintain one set of
38 Approved Plans as the official contract drawings and provisions to which the STATE
39 shall make drawings and notations in either red ink or red pencil to show the constructed
40 configuration of all infrastructure that deviates from the design and contract requirements
41 shown in the Approved Plans as typically recorded per STATE and City of Seattle
42 standard practices. These documents shall be referred to as the Red-Line Plans.

Comment [RF182]: Joint

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1 16.2 The Red-Line Plans shall be kept current throughout construction with accurate
2 and comprehensive information detailing the constructed configuration of the
3 infrastructure. The Red-Line Plans shall reflect the same level of detail as the Approved
4 Plans, and shall provide the drawing accuracy necessary for public and private utility
5 purveyors to locate their respective utilities in accordance with state law.

Comment [RF183]: Joint

7 16.3 Prior to placing infrastructure into service during the course of construction, the
8 STATE shall provide the CITY with color photocopies of portions of the Red-Line Plans
9 showing the constructed configuration of the infrastructure being placed into service.

Comment [RF184]: Joint

11 16.4 The PARTIES shall prepare Record Drawings for the work which they are
12 responsible under this Agreement with two full scale bond copies plus the digital files of
13 the Record Drawings within six months after the PARTIES execute the Letter of
14 Acceptance. The PARTIES shall prepare Record Drawings in general conformance with
15 the standards of the facility owner.

Comment [RF185]: Joint

17 16.5 The Red Line Plans and Record Drawings will be prepared as described in the
18 *Construction Management and Inspection Procedures* attached as Exhibit B. Revisions
19 to the Procedures do not require additional approval beyond execution of this Agreement.

Comment [g186]: Process to address
administrative changes to Exhibit will be dealt with
in City ordinance.

21 **17. WARRANTIES**
22 **Warranty of Work**

24 17.1 The STATE warrants for a minimum period of twelve (12) months that all CITY
25 Infrastructure being accepted by the CITY for ownership, operation and maintenance: (1)
26 meet with the requirements of the Approved Plans, and all CITY-approved modifications
27 to the Approved Plans made during the course of construction; (2) are constructed in
28 accordance with City-issued permits; (3) are free of defects in material and workmanship;
29 and (4) are free of defects in design(s). The warranty of work shall apply to any
30 corrective work required to address non-conforming and Defective Work that is
31 discovered and communicated by the CITY to the STATE within the warranty period.
32 The STATE's warranty of work shall begin following the execution of the Letter of
33 Acceptance of CITY Infrastructure or as otherwise provided in the STATE's contract,
34 whichever occurs later.

Comment [RF187]: Joint

36 17.2 If within the warranty of work period, the CITY discovers and gives written
37 notice to the STATE of non-conforming or Defective Work in the accepted CITY
38 Infrastructure, the STATE shall promptly investigate the work the CITY believes is non-
39 conforming or defective. The STATE shall promptly remedy non-conforming or
40 Defective Work. Disagreements between the CITY and the STATE on what constitutes
41 non-conforming or Defective Work shall be resolved using the dispute resolution process
42 established in Section 22. The STATE shall diligently prosecute the corrective work and
43 shall procure materials using the fastest means available as necessary to minimize the
44 loss of use and operation of the accepted CITY Infrastructure. Corrective work shall be

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1 completed within the time frame specified by the CITY and mutually agreed upon by the
2 STATE.

Comment [RF188]: Joint

3
4 17.3 If, during construction, the CITY encounters an emergency situation caused by
5 non-conforming or Defective Work, it must immediately notify the STATE. The STATE
6 will take immediate corrective action. If, after the warranty period begins, the CITY
7 encounters an emergency situation caused by non-conforming or Defective Work, it may
8 have to immediately correct it. Direct and indirect costs incurred by the CITY,
9 attributable to correcting an emergency situation associated with non-conforming or
10 Defective Work, shall be paid by the STATE to the CITY.

Comment [RF189]: Joint

11 **Transfer of Title and Warranty of Title**

12
13
14 17.4 All right and title to the CITY Infrastructure accepted by the CITY will be
15 transferred by the STATE to the CITY as of the date of the State's signature
16 acknowledging the CITY's Letter of Acceptance pursuant to the provisions of Section 6.
17 Neither the STATE nor its contractors shall hold a property right in any of the CITY
18 Infrastructure accepted by the CITY for ownership, including the materials and
19 equipment comprising the CITY Infrastructure.

Comment [RF190]: Joint

20
21 17.5 The STATE shall warrant good and merchantable title to all materials, supplies,
22 equipment and items installed or incorporated into the accepted CITY Infrastructure. The
23 STATE shall further warrant that all CITY Infrastructure transferred to, and accepted by,
24 the CITY is free from claims, liens and charges.

Comment [RF191]: Joint

25 **Manufacturers' Warranties**

26
27
28 17.6 The STATE shall provide the CITY all manufacturers' and suppliers' guarantees
29 and warranties furnished to the STATE's contractor as a customary trade practice in
30 connection with the contractor's purchase of any equipment, materials, or items
31 incorporated into the CITY Infrastructure. The STATE shall further warrant that it has
32 the right to transfer such warranties and guarantees furnished to the STATE through its
33 construction contract to the CITY and that such transfer shall not adversely affect such
34 warranties and guarantees. These guarantees and warranties shall not relieve the STATE
35 from its obligations under Warranty of Work.

Comment [RF192]: Joint

36 **Warranty Inspections**

37
38
39 17.7 During the warranty period, the CITY shall have the right to inspect the accepted
40 CITY Infrastructure for non-conforming and Defective Work, and will promptly report
41 any such work to the STATE for remedy through corrective work. The CITY shall bear
42 the cost of these inspections.

Comment [RF193]: Joint

43 **18. PUBLIC OUTREACH**

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1
2 18.1 The STATE agrees to lead and manage the public outreach effort for the
3 PROJECT. In recognition of the CITY's experience in working with the Seattle
4 community, the STATE will solicit CITY input and work with the CITY in all public
5 outreach activities. The STATE will not publicly distribute outreach information,
6 planning materials and documents without first obtaining the CITY's review. However,
7 the STATE shall be free to comply with any public records request received under
8 chapter 42.56 RCW for such materials, provided that prior to releasing any sensitive or
9 confidential material, the STATE shall first provide written notice to the CITY in
10 accordance with Section 27 of this Agreement and provisions in the [SCL Agreement, UT
11 0174 and the SPU Agreement, UT 0176.]

Comment [RF194]: Joint

13 19. RISK ALLOCATION

14 19.1 Limits of Liability

15
16
17 19.1.1 No CITY Liability for Assistance, Inspection, Review, or Approvals. The
18 review or approval of any of the STATE's PROJECT plans or specifications, or the
19 inspection of the STATE's work, or any assistance provided to the STATE by the CITY
20 is for the CITY's sole benefit and shall not constitute an opinion or representation by the
21 CITY as to any compliance with any law, ordinance, rule, or regulation or any adequacy
22 for other than the CITY's own purposes; and such assistance, inspection, review or
23 approval shall not create or form the basis of any liability on the part of the CITY or any
24 of its officials, officers, employees, or agents for any injury, damage, or other liability
25 resulting from, or relating to, any inadequacy, error, or omission therein or any failure to
26 comply with applicable law, ordinance, rule, or regulation; and such assistance,
27 inspection, review, or approval shall not relieve the STATE of any of its obligations
28 under this Agreement, the SCL Agreement, UT 01474, and the SPU Agreement, UT
29 01476 Agreement or under applicable law.

Comment [g195]: Joint

30 19.1.2 No CITY Liability for Delay, Consequential, or Liquidated Damages. The
31 CITY shall not be liable in damages for any failure to act within any time limits
32 established by law or for any other delay in issuing permits, other approvals, or
33 concurrences to the STATE or the STATE's contractors, nor shall the CITY have any
34 liability for consequential or liquidated damages, and, to the maximum extent allowed by
35 law, the STATE shall protect, defend, indemnify, and save harmless the CITY, and its
36 officials, officers, employees, and agents, from any and all costs, claims, demands,
37 judgments, damages, or liability of any kind caused by, resulting from, relating to, or
38 connected to delays in issuing permits, other approvals, or concurrences.

Comment [g196]: Joint

39 19.1.3 No CITY Liability for Third Party Claims of Diminution in Value of
40 Property. The CITY shall not be liable in damages for any third party claims alleging
41 diminution in value of property, including, but not limited to, claims of elimination or
42 impairment of rights to light and air and quiet enjoyment, or alleging a taking of property

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1 rights, nor shall the CITY have any liability for related consequential or liquidated
2 damages, and, to the maximum extent allowed by law, the STATE shall protect, defend,
3 indemnify, and save harmless the CITY, and its officials, officers, employees, and agents,
4 from any and all costs, claims, demands, judgments, damages, or liability of any kind
5 caused by, resulting from, relating to, or connected to the third party claims of diminution
6 in value of property arising out of the PROJECT.

Comment [g197]: Joint

7 19.1.4 STATE Contractor's Bonds. The STATE shall require its construction
8 contractors to provide performance bonds to the STATE and to maintain those bonds at
9 all times pertinent to the respective contractor's obligations under its contracts. The
10 penal sums of those bonds shall be for one hundred percent (100%) of the total contract
11 price, including change orders and other modifications. Such bonds shall be executed by
12 an approved Surety that is registered with the Washington State Insurance Commissioner,
13 and that appears on the current Authorized Insurance List in the State of Washington
14 published by the Office of the Insurance Commissioner, and that shall be conditioned
15 upon the faithful performance of the contract by the contractor, and that shall include the
16 City as an additional named obligee. The STATE shall ensure faithful completion of the
17 PROJECT by use of the STATE's contractor bonds or other means, and in the event of
18 any claim for payment is presented to the CITY for any PROJECT work, the STATE
19 upon timely notice and investigation, resulting in STATE responsibility under this
20 Agreement, the SCL Agreement, UT01474, and the SPU Agreement, UT 01476 shall
21 promptly pay such claim.

Comment [g198]: City

22 19.2 General Indemnification.

23 20.2.1 Indemnity. To the extent permitted by law, the STATE shall protect,
24 defend, indemnify, and save harmless the City of Seattle and its officers, officials,
25 employees, and agents, while acting within the scope of their employment, from any and
26 all costs, claims, demands, judgments, damages, or liability of any kind, including
27 injuries to persons or damages to property, that arise out of, or in any way result from, or
28 are connected to, or are due to any acts or omissions, or intentional misconduct, of the
29 STATE or the STATE's contractors, consultants, or agents including any and all claims
30 and litigation arising out of, or resulting from, any state or federal environmental review
31 process in any way relating to the PROJECT, and including any private utility relocation
32 ~~process for the STATE's PROJECT work.~~ The STATE's obligations under this
33 paragraph also extend to claims asserted by third PARTIES against the City of Seattle
34 arising out of, or in any way resulting from, any state or federal environmental review
35 process in any way related to the PROJECT or the PROGRAM, and all of the foregoing
36 protection, defense, indemnity and hold harmless obligations shall extend to claims
37 asserted by State agencies other than the Washington State Department of Transportation.

Comment [g199]:

38 19.2.2 The STATE further agrees that the City of Seattle shall have no liability to the
39 STATE, which in any way arises out of the City of Seattle's decision making processes in
40 agreeing to go forward with the PROJECT, and the STATE shall not be required to
41 indemnify, defend, or save harmless the City of Seattle if the claim, suit, or action for

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1 injuries, death, or damages is caused by the sole negligence of the City of Seattle. Where
2 such claims, suits, or actions result from the concurrent negligence of the PARTIES, the
3 indemnity provisions provided herein shall be valid and enforceable only to the extent of
4 the STATE's own negligence. In the event of any claims, demands, actions, or lawsuits,
5 the STATE upon notice from the City of Seattle, shall assume all costs of defense
6 thereof, including legal fees incurred by the City of Seattle, and of all resulting judgments
7 that may be obtained against the City of Seattle, to the extent of the STATE's liability. In
8 the event that the City of Seattle incurs attorneys' fees, costs, or other legal expenses to
9 enforce the indemnity provisions of this Agreement, the SCL Agreement UT 01474, and
10 the SPU Agreement, UT 01476, all such fees, costs, and expenses shall be recoverable by
11 the City of Seattle. Environmental protection and indemnification, as provided elsewhere
12 in this Agreement, shall be in addition to the foregoing general indemnification.

Comment [g200]: Joint

13 19.2.2 Indemnity. To the extent permitted by law, the City of Seattle shall
14 protect, defend, indemnify, and save harmless the STATE and its officers, officials,
15 employees, and agents, while acting within the scope of their employment, from any and
16 all costs, claims, demands, judgments, damages, or liability of any kind, including
17 injuries to persons or damages to property, that arise out of, or in any way result from, or
18 are connected to, or are due to any acts or omissions, or intentional misconduct, of the
19 City of Seattle or the City of Seattle's contractors, consultants, or agents. The City of
20 Seattle shall not be required to indemnify, defend, or save harmless the STATE if the
21 claim, suit, or action for injuries, death, or damages is caused by the sole negligence of
22 the STATE. Where such claims, suits, or actions result from the concurrent negligence
23 of the PARTIES, the indemnity provisions provided herein shall be valid and enforceable
24 only to the extent of the City of Seattle's own negligence. In the event of any claims,
25 demands, actions, or lawsuits, the City of Seattle upon notice from the STATE, shall
26 assume all costs of defense thereof, including legal fees incurred by the STATE, and of
27 all resulting judgments that may be obtained against the STATE, to the extent of the City
28 of Seattle's liability. In the event that the STATE incurs attorneys' fees, costs, or other
29 legal expenses to enforce the indemnity provisions of this Agreement, the SCL
30 Agreement, UT 01474 Agreement, and the SPU Agreement, UT 01476, all such fees,
31 costs, and expenses shall be recoverable by the STATE.

Comment [g201]: Joint

32 19.2.3 Title 51 RCW. Solely with respect to claims for indemnification under this
33 Agreement, including environmental indemnification, the STATE and the City of Seattle
34 waive, as to each other only, and expressly not for the benefit of their employees or third
35 PARTIES, their immunity under Title 51 RCW, the Industrial Insurance Act, and
36 acknowledge that this waiver has been mutually negotiated by the PARTIES. The
37 STATE and the City of Seattle agree that their respective indemnity obligations extend to
38 any claim, demand, or cause of action brought by, or on behalf of, any of their respective
39 employees or agents. The STATE agrees that in the event that any employee or agent of
40 the STATE's contractors, subcontractors, consultants, or agents asserts a claim against
41 the City of Seattle, the STATE waives any right it may have to assert its Title 51

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1 immunity as a defense against a City of Seattle claim to the STATE that otherwise would
2 be covered by the STATE’s indemnity obligations to the City of Seattle.

Comment [g202]: Joint

3 19.2.4 Survival of Indemnification Obligations. Any liability of the STATE or
4 the City of Seattle arising under any indemnity provision of this Agreement shall survive
5 termination of this Agreement, whether or not any claim giving rise to such liability shall
6 have accrued.

Comment [g203]: Joint

7 **20. INSURANCE**

8
9 20.1 The STATE shall require in writing that the STATE’s contractors, and each of
10 their sub-contractors of any tier where not covered by contractor provided insurance,
11 include “The City of Seattle” as an additional insured for primary and non-contributory
12 limits of liability for Commercial General Liability, Commercial Automobile Liability
13 and (if required) Contractor’s Pollution Liability as established in the construction
14 contract documents, including Products and Completed Operations coverage following
15 the completion of each PROJECT stage. STATE standard insurance specification
16 paragraph 1-07.18 (Public Liability and Property Damage Insurance) applicable to the
17 construction contract documents protecting both the STATE and the CITY for the
18 PROJECT shall be amended for coverages, minimum limits of liability and/or terms and
19 conditions as may be mutually agreed upon by the STATE and the CITY.

Comment [RF204]: Joint

20
21 20.2 The STATE’s contractors and subcontractors of any tier shall cause certification
22 of insurance meeting the requirements herein to be issued to “The City of Seattle, Risk
23 Management Division, P.O. Box 94669, Seattle, WA 98124-4669.” Such certification
24 shall not be mailed, but shall be delivered electronically to fax number (206) 470-1279 or
25 as an e-mail attachment in PDF format to riskmanagement@seattle.gov.

Comment [RF205]: Joint

26 **21. THIRD PARTY BENEFICIARY**

27
28
29 21.1 The STATE shall require the STATE’s contractors, consultants, and designers
30 and each of their subcontractors to perform the STATE’s work contemplated by this
31 Agreement, the SCL Agreement, UT 01474, and the SPU Agreement, UT 01476 at no
32 cost to the City of Seattle; and because a portion of the PROJECT will be conducted on
33 City of Seattle Street Right-of-Way and on or for the benefit of the City of Seattle, the
34 contracts between the STATE and its contractors, consultants, and designers will include
35 the following concepts:

Comment [g206]: Joint

36
37 ¶ With respect to any and all of the City of Seattle’s interests, including, but not
38 limited to, excavation, restoration and traffic control responsibilities of the
39 STATE, the STATE and the contractor acknowledge that the City of Seattle is an
40 intended third party beneficiary and agree to include the City of Seattle as a third
41 party beneficiary of the STATE’s contracts and will accordingly include the City
42 of Seattle in the indemnification, insurance, and performance bond provisions

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1 contained in the STATE's contracts. The STATE and CITY do not intend that
2 this paragraph be interpreted to create any obligation, liability, or benefit to any
3 third party, other than the STATE and the City of Seattle for purposes of design
4 and construction of the PROJECT as described in this Agreement, the SCL
5 Agreement, UT 01474, and the SPU Agreement, UT 01476.

Comment [g207]: City

6
7 **22. LIENS**

8
9 22.1 In the event that any City of Seattle-owned property interest becomes subject to
10 any claims for mechanics', artisans' or materialmen's liens, or other encumbrances
11 chargeable to, or through, the STATE that the STATE does not contest in good faith, the
12 STATE shall cause such lien, claim, or encumbrance to be discharged or released of
13 record (by payment, posting of bond, court deposit, or other appropriate means), without
14 cost to the City of Seattle, and shall indemnify the City of Seattle against all costs and
15 expenses (including attorneys' fees) incurred in discharging and releasing such claim,
16 lien, or encumbrance prior to completion of the PROJECT.

Comment [g208]: Joint

17
18 **23. DISPUTE RESOLUTION**

19
20 23.1 Good Faith. The CITY and the State shall make good faith efforts to resolve any
21 dispute arising under or in connection with this Agreement. The dispute resolution
22 process outlined in this Section applies to disputes arising under or in connection with the
23 terms of this Agreement. In the event that the PARTIES cannot resolve a disagreement
24 arising under or in connection with this Agreement, the PARTIES shall follow the
25 dispute resolution steps set forth below.

Comment [RF209]: Joint

26
27 23.2 Notice. A Party's Designated Representative, as defined in Section 26 below,
28 shall notify the other Party's Designated Representative in writing of any problem or
29 dispute that a Party believes needs resolution. The written notice shall include (a) a
30 description of the issue to be resolved; (b) a description of the differences between the
31 PARTIES on the issue; and (c) a summary of any steps taken to resolve the issue.

Comment [RF210]: Joint

32
33 23.3 Meeting. Upon receipt of a written notice of request for dispute resolution, the
34 Designated Representatives for the PARTIES shall meet within ten (10) Business Days
35 and attempt to resolve the dispute. Any resolution of the dispute requires the agreement
36 of all Designated Representatives attending the meeting or who requested to attend the
37 meeting.

Comment [RF211]: Joint

38
39 23.4 Notice of Second Level Meeting. If the PARTIES have not resolved the dispute
40 within five (5) Business Days after the meeting, at any time thereafter either Party may
41 request that the dispute be elevated to the next level by notifying the other Party's
42 Designated Representative in writing, requesting that the dispute be raised to the Second
43 Level Meeting. The written notification shall include a) a description of the remaining
44 issues to be resolved; b) a description of the differences between the PARTIES on the

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1 issues, c) a summary of the steps already taken to resolve the issues, and d) the resolution
2 of any issues that were initially involved in the dispute.

Comment [RF212]: Joint

3
4 23.5 Second Level Meeting. Upon receiving a written request that the dispute be
5 elevated to the next level, a meeting shall be held within ten (10) Business Days between
6 the Project Director of WSDOT and the appropriate City Designated Representative(s) to
7 resolve the dispute. Any resolution of the dispute requires the agreement of all
8 Representatives attending the meeting or who requested to attend the meeting.

Comment [RF213]: Joint

9
10 23.6 Notice of Third Level Meeting. If the PARTIES have not resolved the dispute
11 within five (5) Business Days after the Second Level Meeting, at any time thereafter
12 either Party may request that the dispute be elevated to the next level by notifying the
13 other Party's Designated Representative in writing, requesting that the dispute be raised
14 to the Third Level Meeting. The written notification shall include a) a description of the
15 remaining issues to be resolved; b) a description of the differences between the PARTIES
16 on the issues, c) a summary of the steps already taken to resolve the issue, and d) the
17 resolution of any issues that were initially involved in the dispute.

Comment [RF214]: Joint

18
19 23.7 Third Level Meeting. Elevate to the Executive Committee.

Comment [RF215]: Joint

20
21 23.8 Court of Law. If the PARTIES have not resolved the dispute within five (5)
22 Business Days after the third level meeting, at any time thereafter either Party may seek
23 relief under this Agreement in a court of law. The PARTIES agree that they have no
24 right to relief in a court of law until they have completed the dispute resolution process
25 outlined in this Section.

Comment [RF216]: Joint

26
27 23.9 A Party's request to utilize this Dispute Resolution Process is not evidence that
28 either Party is in breach of this Agreement, and does not relieve any Party from
29 complying with its obligations under this Agreement.

30 **24. REMEDIES; ENFORCEMENT**

31
32
33 24.1 Subject to the Dispute Resolution provisions in Section 21, the City of Seattle and
34 the STATE shall have, in addition to any remedies available at law or equity, the right to
35 demand specific performance of this Agreement, the SCL Agreement, 01474, and the
36 SPU Agreement, UT 01476.

Comment [RF217]: Joint

37 **25. NOTICE AND DESIGNATED REPRESENTATIVES**

38
39
40 25.1 The Designated Representatives for each Party are as follows: Any notice
41 required or permitted to be given pursuant to this Agreement shall be in writing and shall
42 be sent postage prepaid by U.S. Mail to the Designated Representative.

43
44 [STATE]:

Comment [RF218]: Joint

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1 Program Administrator
2 Alaskan Way Viaduct & Seawall Replacement Program
3 Washington State Department of Transportation
4 999 3rd Avenue, Suite 2424
5 Seattle, WA 98104
6

7 CITY:
8 SDOT Deputy Director
9 Seattle Department of Transportation
10 P.O. Box 34996
11 700 Fifth Avenue, Suite 3800
12 Seattle, WA 98124-4996
13

Comment [RF219]: Joint

14 **26. EFFECTIVENESS AND DURATION**

15
16 26.1 This Agreement shall be effective as of the date the last Party signs and, unless
17 sooner terminated pursuant to the terms hereof, shall remain in effect until final
18 completion of all PARTIES' obligations contained or referred to in this Agreement, the
19 SCL Agreement, UT 01474, and the SPU Agreement, UT 01476.
20

Comment [RF220]: Joint

21 **27. NOTICE**

22
23 27.1 Except for the Dispute Resolution Process in Section 21 above, for which notice
24 shall be given to the officials listed in Section 21, all notices, demands, requests,
25 consents and approvals that may or are required to be given by either Party to the other
26 Party shall be in writing and shall be deemed to have been duly given (i) upon actual
27 receipt or refusal to accept delivery if delivered personally to the Designated
28 Representative, (ii) upon actual receipt or refusal to accept delivery if sent by a nationally
29 recognized overnight delivery service to the Designated Representative, or (iii) upon
30 actual receipt if electronically transmitted to the Designated Representative with
31 confirmation sent by another method specified in this Section. Notice of a change of
32 Designated Representative or the address for the Designated Representative shall be
33 given as provided in this Section.
34

Comment [RF221]: Joint

35 **28. TERMINATION AND SUSPENSION**

36
37 28.1 This Agreement may be terminated by either Party upon sixty (60) calendar days
38 written notice. Said notice shall set forth the reasons for termination, including reasons of
39 convenience, and the effective date of termination.

Comment [RF222]: Joint

40 28.2 Termination of this Agreement, the SCL Agreement, UT 01474, or the SPU
41 Agreement, UT 01476 shall not relieve the PARTIES of any obligations that are required
42 to be performed prior to the date of termination, nor shall it relieve the PARTIES of any
43 obligations that are intended to survive termination of this Agreement, the SCL

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1 Agreement, UT 01474, or the SPU Agreement, UT 01476. Further, the PARTIES agree
2 that, in the event the STATE exercises its right to terminate pursuant to this Section after
3 construction of the PROJECT begins, **or if the STATE suspends the work or materially**
4 **delays the work** then the STATE, at its cost and expense, shall modify the PROJECT, in
5 consultation with the CITY, to provide for the restoration, continued service, operation,
6 and maintenance of existing infrastructure, PROJECT infrastructure, CITY Street right-
7 of-way, or any other CITY property or facility, and the STATE shall ensure that the
8 modified PROJECT is completed. The STATE shall also ensure that all SPU and SCL
9 utility services can continue to be provided by SPU and SCL either in substantially the
10 same manner as occurred prior to the initiation of work, or in the manner intended by the
11 proposed work, unless otherwise agreed to by the affected utility.

Comment [RF223]: City

Comment [RF224]: City

29. CONFIDENTIALITY OF INFORMATION AND RECORDS

15 29.1 It is understood that certain information about the infrastructure is deemed by the
16 CITY to be sensitive and may be confidential under state or federal law. The STATE
17 agrees that all documents and information collected from field activities known to include
18 confidential information will be maintained in a locked file at the project office and
19 access will be controlled by its consultants. Furthermore, confidential information will
20 only be provided to the selected contractor in conformed documents following contract
21 award if such information is considered necessary for construction. The CITY will
22 provide clear written guidelines that specifically define the information that is deemed
23 sensitive and/or confidential.

Comment [RF225]: Joint

25 29.2 Should any of those confidential or sensitive documents become the subject of a
26 request for public disclosure under chapter 42.56 RCW, the STATE shall use its best
27 efforts to immediately notify the CITY of such request and the date by which the STATE
28 anticipates responding, which date shall in no event be less than fifteen (15) calendar
29 days after STATE's first notice of the disclosure request to the CITY. The CITY must
30 then within a reasonable time of receipt of said notice in writing to the STATE (a)
31 specifically identify each record, or part thereof, and (b) fully explain why such
32 records(s) are exempt from disclosure under chapter 42.56 RCW or any other law so that
33 the STATE may respond to the records requester. The STATE shall withhold or redact
34 those public records which the CITY reasonably claims are exempt from disclosure based
35 upon the CITY's information. The CITY at its sole expense may seek a judicial
36 declaration or injunction with respect to the public records request. The CITY further
37 agrees that it will, at its sole expense, defend the non-disclosure of that information it
38 claims is exempt from disclosure and indemnify the STATE for any and all penalties
39 assessed and costs that the STATE incurs, if any.

Comment [RF226]: Joint

41 29.3 The provisions of this Section survive the termination of this Agreement.

43 30. GENERAL PROVISIONS

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1 30.1 This Agreement shall be effective independently from any and all permits that
2 may be issued by the CITY.

Comment [RF227]: Joint

3 30.2 Each PARTIES shall ensure that its employees, agents, and contractors comply
4 with the obligations of this Agreement.

Comment [RF228]: Joint

5 30.3 The PARTIES shall not be deemed to be in default under this Agreement if
6 performance is rendered impossible by war, riots, or civil disturbances, or by floods or
7 other natural catastrophes beyond the PARTIES' control; the unforeseeable unavailability
8 of labor or materials; or labor stoppages or slowdowns or power outages exceeding back-
9 up power supplies. This Agreement shall not be terminated or the PARTIES penalized
10 for such noncompliance, provided that each Party takes immediate and diligent steps to
11 bring itself back into compliance and to comply as soon as practicable under the
12 circumstances without unduly endangering the health, safety, or integrity of the Party's
13 employees or property, or the health, safety, or integrity of the public, street rights-of-
14 way, public property, or private property.

Comment [RF229]: Joint

15 30.4 This Agreement including the definition of the PROJECT as more particularly
16 described in the Project Description attached as Exhibit A may be amended only by a
17 written instrument, duly authorized by the CITY and the STATE, and executed by their
18 duly authorized representatives.

Comment [RF230]: Joint

19 30.5 No failure to exercise, and no delay in exercising, on the part of either Party
20 hereto, any rights, power, or privilege hereunder shall operate as a waiver thereof, except
21 as expressly provided herein.

Comment [RF231]: Joint

22 30.6 This Agreement, together with the GCA 6366, [UT 01474 and the SPU
23 Agreement, UT 01476], with the attached Exhibits and the documents, terms and
24 provisions incorporated in any of the foregoing, constitute the entire agreement of the
25 PARTIES with respect to the PROJECT, and supersede any and all prior negotiations and
26 understandings with respect hereto.

Comment [RF232]: Joint

27 30.7 Section and subsection headings are intended as information only, and shall not
28 be construed with the substance of the section or subsection they caption.

Comment [RF233]: Joint

29 30.8 All exhibits or other attachments are by this reference hereby incorporated into
30 this Agreement.

Comment [RF234]: Joint

31 30.9 This Agreement may be executed in counterparts, each of which shall be deemed
32 an original, and all counterparts together shall constitute but one and the same instrument.

Comment [RF235]: Joint

33 30.10 The ████████ acknowledge the right of the other to exercise its police power
34 pursuant to general law and applicable statutes for the protection of the health, safety, and
35 welfare of its citizens and their properties. Nothing in this Agreement shall be construed

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1 as waiving the **STATE or CITY** rights to exercise its police power or to preclude
2 exercising such regulatory power in connection with this **PROJECT**.

Comment [g236]: Confirm change with attys.

3
4 30.11 This Agreement shall be interpreted, construed, and enforced in accordance with
5 the laws of the State of Washington. The venue for any action under this Agreement
6 shall be in the Superior Court for King County, Washington.

Comment [RF237]: Joint

7
8 **31. RECORDS RETENTION AND AUDIT**

9 **THIS SECTION TO BE PREPARED BY Karen.**

10
11
12
13 IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement as of the
14 last date written below.

15
16 CITY OF SEATTLE

WASHINGTON STATE
DEPARTMENT OF
TRANSPORTATION

17
18
19
20
21 By _____
22 Peter E. Hahn
23 Director of Transportation
24 City of Seattle

By _____
Ronald J. Paananen
Program Administrator
Alaskan Way Viaduct and Seawall
Replacement Program

25
26
27 Date: _____

Date: _____

28
29
30 APPROVED AS TO FORM:

31
32 By _____
33 Elizabeth M. Lagerberg
34 Assistant Attorney General

35
36 Date: _____
37
38
39
40

ATG MI TPC TRANSFER

From: Salay, Ann (ATG)
Sent: Thursday, May 06, 2010 8:13 AM
To: Galvin, Daniel (ATG)
Subject: Exhibit B to Tunnel UT agreements

I do not know who drafted this, but, Exhibit B, Section 4.1 states:

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

[1d]



Just FYI

Ann E. Salay, AAG
POB 40113 -- 7141 Cleanwater Dr. SW
Olympia, Wa 98504-0113
360-753-6130
Fax: 360-586-6847
anns@atg.wa.gov

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ATG MI TPC TRANSFER

From: Salay, Ann (ATG)
Sent: Thursday, May 06, 2010 1:05 PM
To: Galvin, Daniel (ATG)
Subject: SALAY Review: UT 01474/UT01476 (SPU & SCL) Joint Agreement

Importance: High



JOINT_Bored_Tunn
el_Utility_MOA...

Dan:

[1d]

[redacted] did not rewrite anything. [1d]

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Olympia, Wa 98504-0113
360-753-6130
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GREEN HIGHLIGHT = Staff to resolve

Joint
042310

MEMORANDUM OF AGREEMENT

UT 01474/ UT 01476
SR 99 ALASKAN WAY VIADUCT REPLACEMENT
BORED TUNNEL PROJECT
UTILITY FACILITIES WORK

THIS Memorandum of Agreement, UT 01474/ 01476, SR 99 Alaskan Way Viaduct Replacement, Bored Tunnel, UTILITY Facilities Work (“UTILITY Bored Tunnel Agreement”) is made and entered into between the State of Washington Department of Transportation, hereinafter the “STATE,” and the City of Seattle, hereinafter the CITY, (managed by Seattle City Light/Seattle Public Utilities, hereinafter “UTILITY”), collectively the “Parties” and individually the “Party.”

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

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

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

WHEREAS, the January 2009 letter of agreement between the Parties affirmed that the State would be responsible for the bored tunnel project, and that “the allocation of specific project responsibility to each jurisdiction carries with it the responsibility for project management, environmental work, design, construction, and project cost overruns”; and

WHEREAS, in October 2009 the Governor and the Mayor executed a Memorandum of Agreement, GCA 6366, which described the basic roles and responsibilities for the implementation of the AWVSR Program PROGRAM [Salav: AWVSR is not defined. AWV is defined, but the SR is not. This should be fixed because it is used below.]

Comment [SLS1]: To be changed to SPU or SCL in each agreement

Comment [SLS2]: Will be SCL or SPU

Comment [W3]: Joint Language

Comment [W4]: Joint

Comment [W5]: Joint

Comment [W6]: Joint

Comment [W7]: City

Comment [W8]: Joint

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WHEREAS, the AWV SR Program (PROGRAM) consists of a four-lane bored tunnel and improvements to City streets, the City waterfront, and transit; and the Moving Forward Projects; and

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Comment [W9]: Joint

WHEREAS, the Proposed Bored Tunnel Project (PROJECT), the subject of this Agreement, is the part of the PROGRAM that replaces SR 99 from South Royal Brougham Street to Mercer Street that consists of designing and constructing a four-lane bored tunnel from South King Street to Thomas Street, north and south tunnel portals and access streets; re-establishment of the City street grid in the vicinity of the portals [Battery Street Tunnel decommissioning and Alaskan Way Viaduct demolition will be addressed in a future agreement]; and associated utility relocations; and

Comment [W10]: Joint

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

Comment [W11]: Joint

WHEREAS, in January 2009, the Governor, the King County Executive and the Mayor of Seattle recommended replacement of the existing AWV structure in the central waterfront area with a bored tunnel; and [Salav: This duplicates Whereas # 4, delete?]

Comment [W12]: Joint

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WHEREAS, RCW 47.01.402, which became law July 1, 2009, provides that State funding for the PROJECT is not to exceed two billion eight hundred million dollars (\$2,800,000,000.00) of which no more four hundred million shall be from tolls, and

Comment [W13]: City

WHEREAS, RCW 47.01.402(6)(b) provides that any costs in excess of two billion eight hundred million dollars (\$2,800,000,000.00) shall be borne by property owners in the Seattle area who benefit from replacement of the existing viaduct with the deep bore tunnel, and

Comment [W14]: City

WHEREAS, the CITY and STATE agree to jointly pursue the implementation and completion of the PROJECT and endeavor to open the tunnel by 2015 and demolish the Alaska Way viaduct in 2016; and

Comment [W15]: Joint

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

Comment [W16]: Joint

WHEREAS, review of the PROJECT pursuant to the State STATE and City CITY environmental policy laws is currently underway and the Pparties recognize that changes in the alternative chosen would require a new agreement; and

Comment [W17]: City

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1 WHEREAS, the CITY and the STATE will deliver the PROJECT within the financial
2 commitments made in the Memorandum of Agreement, GCA 6366, executed by the PARTIES
3 on October 24, 2009; and

Comment [W18]: Joint

5 WHEREAS, concurrently with this Agreement GCA 6486-Agreement, the STATE and CITY,
6 through Seattle City Light (SCL), are entering into an agreement, UT 01474; and [Salay, this
7 would be deleted for UT 01474 agreement, only used in UT 01476.]

Comment [RF19]: Joint

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9 WHEREAS, concurrently with this Agreement, GCA 6486, the STATE and CITY, through its
10 Seattle Public Utilities Department (SPU), are entering into an agreement, UT 01476; and [Salay,
11 this would be deleted for UT 01476, only used in UT 01474.]

Comment [g20]: Joint

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

Comment [W21]: Joint

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

Comment [W22]: Joint

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

Comment [W23]: Joint

22 WHEREAS, the Parties wish to establish protocols and procedures for property acquisition,
23 environmental remediation, design review, permitting, and construction coordination to govern
24 their relationship during the course of the PROJECT.

Comment [W24]: City

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

Comment [W25]: Joint

29 WHEREAS, concurrently with this UTILITY Bored Tunnel Agreement, the STATE and CITY,
30 through the Seattle Department of Transportation, are entering into an agreement, GCA 6486;
31 and

Comment [g26]: Joint

33 WHEREAS, the PROJECT will require the removal of existing City-CITY electrical, water,
34 drainage and wastewater facilities that directly conflict with the tunnel portals and tunnel portal
35 excavations ("Conflicting Facilities"), and the construction of new facilities and service
36 connections, (excluding temporary construction and permanent electrical services for the
37 PROJECT) to one final location to replace the conflicting facilities (together, the "Relocation
38 Work"); and

Comment [rlc27]: Not sure these should be recitals. Need to edited to be consistent with accepted terminology Also reflects the "one relocation" position of City. Needs Management decision on "one relocation"

41 WHEREAS, together the Relocation Work and the UTILITY Facilities Deformation Mitigation
42 Work will comprise the "UTILITY Facilities Work" of the PROJECT; and

43

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1 NOW, THEREFORE, pursuant to RCW 47.28.140 and RCW 47.01.401 and in consideration of
2 the terms, conditions, covenants, and performances contained herein, or attached and
3 incorporated and made a part hereof;

Comment [W28]: WSDOT

4
5 NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performances
6 contained herein, or attached and incorporated and made a part hereof;

Comment [g29]: City

7
8 IT IS MUTUALLY AGREED AS FOLLOWS:

9
10 **1. DEFINITIONS**

11
12 Words not otherwise defined, which have well-known technical or construction industry
13 meanings, are used in accordance with such recognized meanings;

Comment [g30]: City

14
15 1.1 Approved Plans means the construction plans and provisions that evidence the CITY's
16 determination, through the processes described in Section 3 and Exhibit B of this Agreement,
17 that the plans including Released for Construction Submittal Plans for Design-Build Contracts
18 [Salav: changed to reflect language used below] conform to the Street Use Code [Salav, not
19 defined below, suggest change to Title 15 of the Seattle Municipal Code] and other
20 requirements, and that plan review comments are resolved to both Parties' satisfaction;
21 Approved Plans are included in the contract documents evidencing the agreement between the
22 STATE and its contractors for construction of a given element of the PROJECT;

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Comment [g31]: Joint

23
24 1.2 AWV means the Alaskan Way Viaduct structure on State Route 99, currently a non-
25 limited-access highway over a portion of CITY Street Right-of-Way and located partially in the
26 City of Seattle. [Salav: The AWV is located totally within Seattle, why are you using
27 "located partially" ? Also, can you include SR in this definition, as in AWVSR?]

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Comment [g32]: Joint

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28
29 1.3 Betterment means any upgrading of the UTILITY Facilities, or the design and
30 construction of any new UTILITY Facilities that is not attributable to the PROJECT or
31 PROGRAM and is made solely for the benefit of and at the election of UTILITY. Examples of
32 work that will not constitute a Betterment, so that UTILITY shall not bear cost responsibility,
33 are:

Comment [g33]: Joint

34 1.3.1 If existing devices or materials are no longer regularly manufactured or cannot be
35 obtained in time to meet the PROJECT schedule, needs or requests by the STATE, then devices
36 or materials of equivalent standards although not identical, of the next highest grade or size; or

37 1.3.2 Upgrades to UTILITY Facilities necessary to meet current code requirements and
38 UTILITY published standards; or

39 1.3.3 Work required by UTILITY to maintain current service and capacity; or

40 1.3.4 Work required by current design and construction practices regularly followed by
41 UTILITY in its own work and/or considered an industry design or construction standard.
42

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1 1.4 Business Days means Monday through Friday, inclusive, except for official City of
2 Seattle and state holidays and City-mandated furlough days.

Comment [g34]: City

3
4 1.5 CITY means the City of Seattle, a Washington municipal corporation.

Comment [g35]: Joint

5
6 1.6 City Construction Project Engineer means the person designated by SDOT to act as the
7 City's coordinator and primary representative in matters arising during the course of construction
8 as set forth in this Agreement.

Comment [g36]: Joint

9
10 1.7 CITY Designated Representative means the CITY official listed in Section xx of this
11 Agreement.

Comment [g37]: Joint

12
13 1.8 CITY Infrastructure means the portions of SPU Facilities, SCL Facilities and City-CITY
14 Street Right-of-Way improvements constructed or modified as part of the PROJECT to be
15 owned, operated and maintained by the CITY.

Comment [g38]: Joint

16
17 1.9 CITY Interest Property means CITY Street Right-of-Way plus all other real property that
18 the CITY owns or in which the CITY has a real property interest on the effective date of this
19 Agreement. In addition, City-CITY Interest Property means any property or property interest
20 that will, at the completion of the PROJECT, be transferred by the STATE to the CITY. CITY
21 Interest Property does not include real property acquired or to be acquired by the STATE for
22 planned limited access facilities such as the bored tunnel, portals and access for which no real
23 property interest will be transferred to the CITY.

Comment [g39]: Joint

24
25 1.10 City of Seattle means CITY.

Comment [g40]: Joint

26
27 1.11 City Standards means all City of Seattle laws, rules, regulations and standards and all
28 applicable federal and state laws, rules, regulations and standards, including but not limited to
29 the following, except as otherwise provided in this Agreement, UT 01474 and UT 01476:

Comment [RF41]: Joint

30 The Seattle Municipal Code;
31 The City of Seattle Standard Specifications for Road, Bridge and Municipal
32 Construction;
33 The City of Seattle Standard Plans for Municipal Construction;;
34 SDOT, SCL, DPD and SPU Director's Rules, including the City-CITY Street of Seattle
35 Right-of-Way Improvements Manual, 2005-22;
36 SCL Material Standards; and
37 SCL Construction Guidelines

Comment [RF42]: Joint

38
39 1.12 CITY Street Right-of-Way means public street right-of-way under the jurisdiction of
40 SDOT pursuant to Title 15 of the Seattle Municipal Code.

Comment [g43]: Joint

41

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1 1.13 Conceptual Relocation Plan means a work product that defines the general scope of
2 Utility-UTILITY relocations including a planning level estimate of design and construction
3 costs.

Comment [g44]: Joint

5 1.14 Conflicting Facilities means all SCL Facilities and all SPU Facilities identified by the
6 STATE that directly conflict with the bored tunnel portals and tunnel portal excavations.

Comment [RF45]: Joint

8 1.15 Contract Award means the STATE's written decision accepting bid for construction of a
9 Project. **[Salay: rather than "a Project" do you mean the "PROJECT?" "Project" is not
10 defined. Maybe it should be lower case.]**

Comment [g46]: Joint

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12 1.16 Damage means loss of function, capacity, or aesthetic quality. For the purposes of this
13 Agreement, "Damage" shall not be construed to include reduction of design life of any structure
14 or utility. **[Salay: "aesthetic quality" is not defined.]** [1b]

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Comment [g47]: WSDOT

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17 1.17 Damage means any direct or indirect consequence of the PROJECT that causes harm to,
18 or reduces value or usefulness of, CITY Infrastructure, private property, CITY property or other
19 public property, including but not limited to structural damage or physical failure; loss of
20 function, capacity or aesthetic quality; reduced service capacity, including intended future
21 capacity; reduced service life; a measurable reduction of design life of an SPU Facility or an
22 SCL Facility; water main movement in excess of established thresholds; or any other impact to
23 an SPU Facility or an SCL Facility such as stress or Deformation. **[Salay: [1b]**

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Comment [g48]: City

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30 1.18 Defective Work means design or construction work or materials that fail to comply with
31 the Approved Plans, CITY-approved modifications to the Approved Plans, or the laws, rules,
32 regulations or standards as specified in this Agreement.

Comment [RF49]: Joint

34 1.19 Deformation means any 3-dimensional displacement, for a structure (such as tilt of a
35 structure), and strain (relative displacements of structures or the ground) and includes any
36 settlement, heave, lateral movement, and related terms are used as being common industry
37 terminology. Where such industry terminology is used for convenience herein, it does not imply
38 that the broad definition of Ddeformation has been limited.

Comment [g50]: Joint

40 1.20 Deformation Mitigation Work means any planning, operational and construction
41 management practices, monitoring and temporary or permanent UTILITY Facilities Work
42 undertaken to avoid and/or remedy Damage to UTILITY Facility-Facilities as a result of
43 Deformation.

Comment [g51]: Joint

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- 1
2 1.21 Design-Bid-Build Contract means a project delivery method in which the STATE
3 provides a complete design, advertises for bids, and awards a contract to the lowest responsive
4 bidder who is responsible for completing the construction of the project.
5
6 1.22 Design-Build Contract means a project delivery method in which the STATE develops a
7 conceptual design and requests proposals from pre-qualified contractors. The contract is
8 awarded to the contractor with the best value responsive proposal. The contractor is responsible
9 to complete the design and construct the project.
10
11 1.23 Design Builder means the entity with whom the STATE enters into a Design-Build
12 contract and who is responsible to complete the design and construct the project.
13
14 1.24 DPD means the City of Seattle Department of Planning and Development.
15
16 1.25 Engineer of Record means the engineer licensed in the State of Washington who has been
17 commissioned by the STATE as the prime engineer of the PROJECT, having overall
18 responsibility for the adequacy of the design and the coordination of the design work of other
19 engineers and whose professional seal is on the Approved Plans.
20
21 1.26 Environmental Compliance Assurance Procedure (ECAP) means procedures incorporated
22 into the ~~current~~ WSDOT *Construction Manual* M41-01.05 ~~dated July 2005~~ (Section 1-2.2k(1))
23 and the WSDOT *Environmental Procedures Manual* M31-11.05 (Sections 610 and 690) dated
24 ~~2005~~, as modified by this Agreement, which provide guidance on compliance with
25 Environmental Laws and environmental Remediation. The purpose of the ECAP is to recognize
26 and eliminate environmental violations during the construction phase on STATE construction
27 sites and to ensure prompt notification to STATE management and agencies. For purposes of the
28 ECAP, violations are defined as actions that are not in compliance with environmental standards,
29 permits, or laws.
30
31 1.27 Environmental Law(s) means any environmentally related local, state or federal law,
32 regulation, ordinance or order (including without limitation any final order of any court of
33 competent jurisdiction of which the STATE has knowledge), now or hereafter in effect
34 including, but not limited to: the Federal Clean Air Act; the Federal Water Pollution Control Act;
35 the Federal Safe Drinking Water Act; the Federal Comprehensive Environmental Response
36 Compensation and Liability Act, as amended by the Superfund Amendments and
37 Reauthorization Act of 1986; the Federal Resource Conservation and Recovery Act, as amended
38 by the Solid and Hazardous Waste Amendments of 1984; the Federal Occupational Safety and
39 Health Act; the Federal Emergency Planning and Right-to-Know Act of 1986; the Federal
40 Hazardous Materials Transportation Control Act of 1980; the Federal Clean Water Act of 1977;
41 the Federal Insecticide, Fungicide and Rodenticide Act; the Federal Waste Management
42 Recovery and Recycling Act; the Washington Hazardous Waste Management Act; the
43 Washington Hazardous Waste Fees Act; Washington Model Toxics Control Act; the Washington
Nuclear Energy and Radiation Act; the Washington Radioactive Waste Storage and

Comment [RF52]: Joint

Comment [RF53]: Joint

Comment [RF54]: Joint

Comment [RF55]: Joint

Comment [RF56]: Joint

Comment [g57]: Joint

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1 Transportation Act; the Washington Underground Petroleum Storage Tanks Act; and any
2 regulations promulgated thereunder from time to time.

Comment [RF58]: Joint

3
4 1.28 Final Design Submittal means plans, specifications, and design documentation
5 representing complete design of a given project element in a Design-Build Contract. The Final
6 Design Submittal addresses and incorporates review comments from the Preliminary Design
7 Submittal.

Comment [RF59]: Joint

8
9 1.29 Final Plan Review Package means the Plan Review Package submitted to the CITY that
10 is comprised of the STATE's contract documents including contract addenda and fully
11 incorporates or otherwise addresses all CITY plan review comments and all applicable
12 conditions of the Street Use Permit.

Comment [RF60]: Joint

13
14 1.30 Hazardous Substance(s) means any substance, or substance containing any component,
15 now or hereafter designated as a hazardous, dangerous, toxic or harmful substance, material or
16 waste, subject to regulation under any federal, state or local law, regulation or ordinance relating
17 to environmental protection, contamination or cleanup including, but not limited to, those
18 substances, materials and wastes listed in the United States Department of Transportation
19 Hazardous Materials Table (49 C.F.R. §172.101) or by the United States Environmental
20 Protection Agency as hazardous substances (40 C.F.R. pt. 302 and amendments thereto) or in the
21 Washington Hazardous Waste Management Act (Ch. 70.105 RCW) or the Washington Model
22 Toxics Control Act (Chs. 70.105D RCW and 82.21 RCW), petroleum products and their
23 derivatives, and such other substances, materials and wastes as become regulated or subject to
24 cleanup authority under any Environmental Law.

Comment [RF61]: Joint

25
26 1.31 Letter of Acceptance means the written document that signifies the CITY's acceptance of
27 CITY Infrastructure to be owned by the CITY; and shall signify the STATE's transfer of CITY
28 Infrastructure to be owned by the CITY. The Letter of Acceptance will not transfer any interest
29 in real property. The Letter of Acceptance shall be jointly executed by the Parties. A Letter of
30 Acceptance for SPU Facilities requires SPU approval and a Letter of Acceptance for SCL
31 Facilities requires SCL approval.

Comment [g62]: Joint

32
33 1.32 Letter of Plan Approval means the letter provided to the STATE by the CITY following
34 the completion of the plan review process, signifying that the plans and specifications identified
35 in the letter are the Approved Plans.

Comment [g63]: Joint

36
37 1.33 MTCA means the Washington Model Toxics Control Act (Chs. 70.105D RCW and 82.21
38 RCW).

Comment [RF64]: Joint

39
40 1.34 New Work means the design and construction by or at the direction of UTILITY of a new
41 utility other than (a) as part of a relocation associated with the PROJECT, or (b) to provide
42 service to the PROJECT. New Work shall be entirely the financial obligation of UTILITY.

Comment [RF65]: Joint

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- 1 1.35 Preliminary Engineering means the portion of the pProject engineering which advances
2 the pProject design to address Type, Size, and Location (“TS&L”) for all components of the
3 pProject. Design will have advanced sufficiently to define alignments and identify conflicts.
4 Preliminary engineering will include an estimate for final design and a preliminary cost for
5 construction. **Salay, throughout these definitions, you use “project” rather than PROJECT,
6 and sometimes Project. “Project is not defined and it appears that all references to project
7 should not be PROJECT. So, I have used a lower case, unless you need to define Project as
8 opposed to PROJECT.]**
9
- 10 1.36 Plan Review Package means clear and complete plans, specifications, and the necessary
11 assumptions, studies, models and calculations upon which the design was based, and corrections
12 previously requested by the CITY with respect to Design-Bid-Build pProjects.
13
- 14 1.37 100% Plan Review Package means the Plan Review Package submitted to the CITY
15 concurrent with STATE’s final internal review of the construction contract plans and contract
16 provisions that shall evidence the agreement between the STATE and its contractors for
17 construction of Design-Bid-Build pProjects.
18
- 19 1.38 Plans, Specifications, and Estimate (“PS&E”) means the portion of the ~~PROJECT~~
20 engineering after the Preliminary Engineering, which advances the ~~PROJECT~~ design by
21 preparing contract-ready documents and the engineer’s cost estimate. At this stage the
22 specifications are written and tailored to the plans so that all work can be measured and has a pay
23 item. The cost estimate is formalized using the established specifications, pay items and quantity
24 takeoffs, for 60% through 100% completion of the total design effort. **Salay: look at section
25 1.35, where you do not fully cap PROJECT. Which meaning do you wish to impart to keep
26 these definitions consistent?]**
27
- 28 1.39 Preliminary Design Submittal means in a Design-Build Contract, a formal opportunity for
29 the STATE, the Design-Builder, various design team disciplines, and other approved ~~Project~~
30 stakeholders to review the construction documents in order to ensure that the design is
31 progressing appropriately and proceeding in the right direction; the plans reflect Design-Builder
32 requirements for construction; design features are coordinated; and there are no fatal flaws
33 within a given discipline or between disciplines. **Salay, should this be PROJECT? Or
34 project?]**
35
- 36 1.40 Private Utilities means utility uses, excluding facilities owned and operated by the CITY,
37 approved through franchise agreements and/or ~~Street Use Permits~~ by the CITY and governed and
38 enforced through City/CITY Ordinance. ~~IAES~~ [1b] [1b]
39 [REDACTED]
40 [REDACTED]
41 [REDACTED]
42 [REDACTED]

Comment [RF66]: Joint

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Comment [RF67]: Joint

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Comment [RF68]: Joint

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Comment [RF69]: Joint

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Comment [g70]: Joint

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Comment [g71]: Joint

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1 | 1.41 PROJECT means the pProposed bBored tTunnel pProject, the part of the PROGRAM
2 that replaces SR 99 from South Royal Brougham Street to ~~Alaskan Way~~ Street and that consists of
3 designing and constructing a four-lane bored tunnel from South King Street to Thomas Street,
4 north and south tunnel portals and access streets, re-establishment of the City-CITY street grid in
5 the vicinity of the portals ~~(Battery Street Tunnel decommissioning and Alaskan Way Viaduct
6 demolition will be addressed in a future agreement);~~ and associated utility relocations.

Comment [g72]: Joint. This definition does not currently include the demolition of the Alaskan Way Viaduct and the decommissioning of the Battery Street Tunnel.

8 | 1.42 PROGRAM means the AWVSR pProgram which consists of a four-lane bored tunnel
9 and improvements to City-CITY streets, the City-CITY waterfront, and transit; and the Moving
10 Forward Projects as defined in GCA 6366.

Comment [RF73]: Joint

12 | 1.43 Project Engineer means the persons appointed by the STATE to lead the PROJECT
13 during design and/or construction or his or her designee.

Comment [RF74]: Joint

15 | 1.44 Released for Construction Submittal means in a Design-Build Contract, plans and
16 specifications for a given project element that are construction ready and have been certified by
17 the Design-Builder as having met all contract requirements and received all approvals and
18 permits. The Released for Construction submittal addresses all review comments from the
19 Preliminary Submittal and Final Design Submittals.

Comment [RF75]: Joint

21 | 1.45 Relocation Work means the removal or abandonment of each-Conflicting Facility
22 Facilities and the installation or reconstruction of each-Conflicting Facility-Facilities to its/their
23 permanent and final location. [Salary: [1b]

Comment [RF76]: Joint

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27 | 1.46 Remediation means the same as Remedy or Remedial Action defined in MTCA which
28 includes any action or expenditure consistent with the purposes of MTCA to identify, eliminate,
29 or minimize any threat or potential threat posed by Hazardous Substances to human health or the
30 environment including any investigative and monitoring activities with respect to any release or
31 threatened release of a Hazardous Substance and any assessments to determine the risk or
32 potential risk to human health or the environment.

Comment [RF77]: Joint

34 | 1.47 Round Table Meeting means a meeting typically held five (5) weeks following the
35 submittal of the 100% Plan Review Package to the CITY and STATE, and commonly attended
36 by the STATE's pProject team and STATE reviewers to resolve and address STATE comments
37 on the 100% Plan Review Package.

Comment [RF78]: Joint

39 | 1.48 SCL means Seattle City Light.

Comment [RF79]: Joint

41 | 1.49 SCL Facilities means the electrical facilities impacted by, or constructed as part of, the
42 PROJECT that are owned or to be owned by the CITY.

Comment [RF80]: Joint

HIGHLIGHTED TEXT = Elevate to Leadership
GREEN HIGHLIGHT = Staff to resolve

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- 1 1.50 SCL Facilities Work means work required to design, construct and protect the SCL
2 Facilities as part of the PROJECT. Comment [g81]: Joint
3
- 4 1.51 SDOT means the Seattle Department of Transportation. Comment [RF82]: Joint
5
6
- 7 1.52 Specialty Work means the construction and installation of all 13.8kV or above rated
8 equipment and associated materials and infrastructure needed to accomplish the SCL Facilities
9 Work. Comment [g83]: Joint
10
- 11 1.53 SPU means Seattle Public Utilities. Comment [g84]: Joint
12
- 13 1.54 SPU Facilities means the water, drainage and wastewater facilities impacted by, or
14 constructed as part of, the PROJECT that are owned or to be owned by the CITY. Comment [RF85]: Joint
15
- 16 1.55 SPU Facilities Work means work required to design, construct and protect the SPU
17 Facilities as part of the PROJECT.
18
- 19 1.56 STATE means the State of Washington Department of Transportation and may include
20 its cContractors, sSubcontractors, authorized aAgents and aAssigns. Comment [RF86]: Joint
21
- 22 1.57 STATE Designated Representative means the State of Washington official listed in
23 Section 1.01 of this Agreement.
24
- 25 1.58 Street Use Permit means written authorization secured by the STATE from the Director
26 of SDOT for use of the CITY Street Right-of-Way pursuant to Title 15 of the Seattle Municipal
27 Code. Comment [RF87]: Joint
28
- 29 1.59 Submittal Control Document means a list of all documents or reports that are required by
30 the Approved Plans or construction contract documents or applicable law to be provided to or
31 submitted to the STATE and the CITY. Comment [RF88]: Joint
32
- 33 1.60 Task Force means a group consisting of State STATE, City CITY, contractor, and other
34 stakeholder staff meeting regularly to review and reach decisions relating to a particular subject,
35 e.g., traffic, structures. Comment [g89]: Joint
36
- 37 1.61 Task Order means a document executed by the PARTIES Parties under this Agreement
38 authorizing work by one Pparty to be done on behalf of the other Pparty and that defines the
39 scope and the obligations of the PARTIES Parties for the given element of work. All terms and
40 conditions of the Agreement shall apply to each Task Order. Comment [g90]: Joint
41
- 42 1.62 UTILITY Facilities means SPU Facilities and SCL Facilities. Comment [g91]: Joint
43

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- 1 1.63 UTILITY Facilities Work means SPU Facilities Work and SCL Facilities Work.
- 2
- 3 1.64 UTILITY Easement(s) means a non-exclusive permanent easement over real property for
- 4 the operation, maintenance, repair and replacement of the relocated UTILITY Facilities, in the
- 5 form attached as Exhibit A.
- 6
- 7 1.65 Utility Service Work means any facilities required to provide temporary uUtility services
- 8 for construction of the PROJECT; and any work needed to obtain permanent UTILITY services
- 9 to the bored tunnel or UTILITY customers.
- 10
- 11 1.66 WSDOT means Washington State Department of Transportation.
- 12
- 13 Words not otherwise defined, which have well-known technical or construction industry
- 14 meanings, are used in accordance with such recognized meanings.
- 15
- 16
- 17 **2. GENERAL RESPONSIBILITIES**
- 18
- 19 2.1 The Parties shall manage risk, produce design and conduct construction in a manner that
- 20 maximizes cumulative public benefits and minimizes cumulative public costs as mutually agreed
- 21 to by the Parties.
- 22
- 23 2.2 This Agreement in conjunction with GCA 6486 and UT 01476 is prepared by the STATE
- 24 and CITY to govern relationships between the Parties and establish each Party's responsibilities
- 25 regarding the PROJECT as described in Exhibit A, Project Description. **[Salav: Modify when**
- 26 **splitting this agreement into SCL & SPU. Exhibit A in Section 1.64 is defined as a Utility**
- 27 **Easement; fix Exhibits]**
- 28
- 29 2.3 The Parties understand that environmental review of the proposed PROJECT is underway
- 30 at the date of this Agreement and agree that if an alternative other than the Proposed Bored
- 31 Tunnel is selected, this Agreement shall not be applicable.
- 32
- 33 2.4 The Parties shall work collaboratively to resolve issues in a manner that endeavors to
- 34 open the Proposed Bored Tunnel to the public on schedule.
- 35
- 36 2.5 The design and construction of CITY Infrastructure, including infrastructure repair, shall
- 37 comply with City of Seattle codes, rules, regulations and standards.
- 38
- 39 2.6 Each Party shall provide the funding and resources necessary to fulfill the responsibility
- 40 of that Party as established in this Agreement. **[Salav: [1b]**
- 41 **[1b]**
- 42
- Comment [g92]: Joint
- Comment [g93]: Confirm definition with RES
- Comment [g94]: Joint
- Comment [W95]: Joint
- Comment [W96]: Joint
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- Comment [W97]: Joint
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- Comment [W98]: City
- Comment [W99]: Joint
- Comment [W100]: Joint
- Comment [W101]: Joint
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2.7 The Parties agree to work cooperatively with each other and make reasonable, good faith efforts to timely and expeditiously complete the PROJECT; as provided in this Agreement, including, but not limited to, the selection of a preferred SR 99 design alternative; development of preliminary engineering and final design and construction. In order to optimize design and minimize conflicts, the STATE shall coordinate design and construction of the various contracts making up the PROJECT with design of subsequent PROGRAM stages, and with construction of previous stages of the PROGRAM. The STATE shall be prepared to modify design of the contracts making up the PROJECT, the subsequent PROGRAM stage and/or previous phase if both Parties determine the modifications are necessary and reasonable, to minimize conflicts.

Comment [W102]: Joint

2.8 The STATE shall pay for all costs associated with the UTILITY Facilities Deformation Mitigation Work, including but not limited to design; design review; purchase of materials; construction; inspection; preparation of record drawings; CITY crew time and costs; any temporary UTILITY services required for construction of the PROJECT; and any work needed to obtain permanent UTILITY services to the bored tunnel or UTILITY customers; regardless of whether such UTILITY Facilities Deformation Mitigation Work is performed by the UTILITY or other CITY staff, the STATE, or its contractor, as set forth in the Approved Plans, and any UTILITY-approved revisions to the Approved Plans, without reimbursement from UTILITY, including Change Orders pursuant to Section 8 of this UTILITY Bored Tunnel Agreement, but excluding Betterments or New Work as defined in Sections 1.3 and 1.34, respectively, Section 2 of this UTILITY Bored Tunnel Agreement. No delay costs shall be paid for by UTILITY.

Comment [g103]: Joint

2.9 The STATE is responsible for designing and constructing the proposed Bored Tunnel portion of the PROJECT. The STATE will take reasonable measures to minimize, limit, and mitigate Damage to private property and CITY Infrastructure including CITY streets, CITY telecommunications facilities and CITY utilities that may result from the proposed Bored Tunnel construction, including Damage that may result from tunnel-induced deformation. WSDOT-STATE is responsible for to remedy such Damage should it occur. [1b]

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Comment [W104]: Joint - Damage definition pending.

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2.10 CITY is responsible for relocating those existing CITY utilities that have alignments intersecting the final configuration of the proposed SR 99 bored tunnel portals and tunnel portal excavations. CITY's relocation responsibility is limited to the final relocation of each UTILITY Conflicting Facility found to be in direct conflict with the tunnel portals or portal excavations. During preliminary design, the Parties will jointly identify UTILITY Conflicting Facilities that will need to be relocated more than once.

Comment [W105]: City

2.11 The Parties agree that it is in the public interest for one Party to implement portions of the other Party's PROJECT responsibilities. Therefore, this STATE Agreement establishes a Task Order process for use by a Party to authorize the other Party to conduct work on its behalf,

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1 and as may be documented through each Task Order, agree to reimburse the other Party for such
2 | services. **[Salav: This is not an SDOT agreement]**

Comment [W106]: Joint
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4 | 2.12 The general terms and conditions of GCA 6486 and this Agreement apply to each Task
5 | Order performed as part of the PROJECT, unless otherwise specified in an executed Task Order.

Comment [W107]: Joint

7 | 2.13 For UTILITY Facilities Work which the STATE will design and construct, the STATE
8 | and UTILITY agree to document key design-related decisions to ensure that issues are resolved
9 | to PARTIES Parties satisfaction, pursuant to Section 5 herein, so that the STATE can proceed
10 | with the design of the PROJECT. These decisions will be evidenced through the use of a
11 | concurrence letter signed by both PARTIES Parties.

Comment [g108]: Joint

13 | 2.14 The STATE agrees to take the lead in consulting and coordinating with utilities affected
14 | by the PROJECT.

Comment [RF109]: Joint

16 | 2.15 The PARTIES Parties shall apply for and obtain all necessary federal, state and City of
17 | Seattle issued permits and approvals for the work for which they are responsible prior to
18 | commencing work that requires such permits, including but not limited to all permits, approvals
19 | or permission for exploratory investigations, testing, site preparations, demolition and
20 | construction. **[Salav: [REDACTED] [1b]**

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Comment [W110]: Joint

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24 | 2.16 The PARTIES Parties shall comply with the regulatory requirements and agree to meet
25 | operational and customer service requirements of each existing UTILITY Facility.

Comment [RF111]: Joint

27 | 2.17 The PARTIES Parties shall minimize utility service interruptions to UTILITY customers.

Comment [g112]: Joint

29 | 2.18 To the extent necessary, SCL agrees to lead the coordination of the PROJECT with all
30 | applicable electrical regulatory agencies.

Comment [P113]: Joint - SCL only

3. RESPONSIBILITIES REGARDING SCL AND SPU RELOCATIONS (PORTALS)

34 | 3.1 The STATE shall identify all SCL Facilities and all SPU Facilities that directly conflict
35 | with the bored tunnel portals and tunnel portal excavations ("Conflicting Facilities").

Comment [RF114]: Joint

37 | 3.2 UTILITY shall inform the STATE of any additional Conflicting Facilities or New Work
38 | and confirm that each UTILITY Facility which the STATE has identified as a Conflicting
39 | Facility does in fact directly conflict with the bored tunnel portals or bored tunnel portal
40 | excavations.

Comment [RF115]: Joint

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1 3.3 STATE is responsible to prepare conceptual relocation plan (preliminary engineering) in
2 consultation with the CITY that defines the Relocation Work and provides planning level
3 schedule and cost estimates.

Comment [RF116]: Needs resolution

5 3.4 The STATE shall protect UTILITY Facilities, including those installed as part of the
6 PROJECT or PROGRAM.

Comment [g117]: Joint

8 3.5 UTILITY is responsible for relocating each identified Conflicting Facility one time, to its
9 final and permanent relocation, which work is Relocation Work.

Comment [RF118]: City

11 3.6 Interim or temporary relocations required in order to move a Conflicting Facility to its
12 final and permanent location, including but not limited to relocations necessary to stage any
13 PROJECT construction, is not Relocation Work, and shall be the responsibility of the STATE.

Comment [RF119]: City- [REDACTED]
[REDACTED]

15 **4. RESPONSIBILITIES REGARDING UTILITY FACILITIES DEFORMATION**
16 **..... MITIGATION**

18 4.1 The STATE will undertake an assessment of potential impacts of Deformation on private
19 property and CITY infrastructure including CITY streets, CITY telecommunications facilities
20 and CITY utilities. Where the CITY has established Ddeformation criteria for its uUtilities, the
21 criteria will be used in the potential impact analysis. Otherwise, criteria will be derived using
22 accepted engineering practices. [Salary: [REDACTED] [1b]

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Comment [g120]: Joint

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27 4.2 The UTILITY shall review the STATE's estimate of susceptibility or vulnerability of its
28 facilities to Deformation and provide comments/input.

Comment [g121]: Joint

30 4.3 The STATE shall develop a preliminary plan for UTILITY Facilities Deformation
31 Mitigation Work. PARTIES Parties will work collaboratively to finalize and implement the
32 UTILITY Facilities Deformation Mitigation Work plan.

Comment [g122]: Joint

34 4.4 As a component of the UTILITY Facilities Deformation Mitigation Work plan, the
35 STATE will implement a construction monitoring Task Force responsible for the planning and
36 implementation of the instrumentation and monitoring program and processing data, evaluating
37 results, and developing recommendations to mitigate Ddeformation.

Comment [g123]: Joint

39 4.6 The CITY will advise the STATE and participate in construction monitoring and
40 Ddeformation management activities when these activities pertain to CITY Infrastructure. The
41 CITY will provide the STATE all necessary access to CITY Infrastructure for the purposes of
42 design or implementation of mitigation measures. The CITY may perform mitigation measures

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1 | on behalf of the STATE in a manner and schedule that supports the STATE's project-PROJECT
2 | requirements.

Comment [g124]: Joint

4 | **5. DESIGN, PLAN REVIEW, CHANGE MANAGEMENT**

6 | 5.1 The STATE and UTILITY shall comply with all provisions outlined in Section 6 [Salary:
7 | **This section is permitting & ROW use; design, plan review, etc is under Section 7, did you**
8 | **mean Section 7?**] of the SDOT SR 99 Bored Tunnel Agreement No. 6486. The PARTIES
9 | Parties shall facilitate the design as provided herein and shall allow UTILITY adequate time for
10 | detailed design review. UTILITY will meet agreed-upon timelines for review. The PARTIES
11 | Parties shall address and resolve each design review comment to UTILITY's and the STATE's
12 | satisfaction. In the event the PARTIES Parties are unable to mutually resolve comments, the
13 | PARTIES Parties shall initiate the dispute resolution process pursuant to Section 23 of the SDOT
14 | SR 99 Bored Tunnel Agreement No. 6486 [Salary: **Why are you referencing this dispute**
15 | **resolution process when this agreement has one under Section 19?!**

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Comment [g125]: Joint

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17 | 5.2 In the event the STATE, pursuant to ch. 47.52 RCW, designates as a Limited Access
18 | Facility any area in or near the tunnel portals on which a UTILITY Facility exists or will be
19 | relocated, the PARTIES Parties agree to make every effort to develop a design that minimizes
20 | the need for regular, on-going maintenance access.

Comment [g126]: Joint

22 | 5.3 The STATE agrees to incorporate qualification criteria mutually agreed upon by the
23 | PARTIES Parties for construction contractors in the performance of Specialty Work into the
24 | contract bid document. The STATE shall consult with UTILITY on the contractors and
25 | subcontractors bidder qualifications for Specialty Work. UTILITY shall provide comments to the
26 | STATE on known bidder qualifications. The STATE shall not allow unqualified contractors to
27 | perform Specialty Work.

Comment [g127]: Joint - SCL only

33 | **6. CONSTRUCTION MANAGEMENT, INSPECTION AND CONTRACT**
34 | **ADMINISTRATION**

36 | 6.1 The PARTIES Parties shall comply with all provisions contained within Section 14 of
37 | the SDOT SR 99 Bored Tunnel Agreement No. GCA 6486, regarding Construction
38 | Management, Inspection and Contract Administration for the PROJECT, and such provisions
39 | shall apply equally to this Agreement.

Comment [g128]: Joint

41 | 6.2 Where UTILITY staff or crews are performing work requested by the STATE, [Salary:
42 | [b]
43 | [REDACTED]

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[1b]

1 [REDACTED] the STATE shall provide all labor, materials, equipment, and tools
2 required to excavate, provide trench support systems, and handle and dispose of all spoils
3 (including contaminated soils, groundwater, and other debris), and provide a safe workplace for
4 UTILITY staff per applicable State and Federal laws, and City of Seattle standards, for the
5 UTILITY Facilities Work in accordance with the Approved Plans and any UTILITY-approved
6 revisions to the Approved Plans. The STATE will not provide personal protective equipment for
7 UTILITY staff.

Comment [g129]: Joint

8
9 6.3 The STATE agrees to provide advance notice of service outages needed for construction
10 to schedule crews, notify customers and accommodate other previously scheduled outage
11 requests in accordance with UTILITY procedures. **Salav:** [1b]

Comment [g130]: Joint

[1b]

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7. MONITORING

17 7.1 The PARTIES Parties agree to comply with all provisions contained within Section 12 of
18 the SDOT Bored Tunnel Agreement No. GCA 6486, regarding Monitoring for the PROJECT,
19 and such provisions shall apply equally to this Agreement.

Comment [g131]: Joint

8. NOTICES AND DESIGNATED REPRESENTATIVES

23 8.1 Any notice required or permitted to be given pursuant to this Agreement shall be in
24 writing and shall be sent postage prepaid by U.S. Mail to the Designated Representatives.

26 8.2 The Designated Representatives for each Party are as follows:

28 [STATE]:

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

Comment [RF132]: Joint

35 [CITY]:

36 Project Manager, Alaskan Way Viaduct & Seawall Replacement Program
37 Seattle City Light
38 P.O. Box 34018
39 700 Fifth Avenue, Suite 4900
40 Seattle, WA 98124-4018

Comment [RF133]: Joint

9. FUNDING OF UTILITY FACILITIES WORK, PROJECT AND TASK ORDERS

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1 9.1 The STATE shall provide necessary funding for all PROJECT costs without
2 reimbursement from the City of Seattle, except for the City of Seattle cost responsibilities
3 established in this Agreement, in SDOT Agreement GCA 6486, [add respective UTILITY
4 Agreement], [Salary: [1b]]
5 [1b]
6
7
8

Comment [g134]: Need to identify specific UT agreement for SPU and SCL.

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9 9.2 If for any reason PROJECT costs exceed the State funding limit established by RCW
10 47.01.402, the STATE shall have the sole responsibility for obtaining any needed additional
11 spending authority without recourse to any funding device that burdens Seattle area taxpayers or
12 property owners or the City of Seattle.
13

Comment [W135]: City

14 9.3 Each PARTY-Party shall fund work for which it is responsible pursuant to this
15 Agreement.
16

Comment [g136]: Joint

17 9.4 The STATE will request, obtain and fund any temporary and permanent utility services
18 required for the PROJECT through separate utility service agreements with UTILITY.
19

Comment [g137]: Joint

20 9.5 While SDOT is the City-CITY lead agency for the PROJECT, the STATE understands
21 and agrees that all PROJECT decisions that are likely to result in expenditure of UTILITY funds,
22 and all PROJECT decisions that may have operational, maintenance, or access impacts to
23 UTILITY Facilities, require concurrence of UTILITY.
24

Comment [RF138]: Joint

25 **10. UTILITY'S RIGHT TO CORRECT NON-CONFORMING, UNAUTHORIZED**
26 **AND DEFECTIVE WORK**
27

28 10.1 If the STATE, or its contractor, fails to remedy, or fails to properly remedy, non-
29 conforming, unauthorized or Defective Work within the time specified by UTILITY, which is
30 not to be less than ten (10) Business Days, UTILITY may, but is not required to, correct and
31 remedy such work by any means as UTILITY may deem necessary, including the use of
32 UTILITY staff or contractors.
33

Comment [RF139]: Joint

34 10.2 If the STATE, or its contractor, fails to comply with a written notice to remedy what
35 UTILITY determines to be an emergency situation, UTILITY may, but is not required to, have
36 the non-conforming, unauthorized or Defective Work corrected immediately, have such work
37 removed and replaced, or have work the STATE or its contractor refuses to correct completed.
38 An emergency situation shall mean a condition that calls for immediate action to respond to
39 danger to health, safety or property.
40

Comment [RF140]: Joint

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1 10.3 Direct and indirect costs incurred by UTILITY attributable to correcting and remedying
2 unauthorized, non-conforming or Defective Work, or work the STATE or its contractor failed or
3 refused to perform, shall be paid by the STATE to UTILITY within thirty (30) calendar days
4 after receipt of an invoice with appropriate documentation of such costs.

Comment [RF141]: Joint

6 10.4 Except in an emergency situation as defined under ~~Section 1103~~, disagreements between
7 UTILITY and the STATE on what constitutes non-conforming, unauthorized or Defective Work
8 shall be resolved using the dispute resolution process established in ~~Section 1103~~ herein prior to
9 UTILITY performing any work. [Salav: [1b]

Comment [RF142]: Joint

[1b]

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14 10.5 Any and all services, including direction, provided by UTILITY pursuant to this section
15 shall be subject to all limitations on the CITY's liability contained in the SDOT Bored Tunnel
16 Agreement No. 6486, including but not limited to ~~Section 1103~~, Risk Allocation,

Comment [RF143]: Joint

11. UTILITY ACCESS AND INSPECTION OF UTILITY FACILITIES WORK

20 11.1 Neither the STATE nor its contractor shall require UTILITY to interrupt electrical
21 service without (a) written notice to UTILITY at least fourteen (14) calendar days prior to the
22 planned interruption and (b) UTILITY's written approval. UTILITY may restrict electrical
23 service interruptions to the extent necessary to maintain electrical system operations and
24 adequate power supply to customers. [Salav: [1b]

Comment [SLS144]: Will insert the equivalent for SPU from the SPU H2K2 agreement.

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[1b]

Comment [RF145]: Joint

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28 11.2 The STATE shall ensure the UTILITY has the right to safe access to their its facilities ~~at~~
29 ~~any time~~ to operate and maintain existing and newly installed UTILITY Facilities or to inspect or
30 perform UTILITY Facilities Work. For purposes of this Agreement, "access" shall mean that the
31 vaults, vault openings, handholes, power poles, ductbanks, substation equipment or substation
32 entrances shall not be blocked, covered or otherwise inaccessible to SCL UTILITIES.

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33 UTILITY's staff other than UTILITIES' UTILITY's on-site inspector will notify the STATE in
34 advance of their arrival on-site except in the case of emergency in accordance with site access
35 procedures to be developed by the PARTIES Parties. [Salav: [1b]

Comment [SLS146]: For SPU - hydrants, meter, valves, or similar surface water system facilities, and drainage and wastewater system facilities.

Comment [g147]: Joint

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[1b]

38 11.3 Under no circumstances shall the STATE, its contractor, or anyone other than UTILITY
39 personnel enter any energized UTILITY Facilities or operate any portion of the existing or new
40 UTILITY Facilities, without UTILITY personnel approval and supervision.

Comment [RF148]: Joint

42 11.4 The STATE agrees and acknowledges that UTILITY shall have an on-site inspector
43 available during the construction of UTILITY Facilities for UTILITY's quality assurance. The

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1 STATE agrees and acknowledges the UTILITY's on-site inspector shall (a) have timely and
2 complete access to the construction work associated with the UTILITY Facilities Work; (b) be
3 timely informed of all relevant construction timelines associated with such work; and (c) have
4 the authority to, but not be required to, reject and have corrected and/or replaced any
5 construction or materials deemed to be deficient, or which deviate from the Approved Plans or
6 any SCL-approved revisions to the Approved Plans. In such instances, UTILITY's on-site
7 inspector, or UTILITY's Project Manager, will immediately direct comments and issues to
8 the STATE's construction Project Engineer or designated representative, which will be
9 followed up in writing as soon as possible but no later than ten (10) Business Days of the date of
10 any inspection. The STATE shall promptly address each comment or issue presented by
11 UTILITY to UTILITY's satisfaction. UTILITY staff will continue to be supervised by
12 UTILITY management.

Comment [RF149]: Joint

14 11.5 The STATE will allow UTILITY's on-site inspector or Designated Representative to
15 consult with and inquire of the STATE construction Project Engineer, attend all meetings, and
16 have timely and complete access to all documentation as to all matters concerning the UTILITY
17 Facilities Work. UTILITY shall not provide direction, directly or indirectly, to the STATE's
18 consultant(s) or contractor.

Comment [RF150]: Joint

20 11.6 The STATE shall provide UTILITY with timely notice prior to commencement and
21 completion of all material stages of the UTILITY Facilities Work and shall invite UTILITY to
22 inspect such work upon completion of any material stage. The STATE shall timely address each
23 comment or issue presented by UTILITY to UTILITY's satisfaction. Both Parties agree to act as
24 expeditiously as possible to assure a timely resolution of any deficiencies.

Comment [RF151]: Joint

26 11.7 UTILITY shall observe the UTILITY Facilities Work performed by the STATE for
27 quality assurance. UTILITY will notify the STATE if defective UTILITY Facilities Work is
28 observed, such as improper installation or unsafe conditions.

Comment [RF152]: Joint

30 12. FINAL INSPECTION AND PROJECT ACCEPTANCE

32 12.1 The PARTIES-Parties agree to comply with all provisions contained within Section 15 of
33 the SDOT Bored Tunnel Agreement No. GCA 6486, regarding Final Inspection and Project
34 Acceptance, and such provisions shall apply equally to this Agreement.

Comment [g153]: Joint

36 12.2 UTILITY Facilities shall not be placed into interim use or operation, or transferred to the
37 City/CITY, unless or until: (a) UTILITY has participated in an inspection of the UTILITY
38 Facilities; (b) any deficiencies or Defective Work have been resolved or corrected to UTILITY's
39 satisfaction; and (c) UTILITY confirms with the STATE in writing that UTILITY's minimum
40 inspection and testing requirements for the UTILITY Facilities have been met, including
41 completion of the Washington State Department of Health Completion Report for water mains.

Comment [SLS154]: For SPU only

Comment [RF155]: Joint

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43 13. WARRANTIES

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1
2 13.1 The PARTIES Parties agree to comply with all provisions contained within Section 17 of
3 the SDOT Bored Tunnel Agreement No. GCA 6486, regarding Final Inspection and
4 Project warranties Acceptance, and such provisions shall apply equally to this Agreement

Comment [g156]: Joint

5 **14. ACQUISITION AND TRANSFER OF EASEMENTS AND FRANCHISES**

6
7 14.1 The UTILITY is responsible for identifying and acquiring, at its sole cost and expense,
8 all property rights needed to complete Relocation Work, except for property otherwise required
9 for the PROJECT

Comment [g157]: Joint

10
11 14.2 The STATE is responsible for identifying and acquiring, at its sole cost and expense, all
12 property rights needed to complete UTILITY Facilities Deformation Mitigation Work

Comment [g158]: Joint

13
14 14.3 The PARTIES Parties recognize that their property acquisition responsibilities include
15 the performance of all appraisal, appraisal review, title review, surveys, property investigation,
16 relocation assistance and all other investigations and services in connection with the acquisition
17 of the permanent easement rights necessary for the UTILITY Facilities, including, without
18 limitation, identification and investigation of Hazardous Substances as provided in Section 54 of
19 the SDOT Bored Tunnel Agreement No. GCA 6486. The STATE shall provide to UTILITY, as
20 soon as available to the STATE, all reports and documents prepared or obtained in connection
21 with any of the reviews and investigations described above herein.

Comment [g159]: Joint

22
23 14.4 Where the State STATE is acquiring easement rights for UTILITY Facilities Deformation
24 Mitigation Work, unless the Parties otherwise agree in writing, prior to commencement of
25 construction, the STATE shall convey to the CITY the easement rights referred to in Section 14.6
26 by conveying them substantially in the form as, and containing the same conditions as, the
27 approved Utility Easement form attached and identified as Exhibit A. The Utility Easements
28 conveyed to the CITY shall not be subject to any lien, encumbrance or exception of title of any
29 kind.

Comment [RF160]: Joint

30
31 14.5 The legal descriptions will be developed based on the Approved Plans. The Parties
32 acknowledge that due to unforeseen field conditions the location of one or more of the easements
33 may need to change after commencement of construction. In that case, the STATE shall provide
34 UTILITY with documents, reports and information identified in Subsection 14.3 above, relevant
35 to the new or modified easement area. All requirements and conditions pertaining to the original
36 permanent Utility Easements shall apply to all amendments and modifications.

Comment [g161]: Joint - RES needs to review

37
38 14.6 Where UTILITY Facilities are located in or near an area which the STATE designates as
39 a Limited Access Facility, the STATE will ensure that UTILITY continues to be allowed access
40 to its UTILITIES.

Comment [RF162]: TBD - RES needs to review

41 14.6.1 The STATE's Limited Access Facility designation for the tunnel shall contain a
42 vertical and horizontal boundary.

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14.6.2 The STATE agrees that any Limited Access Facility designation for the tunnel will end at a maximum of three (3) feet above the tunnel in order to allow UTILITY to access its UTILITY Facilities.

14.6.3 The area between the Limited Access Facility boundaries and the UTILITY Street shall continue to be CITY Street Right-of-Way. [1b] Salav [1b]

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14.6.4 In the event the STATE designates as a Limited Access Facility any area in or near the tunnel portals on which a UTILITY Facility exists or will be relocated, the STATE agrees to provide UTILITY a UTILITY franchise in the form attached hereto as Exhibit D, pursuant to the requirements of Section 14 herein [OR provide for access to operate and maintain 24/7.] and will make every effort to develop a design that minimizes the need for regular, on-going maintenance access. [Salav: Is Exhibit D a copy of WSDOT's franchise?] [1b]

Comment [SLS163]: Still just a placeholder. Need more discussion with WSDOT.

Comment [RF164]: May need elevation

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15. ENVIRONMENTAL REMEDIATION

15.1 The PARTIES-Parties shall comply with all provisions of the SDOT Bored Tunnel Agreement No. GCA 6486, regarding Environmental Remediation, including but not limited to all provisions in Section 5 therein, and such provisions shall apply equally to this Agreement.

Comment [RF165]: Joint

16. RISK ALLOCATION

16.1 The PARTIES-Parties shall comply with all provisions of the SDOT Bored Tunnel Agreement No. GCA 6486, regarding Risk Allocation and Indemnification, including but not limited to all provisions in Section 19 therein, and such provisions shall apply equally to this Agreement.

Comment [RF166]: TBD

17. INSURANCE

17.1 The PARTIES-Parties shall comply with all provisions of the SDOT Bored Tunnel Agreement No. GCA 6486, regarding Insurance, including but not limited to all provisions in Section 20 therein, and such provisions shall apply equally to this Agreement.

Comment [RF167]: Joint

18. THIRD PARTY BENEFICIARY

18.1 The PARTIES-Parties shall comply with all provisions of the SDOT Bored Tunnel Agreement No. GCA 6486, regarding Third Party Beneficiary, including but not limited to all provisions in Section 21 therein, and such provisions shall apply equally to this Agreement.

Comment [RF168]: Joint

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[1b]

19. DISPUTE RESOLUTION [Salav:
[1b]

19.1 Dispute Resolution Representatives. The Dispute Resolution Representatives for the Parties are as follows:

For the STATE: Bored Tunnel Project Design Project Engineer or, if appropriate, Construction Project Engineer, Alaskan Way Viaduct & Seawall Replacement Program Washington State Department of Transportation 999 3rd Avenue, Suite 2424 Seattle, WA 98104

For UTILITY: UTILITY AWV Project Manager P.O. Box 34023 700 Fifth Avenue, Suite 3200 Seattle, WA 98124-4023

19.2 Dispute Resolution Process. The designated representatives established under Section 19.2 shall use their best efforts to resolve disputes between the Parties. If these individuals are unable to resolve a dispute, Customer Service and Energy Delivery Officer of Seattle City Light and the Alaskan Way Viaduct Program Administrator for the Washington State Department of Transportation shall review the matter and attempt to resolve it. If they are unable to resolve the dispute, the matter shall be reviewed by the Superintendent of Seattle City Light and the Washington State Deputy Secretary of Transportation. The Parties agree to exhaust each of these procedural steps before seeking to resolve disputes in a court of law or any other forum.

Comment [g169]: Joint

20. REMEDIES; ENFORCEMENT

20.1 The PARTIES Parties agree that provisions of the SDOT Bored Tunnel Agreement No. GCA 6486, regarding Remedies; Enforcement, including but not limited to Section 24 therein, shall apply equally to this Agreement.

Comment [g170]: Joint

21. TERMINATION

21.1 The Term of this Agreement shall be the Term provided in Section 28 of the SDOT Bored Tunnel Agreement No. GCA 6486 regarding Termination and Suspension.

Comment [g171]: Joint

22. CONFIDENTIALITY OF INFORMATION AND RECORDS

22.1 The provisions of the SDOT Bored Tunnel Agreement No. GCA 6486, regarding Confidentiality of Information and Records, including but not limited to Section 297 therein,

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1 | shall apply equally to this UTILITY Bored Tunnel Agreement. In addition, the Federal Energy
2 | Regulatory Commission (FERC) and the North American Electric Reliability Corporation
3 | (NERC) require that SCL limit access and disclosure of certain sensitive Critical Energy
4 | Infrastructure Information. Therefore, SCL shall require the STATE and its contractors who
5 | have access to documents marked "confidential" or "proprietary" to sign the Non-Disclosure
6 | Agreement attached hereto as Exhibit C.

Comment [SLS172]: Joint - SCL only

8 | **23. EFFECTIVENESS AND DURATION**

9 |
10 | 23.1 This Agreement shall be effective as of the date the last PARTY Party signs and, unless
11 | sooner terminated pursuant to the terms hereof, shall remain in effect until final completion of all
12 | PARTIES Parties' obligations contained or referred to in this Agreement, and the SDOT Bored
13 | Tunnel Agreement No. GCA 6486, the SCL Agreement, UT 01474, and the SCL Agreement
14 | 01476.

Comment [RF173]: Joint

16 | **24. GENERAL PROVISIONS**

17 |
18 | 24.1 The General Provisions set forth in the SDOT Bored Tunnel Agreement No. GCA 6486,
19 | including but not limited to Section 30 therein, shall apply equally to this Agreement.
20 |

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

SEATTLE CITY LIGHT

**WASHINGTON STATE
DEPARTMENT OF
TRANSPORTATION**

By:
Jorge Carrasco
Superintendent:

By: _____
Print: _____
Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM:

By (print)

Signature
Assistant Attorney General

Date: _____

ATG MI TPC TRANSFER

From: Salay, Ann (ATG)
Sent: Thursday, May 06, 2010 2:13 PM
To: Brown, Bryce (ATG); Lagerberg, Elizabeth (ATG)
Subject: SALAY Review: UT 01474/UT01476 (SPU & SCL) Joint Agreement

Importance: High

Sorry, I forgot to cc you on the below.

From: Salay, Ann (ATG)
Sent: Thursday, May 06, 2010 1:05 PM
To: Galvin, Daniel (ATG)
Subject: SALAY Review: UT 01474/UT01476 (SPU & SCL) Joint Agreement
Importance: High



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el_Utility_MOA...

Dan:

[1d]

I did not rewrite anything.

[1d]

Ann E. Salay, AAG
POB 40113 -- 7141 Cleanwater Dr. SW
Olympia, Wa 98504-0113
360-753-6130
Fax: 360-586-6847
anns@atg.wa.gov

NOTICE: This communication may contain legally privileged or other confidential information. If you have received it in error, please advise the sender by reply e-mail and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

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MEMORANDUM OF AGREEMENT

UT 01474/ UT 01476
SR 99 ALASKAN WAY VIADUCT REPLACEMENT
BORED TUNNEL PROJECT
UTILITY FACILITIES WORK

THIS Memorandum of Agreement, UT 01474/ 01476, SR 99 Alaskan Way Viaduct Replacement, Bored Tunnel, UTILITY Facilities Work (“UTILITY Bored Tunnel Agreement”) is made and entered into between the State of Washington Department of Transportation, hereinafter the “STATE,” and the City of Seattle, hereinafter the CITY, (managed by Seattle City Light/Seattle Public Utilities, hereinafter “UTILITY”), collectively the “Parties” and individually the “Party.”

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

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

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

WHEREAS, the January 2009 letter of agreement between the Parties affirmed that the State would be responsible for the bored tunnel project, and that “the allocation of specific project responsibility to each jurisdiction carries with it the responsibility for project management, environmental work, design, construction, and project cost overruns”; and

WHEREAS, in October 2009 the Governor and the Mayor executed a Memorandum of Agreement, GCA 6366, which described the basic roles and responsibilities for the implementation of the AWVSR Program PROGRAM [Salav: AWVSR is not defined. AWV is defined, but the SR is not. This should be fixed because it is used below.]

Comment [SLS1]: To be changed to SPU or SCL in each agreement

Comment [SLS2]: Will be SCL or SPU

Comment [W3]: Joint Language

Comment [W4]: Joint

Comment [W5]: Joint

Comment [W6]: Joint

Comment [W7]: City

Comment [W8]: Joint

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WHEREAS, the AWV SR Program (PROGRAM) consists of a four-lane bored tunnel and improvements to City streets, the City waterfront, and transit; and the Moving Forward Projects; and

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Comment [W9]: Joint

WHEREAS, the Proposed Bored Tunnel Project (PROJECT), the subject of this Agreement, is the part of the PROGRAM that replaces SR 99 from South Royal Brougham Street to Mercer Street that consists of designing and constructing a four-lane bored tunnel from South King Street to Thomas Street, north and south tunnel portals and access streets; re-establishment of the City street grid in the vicinity of the portals [Battery Street Tunnel decommissioning and Alaskan Way Viaduct demolition will be addressed in a future agreement]; and associated utility relocations; and

Comment [W10]: Joint

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

Comment [W11]: Joint

WHEREAS, in January 2009, the Governor, the King County Executive and the Mayor of Seattle recommended replacement of the existing AWV structure in the central waterfront area with a bored tunnel; and [Salav: This duplicates Whereas # 4, delete?]

Comment [W12]: Joint

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WHEREAS, RCW 47.01.402, which became law July 1, 2009, provides that State funding for the PROJECT is not to exceed two billion eight hundred million dollars (\$2,800,000,000.00) of which no more four hundred million shall be from tolls, and

Comment [W13]: City

WHEREAS, RCW 47.01.402(6)(b) provides that any costs in excess of two billion eight hundred million dollars (\$2,800,000,000.00) shall be borne by property owners in the Seattle area who benefit from replacement of the existing viaduct with the deep bore tunnel, and

Comment [W14]: City

WHEREAS, the CITY and STATE agree to jointly pursue the implementation and completion of the PROJECT and endeavor to open the tunnel by 2015 and demolish the Alaska Way viaduct in 2016; and

Comment [W15]: Joint

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

Comment [W16]: Joint

WHEREAS, review of the PROJECT pursuant to the State STATE and City CITY environmental policy laws is currently underway and the Pparties recognize that changes in the alternative chosen would require a new agreement; and

Comment [W17]: City

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1 WHEREAS, the CITY and the STATE will deliver the PROJECT within the financial
2 commitments made in the Memorandum of Agreement, GCA 6366, executed by the PARTIES
3 on October 24, 2009; and

Comment [W18]: Joint

4
5 WHEREAS, concurrently with this Agreement GCA 6486-Agreement, the STATE and CITY,
6 through Seattle City Light (SCL), are entering into an agreement, UT 01474; and [Salay, this
7 would be deleted for UT 01474 agreement, only used in UT 01476.]

Comment [RF19]: Joint

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9 WHEREAS, concurrently with this Agreement, GCA 6486, the STATE and CITY, through its
10 Seattle Public Utilities Department (SPU), are entering into an agreement, UT 01476; and [Salay,
11 this would be deleted for UT 01476, only used in UT 01474.]

Comment [g20]: Joint

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12
13 WHEREAS, the PROJECT will in some instances require the use of existing CITY Street Right-
14 of-Way; and

Comment [W21]: Joint

15
16 WHEREAS, the CITY will own and/or maintain significant infrastructure to be constructed as
17 part of the PROJECT; and

Comment [W22]: Joint

18
19 WHEREAS, some portion of SR 99 is within the PROJECT and is a city street serving as part of
20 a State Highway under RCW 47.24.010; and

Comment [W23]: Joint

21
22 WHEREAS, the Parties wish to establish protocols and procedures for property acquisition,
23 environmental remediation, design review, permitting, and construction coordination to govern
24 their relationship during the course of the PROJECT.

Comment [W24]: City

25
26 WHEREAS, some or all of the work covered by this Agreement may be accomplished by
27 executed "Task Order" documents; and

Comment [W25]: Joint

28
29 WHEREAS, concurrently with this UTILITY Bored Tunnel Agreement, the STATE and CITY,
30 through the Seattle Department of Transportation, are entering into an agreement, GCA 6486;
31 and

Comment [g26]: Joint

32
33 WHEREAS, the PROJECT will require the removal of existing City-CITY electrical, water,
34 drainage and wastewater facilities that directly conflict with the tunnel portals and tunnel portal
35 excavations ("Conflicting Facilities"), and the construction of new facilities and service
36 connections, (excluding temporary construction and permanent electrical services for the
37 PROJECT) to one final location to replace the conflicting facilities (together, the "Relocation
38 Work"); and

Comment [rlc27]: Not sure these should be recitals. Need to edited to be consistent with accepted terminology. Also reflects the "one relocation" position of City. Needs Management decision on "one relocation"

39
40
41 WHEREAS, together the Relocation Work and the UTILITY Facilities Deformation Mitigation
42 Work will comprise the "UTILITY Facilities Work" of the PROJECT; and

43

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1 NOW, THEREFORE, pursuant to RCW 47.28.140 and RCW 47.01.401 and in consideration of
2 the terms, conditions, covenants, and performances contained herein, or attached and
3 incorporated and made a part hereof;

Comment [W28]: WSDOT

4
5 NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performances
6 contained herein, or attached and incorporated and made a part hereof;

Comment [g29]: City

7
8 IT IS MUTUALLY AGREED AS FOLLOWS:

9
10 **1. DEFINITIONS**

11
12 Words not otherwise defined, which have well-known technical or construction industry
13 meanings, are used in accordance with such recognized meanings;

Comment [g30]: City

14
15 1.1 Approved Plans means the construction plans and provisions that evidence the CITY's
16 determination, through the processes described in Section 3 and Exhibit B of this Agreement,
17 that the plans including Released for Construction Submittal Plans for Design-Build Contracts
18 [Salav: changed to reflect language used below] conform to the Street Use Code [Salav, not
19 defined below, suggest change to Title 15 of the Seattle Municipal Code] and other
20 requirements, and that plan review comments are resolved to both Parties' satisfaction;
21 Approved Plans are included in the contract documents evidencing the agreement between the
22 STATE and its contractors for construction of a given element of the PROJECT;

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Comment [g31]: Joint

23
24 1.2 AWV means the Alaskan Way Viaduct structure on State Route 99, currently a non-
25 limited-access highway over a portion of CITY Street Right-of-Way and located partially in the
26 City of Seattle. [Salav: The AWV is located totally within Seattle, why are you using
27 "located partially" ? Also, can you include SR in this definition, as in AWVSR?]

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Comment [g32]: Joint

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28
29 1.3 Betterment means any upgrading of the UTILITY Facilities, or the design and
30 construction of any new UTILITY Facilities that is not attributable to the PROJECT or
31 PROGRAM and is made solely for the benefit of and at the election of UTILITY. Examples of
32 work that will not constitute a Betterment, so that UTILITY shall not bear cost responsibility,
33 are:

Comment [g33]: Joint

34 1.3.1 If existing devices or materials are no longer regularly manufactured or cannot be
35 obtained in time to meet the PROJECT schedule, needs or requests by the STATE, then devices
36 or materials of equivalent standards although not identical, of the next highest grade or size; or

37 1.3.2 Upgrades to UTILITY Facilities necessary to meet current code requirements and
38 UTILITY published standards; or

39 1.3.3 Work required by UTILITY to maintain current service and capacity; or

40 1.3.4 Work required by current design and construction practices regularly followed by
41 UTILITY in its own work and/or considered an industry design or construction standard.
42

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1 1.4 Business Days means Monday through Friday, inclusive, except for official City of
2 Seattle and state holidays and City-mandated furlough days.

Comment [g34]: City

3
4 1.5 CITY means the City of Seattle, a Washington municipal corporation.

Comment [g35]: Joint

5
6 1.6 City Construction Project Engineer means the person designated by SDOT to act as the
7 City's coordinator and primary representative in matters arising during the course of construction
8 as set forth in this Agreement.

Comment [g36]: Joint

9
10 1.7 CITY Designated Representative means the CITY official listed in Section xx of this
11 Agreement.

Comment [g37]: Joint

12
13 1.8 CITY Infrastructure means the portions of SPU Facilities, SCL Facilities and City-CITY
14 Street Right-of-Way improvements constructed or modified as part of the PROJECT to be
15 owned, operated and maintained by the CITY.

Comment [g38]: Joint

16
17 1.9 CITY Interest Property means CITY Street Right-of-Way plus all other real property that
18 the CITY owns or in which the CITY has a real property interest on the effective date of this
19 Agreement. In addition, City-CITY Interest Property means any property or property interest
20 that will, at the completion of the PROJECT, be transferred by the STATE to the CITY. CITY
21 Interest Property does not include real property acquired or to be acquired by the STATE for
22 planned limited access facilities such as the bored tunnel, portals and access for which no real
23 property interest will be transferred to the CITY.

Comment [g39]: Joint

24
25 1.10 City of Seattle means CITY.

Comment [g40]: Joint

26
27 1.11 City Standards means all City of Seattle laws, rules, regulations and standards and all
28 applicable federal and state laws, rules, regulations and standards, including but not limited to
29 the following, except as otherwise provided in this Agreement, UT 01474 and UT 01476:

Comment [RF41]: Joint

30 The Seattle Municipal Code;
31 The City of Seattle Standard Specifications for Road, Bridge and Municipal
32 Construction;
33 The City of Seattle Standard Plans for Municipal Construction;;
34 SDOT, SCL, DPD and SPU Director's Rules, including the City-CITY Street of Seattle
35 Right-of-Way Improvements Manual, 2005-22;
36 SCL Material Standards; and
37 SCL Construction Guidelines

Comment [RF42]: Joint

38
39 1.12 CITY Street Right-of-Way means public street right-of-way under the jurisdiction of
40 SDOT pursuant to Title 15 of the Seattle Municipal Code.

Comment [g43]: Joint

41

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1 1.13 Conceptual Relocation Plan means a work product that defines the general scope of
2 Utility-UTILITY relocations including a planning level estimate of design and construction
3 costs.

Comment [g44]: Joint

5 1.14 Conflicting Facilities means all SCL Facilities and all SPU Facilities identified by the
6 STATE that directly conflict with the bored tunnel portals and tunnel portal excavations.

Comment [RF45]: Joint

8 1.15 Contract Award means the STATE's written decision accepting bid for construction of a
9 Project. **[Salav: rather than "a Project" do you mean the "PROJECT?" "Project" is not
10 defined. Maybe it should be lower case.]**

Comment [g46]: Joint

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12 1.16 Damage means loss of function, capacity, or aesthetic quality. For the purposes of this
13 Agreement, "Damage" shall not be construed to include reduction of design life of any structure
14 or utility. **[Salav: "aesthetic quality" is not defined.]** [1b]

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Comment [g47]: WSDOT

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17 1.17 Damage means any direct or indirect consequence of the PROJECT that causes harm to,
18 or reduces value or usefulness of, CITY Infrastructure, private property, CITY property or other
19 public property, including but not limited to structural damage or physical failure; loss of
20 function, capacity or aesthetic quality; reduced service capacity, including intended future
21 capacity; reduced service life; a measurable reduction of design life of an SPU Facility or an
22 SCL Facility; water main movement in excess of established thresholds; or any other impact to
23 an SPU Facility or an SCL Facility such as stress or Deformation. **[Salav: [1b]**

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Comment [g48]: City

24 [1b]

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30 1.18 Defective Work means design or construction work or materials that fail to comply with
31 the Approved Plans, CITY-approved modifications to the Approved Plans, or the laws, rules,
32 regulations or standards as specified in this Agreement.

Comment [RF49]: Joint

34 1.19 Deformation means any 3-dimensional displacement, for a structure (such as tilt of a
35 structure), and strain (relative displacements of structures or the ground) and includes any
36 settlement, heave, lateral movement, and related terms are used as being common industry
37 terminology. Where such industry terminology is used for convenience herein, it does not imply
38 that the broad definition of Ddeformation has been limited.

Comment [g50]: Joint

40 1.20 Deformation Mitigation Work means any planning, operational and construction
41 management practices, monitoring and temporary or permanent UTILITY Facilities Work
42 undertaken to avoid and/or remedy Damage to UTILITY Facility-Facilities as a result of
43 Deformation.

Comment [g51]: Joint

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- 1
2 1.21 Design-Bid-Build Contract means a project delivery method in which the STATE
3 provides a complete design, advertises for bids, and awards a contract to the lowest responsive
4 bidder who is responsible for completing the construction of the project.
5
6 1.22 Design-Build Contract means a project delivery method in which the STATE develops a
7 conceptual design and requests proposals from pre-qualified contractors. The contract is
8 awarded to the contractor with the best value responsive proposal. The contractor is responsible
9 to complete the design and construct the project.
10
11 1.23 Design Builder means the entity with whom the STATE enters into a Design-Build
12 contract and who is responsible to complete the design and construct the project.
13
14 1.24 DPD means the City of Seattle Department of Planning and Development.
15
16 1.25 Engineer of Record means the engineer licensed in the State of Washington who has been
17 commissioned by the STATE as the prime engineer of the PROJECT, having overall
18 responsibility for the adequacy of the design and the coordination of the design work of other
19 engineers and whose professional seal is on the Approved Plans.
20
21 1.26 Environmental Compliance Assurance Procedure (ECAP) means procedures incorporated
22 into the ~~current~~ WSDOT *Construction Manual* M41-01.05 ~~dated July 2005~~ (Section 1-2.2k(1))
23 and the WSDOT *Environmental Procedures Manual* M31-11.05 (Sections 610 and 690) dated
24 ~~2005~~, as modified by this Agreement, which provide guidance on compliance with
25 Environmental Laws and environmental Remediation. The purpose of the ECAP is to recognize
26 and eliminate environmental violations during the construction phase on STATE construction
27 sites and to ensure prompt notification to STATE management and agencies. For purposes of the
28 ECAP, violations are defined as actions that are not in compliance with environmental standards,
29 permits, or laws.
30
31 1.27 Environmental Law(s) means any environmentally related local, state or federal law,
32 regulation, ordinance or order (including without limitation any final order of any court of
33 competent jurisdiction of which the STATE has knowledge), now or hereafter in effect
34 including, but not limited to: the Federal Clean Air Act; the Federal Water Pollution Control Act;
35 the Federal Safe Drinking Water Act; the Federal Comprehensive Environmental Response
36 Compensation and Liability Act, as amended by the Superfund Amendments and
37 Reauthorization Act of 1986; the Federal Resource Conservation and Recovery Act, as amended
38 by the Solid and Hazardous Waste Amendments of 1984; the Federal Occupational Safety and
39 Health Act; the Federal Emergency Planning and Right-to-Know Act of 1986; the Federal
40 Hazardous Materials Transportation Control Act of 1980; the Federal Clean Water Act of 1977;
41 the Federal Insecticide, Fungicide and Rodenticide Act; the Federal Waste Management
42 Recovery and Recycling Act; the Washington Hazardous Waste Management Act; the
43 Washington Hazardous Waste Fees Act; Washington Model Toxics Control Act; the Washington
Nuclear Energy and Radiation Act; the Washington Radioactive Waste Storage and

Comment [RF52]: Joint

Comment [RF53]: Joint

Comment [RF54]: Joint

Comment [RF55]: Joint

Comment [RF56]: Joint

Comment [g57]: Joint

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1 Transportation Act; the Washington Underground Petroleum Storage Tanks Act; and any
2 regulations promulgated thereunder from time to time.

Comment [RF58]: Joint

3
4 1.28 Final Design Submittal means plans, specifications, and design documentation
5 representing complete design of a given project element in a Design-Build Contract. The Final
6 Design Submittal addresses and incorporates review comments from the Preliminary Design
7 Submittal.

Comment [RF59]: Joint

8
9 1.29 Final Plan Review Package means the Plan Review Package submitted to the CITY that
10 is comprised of the STATE's contract documents including contract addenda and fully
11 incorporates or otherwise addresses all CITY plan review comments and all applicable
12 conditions of the Street Use Permit.

Comment [RF60]: Joint

13
14 1.30 Hazardous Substance(s) means any substance, or substance containing any component,
15 now or hereafter designated as a hazardous, dangerous, toxic or harmful substance, material or
16 waste, subject to regulation under any federal, state or local law, regulation or ordinance relating
17 to environmental protection, contamination or cleanup including, but not limited to, those
18 substances, materials and wastes listed in the United States Department of Transportation
19 Hazardous Materials Table (49 C.F.R. §172.101) or by the United States Environmental
20 Protection Agency as hazardous substances (40 C.F.R. pt. 302 and amendments thereto) or in the
21 Washington Hazardous Waste Management Act (Ch. 70.105 RCW) or the Washington Model
22 Toxics Control Act (Chs. 70.105D RCW and 82.21 RCW), petroleum products and their
23 derivatives, and such other substances, materials and wastes as become regulated or subject to
24 cleanup authority under any Environmental Law.

Comment [RF61]: Joint

25
26 1.31 Letter of Acceptance means the written document that signifies the CITY's acceptance of
27 CITY Infrastructure to be owned by the CITY; and shall signify the STATE's transfer of CITY
28 Infrastructure to be owned by the CITY. The Letter of Acceptance will not transfer any interest
29 in real property. The Letter of Acceptance shall be jointly executed by the Parties. A Letter of
30 Acceptance for SPU Facilities requires SPU approval and a Letter of Acceptance for SCL
31 Facilities requires SCL approval.

Comment [g62]: Joint

32
33 1.32 Letter of Plan Approval means the letter provided to the STATE by the CITY following
34 the completion of the plan review process, signifying that the plans and specifications identified
35 in the letter are the Approved Plans.

Comment [g63]: Joint

36
37 1.33 MTCA means the Washington Model Toxics Control Act (Chs. 70.105D RCW and 82.21
38 RCW).

Comment [RF64]: Joint

39
40 1.34 New Work means the design and construction by or at the direction of UTILITY of a new
41 utility other than (a) as part of a relocation associated with the PROJECT, or (b) to provide
42 service to the PROJECT. New Work shall be entirely the financial obligation of UTILITY.

Comment [RF65]: Joint

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- 1 1.35 Preliminary Engineering means the portion of the pProject engineering which advances
2 the pProject design to address Type, Size, and Location (“TS&L”) for all components of the
3 pProject. Design will have advanced sufficiently to define alignments and identify conflicts.
4 Preliminary engineering will include an estimate for final design and a preliminary cost for
5 construction. **Salay, throughout these definitions, you use “project” rather than PROJECT,
6 and sometimes Project. “Project is not defined and it appears that all references to project
7 should not be PROJECT. So, I have used a lower case, unless you need to define Project as
8 opposed to PROJECT.]**
9
- 10 1.36 Plan Review Package means clear and complete plans, specifications, and the necessary
11 assumptions, studies, models and calculations upon which the design was based, and corrections
12 previously requested by the CITY with respect to Design-Bid-Build pProjects.
13
- 14 1.37 100% Plan Review Package means the Plan Review Package submitted to the CITY
15 concurrent with STATE’s final internal review of the construction contract plans and contract
16 provisions that shall evidence the agreement between the STATE and its contractors for
17 construction of Design-Bid-Build pProjects.
18
- 19 1.38 Plans, Specifications, and Estimate (“PS&E”) means the portion of the ~~PROJECT~~
20 engineering after the Preliminary Engineering, which advances the ~~PROJECT~~ design by
21 preparing contract-ready documents and the engineer’s cost estimate. At this stage the
22 specifications are written and tailored to the plans so that all work can be measured and has a pay
23 item. The cost estimate is formalized using the established specifications, pay items and quantity
24 takeoffs, for 60% through 100% completion of the total design effort. **Salay: look at section
25 1.35, where you do not fully cap PROJECT. Which meaning do you wish to impart to keep
26 these definitions consistent?]**
27
- 28 1.39 Preliminary Design Submittal means in a Design-Build Contract, a formal opportunity for
29 the STATE, the Design-Builder, various design team disciplines, and other approved ~~Project~~
30 stakeholders to review the construction documents in order to ensure that the design is
31 progressing appropriately and proceeding in the right direction; the plans reflect Design-Builder
32 requirements for construction; design features are coordinated; and there are no fatal flaws
33 within a given discipline or between disciplines. **Salay, should this be PROJECT? Or
34 project?]**
35
- 36 1.40 Private Utilities means utility uses, excluding facilities owned and operated by the CITY,
37 approved through franchise agreements and/or ~~Street Use Permits~~ by the CITY and governed and
38 enforced through City CITY Ordinance. ~~JAES~~ [1b]
39 [1b]
40 [Redacted]
41 [Redacted]
42 [Redacted]

Comment [RF66]: Joint

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Comment [RF67]: Joint

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Comment [RF68]: Joint

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Comment [RF69]: Joint

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Comment [g70]: Joint

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Comment [g71]: Joint

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1 | 1.41 PROJECT means the pProposed bBored tTunnel pProject, the part of the PROGRAM
2 that replaces SR 99 from South Royal Brougham Street to ~~Alaskan Way~~ Street and that consists of
3 designing and constructing a four-lane bored tunnel from South King Street to Thomas Street,
4 north and south tunnel portals and access streets, re-establishment of the City-CITY street grid in
5 the vicinity of the portals ~~(Battery Street Tunnel decommissioning and Alaskan Way Viaduct
6 demolition will be addressed in a future agreement)~~ and associated utility relocations.

Comment [g72]: Joint. This definition does not currently include the demolition of the Alaskan Way Viaduct and the decommissioning of the Battery Street Tunnel.

8 | 1.42 PROGRAM means the AWVSR pProgram which consists of a four-lane bored tunnel
9 and improvements to City-CITY streets, the City-CITY waterfront, and transit; and the Moving
10 Forward Projects as defined in GCA 6366.

Comment [RF73]: Joint

12 | 1.43 Project Engineer means the persons appointed by the STATE to lead the PROJECT
13 during design and/or construction or his or her designee.

Comment [RF74]: Joint

15 | 1.44 Released for Construction Submittal means in a Design-Build Contract, plans and
16 specifications for a given project element that are construction ready and have been certified by
17 the Design-Builder as having met all contract requirements and received all approvals and
18 permits. The Released for Construction submittal addresses all review comments from the
19 Preliminary Submittal and Final Design Submittals.

Comment [RF75]: Joint

21 | 1.45 Relocation Work means the removal or abandonment of each-Conflicting Facility
22 Facilities and the installation or reconstruction of each-Conflicting Facility-Facilities to its/their
23 permanent and final location. [Salav] [1b]
24 [1b]

Comment [RF76]: Joint

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27 | 1.46 Remediation means the same as Remedy or Remedial Action defined in MTCA which
28 includes any action or expenditure consistent with the purposes of MTCA to identify, eliminate,
29 or minimize any threat or potential threat posed by Hazardous Substances to human health or the
30 environment including any investigative and monitoring activities with respect to any release or
31 threatened release of a Hazardous Substance and any assessments to determine the risk or
32 potential risk to human health or the environment.

Comment [RF77]: Joint

34 | 1.47 Round Table Meeting means a meeting typically held five (5) weeks following the
35 submittal of the 100% Plan Review Package to the CITY and STATE, and commonly attended
36 by the STATE's pProject team and STATE reviewers to resolve and address STATE comments
37 on the 100% Plan Review Package.

Comment [RF78]: Joint

39 | 1.48 SCL means Seattle City Light.

Comment [RF79]: Joint

41 | 1.49 SCL Facilities means the electrical facilities impacted by, or constructed as part of, the
42 PROJECT that are owned or to be owned by the CITY.

Comment [RF80]: Joint

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- 1 1.50 SCL Facilities Work means work required to design, construct and protect the SCL
2 Facilities as part of the PROJECT. Comment [g81]: Joint
- 3
- 4 1.51 SDOT means the Seattle Department of Transportation. Comment [RF82]: Joint
- 5
- 6
- 7 1.52 Specialty Work means the construction and installation of all 13.8kV or above rated
8 equipment and associated materials and infrastructure needed to accomplish the SCL Facilities
9 Work. Comment [g83]: Joint
- 10
- 11 1.53 SPU means Seattle Public Utilities. Comment [g84]: Joint
- 12
- 13 1.54 SPU Facilities means the water, drainage and wastewater facilities impacted by, or
14 constructed as part of, the PROJECT that are owned or to be owned by the CITY. Comment [RF85]: Joint
- 15
- 16 1.55 SPU Facilities Work means work required to design, construct and protect the SPU
17 Facilities as part of the PROJECT.
- 18
- 19 1.56 STATE means the State of Washington Department of Transportation and may include
20 its cContractors, sSubcontractors, authorized aAgents and aAssigns. Comment [RF86]: Joint
- 21
- 22 1.57 STATE Designated Representative means the State of Washington official listed in
23 Section 1.01 of this Agreement.
- 24
- 25 1.58 Street Use Permit means written authorization secured by the STATE from the Director
26 of SDOT for use of the CITY Street Right-of-Way pursuant to Title 15 of the Seattle Municipal
27 Code. Comment [RF87]: Joint
- 28
- 29 1.59 Submittal Control Document means a list of all documents or reports that are required by
30 the Approved Plans or construction contract documents or applicable law to be provided to or
31 submitted to the STATE and the CITY. Comment [RF88]: Joint
- 32
- 33 1.60 Task Force means a group consisting of State STATE, City CITY, contractor, and other
34 stakeholder staff meeting regularly to review and reach decisions relating to a particular subject,
35 e.g., traffic, structures. Comment [g89]: Joint
- 36
- 37 1.61 Task Order means a document executed by the PARTIES Parties under this Agreement
38 authorizing work by one Pparty to be done on behalf of the other Pparty and that defines the
39 scope and the obligations of the PARTIES Parties for the given element of work. All terms and
40 conditions of the Agreement shall apply to each Task Order. Comment [g90]: Joint
- 41
- 42 1.62 UTILITY Facilities means SPU Facilities and SCL Facilities. Comment [g91]: Joint
- 43

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- 1 1.63 UTILITY Facilities Work means SPU Facilities Work and SCL Facilities Work.
- 2
- 3 1.64 UTILITY Easement(s) means a non-exclusive permanent easement over real property for
- 4 the operation, maintenance, repair and replacement of the relocated UTILITY Facilities, in the
- 5 form attached as Exhibit A.
- 6
- 7 1.65 Utility Service Work means any facilities required to provide temporary uUtility services
- 8 for construction of the PROJECT; and any work needed to obtain permanent UTILITY services
- 9 to the bored tunnel or UTILITY customers.
- 10
- 11 1.66 WSDOT means Washington State Department of Transportation.
- 12
- 13 Words not otherwise defined, which have well-known technical or construction industry
- 14 meanings, are used in accordance with such recognized meanings.
- 15
- 16
- 17 **2. GENERAL RESPONSIBILTIES**
- 18
- 19 2.1 The Parties shall manage risk, produce design and conduct construction in a manner that
- 20 maximizes cumulative public benefits and minimizes cumulative public costs as mutually agreed
- 21 to by the Parties.
- 22
- 23 2.2 This Agreement in conjunction with GCA 6486 and UT 01476 is prepared by the STATE
- 24 and CITY to govern relationships between the Parties and establish each Party's responsibilities
- 25 regarding the PROJECT as described in Exhibit A, Project Description. **[Salav: Modify when**
- 26 **splitting this agreement into SCL & SPU. Exhibit A in Section 1.64 is defined as a Utility**
- 27 **Easement; fix Exhibits]**
- 28
- 29 2.3 The Parties understand that environmental review of the proposed PROJECT is underway
- 30 at the date of this Agreement and agree that if an alternative other than the Proposed Bored
- 31 Tunnel is selected, this Agreement shall not be applicable.
- 32
- 33 2.4 The Parties shall work collaboratively to resolve issues in a manner that endeavors to
- 34 open the Proposed Bored Tunnel to the public on schedule.
- 35
- 36 2.5 The design and construction of CITY Infrastructure, including infrastructure repair, shall
- 37 comply with City of Seattle codes, rules, regulations and standards.
- 38
- 39 2.6 Each Party shall provide the funding and resources necessary to fulfill the responsibility
- 40 of that Party as established in this Agreement. **[Salav: [1b]**
- 41 **[1b]**
- 42
- Comment [g92]: Joint
- Comment [g93]: Confirm definition with RES
- Comment [g94]: Joint
- Comment [W95]: Joint
- Comment [W96]: Joint
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- Comment [W98]: City
- Comment [W99]: Joint
- Comment [W100]: Joint
- Comment [W101]: Joint
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1 2.7 The Parties agree to work cooperatively with each other and make reasonable, good faith
2 efforts to timely and expeditiously complete the PROJECT; as provided in this Agreement,
3 including, but not limited to, the selection of a preferred SR 99 design alternative; development
4 of preliminary engineering and final design and construction. In order to optimize design and
5 minimize conflicts, the STATE shall coordinate design and construction of the various contracts
6 making up the PROJECT with design of subsequent PROGRAM stages, and with construction of
7 previous stages of the PROGRAM. The STATE shall be prepared to modify design of the
8 contracts making up the PROJECT, the subsequent PROGRAM stage and/or previous phase if
9 both Parties determine the modifications are necessary and reasonable, to minimize conflicts.
10

Comment [W102]: Joint

11
12 2.8 The STATE shall pay for all costs associated with the ~~UTILITY Facilities Deformation~~
13 ~~Mitigation~~ Work, including but not limited to design; design review; purchase of materials;
14 construction; inspection; preparation of record drawings; CITY crew time and costs; any
15 temporary UTILITY services required for construction of the PROJECT; and any work needed
16 to obtain permanent UTILITY services to the bored tunnel or UTILITY customers; regardless of
17 whether such UTILITY Facilities Deformation Mitigation Work is performed by the UTILITY
18 or other CITY staff, the STATE, or its contractor, as set forth in the Approved Plans, and any
19 UTILITY-approved revisions to the Approved Plans, without reimbursement from UTILITY,
20 including cChange oOrders pursuant to ~~Section~~ 8 of this UTILITY Bored Tunnel Agreement,
21 but excluding Betterments or New Work as defined in Sections 1.3 and 1.34, respectively,
22 ~~Section~~ 2 of this UTILITY Bored Tunnel Agreement. No delay costs shall be paid for by
23 UTILITY.
24

Comment [g103]: Joint

25 2.9 The STATE is responsible for designing and constructing the pProposed bBored tTunnel
26 portion of the ProjectPROJECT. The STATE will take reasonable measures to minimize, limit,
27 and mitigate Damage to private property and CITY Infrastructure including CITY streets, CITY
28 telecommunications facilities and CITY utilities that may result from the pProposed bBored
29 tTunnel construction, including Damage that may result from tunnel-induced dDeformation.
30 WSDOT-STATE is responsible for to remedy such Damage should it occur[Salay: [1b]
31 [1b]

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Comment [W104]: Joint - Damage definition pending.

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32
33
34 2.10 CITY is responsible for relocating those existing CITY utilities that have alignments
35 intersecting the final configuration of the proposed SR 99 bored tunnel portals and tunnel portal
36 excavations. CITY's relocation responsibility is limited to the final relocation of each UTILITY
37 Conflicting Facility found to be in direct conflict with the tunnel portals or portal excavations.
38 During preliminary design, the Parties will jointly identify UTILITY Conflicting Facilities that
39 will need to be relocated more than once
40

Comment [W105]: City

41 2.11 The Parties agree that it is in the public interest for one Party to implement portions of the
42 other Party's PROJECTProject responsibilities. Therefore, this SDC Agreement establishes a
43 Task Order process for use by a Party to authorize the other Party to conduct work on its behalf,

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1 and as may be documented through each Task Order, agree to reimburse the other Party for such
2 services. **[Salay: This is not an SDOT agreement]**

Comment [W106]: Joint
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4 2.12 The general terms and conditions of GCA 6486 and this Agreement apply to each Task
5 Order performed as part of the PROJECT, unless otherwise specified in an executed Task Order.

Comment [W107]: Joint

7 2.13 For UTILITY Facilities Work which the STATE will design and construct, the STATE
8 and UTILITY agree to document key design-related decisions to ensure that issues are resolved
9 to PARTIES Parties satisfaction, pursuant to Section 5 herein, so that the STATE can proceed
10 with the design of the PROJECT. These decisions will be evidenced through the use of a
11 concurrence letter signed by both PARTIES Parties.

Comment [g108]: Joint

13 2.14 The STATE agrees to take the lead in consulting and coordinating with utilities affected
14 by the PROJECT.

Comment [RF109]: Joint

16 2.15 The PARTIES Parties shall apply for and obtain all necessary federal, state and City of
17 Seattle issued permits and approvals for the work for which they are responsible prior to
18 commencing work that requires such permits, including but not limited to all permits, approvals
19 or permission for exploratory investigations, testing, site preparations, demolition and
20 construction. **[Salay: [REDACTED] [1b]**

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Comment [W110]: Joint

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24 2.16 The PARTIES Parties shall comply with the regulatory requirements and agree to meet
25 operational and customer service requirements of each existing UTILITY Facility.

Comment [RF111]: Joint

27 2.17 The PARTIES Parties shall minimize utility service interruptions to UTILITY customers.

Comment [g112]: Joint

29 2.18 To the extent necessary, SCL agrees to lead the coordination of the PROJECT with all
30 applicable electrical regulatory agencies.

Comment [P113]: Joint - SCL only

3. RESPONSIBILITIES REGARDING SCL AND SPU RELOCATIONS (PORTALS)

34 3.1 The STATE shall identify all SCL Facilities and all SPU Facilities that directly conflict
35 with the bored tunnel portals and tunnel portal excavations ("Conflicting Facilities").

Comment [RF114]: Joint

37 3.2 UTILITY shall inform the STATE of any additional Conflicting Facilities or New Work
38 and confirm that each UTILITY Facility which the STATE has identified as a Conflicting
39 Facility does in fact directly conflict with the bored tunnel portals or bored tunnel portal
40 excavations.

Comment [RF115]: Joint

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1 3.3 STATE is responsible to prepare conceptual relocation plan (preliminary engineering) in
2 consultation with the CITY that defines the Relocation Work and provides planning level
3 schedule and cost estimates.

Comment [RF116]: Needs resolution

5 3.4 The STATE shall protect UTILITY Facilities, including those installed as part of the
6 PROJECT or PROGRAM.

Comment [g117]: Joint

8 3.5 UTILITY is responsible for relocating each identified Conflicting Facility one time, to its
9 final and permanent relocation, which work is Relocation Work.

Comment [RF118]: City

11 3.6 Interim or temporary relocations required in order to move a Conflicting Facility to its
12 final and permanent location, including but not limited to relocations necessary to stage any
13 PROJECT construction, is not Relocation Work, and shall be the responsibility of the STATE.

Comment [RF119]: City- [REDACTED]
[REDACTED]

15 **4. RESPONSIBILITIES REGARDING UTILITY FACILITIES DEFORMATION**
16 **..... MITIGATION**

18 4.1 The STATE will undertake an assessment of potential impacts of Deformation on private
19 property and CITY infrastructure including CITY streets, CITY telecommunications facilities
20 and CITY utilities. Where the CITY has established Ddeformation criteria for its uUtilities, the
21 criteria will be used in the potential impact analysis. Otherwise, criteria will be derived using
22 accepted engineering practices. [Salary] [1b]

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Comment [g120]: Joint

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27 4.2 The UTILITY shall review the STATE's estimate of susceptibility or vulnerability of its
28 facilities to Deformation and provide comments/input.

Comment [g121]: Joint

30 4.3 The STATE shall develop a preliminary plan for UTILITY Facilities Deformation
31 Mitigation Work. PARTIES Parties will work collaboratively to finalize and implement the
32 UTILITY Facilities Deformation Mitigation Work plan.

Comment [g122]: Joint

34 4.4 As a component of the UTILITY Facilities Deformation Mitigation Work plan, the
35 STATE will implement a construction monitoring Task Force responsible for the planning and
36 implementation of the instrumentation and monitoring program and processing data, evaluating
37 results, and developing recommendations to mitigate Ddeformation.

Comment [g123]: Joint

39 4.6 The CITY will advise the STATE and participate in construction monitoring and
40 Ddeformation management activities when these activities pertain to CITY Infrastructure. The
41 CITY will provide the STATE all necessary access to CITY Infrastructure for the purposes of
42 design or implementation of mitigation measures. The CITY may perform mitigation measures

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1 | on behalf of the STATE in a manner and schedule that supports the STATE's project-PROJECT
2 | requirements.

Comment [g124]: Joint

4 | **5. DESIGN, PLAN REVIEW, CHANGE MANAGEMENT**

6 | 5.1 The STATE and UTILITY shall comply with all provisions outlined in Section 6 [Salay:
7 | **This section is permitting & ROW use; design, plan review, etc is under Section 7, did you**
8 | **mean Section 7?**] of the SDOT SR 99 Bored Tunnel Agreement No. 6486. The PARTIES
9 | Parties shall facilitate the design as provided herein and shall allow UTILITY adequate time for
10 | detailed design review. UTILITY will meet agreed-upon timelines for review. The PARTIES
11 | Parties shall address and resolve each design review comment to UTILITY's and the STATE's
12 | satisfaction. In the event the PARTIES Parties are unable to mutually resolve comments, the
13 | PARTIES Parties shall initiate the dispute resolution process pursuant to Section 23 of the SDOT
14 | SR 99 Bored Tunnel Agreement No. 6486 [Salay: **Why are you referencing this dispute**
15 | **resolution process when this agreement has one under Section 19?!**]

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Comment [g125]: Joint

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17 | 5.2 In the event the STATE, pursuant to ch. 47.52 RCW, designates as a Limited Access
18 | Facility any area in or near the tunnel portals on which a UTILITY Facility exists or will be
19 | relocated, the PARTIES Parties agree to make every effort to develop a design that minimizes
20 | the need for regular, on-going maintenance access.

Comment [g126]: Joint

22 | 5.3 The STATE agrees to incorporate qualification criteria mutually agreed upon by the
23 | PARTIES Parties for construction contractors in the performance of Specialty Work into the
24 | contract bid document. The STATE shall consult with UTILITY on the contractors and
25 | subcontractors bidder qualifications for Specialty Work. UTILITY shall provide comments to the
26 | STATE on known bidder qualifications. The STATE shall not allow unqualified contractors to
27 | perform Specialty Work.

Comment [g127]: Joint - SCL only

33 | **6. CONSTRUCTION MANAGEMENT, INSPECTION AND CONTRACT**
34 | **ADMINISTRATION**

36 | 6.1 The PARTIES Parties shall comply with all provisions contained within Section 14 of
37 | the SDOT SR 99 Bored Tunnel Agreement No. GCA 6486, regarding Construction
38 | Management, Inspection and Contract Administration for the PROJECT, and such provisions
39 | shall apply equally to this Agreement.

Comment [g128]: Joint

41 | 6.2 Where UTILITY staff or crews are performing work requested by the STATE, [Salay:
42 | [1b]

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[1b]

the STATE shall provide all labor, materials, equipment, and tools required to excavate, provide trench support systems, and handle and dispose of all spoils (including contaminated soils, groundwater, and other debris), and provide a safe workplace for UTILITY staff per applicable State and Federal laws, and City of Seattle standards, for the UTILITY Facilities Work in accordance with the Approved Plans and any UTILITY-approved revisions to the Approved Plans. The STATE will not provide personal protective equipment for UTILITY staff.

Comment [g129]: Joint

6.3 The STATE agrees to provide advance notice of service outages needed for construction to schedule crews, notify customers and accommodate other previously scheduled outage requests in accordance with UTILITY procedures. **Salary:** [1b]

Comment [g130]: Joint

[1b]

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7. MONITORING

7.1 The PARTIES Parties agree to comply with all provisions contained within Section 12 of the SDOT Bored Tunnel Agreement No. GCA 6486, regarding Monitoring for the PROJECT, and such provisions shall apply equally to this Agreement.

Comment [g131]: Joint

8. NOTICES AND DESIGNATED REPRESENTATIVES

8.1 Any notice required or permitted to be given pursuant to this Agreement shall be in writing and shall be sent postage prepaid by U.S. Mail to the Designated Representatives.

8.2 The Designated Representatives for each Party are as follows:

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

Comment [RF132]: Joint

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

Comment [RF133]: Joint

9. FUNDING OF UTILITY FACILITIES WORK, PROJECT AND TASK ORDERS

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1 9.1 The STATE shall provide necessary funding for all PROJECT costs without
2 reimbursement from the City of Seattle, except for the City of Seattle cost responsibilities
3 established in this Agreement, in SDOT Agreement GCA 6486, [add respective UTILITY
4 Agreement]. [Salary: [b] [1b]
5 [1b]
6
7
8

Comment [g134]: Need to identify specific UT agreement for SPU and SCL.

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9 9.2 If for any reason PROJECT costs exceed the State funding limit established by RCW
10 47.01.402, the STATE shall have the sole responsibility for obtaining any needed additional
11 spending authority without recourse to any funding device that burdens Seattle area taxpayers or
12 property owners or the City of Seattle.
13

Comment [W135]: City

14 9.3 Each PARTY-Party shall fund work for which it is responsible pursuant to this
15 Agreement.
16

Comment [g136]: Joint

17 9.4 The STATE will request, obtain and fund any temporary and permanent utility services
18 required for the PROJECT through separate utility service agreements with UTILITY.
19

Comment [g137]: Joint

20 9.5 While SDOT is the City-CITY lead agency for the PROJECT, the STATE understands
21 and agrees that all PROJECT decisions that are likely to result in expenditure of UTILITY funds,
22 and all PROJECT decisions that may have operational, maintenance, or access impacts to
23 UTILITY Facilities, require concurrence of UTILITY.
24

Comment [RF138]: Joint

25 **10. UTILITY'S RIGHT TO CORRECT NON-CONFORMING, UNAUTHORIZED**
26 **AND DEFECTIVE WORK**
27

28 10.1 If the STATE, or its contractor, fails to remedy, or fails to properly remedy, non-
29 conforming, unauthorized or Defective Work within the time specified by UTILITY, which is
30 not to be less than ten (10) Business Days, UTILITY may, but is not required to, correct and
31 remedy such work by any means as UTILITY may deem necessary, including the use of
32 UTILITY staff or contractors.
33

Comment [RF139]: Joint

34 10.2 If the STATE, or its contractor, fails to comply with a written notice to remedy what
35 UTILITY determines to be an emergency situation, UTILITY may, but is not required to, have
36 the non-conforming, unauthorized or Defective Work corrected immediately, have such work
37 removed and replaced, or have work the STATE or its contractor refuses to correct completed.
38 An emergency situation shall mean a condition that calls for immediate action to respond to
39 danger to health, safety or property.
40

Comment [RF140]: Joint

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1 10.3 Direct and indirect costs incurred by UTILITY attributable to correcting and remedying
2 unauthorized, non-conforming or Defective Work, or work the STATE or its contractor failed or
3 refused to perform, shall be paid by the STATE to UTILITY within thirty (30) calendar days
4 after receipt of an invoice with appropriate documentation of such costs.

Comment [RF141]: Joint

6 10.4 Except in an emergency situation as defined under ~~Section 1133~~, disagreements between
7 UTILITY and the STATE on what constitutes non-conforming, unauthorized or Defective Work
8 shall be resolved using the dispute resolution process established in ~~Section 1133~~ herein prior to
9 UTILITY performing any work. [Salav: [1b]

Comment [RF142]: Joint

[1b]

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14 10.5 Any and all services, including direction, provided by UTILITY pursuant to this section
15 shall be subject to all limitations on the CITY's liability contained in the SDOT Bored Tunnel
16 Agreement No. 6486, including but not limited to ~~Section 1133~~, Risk Allocation,

Comment [RF143]: Joint

11. UTILITY ACCESS AND INSPECTION OF UTILITY FACILITIES WORK

20 11.1 Neither the STATE nor its contractor shall require UTILITY to interrupt electrical
21 service without (a) written notice to UTILITY at least fourteen (14) calendar days prior to the
22 planned interruption and (b) UTILITY's written approval. UTILITY may restrict electrical
23 service interruptions to the extent necessary to maintain electrical system operations and
24 adequate power supply to customers. [Salav: [1b]

Comment [SLS144]: Will insert the equivalent for SPU from the SPU H2K2 agreement.

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Comment [RF145]: Joint

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[1b]

28 11.2 The STATE shall ensure the UTILITY has the right to safe access to their its facilities ~~at~~
29 ~~any time~~ to operate and maintain existing and newly installed UTILITY Facilities or to inspect or
30 perform UTILITY Facilities Work. For purposes of this Agreement, "access" shall mean that the
31 vaults, vault openings, handholes, power poles, ductbanks, substation equipment or substation
32 entrances shall not be blocked, covered or otherwise inaccessible to SCL UTILITIES
33 UTILITY's staff other than UTILITIES' UTILITY's on-site inspector will notify the STATE in
34 advance of their arrival on-site except in the case of emergency in accordance with site access
35 procedures to be developed by the PARTIES Parties. [Salav: [1b]

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Comment [SLS146]: For SPU - hydrants, meter, valves, or similar surface water system facilities, and drainage and wastewater system facilities.

Comment [g147]: Joint

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[1b]

38 11.3 Under no circumstances shall the STATE, its contractor, or anyone other than UTILITY
39 personnel enter any energized UTILITY Facilities or operate any portion of the existing or new
40 UTILITY Facilities, without UTILITY personnel approval and supervision.

Comment [RF148]: Joint

42 11.4 The STATE agrees and acknowledges that UTILITY shall have an on-site inspector
43 available during the construction of UTILITY Facilities for UTILITY's quality assurance. The

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1 STATE agrees and acknowledges the UTILITY's on-site inspector shall (a) have timely and
2 complete access to the construction work associated with the UTILITY Facilities Work; (b) be
3 timely informed of all relevant construction timelines associated with such work; and (c) have
4 the authority to, but not be required to, reject and have corrected and/or replaced any
5 construction or materials deemed to be deficient, or which deviate from the Approved Plans or
6 any SCL-approved revisions to the Approved Plans. In such instances, UTILITY's on-site
7 inspector, or UTILITY's Project Manager, will immediately direct comments and issues to
8 the STATE's construction Project Engineer or designated representative, which will be
9 followed up in writing as soon as possible but no later than ten (10) Business Days of the date of
10 any inspection. The STATE shall promptly address each comment or issue presented by
11 UTILITY to UTILITY's satisfaction. UTILITY staff will continue to be supervised by
12 UTILITY management.

Comment [RF149]: Joint

14 11.5 The STATE will allow UTILITY's on-site inspector or Designated Representative to
15 consult with and inquire of the STATE construction Project Engineer, attend all meetings, and
16 have timely and complete access to all documentation as to all matters concerning the UTILITY
17 Facilities Work. UTILITY shall not provide direction, directly or indirectly, to the STATE's
18 consultant(s) or contractor.

Comment [RF150]: Joint

20 11.6 The STATE shall provide UTILITY with timely notice prior to commencement and
21 completion of all material stages of the UTILITY Facilities Work and shall invite UTILITY to
22 inspect such work upon completion of any material stage. The STATE shall timely address each
23 comment or issue presented by UTILITY to UTILITY's satisfaction. Both Parties agree to act as
24 expeditiously as possible to assure a timely resolution of any deficiencies.

Comment [RF151]: Joint

26 11.7 UTILITY shall observe the UTILITY Facilities Work performed by the STATE for
27 quality assurance. UTILITY will notify the STATE if defective UTILITY Facilities Work is
28 observed, such as improper installation or unsafe conditions.

Comment [RF152]: Joint

30 12. FINAL INSPECTION AND PROJECT ACCEPTANCE

32 12.1 The PARTIES-Parties agree to comply with all provisions contained within Section 15 of
33 the SDOT Bored Tunnel Agreement No. GCA 6486, regarding Final Inspection and Project
34 Acceptance, and such provisions shall apply equally to this Agreement.

Comment [g153]: Joint

36 12.2 UTILITY Facilities shall not be placed into interim use or operation, or transferred to the
37 City/CITY, unless or until: (a) UTILITY has participated in an inspection of the UTILITY
38 Facilities; (b) any deficiencies or Defective Work have been resolved or corrected to UTILITY's
39 satisfaction; and (c) UTILITY confirms with the STATE in writing that UTILITY's minimum
40 inspection and testing requirements for the UTILITY Facilities have been met, including
41 completion of the Washington State Department of Health Completion Report for water mains.

Comment [SLS154]: For SPU only

Comment [RF155]: Joint

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43 13. WARRANTIES

JOINT EDITION UT 01474/UT 01476 WSDOT/UTILITY Memorandum of Agreement
Bored Tunnel
Page 20 of 25

HIGHLIGHTED TEXT = Elevate to Leadership
GREEN HIGHLIGHT = Staff to resolve

Joint
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1
2 13.1 The PARTIES Parties agree to comply with all provisions contained within Section 17 of
3 the SDOT Bored Tunnel Agreement No. GCA 6486, regarding Final Inspection and
4 Project warranties Acceptance, and such provisions shall apply equally to this Agreement

Comment [g156]: Joint

5 **14. ACQUISITION AND TRANSFER OF EASEMENTS AND FRANCHISES**

6
7 14.1 The UTILITY is responsible for identifying and acquiring, at its sole cost and expense,
8 all property rights needed to complete Relocation Work, except for property otherwise required
9 for the PROJECT

Comment [g157]: Joint

10
11 14.2 The STATE is responsible for identifying and acquiring, at its sole cost and expense, all
12 property rights needed to complete UTILITY Facilities Deformation Mitigation Work

Comment [g158]: Joint

13
14 14.3 The PARTIES Parties recognize that their property acquisition responsibilities include
15 the performance of all appraisal, appraisal review, title review, surveys, property investigation,
16 relocation assistance and all other investigations and services in connection with the acquisition
17 of the permanent easement rights necessary for the UTILITY Facilities, including, without
18 limitation, identification and investigation of Hazardous Substances as provided in Section 54 of
19 the SDOT Bored Tunnel Agreement No. GCA 6486. The STATE shall provide to UTILITY, as
20 soon as available to the STATE, all reports and documents prepared or obtained in connection
21 with any of the reviews and investigations described above herein.

Comment [g159]: Joint

22
23 14.4 Where the State STATE is acquiring easement rights for UTILITY Facilities Deformation
24 Mitigation Work, unless the Parties otherwise agree in writing, prior to commencement of
25 construction, the STATE shall convey to the CITY the easement rights referred to in Section 14.6
26 by conveying them substantially in the form as, and containing the same conditions as, the
27 approved Utility Easement form attached and identified as Exhibit A. The Utility Easements
28 conveyed to the CITY shall not be subject to any lien, encumbrance or exception of title of any
29 kind.

Comment [RF160]: Joint

30
31 14.5 The legal descriptions will be developed based on the Approved Plans. The Parties
32 acknowledge that due to unforeseen field conditions the location of one or more of the easements
33 may need to change after commencement of construction. In that case, the STATE shall provide
34 UTILITY with documents, reports and information identified in Subsection 14.3 above, relevant
35 to the new or modified easement area. All requirements and conditions pertaining to the original
36 permanent Utility Easements shall apply to all amendments and modifications.

Comment [g161]: Joint - RES needs to review

37
38 14.6 Where UTILITY Facilities are located in or near an area which the STATE designates as
39 a Limited Access Facility, the STATE will ensure that UTILITY continues to be allowed access
40 to its UTILITIES.

Comment [RF162]: TBD - RES needs to review

41 14.6.1 The STATE's Limited Access Facility designation for the tunnel shall contain a
42 vertical and horizontal boundary.

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14.6.2 The STATE agrees that any Limited Access Facility designation for the tunnel will end at a maximum of three (3) feet above the tunnel in order to allow UTILITY to access its UTILITY Facilities.

14.6.3 The area between the Limited Access Facility boundaries and the UTILITY shall continue to be UTILITY Street Right-of-Way. [1b]Salav [1b]

14.6.4 In the event the STATE designates as a Limited Access Facility any area in or near the tunnel portals on which a UTILITY Facility exists or will be relocated, the STATE agrees to provide UTILITY a UTILITY franchise in the form attached hereto as Exhibit D, pursuant to the requirements of Section 14 herein [OR provide for access to operate and maintain 24/7.] and will make every effort to develop a design that minimizes the need for regular, on-going maintenance access. [Salav: [1b]

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Comment [SLS163]: Still just a placeholder. Need more discussion with WSDOT.

Comment [RF164]: May need elevation

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15. ENVIRONMENTAL REMEDIATION

15.1 The PARTIES-Parties shall comply with all provisions of the SDOT Bored Tunnel Agreement No. GCA 6486, regarding Environmental Remediation, including but not limited to all provisions in Section 5 therein, and such provisions shall apply equally to this Agreement.

Comment [RF165]: Joint

16. RISK ALLOCATION

16.1 The PARTIES-Parties shall comply with all provisions of the SDOT Bored Tunnel Agreement No. GCA 6486, regarding Risk Allocation and Indemnification, including but not limited to all provisions in Section 19 therein, and such provisions shall apply equally to this Agreement.

Comment [RF166]: TBD

17. INSURANCE

17.1 The PARTIES-Parties shall comply with all provisions of the SDOT Bored Tunnel Agreement No. GCA 6486, regarding Insurance, including but not limited to all provisions in Section 20 therein, and such provisions shall apply equally to this Agreement.

Comment [RF167]: Joint

18. THIRD PARTY BENEFICIARY

18.1 The PARTIES-Parties shall comply with all provisions of the SDOT Bored Tunnel Agreement No. GCA 6486, regarding Third Party Beneficiary, including but not limited to all provisions in Section 21 therein, and such provisions shall apply equally to this Agreement.

Comment [RF168]: Joint

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19. **DISPUTE RESOLUTION** [Salav: [1b]

[1b]

19.1 Dispute Resolution Representatives. The Dispute Resolution Representatives for the Parties are as follows:

For the STATE: Bored Tunnel Project Design Project Engineer or, if appropriate, Construction Project Engineer, Alaskan Way Viaduct & Seawall Replacement Program Washington State Department of Transportation 999 3rd Avenue, Suite 2424 Seattle, WA 98104

For UTILITY: UTILITY AWV Project Manager P.O. Box 34023 700 Fifth Avenue, Suite 3200 Seattle, WA 98124-4023

19.2 Dispute Resolution Process. The designated representatives established under Section 19.2 shall use their best efforts to resolve disputes between the Parties. If these individuals are unable to resolve a dispute, Customer Service and Energy Delivery Officer of Seattle City Light and the Alaskan Way Viaduct Program Administrator for the Washington State Department of Transportation shall review the matter and attempt to resolve it. If they are unable to resolve the dispute, the matter shall be reviewed by the Superintendent of Seattle City Light and the Washington State Deputy Secretary of Transportation. The Parties agree to exhaust each of these procedural steps before seeking to resolve disputes in a court of law or any other forum.

Comment [g169]: Joint

20. **REMEDIES; ENFORCEMENT**

20.1 The ~~PARTIES~~ Parties agree that provisions of the SDOT Bored Tunnel Agreement No. GCA 6486, regarding Remedies; Enforcement, including but not limited to Section 24 therein, shall apply equally to this Agreement.

Comment [g170]: Joint

21. **TERMINATION**

21.1 The Term of this Agreement shall be the Term provided in Section 28 of the SDOT Bored Tunnel Agreement No. GCA 6486 regarding Termination and Suspension.

Comment [g171]: Joint

22. **CONFIDENTIALITY OF INFORMATION AND RECORDS**

22.1 The provisions of the SDOT Bored Tunnel Agreement No. GCA 6486, regarding Confidentiality of Information and Records, including but not limited to Section 297 therein,

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1 | shall apply equally to this UTILITY Bored Tunnel Agreement. In addition, the Federal Energy
2 | Regulatory Commission (FERC) and the North American Electric Reliability Corporation
3 | (NERC) require that SCL limit access and disclosure of certain sensitive Critical Energy
4 | Infrastructure Information. Therefore, SCL shall require the STATE and its contractors who
5 | have access to documents marked "confidential" or "proprietary" to sign the Non-Disclosure
6 | Agreement attached hereto as Exhibit C.

Comment [SLS172]: Joint - SCL only

7
8 | **23. EFFECTIVENESS AND DURATION**

9
10 | 23.1 This Agreement shall be effective as of the date the last PARTY Party signs and, unless
11 | sooner terminated pursuant to the terms hereof, shall remain in effect until final completion of all
12 | PARTIES Parties' obligations contained or referred to in this Agreement, and the SDOT Bored
13 | Tunnel Agreement No. GCA 6486, the SCL Agreement, UT 01474, and the SCL Agreement
14 | 01476.

Comment [RF173]: Joint

15
16 | **24. GENERAL PROVISIONS**

17
18 | 24.1 The General Provisions set forth in the SDOT Bored Tunnel Agreement No. GCA 6486,
19 | including but not limited to Section 30 therein, shall apply equally to this Agreement.
20

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

SEATTLE CITY LIGHT

**WASHINGTON STATE
DEPARTMENT OF
TRANSPORTATION**

By:
Jorge Carrasco
Superintendent:

By: _____
Print: _____
Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM:

By (print)

Signature
Assistant Attorney General

Date: _____

ATG MI TPC TRANSFER

From: Salay, Ann (ATG)
Sent: Friday, May 07, 2010 11:03 AM
To: Galvin, Daniel (ATG); Lagerberg, Elizabeth (ATG)
Cc: Brown, Bryce (ATG)
Subject: SDOT GCA 6486 Salay Review

Importance: High

I have completed my review and [redacted] [1d]

[redacted] [1d]
Dan: [redacted] Thanks.

Dan: [redacted] [1d]
[redacted] Thanks.

Elizabeth: [redacted] [1d]
[redacted] Thanks.

Feel free to send it to Theresa, [redacted] [1d]



Joint SDOT MOA
5-4-10.doc

Thanks.

Annie

Ann E. Salay, AAG
POB 40113 -- 7141 Cleanwater Dr. SW
Olympia, Wa 98504-0113
360-753-6130
Fax: 360-586-6847
anns@atg.wa.gov

NOTICE: This communication may contain legally privileged or other confidential information. If you have received it in error, please advise the sender by reply e-mail and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

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MEMORANDUM OF AGREEMENT
NO. GCA 6486

SR 99 ALASKAN WAY VIADUCT

PROPERTY, ENVIRONMENTAL REMEDIATION, DESIGN REVIEW,
PERMITTING, AND CONSTRUCTION COORDINATION
AGREEMENT
FOR SR 99 BORED TUNNEL PROJECT

Comment [RF1]: City Language

THIS Property, Environmental Remediation, Design Review, Permitting, and Construction Coordination Agreement, No. GCA 6486 for the SR 99 Bored Tunnel Project ("Agreement" or "SDOT Agreement") is made and entered into between the State of Washington Department of Transportation, hereinafter the "STATE," and the City of Seattle hereinafter the "CITY" (managed by the Seattle Department of Transportation, hereinafter "SDOT"), collectively the "PARTIES" and individually the "PARTY,"

Comment [g2]: City

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

Comment [RF4]: Joint

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

Comment [W5]: Joint

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

Comment [W6]: Joint

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

Comment [W7]: Joint

WHEREAS, the January 2009 letter of agreement between the PARTIES affirmed that the State would be responsible for the bored tunnel project, and that "the allocation of specific project responsibility to each jurisdiction carries with it the responsibility for project management, environmental work, design, construction, and project cost overruns"; and

Comment [W8]: City - Not acceptable to WSDOT

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WHEREAS, in October 2009 the Governor and the Mayor executed a Memorandum of Agreement, GCA 6366, which described the basic roles and responsibilities for the implementation of the AWVSR Program. **Salay: AWV is defined below, but AWVSR is not, what is SR, can it be defined under Section 1.2?**

Comment [W9]: Joint
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WHEREAS, the AWVSR Program (PROGRAM) consists of a four-lane bored tunnel and improvements to City streets, the City waterfront, and transit; and the Moving Forward Projects; and

Comment [W10]: Joint

WHEREAS, the Proposed Bored Tunnel Project (PROJECT), the subject of this Agreement, is the part of the PROGRAM that replaces SR 99 from South Royal Brougham Street to Mercer Street that consists of designing and constructing a four-lane bored tunnel from South King Street to Thomas Street, north and south tunnel portals and access streets; re-establishment of the City street grid in the vicinity of the portals (Battery Street Tunnel decommissioning and Alaskan Way Viaduct demolition will be addressed in a future agreement); and associated utility relocations; and **Salay: Please**

Comment [W11]: Joint

[b]

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

Comment [W12]: Joint

WHEREAS, RCW 47.01.402, which became law July 1, 2009, provides that State funding for the PROJECT is not to exceed two billion eight hundred million dollars (\$2,800,000,000.00) of which no more four hundred million shall be from tolls, and

Comment [W13]: City - Not Acceptable to WSDOT

WHEREAS, RCW 47.01.402(6)(b) provides that any costs in excess of two billion eight hundred million dollars (\$2,800,000,000.00) shall be borne by property owners in the Seattle area who benefit from replacement of the existing AWV with the deep bore tunnel, and

Comment [W14]: City - Not Acceptable to WSDOT

WHEREAS, the CITY and STATE agree to jointly pursue the implementation and completion of the PROJECT and endeavor to open the tunnel by 2015 and demolish the Alaskan Way Viaduct in 2016; and

Comment [W15]: Joint

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

Comment [W16]: Joint

WHEREAS, review of the PROJECT pursuant to the State STATE and City CITY environmental policy laws is currently underway and the PARTIES recognize that

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1 | changes in the alternative chosen would require a new agreement; and [Salary: [1b]
2 | [1b]

- Comment [W17]: Joint
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4 WHEREAS, the CITY and the STATE will deliver the PROJECT within the financial
5 commitments made in the Memorandum of Agreement, GCA 6366, executed by the
6 PARTIES on October 24, 2009; and

Comment [W18]: Joint

8 WHEREAS, concurrently with this GCA 6486 Agreement, the STATE and CITY,
9 through Seattle City Light (SCL), are entering into an agreement, UT 01474; and

Comment [W19]: Joint

11 WHEREAS, concurrently with this , GCA 6486, the STATE and CITY, through its
12 Seattle Public Utilities Department (SPU), are entering into an agreement, UT 01476; and

Comment [W20]: Joint

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

Comment [W21]: Joint

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

Comment [W22]: Joint

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

Comment [W23]: Joint

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

Comment [W24]: City

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

Comment [W25]: Joint

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

Comment [W26]: City - Need to choose

33 NOW, THEREFORE, pursuant to RCW 47.28.140 and RCW 47.01.401 and in
34 consideration of the terms, conditions, covenants, and performances contained herein, or
35 attached and incorporated and made a part hereto;

Comment [W27]: WSDOT - Need to choose

38 **IT IS MUTUALLY AGREED AS FOLLOWS:**

40 **1. DEFINITIONS**

Comment [W28]: WSDOT

42 Words not otherwise defined, which have well-known technical or construction industry
43 meanings, are used in accordance with such recognized meanings;

Comment [g29]: Joint

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1 1.1 Approved Plans means the construction plans and provisions that evidence the
2 CITY's determination, through the processes described in Section 8 and Exhibit B of this
3 Agreement, that the plans including Released for Construction Submittal pPlans for
4 Design-Build Contracts **Salav: changed to reflect language used below** conform to
5 the Street Use Code **Salav, not defined below, suggest change to Title 15 of the Seattle**
6 **Municipal Code** and other requirements, and that plan review comments are resolved to
7 both PARTIES' satisfaction; Approved Plans are included in the contract documents
8 evidencing the agreement between the STATE and its contractors for construction of a
9 given element of the PROJECT.

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Comment [g30]: Joint

11 1.2 AWV means the Alaskan Way Viaduct structure on State Route 99, currently a
12 non-limited-access highway over a portion of CITY Street Right-of-Way and located
13 partially in the City of Seattle. **Salav: The AWV is located totally within Seattle, why**
14 **are you using "located partially" ? Also, can you include 'SR' in this definition, as in**
15 **AWVSR?**

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Comment [g31]: Joint - requires clean up

17 1.3 Betterment means any upgrading of SDOT Facilities that is made solely for the
18 benefit of and at the election of SDOT. Betterments will be the cost responsibility of
19 SDOT. **Salav: SDOT Facilities is not defined below.**

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Comment [g32]: Joint

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21 1.4 Business Days means Monday through Friday, inclusive, except for official City
22 of Seattle and state holidays.

Comment [g33]: Joint

24 1.5 CITY means the City of Seattle, a Washington municipal corporation.

Comment [g34]: Joint

26 1.6 City Construction Project Engineer means the person designated by SDOT to act
27 as the City's CITY's coordinator and primary representative in matters arising during the
28 course of construction as set forth in this Agreement.

Comment [g35]: Joint

30 1.7 CITY Designated Representative means the CITY official listed in Section 25 of
31 this Agreement.

Comment [g36]: Joint

33 1.8 CITY Infrastructure means the portions of SFU Facilities, SCL Facilities and City
34 CITY Street Right-of-Way improvements constructed or modified as part of the
35 PROJECT to be owned, operated and maintained by the CITY. **Salav: SDOT Facilities**
36 **is not defined below.**

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Comment [g37]: Joint

Comment [g38]: Joint

38 1.9 CITY Interest Property means CITY Street Right-of-Way plus all other real
39 property that the CITY owns or in which the CITY has a real property interest on the
40 effective date of this Agreement, or in connection with the PROGRAM is to acquire
41 ownership of or an interest in real property or a different utility related right from the
42 STATE, which includes, but is not limited to Program Transfer Property. CITY Interest
43 Property does not include real property acquired or to be acquired by the STATE for
44 planned limited access facilities such as the bored tunnel, portals and access for which no

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1 real property interest or different utility-related asset will be transferred to the
2 CITY. [Salary: [1b]
3 [1b]
4
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8 1.10 City of Seattle means CITY.

Comment [g39]: Joint

9
10 1.11 City Standards means all City of Seattle laws, rules, regulations and standards and
11 all applicable federal and state laws, rules, regulations and standards, including but not
12 limited to the following, except as otherwise provided in this Agreement, UT 01474 and
13 UT 01476:

Comment [RF40]: Joint

14 The Seattle Municipal Code;
15 The City of Seattle Standard Specifications for Road, Bridge and Municipal
16 Construction;
17 The City of Seattle Standard Plans for Municipal Construction,;
18 SDOT, SCL, DPD and SPU Director's Rules, including the City of Seattle CITY
19 Street Right of Way Improvements Manual, 2005-22,;
20 SCL Material Standards; and
21 SCL Construction Guidelines

Comment [RF41]: Joint

22
23 1.12 CITY Street Right-of-Way means public street right-of-way under the jurisdiction
24 of SDOT pursuant to Title 15 of the Seattle Municipal Code.

Comment [g42]: Joint

25
26 1.13 Conceptual Relocation Plan means a work product that defines the general scope
27 of utility relocations including a planning level estimate of design and construction
28 costs.

Comment [g43]: WSDOT

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29
30 1.14 Conflicting Facilities means all SCL Facilities and all SPU Facilities identified by
31 the STATE that directly conflict with the bored tunnel portals and tunnel portal
32 excavations.

Comment [RF44]: City - Add to SDOT?

33
34 1.15 Contract Award means the STATE's written decision accepting bid for
35 construction of a Project. Salary: rather than "a Project" do you mean the
36 "PROJECT?" "Project" is not defined. Maybe it should be lower case.

Comment [g45]: Joint

37
38 1.16 Damage means loss of function, capacity, or aesthetic quality. For the purposes
39 of this Agreement, "Damage" shall not be construed to include reduction of design life
40 of any structure or utility. [Salary: "aesthetic quality" is not defined, [1b]
41 [1b]
42

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Comment [g46]: WSDOT

43 1.16 Damage means any direct or indirect consequence of the PROJECT that causes
44 harm to, or reduces value or usefulness of, CITY Infrastructure, private property, CITY

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1 | property or other public property, including but not limited to structural damage or
2 | physical failure; loss of function, capacity or aesthetic quality; reduced service capacity,
3 | including intended future capacity; reduced service life; a measurable reduction of design
4 | life of an SPU Facility or an SCL Facility; water main movement in excess of established
5 | thresholds; or any other impact to an SPU Facility or an SCL Facility such as stress or
6 | Deformation. [Salav: [1b]

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Comment [g47]: City

15 | 1.17 Defective Work means design or construction work or materials that fail to
16 | comply with the Approved Plans, CITY-approved modifications to the Approved Plans,
17 | or the laws, rules, regulations or standards as specified in this Agreement.

Comment [g48]: Joint

19 | 1.18 Deformation means any 3-dimensional displacement, for a structure (such as tilt
20 | of a structure), and strain (relative displacements of structures or the ground) and includes
21 | any settlement, heave, lateral movement, and related terms are used as being common
22 | industry terminology. Where such industry terminology is used for convenience herein, it
23 | does not imply that the broad definition of Deformation has been limited.

Comment [g49]: Joint

25 | 1.19 Design-Bid-Build Contract means a project delivery method in which the STATE
26 | provides a complete design, advertises for bids, and awards a contract to the lowest
27 | responsive bidder who is responsible for completing the construction of the project.

Comment [g50]: Joint

29 | 1.20 Design-Build Contract means a project delivery method in which the STATE
30 | develops a conceptual design and requests proposals from pre-qualified contractors. The
31 | contract is awarded to the contractor with the best value responsive proposal. The
32 | contractor is responsible to complete the design and construct the project.

Comment [g51]: Joint

34 | 1.21 Design Builder means the entity with whom the STATE enters into a Design-
35 | Build contract and who is responsible to complete the design and construct the project.

Comment [RF52]: Joint

37 | 1.22 DPD means the City of Seattle Department of Planning and Development.

Comment [g53]: Joint

39 | 1.23 Engineer of Record means the engineer licensed in the State of Washington who
40 | has been commissioned by the STATE as the prime engineer of the PROJECT, having
41 | overall responsibility for the adequacy of the design and the coordination of the design
42 | work of other engineers and whose professional seal is on the Approved Plans.

Comment [g54]: Joint

44 | 1.24 Environmental Compliance Assurance Procedure (ECAP) means procedures

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1 incorporated into the ~~current~~ WSDOT *Construction Manual* M41-01.05 ~~dated July 2008~~
2 (Section 1-2.2k(1)) and the WSDOT *Environmental Procedures Manual* M31-11.05
3 (Sections 610 and 690) ~~dated October 2008~~, as modified by this Agreement, which
4 provide guidance on compliance with Environmental Laws and environmental
5 Remediation. The purpose of the ECAP is to recognize and eliminate environmental
6 violations during the construction phase on STATE construction sites and to ensure
7 prompt notification to STATE management and agencies. For purposes of the ECAP,
8 violations are defined as actions that are not in compliance with environmental standards,
9 permits, or laws.

Comment [g55]: Joint

10 1.24 Environmental Law(s) means any environmentally related local, state or federal
11 law, regulation, ordinance or order (including without limitation any final order of any
12 court of competent jurisdiction of which the STATE has knowledge), now or hereafter in
13 effect including, but not limited to: the Federal Clean Air Act; the Federal Water
14 Pollution Control Act; the Federal Safe Drinking Water Act; the Federal Comprehensive
15 Environmental Response Compensation and Liability Act, as amended by the Superfund
16 Amendments and Reauthorization Act of 1986; the Federal Resource Conservation and
17 Recovery Act, as amended by the Solid and Hazardous Waste Amendments of 1984; the
18 Federal Occupational Safety and Health Act; the Federal Emergency Planning and Right-
19 to-Know Act of 1986; the Federal Hazardous Materials Transportation Control Act of
20 1980; the Federal Clean Water Act of 1977; the Federal Insecticide, Fungicide and
21 Rodenticide Act; the Federal Waste Management Recovery and Recycling Act; the
22 Washington Hazardous Waste Management Act; the Washington Hazardous Waste Fees
23 Act; Washington Model Toxics Control Act; the Washington Nuclear Energy and
24 Radiation Act; the Washington Radioactive Waste Storage and Transportation Act; the
25 Washington Underground Petroleum Storage Tanks Act; and any regulations
26 promulgated thereunder from time to time.

Comment [g56]: Joint

27
28 1.25 Final Design Submittal means plans, specifications, and design documentation
29 representing complete design of a given project element in a Design-Build Contract. The
30 Final Design Submittal addresses and incorporates review comments from the
31 Preliminary Design Submittal.

Comment [RF57]: Joint

32
33 1.26 Final Plan Review Package means the Plan Review Package submitted to the
34 CTEY that is comprised of the STATE's contract documents including contract addenda
35 and fully incorporates or otherwise addresses all CTEY plan review comments and all
36 applicable conditions of the Street Use Permit.

Comment [RF58]: Move to Exhibit

37
38 1.27 Hazardous Substance(s) means any substance, or substance containing any
39 component, now or hereafter designated as a hazardous, dangerous, toxic or harmful
40 substance, material or waste, subject to regulation under any federal, state or local law,
41 regulation or ordinance relating to environmental protection, contamination or cleanup
42 including, but not limited to, those substances, materials and wastes listed in the United
43 States Department of Transportation Hazardous Materials Table (49 C.F.R. §172.101) or
44 by the United States Environmental Protection Agency as hazardous substances (40

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1 C.F.R. pt. 302 and amendments thereto) or in the Washington Hazardous Waste
2 Management Act (Ch. 70.105 RCW) or the Washington Model Toxics Control Act (Chs.
3 70.105D RCW and 82.21 RCW), petroleum products and their derivatives, and such
4 other substances, materials and wastes as become regulated or subject to cleanup
5 authority under any Environmental Law.

Comment [g59]: Joint

7 1.28 Letter of Acceptance means the written document that signifies the CITY's
8 acceptance of CITY Infrastructure to be owned by the CITY, and shall signify the
9 STATE's transfer of CITY Infrastructure to be owned by the CITY. The Letter of
10 Acceptance will not transfer any interest in real property. The Letter of Acceptance shall
11 be jointly executed by the PARTIES. A Letter of Acceptance for SPU Facilities requires
12 SPU approval and a Letter of Acceptance for SCL Facilities requires SCL approval.

Comment [g60]: Joint

14 1.29 Letter of Plan Approval means the letter provided to the STATE by the CITY
15 following the completion of the plan review process, signifying that the plans and
16 specifications identified in the letter are the Approved Plans.

Comment [g61]: Joint

18 1.30 MTCA means the Washington Model Toxics Control Act (Chs. 70.105D RCW
19 and 82.21 RCW).

Comment [g62]: Joint

21 New Work means the design and construction by or at the direction of UTILITY
22 of a new utility other than (a) as part of a relocation associated with the PROJECT, or (b)
23 to provide service to the PROJECT. New Work shall be entirely the financial obligation
24 of UTILITY. **[Salay: UTILITY is not defined in this agreement, either define it or
25 call it SCL and SPU.]**

Comment [RF63]: Is this needed in SDOT?

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27 1.32 Preliminary Engineering means the portion of the pProject engineering which
28 advances the pProject design to address Type, Size, and Location ("TS&L") for all
29 components of the pProject. Design will have advanced sufficiently to define alignments
30 and identify conflicts. Preliminary engineering will include an estimate for final design
31 and a preliminary cost for construction. **[Salay, throughout these definitions, you use
32 "project" rather than PROJECT, and sometimes Project. "Project is not defined
33 and it appears that all references to project should not be PROJECT. So, I have
34 used a lower case, unless you need to define Project as opposed to PROJECT.]**

Comment [g64]: Joint

Comment [RF65]: Joint

36 1.33 Plan Review Package means clear and complete plans, specifications, and the
37 necessary assumptions, studies, models and calculations upon which the design was
38 based, and corrections previously requested by the CITY with respect to Design-Bid-
39 Build pProjects.

Comment [g66]: Joint

41 1.34 100% Plan Review Package means the Plan Review Package submitted to the
42 CITY concurrent with STATE's final internal review of the construction contract plans
43 and contract provisions that shall evidence the agreement between the STATE and its
44 contractors for construction of Design-Bid-Build pProjects.

Comment [RF67]: Joint

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1
2 1.35 Plans, Specifications, and Estimate (“PS&E”) means the portion of the PROJECT
3 engineering after the Preliminary Engineering, which advances the PROJECT design by
4 preparing contract-ready documents and the engineer’s cost estimate. At this stage the
5 specifications are written and tailored to the plans so that all work can be measured and
6 has a pay item. The cost estimate is formalized using the established specifications, pay
7 items and quantity takeoffs, for 60% through 100% completion of the total design
8 effort. **Salay: look at section 1.32, where you do not fully cap PROJECT. Which**
9 **meaning do you wish to impart to keep these definitions consistent?!**

Comment [RF68]: Joint
Comment [RF69]: Joint

11 1.36 Preliminary Design Submittal means in a Design-Build Contract, a formal
12 opportunity for the STATE, the Design -Builder, various design team disciplines, and
13 other approved stakeholders to review the construction documents in order to
14 ensure that the design is progressing appropriately and proceeding in the right direction;
15 the plans reflect Design -Builder requirements for construction; design features are
16 coordinated; and there are no fatal flaws within a given discipline or between disciplines.
17 **Salay, should this be PROJECT? Or project?!**

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Comment [g70]: Joint

19 1.37 Private Utilities means utility uses, excluding facilities owned and operated by the
20 CITY, approved through franchise agreements and/or Street Use Permits by the CITY
21 and governed and enforced through City-CITY Ordinance AFS- [1b]

22 [1b]
23
24
25
26

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Comment [g71]: Joint

27 1.38 PROJECT means the proposed bored tunnel project, the part of the
28 PROGRAM that replaces SR 99 from South Royal Brougham Street to Merce Street and
29 that consists of designing and constructing a four-lane bored tunnel from South King
30 Street to Thomas Street, north and south tunnel portals and access streets, re-
31 establishment of the City-CITY street grid in the vicinity of the portals **Battery Street**
32 **Tunnel decommissioning and Alaskan Way Viaduct demolition will be addressed in a**
33 **future agreement** and associated utility relocations.

Comment [g72]: Joint. This definition does not currently include the demolition of the Alaskan Way Viaduct and the decommissioning of the Battery Street Tunnel.

35 1.39 PROGRAM means the AWVSR program which consists of a four-lane bored
36 tunnel and improvements to City-CITY streets, the City-CITY waterfront, and transit; and
37 the Moving Forward Projects as defined in GCA 6366.

Comment [RF73]: Joint

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

42 Program Transfer Property means all Program Property identified by the STATE and the
43 CITY for transfer from the STATE to the CITY in [1b]

44 [1b]

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1
2 Project Property means all real property interests acquired and to be acquired by the
3 STATE and used for the PROJECT.

4
5 1.40 Project Engineer means the persons appointed by the STATE to lead the
6 PROJECT during design and/or construction or his or her designee.

Comment [RF74]: Joint

7
8 1.41 Released for Construction Submittal means in a Design-Build Contract, plans and
9 specifications for a given project element that are construction ready and have been
10 certified by the Design-Builder as having met all contract requirements and received all
11 approvals and permits. The Released for Construction Submittal addresses all review
12 comments from the Preliminary Design Submittal and Final Design Submittals.

Comment [RF75]: Joint

13 Relinquishment Property

Comment [g76]: TBD

14
15
16 1.42 Remediation means the same as Remedy or Remedial Action defined in MTCA
17 which includes any action or expenditure consistent with the purposes of MTCA to
18 identify, eliminate, or minimize any threat or potential threat posed by Hazardous
19 Substances to human health or the environment including any investigative and
20 monitoring activities with respect to any release or threatened release of a Hazardous
21 Substance and any assessments to determine the risk or potential risk to human health or
22 the environment.

Comment [RF77]: Joint

23
24 1.43 Round Table Meeting means a meeting typically held five (5) weeks following
25 the submittal of the 100% Plan Review Package to the CITY and STATE, and commonly
26 attended by the STATE's Project team and STATE reviewers to resolve and address
27 STATE comments on the 100% Plan Review Package.

Comment [RF78]: Joint

28
29 1.43 SCL means Seattle City Light.

Comment [RF79]: Joint

30
31 1.44 SCL Facilities means the electrical facilities impacted by, or constructed as part
32 of, the PROJECT that are owned or to be owned by the CITY.

Comment [RF80]: Joint

33
34 1.45 SCL Facilities Work means work required to design, construct and protect the
35 SCL Facilities as part of the PROJECT.

Comment [g81]: Joint

36
37 1.46 SDOT means the Seattle Department of Transportation.
38 **Salay: There is no SDOT Facilities or SDOT Facilities Work defined in this**
39 **agreement.**

Comment [RF82]: Joint

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40
41 1.47 SPU means Seattle Public Utilities.

Comment [RF83]: Joint

42
43 1.48 SPU Facilities means the water, drainage and wastewater facilities impacted by,
44 or constructed as part of, the PROJECT that are owned or to be owned by the CITY.

Comment [RF84]: Joint

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1
2 1.49 SPU Facilities Work means work required to design, construct and protect the
3 SPU Facilities as part of the PROJECT.

4
5 1.50 STATE means the State of Washington Department of Transportation and may
6 include its cContractors, sSubcontractors, authorized aAgents and aAssigns.

Comment [RF85]: Joint

7
8 1.51 STATE Designated Representative means the STATE official listed in Section 25
9 of this Agreement.

Comment [RF86]: Joint

10
11 1.52 Street Use Permit means written authorization secured by the STATE from the
12 Director of SDOT for use of the CITY Street Right-of-Way pursuant to Title 15 of the
13 Seattle Municipal Code.

Comment [RF87]: Joint

14
15 1.53 Submittal Control Document means a list of all documents or reports that are
16 required by the Approved Plans or construction contract documents or applicable law to
17 be provided to or submitted to the STATE and the CITY.

Comment [RF88]: Joint

18
19 Surplus Property means Program Property, excluding Program Transfer Property and
20 other CITY Interest Property, that upon completion of the PROJECT has not been
21 designated as part of the limited access or non-limited access right-of-way of State Route
22 99.

23
24 1.54 Task Force means a group consisting of StateSTATE, CityCITY, contractor, and
25 other stakeholder staff meeting regularly to review and reach decisions relating to a
26 particular subject, e.g., traffic, structures.

Comment [g89]: Joint

27
28 1.55 Task Order means a document executed by the PARTIES under this Agreement
29 authorizing work by one party-PARTY to be done on behalf of the other party-PARTY
30 and that defines the scope and the obligations of the PARTIES for the given element of
31 work. All terms and conditions of the Agreement shall apply to each Task Order.

Comment [g90]: Joint

32
33 1.56 WSDOT means Washington State Department of Transportation.

Comment [RF91]: Joint

34
35 Words not otherwise defined, which have well-known technical or construction industry
36 meanings, are used in accordance with such recognized meanings.

Comment [W92]: Joint

37
38
39 **2. GENERAL RESPONSIBILITIES**

40
41 2.1 The PARTIES shall manage risk, produce design and conduct construction in a
42 manner that maximizes cumulative public benefits and minimizes cumulative public costs
43 as mutually agreed to by the PARTIES.

Comment [W93]: Joint Language

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1 2.2 This Agreement in conjunction with UT 01474 and UT 01476 is prepared by the
2 STATE and CITY to govern relationships between the PARTIES and establish each
3 Party's PARTY's responsibilities regarding the PROJECT as described in Exhibit A.
4 Project Description. [Salav: Exhibit A has not been provided; do you want "Project"
5 to be PROJECT or project?]

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Comment [W94]: Joint

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6
7 2.3 The PARTIES understand that environmental review of the proposed PROJECT
8 is underway at the date of this Agreement and agree that if an alternative other than the
9 Proposed Bored Tunnel is selected, this Agreement shall not be applicable.

Comment [W95]: City

10
11 2.4 The PARTIES shall work collaboratively to resolve issues in a manner that
12 endeavors to open the Proposed Bored Tunnel to the public on schedule.

Comment [W96]: Joint

13
14 2.5 The design and construction of CITY Infrastructure, including infrastructure
15 repair, shall comply with City of Seattle codes, rules, regulations and standards.

Comment [W97]: Joint

16
17 2.6 Each Party-PARTY shall provide the funding and resources necessary to fulfill
18 the responsibility of that Party-PARTY as established in this Agreement. [Salav: [1b]
19 [1b]
20
21

Comment [W98]: Joint

Comment [W99]: Joint

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

Comment [W100]: Joint

32
33 2.8 The PARTIES agree to work cooperatively with each other and make reasonable,
34 good faith efforts to timely and expeditiously complete the PROJECT, as provided in this
35 Agreement, including, but not limited to, the selection of a preferred SR 99 design
36 alternative; development of preliminary engineering and final design and construction.
37 [Salav: This section is the same as Section 2.7, except for lines 30-36. Should this be
38 deleted?]

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Comment [W101]: Joint

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39
40 2.9 The STATE is responsible for designing and constructing the Proposed Bored
41 Tunnel portion of the ProjectPROJECT. The STATE will take reasonable measures to
42 minimize, limit, and mitigate Damage to private property and CITY infrastructure
43 including CITY streets, CITY telecommunications facilities and CITY utilities that may
44 result from the Proposed Bored Tunnel construction, including Damage that may result

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1 from tunnel-induced Ddeformation. WSDOT-STATE is responsible for-to remedy such
2 Damage should it occur. **Salay:** [1b]

3 [1b]

Comment [W102]: Joint - Damage definition pending

8 2.10 The CITY is responsible for relocating those existing UTILITY Facilities that
9 have alignments intersecting the final configuration of the proposed SR 99 bored tunnel
10 portals and tunnel portal excavations.

Comment [JRB103]: Remove from the SDOT MoA and just use in UTILITY MoAs

11
12 2.11 The PARTIES agree that it is in the public interest for one PARTY to implement
13 portions of the other PARTY's PROJECT responsibilities. Therefore, this Agreement
14 establishes a Task Order process for use by a PARTY to authorize the other PARTY to
15 conduct work on its behalf, and as may be documented through each Task Order, agree to
16 reimburse the other PARTY for such services.

17
18 2.12 During conceptual and preliminary design of the PROJECT, the PARTIES shall
19 jointly identify Conflicting Facilities and plan for the relocation of these Conflicting
20 Utilities. The STATE agrees to prepare a Conceptual ~~Utility~~ Relocation Plan **[Salay:**
21 **Just using actual defined wording of concept. If you want Utility in the definition,**
22 **then fix section 1.13]**, that documents a feasible conceptual approach to relocating
23 Conflicting Facilities in a manner that accommodates the PROJECT. The PARTIES shall
24 mutually determine the feasibility of the Conceptual ~~Utility~~ Relocation Plan. The
25 Conceptual ~~Utility~~ Relocation Plan shall include:

Comment [JRB104]: Just include in UTILITY MoAs.

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26
27 2.12.1 The STATE's conceptual design of the PROJECT.

28 2.12.2 Identification of Conflicting Facilities.

29 2.12.3 The STATE's request for ~~UTILITY~~ SCL and/or SPU **[Salay, UTILITY**
30 **is not defined in this agreement. See suggested change.]** to relocate Conflicting
31 Facilities based on the STATE's conceptual design of the PROJECT.

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32 2.12.4 A feasible conceptual design that demonstrates compatibility with
33 existing infrastructure to remain.

34 2.12.5 Plan view drawings drafted to an engineering scale of 1 inch equals 40
35 feet showing the existing configuration of Conflicting Facilities, proposed
36 configuration of relocated CITY Infrastructure, and all existing infrastructure to
37 remain adjacent to relocated CITY Infrastructure.

38 2.12.6 Roadway and utility cross-sections necessary to demonstrate the
39 feasibility of the conceptual design.

40 2.12.7 Utility profiles and elevations necessary to demonstrate the feasibility of
41 the conceptual design.

42 2.12.8 Identification of Conflicting Facilities that require multiple relocations
43 in order to accommodate the PROJECT along with the circumstances that cause
44 the need for such multiple relocations.

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1 2.12.9 A schedule for relocation of Conflicting Facilities that is coordinated
 2 with the proposed design and construction schedule for other work within the
 3 PROJECT.
 4 2.12.10 A contracting strategy for design and construction of each Conflicting
 5 Facility identified for relocation including a proposal for Task Orders necessary
 6 for [REDACTED] SCL and/or SPU to authorize the STATE to perform services on its
 7 behalf. **Salav, UTILITY is not defined in this agreement. See suggested**
 8 **change.]**
 9 2.12.11 An estimate of design services to be performed by the STATE on behalf
 10 of the SCL and/or SPU [REDACTED] **Salav, UTILITY is not defined in this**
 11 **agreement. See suggested change.]**
 12 2.12.12 An estimate of construction costs commensurate with the level of
 13 conceptual design.
 14 2.12.13 [what else???]
 15
 16 2.13 [REDACTED] shall review and comment on the Conceptual [REDACTED]
 17 **[Salav: Just using actual defined wording of concept. If you want Utility in the**
 18 **definition, then fix section 1.13]** Relocation Plan. The PARTIES shall address
 19 [REDACTED] SCL's and/or SPU's comments on the Conceptual [REDACTED] Relocation Plan to
 20 the PARTIES' mutual satisfaction. **Salav, UTILITY is not defined in this agreement.**
 21 **See suggested change.]**
 22
 23 2.14 The PARTIES shall use the final Conceptual [REDACTED] Relocation Plan as the basis
 24 for negotiating each PARTY's design, construction and funding responsibilities for
 25 multiple utility relocations. **[Salav: [REDACTED] [1b]**
 26 **[1b]**
 27
 28
 29
 30
 31
 32
 33
 34 2.15 SCL's and/or SPU's [REDACTED] responsibility for the design and construction of
 35 Conflicting Facilities relocations begins when the PARTIES STATE and SPU and/or
 36 SCL have a written mutual agreement regarding the content of the Conceptual [REDACTED]
 37 Relocation Plan and the STATE's, SPU's and SCL's each PARTY's responsibilities for
 38 multiple utility relocations. **Salav, UTILITY is not defined in this agreement. See**
 39 **suggested change. Further, PARTIES in this agreement means SDOT & State, the**
 40 **Conceptual plan and agreement should be between State & SPU & SCL, not SDOT,**
 41 **Correct?]**
 42

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1 | 2.16 The PARTIES shall use the Conceptual ~~Utility~~ Relocation Plan as the basis for
2 | establishing the STATE's scope, schedule and estimated costs of design and construction
3 | services to be documented in Task Orders under this Agreement.
4 |

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5 | ~~2.17~~—In instances where the STATE's revisions to the PROJECT design differ so
6 | significantly from the conceptual design presented in the Conceptual Utility Relocation
7 | Plan as to render UTILITY's SPU's and/or SCL's relocation design or construction plan
8 | obsolete, the STATE shall reimburse UTILITY-SPU and/or SCL for the accrued costs of
9 | obsolete work. Salay: UTILITY is not defined in this agreement. See suggested
10 | change.

11 | **3. PROPERTY ACQUISITION AND TRANSFER; RELINQUISHMENT;**
12 | **SURPLUS PROPERTY**

Comment [W105]: TBD

13 | 3.1 Acquisition
14 |

15 | 3.1.1 The STATE has or will acquire, at its expense, the Project Property. The
16 | CITY will acquire, at its expense, any utility-related property right necessary for the
17 | relocation of SPU Facilities or SCL Facilities that cannot be accommodated within
18 | Project Property or existing CITY right of way.
19 |

20 | 3.1.2 The STATE is responsible, at its expense, for performance of all
21 | appraisals, appraisal review, title review, surveys, property investigation, relocation
22 | assistance and all other investigations and services in connection with the acquisition of
23 | the Project Property. For each parcel of Program Transfer Property, the STATE shall
24 | deliver to the CITY, as soon as practicable after a parcel is acquired and identified by the
25 | PARTIES as Program Transfer Property, all documents created, commissioned or
26 | received in connection with the STATE's acquisition of such parcel. Such documents
27 | shall include, to the extent applicable, appraisals, appraisal reviews, title reports and all
28 | documentation concerning title encumbrances, title policies, surveys, geotechnical
29 | reports, purchase agreements, term sheets, options, leases, deeds, indemnities, and all
30 | other documents and information created, commissioned or received by the STATE.
31 | Salay: As this language stands, it just requires that all property documents be
32 | provided to the city. Please be careful that this does not morph into requiring the
33 | WSDOT to actually create or provide documentation that it does not normally
34 | have.
35 |

Comment [HMc106]: Hannah and Theresa to verify that the documentation listed here matches the requirements in WSDOT's ROW Manual. If it does, consider just referencing ROW Manual.

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36 | 3.1.3 The STATE is responsible for identification and investigation of
37 | Hazardous Substances on Program Property following procedures set in the WSDOT
38 | *Environmental Procedures Manual M 31-11* and WSDOT *Right of Way Manual M 26-01*
39 | that are in effect on the date of property acquisition. The STATE shall provide to
40 | SDOT's Real Property and Environmental Manager, as soon as practicable after a parcel
41 | is identified by the PARTIES as Program Transfer Property, copies of all documentation
42 |
43 |
44 |

Comment [HMc107]: Theresa to share with WSDOT environmental team.

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1 of environmental investigation concerning the Program Transfer Property, remedial
2 actions, reports, studies or other documentation, whether received by or prepared by or
3 for the benefit of the STATE, including, but not limited to, (1) documents relating to due
4 diligence and/or all appropriate inquiry, environmental assessments, and remedial,
5 removal or cleanup activities related to the Program Transfer Property; (2) documents
6 relating to allegations, orders, claims, regulatory demands, or losses relating to the
7 alleged existence or migration of any Hazardous Substance from or on any parcel of
8 Program Transfer Property; and (3) any alleged violation of any Environmental Law or
9 other information relating to environmental condition of the Program Transfer Property.

10
11 3.2 Transfer

12
13 3.2.1 On or before December 31, 2011, the STATE and the CITY shall enter
14 into a separate written agreement governing transfer of Program Transfer Property to the
15 CITY. The agreement shall provide that each transfer to the CITY shall be by deed. The
16 agreement shall also provide the following: timing of transfer, condition of title,
17 protection for utilities in the event of future sale, the following release and
18 indemnification provision:

19
20 “The STATE hereby releases and indemnifies, protects and holds harmless the
21 City of Seattle and its officers, officials, employees, and authorized agents
22 working within the scope of their employment from all liability and claims
23 (including but not limited to liability and claims for response and remediation
24 costs, administrative costs, fines, charges, penalties, attorney fees and cost
25 recovery or similar actions brought by a governmental or private party, including
26 third party tort liability) arising, directly or indirectly, from any presence or
27 release of any Hazardous Substance remaining within or transported from the real
28 property in which an interest is transferred.”

29
30 and the definitions of Hazardous Substance and Environmental Law contained in this
31 SDOT Agreement. The foregoing is not an exclusive list.

32
33 3.2.2 Whether or not any separate agreement or transfer document is made,
34 effective beginning on the date of transfer of each real property interest from the STATE
35 to the CITY in connection with the PROGRAM, the STATE shall release and indemnify,
36 protect and hold harmless the City of Seattle and its officers, officials, employees, and
37 authorized agents working within the scope of their employment from all liability and
38 claims (including but not limited to liability and claims for response and remediation
39 costs, administrative costs, fines, charges, penalties, attorney fees and cost recovery or
40 similar actions brought by a governmental or private party, including third party tort
41 liability) arising, directly or indirectly, from any presence or release of any Hazardous
42 Substance remaining within or transported from the real property in which an interest is
43 transferred.

Comment [HM108]: Theresa to share with
WSDOT environmental team.

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1 3.3 Surplus Property. Within two (2) years after completion of the PROJECT, the
2 STATE shall complete its disposal of all Surplus Property pursuant to the provisions of
3 chapter 47.12 RCW and following the procedures in the WSDOT *Right of Way Manual*
4 *M 26-01.02*, dated August 2009, Chapter 11, Sections 11-7.1 – 11-7.4.2. Disposal
5 includes any of the disposal methods described in Chapter 11, Sections 11-7.1 – 11-7.4.2.
6 The parties PARTIES may agree to extend the two year period if disposal of surplus
7 property is not reasonably feasible. **[Salay: [1b]**

8 [REDACTED]
9 [REDACTED]

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11 3.4 Survival. The obligations set forth in this Section 3 shall survive termination of
12 this SDOT Agreement unless otherwise expressly negotiated by the PARTIES and
13 memorialized by written amendment to this SDOT Agreement.

15 3.5 Where ~~UTILITY~~ SCL Facilities and/or SPU Facilities are located in or near an
16 area which the STATE designates as a Limited Access Facility, the STATE will ensure
17 that ~~UTILITY~~ SCL and/or SPU continues to be allowed access to its
18 ~~UTILITY~~ facilities. **Salay, UTILITY is not defined in this agreement. See suggested**
19 **change.**

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20 3.5.1 The STATE's Limited Access Facility designation for the tunnel shall
21 contain a vertical and horizontal boundary.

22 3.5.2 The STATE agrees that any Limited Access Facility designation for the
23 tunnel will allow ~~UTILITY~~ SCL and/or SPU to access its ~~UTILITY~~ facilities.

24 3.5.3 The area between the Limited Access Facility boundaries and the CITY
25 streets shall continue to be CITY Street Right-of-Way. **[Salay: [1b]**

26 [REDACTED]
27 [REDACTED]

28 3.5.4 In the event the STATE designates as a Limited Access Facility any area
29 in or near the tunnel portals on which a SPU Facilities and/or SCL Facilities ~~UTILITY~~
30 Facility exists or will be relocated, the STATE agrees to provide ~~UTILITY~~ SCL and/or
31 SPU a ~~UTILITY~~-utility franchise in the form attached hereto as ~~Exhibit A~~, pursuant to the
32 requirements of Section 14 herein [OR provide for access to operate and maintain 24/7,]
33 and will make every effort to develop a design that minimizes the need for regular, on-
34 going maintenance access as reasonably feasible. **[AES: Exhibit A is designated as a**
35 **project design; please fix this designation.** **[1b]**

36 [REDACTED]
37 [REDACTED]
38 [REDACTED]
39 [REDACTED]

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41 THIS SECTION TO BE PREPARED BY Theresa and Hannah

Comment [g109]: Needs elevation

42
43 **4. TASK ORDERS**
44

HIGHLIGHTED TEXT = Elevate to Leadership

GREEN HIGHLIGHT = Staff to resolve

Joint
042310

1 4.1 Some or all of the work undertaken pursuant to this Agreement may be governed
2 by Task Orders. Each Task Order shall be substantially similar to Exhibit C and shall
3 document the scope of services, schedule of services, itemized estimate of costs, and any
4 provisions specific to the scope of services. Task Orders shall be subject to the
5 provisions of this Agreement. Either PARTY may initiate a Task Order which will be
6 jointly executed by the PARTIES.

Comment [g110]: Joint

8 4.2 Partial Task Order payments, if any, shall be made upon invoice from the Party
9 PARTY providing services, to cover actual direct and related indirect costs incurred at
10 rates established in each Task Order. It is agreed that any such partial payment will not
11 constitute agreement as to the appropriateness of ~~services costs~~ and that, at the time of
12 final ~~audit~~, all required adjustments will be made and reflected in a final payment. The
13 Party-PARTY providing services shall submit itemized invoices within sixty (60)
14 calendar days of the end of the calendar month in which the services were performed.
15 Invoices for partial payment shall not be submitted more frequently than once per month.
16 The invoices shall substantially conform to the invoice requirements shown in Exhibit D.
17 The PARTIES agree to make payment for services completed and invoiced within thirty
18 (30) calendar days of receiving an invoice. [AES: [b)] [1b]

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Comment [W111]: Joint

22 4.3 Audit Requirements for Task Order Activity

23 THIS SECTION TO BE PREPARED BY Theresa and Hannah

26 4.4 Task Order Closeout Requirement

27 THIS SECTION TO BE PREPARED BY Theresa and Hannah

30 5. ENVIRONMENTAL REMEDIATION DURING CONSTRUCTION

Comment [g112]: Joint

32 5.1 STATE Responsibilities. For CITY Interest Property the STATE shall be
33 responsible for identification, investigation and Remediation of Hazardous Substances
34 found within the limits of the PROJECT during its environmental due diligence of the
35 Project Property and shall identify areas of known Hazardous Substances in the Plan
36 Review Packages circulated for CITY review and in Design-Build Contract-related
37 documentation, including Preliminary and Final Design Submittals, that are relevant to
38 CITY Interest Property. In addition, the STATE shall be responsible for identification,
39 investigation and Remediation of Hazardous Substances discovered during construction
40 at CITY Interest Property. For CITY Interest Property, provisions for Remediation of
41 known Hazardous Substances, approved Remediation plans, and provisions for
42 Remediation of Hazardous Substances discovered during construction shall be included
43 in the Plan Review Packages and Approved Plans and in Design-Build Contract-related
44 documentation, including Preliminary and Final Design Submittals, that are relevant to

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1 CITY Interest Property. Nothing in this Agreement is intended to alter the legal
2 obligations of the STATE with respect to Hazardous Substances that may remain in
3 place after completion of the PROJECT except for release and indemnity provisions of
4 this Agreement.

Comment [RF113]: Joint

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.

Comment [RF114]: Joint

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.

Comment [RF115]: Joint

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:

Comment [RF116]: Joint

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.

Comment [RF117]: Joint

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1 5.5 All work at CITY Interest Property shall comply with the then-current WSDOT
2 *Environmental Procedures Manual M 31-11* and WSDOT *Construction Manual M41-01*,
3 Environmental Law, and all applicable CITY regulations except as modified by this
4 Agreement.

Comment [RF118]: Joint

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

Comment [RF119]: Joint

11 5.7 The STATE's Project Engineer shall determine, in consultation with the CITY,
12 Remediation of known and unanticipated Hazardous Substances at or adjacent to CITY
13 Interest Property within the limits of the PROJECT. In instances where the CITY
14 disputes the STATE's plan(s) for Remediation in connection with CITY Interest
15 Property, the CITY and STATE will resolve the dispute through the dispute resolution
16 process in Section 21 of this Agreement.

Comment [RF120]: Joint

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

Comment [RF121]: Joint

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

Comment [RF122]: Joint

32 5.10 The PARTIES shall obtain all required permits and approvals for Remediation at
33 CITY Interest Property.

Comment [RF123]: Joint

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

Comment [RF124]: Joint

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

Comment [RF125]: Joint

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GREEN HIGHLIGHT – Staff to resolve

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1 5.13 All costs associated with testing, handling, storing, removing, transporting,
2 disposing, or treating Hazardous Substances that are excavated in connection with the
3 PROJECT relating to CITY Interest Property shall be paid by the STATE. In addition,
4 STATE shall be responsible for all costs associated with Remediation of any releases that
5 are caused or exacerbated by its own employees or contractors. The STATE shall be
6 identified as the generator for these Hazardous Substances.

Comment [RF126]: Joint

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.

Comment [RF127]: Joint

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.

Comment [RF128]: Joint

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 authorized agents, while acting
28 within the scope of their employment, from all liability and claims (including but not
29 limited to liability and claims for response and remediation costs, administrative costs,
30 fines, 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-CITY has a real property interest on that date or in which the
36 City-CITY later acquires a real property interest for the purposes of the Program
37 PROGRAM from an entity other than the STATE, and (2) the removal, transport or
38 disposal in connection with the PROJECT of any Hazardous Substance for which the
39 STATE or any person, contractor or other entity working on behalf of the STATE is a
40 generator.

Comment [RF129]: Joint

41 **6. PERMITTING AND RIGHT-OF-WAY USE**
42
43

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1 6.1 The PARTIES shall apply for and obtain all necessary federal, state and City of
2 Seattle-issued permits and approvals for the work for which they are responsible prior to
3 commencing work that requires such permits, including but not limited to all permits,
4 approvals or permission for exploratory investigations, testing, site preparations,
5 demolition and construction.

Comment [W130]: Joint

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

Comment [g131]: Joint

Comment [g132]: Joint

14 6.3 The PARTIES agree that for both design-build and design-bid-build portions of
15 the PROJECT, the PARTIES shall obtain a Street Use Permit consistent with the
16 provisions in Section 3 of this Agreement prior to undertaking work in the CITY Street
17 Right of Way. [Salay: do you really mean section 5, or should it be section 6? In

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Comment [RF133]: Joint

18 [1b]
19 [Redacted]
20 [Redacted]
21 [Redacted]
22 [Redacted]
23 [Redacted]
24 [Redacted]

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25 6.4 Conditions applicable to the Street Use Permits issued for CITY Street Right-of-
26 Way in connection with the PROJECT will apply to Project PROJECT work outside the
27 current CITY Street Right of Way. [Salay: [1b]

Comment [RF134]: Needs clarification for application to Limited Access

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28 [Redacted]
29 [Redacted]
30 [Redacted]

31 6.5 The PARTIES agrees to abide by and comply with all requirements and
32 conditions of the Street Use Permit. After the Street Use Permit is issued, the responsible
33 PARTY will obtain Letters of Plan Approval for any subsequent revisions for
34 advancement of design or amendments to the Street Use Permit as set forth in the
35 Procedures. [Salay: "Procedures" is not defined, where is the term "as set forth in
36 the Procedures"? Please clarify]

Comment [g135]: Joint

Comment [g136]: Joint

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37
38 6.6 The Street Use Permit and Letters of Plan Approval are not a representation or
39 assurance that the design or plans comply with applicable laws, regulations, ordinances or
40 codes, nor shall the Street Use Permit or Letter of Plan Approval be construed to
41 authorize any failure to comply with any of the foregoing.

Comment [g137]: Joint

42
43 6.7 The STATE shall be responsible for ordering and managing the relocation of any
44 and all private utilities required for performance of the work on the PROJECT, and the

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1 STATE shall require its construction contractors to schedule and coordinate their
2 activities with the relocation of private utilities so that neither the construction contractors
3 nor the private utilities are adversely impacted by the other's activities. The city-CITY
4 shall assist and cooperate with the state-STATE as the state-STATE performs its
5 obligations under this provision, including, but not limited, the CITY co-signing the state
6 STATE relocation notices to the private utility owners and the city-CITY joining the state
7 STATE as an additional plaintiff in any litigation the state-STATE may need to pursue in
8 order to require the private utilities to relocate. The STATE shall protect, defend,
9 indemnify, and save harmless the CITY and CITY officers, officials, employees, and
10 authorized agents (while acting in their official capacities) for any claims, costs,
11 demands, judgments, or other liabilities that the CITY or its officers employees or
12 authorized agents may incur that arise out of, result from, are connected to, or are due to
13 the orders to relocate, or to the relocation of, any and all private utilities for the
14 PROJECT

Comment [g138]: City

7. DESIGN, PLAN REVIEW AND CHANGE MANAGEMENT

17
18 7.1 The PARTIES agree to work cooperatively with each other and shall make
19 reasonable, good faith efforts to timely and expeditiously complete PROJECT designs

Comment [RF139]: Joint

20
21 7.2 The STATE shall consult the CITY with regard to planning, design and
22 construction of the PROJECT

Comment [RF140]: Joint

23
24 7.3 This Agreement addresses the design and plan review process for SDOT, SCL,
25 and SPU and the process for issuance of the SDOT Street Use Permits; it does not
26 address plan review or permits issued by other departments of the City of Seattle

Comment [g141]: Fire Department -- separate agreement?

27
28 7.4 The PARTIES agree to prepare PROJECT designs and Plan Review Packages,
29 and Release for Construction Submittals pursuant to the provisions established in this
30 Agreement and the procedures defined in Exhibit B

Comment [RF142]: Joint

31
32 7.5 The PARTIES shall mutually prepare PROJECT schedules that afford the
33 PARTIES adequate plan review and comment resolution periods sufficient to promote
34 the quality of design consistent with the provisions of this Agreement

Comment [RF143]: Joint

35
36 7.6 The PARTIES shall conduct reviews of at all stages of design to ascertain that
37 CITY Infrastructure designs, and provisions for PROJECT construction within CITY
38 Street Right-of-Way comply with City-CITY Standards

Comment [g144]: Joint

39
40 7.7 The STATE shall address all CITY plan review comments from each stage of
41 plan review to the PARTIES' mutual satisfaction and incorporate agreed comment
42 resolution into subsequent plan review submittals. [Salary] [1b]

Comment [RF145]: Joint

43 [1b]
44 [Redacted]

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1
2 7.8 The PARTIES shall provide sufficient staff and resources for timely preparation
3 and review of the PROJECT designs.

Comment [RF146]: Joint

4
5 7.9 The CITY shall not give direction to the STATE's consultants or contractors
6 during the design collaboration and design review.

Comment [RF147]: Joint

7
8 7.10 Both Parties-PARTIES shall endeavor to identify and address issues as early as
9 possible during the design process.

Comment [RF148]: Joint

10
11 7.11 The STATE shall obtain the CITY's design approval for all City Infrastructure,
12 and for PROJECT work within City Street Right-of-Way prior to constructing such work.

Comment [RF149]: TBD

13
14 7.12 CITY Infrastructure designs and provisions for PROJECT construction shall
15 comply with City-CITY Standards.

Comment [RF150]: Joint

16
17 7.13 The PARTIES agree that design of CITY Infrastructure shall consider long-term
18 operation and maintenance costs and requirements, and minimize potential interruptions
19 and disruptions to CITY utility customers.

Comment [RF151]: Joint

20
21 7.14 The STATE shall obtain the CITY's approval prior to incorporating any
22 deviations from City-CITY Standards into the design or construction of all City-CITY
23 Infrastructure.

Comment [RF152]: Joint

24
25 7.15 The PARTIES agree that Approved Plans or Released for Construction Submittal
26 for each component of the PROJECT shall be stamped by an Engineer of Record
27 representing the PARTY preparing the Approved Plans pursuant to the requirements of
28 sState law.

Comment [RF153]: Joint - stamped or sealed?

29
30 7.16 The PARTIES shall first obtain the review and concurrence of the CITY prior to
31 making or implementing revisions or deviations from the Approved Plans for any such
32 revisions or deviations pertaining to the following:

Comment [RF154]: Joint

33
34 7.16.1 CITY Infrastructure.

35 7.16.2 PROJECT work that alters or impacts the configuration, condition or
36 use of CITY property including existing and proposed CITY roadway-streets and
37 utility facilities.

38 7.16.3 PROJECT work that alters access to existing and proposed CITY [1b]
39 roadways-streets and utility facilities.

40 7.16.4 PROJECT work that alters or impacts private property. [AES: [1b]

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41 [1b]
42 [1b]
43 [1b]
44 7.16.5 PROJECT urban design as established in Section 8.

HIGHLIGHTED TEXT = Elevate to Leadership

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1 | 7.16.6 The temporary or permanent use or operation of CITY Street Right-of-
2 | Way including ~~maintenane~~ of traffic control.

3 | 7.16.7 Mitigation measures established by the STATE's review and
4 | determination of PROJECT environmental impacts pursuant to sState and cCity
5 | environmental policy laws.

6 | 7.16.8 Private utilities within CITY Street Rright-of-Wway. [1b]

7 | 7.16.9 ~~Private utilities within CITY Street Rright-of-Wway~~ [Salav

8 | [1b]

Comment [RF155]: Joint

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9 |
10 | 7.17 The PARTIES acknowledge that the STATE may request the CITY to operate
11 | and maintain certain STATE-owned PROJECT facilities as may be established by
12 | separate agreement. The CITY shall, at the request of the STATE, review the design of
13 | such facilities to determine the compatibility of the design with the CITY's existing
14 | operational capabilities, standard practices, equipment and other resources required to
15 | operate and maintain such facilities.

Comment [RF156]: Joint

17 | 8. URBAN DESIGN

Comment [g157]: WSDOT

18 |
19 | 8.1 The STATE and CITY agree to work together to develop standards that will
20 | promote appropriate urban and architectural design of the PROJECT.

21 |
22 | 8.2 The STATE and CITY have prepared the Bored Tunnel Design Goals and
23 | Objectives which were submitted to the Seattle Design Commission on January 21, 2010
24 | and Guiding Principals which were submitted to the Seattle Design Commission March
25 | 18, 2010 and Building Design Principles which were submitted to the Seattle Design
26 | Commission on February 18, 2010.

27 |
28 | 8.3 The STATE has developed visual guidelines based on these Bored Tunnel Design
29 | Goals and Objectives and Guiding Principles. The visual guidelines include:

- 30 | • Functional transportation and development configurations,
- 31 | • Landscaping concepts,
- 32 | • Architectural and design concepts for walls, bridges and tunnel portals,
- 33 | • Highway appurtenances architectural concepts (ie barrier type, light standards,
34 | sign support types, sidewalk patterns, etc.), and
- 35 | • Trail and plaza architectural concepts.

36 | The visual guidelines were submitted to the Seattle Design Commission for review and
37 | comment. The final visual guidelines were approved by the Seattle Department of
38 | Transportation. The visual guidelines will be used as the basis for the PROJECT design.

39 |
40 | 8.4 The STATE has prepared Building Architectural Design Guidelines based on
41 | Building Design Principals. The Building Architectural Design Guidelines include:

- 42 | • Height and scale, and
- 43 | • Façade treatments, including those that may not fully conform with façade
44 | requirements generally applicable in the zones in which they are located.

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1 The Building Architectural Design Guidelines were submitted to the Seattle Design
2 Commission for review and comment. The Building Architectural Design Guidelines
3 were approved by the Seattle Department of Transportation. The Building Architectural
4 Design Guidelines will be used as the basis for the PROJECT design.

6 8.5 Conceptual designs that include building blocking, stacking, façade treatments,
7 façade materials and elevations shall be prepared in accordance with the Building
8 Architectural Design Guidelines and presented to the Seattle Design Commission (SDC)
9 in accordance with chapter 3.58.010 thru 3.59.080 of the Seattle Municipal Code.

Comment [sle158]: Include portal areas

Comment [sle159]: Design/builder will bring draft designs.

11 8.6 The STATE shall endeavor to develop designs that incorporate SDC
12 recommendations. The CITY shall verify the STATE's incorporation of SCD
13 recommendations through the CITY review processes set forth in Section 5 in this
14 agreement. [Salay: Section 5 is an incorrect section, please correct.]

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16 8.7 If SDOT and WSDOT-STATE cannot come to an agreement on an urban design
17 or architectural issue or the incorporation of a SCD comment, the issue shall be referred
18 to Disputes Resolution in Section 23 of this Agreement.

21 9. SCHEDULE

Comment [W160]: WSDOT

23 9.1 The PARTIES will work together to develop Project-PROJECT sSchedule(s) for
24 work associated with the PROJECT whether performed by the STATE or CITY.

Comment [W161]: Joint

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

Comment [RF162]: Joint

31 10. FUNDING AND COMPENSATION

32 10.1 The STATE shall provide necessary funding for all PROJECT costs as defined by
33 this Agreement without reimbursement from the City of SeattleCITY, except for the City
34 of SeattleCITY's cost responsibilities established in this Agreement, in SCL Agreement
35 UT01474, and in SPU Agreement UT 01476. If for any reason PROJECT costs exceed
36 the sState funding limit established by RCW 47.01.402, the STATE shall have the sole
37 responsibility for obtaining any needed additional spending authority without recourse to
38 any funding device that burdens Seattle area taxpayers or property owners or the City of
39 Seattle.

Comment [RF163]: WSDOT

Comment [W164]: City

41 10.1.1 The STATE will reimburse SDOT for Project Services through the
42 process provided for in Agreement GCA 5739, entitled Project Services
43 Agreement for State Route 99 Alaskan Way Viaduct and Seawall Replacement
44 Program and SR 519/I-90 Intermodal Access Project – I/C Improvements

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1 (“Project Services Agreement”), and as amended by the PARTIES to modify the
2 process for the STATE’s reimbursement of the CITY and to extend the
3 duration of the Project Services Agreement. The the reimbursement terms for
4 Project Services contained within GCA 5739 are incorporated herein as if fully set
5 forth below. **Salav: please note the inclusion of these terms by reference. I**
6 **would suggest that you identify the GCA 5739 terms by section numbers so**
7 **that there is no confusion.**

Comment [W165]: City

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8
9 10.1.2 The categories of services to be provided by the CITY are: project
10 management, project controls and coordination, design review and consultation, permit
11 development and coordination, right of way services, and services to support construction
12 activities.

Comment [W166]: Joint

13 11. PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES

14
15
16 11.1 The STATE and the CITY agree that it is good public policy to utilize the
17 services of Disadvantaged Business Enterprises in the construction of public works
18 projects, to the fullest extent permitted by law.

Comment [RF167]: Joint

19
20 11.2 In furtherance of the foregoing public policy, the STATE agrees to include
21 Disadvantaged Business Enterprise (DBE) provisions in its construction contracts to the
22 extent required by federal law for the Projects PROJECT under this Agreement.

Comment [RF168]: Joint

23 12. MONITORING

24
25
26 12.1 The STATE will design and implement a comprehensive instrumentation and
27 monitoring program for open cut, cut-and-cover, and tunnel construction, and the develop
28 and action plan for mitigating impacts of Deformation.

Comment [g169]: Joint

29
30 12.2 The STATE will implement a Construction Monitoring Task Force
31 responsible for the planning and implementation of the instrumentation and
32 monitoring program and processing data, evaluating results, and developing
33 recommendations to mitigate Deformation. The Task Force has authority to direct rapid
34 and effective changes in construction to achieve Deformation mitigation.

Comment [g170]: Joint

35
36 12.3 The CITY will advise the STATE and participate in construction monitoring and
37 Deformation management activities when these activities pertain to CITY Infrastructure.
38 The CITY will provide the STATE all necessary access to CITY Infrastructure for the
39 purposes of design or implementation of Deformation mitigation measures. The CITY
40 may perform Deformation mitigation measures on behalf of the STATE in a manner and
41 schedule that supports the STATE’s project-PROJECT requirements.

Comment [g171]: Joint

42 13. MAINTENANCE OF TRAFFIC

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1 13.1 The PARTIES agree that it is the goal of this PROJECT to maintain local
2 motorized and non-motorized traffic in safe corridors through the project-PROJECT area
3 while minimizing impact to the existing street system. To achieve this goal, the
4 PARTIES shall formulate plans to maintain traffic flow during construction of the
5 PROJECT and shall comply with Approved Plans and conditions of the Street Use
6 Permit. [SALARY: [b]]

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Comment [RF172]: Joint

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9
10 13.2 The PARTIES agree to develop an outreach plan specifically focused on
11 maintenance-of-traffic issues. This outreach plan will elicit input from affected
12 stakeholders in the vicinity of the PROJECT. Affected stakeholders shall be determined
13 by the PARTIES. [SALARY: [b]]

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Comment [RF173]: Joint

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14
15 13.3 The STATE agrees to create a Maintenance-of-Traffic (MOT) Task Force for the
16 PROGRAM. The CITY agrees to be an active member on the Task Force. [SALARY:
17 [b]]

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Comment [RF174]: Joint

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18
19 13.4 The CITY agrees be a participant in all planning for haul routes, and all haul route
20 traffic shall be regulated pursuant to the Street Use Permit and the provisions of this
21 Agreement. Haul routes and times shall be approved by the CITY prior to the
22 commencement of hauling, and all haul routes shall be along arterial streets designated as
23 major truck streets and must comply with downtown traffic control zone restrictions as
24 defined by the Seattle Municipal Code and implementing regulations.

Comment [RF175]: Joint

25
26 **14. CONSTRUCTION MANAGEMENT, INSPECTION AND CONTRACT**
27 **ADMINISTRATION**

28
29 14.1 It is anticipated that the STATE will develop and issue multiple construction
30 contracts to fulfill its PROJECT responsibilities. The STATE's construction contracts
31 will be conducted in accordance with current Washington State Department of
32 Transportation contracting practices.

Comment [g176]: Joint

33
34 14.2 The STATE shall act as the sole authority in the administration of the STATE
35 construction contracts. The STATE shall allow the CITY to consult with and make
36 inquiries of the STATE Project Engineer or designee, attend meetings, and have access to
37 documentation concerning the PROJECT. The CITY shall not provide direction, directly
38 or indirectly, to the STATE's consultant(s) or contractors. Except in the instances listed
39 below, the CITY shall direct all communications to the STATE's Project Engineer or
40 designee, including communications regarding compliance with Street Use Permits,
41 quality of construction and contractor performance.

Comment [g177]: Joint

42
43 14.3 The STATE will manage any requests from the CITY that have contractual or
44 scope-of-work impacts and will coordinate responses. The CITY will communicate with

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1 STATE's consultants or contractors (1) where authorized to do so by the STATE's
2 Designated Representative; (2) to arrange for regulatory permitting and inspections made
3 pursuant to permits issued by the CITY other than the Street Use Permits, e.g. electrical
4 permits or other permits obtained from the CITY by the consultant or contractor; and (3)
5 for the Street Use Permits, if necessary because of a threat to health or safety.

Comment [g178]: Joint

7 14.4 The CITY will provide qualified staff and consultants during construction. CITY
8 staff and consultants will communicate with the STATE Project Engineer or designee in
9 evaluating the conformity of CITY Infrastructure with the Approved Plans or Release for
10 Construction Submittal and will immediately notify the Project Engineer or designee of
11 any compliance issues. Notwithstanding any act or omission by the CITY pursuant to
12 this subsection, the STATE shall not be relieved of any of its authority over, and
13 responsibility for, the PROJECT, as provided for in Section 13.2 of this Agreement or
14 elsewhere in this Agreement. **[Salav: Section 13.2 does not appear to be correct,**
15 **please fix]**

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Comment [g179]: Joint

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17 14.5 The PARTIES agree to follow the process and procedure set forth in the
18 *Construction Management and Inspection Procedures* attached as Exhibit B to facilitate
19 compliance with the STATE and CITY processes. Revisions to the Procedures do not
20 require additional approval beyond execution of this Agreement.

Comment [g180]: Process to address administrative changes to Exhibit will be dealt with in City ordinance.

21 15. FINAL INSPECTION AND PROJECT ACCEPTANCE

22 15.1 The PARTIES agree to follow the process and procedure set forth in the
23 *Construction Management and Inspection Procedures* attached as Exhibit B to facilitate
24 interim and final inspections and acceptance of CITY Infrastructure. Revisions to the
25 pProcedures do not require additional approval beyond execution of this Agreement.

Comment [g181]: Process to address administrative changes to Exhibit will be dealt with in City ordinance.

27 15.2 Following the satisfactory completion of the pre-final and final inspection
28 processes described in the *Construction Management and Inspection Procedures* attached
29 as Exhibit B, the CITY shall submit a written response notifying the STATE that CITY
30 Infrastructure has been constructed in accordance with the Approved Plans and Release
31 for Construction Submittal.

Comment [g182]: Joint

33 15.3 The CITY agrees, upon satisfactory completion of the PROJECT work
34 successfully placing City-CITY Infrastructure into operation, transfer and acceptance of
35 any real property on or in which CITY Infrastructure is located, and receipt from the
36 STATE of one color set of the Red-Line Plans, pursuant to Section 165, to deliver a
37 Letter of Acceptance, subject to any Defective Work, Damage or contractor claims
38 caused by the negligent acts or omissions of the STATE.

Comment [g183]: Joint

40 15.4 The PARTIES will execute one Letter of Acceptance for each contract unless
41 both PARTIES agree to phase CITY Infrastructure acceptance by those geographic areas
42 or select portions of the PROJECT in which the STATE has completed all PROJECT

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1 | work and has satisfied the requirements of Section 14.3. Roadway restoration will not be
2 | considered to be complete until all roadways are fully open to public vehicular and
3 | pedestrian use. **Salay: Section 14.3 does not seem to be a correct reference, please**
4 | **fix.**

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Comment [g184]: Joint

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6 | 15.5 In instances where portions of CITY Infrastructure must be placed into the
7 | CITY's use and operation prior to the execution of the Letter of Acceptance, and after the
8 | CITY has determined that these portions of CITY Infrastructure meet with the minimum
9 | inspection and testing requirements necessary for placing the CITY Infrastructure into
10 | use, the CITY will notify the STATE in writing that it is assuming responsibility for and
11 | cost of the interim use and operation of the CITY Infrastructure until the terms of Section
12 | 14.3 are satisfied and the PARTIES execute the Letter of Acceptance. **Salay: Section**
13 | **14.3 does not seem to be a correct reference, please fix.**

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Comment [g185]: Joint

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16. RED-LINES AND RECORD DRAWINGS

17 | 16.1 The STATE shall maintain red lines in general conformance with WSDOT's
18 | *Construction Manual*, WSDOT manual M4-01. The STATE shall maintain one set of
19 | Approved Plans as the official contract drawings and provisions to which the STATE
20 | shall make drawings and notations in either red ink or red pencil to show the constructed
21 | configuration of all infrastructure that deviates from the design and contract requirements
22 | shown in the Approved Plans as typically recorded per STATE and City of Seattle
23 | standard practices. These documents shall be referred to as the Red-Line Plans.

Comment [RF186]: Joint

25 | 16.2 The Red-Line Plans shall be kept current throughout construction with accurate
26 | and comprehensive information detailing the constructed configuration of the
27 | infrastructure. The Red-Line Plans shall reflect the same level of detail as the Approved
28 | Plans, and shall provide the drawing accuracy necessary for public and private utility
29 | purveyors to locate their respective utilities in accordance with state law.

Comment [RF187]: Joint

31 | 16.3 Prior to placing infrastructure into service during the course of construction, the
32 | STATE shall provide the CITY with color photocopies of portions of the Red-Line Plans
33 | showing the constructed configuration of the infrastructure being placed into service.
34 | **Salay: [REDACTED] [1b]**

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Comment [RF188]: Joint

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37 | 16.4 The PARTIES shall prepare Record Drawings for the work for which they are
38 | responsible under this Agreement with two full scale bond copies plus the digital files of
39 | the Record Drawings within six months after the PARTIES execute the Letter of
40 | Acceptance. The PARTIES shall prepare Record Drawings in general conformance with
41 | the standards of the facility owner.

Comment [RF189]: Joint

43 | 16.5 The Red-Line Plans and Record Drawings will be prepared as described in the
44 | *Construction Management and Inspection Procedures* attached as Exhibit B. Revisions

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1 to the pProcedures do not require additional approval beyond execution of this

2 Agreement. [Salav: [1b]

3 [1b]

Comment [g190]: Process to address administrative changes to Exhibit will be dealt with in City ordinance.

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6 **17. WARRANTIES**
7 **Warranty of Work**

9 17.1 The STATE warrants for a minimum period of twelve (12) months that all CITY
10 Infrastructure being accepted by the CITY for ownership, operation and maintenance: (1)
11 meet with the requirements of the Approved Plans; and all CITY-approved modifications
12 to the Approved Plans made during the course of construction; (2) are constructed in
13 accordance with CityCITY-issued permits; (3) are free of defects in material and
14 workmanship; and (4) are free of defects in design(s). The warranty of work shall apply
15 to any corrective work required to address non-conforming and Defective Work that is
16 discovered and communicated by the CITY to the STATE within the warranty period.
17 The STATE's warranty of work shall begin following the execution of the Letter of
18 Acceptance of CITY Infrastructure or as otherwise provided in the STATE's contract,
19 whichever occurs later.

Comment [RF191]: Joint

21 17.2 If within the warranty of work period, the CITY discovers and gives written
22 notice to the STATE of non-conforming or Defective Work in the accepted CITY
23 Infrastructure, the STATE shall promptly investigate the work the CITY believes is non-
24 conforming or defective. The STATE shall promptly remedy non-conforming or
25 Defective Work. Disagreements between the CITY and the STATE on what constitutes
26 non-conforming or Defective Work shall be resolved using the dispute resolution process
27 established in Section 232. The STATE shall diligently prosecute the corrective work
28 and shall procure materials using the fastest means available as necessary to minimize the
29 loss of use and operation of the accepted CITY Infrastructure. Corrective work shall be
30 completed within the time frame specified by the CITY and mutually agreed upon by the
31 STATE.

Comment [RF192]: Joint

33 17.3 If, during construction, the CITY encounters an emergency situation caused by
34 non-conforming or Defective Work, it must immediately notify the STATE. The STATE
35 will take immediate corrective action. If, after the warranty period begins, the CITY
36 encounters an emergency situation caused by non-conforming or Defective Work, it may
37 have to immediately correct it. Direct and indirect costs incurred by the CITY,
38 attributable to correcting an emergency situation associated with non-conforming or
39 Defective Work, shall be paid by the STATE to the CITY. [Salav: [1b]

Comment [RF193]: Joint

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41 **Transfer of Title and Warranty of Title**
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1 17.4 All right and title to the CITY Infrastructure accepted by the CITY will be
2 transferred by the STATE to the CITY as of the date of the State's STATE's signature
3 acknowledging the CITY's Letter of Acceptance pursuant to the provisions of Section 6.
4 Neither the STATE nor its contractors shall hold a property right in any of the CITY
5 Infrastructure accepted by the CITY for ownership, including the materials and
6 equipment comprising the CITY Infrastructure. [Salay: Section 6 appears to be an
7 incorrect reference, please fix. [1b]

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Comment [RF194]: Joint

11 17.5 The STATE shall warrant good and merchantable title to all materials, supplies,
12 equipment and items installed or incorporated into the accepted CITY Infrastructure. The
13 STATE shall further warrant that all CITY Infrastructure transferred to, and accepted by,
14 the CITY is free from claims, liens and charges.

Comment [RF195]: Joint

16 **Manufacturers' Warranties**

18 17.6 The STATE shall provide the CITY all manufacturers' and suppliers' guarantees
19 and warranties furnished to the STATE's contractor as a customary trade practice in
20 connection with the contractor's purchase of any equipment, materials, or items
21 incorporated into the CITY Infrastructure. The STATE shall further warrant that it has
22 the right to transfer such warranties and guarantees furnished to the STATE through its
23 construction contract to the CITY and that such transfer shall not adversely affect such
24 warranties and guarantees. These guarantees and warranties shall not relieve the STATE
25 from its obligations under Warranty of Work.

Comment [RF196]: Joint

27 **Warranty Inspections**

29 17.7 During the warranty period, the CITY shall have the right to inspect the accepted
30 CITY Infrastructure for non-conforming and Defective Work, and will promptly report
31 any such work to the STATE for remedy through corrective work. The CITY shall bear
32 the cost of these inspections.

Comment [RF197]: Joint

34 **18. PUBLIC OUTREACH**

36 18.1 The STATE agrees to lead and manage the public outreach effort for the
37 PROJECT. In recognition of the CITY's experience in working with the Seattle
38 community, the STATE will solicit CITY input and work with the CITY in all public
39 outreach activities. The STATE will not publicly distribute outreach information,
40 planning materials and documents without first obtaining the CITY's review. However,
41 the STATE shall be free to comply with any public records requests received under
42 chapter 42.56 RCW for such materials; provided that, prior to releasing any sensitive or
43 confidential material, the STATE shall first provide written notice to the CITY in
44 accordance with Section 27 of this Agreement and provisions in the [SCL Agreement,

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1 UT 0174 and the SPU Agreement, UT 0176.] **Salay: You have referenced two**
2 **additional agreement, but it is unclear as to whether you are attempting to**
3 **incorporate any of those terms into this agreement. The references that you have**
4 **made as to how these prior agreements are to be utilized. If you want specific terms**
5 **incorporated, please do so and add the language that I provided in section 10.1.1]**
6

Comment [RF198]: Joint

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7 **19. RISK ALLOCATION AND INDEMNIFICATION**

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9 19.1 Limits of Liability

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11 19.1.1 No CITY Liability for Assistance, Inspection, Review, or Approvals. The
12 review or approval of any of the STATE's PROJECT plans or specifications, or the
13 inspection of the STATE's work, or any assistance provided to the STATE by the CITY
14 is for the CITY's sole benefit and shall not constitute an opinion or representation by the
15 CITY as to any compliance with any law, ordinance, rule, or regulation or any adequacy
16 for other than the CITY's own purposes; and such assistance, inspection, review or
17 approval shall not create or form the basis of any liability on the part of the CITY or any
18 of its officials, officers, employees, or authorized agents for any injury, damage, or other
19 liability resulting from, or relating to, any inadequacy, error, or omission therein or any
20 failure to comply with applicable law, ordinance, rule, or regulation; and such assistance,
21 inspection, review, or approval shall not relieve the STATE of any of its obligations
22 under this Agreement, the SCL Agreement, UT 01474, and the SPU Agreement, UT
23 01476 Agreement or under applicable law. **Salay:** [1b]

Comment [g199]: Joint

[1b]

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28 19.1.2 No CITY Liability for Delay, Consequential, or Liquidated Damages. The
29 CITY shall not be liable in damages for any failure to act within any time limits
30 established by law or for any other delay in issuing permits, other approvals, or
31 concurrences to the STATE or the STATE's contractors, nor shall the CITY have any
32 liability for consequential or liquidated damages, and, to the maximum extent allowed by
33 law, the STATE shall protect, defend, indemnify, and save harmless the CITY, and its
34 officials, officers, employees, and authorized agents, from any and all costs, claims,
35 demands, judgments, damages, or liability of any kind caused by, resulting from, relating
36 to, or connected to delays in issuing permits, other approvals, or concurrences. **Salay, I**

Comment [g200]: Joint

[1b]

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41 19.1.3 No CITY Liability for Third Party Claims of Diminution in Value of
42 Property. The CITY shall not be liable in damages for any third party claims alleging

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1 diminution in value of property, including, but not limited to, claims of elimination or
2 impairment of rights to light and air and quiet enjoyment, or alleging a taking of property
3 rights, nor shall the CITY have any liability for related consequential or liquidated
4 damages, and, to the maximum extent allowed by law, the STATE shall protect, defend,
5 indemnify, and save harmless the CITY, and its officials, officers, employees, and
6 authorized agents, from any and all costs, claims, demands, judgments, damages, or
7 liability of any kind caused by, resulting from, relating to, or connected to the third party
8 claims of diminution in value of property arising out of the PROJECT.

Comment [g201]: Joint

9 19.1.4 STATE Contractor's Bonds. The STATE shall require its construction
10 contractors to provide performance bonds to the STATE and to maintain those bonds at
11 all times pertinent to the respective contractor's obligations under its contracts. The
12 penal sums of those bonds shall be for one hundred percent (100%) of the total contract
13 price, including change orders and other modifications. Such bonds shall be executed by
14 an approved surety that is registered with the Washington State Insurance
15 Commissioner, and that appears on the current Authorized Insurance List in the State of
16 Washington published by the Office of the Insurance Commissioner, and that shall be
17 conditioned upon the faithful performance of the contract by the contractor, and that shall
18 include the City-CITY as an additional named obligee. The STATE shall ensure faithful
19 completion of the PROJECT by use of the STATE's contractor bonds or other means,
20 and in the event of any claim for payment is presented to the CITY for any PROJECT
21 work, the STATE upon timely notice and investigation, resulting in STATE
22 responsibility under this Agreement, the SCL Agreement, UT01474, and the SPU
23 Agreement, UT 01476 shall promptly pay such claim. [Salary] [1b]
24 [1b]

Comment [g202]: City

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25 19.2 General Indemnification.

26 19.2.0.1 Indemnity. To the extent permitted by law, the STATE shall
27 protect, defend, indemnify, and save harmless the City of Seattle and its officers,
28 officials, employees, and authorized agents, while acting within the scope of their
29 employment, from any and all costs, claims, demands, judgments, damages, or liability of
30 any kind, including injuries to persons or damages to property, that arise out of, or in any
31 way result from, or are connected to, or are due to any acts or omissions, or intentional
32 misconduct, of the STATE or the STATE's contractors, consultants, or authorized agents
33 including any and all claims and litigation arising out of, or resulting from, any state or
34 federal environmental review process in any way relating to the PROJECT, and including
35 any private utility relocations required for the STATE's PROJECT work. The STATE's
36 obligations under this paragraph also extend to claims asserted by third PARTIES against
37 the City of Seattle arising out of, or in any way resulting from, any state or federal
38 environmental review process in any way related to the PROJECT or the PROGRAM,
39 and all of the foregoing protection, defense, indemnity and hold harmless obligations
40 shall extend to claims asserted by sState agencies other than the Washington State
41 Department of Transportation. [1b]
42 [1b]

Comment [g203]:

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[b]

[Salav: [b]

Comment [g204]: Joint

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

indemnification. [Salav: [b]

[b]

Comment [g205]: Joint

[Thanks.]

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19.2.2 Indemnity. To the extent permitted by law, the City of Seattle shall protect, defend, indemnify, and save harmless the STATE and its officers, officials, employees, and authorized agents, while acting within the scope of their employment, from any and all costs, claims, demands, judgments, damages, or liability of any kind, including injuries to persons or damages to property, that arise out of, or in any way

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

Comment [g206]: Joint

16 19.2.3 Title 51 RCW. Solely with respect to claims for indemnification under this
17 Agreement, including environmental indemnification, the STATE and the City of Seattle
18 waive, as to each other only, and expressly not for the benefit of their employees or third
19 PARTIES, their immunity under Title 51 RCW, the Industrial Insurance Act, and
20 acknowledge that this waiver has been mutually negotiated by the PARTIES. The
21 STATE and the City of Seattle agree that their respective indemnity obligations extend to
22 any claim, demand, or cause of action brought by, or on behalf of, any of their respective
23 employees or authorized agents. The STATE agrees that in the event that any employee
24 or authorized agent of the STATE’s contractors, subcontractors, consultants, or
25 authorized agents asserts a claim against the City of Seattle, the STATE waives any right
26 it may have to assert its Title 51 immunity as a defense against a City of Seattle claim to
27 the STATE that otherwise would be covered by the STATE’s indemnity obligations to
28 the City of Seattle. [Salav: [1b]

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Comment [g207]: Joint

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33 19.2.4 Survival of Indemnification and Waiver Obligations. Any liability of the
34 STATE or the City of Seattle arising under any indemnity or waiver provision of
35 this Agreement shall survive termination of this Agreement, whether or not any claim
36 giving rise to such liability shall have accrued.

Comment [g208]: Joint

37 **20. INSURANCE**

38
39 20.1 The STATE shall require in writing that the STATE’s contractors, and each of
40 their sub-contractors of any tier where not covered by contractor provided insurance,
41 include “The City of Seattle” as an additional insured for primary and non-contributory
42 limits of liability for Commercial General Liability, Commercial Automobile Liability

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1 and (if required) Contractor’s Pollution Liability as established in the construction
2 contract documents, including Products and Completed Operations coverage following
3 the completion of each PROJECT stage. STATE standard insurance specification
4 paragraph 1-07.18 (Public Liability and Property Damage Insurance) applicable to the
5 construction contract documents protecting both the STATE and the CITY for the
6 PROJECT shall be amended for coverages, minimum limits of liability and/or terms and
7 conditions as may be mutually agreed upon by the STATE and the CITY. [Salav: [1b]

8 [REDACTED] [1b]

Comment [RF209]: Joint
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10 20.2 The STATE’s contractors and subcontractors of any tier shall cause certification
11 of insurance meeting the requirements herein to be issued to “The City of Seattle, Risk
12 Management Division, P.O. Box 94669, Seattle, WA 98124-4669.” Such certification
13 shall not be mailed, but shall be delivered electronically to fax number (206) 470-1279 or
14 as an e-mail attachment in PDF format to riskmanagement@seattle.gov.

Comment [RF210]: Joint

16 **21. THIRD PARTY BENEFICIARY**

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

Comment [g211]: Joint
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26 ¶ With respect to any and all of the City of Seattle’s interests, including, but not
27 limited to, excavation, restoration and traffic control responsibilities of the
28 STATE, the STATE and the contractor acknowledge that the City of Seattle is an
29 intended third party beneficiary and agree to include the City of Seattle as a third
30 party beneficiary of the STATE’s contracts and will accordingly include the City
31 of Seattle in the indemnification, insurance, and performance bond provisions
32 contained in the STATE’s contracts. The STATE and CITY do not intend that
33 this paragraph be interpreted to create any obligation, liability, or benefit to any
34 third party, other than the STATE and the City of Seattle for purposes of design
35 and construction of the PROJECT as described in this Agreement, the SCL
36 Agreement, UT 01474, and the SPU Agreement, UT 01476. ¶

Comment [g212]: City

38 **22. LIENS**

40 22.1 In the event that any City of Seattle CITY-owned property interest becomes
41 subject to any claims for mechanics’, artisans’ or materialmen’s liens, or other
42 encumbrances chargeable to, or through, the STATE that the STATE does not contest in
43 good faith, the STATE shall cause such lien, claim, or encumbrance to be discharged or
44 released of record (by payment, posting of bond, court deposit, or other appropriate

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1 | means), without cost to the City of Seattle CITY, and shall indemnify the City of
2 | Seattle CITY against all costs and expenses (including attorneys' fees) incurred in
3 | discharging and releasing such claim, lien, or encumbrance prior to completion of the
4 | PROJECT.

Comment [g213]: Joint

6 | **23. DISPUTE RESOLUTION**

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

Comment [RF214]: Joint

14 |
15 | 23.2 Notice. A Party's PARTY's Designated Representative, as defined in Section 256
16 | below, shall notify the other Party's PARTY's Designated Representative in writing of
17 | any problem or dispute that a Party PARTY believes needs resolution. The written notice
18 | shall include (a) a description of the issue to be resolved; (b) a description of the
19 | differences between the PARTIES on the issue; and (c) a summary of any steps taken to
20 | resolve the issue.

Comment [RF215]: Joint

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

Comment [RF216]: Joint

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

Comment [RF217]: Joint

36 |
37 | 23.5 Second Level Meeting. Upon receiving a written request that the dispute be
38 | elevated to the next level, a meeting shall be held within ten (10) Business Days between
39 | the STATE Project Director of WSDOT and the appropriate City CITY Designated
40 | Representative(s) to resolve the dispute. Any resolution of the dispute requires the
41 | agreement of all Representatives attending the meeting or who requested to attend the
42 | meeting.

Comment [RF218]: Joint

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1 23.6 Notice of Third Level Meeting. If the PARTIES have not resolved the dispute
2 within five (5) Business Days after the Second Level Meeting, at any time thereafter
3 either Party-PARTY may request that the dispute be elevated to the next level by
4 notifying the other Party's-PARTY's Designated Representative in writing, requesting
5 that the dispute be raised to the Third Level Meeting. The written notification shall
6 include a) a description of the remaining issues to be resolved; b) a description of the
7 differences between the PARTIES on the issues, c) a summary of the steps already taken
8 to resolve the issue, and d) the resolution of any issues that were initially involved in the
9 dispute.

Comment [RF219]: Joint

11 23.7 Third Level Meeting. Elevate to the Executive Committee. **[Salav: Executive
12 Committee is not defined in this agreement, do you want to define it here?]**

Comment [RF220]: Joint

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14 23.8 Court of Law. If the PARTIES have not resolved the dispute within five (5)
15 Business Days after the third level meeting, at any time thereafter either Party-PARTY
16 may seek relief under this Agreement in a court of law. The PARTIES agree that they
17 have no right to relief in a court of law until they have completed the dispute resolution
18 process outlined in this Section.

Comment [RF221]: Joint

20 23.9 A Party's-PARTY's request to utilize this Dispute Resolution Process is not
21 evidence that either Party-PARTY is in breach of this Agreement, and does not relieve
22 any Party-PARTY from complying with its obligations under this Agreement.

24. REMEDIES; ENFORCEMENT

26 24.1 Subject to the Dispute Resolution provisions in Section 24.23, the City of
27 SeattleCITY and the STATE shall have, in addition to any remedies available at law or
28 equity, the right to demand specific performance of this Agreement, the SCL Agreement,
29 01474, and the SPU Agreement, UT 01476. **[Salav: [1b]**

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Comment [RF222]: Joint

[1b]

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25. NOTICE AND DESIGNATED REPRESENTATIVES

36 25.1 The Designated Representatives for each Party-PARTY are as follows: **Any
37 notice required or permitted to be given pursuant to this Agreement shall be in writing
38 and shall be sent postage prepaid by U.S. Mail to the Designated Representatives.**

40 [STATE];

Comment [RF223]: Joint

41 Program Administrator
42 Alaskan Way Viaduct & Seawall Replacement Program
43 Washington State Department of Transportation
44 999 3rd Avenue, Suite 2424

HIGHLIGHTED TEXT = Elevate to Leadership

GREEN HIGHLIGHT = Staff to resolve

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1 Seattle, WA 98104
2
3 CITY:
4 SDOT Deputy Director
5 Seattle Department of Transportation
6 P.O. Box 34996
7 700 Fifth Avenue, Suite 3800
8 Seattle, WA 98124-4996
9

Comment [RF224]: Joint

10 **26. EFFECTIVENESS AND DURATION**

11
12 26.1 This Agreement shall be effective as of the date the last Party-PARTY signs and,
13 unless sooner terminated pursuant to the terms hereof, shall remain in effect until final
14 completion of all PARTIES' obligations contained or referred to in this Agreement, the
15 SCL Agreement, UT 01474, and the SPU Agreement, UT 01476.

Comment [RF225]: Joint

17 **27. NOTICE**

18
19 27.1 Except for the Dispute Resolution Process in Section 231-above, for which notice
20 shall be given to the officials listed in Section 231, all notices, demands, requests,
21 consents and approvals that may or are required to be given by either Party-PARTY to the
22 other Party-PARTY shall be in writing and shall be deemed to have been duly given (i)
23 upon actual receipt or refusal to accept delivery if delivered personally to the Designated
24 Representative, (ii) upon actual receipt or refusal to accept delivery if sent by a nationally
25 recognized overnight delivery service to the Designated Representative, or (iii) upon
26 actual receipt if electronically transmitted to the Designated Representative with
27 confirmation sent by another method specified in this Section. Notice of a change of
28 Designated Representative or the address for the Designated Representative shall be
29 given as provided in this Section.

Comment [RF226]: Joint

31 **28. TERMINATION AND SUSPENSION**

32
33 28.1 This Agreement may be terminated by either Party-PARTY upon sixty (60)
34 calendar days written notice. Said notice shall set forth the reasons for termination
35 including reasons of convenience, and the effective date of termination. [Salav: [1b]

Comment [RF227]: Joint

36 [Redacted]
37 [Redacted]
38 [Redacted]
39 [Redacted]

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40 28.2 Termination of this Agreement, the SCL Agreement, UT 01474, or the SPU
41 Agreement, UT 01476 shall not relieve the PARTIES of any obligations that are required
42 to be performed prior to the date of termination, nor shall it relieve the PARTIES of any
43 obligations that are intended to survive termination of this Agreement, the SCL

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1 Agreement, UT 01474, or the SPU Agreement, UT 01476. Further, the PARTIES agree
2 that, in the event the STATE exercises its right to terminate pursuant to this Section after
3 construction of the PROJECT begins, **or if the STATE suspends the work or materially**
4 **delays the work** then the STATE, at its cost and expense, shall modify the PROJECT, in
5 consultation with the CITY, to provide for the restoration, continued service, operation,
6 and maintenance of existing infrastructure, PROJECT infrastructure, CITY Street right-
7 of-way, or any other CITY property or facility, and the STATE shall ensure that the
8 modified PROJECT is completed. The STATE shall also ensure that all SPU and SCL
9 utility services can continue to be provided by SPU and SCL either in substantially the
10 same manner as occurred prior to the initiation of work, or in the manner intended by the
11 proposed work, unless otherwise agreed to by the affected utility.

Comment [RF228]: City

Comment [RF229]: City

29. CONFIDENTIALITY OF INFORMATION AND RECORDS

15 29.1 It is understood that certain information about the infrastructure is deemed by the
16 CITY to be sensitive and may be confidential under state or federal law. The STATE
17 agrees that all documents and information collected from field activities known to include
18 confidential information will be maintained in a locked file at the project office and
19 access will be controlled by its consultants. Furthermore, confidential information will
20 only be provided to the selected contractor in conformed documents following contract
21 award if such information is considered necessary for construction. The CITY will
22 provide clear written guidelines that specifically define the information that is deemed
23 sensitive and/or confidential.

Comment [RF230]: Joint

25 29.2 Should any of those confidential or sensitive documents become the subject of a
26 request for public disclosure under chapter 42.56 RCW, the STATE shall use its best
27 efforts to immediately notify the CITY of such request and the date by which the STATE
28 anticipates responding, which date shall in no event be less than fifteen (15) calendar
29 days after STATE's first notice of the disclosure request to the CITY. The CITY must
30 then within a reasonable time of receipt of said notice in writing to the STATE (a)
31 specifically identify each record, or part thereof, and (b) fully explain why such
32 records(s) are exempt from disclosure under chapter 42.56 RCW or any other law so that
33 the STATE may respond to the records requester. The STATE shall withhold or redact
34 those public records which the CITY reasonably claims are exempt from disclosure based
35 upon the CITY's information. The CITY at its sole expense may seek a judicial
36 declaration or injunction with respect to the public records request. The CITY further
37 agrees that it will, at its sole expense, defend the non-disclosure of that information it
38 claims is exempt from disclosure and indemnify the STATE for any and all penalties
39 assessed and costs that the STATE incurs, if any.

Comment [RF231]: Joint

41 29.3 The provisions of this Section shall survive the termination of this Agreement.

43 30. GENERAL PROVISIONS

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1 30.1 This Agreement shall be effective independently from any and all permits that
2 may be issued by the CITY.

Comment [RF232]: Joint

3 30.2 Each PARTIES PARTY shall ensure that its employees, agents, and contractors
4 comply with the obligations of this Agreement.

Comment [RF233]: Joint

5 30.3 The PARTIES shall not be deemed to be in default under this Agreement if
6 performance is rendered impossible by war, riots, or civil disturbances, or by floods or
7 other natural catastrophes beyond the PARTIES' control; the unforeseeable unavailability
8 of labor or materials; or labor stoppages or slowdowns or power outages exceeding back-
9 up power supplies. This Agreement shall not be terminated or the PARTIES penalized
10 for such noncompliance, provided that each Party PARTY takes immediate and diligent
11 steps to bring itself back into compliance and to comply as soon as practicable under the
12 circumstances without unduly endangering the health, safety, or integrity of the Party's
13 PARTY's employees or property, or the health, safety, or integrity of the public, street
14 rights-of-way, public property, or private property.

Comment [RF234]: Joint

15 30.4 This Agreement, including the definition of the PROJECT as more particularly
16 described in the Project Description attached as Exhibit A, may be amended only by a
17 written instrument, duly authorized by the CITY and the STATE, and executed by their
18 duly authorized representatives.

Comment [RF235]: Joint

19 30.5 No failure to exercise, and no delay in exercising, on the part of either Party
20 PARTY hereto, any rights, powers, or privileges hereunder shall operate as a waiver
21 thereof, except as expressly provided herein.

Comment [RF236]: Joint

22 30.6 This Agreement, together with the GCA 6366, the SCL Agreement No. [UT 01474
23 and the SPU Agreement No., UT 01476], with the attached Exhibits and the documents,
24 terms and provisions incorporated in any of the foregoing, constitute the entire
25 Agreement of the PARTIES with respect to the PROJECT, and supersede any and all
26 prior negotiations and understandings with respect hereto.

Comment [RF237]: Joint

27 30.7 Section and subsection headings are intended as information only, and shall not
28 be construed with the substance of the section or subsection they caption.

Comment [RF238]: Joint

29 30.8 All exhibits or other attachments are by this reference hereby incorporated into
30 this Agreement, including Agreements UT 01474 and UT 01476.

Comment [RF239]: Joint

31 30.9 This Agreement may be executed in counterparts, each of which shall be deemed
32 an original, and all counterparts together shall constitute but one and the same instrument.

Comment [RF240]: Joint

33 30.10 The [REDACTED] acknowledge the right of the other to exercise its police power
34 pursuant to general law and applicable statutes for the protection of the health, safety, and
35 welfare of its citizens and their properties. Nothing in this Agreement shall be construed
36 as waiving the [REDACTED] rights to exercise its police power or to preclude

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[1b]

1 exercising such regulatory power in connection with this PROJECT. [Salary [REDACTED]]

Comment [g241]: Confirm change with attys.

2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]

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6 30.11 This Agreement shall be interpreted, construed, and enforced in accordance with
7 the laws of the State of Washington. The venue for any action under this Agreement
8 shall be in the Superior Court for King County, [Washington].

Comment [RF242]: Joint

9
10 **31. RECORDS RETENTION AND AUDIT**
11 THIS SECTION TO BE PREPARED BY Karen.

12
13
14
15 IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement as of the
16 last date written below.

17
18 CITY OF SEATTLE
19
20
21
22
23 By _____
24 Peter E. Hahn
25 Director of Transportation
26 City of Seattle

WASHINGTON STATE
DEPARTMENT OF
TRANSPORTATION
By _____
Ronald J. Paananen
Program Administrator
Alaskan Way Viaduct and Seawall
Replacement Program

27
28
29 Date: _____

Date: _____

30
31
32 APPROVED AS TO FORM:

33
34 By _____
35 Elizabeth M. Lagerberg
36 Assistant Attorney General

37
38 Date: _____
39
40
41
42

ATG MI TPC TRANSFER

From: Galvin, Daniel (ATG)
Sent: Monday, May 10, 2010 2:01 PM
To: 'Greco, Theresa'
Cc: Salay, Ann (ATG)
Subject: FW: SDOT GCA 6486 Salay Review

Importance: High

Theresa

Here are Annie's comments on the SDOT agreement.

Daniel W. Galvin, P.E.
Assistant Attorney General
Transportation and Public Construction Division
7141 Cleanwater Drive SW
PO Box 40113
Olympia, WA 98504-0113

Phone(360)753-1626
Fax (360)586-6847
Blackberry (360) 584-4329

Please Print Only When Necessary.

This e-mail may contain confidential information which is legally privileged. If you have received this e-mail in error, please notify me by return e-mail and delete this mail. Any disclosure, copying, distribution or other use of the contents of this information is prohibited

From: Salay, Ann (ATG)
Sent: Friday, May 07, 2010 11:03 AM
To: Galvin, Daniel (ATG); Lagerberg, Elizabeth (ATG)
Cc: Brown, Bryce (ATG)
Subject: SDOT GCA 6486 Salay Review
Importance: High

I have completed my review [1d]

Dan: [1d] Thanks.

Dan: [1d] Thanks.

[1d]

Elizabeth:

Thanks.

Feel free to send it to Theresa,

[1d]



Joint SDOT MOA
5-4-10.doc

Thanks.

Annie

Ann E. Salay, AAG
POB 40113 -- 7141 Cleanwater Dr. SW
Olympia, Wa 98504-0113
360-753-6130
Fax: 360-586-6847
anns@atg.wa.gov

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MEMORANDUM OF AGREEMENT
NO. GCA 6486

SR 99 ALASKAN WAY VIADUCT

PROPERTY, ENVIRONMENTAL REMEDIATION, DESIGN REVIEW,
PERMITTING, AND CONSTRUCTION COORDINATION
AGREEMENT
FOR SR 99 BORED TUNNEL PROJECT

Comment [RF1]: City Language

THIS Property, Environmental Remediation, Design Review, Permitting, and Construction Coordination Agreement, No. GCA 6486 for the SR 99 Bored Tunnel Project ("Agreement" or "SDOT Agreement") is made and entered into between the State of Washington Department of Transportation, hereinafter the "STATE," and the City of Seattle hereinafter the "CITY" (managed by the Seattle Department of Transportation, hereinafter "SDOT"), collectively the "PARTIES" and individually the "PARTY,"

Comment [g2]: City

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

Comment [RF4]: Joint

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

Comment [W5]: Joint

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

Comment [W6]: Joint

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

Comment [W7]: Joint

WHEREAS, the January 2009 letter of agreement between the PARTIES affirmed that the State would be responsible for the bored tunnel project, and that "the allocation of specific project responsibility to each jurisdiction carries with it the responsibility for project management, environmental work, design, construction, and project cost overruns"; and

Comment [W8]: City - Not acceptable to WSDOT

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WHEREAS, in October 2009 the Governor and the Mayor executed a Memorandum of Agreement, GCA 6366, which described the basic roles and responsibilities for the implementation of the AWVSR Program. **Salay: AWV is defined below, but AWVSR is not, what is SR, can it be defined under Section 1.2?**

Comment [W9]: Joint
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WHEREAS, the AWVSR Program (PROGRAM) consists of a four-lane bored tunnel and improvements to City streets, the City waterfront, and transit; and the Moving Forward Projects; and

Comment [W10]: Joint

WHEREAS, the Proposed Bored Tunnel Project (PROJECT), the subject of this Agreement, is the part of the PROGRAM that replaces SR 99 from South Royal Brougham Street to Mercer Street that consists of designing and constructing a four-lane bored tunnel from South King Street to Thomas Street, north and south tunnel portals and access streets; re-establishment of the City street grid in the vicinity of the portals (Battery Street Tunnel decommissioning and Alaskan Way Viaduct demolition will be addressed in a future agreement); and associated utility relocations; and **Salay: [1b]**

Comment [W11]: Joint
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WHEREAS, the Washington State Legislature passed Engrossed Substitute Senate Bill 5768 and the Governor signed the bill into law designating and funding a Bored Tunnel Program as the replacement for the Alaskan Way Viaduct; and

Comment [W12]: Joint

WHEREAS, RCW 47.01.402, which became law July 1, 2009, provides that State funding for the PROJECT is not to exceed two billion eight hundred million dollars (\$2,800,000,000.00) of which no more four hundred million shall be from tolls; and

Comment [W13]: City - Not Acceptable to WSDOT

WHEREAS, RCW 47.01.402(6)(b) provides that any costs in excess of two billion eight hundred million dollars (\$2,800,000,000.00) shall be borne by property owners in the Seattle area who benefit from replacement of the existing AWV with the deep bore tunnel; and

Comment [W14]: City - Not Acceptable to WSDOT

WHEREAS, the CITY and STATE agree to jointly pursue the implementation and completion of the PROJECT and endeavor to open the tunnel by 2015 and demolish the Alaskan Way Viaduct in 2016; and

Comment [W15]: Joint

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

Comment [W16]: Joint

WHEREAS, review of the PROJECT pursuant to the State STATE and City CITY environmental policy laws is currently underway and the PARTIES recognize that

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1 | changes in the alternative chosen would require a new agreement; and **Salary:** [1b]
2 | [REDACTED]
3 | [REDACTED]

- Comment [W17]: Joint
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4 | WHEREAS, the CITY and the STATE will deliver the PROJECT within the financial
5 | commitments made in the Memorandum of Agreement, GCA 6366, executed by the
6 | PARTIES on October 24, 2009; and

- Comment [W18]: Joint

8 | WHEREAS, concurrently with this GCA 6486 Agreement, the STATE and CITY,
9 | through Seattle City Light (SCL), are entering into an agreement, UT 01474; and

- Comment [W19]: Joint

11 | WHEREAS, concurrently with this , GCA 6486, the STATE and CITY, through its
12 | Seattle Public Utilities Department (SPU), are entering into an agreement, UT 01476; and

- Comment [W20]: Joint

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

- Comment [W21]: Joint

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

- Comment [W22]: Joint

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

- Comment [W23]: Joint

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

- Comment [W24]: City

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

- Comment [W25]: Joint

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

- Comment [W26]: City - Need to choose

33 | NOW, THEREFORE, pursuant to RCW 47.28.140 and RCW 47.01.401 and in
34 | consideration of the terms, conditions, covenants, and performances contained herein, or
35 | attached and incorporated and made a part hereto;

- Comment [W27]: WSDOT - Need to choose

IT IS MUTUALLY AGREED AS FOLLOWS:

1. DEFINITIONS

- Comment [W28]: WSDOT

42 | Words not otherwise defined, which have well-known technical or construction industry
43 | meanings, are used in accordance with such recognized meanings;

- Comment [g29]: Joint

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1 1.1 Approved Plans means the construction plans and provisions that evidence the
2 CITY's determination, through the processes described in Section 8 and Exhibit B of this
3 Agreement, that the plans including Released for Construction Submittal pPlans for
4 Design-Build Ccontracts **Salay: changed to reflect language used below** conform to
5 the Street Use Code **Salay, not defined below, suggest change to Title 15 of the Seattle**
6 **Municipal Code** and other requirements, and that plan review comments are resolved to
7 both PARTIES' satisfaction; Approved Plans are included in the contract documents
8 evidencing the agreement between the STATE and its contractors for construction of a
9 given element of the PROJECT.

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Comment [g30]: Joint

11 1.2 AWV means the Alaskan Way Viaduct structure on State Route 99, currently a
12 non-limited-access highway over a portion of CITY Street Right-of-Way and located
13 partially in the City of Seattle. **Salay: The AWV is located totally within Seattle, why**
14 **are you using "located partially" ? Also, can you include 'SR' in this definition, as in**
15 **AWVSR?**

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Comment [g31]: Joint - requires clean up

17 1.3 Betterment means any upgrading of SDOT Facilities that is made solely for the
18 benefit of and at the election of SDOT. Betterments will be the cost responsibility of
19 SDOT. **Salay: SDOT Facilities is not defined below.**

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Comment [g32]: Joint

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21 1.4 Business Days means Monday through Friday, inclusive, except for official City
22 of Seattle and state holidays.

Comment [g33]: Joint

24 1.5 CITY means the City of Seattle, a Washington municipal corporation.

Comment [g34]: Joint

26 1.6 City Construction Project Engineer means the person designated by SDOT to act
27 as the City's CITY's coordinator and primary representative in matters arising during the
28 course of construction as set forth in this Agreement.

Comment [g35]: Joint

30 1.7 CITY Designated Representative means the CITY official listed in Section 25 of
31 this Agreement.

Comment [g36]: Joint

33 1.8 CITY Infrastructure means the portions of SFU Facilities, SCL Facilities and City
34 CITY Street Right-of-Way improvements constructed or modified as part of the
35 PROJECT to be owned, operated and maintained by the CITY. **Salay: SDOT Facilities**
36 **is not defined below.**

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Comment [g37]: Joint

Comment [g38]: Joint

38 1.9 CITY Interest Property means CITY Street Right-of-Way plus all other real
39 property that the CITY owns or in which the CITY has a real property interest on the
40 effective date of this Agreement, or in connection with the PROGRAM is to acquire
41 ownership of or an interest in real property or a different utility-related right from the
42 STATE, which includes, but is not limited to Program Transfer Property. CITY Interest
43 Property does not include real property acquired or to be acquired by the STATE for
44 planned limited access facilities such as the bored tunnel, portals and access for which no

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1 real property interest or ~~different utility-related right~~ will be transferred to the
2 CITY. ~~Salay:~~ [1b]

3 [Redacted]
4 [Redacted]
5 [Redacted]
6 [Redacted]
7 [Redacted]

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8 1.10 City of Seattle means CITY.

Comment [g39]: Joint

10 1.11 City Standards means all City of Seattle laws, rules, regulations and standards and
11 all applicable federal and state laws, rules, regulations and standards, including but not
12 limited to the following, except as otherwise provided in this Agreement, UT 01474 and
13 UT 01476:

Comment [RF40]: Joint

- 14 The Seattle Municipal Code;
- 15 The City of Seattle Standard Specifications for Road, Bridge and Municipal
- 16 Construction;
- 17 The City of Seattle Standard Plans for Municipal Construction,;
- 18 SDOT, SCL, DPD and SPU Director’s Rules, including the City of Seattle CITY
- 19 Street Right of Way Improvements Manual, 2005-22,;
- 20 SCL Material Standards; and
- 21 SCL Construction Guidelines

Comment [RF41]: Joint

23 1.12 CITY Street Right-of-Way means public street right-of-way under the jurisdiction
24 of SDOT pursuant to Title 15 of the Seattle Municipal Code.

Comment [g42]: Joint

26 1.13 Conceptual Relocation Plan means a work product that defines the general scope
27 of utility relocations including a planning level estimate of design and construction
28 costs.

Comment [g43]: WSDOT

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30 1.14 ~~Conflicting Facilities means all SCL Facilities and all SPU Facilities identified by~~
31 ~~the STATE that directly conflict with the bored tunnel portals and tunnel portal~~
32 ~~excavations.~~

Comment [RF44]: City - Add to SDOT?

34 1.15 Contract Award means the STATE’s written decision accepting bid for
35 construction of a Project. ~~Salay: rather than “a Project” do you mean the~~
36 ~~“PROJECT?” “Project” is not defined. Maybe it should be lower case.~~

Comment [g45]: Joint

38 1.16 Damage means loss of function, capacity, or ~~aesthetic quality~~. For the purposes
39 of this Agreement, “Damage” shall not be construed to include reduction of design life
40 of any structure or utility. ~~Salay: “aesthetic quality” is not defined~~ [1b]

41 [Redacted]
42 [Redacted]

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Comment [g46]: WSDOT

43 1.16 Damage means any direct or indirect consequence of the PROJECT that causes
44 harm to, or reduces value or usefulness of, CITY Infrastructure, ~~private property~~, CITY

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1 | property or **other public property**, including but not limited to structural damage or
2 | physical failure; loss of function, capacity or **aesthetic quality**; reduced service capacity,
3 | including intended future capacity; reduced service life; a measurable reduction of design
4 | life of an SPU Facility or an SCL Facility; water main movement in excess of established
5 | thresholds; or any other impact to an SPU Facility or an SCL Facility such as stress or

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6 | Deformation. **[Salary: [REDACTED] [1b]**
7 | **[1b]**

Comment [g47]: City

15 | 1.17 Defective Work means design or construction work or materials that fail to
16 | comply with the Approved Plans, CITY-approved modifications to the Approved Plans,
17 | or the laws, rules, regulations or standards as specified in this Agreement.

Comment [g48]: Joint

19 | 1.18 Deformation means any 3-dimensional displacement, for a structure (such as tilt
20 | of a structure), and strain (relative displacements of structures or the ground) and includes
21 | any settlement, heave, lateral movement, and related terms are used as being common
22 | industry terminology. Where such industry terminology is used for convenience herein, it
23 | does not imply that the broad definition of Deformation has been limited.

Comment [g49]: Joint

25 | 1.19 Design-Bid-Build Contract means a project delivery method in which the STATE
26 | provides a complete design, advertises for bids, and awards a contract to the lowest
27 | responsive bidder who is responsible for completing the construction of the project.

Comment [g50]: Joint

29 | 1.20 Design-Build Contract means a project delivery method in which the STATE
30 | develops a conceptual design and requests proposals from pre-qualified contractors. The
31 | contract is awarded to the contractor with the best value responsive proposal. The
32 | contractor is responsible to complete the design and construct the project.

Comment [g51]: Joint

34 | 1.21 Design Builder means the entity with whom the STATE enters into a Design-
35 | Build contract and who is responsible to complete the design and construct the project.

Comment [RF52]: Joint

37 | 1.22 DPD means the City of Seattle Department of Planning and Development.

Comment [g53]: Joint

39 | 1.23 Engineer of Record means the engineer licensed in the State of Washington who
40 | has been commissioned by the STATE as the prime engineer of the PROJECT, having
41 | overall responsibility for the adequacy of the design and the coordination of the design
42 | work of other engineers and whose professional seal is on the Approved Plans.

Comment [g54]: Joint

44 | 1.24 Environmental Compliance Assurance Procedure (ECAP) means procedures

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1 incorporated into the ~~current~~ WSDOT *Construction Manual* M41-01.05 ~~dated July 2008~~
2 (Section 1-2.2k(1)) and the WSDOT *Environmental Procedures Manual* M31-11.05
3 (Sections 610 and 690) ~~dated October 2008~~, as modified by this Agreement, which
4 provide guidance on compliance with Environmental Laws and environmental
5 Remediation. The purpose of the ECAP is to recognize and eliminate environmental
6 violations during the construction phase on STATE construction sites and to ensure
7 prompt notification to STATE management and agencies. For purposes of the ECAP,
8 violations are defined as actions that are not in compliance with environmental standards,
9 permits, or laws.

Comment [g55]: Joint

10 1.24 Environmental Law(s) means any environmentally related local, state or federal
11 law, regulation, ordinance or order (including without limitation any final order of any
12 court of competent jurisdiction of which the STATE has knowledge), now or hereafter in
13 effect including, but not limited to: the Federal Clean Air Act; the Federal Water
14 Pollution Control Act; the Federal Safe Drinking Water Act; the Federal Comprehensive
15 Environmental Response Compensation and Liability Act, as amended by the Superfund
16 Amendments and Reauthorization Act of 1986; the Federal Resource Conservation and
17 Recovery Act, as amended by the Solid and Hazardous Waste Amendments of 1984; the
18 Federal Occupational Safety and Health Act; the Federal Emergency Planning and Right-
19 to-Know Act of 1986; the Federal Hazardous Materials Transportation Control Act of
20 1980; the Federal Clean Water Act of 1977; the Federal Insecticide, Fungicide and
21 Rodenticide Act; the Federal Waste Management Recovery and Recycling Act; the
22 Washington Hazardous Waste Management Act; the Washington Hazardous Waste Fees
23 Act; Washington Model Toxics Control Act; the Washington Nuclear Energy and
24 Radiation Act; the Washington Radioactive Waste Storage and Transportation Act; the
25 Washington Underground Petroleum Storage Tanks Act; and any regulations
26 promulgated thereunder from time to time.

Comment [g56]: Joint

27
28 1.25 Final Design Submittal means plans, specifications, and design documentation
29 representing complete design of a given project element in a Design-Build Contract. The
30 Final Design Submittal addresses and incorporates review comments from the
31 Preliminary Design Submittal.

Comment [RF57]: Joint

32
33 1.26 Final Plan Review Package means the Plan Review Package submitted to the
34 CTEY that is comprised of the STATE's contract documents including contract addenda
35 and fully incorporates or otherwise addresses all CTEY plan review comments and all
36 applicable conditions of the Street Use Permit.

Comment [RF58]: Move to Exhibit

37
38 1.27 Hazardous Substance(s) means any substance, or substance containing any
39 component, now or hereafter designated as a hazardous, dangerous, toxic or harmful
40 substance, material or waste, subject to regulation under any federal, state or local law,
41 regulation or ordinance relating to environmental protection, contamination or cleanup
42 including, but not limited to, those substances, materials and wastes listed in the United
43 States Department of Transportation Hazardous Materials Table (49 C.F.R. §172.101) or
44 by the United States Environmental Protection Agency as hazardous substances (40

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1 C.F.R. pt. 302 and amendments thereto) or in the Washington Hazardous Waste
2 Management Act (Ch. 70.105 RCW) or the Washington Model Toxics Control Act (Chs.
3 70.105D RCW and 82.21 RCW), petroleum products and their derivatives, and such
4 other substances, materials and wastes as become regulated or subject to cleanup
5 authority under any Environmental Law.

Comment [g59]: Joint

7 1.28 Letter of Acceptance means the written document that signifies the CITY's
8 acceptance of CITY Infrastructure to be owned by the CITY, and shall signify the
9 STATE's transfer of CITY Infrastructure to be owned by the CITY. The Letter of
10 Acceptance will not transfer any interest in real property. The Letter of Acceptance shall
11 be jointly executed by the PARTIES. A Letter of Acceptance for SPU Facilities requires
12 SPU approval and a Letter of Acceptance for SCL Facilities requires SCL approval.

Comment [g60]: Joint

14 1.29 Letter of Plan Approval means the letter provided to the STATE by the CITY
15 following the completion of the plan review process, signifying that the plans and
16 specifications identified in the letter are the Approved Plans.

Comment [g61]: Joint

18 1.30 MTCA means the Washington Model Toxics Control Act (Chs. 70.105D RCW
19 and 82.21 RCW).

Comment [g62]: Joint

21 New Work means the design and construction by or at the direction of UTILITY
22 of a new utility other than (a) as part of a relocation associated with the PROJECT, or (b)
23 to provide service to the PROJECT. New Work shall be entirely the financial obligation
24 of UTILITY. **[Salay: UTILITY is not defined in this agreement, either define it or
25 call it SCL and SPU.]**

Comment [RF63]: Is this needed in SDOT?

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27 1.32 Preliminary Engineering means the portion of the pProject engineering which
28 advances the pProject design to address Type, Size, and Location ("TS&L") for all
29 components of the pProject. Design will have advanced sufficiently to define alignments
30 and identify conflicts. Preliminary engineering will include an estimate for final design
31 and a preliminary cost for construction. **[Salay, throughout these definitions, you use
32 "project" rather than PROJECT, and sometimes Project. "Project is not defined
33 and it appears that all references to project should not be PROJECT. So, I have
34 used a lower case, unless you need to define Project as opposed to PROJECT.]**

Comment [g64]: Joint

Comment [RF65]: Joint

36 1.33 Plan Review Package means clear and complete plans, specifications, and the
37 necessary assumptions, studies, models and calculations upon which the design was
38 based, and corrections previously requested by the CITY with respect to Design-Bid-
39 Build pProjects.

Comment [g66]: Joint

41 1.34 100% Plan Review Package means the Plan Review Package submitted to the
42 CITY concurrent with STATE's final internal review of the construction contract plans
43 and contract provisions that shall evidence the agreement between the STATE and its
44 contractors for construction of Design-Bid-Build pProjects.

Comment [RF67]: Joint

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1
2 1.35 Plans, Specifications, and Estimate (“PS&E”) means the portion of the PROJECT
3 engineering after the Preliminary Engineering, which advances the PROJECT design by
4 preparing contract-ready documents and the engineer’s cost estimate. At this stage the
5 specifications are written and tailored to the plans so that all work can be measured and
6 has a pay item. The cost estimate is formalized using the established specifications, pay
7 items and quantity takeoffs, for 60% through 100% completion of the total design
8 effort. **[Salav: look at section 1.32, where you do not fully cap PROJECT. Which**
9 **meaning do you wish to impart to keep these definitions consistent?]**

Comment [RF68]: Joint
Comment [RF69]: Joint

11 1.36 Preliminary Design Submittal means in a Design-Build Contract, a formal
12 opportunity for the STATE, the Design -Builder, various design team disciplines, and
13 other approved ~~stakeholders~~ stakeholders to review the construction documents in order to
14 ensure that the design is progressing appropriately and proceeding in the right direction;
15 the plans reflect Design -Builder requirements for construction; design features are
16 coordinated; and there are no fatal flaws within a given discipline or between disciplines.
17 **Salav, should this be PROJECT? Or project?!**

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Comment [g70]: Joint

19 1.37 Private Utilities means utility uses, excluding facilities owned and operated by the
20 CITY, approved through franchise agreements and/or ~~Street Use Permits~~ by the CITY
21 and governed and enforced through City-CITY Ordinance. AES: [1b]

22 [1b]
23
24
25
26

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Comment [g71]: Joint

27 1.38 PROJECT means the pProposed bBored tTunnel pProject, the part of the
28 PROGRAM that replaces SR 99 from South Royal Brougham Street to ~~Mer~~ Street and
29 that consists of designing and constructing a four-lane bored tunnel from South King
30 Street to Thomas Street, north and south tunnel portals and access streets, re-
31 establishment of the City-CITY street grid in the vicinity of the portals ~~Battery Street~~
32 ~~Tunnel decommissioning and Alaskan Way Viaduct demolition will be addressed in a~~
33 ~~future agreement~~ and associated utility relocations.

Comment [g72]: Joint. This definition does not currently include the demolition of the Alaskan Way Viaduct and the decommissioning of the Battery Street Tunnel.

35 1.39 PROGRAM means the AWVSR pProgram which consists of a four-lane bored
36 tunnel and improvements to City-CITY streets, the City-CITY waterfront, and transit; and
37 the Moving Forward Projects as defined in GCA 6366.

Comment [RF73]: Joint

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

42 Program Transfer Property means all Program Property identified by the STATE and the
43 CITY for transfer from the STATE to the CITY in ~~its simple~~ [Salav: [1b]
44 [1b]

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1
2 Project Property means all real property interests acquired and to be acquired by the
3 STATE and used for the PROJECT.

4
5 1.40 Project Engineer means the persons appointed by the STATE to lead the
6 PROJECT during design and/or construction or his or her designee.

Comment [RF74]: Joint

7
8 1.41 Released for Construction Submittal means in a Design-Build Contract, plans and
9 specifications for a given project element that are construction ready and have been
10 certified by the Design-Builder as having met all contract requirements and received all
11 approvals and permits. The Released for Construction Submittal addresses all review
12 comments from the Preliminary Design Submittal and Final Design Submittals.

Comment [RF75]: Joint

13 Relinquishment Property

Comment [g76]: TBD

14
15
16 1.42 Remediation means the same as Remedy or Remedial Action defined in MTCA
17 which includes any action or expenditure consistent with the purposes of MTCA to
18 identify, eliminate, or minimize any threat or potential threat posed by Hazardous
19 Substances to human health or the environment including any investigative and
20 monitoring activities with respect to any release or threatened release of a Hazardous
21 Substance and any assessments to determine the risk or potential risk to human health or
22 the environment.

Comment [RF77]: Joint

23
24 1.43 Round Table Meeting means a meeting typically held five (5) weeks following
25 the submittal of the 100% Plan Review Package to the CITY and STATE, and commonly
26 attended by the STATE's Project team and STATE reviewers to resolve and address
27 STATE comments on the 100% Plan Review Package.

Comment [RF78]: Joint

28
29 1.43 SCL means Seattle City Light.

Comment [RF79]: Joint

30
31 1.44 SCL Facilities means the electrical facilities impacted by, or constructed as part
32 of, the PROJECT that are owned or to be owned by the CITY.

Comment [RF80]: Joint

33
34 1.45 SCL Facilities Work means work required to design, construct and protect the
35 SCL Facilities as part of the PROJECT.

Comment [g81]: Joint

36
37 1.46 SDOT means the Seattle Department of Transportation.
38 **Salay: There is no SDOT Facilities or SDOT Facilities Work defined in this**
39 **agreement.**

Comment [RF82]: Joint

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40
41 1.47 SPU means Seattle Public Utilities.

Comment [RF83]: Joint

42
43 1.48 SPU Facilities means the water, drainage and wastewater facilities impacted by,
44 or constructed as part of, the PROJECT that are owned or to be owned by the CITY.

Comment [RF84]: Joint

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1
2 1.49 SPU Facilities Work means work required to design, construct and protect the
3 SPU Facilities as part of the PROJECT.

4
5 1.50 STATE means the State of Washington Department of Transportation and may
6 include its cContractors, sSubcontractors, authorized aAgents and aAssigns.

Comment [RF85]: Joint

7
8 1.51 STATE Designated Representative means the STATE official listed in Section 25
9 of this Agreement.

Comment [RF86]: Joint

10
11 1.52 Street Use Permit means written authorization secured by the STATE from the
12 Director of SDOT for use of the CITY Street Right-of-Way pursuant to Title 15 of the
13 Seattle Municipal Code.

Comment [RF87]: Joint

14
15 1.53 Submittal Control Document means a list of all documents or reports that are
16 required by the Approved Plans or construction contract documents or applicable law to
17 be provided to or submitted to the STATE and the CITY.

Comment [RF88]: Joint

18
19 Surplus Property means Program Property, excluding Program Transfer Property and
20 other CITY Interest Property, that upon completion of the PROJECT has not been
21 designated as part of the limited access or non-limited access right-of-way of State Route
22 99.

23
24 1.54 Task Force means a group consisting of StateSTATE, CityCITY, contractor, and
25 other stakeholder staff meeting regularly to review and reach decisions relating to a
26 particular subject, e.g., traffic, structures.

Comment [g89]: Joint

27
28 1.55 Task Order means a document executed by the PARTIES under this Agreement
29 authorizing work by one party-PARTY to be done on behalf of the other party-PARTY
30 and that defines the scope and the obligations of the PARTIES for the given element of
31 work. All terms and conditions of the Agreement shall apply to each Task Order.

Comment [g90]: Joint

32
33 1.56 WSDOT means Washington State Department of Transportation.

Comment [RF91]: Joint

34
35 Words not otherwise defined, which have well-known technical or construction industry
36 meanings, are used in accordance with such recognized meanings.

Comment [W92]: Joint

37
38
39 **2. GENERAL RESPONSIBILITIES**

40
41 2.1 The PARTIES shall manage risk, produce design and conduct construction in a
42 manner that maximizes cumulative public benefits and minimizes cumulative public costs
43 as mutually agreed to by the PARTIES.

Comment [W93]: Joint Language

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1 2.2 This Agreement in conjunction with UT 01474 and UT 01476 is prepared by the
2 STATE and CITY to govern relationships between the PARTIES and establish each
3 Party's PARTY's responsibilities regarding the PROJECT as described in Exhibit A
4 Project Description. [Salay: Exhibit A has not been provided; do you want "Project"
5 to be PROJECT or project?]

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Comment [W94]: Joint

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6
7 2.3 The PARTIES understand that environmental review of the proposed PROJECT
8 is underway at the date of this Agreement and agree that if an alternative other than the
9 Proposed Bored Tunnel is selected, this Agreement shall not be applicable.

Comment [W95]: City

10
11 2.4 The PARTIES shall work collaboratively to resolve issues in a manner that
12 endeavors to open the Proposed Bored Tunnel to the public on schedule.

Comment [W96]: Joint

13
14 2.5 The design and construction of CITY Infrastructure, including infrastructure
15 repair, shall comply with City of Seattle codes, rules, regulations and standards.

Comment [W97]: Joint

16
17 2.6 Each Party PARTY shall provide the funding and resources necessary to fulfill
18 the responsibility of that Party PARTY as established in this Agreement. [Salay: [1b]
19 [1b]
20 [REDACTED]
21 [REDACTED]

Comment [W98]: Joint

Comment [W99]: Joint

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22 2.7 The PARTIES agree to work cooperatively with each other and make reasonable,
23 good faith efforts to timely and expeditiously complete the PROJECT, as provided in this
24 Agreement, including, but not limited to, the selection of a preferred SR 99 design
25 alternative; development of preliminary engineering and final design and construction. In
26 order to optimize design and minimize conflicts, the STATE shall coordinate design and
27 construction of the various contracts making up the PROJECT with design of subsequent
28 PROGRAM stages, and with construction of previous stages of the PROGRAM. The
29 STATE shall be prepared to modify design of the contracts making up the PROJECT, the
30 subsequent PROGRAM stage and/or previous phase if both PARTIES determine the
31 modifications are necessary and reasonable, to minimize conflicts.
32

Comment [W100]: Joint

33 2.8 The PARTIES agree to work cooperatively with each other and make reasonable,
34 good faith efforts to timely and expeditiously complete the PROJECT, as provided in this
35 Agreement, including, but not limited to, the selection of a preferred SR 99 design
36 alternative; development of preliminary engineering and final design and construction.
37 [Salay: This section is the same as Section 2.7, except for lines 30-36. Should this be
38 deleted?]

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Comment [W101]: Joint

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39
40 2.9 The STATE is responsible for designing and constructing the Proposed Bored
41 Tunnel portion of the Project PROJECT. The STATE will take reasonable measures to
42 minimize, limit, and mitigate Damage to private property and CITY infrastructure
43 including CITY streets, CITY telecommunications facilities and CITY utilities that may
44 result from the Proposed Bored Tunnel construction, including Damage that may result

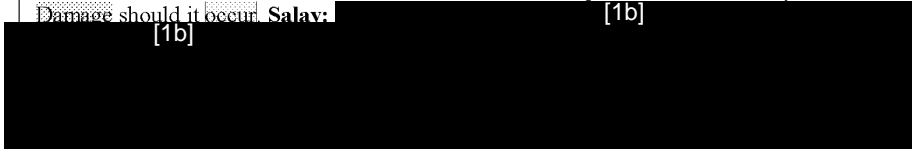
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1 from tunnel-induced Ddeformation. WSDOT-STATE is responsible for to remedy such
2 Damage should it occur. **Salav:** [1b]



Comment [W102]: Joint - Damage definition pending

8 2.10 The CITY is responsible for relocating those existing UTILITY Facilities that
9 have alignments intersecting the final configuration of the proposed SR 99 bored tunnel
10 portals and tunnel portal excavations.

Comment [JRB103]: Remove from the SDOT MoA and just use in UTILITY MoAs

11
12 2.11 The PARTIES agree that it is in the public interest for one PARTY to implement
13 portions of the other PARTY's PROJECT responsibilities. Therefore, this Agreement
14 establishes a Task Order process for use by a PARTY to authorize the other PARTY to
15 conduct work on its behalf, and as may be documented through each Task Order, agree to
16 reimburse the other PARTY for such services.

17
18 2.12 During conceptual and preliminary design of the PROJECT, the PARTIES shall
19 jointly identify Conflicting Facilities and plan for the relocation of these Conflicting
20 Utilities. The STATE agrees to prepare a Conceptual ~~Utility~~ Relocation Plan **[Salav:**
21 **Just using actual defined wording of concept. If you want Utility in the definition,**
22 **then fix section 1.13]**, that documents a feasible conceptual approach to relocating
23 Conflicting Facilities in a manner that accommodates the PROJECT. The PARTIES shall
24 mutually determine the feasibility of the Conceptual ~~Utility~~ Relocation Plan. The
25 Conceptual ~~Utility~~ Relocation Plan shall include:

Comment [JRB104]: Just include in UTILITY MoAs

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26
27 2.12.1 The STATE's conceptual design of the PROJECT.

28 2.12.2 Identification of Conflicting Facilities.

29 2.12.3 The STATE's request for ~~UTILITY~~ SCL and/or SPU **[Salav, UTILITY**
30 **is not defined in this agreement. See suggested change.]** to relocate Conflicting
31 Facilities based on the STATE's conceptual design of the PROJECT.

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32 2.12.4 A feasible conceptual design that demonstrates compatibility with
33 existing infrastructure to remain.

34 2.12.5 Plan view drawings drafted to an engineering scale of 1 inch equals 40
35 feet showing the existing configuration of Conflicting Facilities, proposed
36 configuration of relocated CITY Infrastructure, and all existing infrastructure to
37 remain adjacent to relocated CITY Infrastructure.

38 2.12.6 Roadway and utility cross-sections necessary to demonstrate the
39 feasibility of the conceptual design.

40 2.12.7 Utility profiles and elevations necessary to demonstrate the feasibility of
41 the conceptual design.

42 2.12.8 Identification of Conflicting Facilities that require multiple relocations
43 in order to accommodate the PROJECT along with the circumstances that cause
44 the need for such multiple relocations.

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1 2.12.9 A schedule for relocation of Conflicting Facilities that is coordinated
2 with the proposed design and construction schedule for other work within the
3 PROJECT.

4 2.12.10 A contracting strategy for design and construction of each Conflicting
5 Facility identified for relocation including a proposal for Task Orders necessary
6 for [REDACTED] SCL and/or SPU to authorize the STATE to perform services on its
7 behalf. **Salav, UTILITY is not defined in this agreement. See suggested
8 change.**

9 2.12.11 An estimate of design services to be performed by the STATE on behalf
10 of the SCL and/or SPU [REDACTED]. **Salav, UTILITY is not defined in this
11 agreement. See suggested change.**

12 2.12.12 An estimate of construction costs commensurate with the level of
13 conceptual design.

14 2.12.13 [what else???]

15
16 2.13 [REDACTED] shall review and comment on the Conceptual [REDACTED]
17 **[Salav: Just using actual defined wording of concept. If you want Utility in the
18 definition, then fix section 1.13]** Relocation Plan. The PARTIES shall address
19 [REDACTED] SCL's and/or SPU's comments on the Conceptual [REDACTED] Relocation Plan to
20 the PARTIES' mutual satisfaction. **Salav, UTILITY is not defined in this agreement.
21 See suggested change.**

22
23 2.14 The PARTIES shall use the final Conceptual [REDACTED] Relocation Plan as the basis
24 for negotiating each PARTY's design, construction and funding responsibilities for
25 multiple utility relocations. **[Salav: Elsewhere in these agreements you have
26 highlighted in Yellow, [1b]**

27 [REDACTED] [1b]
28 [REDACTED]
29 [REDACTED]
30 [REDACTED]
31 [REDACTED]
32 [REDACTED]
33 [REDACTED]
34 2.15 SCL's and/or SPU's [REDACTED] responsibility for the design and construction of
35 Conflicting Facilities relocations begins when the PARTIES STATE and SPU and/or
36 SCL have a written mutual agreement regarding the content of the Conceptual [REDACTED]
37 Relocation Plan and the STATE's, SPU's and SCL's each PARTY's responsibilities for
38 multiple utility relocations. **Salav, UTILITY is not defined in this agreement. See
39 suggested change. Further, PARTIES in this agreement means SDOT & State, the
40 Conceptual plan and agreement should be between State & SPU & SCL, not SDOT,
41 Correct?!**
42

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1 | 2.16 The PARTIES shall use the Conceptual ~~Utility~~ Relocation Plan as the basis for
2 | establishing the STATE's scope, schedule and estimated costs of design and construction
3 | services to be documented in Task Orders under this Agreement.
4 |

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5 | ~~2.17~~—In instances where the STATE's revisions to the PROJECT design differ so
6 | significantly from the conceptual design presented in the Conceptual Utility Relocation
7 | Plan as to render UTILITY's SPU's and/or SCL's relocation design or construction plan
8 | obsolete, the STATE shall reimburse UTILITY-SPU and/or SCL for the accrued costs of
9 | obsolete work. Salay: UTILITY is not defined in this agreement. See suggested
10 | change.

11 | **3. PROPERTY ACQUISITION AND TRANSFER; RELINQUISHMENT;**
12 | **SURPLUS PROPERTY**

Comment [W105]: TBD

13 | 3.1 Acquisition
14 |

15 | 3.1.1 The STATE has or will acquire, at its expense, the Project Property. The
16 | CITY will acquire, at its expense, any utility-related property right necessary for the
17 | relocation of SPU Facilities or SCL Facilities that cannot be accommodated within
18 | Project Property or existing CITY right of way.
19 |

20 | 3.1.2 The STATE is responsible, at its expense, for performance of all
21 | appraisals, appraisal review, title review, surveys, property investigation, relocation
22 | assistance and all other investigations and services in connection with the acquisition of
23 | the Project Property. For each parcel of Program Transfer Property, the STATE shall
24 | deliver to the CITY, as soon as practicable after a parcel is acquired and identified by the
25 | PARTIES as Program Transfer Property, all documents created, commissioned or
26 | received in connection with the STATE's acquisition of such parcel. Such documents
27 | shall include, to the extent applicable, appraisals, appraisal reviews, title reports and all
28 | documentation concerning title encumbrances, title policies, surveys, geotechnical
29 | reports, purchase agreements, term sheets, options, leases, deeds, indemnities, and all
30 | other documents and information created, commissioned or received by the STATE.
31 | Salay: As this language stands, it just requires that all property documents be
32 | provided to the city. Please be careful that this does not morph into requiring the
33 | WSDOT to actually create or provide documentation that it does not normally
34 | have.
35 |

Comment [HMc106]: Hannah and Theresa to verify that the documentation listed here matches the requirements in WSDOT's ROW Manual. If it does, consider just referencing ROW Manual.

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36 | 3.1.3 The STATE is responsible for identification and investigation of
37 | Hazardous Substances on Program Property following procedures set in the WSDOT
38 | *Environmental Procedures Manual M 31-11* and WSDOT *Right of Way Manual M 26-01*
39 | that are in effect on the date of property acquisition. The STATE shall provide to
40 | SDOT's Real Property and Environmental Manager, as soon as practicable after a parcel
41 | is identified by the PARTIES as Program Transfer Property, copies of all documentation
42 |
43 |
44 |

Comment [HMc107]: Theresa to share with WSDOT environmental team.

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1 of environmental investigation concerning the Program Transfer Property, remedial
2 actions, reports, studies or other documentation, whether received by or prepared by or
3 for the benefit of the STATE, including, but not limited to, (1) documents relating to due
4 diligence and/or all appropriate inquiry, environmental assessments, and remedial,
5 removal or cleanup activities related to the Program Transfer Property; (2) documents
6 relating to allegations, orders, claims, regulatory demands, or losses relating to the
7 alleged existence or migration of any Hazardous Substance from or on any parcel of
8 Program Transfer Property; and (3) any alleged violation of any Environmental Law or
9 other information relating to environmental condition of the Program Transfer Property.

10
11 3.2 Transfer

12
13 3.2.1 On or before December 31, 2011, the STATE and the CITY shall enter
14 into a separate written agreement governing transfer of Program Transfer Property to the
15 CITY. The agreement shall provide that each transfer to the CITY shall be by deed. The
16 agreement shall also provide the following: timing of transfer, condition of title,
17 protection for utilities in the event of future sale, the following release and
18 indemnification provision:

19
20 “The STATE hereby releases and indemnifies, protects and holds harmless the
21 City of Seattle and its officers, officials, employees, and authorized agents
22 working within the scope of their employment from all liability and claims
23 (including but not limited to liability and claims for response and remediation
24 costs, administrative costs, fines, charges, penalties, attorney fees and cost
25 recovery or similar actions brought by a governmental or private party, including
26 third party tort liability) arising, directly or indirectly, from any presence or
27 release of any Hazardous Substance remaining within or transported from the real
28 property in which an interest is transferred.”

29
30 and the definitions of Hazardous Substance and Environmental Law contained in this
31 SDOT Agreement. The foregoing is not an exclusive list.

32
33 3.2.2 Whether or not any separate agreement or transfer document is made,
34 effective beginning on the date of transfer of each real property interest from the STATE
35 to the CITY in connection with the PROGRAM, the STATE shall release and indemnify,
36 protect and hold harmless the City of Seattle and its officers, officials, employees, and
37 authorized agents working within the scope of their employment from all liability and
38 claims (including but not limited to liability and claims for response and remediation
39 costs, administrative costs, fines, charges, penalties, attorney fees and cost recovery or
40 similar actions brought by a governmental or private party, including third party tort
41 liability) arising, directly or indirectly, from any presence or release of any Hazardous
42 Substance remaining within or transported from the real property in which an interest is
43 transferred.

Comment [HM108]: Theresa to share with
WSDOT environmental team.

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1 3.3 Surplus Property. Within two (2) years after completion of the PROJECT, the
2 STATE shall complete its disposal of all Surplus Property pursuant to the provisions of
3 chapter 47.12 RCW and following the procedures in the WSDOT *Right of Way Manual*
4 *M 26-01.02*, dated August 2009, Chapter 11, Sections 11-7.1 – 11-7.4.2. Disposal
5 includes any of the disposal methods described in Chapter 11, Sections 11-7.1 – 11-7.4.2.
6 The parties PARTIES may agree to extend the two year period if disposal of surplus
7 property is not reasonably feasible. **Salav:** [1b]

11 3.4 Survival. The obligations set forth in this Section 3 shall survive termination of
12 this SDOT Agreement unless otherwise expressly negotiated by the PARTIES and
13 memorialized by written amendment to this SDOT Agreement.

15 3.5 Where ~~UTILITY~~ SCL Facilities and/or SPU Facilities are located in or near an
16 area which the STATE designates as a Limited Access Facility, the STATE will ensure
17 that ~~UTILITY~~ SCL and/or SPU continues to be allowed access to its
18 ~~UTILITY~~ facilities. **Salav, UTILITY is not defined in this agreement. See suggested**
19 **change.**

20 3.5.1 The STATE's Limited Access Facility designation for the tunnel shall
21 contain a vertical and horizontal boundary.

22 3.5.2 The STATE agrees that any Limited Access Facility designation for the
23 tunnel will allow ~~UTILITY~~ SCL and/or SPU to access its ~~UTILITY~~ facilities.

24 3.5.3 The area between the Limited Access Facility boundaries and the CITY
25 streets shall continue to be CITY Street Right-of-Way. **Salav:** [1b]

28 3.5.4 In the event the STATE designates as a Limited Access Facility any area
29 in or near the tunnel portals on which a SPU Facilities and/or SCL Facilities ~~UTILITY~~
30 Facility exists or will be relocated, the STATE agrees to provide ~~UTILITY~~ SCL and/or
31 SPU a ~~UTILITY~~-utility franchise in the form attached hereto as ~~Exhibit A~~, pursuant to the
32 requirements of Section 14 herein [OR provide for access to operate and maintain 24/7,]
33 and will make every effort to develop a design that minimizes the need for regular, on-
34 going maintenance access as reasonably feasible. **LAES: Exhibit A is designated as a**
35 **project design; please fix this designation.** [1b]

41 THIS SECTION TO BE PREPARED BY Theresa and Hannah

43 4. TASK ORDERS

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Comment [g109]: Needs elevation

HIGHLIGHTED TEXT = Elevate to Leadership

GREEN HIGHLIGHT = Staff to resolve

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1 4.1 Some or all of the work undertaken pursuant to this Agreement may be governed
2 by Task Orders. Each Task Order shall be substantially similar to Exhibit C and shall
3 document the scope of services, schedule of services, itemized estimate of costs, and any
4 provisions specific to the scope of services. Task Orders shall be subject to the
5 provisions of this Agreement. Either PARTY may initiate a Task Order which will be
6 jointly executed by the PARTIES.

Comment [g110]: Joint

8 4.2 Partial Task Order payments, if any, shall be made upon invoice from the Party
9 PARTY providing services, to cover actual direct and related indirect costs incurred at
10 rates established in each Task Order. It is agreed that any such partial payment will not
11 constitute agreement as to the appropriateness of services costs and that, at the time of
12 final audit, all required adjustments will be made and reflected in a final payment. The
13 Party-PARTY providing services shall submit itemized invoices within sixty (60)
14 calendar days of the end of the calendar month in which the services were performed.
15 Invoices for partial payment shall not be submitted more frequently than once per month.
16 The invoices shall substantially conform to the invoice requirements shown in Exhibit D.
17 The PARTIES agree to make payment for services completed and invoiced within thirty
18 (30) calendar days of receiving an invoice. [AES: [b] [1b]

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Comment [W111]: Joint

22 4.3 Audit Requirements for Task Order Activity

23 THIS SECTION TO BE PREPARED BY Theresa and Hannah

26 4.4 Task Order Closeout Requirement

27 THIS SECTION TO BE PREPARED BY Theresa and Hannah

30 5. ENVIRONMENTAL REMEDIATION DURING CONSTRUCTION

Comment [g112]: Joint

32 5.1 STATE Responsibilities. For CITY Interest Property the STATE shall be
33 responsible for identification, investigation and Remediation of Hazardous Substances
34 found within the limits of the PROJECT during its environmental due diligence of the
35 Project Property and shall identify areas of known Hazardous Substances in the Plan
36 Review Packages circulated for CITY review and in Design-Build Contract-related
37 documentation, including Preliminary and Final Design Submittals, that are relevant to
38 CITY Interest Property. In addition, the STATE shall be responsible for identification,
39 investigation and Remediation of Hazardous Substances discovered during construction
40 at CITY Interest Property. For CITY Interest Property, provisions for Remediation of
41 known Hazardous Substances, approved Remediation plans, and provisions for
42 Remediation of Hazardous Substances discovered during construction shall be included
43 in the Plan Review Packages and Approved Plans and in Design-Build Contract-related
44 documentation, including Preliminary and Final Design Submittals, that are relevant to

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1 CITY Interest Property. Nothing in this Agreement is intended to alter the legal
2 obligations of the STATE with respect to Hazardous Substances that may remain in
3 place after completion of the PROJECT except for release and indemnity provisions of
4 this Agreement.

Comment [RF113]: Joint

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.

Comment [RF114]: Joint

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.

Comment [RF115]: Joint

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:

Comment [RF116]: Joint

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.

Comment [RF117]: Joint

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1 5.5 All work at CITY Interest Property shall comply with the then-current WSDOT
2 *Environmental Procedures Manual M 31-11* and WSDOT *Construction Manual M41-01*,
3 Environmental Law, and all applicable CITY regulations except as modified by this
4 Agreement.

Comment [RF118]: Joint

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

Comment [RF119]: Joint

11 5.7 The STATE's Project Engineer shall determine, in consultation with the CITY,
12 Remediation of known and unanticipated Hazardous Substances at or adjacent to CITY
13 Interest Property within the limits of the PROJECT. In instances where the CITY
14 disputes the STATE's plan(s) for Remediation in connection with CITY Interest
15 Property, the CITY and STATE will resolve the dispute through the dispute resolution
16 process in Section 21 of this Agreement.

Comment [RF120]: Joint

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

Comment [RF121]: Joint

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

Comment [RF122]: Joint

32 5.10 The PARTIES shall obtain all required permits and approvals for Remediation at
33 CITY Interest Property.

Comment [RF123]: Joint

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

Comment [RF124]: Joint

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

Comment [RF125]: Joint

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GREEN HIGHLIGHT – Staff to resolve

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1 5.13 All costs associated with testing, handling, storing, removing, transporting,
2 disposing, or treating Hazardous Substances that are excavated in connection with the
3 PROJECT relating to CITY Interest Property shall be paid by the STATE. In addition,
4 STATE shall be responsible for all costs associated with Remediation of any releases that
5 are caused or exacerbated by its own employees or contractors. The STATE shall be
6 identified as the generator for these Hazardous Substances.

Comment [RF126]: Joint

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.

Comment [RF127]: Joint

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.

Comment [RF128]: Joint

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 authorized agents, while acting
28 within the scope of their employment, from all liability and claims (including but not
29 limited to liability and claims for response and remediation costs, administrative costs,
30 fines, 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-CITY has a real property interest on that date or in which the
36 City-CITY later acquires a real property interest for the purposes of the Program
37 PROGRAM from an entity other than the STATE, and (2) the removal, transport or
38 disposal in connection with the PROJECT of any Hazardous Substance for which the
39 STATE or any person, contractor or other entity working on behalf of the STATE is a
40 generator.

Comment [RF129]: Joint

41 **6. PERMITTING AND RIGHT-OF-WAY USE**
42
43

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1 6.1 The PARTIES shall apply for and obtain all necessary federal, state and City of
2 Seattle-issued permits and approvals for the work for which they are responsible prior to
3 commencing work that requires such permits, including but not limited to all permits,
4 approvals or permission for exploratory investigations, testing, site preparations,
5 demolition and construction.

Comment [W130]: Joint

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

Comment [g131]: Joint

Comment [g132]: Joint

14 6.3 The PARTIES agree that for both design-build and design-bid-build portions of
15 the PROJECT, the PARTIES shall obtain a Street Use Permit consistent with the
16 provisions in Section 3 of this Agreement prior to undertaking work in the CITY Street
17 Right of Way. **[Salay: do you really mean section 5, or should it be section 6? In**

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Comment [RF133]: Joint

[1b]

25 6.4 Conditions applicable to the Street Use Permits issued for CITY Street Right-of-
26 Way in connection with the PROJECT will apply to Project-PROJECT work outside the
27 current CITY Street Right of Way. **[Salay: [1b]**

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Comment [RF134]: Needs clarification for application to Limited Access

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31 6.5 The PARTIES agrees to abide by and comply with all requirements and
32 conditions of the Street Use Permit. After the Street Use Permit is issued, the responsible
33 PARTY will obtain Letters of Plan Approval for any subsequent revisions for
34 advancement of design or amendments to the Street Use Permit as set forth in the
35 Procedures. **[Salay: "Procedures" is not defined, where is the term "as set forth in
36 the Procedures"? Please clarify]**

Comment [g135]: Joint

Comment [g136]: Joint

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38 6.6 The Street Use Permit and Letters of Plan Approval are not a representation or
39 assurance that the design or plans comply with applicable laws, regulations, ordinances or
40 codes, nor shall the Street Use Permit or Letter of Plan Approval be construed to
41 authorize any failure to comply with any of the foregoing.

Comment [g137]: Joint

43 6.7 The STATE shall be responsible for ordering and managing the relocation of any
44 and all private utilities required for performance of the work on the PROJECT, and the

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1 STATE shall require its construction contractors to schedule and coordinate their
2 activities with the relocation of private utilities so that neither the construction contractors
3 nor the private utilities are adversely impacted by the other's activities. The ~~city~~-CITY
4 shall assist and cooperate with the ~~state~~-STATE as the ~~state~~-STATE performs its
5 obligations under this provision, including, but not limited, the CITY co-signing the ~~state~~
6 STATE relocation notices to the private utility owners and the ~~city~~-CITY joining the ~~state~~
7 STATE as an additional plaintiff in any litigation the ~~state~~-STATE may need to pursue in
8 order to require the private utilities to relocate. The STATE shall protect, defend,
9 indemnify, and save harmless the CITY and CITY officers, officials, employees, and
10 authorized agents (while acting in their official capacities) for any claims, costs,
11 demands, judgments, or other liabilities that the CITY or its officers employees or
12 authorized agents may incur that arise out of, result from, are connected to, or are due to
13 the orders to relocate, or to the relocation of, any and all private utilities for the
14 PROJECT

Comment [g138]: City

16 7. DESIGN, PLAN REVIEW AND CHANGE MANAGEMENT

17
18 7.1 The PARTIES agree to work cooperatively with each other and shall make
19 reasonable, good faith efforts to timely and expeditiously complete PROJECT designs

Comment [RF139]: Joint

20
21 7.2 The STATE shall consult the CITY with regard to planning, design and
22 construction of the PROJECT

Comment [RF140]: Joint

23
24 7.3 This Agreement addresses the design and plan review process for SDOT, SCL,
25 and SPU and the process for issuance of the SDOT Street Use Permits; it does not
26 address plan review or permits issued by ~~other departments of the City~~ of Seattle

Comment [g141]: Fire Department -- separate agreement?

27
28 7.4 The PARTIES agree to prepare PROJECT designs and Plan Review Packages,
29 and Release for Construction Submittals pursuant to the provisions established in this
30 Agreement and the procedures defined in Exhibit B

Comment [RF142]: Joint

31
32 7.5 The PARTIES shall mutually prepare PROJECT schedules that afford the
33 PARTIES adequate plan review and comment resolution periods sufficient to promote
34 the quality of design consistent with the provisions of this Agreement

Comment [RF143]: Joint

35
36 7.6 The PARTIES shall conduct reviews of at all stages of design to ascertain that
37 CITY Infrastructure designs, and provisions for PROJECT construction within CITY
38 Street Right-of-Way comply with ~~City~~-CITY Standards

Comment [g144]: Joint

39
40 7.7 The STATE shall address all CITY plan review comments from each stage of
41 plan review to the PARTIES' mutual satisfaction and incorporate agreed comment
42 resolution into subsequent plan review submittals. [Salary: [1b]

Comment [RF145]: Joint

43 [1b]
44 [REDACTED]

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1
2 7.8 The PARTIES shall provide sufficient staff and resources for timely preparation
3 and review of the PROJECT designs.

Comment [RF146]: Joint

4
5 7.9 The CITY shall not give direction to the STATE's consultants or contractors
6 during the design collaboration and design review.

Comment [RF147]: Joint

7
8 7.10 Both Parties-PARTIES shall endeavor to identify and address issues as early as
9 possible during the design process.

Comment [RF148]: Joint

10
11 7.11 The STATE shall obtain the CITY's design approval for all City Infrastructure,
12 and for PROJECT work within City Street Right-of-Way prior to constructing such work.

Comment [RF149]: TBD

13
14 7.12 CITY Infrastructure designs and provisions for PROJECT construction shall
15 comply with City-CITY Standards.

Comment [RF150]: Joint

16
17 7.13 The PARTIES agree that design of CITY Infrastructure shall consider long-term
18 operation and maintenance costs and requirements, and minimize potential interruptions
19 and disruptions to CITY utility customers.

Comment [RF151]: Joint

20
21 7.14 The STATE shall obtain the CITY's approval prior to incorporating any
22 deviations from City-CITY Standards into the design or construction of all City-CITY
23 Infrastructure.

Comment [RF152]: Joint

24
25 7.15 The PARTIES agree that Approved Plans or Released for Construction Submittal
26 for each component of the PROJECT shall be stamped by an Engineer of Record
27 representing the PARTY preparing the Approved Plans pursuant to the requirements of
28 sState law.

Comment [RF153]: Joint - stamped or sealed?

29
30 7.16 The PARTIES shall first obtain the review and concurrence of the CITY prior to
31 making or implementing revisions or deviations from the Approved Plans for any such
32 revisions or deviations pertaining to the following:

Comment [RF154]: Joint

33
34 7.16.1 CITY Infrastructure.

35 7.16.2 PROJECT work that alters or impacts the configuration, condition or
36 use of CITY property including existing and proposed CITY roadway-streets and
37 utility facilities.

38 7.16.3 PROJECT work that alters access to existing and proposed CITY
39 roadways-streets and utility facilities.

40 7.16.4 PROJECT work that alters or impacts private property. IAES: [1b]

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41 [1b]
42 [REDACTED]
43 [REDACTED]

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44 7.16.5 PROJECT urban design as established in Section 8.

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1 | 7.16.6 The temporary or permanent use or operation of CITY Street Right-of-
2 | Way including ~~maintenane~~ of traffic control.

3 | 7.16.7 Mitigation measures established by the STATE's review and
4 | determination of PROJECT environmental impacts pursuant to sState and cCity
5 | environmental policy laws.

6 | 7.16.8 Private utilities within CITY Street Right-of-Wway.

7 | 7.16.9 ~~Private facilities within CITY Street Right-of-Wway.~~ **Salav, this is a**
8 | **broad premise. Can you narrow its application?**

Comment [RF155]: Joint

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9 |
10 | 7.17 The PARTIES acknowledge that the STATE may request the CITY to operate
11 | and maintain certain STATE-owned PROJECT facilities as may be established by
12 | separate agreement. The CITY shall, at the request of the STATE, review the design of
13 | such facilities to determine the compatibility of the design with the CITY's existing
14 | operational capabilities, standard practices, equipment and other resources required to
15 | operate and maintain such facilities.

Comment [RF156]: Joint

17 | 8. URBAN DESIGN

Comment [g157]: WSDOT

18 |
19 | 8.1 The STATE and CITY agree to work together to develop standards that will
20 | promote appropriate urban and architectural design of the PROJECT.

21 |
22 | 8.2 The STATE and CITY have prepared the Bored Tunnel Design Goals and
23 | Objectives which were submitted to the Seattle Design Commission on January 21, 2010
24 | and Guiding Principals which were submitted to the Seattle Design Commission March
25 | 18, 2010 and Building Design Principles which were submitted to the Seattle Design
26 | Commission on February 18, 2010.

27 |
28 | 8.3 The STATE has developed visual guidelines based on these Bored Tunnel Design
29 | Goals and Objectives and Guiding Principles. The visual guidelines include:

- 30 | • Functional transportation and development configurations,
- 31 | • Landscaping concepts,
- 32 | • Architectural and design concepts for walls, bridges and tunnel portals,
- 33 | • Highway appurtenances architectural concepts (ie barrier type, light standards,
34 | sign support types, sidewalk patterns, etc.), and
- 35 | • Trail and plaza architectural concepts.

36 | The visual guidelines were submitted to the Seattle Design Commission for review and
37 | comment. The final visual guidelines were approved by the Seattle Department of
38 | Transportation. The visual guidelines will be used as the basis for the PROJECT design.

39 |
40 | 8.4 The STATE has prepared Building Architectural Design Guidelines based on
41 | Building Design Principals. The Building Architectural Design Guidelines include:

- 42 | • Height and scale, and
- 43 | • Façade treatments, including those that may not fully conform with façade
44 | requirements generally applicable in the zones in which they are located.

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1 The Building Architectural Design Guidelines were submitted to the Seattle Design
2 Commission for review and comment. The Building Architectural Design Guidelines
3 were approved by the Seattle Department of Transportation. The Building Architectural
4 Design Guidelines will be used as the basis for the PROJECT design.

6 8.5 Conceptual designs that include building blocking, stacking, façade treatments,
7 façade materials and elevations shall be prepared in accordance with the Building
8 Architectural Design Guidelines and presented to the Seattle Design Commission (SDC)
9 in accordance with chapter 3.58.010 thru 3.59.080 of the Seattle Municipal Code.

Comment [sle158]: Include portal areas

Comment [sle159]: Design/builder will bring draft designs.

11 8.6 The STATE shall endeavor to develop designs that incorporate SDC
12 recommendations. The CITY shall verify the STATE's incorporation of SCD
13 recommendations through the CITY review processes set forth in Section 5 in this
14 agreement. [Salay: Section 5 is an incorrect section, please correct.]

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16 8.7 If SDOT and WSDOT-STATE cannot come to an agreement on an urban design
17 or architectural issue or the incorporation of a SCD comment, the issue shall be referred
18 to Disputes Resolution in Section 23 of this Agreement.

21 9. SCHEDULE

Comment [W160]: WSDOT

23 9.1 The PARTIES will work together to develop Project-PROJECT sSchedule(s) for
24 work associated with the PROJECT whether performed by the STATE or CITY.

Comment [W161]: Joint

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

Comment [RF162]: Joint

30 10. FUNDING AND COMPENSATION

32 10.1 The STATE shall provide necessary funding for all PROJECT costs defined by
33 this Agreement without reimbursement from the City of SeattleCITY, except for the City
34 of SeattleCITY's cost responsibilities established in this Agreement, in SCL Agreement
35 UT01474, and in SPU Agreement UT 01476. If for any reason PROJECT costs exceed
36 the sState funding limit established by RCW 47.01.402, the STATE shall have the sole
37 responsibility for obtaining any needed additional spending authority without recourse to
38 any funding device that burdens Seattle area taxpayers or property owners or the City of
39 Seattle.

Comment [RF163]: WSDOT

Comment [W164]: City

41 10.1.1 The STATE will reimburse SDOT for Project Services through the
42 process provided for in Agreement GCA 5739, entitled Project Services
43 Agreement for State Route 99 Alaskan Way Viaduct and Seawall Replacement
44 Program and SR 519/I-90 Intermodal Access Project – I/C Improvements

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1 (“Project Services Agreement”), and as amended by the PARTIES to modify the
2 process for the STATE’s reimbursement of the CITY and to extend the
3 duration of the Project Services Agreement. The the reimbursement terms for
4 Project Services contained within GCA 5739 are incorporated herein as if fully set
5 forth below. **Salav: please note the inclusion of these terms by reference. I**
6 **would suggest that you identify the GCA 5739 terms by section numbers so**
7 **that there is no confusion.**

Comment [W165]: City

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8
9 10.1.2 The categories of services to be provided by the CITY are: project
10 management, project controls and coordination, design review and consultation, permit
11 development and coordination, right of way services, and services to support construction
12 activities.

Comment [W166]: Joint

13 11. PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES

14
15
16 11.1 The STATE and the CITY agree that it is good public policy to utilize the
17 services of Disadvantaged Business Enterprises in the construction of public works
18 projects, to the fullest extent permitted by law.

Comment [RF167]: Joint

19
20 11.2 In furtherance of the foregoing public policy, the STATE agrees to include
21 Disadvantaged Business Enterprise (DBE) provisions in its construction contracts to the
22 extent required by federal law for the Projects PROJECT under this Agreement.

Comment [RF168]: Joint

23 12. MONITORING

24
25
26 12.1 The STATE will design and implement a comprehensive instrumentation and
27 monitoring program for open cut, cut-and-cover, and tunnel construction, and the develop
28 and action plan for mitigating impacts of Deformation.

Comment [g169]: Joint

29
30 12.2 The STATE will implement a Construction Monitoring Task Force
31 responsible for the planning and implementation of the instrumentation and
32 monitoring program and processing data, evaluating results, and developing
33 recommendations to mitigate Deformation. The Task Force has authority to direct rapid
34 and effective changes in construction to achieve Deformation mitigation.

Comment [g170]: Joint

35
36 12.3 The CITY will advise the STATE and participate in construction monitoring and
37 Deformation management activities when these activities pertain to CITY Infrastructure.
38 The CITY will provide the STATE all necessary access to CITY Infrastructure for the
39 purposes of design or implementation of Deformation mitigation measures. The CITY
40 may perform Deformation mitigation measures on behalf of the STATE in a manner and
41 schedule that supports the STATE’s project-PROJECT requirements.

Comment [g171]: Joint

42 13. MAINTENANCE OF TRAFFIC

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1 13.1 The PARTIES agree that it is the goal of this PROJECT to maintain local
2 motorized and non-motorized traffic in safe corridors through the project-PROJECT area
3 while minimizing impact to the existing street system. To achieve this goal, the
4 PARTIES shall formulate plans to maintain traffic flow during construction of the
5 PROJECT and shall comply with Approved Plans and conditions of the Street Use
6 Permit. [SALAY: [REDACTED] [1b]
7 [1b]
8
9

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Comment [RF172]: Joint

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10 13.2 The PARTIES agree to develop an outreach plan specifically focused on
11 maintenance-of-traffic issues. This outreach plan will elicit input from affected
12 stakeholders in the vicinity of the PROJECT. Affected stakeholders shall be determined
13 by the PARTIES. [SALAY: [REDACTED] [1b]
14

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Comment [RF173]: Joint

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15 13.3 The STATE agrees to create a Maintenance-of-Traffic (MOT) Task Force for the
16 PROGRAM. The CITY agrees to be an active member on the Task Force. [SALAY:
17 [REDACTED] [1b]
18

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Comment [RF174]: Joint

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19 13.4 The CITY agrees be a participant in all planning for haul routes, and all haul route
20 traffic shall be regulated pursuant to the Street Use Permit and the provisions of this
21 Agreement. Haul routes and times shall be approved by the CITY prior to the
22 commencement of hauling, and all haul routes shall be along arterial streets designated as
23 major truck streets and must comply with downtown traffic control zone restrictions as
24 defined by the Seattle Municipal Code and implementing regulations.
25

Comment [RF175]: Joint

26 14. CONSTRUCTION MANAGEMENT, INSPECTION AND CONTRACT 27 ADMINISTRATION

28
29 14.1 It is anticipated that the STATE will develop and issue multiple construction
30 contracts to fulfill its PROJECT responsibilities. The STATE's construction contracts
31 will be conducted in accordance with current Washington State Department of
32 Transportation contracting practices.
33

Comment [g176]: Joint

34 14.2 The STATE shall act as the sole authority in the administration of the STATE
35 construction contracts. The STATE shall allow the CITY to consult with and make
36 inquiries of the STATE Project Engineer or designee, attend meetings, and have access to
37 documentation concerning the PROJECT. The CITY shall not provide direction, directly
38 or indirectly, to the STATE's consultant(s) or contractors. Except in the instances listed
39 below, the CITY shall direct all communications to the STATE's Project Engineer or
40 designee, including communications regarding compliance with Street Use Permits,
41 quality of construction and contractor performance.
42

Comment [g177]: Joint

43 14.3 The STATE will manage any requests from the CITY that have contractual or
44 scope-of-work impacts and will coordinate responses. The CITY will communicate with

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1 STATE's consultants or contractors (1) where authorized to do so by the STATE's
2 Designated Representative; (2) to arrange for regulatory permitting and inspections made
3 pursuant to permits issued by the CITY other than the Street Use Permits, e.g. electrical
4 permits or other permits obtained from the CITY by the consultant or contractor; and (3)
5 for the Street Use Permits, if necessary because of a threat to health or safety.

Comment [g178]: Joint

7 14.4 The CITY will provide qualified staff and consultants during construction. CITY
8 staff and consultants will communicate with the STATE Project Engineer or designee in
9 evaluating the conformity of CITY Infrastructure with the Approved Plans or Release for
10 Construction Submittal and will immediately notify the Project Engineer or designee of
11 any compliance issues. Notwithstanding any act or omission by the CITY pursuant to
12 this subsection, the STATE shall not be relieved of any of its authority over, and
13 responsibility for, the PROJECT, as provided for in Section 13.2 of this Agreement or
14 elsewhere in this Agreement. **[Salav: Section 13.2 does not appear to be correct,
15 please fix]**

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Comment [g179]: Joint

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17 14.5 The PARTIES agree to follow the process and procedure set forth in the
18 *Construction Management and Inspection Procedures* attached as Exhibit B to facilitate
19 compliance with the STATE and CITY processes. Revisions to the Procedures do not
20 require additional approval beyond execution of this Agreement.

Comment [g180]: Process to address administrative changes to Exhibit will be dealt with in City ordinance.

21 15. FINAL INSPECTION AND PROJECT ACCEPTANCE

22 15.1 The PARTIES agree to follow the process and procedure set forth in the
23 *Construction Management and Inspection Procedures* attached as Exhibit B to facilitate
24 interim and final inspections and acceptance of CITY Infrastructure. Revisions to the
25 pProcedures do not require additional approval beyond execution of this Agreement.

Comment [g181]: Process to address administrative changes to Exhibit will be dealt with in City ordinance.

27 15.2 Following the satisfactory completion of the pre-final and final inspection
28 processes described in the *Construction Management and Inspection Procedures* attached
29 as Exhibit B, the CITY shall submit a written response notifying the STATE that CITY
30 Infrastructure has been constructed in accordance with the Approved Plans and Release
31 for Construction Submittal.

Comment [g182]: Joint

33 15.3 The CITY agrees, upon satisfactory completion of the PROJECT work
34 successfully placing City CITY Infrastructure into operation, transfer and acceptance of
35 any real property on or in which CITY Infrastructure is located, and receipt from the
36 STATE of one color set of the Red-Line Plans, pursuant to Section 165, to deliver a
37 Letter of Acceptance, subject to any Defective Work, Damage or contractor claims
38 caused by the negligent acts or omissions of the STATE.

Comment [g183]: Joint

40 15.4 The PARTIES will execute one Letter of Acceptance for each contract unless
41 both PARTIES agree to phase CITY Infrastructure acceptance by those geographic areas
42 or select portions of the PROJECT in which the STATE has completed all PROJECT

HIGHLIGHTED TEXT = Elevate to Leadership

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1 | work and has satisfied the requirements of Section 14.3. Roadway restoration will not be
2 | considered to be complete until all roadways are fully open to public vehicular and
3 | pedestrian use. **[Salay: Section 14.3 does not seem to be a correct reference, please**
4 | **fix.]**

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Comment [g184]: Joint

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6 | 15.5 In instances where portions of CITY Infrastructure must be placed into the
7 | CITY's use and operation prior to the execution of the Letter of Acceptance, and after the
8 | CITY has determined that these portions of CITY Infrastructure meet with the minimum
9 | inspection and testing requirements necessary for placing the CITY Infrastructure into
10 | use, the CITY will notify the STATE in writing that it is assuming responsibility for and
11 | cost of the interim use and operation of the CITY Infrastructure until the terms of Section
12 | 14.3 are satisfied and the PARTIES execute the Letter of Acceptance. **[Salay: Section**
13 | **14.3 does not seem to be a correct reference, please fix.]**

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Comment [g185]: Joint

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14 |
15 | **16. RED-LINES AND RECORD DRAWINGS**

16 |
17 | 16.1 The STATE shall maintain red lines in general conformance with WSDOT's
18 | *Construction Manual*, WSDOT manual M4-01. The STATE shall maintain one set of
19 | Approved Plans as the official contract drawings and provisions to which the STATE
20 | shall make drawings and notations in either red ink or red pencil to show the constructed
21 | configuration of all infrastructure that deviates from the design and contract requirements
22 | shown in the Approved Plans as typically recorded per STATE and City of Seattle
23 | standard practices. These documents shall be referred to as the Red-Line Plans.

Comment [RF186]: Joint

24 |
25 | 16.2 The Red-Line Plans shall be kept current throughout construction with accurate
26 | and comprehensive information detailing the constructed configuration of the
27 | infrastructure. The Red-Line Plans shall reflect the same level of detail as the Approved
28 | Plans, and shall provide the drawing accuracy necessary for public and private utility
29 | purveyors to locate their respective utilities in accordance with state law.

Comment [RF187]: Joint

30 |
31 | 16.3 Prior to placing infrastructure into service during the course of construction, the
32 | STATE shall provide the CITY with color photocopies of portions of the Red-Line Plans
33 | showing the constructed configuration of the infrastructure being placed into service.
34 | **[Salay: [REDACTED] (b)]**

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Comment [RF188]: Joint

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36 |
37 | 16.4 The PARTIES shall prepare Record Drawings for the work for which they are
38 | responsible under this Agreement with two full scale bond copies plus the digital files of
39 | the Record Drawings within six months after the PARTIES execute the Letter of
40 | Acceptance. The PARTIES shall prepare Record Drawings in general conformance with
41 | the standards of the facility owner.

Comment [RF189]: Joint

42 |
43 | 16.5 The Red-Line Plans and Record Drawings will be prepared as described in the
44 | *Construction Management and Inspection Procedures* attached as Exhibit B. Revisions

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1 to the pProcedures do not require additional approval beyond execution of this
2 Agreement | Salary: [1b]

3 [1b]
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Comment [g190]: Process to address administrative changes to Exhibit will be dealt with in City ordinance.

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6 **17. WARRANTIES**
7 **Warranty of Work**
8

9 17.1 The STATE warrants for a minimum period of twelve (12) months that all CITY
10 Infrastructure being accepted by the CITY for ownership, operation and maintenance: (1)
11 meet with the requirements of the Approved Plans; and all CITY-approved modifications
12 to the Approved Plans made during the course of construction; (2) are constructed in
13 accordance with CityCITY-issued permits; (3) are free of defects in material and
14 workmanship; and (4) are free of defects in design(s). The warranty of work shall apply
15 to any corrective work required to address non-conforming and Defective Work that is
16 discovered and communicated by the CITY to the STATE within the warranty period.
17 The STATE's warranty of work shall begin following the execution of the Letter of
18 Acceptance of CITY Infrastructure or as otherwise provided in the STATE's contract,
19 whichever occurs later.

Comment [RF191]: Joint

20
21 17.2 If within the warranty of work period, the CITY discovers and gives written
22 notice to the STATE of non-conforming or Defective Work in the accepted CITY
23 Infrastructure, the STATE shall promptly investigate the work the CITY believes is non-
24 conforming or defective. The STATE shall promptly remedy non-conforming or
25 Defective Work. Disagreements between the CITY and the STATE on what constitutes
26 non-conforming or Defective Work shall be resolved using the dispute resolution process
27 established in Section 232. The STATE shall diligently prosecute the corrective work
28 and shall procure materials using the fastest means available as necessary to minimize the
29 loss of use and operation of the accepted CITY Infrastructure. Corrective work shall be
30 completed within the time frame specified by the CITY and mutually agreed upon by the
31 STATE.

Comment [RF192]: Joint

32
33 17.3 If, during construction, the CITY encounters an emergency situation caused by
34 non-conforming or Defective Work, it must immediately notify the STATE. The STATE
35 will take immediate corrective action. If, after the warranty period begins, the CITY
36 encounters an emergency situation caused by non-conforming or Defective Work, it may
37 have to immediately correct it. Direct and indirect costs incurred by the CITY,
38 attributable to correcting an emergency situation associated with non-conforming or
39 Defective Work, shall be paid by the STATE to the CITY | Salary: [1b]

Comment [RF193]: Joint

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40 [1b]
41 [1b]
42 **Transfer of Title and Warranty of Title**
43

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1 17.4 All right and title to the CITY Infrastructure accepted by the CITY will be
2 transferred by the STATE to the CITY as of the date of the State's STATE's signature
3 acknowledging the CITY's Letter of Acceptance pursuant to the provisions of Section 6.
4 Neither the STATE nor its contractors shall hold a property right in any of the CITY
5 Infrastructure accepted by the CITY for ownership, including the materials and
6 equipment comprising the CITY Infrastructure. [Salay: Section 6 appears to be an
7 incorrect reference, please fix. [1b]

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Comment [RF194]: Joint

8 [REDACTED]
9 [REDACTED]

11 17.5 The STATE shall warrant good and merchantable title to all materials, supplies,
12 equipment and items installed or incorporated into the accepted CITY Infrastructure. The
13 STATE shall further warrant that all CITY Infrastructure transferred to, and accepted by,
14 the CITY is free from claims, liens and charges.

Comment [RF195]: Joint

16 **Manufacturers' Warranties**

17
18 17.6 The STATE shall provide the CITY all manufacturers' and suppliers' guarantees
19 and warranties furnished to the STATE's contractor as a customary trade practice in
20 connection with the contractor's purchase of any equipment, materials, or items
21 incorporated into the CITY Infrastructure. The STATE shall further warrant that it has
22 the right to transfer such warranties and guarantees furnished to the STATE through its
23 construction contract to the CITY and that such transfer shall not adversely affect such
24 warranties and guarantees. These guarantees and warranties shall not relieve the STATE
25 from its obligations under Warranty of Work.

Comment [RF196]: Joint

27 **Warranty Inspections**

28
29 17.7 During the warranty period, the CITY shall have the right to inspect the accepted
30 CITY Infrastructure for non-conforming and Defective Work, and will promptly report
31 any such work to the STATE for remedy through corrective work. The CITY shall bear
32 the cost of these inspections.

Comment [RF197]: Joint

34 **18. PUBLIC OUTREACH**

35
36 18.1 The STATE agrees to lead and manage the public outreach effort for the
37 PROJECT. In recognition of the CITY's experience in working with the Seattle
38 community, the STATE will solicit CITY input and work with the CITY in all public
39 outreach activities. The STATE will not publicly distribute outreach information,
40 planning materials and documents without first obtaining the CITY's review. However,
41 the STATE shall be free to comply with any public records requests received under
42 chapter 42.56 RCW for such materials; provided that, prior to releasing any sensitive or
43 confidential material, the STATE shall first provide written notice to the CITY in
44 accordance with Section 27 of this Agreement and provisions in the [SCL Agreement,

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1 | UT 0174 and the SPU Agreement, UT 0176.] **[Salav: You have referenced two**
2 | **additional agreement, but it is unclear as to whether you are attempting to**
3 | **incorporate any of those terms into this agreement. The references that you have**
4 | **made as to how these prior agreements are to be utilized. If you want specific terms**
5 | **incorporated, please do so and add the language that I provided in section 10.1.1]**

Comment [RF198]: Joint

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7 | **19. RISK ALLOCATION AND INDEMNIFICATION**

8 |
9 | 19.1 Limits of Liability

10 |
11 | 19.1.1 No CITY Liability for Assistance, Inspection, Review, or Approvals. The
12 | review or approval of any of the STATE's PROJECT plans or specifications, or the
13 | inspection of the STATE's work, or any assistance provided to the STATE by the CITY
14 | is for the CITY's sole benefit and shall not constitute an opinion or representation by the
15 | CITY as to any compliance with any law, ordinance, rule, or regulation or any adequacy
16 | for other than the CITY's own purposes; and such assistance, inspection, review or
17 | approval shall not create or form the basis of any liability on the part of the CITY or any
18 | of its officials, officers, employees, or authorized agents for any injury, damage, or other
19 | liability resulting from, or relating to, any inadequacy, error, or omission therein or any
20 | failure to comply with applicable law, ordinance, rule, or regulation; and such assistance,
21 | inspection, review, or approval shall not relieve the STATE of any of its obligations
22 | under this Agreement, the SCL Agreement, UT 01474, and the SPU Agreement, UT
23 | 01476 Agreement or under applicable law. **[Salav: [b]**

Comment [g199]: Joint

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24 | [b]
25 |
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27 |
28 | 19.1.2 No CITY Liability for Delay, Consequential, or Liquidated Damages. The
29 | CITY shall not be liable in damages for any failure to act within any time limits
30 | established by law or for any other delay in issuing permits, other approvals, or
31 | concurrences to the STATE or the STATE's contractors, nor shall the CITY have any
32 | liability for consequential or liquidated damages, and, to the maximum extent allowed by
33 | law, the STATE shall protect, defend, indemnify, and save harmless the CITY, and its
34 | officials, officers, employees, and authorized agents, from any and all costs, claims,
35 | demands, judgments, damages, or liability of any kind caused by, resulting from, relating
36 | to, or connected to delays in issuing permits, other approvals, or concurrences. **[Salav, I**

Comment [g200]: Joint

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37 | [b]
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41 | 19.1.3 No CITY Liability for Third Party Claims of Diminution in Value of
42 | Property. The CITY shall not be liable in damages for any third party claims alleging

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1 diminution in value of property, including, but not limited to, claims of elimination or
2 impairment of rights to light and air and quiet enjoyment, or alleging a taking of property
3 rights, nor shall the CITY have any liability for related consequential or liquidated
4 damages, and, to the maximum extent allowed by law, the STATE shall protect, defend,
5 indemnify, and save harmless the CITY, and its officials, officers, employees, and
6 authorized agents, from any and all costs, claims, demands, judgments, damages, or
7 liability of any kind caused by, resulting from, relating to, or connected to the third party
8 claims of diminution in value of property arising out of the PROJECT.

Comment [g201]: Joint

9 19.1.4 STATE Contractor's Bonds. The STATE shall require its construction
10 contractors to provide performance bonds to the STATE and to maintain those bonds at
11 all times pertinent to the respective contractor's obligations under its contracts. The
12 penal sums of those bonds shall be for one hundred percent (100%) of the total contract
13 price, including change orders and other modifications. Such bonds shall be executed by
14 an approved surety that is registered with the Washington State Insurance
15 Commissioner, and that appears on the current Authorized Insurance List in the State of
16 Washington published by the Office of the Insurance Commissioner, and that shall be
17 conditioned upon the faithful performance of the contract by the contractor, and that shall
18 include the City-CITY as an additional named obligee. The STATE shall ensure faithful
19 completion of the PROJECT by use of the STATE's contractor bonds or other means,
20 and in the event of any claim for payment is presented to the CITY for any PROJECT
21 work, the STATE upon timely notice and investigation, resulting in STATE
22 responsibility under this Agreement, the SCL Agreement, UT01474, and the SPU
23 Agreement, UT 01476 shall promptly pay such claim. [Salav: [1b]

Comment [g202]: City

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24 [REDACTED]
25 19.2 General Indemnification.

26 1920.2.1 Indemnity. To the extent permitted by law, the STATE shall
27 protect, defend, indemnify, and save harmless the City of Seattle and its officers,
28 officials, employees, and authorized agents, while acting within the scope of their
29 employment, from any and all costs, claims, demands, judgments, damages, or liability of
30 any kind, including injuries to persons or damages to property, that arise out of, or in any
31 way result from, or are connected to, or are due to any acts or omissions, or intentional
32 misconduct, of the STATE or the STATE's contractors, consultants, or authorized agents
33 including any and all claims and litigation arising out of, or resulting from, any state or
34 federal environmental review process in any way relating to the PROJECT, and including
35 any private utility relocations required for the STATE's PROJECT work. The STATE's
36 obligations under this paragraph also extend to claims asserted by third PARTIES against
37 the City of Seattle arising out of, or in any way resulting from, any state or federal
38 environmental review process in any way related to the PROJECT or the PROGRAM,
39 and all of the foregoing protection, defense, indemnity and hold harmless obligations
40 shall extend to claims asserted by sState agencies other than the Washington State
41 Department of Transportation. [1b]

Comment [g203]: [REDACTED]

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[Salav: [1b]

Comment [g204]: Joint

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

indemnification [Salav: [1b]
[1b]

Comment [g205]: Joint

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19.2.2 Indemnity. To the extent permitted by law, the City of Seattle shall protect, defend, indemnify, and save harmless the STATE and its officers, officials, employees, and authorized agents, while acting within the scope of their employment, from any and all costs, claims, demands, judgments, damages, or liability of any kind, including injuries to persons or damages to property, that arise out of, or in any way

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

Comment [g206]: Joint

16 19.2.3 Title 51 RCW. Solely with respect to claims for indemnification under this
17 Agreement, including environmental indemnification, the STATE and the City of Seattle
18 waive, as to each other only, and expressly not for the benefit of their employees or third
19 PARTIES, their immunity under Title 51 RCW, the Industrial Insurance Act, and
20 acknowledge that this waiver has been mutually negotiated by the PARTIES. The
21 STATE and the City of Seattle agree that their respective indemnity obligations extend to
22 any claim, demand, or cause of action brought by, or on behalf of, any of their respective
23 employees or authorized agents. The STATE agrees that in the event that any employee
24 or authorized agent of the STATE’s contractors, subcontractors, consultants, or
25 authorized agents asserts a claim against the City of Seattle, the STATE waives any right
26 it may have to assert its Title 51 immunity as a defense against a City of Seattle claim to
27 the STATE that otherwise would be covered by the STATE’s indemnity obligations to
28 the City of Seattle. [Salav: [1b]

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Comment [g207]: Joint

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33 19.2.4 Survival of Indemnification and Waiver Obligations. Any liability of the
34 STATE or the City of Seattle arising under any indemnity or waiver provision of
35 this Agreement shall survive termination of this Agreement, whether or not any claim
36 giving rise to such liability shall have accrued.

Comment [g208]: Joint

37 **20. INSURANCE**

38
39 20.1 The STATE shall require in writing that the STATE’s contractors, and each of
40 their sub-contractors of any tier where not covered by contractor provided insurance,
41 include “The City of Seattle” as an additional insured for primary and non-contributory
42 limits of liability for Commercial General Liability, Commercial Automobile Liability

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1 and (if required) Contractor's Pollution Liability as established in the construction
2 contract documents, including Products and Completed Operations coverage following
3 the completion of each PROJECT stage. STATE standard insurance specification
4 paragraph 1-07.18 (Public Liability and Property Damage Insurance) applicable to the
5 construction contract documents protecting both the STATE and the CITY for the
6 PROJECT shall be amended for coverages, minimum limits of liability and/or terms and
7 conditions as may be mutually agreed upon by the STATE and the CITY. [Salary: [1b]

Comment [RF209]: Joint

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8 [1b]
9
10 20.2 The STATE's contractors and subcontractors of any tier shall cause certification
11 of insurance meeting the requirements herein to be issued to "The City of Seattle, Risk
12 Management Division, P.O. Box 94669, Seattle, WA 98124-4669." Such certification
13 shall not be mailed, but shall be delivered electronically to fax number (206) 470-1279 or
14 as an e-mail attachment in PDF format to riskmanagement@seattle.gov.

Comment [RF210]: Joint

16 21. THIRD PARTY BENEFICIARY

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

Comment [g211]: Joint

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

Comment [g212]: City

38 22. LIENS

39
40 22.1 In the event that any City of Seattle CITY-owned property interest becomes
41 subject to any claims for mechanics', artisans' or materialmen's liens, or other
42 encumbrances chargeable to, or through, the STATE that the STATE does not contest in
43 good faith, the STATE shall cause such lien, claim, or encumbrance to be discharged or
44 released of record (by payment, posting of bond, court deposit, or other appropriate

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1 | means), without cost to the City of Seattle CITY, and shall indemnify the City of
2 | Seattle CITY against all costs and expenses (including attorneys' fees) incurred in
3 | discharging and releasing such claim, lien, or encumbrance prior to completion of the
4 | PROJECT.

Comment [g213]: Joint

5 |
6 | **23. DISPUTE RESOLUTION**

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

Comment [RF214]: Joint

14 |
15 | 23.2 Notice. A Party's PARTY's Designated Representative, as defined in Section 256
16 | below, shall notify the other Party's PARTY's Designated Representative in writing of
17 | any problem or dispute that a Party PARTY believes needs resolution. The written notice
18 | shall include (a) a description of the issue to be resolved; (b) a description of the
19 | differences between the PARTIES on the issue; and (c) a summary of any steps taken to
20 | resolve the issue.

Comment [RF215]: Joint

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

Comment [RF216]: Joint

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

Comment [RF217]: Joint

36 |
37 | 23.5 Second Level Meeting. Upon receiving a written request that the dispute be
38 | elevated to the next level, a meeting shall be held within ten (10) Business Days between
39 | the STATE Project Director of WSDOT and the appropriate City CITY Designated
40 | Representative(s) to resolve the dispute. Any resolution of the dispute requires the
41 | agreement of all Representatives attending the meeting or who requested to attend the
42 | meeting.

Comment [RF218]: Joint

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1 23.6 Notice of Third Level Meeting. If the PARTIES have not resolved the dispute
2 within five (5) Business Days after the Second Level Meeting, at any time thereafter
3 either Party-PARTY may request that the dispute be elevated to the next level by
4 notifying the other Party's-PARTY's Designated Representative in writing, requesting
5 that the dispute be raised to the Third Level Meeting. The written notification shall
6 include a) a description of the remaining issues to be resolved; b) a description of the
7 differences between the PARTIES on the issues, c) a summary of the steps already taken
8 to resolve the issue, and d) the resolution of any issues that were initially involved in the
9 dispute.

Comment [RF219]: Joint

11 23.7 Third Level Meeting. Elevate to the Executive Committee. **[Salav: Executive
12 Committee is not defined in this agreement, do you want to define it here?]**

Comment [RF220]: Joint

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14 23.8 Court of Law. If the PARTIES have not resolved the dispute within five (5)
15 Business Days after the third level meeting, at any time thereafter either Party-PARTY
16 may seek relief under this Agreement in a court of law. The PARTIES agree that they
17 have no right to relief in a court of law until they have completed the dispute resolution
18 process outlined in this Section.

Comment [RF221]: Joint

20 23.9 A Party's-PARTY's request to utilize this Dispute Resolution Process is not
21 evidence that either Party-PARTY is in breach of this Agreement, and does not relieve
22 any Party-PARTY from complying with its obligations under this Agreement.

24. REMEDIES; ENFORCEMENT

26 24.1 Subject to the Dispute Resolution provisions in Section 24.23, the City of
27 SeattleCITY and the STATE shall have, in addition to any remedies available at law or
28 equity, the right to demand specific performance of this Agreement, the SCL Agreement,
29 01474, and the SPU Agreement, UT 01476. **[Salav: [1b]**

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Comment [RF222]: Joint

[1b]

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25. NOTICE AND DESIGNATED REPRESENTATIVES

36 25.1 The Designated Representatives for each Party-PARTY are as follows: **Any
37 notice required or permitted to be given pursuant to this Agreement shall be in writing
38 and shall be sent postage prepaid by U.S. Mail to the Designated Representatives.**

40 [STATE];

Comment [RF223]: Joint

41 Program Administrator
42 Alaskan Way Viaduct & Seawall Replacement Program
43 Washington State Department of Transportation
44 999 3rd Avenue, Suite 2424

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GREEN HIGHLIGHT = Staff to resolve

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1 Seattle, WA 98104
2
3 CITY:
4 SDOT Deputy Director
5 Seattle Department of Transportation
6 P.O. Box 34996
7 700 Fifth Avenue, Suite 3800
8 Seattle, WA 98124-4996
9

Comment [RF224]: Joint

10 **26. EFFECTIVENESS AND DURATION**

11
12 26.1 This Agreement shall be effective as of the date the last Party-PARTY signs and,
13 unless sooner terminated pursuant to the terms hereof, shall remain in effect until final
14 completion of all PARTIES' obligations contained or referred to in this Agreement, the
15 SCL Agreement, UT 01474, and the SPU Agreement, UT 01476.
16

Comment [RF225]: Joint

17 **27. NOTICE**

18
19 27.1 Except for the Dispute Resolution Process in Section 231-above, for which notice
20 shall be given to the officials listed in Section 231, all notices, demands, requests,
21 consents and approvals that may or are required to be given by either Party-PARTY to the
22 other Party-PARTY shall be in writing and shall be deemed to have been duly given (i)
23 upon actual receipt or refusal to accept delivery if delivered personally to the Designated
24 Representative, (ii) upon actual receipt or refusal to accept delivery if sent by a nationally
25 recognized overnight delivery service to the Designated Representative, or (iii) upon
26 actual receipt if electronically transmitted to the Designated Representative with
27 confirmation sent by another method specified in this Section. Notice of a change of
28 Designated Representative or the address for the Designated Representative shall be
29 given as provided in this Section.
30

Comment [RF226]: Joint

31 **28. TERMINATION AND SUSPENSION**

32
33 28.1 This Agreement may be terminated by either Party-PARTY upon sixty (60)
34 calendar days written notice. Said notice shall set forth the reasons for termination,
35 including reasons of convenience, and the effective date of termination. [Salary: [1b]

Comment [RF227]: Joint

36 [Redacted block]

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37
38 28.2 Termination of this Agreement, the SCL Agreement, UT 01474, or the SPU
39 Agreement, UT 01476 shall not relieve the PARTIES of any obligations that are required
40 to be performed prior to the date of termination, nor shall it relieve the PARTIES of any
41 obligations that are intended to survive termination of this Agreement, the SCL
42
43

HIGHLIGHTED TEXT = Elevate to Leadership

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1 Agreement, UT 01474, or the SPU Agreement, UT 01476. Further, the PARTIES agree
2 that, in the event the STATE exercises its right to terminate pursuant to this Section after
3 construction of the PROJECT begins, **or if the STATE suspends the work or materially**
4 **delays the work** then the STATE, at its cost and expense, shall modify the PROJECT, in
5 consultation with the CITY, to provide for the restoration, continued service, operation,
6 and maintenance of existing infrastructure, PROJECT infrastructure, CITY Street right-
7 of-way, or any other CITY property or facility, and the STATE shall ensure that the
8 modified PROJECT is completed. The STATE shall also ensure that all SPU and SCL
9 utility services can continue to be provided by SPU and SCL either in substantially the
10 same manner as occurred prior to the initiation of work, or in the manner intended by the
11 proposed work, unless otherwise agreed to by the affected utility.

Comment [RF228]: City

Comment [RF229]: City

29. CONFIDENTIALITY OF INFORMATION AND RECORDS

15 29.1 It is understood that certain information about the infrastructure is deemed by the
16 CITY to be sensitive and may be confidential under state or federal law. The STATE
17 agrees that all documents and information collected from field activities known to include
18 confidential information will be maintained in a locked file at the project office and
19 access will be controlled by its consultants. Furthermore, confidential information will
20 only be provided to the selected contractor in conformed documents following contract
21 award if such information is considered necessary for construction. The CITY will
22 provide clear written guidelines that specifically define the information that is deemed
23 sensitive and/or confidential.

Comment [RF230]: Joint

25 29.2 Should any of those confidential or sensitive documents become the subject of a
26 request for public disclosure under chapter 42.56 RCW, the STATE shall use its best
27 efforts to immediately notify the CITY of such request and the date by which the STATE
28 anticipates responding, which date shall in no event be less than fifteen (15) calendar
29 days after STATE's first notice of the disclosure request to the CITY. The CITY must
30 then within a reasonable time of receipt of said notice in writing to the STATE (a)
31 specifically identify each record, or part thereof, and (b) fully explain why such
32 records(s) are exempt from disclosure under chapter 42.56 RCW or any other law so that
33 the STATE may respond to the records requester. The STATE shall withhold or redact
34 those public records which the CITY reasonably claims are exempt from disclosure based
35 upon the CITY's information. The CITY at its sole expense may seek a judicial
36 declaration or injunction with respect to the public records request. The CITY further
37 agrees that it will, at its sole expense, defend the non-disclosure of that information it
38 claims is exempt from disclosure and indemnify the STATE for any and all penalties
39 assessed and costs that the STATE incurs, if any.

Comment [RF231]: Joint

41 29.3 The provisions of this Section shall survive the termination of this Agreement.

43 30. GENERAL PROVISIONS

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1 30.1 This Agreement shall be effective independently from any and all permits that
2 may be issued by the CITY.

Comment [RF232]: Joint

3 30.2 Each PARTIES PARTY shall ensure that its employees, agents, and contractors
4 comply with the obligations of this Agreement.

Comment [RF233]: Joint

5 30.3 The PARTIES shall not be deemed to be in default under this Agreement if
6 performance is rendered impossible by war, riots, or civil disturbances, or by floods or
7 other natural catastrophes beyond the PARTIES' control; the unforeseeable unavailability
8 of labor or materials; or labor stoppages or slowdowns or power outages exceeding back-
9 up power supplies. This Agreement shall not be terminated or the PARTIES penalized
10 for such noncompliance, provided that each Party PARTY takes immediate and diligent
11 steps to bring itself back into compliance and to comply as soon as practicable under the
12 circumstances without unduly endangering the health, safety, or integrity of the Party's
13 PARTY's employees or property, or the health, safety, or integrity of the public, street
14 rights-of-way, public property, or private property.

Comment [RF234]: Joint

15 30.4 This Agreement, including the definition of the PROJECT as more particularly
16 described in the Project Description attached as Exhibit A, may be amended only by a
17 written instrument, duly authorized by the CITY and the STATE, and executed by their
18 duly authorized representatives.

Comment [RF235]: Joint

19 30.5 No failure to exercise, and no delay in exercising, on the part of either Party
20 PARTY hereto, any rights, powers, or privileges hereunder shall operate as a waiver
21 thereof, except as expressly provided herein.

Comment [RF236]: Joint

22 30.6 This Agreement, together with the GCA 6366, the SCL Agreement No. [UT 01474
23 and the SPU Agreement No., UT 01476], with the attached Exhibits and the documents,
24 terms and provisions incorporated in any of the foregoing, constitute the entire
25 Agreement of the PARTIES with respect to the PROJECT, and supersede any and all
26 prior negotiations and understandings with respect hereto.

Comment [RF237]: Joint

27 30.7 Section and subsection headings are intended as information only, and shall not
28 be construed with the substance of the section or subsection they caption.

Comment [RF238]: Joint

29 30.8 All exhibits or other attachments are by this reference hereby incorporated into
30 this Agreement, including Agreements UT 01474 and UT 01476.

Comment [RF239]: Joint

31 30.9 This Agreement may be executed in counterparts, each of which shall be deemed
32 an original, and all counterparts together shall constitute but one and the same instrument.

Comment [RF240]: Joint

33 30.10 The [REDACTED] acknowledge the right of the other to exercise its police power
34 pursuant to general law and applicable statutes for the protection of the health, safety, and
35 welfare of its citizens and their properties. Nothing in this Agreement shall be construed
36 as waiving the [REDACTED] rights to exercise its police power or to preclude

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1 exercising such regulatory power in connection with this PROJECT. [Salary: [1b]
2 [1b]
3
4
5

Comment [g241]: Confirm change with attys.

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6 30.11 This Agreement shall be interpreted, construed, and enforced in accordance with
7 the laws of the State of Washington. The venue for any action under this Agreement
8 shall be in the Superior Court for King County, [Washington].
9

Comment [RF242]: Joint

10 **31. RECORDS RETENTION AND AUDIT**
11 THIS SECTION TO BE PREPARED BY Karen.

12
13
14
15 IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement as of the
16 last date written below.

17
18 CITY OF SEATTLE
19
20
21
22
23 By _____
24 Peter E. Hahn
25 Director of Transportation
26 City of Seattle

WASHINGTON STATE
DEPARTMENT OF
TRANSPORTATION
By _____
Ronald J. Paananen
Program Administrator
Alaskan Way Viaduct and Seawall
Replacement Program

27
28
29 Date: _____

Date: _____

30
31
32 APPROVED AS TO FORM:

33
34 By _____
35 Elizabeth M. Lagerberg
36 Assistant Attorney General

37
38 Date: _____
39
40
41
42

Salay, Ann (ATG)

From: Galvin, Daniel (ATG)
Sent: Thursday, May 13, 2010 7:17 AM
To: Lagerberg, Elizabeth (ATG); Salay, Ann (ATG)
Subject: FW: Revised UTILITY MOA draft
Attachments: Bored_Tunnel_Utility_MOA-LED GP comments to State.docx

I just got this from Theresa

Daniel W. Galvin, P.E.
Assistant Attorney General
Transportation and Public Construction Division
7141 Cleanwater Drive SW
PO Box 40113
Olympia, WA 98504-0113

Phone(360)753-1626
Fax (360)586-6847
Blackberry (360) 584-4329

Please Print Only When Necessary.

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From: Greco, Theresa [mailto:GrecoT@wsdot.wa.gov]
Sent: Wednesday, May 12, 2010 6:29 PM
To: Galvin, Daniel (ATG)
Subject: Fw: Revised UTILITY MOA draft

Just received.

From: Patterson, Gavin <Gavin.Patterson@seattle.gov>
To: McIntosh, Hannah <Hannah.McIntosh@seattle.gov>; Coordination,AWVUtilities <AWVUtilities.Coordination@seattle.gov>; Kling, Joyce; Hathaway, Ross <Ross.Hathaway@seattle.gov>; Rian, Jodi <Jodi.Rian@seattle.gov>; Smith, Suzanne <Suzanne.Smith@seattle.gov>; Smith, Dave <Dave.Smith@seattle.gov>; Groh,John <John.Groh@seattle.gov>; Deboldt, Linda <Linda.Deboldt@seattle.gov>; Kelly, Liz <Liz.Kelly@seattle.gov>; Conte, Rick (Consultant); Greco, Theresa
Cc: Marquardt, Carl <Carl.Marquardt@seattle.gov>; DuComb, Darby <Darby.DuComb@seattle.gov>; Chandler, Bob (Seattle.Gov); Boler, Jean <Jean.Boler@seattle.gov>; Madden, Charlie <Charlie.Madden@seattle.gov>
Sent: Wed May 12 17:14:37 2010
Subject: Revised UTILITY MOA draft

Attached is the draft Utility MOA. As indicated yesterday, there are still some issues we are trying to resolve internally. Theresa and Rick, please distribute at the State.
Thanks,

Gavin

*** eSafel scanned this email for malicious content ***

*** IMPORTANT: Do not open attachments from unrecognized senders ***

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MEMORANDUM OF AGREEMENT

UT 01474/ UT 01476
SR 99 ALASKAN WAY VIADUCT REPLACEMENT
BORED TUNNEL PROJECT
UTILITY FACILITIES WORK

Comment [SL1]: To be changed to SPU or SCL
in each agreement

THIS Memorandum of Agreement, UT 01474/ 01476, SR 99 Alaskan Way Viaduct Replacement, Bored Tunnel, UTILITY Facilities Work (“UTILITY Bored Tunnel Agreement”) is made and entered into between the State of Washington Department of Transportation, hereinafter the “STATE,” and the City of Seattle, hereinafter the CITY, (managed by Seattle City Light/Seattle Public Utilities, hereinafter “UTILITY”), collectively the “Parties” and individually the “Party.”

Comment [SL2]: To be changed to SPU or SCL

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

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

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

WHEREAS, the January 2009 letter of agreement between the parties affirmed that the State would be responsible for the bored tunnel project, and that “the allocation of specific project responsibility to each jurisdiction carries with it the responsibility for project management, environmental work, design, construction, and project cost overruns”; and

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

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1
2 | WHEREAS, the AWVSR Program (PROGRAM)-consists of a four-lane bored tunnel and
3 improvements to City streets, the City waterfront, and transit; and the Moving Forward Projects;
4 and
5
6 | WHEREAS, the Proposed Bored Tunnel Project (PROJECT), the subject of this Agreement, is
7 the part of the PROGRAM that replaces SR 99 from South Royal Brougham Street to Mereer
8 Roy Street that consists of designing and constructing a four-lane bored tunnel from South King
9 Street to Thomas Street, north and south tunnel portals and access streets; re-establishment of the
10 City street grid in the vicinity of the portals (Battery Street Tunnel decommissioning and
11 Alaskan Way Viaduct demolition will be addressed in a future agreement); and associated utility
12 relocations; and
13
14 | WHEREAS, the Washington State Legislature passed Engrossed Substitute Senate Bill 5768 and
15 the Governor signed the bill into law designating and funding a Bored Tunnel Program as the
16 replacement for the Alaskan Way Viaduct; and
17
18 | WHEREAS, in January 2009, the Governor, the King County Executive and the Mayor of
19 Seattle recommended replacement of the existing AWV structure in the central waterfront area
20 with a bored tunnel; and
21
22 | ~~WHEREAS, RCW 47.01.402, which became law July 1, 2009, provides that State funding for~~
23 ~~the PROJECT is not to exceed two billion eight hundred million dollars (\$2,800,000,000.00) of~~
24 ~~which no more four hundred million shall be from tolls, and~~
25
26 | ~~WHEREAS, RCW 47.01.402(6)(b) provides that any costs in excess of two billion eight hundred~~
27 ~~million dollars (\$2,800,000,000.00) shall be borne by property owners in the Seattle area who~~
28 ~~benefit from replacement of the existing viaduct with the deep bore tunnel, and~~
29
30 | ~~WHEREAS, the CITY and STATE agree to work collaboratively toward the successful jointly~~
31 ~~pursue the implementation and completion of the PROJECT and endeavor to open the tunnel by~~
32 ~~the end of 2015 and demolish the Alaska Way viaduct in 2016; and~~
33
34 | WHEREAS, the PROJECT is consistent with the CITY of Seattle's adopted Comprehensive
35 Plan; and
36
37 | ~~WHEREAS, review of the PROJECT pursuant to the State and City environmental policy laws~~
38 ~~is currently underway and the parties recognize that changes in the alternative chosen would~~
39 ~~require a new agreement, and~~
40
41 | WHEREAS, the CITY and the STATE will deliver the PROJECT within the financial
42 commitments made in the Memorandum of Agreement, GCA 6366, executed by the PARTIES
43 on October 24, 2009; and

Comment [SLS3]: These recitals and the other yellow one below re: environmental policy laws don't belong in the Utility agreements.

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1
2 | WHEREAS, concurrently with this GCA-6486/UT 01476 Agreement, the STATE and CITY,
3 through Seattle City Light (SCL), are entering into an agreement, UT 01474; and
4
5 | WHEREAS, concurrently with this GCA-6486/UT 01474 Agreement, the STATE and CITY,
6 through its Seattle Public Utilities Department (SPU), are entering into an agreement, UT 01476;
7 and
8
9 | WHEREAS, concurrently with this UTILITY Bored Tunnel UT 01474/UT 01476 Agreement, the
10 STATE and CITY, through the Seattle Department of Transportation, are entering into an
11 agreement, GCA 6486; and
12
13 | WHEREAS, the PROJECT will in some instances require the use of existing CITY Street Right-
14 of-Way; and
15
16 | WHEREAS, the CITY will own and/or maintain significant infrastructure to be constructed as
17 part of the PROJECT; and
18
19 | WHEREAS, some portion of SR 99 is within the PROJECT and is a city street serving as part of
20 a State Highway under RCW 47.24.010; and
21
22 | WHEREAS, the Parties wish to establish protocols and procedures for property acquisition,
23 environmental remediation, design review, permitting, and construction coordination to govern
24 their relationship during the course of the PROJECT.
25
26 | WHEREAS, some or all of the work covered by this Agreement may be accomplished by
27 executed "Task Order" documents.
28
29 | WHEREAS, concurrently with this UTILITY Bored Tunnel Agreement, the STATE and CITY,
30 through the Seattle Department of Transportation, are entering into an agreement, GCA-6486;
31 and
32
33 | WHEREAS, the PROJECT will require the removal of existing City electrical, water, drainage
34 and wastewater facilities that directly conflict with the tunnel portals and tunnel portal
35 excavations ("Conflicting Facilities"), and the construction of new facilities and service
36 connections, (excluding temporary construction and permanent electrical services for the
37 PROJECT) to a permanent and one final location to replace the conflicting facilities (together,
38 the "Relocation Work"); and
39
40 | WHEREAS, the PROJECT will also require the planning, operational and construction
41 management practices, monitoring and other work to avoid and/or remedy damage
42 ("Deformation Mitigation Work"); and
43

Comment [SLS4]: Remember to delete either this recital or the next one, depending on which Agreement

Comment [SLS5]: In response to Rick (comment below), we confirmed that the definitions here are now consistent with those in Section 1. We also deleted the "one" per Rick's comment. We do think this should be included as a recital, because it explains what this agreement is about (just like the recitals regarding street use, etc., which we have suggested deleting here, make sense as recitals in the SDOT MOA). And the next recital which we added completes the story of what this agreement is about.

Comment [rlc6]: Not sure these should be recitals. Need to edited to be consistent with accepted terminology Also reflects the "one relocation" position of City. Needs Management decision on "one relocation"

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1 WHEREAS, together the Relocation Work and the UTILITY Facilities Deformation Mitigation
2 Work will comprise the "UTILITY Facilities Work" of the PROJECT; and
3

4 ~~NOW, THEREFORE, pursuant to RCW 47.29.140 and RCW 47.91.401 and in consideration of~~
5 ~~the terms, conditions, covenants, and performances contained herein, or attached and~~
6 ~~incorporated and made a part hereof;~~
7

8 NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performances
9 contained herein, or attached and incorporated and made a part hereof;
10

11 IT IS MUTUALLY AGREED AS FOLLOWS:
12

13 **1. DEFINITIONS**
14

15 Words not otherwise defined, which have well-known technical or construction industry
16 meanings, are used in accordance with such recognized meanings.
17

18 1.1 Approved Plans means the construction plans and provisions that evidence the CITY's
19 determination, through the processes described in Section 6 and 75 and Exhibit B of the SDOT is
20 Agreement GCA 6366, that the plans including ~~Released for Construction Submittal Plans for~~
21 ~~Design-Build contracts conform to the Street Use Code and other requirements, and that plan~~
22 ~~review comments are resolved to both Parties' satisfaction conform to the criteria in Sections 6~~
23 ~~and 7 and Exhibit B of the SDOT Agreement GCA 6366; Approved Plans are included in the~~
24 contract documents evidencing the agreement between the STATE and its contractors for
25 construction of a given element of the PROJECT.
26

27 1.2 AWV means the Alaskan Way Viaduct structure on State Route 99, currently a non-
28 limited-access highway over a portion of CITY Street Right-of-Way and located partially in the
29 City of Seattle.
30

31 1.3 Betterment means any upgrading of the UTILITY Facilities, or the design and
32 construction of any new UTILITY Facilities that is not attributable to the PROJECT or
33 PROGRAM and is made solely for the benefit of and at the election of UTILITY. Examples of
34 work that will not constitute a Betterment, so that UTILITY shall not bear cost responsibility,
35 are:

36 1.3.1 If existing devices or materials are no longer regularly manufactured or cannot be
37 obtained in time to meet the PROJECT schedule, needs or requests by the STATE, then devices
38 or materials of equivalent standards although not identical, of the next highest grade or size; or

39 1.3.2 Upgrades to UTILITY Facilities necessary to meet current code requirements and
40 UTILITY published standards; or

41 1.3.3 Work required by UTILITY to maintain current service and capacity; or

42 1.3.4 Work required by current design and construction practices regularly followed by
43 UTILITY in its own work and/or considered an industry design or construction standard.

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- 1
2 1.4 Business Days means Monday through Friday, inclusive, except for official City of
3 Seattle and state holidays and ~~City mandated furlough days.~~
4
5 1.5 CITY means the City of Seattle, a Washington municipal corporation.
6
7 1.6 City Construction Project Engineer means the person designated by SDOT to act as the
8 City's coordinator and primary representative in matters arising during the course of construction
9 as set forth in this Agreement.
10
11 1.7 CITY Facilities means SCL Facilities, SDOT Facilities, SPU Facilities and facilities
12 impacted by, or constructed as part of, the PROJECT that are owned or will be owned by any
13 other CITY agency.
14 ~~1.7.....CITY Designated Representative means the CITY official listed in Section xx of this~~
15 ~~Agreement.~~
16
17 1.8 CITY Infrastructure means the portions of SPU Facilities, SCL Facilities and City Street
18 Right-of-Way improvements constructed or modified as part of the PROJECT to be owned,
19 operated and maintained by the CITY.
20
21 1.9 ~~CITY Interest Property~~ means CITY Street Right-of-Way plus all other real property that
22 the CITY owns or in which the CITY has a real property interest on the effective date of this
23 Agreement, or in connection with the PROGRAM is to acquire ownership of or an interest in
24 real property ~~by a different utility related fund from the STATE, which includes, but is not~~
25 ~~limited to Program Transfer Property, - in addition, City Interest Property means any property or~~
26 ~~property interest that will, at the completion of the PROJECT, be transferred by the STATE to~~
27 ~~the CITY~~ - CITY Interest Property does not include real property acquired or to be acquired by
28 the STATE for planned limited access facilities such as the bored tunnel, portals and access for
29 which no real property interest or ~~different utility related fund~~ will be transferred to the CITY.
30
31 1.10 City of Seattle means CITY.
32
33 1.11 City Standards means all City of Seattle laws, rules, regulations and standards and all
34 applicable federal and state laws, rules, regulations and standards, including but not limited to
35 the following, except as otherwise provided in this Agreement, UT 01474 and UT 01476:
36 The Seattle Municipal Code
37 The City of Seattle Standard Specifications for Road, Bridge and Municipal Construction
38 The City of Seattle Standard Plans for Municipal Construction,
39 SDOT, SCL, DPD and SPU Director's Rules, including the City of Seattle Right of Way
40 Improvements Manual, 2005-22.
41 SCL Material Standards
42 SCL Construction Guidelines

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1 1.12 CITY Street Right-of-Way means public street right-of-way under the jurisdiction of
2 SDOT pursuant to Title 15 of the Seattle Municipal Code.

3
4 1.13 Conceptual Utility Relocation Plan means a work product that defines the general scope
5 of Relocation Work Utility relocations including a planning level estimate of design and
6 construction costs, as further described in Section 3 herein.

Comment [SL57]: May need more City
discussion.

7
8 1.14 Conflicting Facilities means all SCL Facilities and all SPU Facilities identified by the
9 STATE that directly conflict with the bored tunnel portals and tunnel portal excavations.

10
11 1.15 Contract Award means the STATE's written decision accepting bid for construction of a
12 Project.

13
14 ~~1.16 Damage means loss of function, capacity, or aesthetic quality. For the purposes of this~~
15 ~~Agreement, "Damage" shall not be construed to include reduction of design life of any structure~~
16 ~~or utility.~~

17
18 ~~1.17 Damage means any direct or indirect consequence of the PROJECT that causes harm to,~~
19 ~~or reduces value or usefulness of, CITY Infrastructure, private property, CITY property or other~~
20 ~~public property, including but not limited to structural damage or physical failure, loss of~~
21 ~~function, capacity or aesthetic quality, reduced service capacity, including intended future~~
22 ~~capacity, reduced service life, a measurable reduction of design life of an SPU Facility or an~~
23 ~~SCL Facility, water main movement in excess of established thresholds, or any other impact to~~
24 ~~an SPU Facility or an SCL Facility such as stress or Deformation.~~

25
26 1.18 Defective Work means design or construction work or materials that fail to comply with
27 the Approved Plans, CITY-approved modifications to the Approved Plans, or the laws, rules,
28 regulations or standards as specified in this Agreement.

29
30 1.19 Deformation means any 3-dimensional displacement, for a structure (such as tilt of a
31 structure), and strain (relative displacements of structures or the ground) and includes any
32 settlement, heave, and lateral movement. Any use of the defined term Deformation, and related
33 terms are used as being in the manner commonly used in industry terminology. Where such
34 industry terminology is used for convenience herein, it does not imply that the broad definition
35 of Ddeformation has been limited.

36
37 1.20 Deformation Mitigation Work means any planning, operational and construction
38 management practices, monitoring and temporary or permanent UTILITY Facilities Work
39 undertaken to avoid and/or remedy dDamage to UTILITY Facility as a result of Deformation, as
40 further described in Section 4 herein.

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1 1.21 ~~Design Bid Build Contract~~ means a project delivery method in which the STATE
2 provides a complete design, advertises for bids, and awards a contract to the lowest responsive
3 bidder who is responsible for completing the construction of the project.

Comment [SLS8]: We propose that this definition be deleted from here and put in the definitions section of SDOT MOA Exhibit B. The term is not referenced in this agreement.

4
5 1.22 ~~Design Build Contract~~ means a project delivery method in which the STATE develops a
6 conceptual design and requests proposals from pre-qualified contractors. The contract is
7 awarded to the contractor with the best value responsive proposal. The contractor is responsible
8 to complete the design and construct the project.

Comment [SLS9]: We propose that this definition be deleted from here and put in the definitions section of SDOT MOA Exhibit B. The term is not referenced in this agreement.

9
10 1.23 ~~Design Builder~~ means the entity with whom the STATE enters into a Design-Build
11 contract and who is responsible to complete the design and construct the project.

Comment [SLS10]: We propose that this definition be deleted from here and put in the definitions section of SDOT MOA Exhibit B. The term is not referenced in this agreement.

12 1.24 DPD means the City of Seattle Department of Planning and Development.

13
14
15 1.25 Engineer of Record means the engineer licensed in the State of Washington who has been
16 commissioned by the STATE as the prime engineer of the PROJECT, having overall
17 responsibility for the adequacy of the design and the coordination of the design work of other
18 engineers and whose professional seal is on the Approved Plans.

19
20 1.26 ~~Environmental Compliance Assurance Procedure (ECAP)~~ means procedures incorporated
21 into the ~~WSDOT Construction Manual M41-01.05 dated 11/13/2008~~ (Section 1-2.2k(1))
22 and the ~~WSDOT Environmental Procedures Manual M31-11.05~~ (Sections 610 and 690) dated
23 ~~11/13/2008~~, as modified by this Agreement, which provide guidance on compliance with
24 Environmental Laws and environmental Remediation. The purpose of the ECAP is to recognize
25 and eliminate environmental violations during the construction phase on STATE construction
26 sites and to ensure prompt notification to STATE management and agencies. For purposes of the
27 ECAP, violations are defined as actions that are not in compliance with environmental standards,
28 permits, or laws.

Comment [SLS11]: This term is not referenced in this agreement.

29 1.27 ~~Environmental Law(s)~~ means any environmentally related local, state or federal law,
30 regulation, ordinance or order (including without limitation any final order of any court of
31 competent jurisdiction of which the STATE has knowledge), now or hereafter in effect
32 including, but not limited to: the Federal Clean Air Act; the Federal Water Pollution Control Act;
33 the Federal Safe Drinking Water Act; the Federal Comprehensive Environmental Response
34 Compensation and Liability Act, as amended by the Superfund Amendments and
35 Reauthorization Act of 1986; the Federal Resource Conservation and Recovery Act, as amended
36 by the Solid and Hazardous Waste Amendments of 1984; the Federal Occupational Safety and
37 Health Act; the Federal Emergency Planning and Right to Know Act of 1986; the Federal
38 Hazardous Materials Transportation Control Act of 1980; the Federal Clean Water Act of 1977;
39 the Federal Insecticide, Fungicide and Rodenticide Act; the Federal Waste Management
40 Recovery and Recycling Act; the Washington Hazardous Waste Management Act; the
41 Washington Hazardous Waste Fees Act; Washington Model Toxics Control Act; the Washington
42 Nuclear Energy and Radiation Act; the Washington Radioactive Waste Storage and

Comment [SLS12]: This term is not referenced anywhere in this agreement.

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1 Transportation Act; the Washington Underground Petroleum Storage Tanks Act; and any
2 regulations promulgated thereunder from time to time.

3
4 ~~1.28 Final Design Submittal means plans, specifications, and design documentation~~
5 ~~representing complete design of a given project element in a Design-Build Contract. The Final~~
6 ~~Design Submittal addresses and incorporates review comments from the Preliminary Design~~
7 ~~Submittal.~~

Comment [SLS13]: We propose that this definition be deleted from here and put in the definitions section of SDOT MOA Exhibit B. The term is not referenced in this agreement.

8
9 ~~1.29 Final Plan Review Package means the Plan Review Package submitted to the CITY that~~
10 ~~is comprised of the STATE's contract documents including contract addenda and fully~~
11 ~~incorporates or otherwise addresses all CITY plan review comments and all applicable~~
12 ~~conditions of the Street Use Permit.~~

Comment [SLS14]: We propose that this definition be deleted from here and put in the definitions section of SDOT MOA Exhibit B. The term is not referenced in this agreement.

13
14 1.30 Hazardous Substance(s) means any substance, or substance containing any component,
15 now or hereafter designated as a hazardous, dangerous, toxic or harmful substance, material or
16 waste, subject to regulation under any federal, state or local law, regulation or ordinance relating
17 to environmental protection, contamination or cleanup including, but not limited to, those
18 substances, materials and wastes listed in the United States Department of Transportation
19 Hazardous Materials Table (49 C.F.R. §172.101) or by the United States Environmental
20 Protection Agency as hazardous substances (40 C.F.R. pt. 302 and amendments thereto) or in the
21 Washington Hazardous Waste Management Act (Ch. 70.105 RCW) or the Washington Model
22 Toxics Control Act (Chs. 70.105D RCW and 82.21 RCW), petroleum products and their
23 derivatives, and such other substances, materials and wastes as become regulated or subject to
24 cleanup authority under any Environmental Law.

25
26 1.31 Letter of Acceptance means the written document that signifies the CITY's acceptance of
27 CITY Infrastructure to be owned by the CITY, and shall signify the STATE's transfer of CITY
28 Infrastructure to be owned by the CITY. The Letter of Acceptance will not transfer any interest
29 in real property. The Letter of Acceptance shall be jointly executed by the Parties. A Letter of
30 Acceptance for SPU Facilities requires SPU approval and a Letter of Acceptance for SCL
31 Facilities requires SCL approval.

32
33 1.32 Letter of Plan Approval means the letter provided to the STATE by the CITY following
34 the completion of the plan review process, signifying that the plans and specifications identified
35 in the letter are the Approved Plans.

36
37 ~~1.33 MTCA means the Washington Model Toxics Control Act (Chs. 70.105D RCW and 82.21~~
38 ~~RCW).~~

Comment [SLS15]: This term is not referenced in this agreement.

39
40 1.34 New Work means the design and construction by or at the direction of UTILITY of a new
41 utility other than (a) as part of a relocation associated with the PROJECT, or (b) to provide
42 service to the PROJECT. New Work shall be entirely the financial obligation of UTILITY.

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- 1 1.35 Preliminary Engineering means the portion of the Project engineering which advances the
2 Project design to address Type, Size, and Location (“TS&L”) for all components of the Project.
3 Design will have advanced sufficiently to define alignments and identify conflicts. Preliminary
4 engineering will include an estimate for final design and a preliminary cost for construction.
5
- 6 1.36 Plan Review Package means clear and complete plans, specifications, and the necessary
7 assumptions, studies, models and calculations upon which the design was based, and corrections
8 previously requested by the CITY with respect to Design Bid Build Projects.
9
- 10 1.37 100% Plan Review Package means the Plan Review Package submitted to the CITY
11 concurrent with STATE’s final internal review of the construction contract plans and contract
12 provisions that shall evidence the agreement between the STATE and its contractors for
13 construction of Design Bid Build Projects.
14
- 15 1.38 Plans, Specifications, and Estimate (“PS&E”) means the portion of the PROJECT
16 engineering after the Preliminary Engineering, which advances the PROJECT design by
17 preparing contract-ready documents and the engineer’s cost estimate. At this stage the
18 specifications are written and tailored to the plans so that all work can be measured and has a pay
19 item. The cost estimate is formalized using the established specifications, pay items and quantity
20 takeoffs, for 60% through 100% completion of the total design effort.
21
- 22 1.39 Preliminary Design Submittal means in a Design Build Contract, a formal opportunity for
23 the STATE, the Design Builder, various design team disciplines, and other approved Project
24 stakeholders to review the construction documents in order to ensure that the design is
25 progressing appropriately and proceeding in the right direction; the plans reflect Design Builder
26 requirements for construction; design features are coordinated; and there are no fatal flaws
27 within a given discipline or between disciplines
28
- 29 1.40 Private Utilities means utility uses, excluding facilities owned and operated by the CITY,
30 approved through franchise agreements and/or Street Use Permits by the CITY and governed and
31 enforced through City Ordinance.
32
- 33 1.40 Procedures means *Design Review, Construction Management, Inspection and Record*
34 *Drawing Procedures*, attached as Exhibit B to the SDOT Agreement GCA 6366.
35
- 36 1.41 PROJECT means the Proposed Bored Tunnel Project, the part of the PROGRAM that
37 replaces SR 99 from South Royal Brougham Street to Mercer Roy Street and that consists of
38 designing and constructing a four-lane bored tunnel from South King Street to Thomas Street,
39 north and south tunnel portals and access streets, re-establishment of the City street grid in the
40 vicinity of the portals (Battery Street Tunnel decommissioning and Alaskan Way Viaduct
41 demolition will be addressed in a future agreement); and associated utility relocations. A
42 PROJECT description is attached as Exhibit A to the SDOT Agreement GCA 6366.
43

Comment [SLS16]: This term is no longer referenced in this agreement.

Comment [SLS17]: We propose that this definition be deleted from here and put in the definitions section of SDOT MOA Exhibit B. The term is not referenced in this agreement.

Comment [SLS18]: We propose that this definition be deleted from here and put in the definitions section of SDOT MOA Exhibit B. The term is not referenced in this agreement.

Comment [SLS19]: This term is no longer referenced in this agreement.

Comment [SLS20]: We propose that this definition be deleted from here and put in the definitions section of SDOT MOA Exhibit B. The term is not referenced in this agreement.

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1 1.42 PROGRAM means all the projects, collectively, implemented by the STATE and the
2 CITY that remove and replace the AWW and seawall.
3 the AWVSR Program which consists of a four-lane bored-tunnel and improvements to City
4 streets, the City waterfront, and transit; and the Moving Forward Projects as defined in GCA
5 6366

6
7 1.43 Project Engineer means the persons appointed by the STATE to lead the PROJECT
8 during design and/or construction or his or her designee.
9

10 1.44 ~~Released for Construction Submittal means in a Design-Build Contract, plans and~~
11 ~~specifications for a given project element that are construction-ready and have been certified by~~
12 ~~the Design-Builder as having met all contract requirements and received all approvals and~~
13 ~~permits. The Released for Construction submittal addresses all review comments from the~~
14 ~~Preliminary and Final Design submittals.~~

Comment [SLS21]: We propose that this definition be deleted from here and put in the definitions section of SDOT MOA Exhibit B. The term is not referenced in this agreement.

15
16 1.45 Relocation Work means the removal or abandonment of each Conflicting Facility and the
17 installation or reconstruction of each Conflicting Facility to its permanent and final location.
18

19 1.46 Remediation means the same as Remedy or Remedial Action defined in MTCA which
20 includes any action or expenditure consistent with the purposes of MTCA to identify, eliminate,
21 or minimize any threat or potential threat posed by Hazardous Substances to human health or the
22 environment including any investigative and monitoring activities with respect to any release or
23 threatened release of a Hazardous Substance and any assessments to determine the risk or
24 potential risk to human health or the environment.
25

26 1.47 ~~Round Table Meeting means a meeting typically held five (5) weeks following the~~
27 ~~submittal of the 100% Plan Review Package to the CITY and STATE, and commonly attended~~
28 ~~by the STATE's Project team and STATE reviewers to resolve and address STATE comments~~
29 ~~on the 100% Plan Review Package.~~

Comment [SLS22]: We propose that this definition be deleted from here and put in the definitions section of SDOT MOA Exhibit B. The term is not referenced in this agreement.

30
31 1.48 SCL means Seattle City Light.
32

33 1.49 SCL Facilities means the electrical facilities impacted by, or constructed as part of, the
34 PROJECT that are owned or will be owned by the CITY.
35

36 1.50 SCL Facilities Work means work required to design, construct and protect the SCL
37 Facilities as part of the PROJECT.
38

39 1.51 SDOT means the Seattle Department of Transportation.
40

41 SDOT Facilities means the transportation facilities impacted by, or constructed as part of, the
42 PROJECT that are owned or will be owned by the CITY.
43

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1 1.52 Specialty Work means the construction and installation of all 13.8kV or above rated
2 equipment and associated materials and infrastructure needed to accomplish the SCL Facilities
3 Work.

4
5 1.53 SPU means Seattle Public Utilities.

6
7 1.54 SPU Facilities means the water, drainage and wastewater facilities impacted by, or
8 constructed as part of, the PROJECT that are owned or will be owned by the CITY.

9
10 1.55 SPU Facilities Work means work required to design, construct and protect the SPU
11 Facilities as part of the PROJECT.

12
13 1.56 STATE means the State of Washington Department of Transportation and may include
14 its Contractors, Subcontractors, Agents and Assigns.

15
16 1.57 STATE Designated Representative means the State of Washington official listed in
17 Section 1.57 of this Agreement.

18
19 ~~1.58 Street Use Permit means written authorization secured by the STATE from the Director
20 of SDOT for use of the CITY Street Right of Way pursuant to Title 15 of the Seattle Municipal
21 Code.~~

Comment [SLS23]: We propose that this definition be deleted from here and put in the definitions section of SDOT MOA Exhibit B. The term is not referenced in this agreement.

22
23 ~~1.59 Submittal Control Document means a list of all documents or reports that are required by
24 the Approved Plans or construction contract documents or applicable law to be provided to or
25 submitted to the STATE and the CITY.~~

Comment [SLS24]: We propose that this definition be deleted from here and put in the definitions section of SDOT MOA Exhibit B. The term is not referenced in this agreement.

26
27 1.60 Task Force means a group consisting of State, City, contractor, and other stakeholder
28 staff meeting regularly to review and reach decisions relating to a particular subject, e.g., traffic,
29 structures.

30
31 1.61 Task Order means a document executed by the PARTIES under this Agreement
32 authorizing work by one party to be done on behalf of the other party and that defines the scope
33 and the obligations of the PARTIES for the given element of work. All terms and conditions of
34 the Agreement shall apply to each Task Order.

35
36 1.62 UTILITY Facilities means SPU Facilities and SCL Facilities.

37
38 1.63 UTILITY Facilities Work means SPU Facilities Work and SCL Facilities Work.

39
40 ~~1.64 UTILITY Easement means a non-exclusive permanent easement over real property for
41 the operation, maintenance, repair and replacement of the relocated UTILITY Facilities, in the
42 form attached as Exhibit A.~~

Comment [g25]: Confirm definition with RES

43

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1 1.65 Utility Service Work means any facilities required to provide temporary Utility services
2 for construction of the PROJECT; and any work needed to obtain permanent UTILITY services
3 to the bored tunnel or UTILITY customers.

4
5 1.66 WSDOT means Washington State Department of Transportation.

6
7 Words not otherwise defined, which have well-known technical or construction industry
8 meanings, are used in accordance with such recognized meanings.

9
10
11 | **2. GENERAL RESPONSIBILITIES**

12
13 2.1 The Parties shall manage risk, produce design and conduct construction in a manner that
14 maximizes cumulative public benefits and minimizes cumulative public costs as mutually agreed
15 to by the Parties.

16
17 2.2 This Agreement in conjunction with GCA 6486 and UT 01476 is prepared by the STATE
18 and CITY to govern relationships between the Parties and establish each Party's responsibilities
19 regarding the PROJECT as described in Exhibit A of GCA 6486, Project Description.

20
21 2.3 The Parties understand that environmental review of the proposed PROJECT is underway
22 at the date of this agreement and agree that if an alternative other than the Proposed Bored
23 Tunnel is selected, this agreement may be terminated pursuant to the provisions of Section 21
24 herein shall not be applicable.

25
26 2.4 The Parties shall work collaboratively to resolve issues in a manner that endeavors to
27 open the Proposed Bored Tunnel to the public on schedule.

28
29 2.5 The design and construction of CITY ~~infrastructure~~ Facilities, including ~~infrastructure~~
30 ~~repair~~, shall comply with City of Seattle ~~codes, rules, regulations and standards.~~

31
32 2.6 Each Party shall provide the funding and resources necessary to fulfill the responsibility
33 of that Party as established in this Agreement.

34
35 2.7 The Parties agree to work cooperatively with each other and make reasonable, good faith
36 efforts to timely and expeditiously complete the PROJECT, as provided in this Agreement,
37 including, but not limited to, the selection of a preferred SR 99 design alternative; development
38 of preliminary engineering and final design and construction. In order to optimize design and
39 minimize conflicts, the STATE shall coordinate design and construction of the various contracts
40 making up the PROJECT with design of subsequent PROGRAM stages, and with construction of
41 previous stages of the PROGRAM. The STATE shall be prepared to modify design of the
42 contracts making up the PROJECT, the subsequent PROGRAM stage and/or previous phase if
43 both Parties determine the modifications are necessary and reasonable, to minimize conflicts.

Comment [SLS26]: May need more City discussion: SPU and SCL still need time to review this Exhibit.

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1
2 2.8 The STATE shall pay for all costs associated with the ~~UTILITY Facilities Deformation~~
3 ~~Mitigation~~ Work, including but not limited to design; design review; purchase of materials;
4 construction; inspection; preparation of record drawings; CITY crew time and costs; any
5 temporary UTILITY services required for construction of the PROJECT; and any work needed
6 to obtain permanent UTILITY services to the bored tunnel or UTILITY customers; regardless of
7 whether such UTILITY Facilities Deformation Mitigation Work is performed by the UTILITY
8 or other CITY staff, the STATE, or its contractor, as set forth in the Approved Plans, and any
9 UTILITY-approved revisions to the Approved Plans, without reimbursement from UTILITY,
10 including ~~cChange oOrders pursuant to Section 8 of this UTILITY Bored Tunnel Agreement,~~
11 but excluding Betterments or New Work as defined in ~~Section 2 of this UTILITY Bored Tunnel~~
12 ~~Agreement.~~ No delay costs shall be paid for by UTILITY.
13

14 2.9 The STATE is responsible for designing and constructing the Proposed Bored Tunnel
15 portion of the ~~Project~~PROJECT. The STATE is responsible for ~~will take reasonable measures to~~
16 ~~minimizing, limiting, and mitigating~~ ~~d~~damage to private property and CITY Facilities
17 ~~infrastructure~~ including CITY streets, CITY telecommunications facilities and ~~CITY~~UTILITY
18 ~~Facilities~~utilities that may result from the ~~PROJECT Proposed Bored Tunnel~~ construction,
19 including ~~d~~Damage that may result from tunnel-induced ~~D~~deformation. ~~The STATE~~WSDOT is
20 responsible for ~~remediating~~ such ~~d~~Damage should it occur.
21

22 ~~2.10 CITY-UTILITY is responsible for the cost of relocating those existing CITY-UTILITY~~
23 ~~Facilities~~utilities that have alignments intersecting the final configuration of the proposed SR 99
24 bored tunnel portals and tunnel portal excavations. ~~UTILITY's CITY's~~ relocation responsibility
25 is limited to the ~~typical cost for a single final relocation of each UTILITY Conflicting Facility.~~
26 During preliminary design, the Parties will jointly identify UTILITY Conflicting Facilities that
27 will need to be relocated more than once
28

Comment [P27]: May need more City discussion

29 2.11 The Parties agree that it is in the public interest for one Party to implement portions of the
30 other Party's ~~PROJECT~~reject responsibilities. Therefore, this ~~SDOT~~Agreement establishes a
31 Task Order process for use by a Party to authorize the other Party to conduct work on its behalf,
32 and as may be documented through each Task Order, agree to reimburse the other Party for such
33 services.
34

35 2.12 The ~~general terms, and conditions, and requirements~~ of GCA 6486 and this Agreement
36 ~~shall apply to each Task Order performed as part of the PROJECT, unless otherwise specified in~~
37 ~~an executed Task Order.~~
38

39 2.13 For UTILITY Facilities Work which the STATE will design and construct, the STATE
40 ~~and UTILITY~~ agrees to document key design-related decisions to ensure that issues are resolved
41 to ~~PARTIES~~SPU's/SCL's satisfaction, pursuant to Section 5 herein and Section 6 and Exhibit B
42 of ~~GCA 6486~~, so that the STATE can proceed with the design of the PROJECT. These decisions
43 will be evidenced through the use of a concurrence letter signed by both PARTIES.

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1
2 | 2.14 The STATE agrees to take the lead in consulting and coordinating with Private Utilities
3 affected by the PROJECT.

4
5 2.15 The PARTIES shall apply for and obtain all necessary federal, state and City of Seattle-
6 issued permits and approvals for the work for which they are responsible prior to commencing
7 work that requires such permits, including but not limited to all permits, approvals or permission
8 for exploratory investigations, testing, site preparations, demolition and construction.

9
10 | 2.16 The PARTIES-STATE shall comply with the regulatory requirements and agree to meet
11 operational and customer service requirements of each existing UTILITY Facility.

12
13 | 2.17 The ~~STATE/PARTIES~~ shall minimize utility service interruptions to UTILITY customers.

14
15 2.18 To the extent necessary, SCL agrees to lead the coordination of the PROJECT with all
16 applicable electrical regulatory agencies.

Comment [P28]: SCL only

17
18 | **3. RESPONSIBILITIES REGARDING SCL AND SPU RELOCATIONS**
19 **(PORTALS)CONFLICTING FACILITIES**

20
21 3.1 The STATE shall identify all SCL Facilities and all SPU Facilities that directly conflict
22 with the bored tunnel portals and tunnel portal excavations (“Conflicting Facilities”).

23
24 | 3.2 UTILITY shall ~~inform the STATE of any additional Conflicting Facilities or New Work~~
25 ~~and confirm that each UTILITY Facility which the STATE has identified as a Conflicting~~
26 ~~Facility does in fact directly conflict with the bored tunnel portals or bored tunnel portal~~
27 ~~excavations. In the event that, after the STATE identifies the Conflicting Facilities, UTILITY~~
28 ~~builds new UTILITY Facilities that conflict with the bored tunnel portals or bored tunnel portal~~
29 ~~excavations, UTILITY shall so inform the STATE.~~

30
31 | 3.3 The STATE is responsible for ~~to~~ preparing a Conceptual Utility Rrelocation Pplan that
32 documents a functional and efficient approach to relocating Conflicting Facilities in a manner
33 that accommodates the PROJECT. The Conceptual Utility Relocation Plan shall include:

34 | 3.3.1 The STATE's preliminary design of the PROJECT that includes Type,
35 Size and Location for all components; and

36 | 3.3.2 The STATE's preliminary design of the Relocation Work that is
37 functional and efficient, that is in compliance with City Standards, and
38 that demonstrates compatibility with existing infrastructure to remain.

39 | 3.3.3 Identification of Conflicting Facilities; and

40 | 3.3.4 The STATE's request for UTILITY to relocate Conflicting Facilities
41 based on the STATE's current design of the PROJECT; and

42 | 3.3.5 Plan view drawings developed in collaboration with UTILITY;
43 incorporating UTILITY comments and input; drafted to an engineering

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- 1 scale of 1 inch equals 20 feet; showing the existing configuration of
2 Conflicting Facilities, proposed configuration of relocated CITY
3 Infrastructure, and all existing infrastructure to remain adjacent to
4 relocated CITY Infrastructure; and confirming no conflicts with other
5 utilities or infrastructure; and
6 3.3.6 Roadway and utility cross-sections necessary to demonstrate the feasibility
7 of the conceptual design; showing the existing configuration of
8 Conflicting Facilities, proposed configuration of relocated CITY
9 Infrastructure, and all existing infrastructure to remain adjacent to
10 relocated CITY Infrastructure; and confirming no conflicts with other
11 utilities or infrastructure; and
12 3.3.7 Utility profiles and elevations necessary to demonstrate the feasibility of
13 the conceptual design; showing the existing configuration of Conflicting
14 Facilities, proposed configuration of relocated CITY Infrastructure, and all
15 existing infrastructure to remain adjacent to relocated CITY Infrastructure;
16 and confirming no conflicts with other utilities or infrastructure; and
17 3.3.8 A cost estimate of all costs associated with relocating the Conflicting
18 Facilities including design, permitting, construction costs, and
19 contingency. The cost estimate shall be prepared and sealed by a Licensed
20 Professional Engineer in the State of Washington. All costs shall be
21 developed on a per linear foot unit basis for the separate types, sizes and
22 segments of Conflicting Facilities and the new relocated Utility Facilities.
23 The estimate shall document the construction costs of the relocated Utility
24 Facility including associated appurtenances, trench safety systems, traffic
25 control, service connections, inspection, surface restoration and all other
26 costs associated with each new and abandoned UTILITY Facility. The
27 costs shall be developed on the basis of typical construction costs in the
28 area and on the basis of a single relocation, unless single relocation is
29 mutually agreed upon by the City and State to be infeasible, in which case
30 the costs shall be based on a mutually agreed upon relocation plan
31 between SPU and the State; and
32 3.3.9 A schedule for relocation of Conflicting Facilities that includes the list of
33 specific tasks and associated costs developed in the cost estimate. The
34 schedule shall be coordinated with the proposed design and construction
35 schedule for other work within the PROJECT.

37 3.4 The STATE shall deliver the Conceptual Utility Relocation Plan to UTILITY no later
38 than September 1, 2010.

39
40 3.5 Within thirty (30) days of receipt of the Conceptual Utility Relocation Plan, UTILITY
41 shall provide comments the STATE, including informing the STATE whether any requirements
42 listed in Section 3.3 above are missing or incomplete. Within thirty (30) days of the STATE's
43 receipt of UTILITY's comments, the STATE shall address UTILITY's comments to the

Comment [P29]: Needs more City discussion.
Intent is that we set a reasonable timeline

Comment [P30]: Needs more City discussion.

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1 UTILITY's satisfaction. UTILITY's responsibility for the Relocation Work begins when the
2 PARTIES have written mutual agreement of the Conceptual Utility Relocation Plan.
3

4 3.6 The PARTIES shall use the Conceptual Utility Relocation Plan as the basis for
5 establishing the scope, schedule and estimated cost of design and construction services to be
6 documented in Task Orders under this Agreement.
7

8 3.7 In instances where the STATE's revisions to the PROJECT design differ so significantly
9 from the Conceptual Utility Relocation Plan as to render the UTILITY's design or construction
10 work obsolete, the STATE shall reimburse UTILITY for the accrued costs of the obsolete work.
11

12
13 3.87 The STATE is responsible for shall protect avoiding damage to UTILITY Facilities,
14 including those installed as part of the PROJECT or PROGRAM.
15

16 ~~3.95 UTILITY is responsible for relocating each identified Conflicting Facility one time, to its~~
17 ~~final and permanent relocation, which work is Relocation Work.~~
18

19 ~~3.106 Interim or temporary relocations required in order to move a Conflicting Facility to its~~
20 ~~final and permanent location, including but not limited to relocations necessary to stage any~~
21 ~~PROJECT construction, is not Relocation Work, and shall be the responsibility of the STATE.~~
22

Comment [P31]: Needs more City discussion.

23 **4. STATE RESPONSIBILITIES REGARDING UTILITY FACILITIES**
24 **DEFORMATION MITIGATION**
25

26 4.1 The STATE is responsible for performing all planning, operational and construction
27 management practices, monitoring and temporary or permanent UTILITY Facilities Work
28 undertaken to avoid or remedy damage as a result of Deformation ("Deformation Mitigation
29 Work").
30

31 4.1 The STATE will undertake an assessment of potential impacts of Deformation on private
32 property and CITY infrastructure Facilities including CITY streets, CITY telecommunications
33 facilities and UTILITY Facilities CITY utilities. Where the CITY has established deformation
34 criteria for its Facilities Utilities, the criteria will be used in analysis. Otherwise, criteria will be
35 derived using accepted engineering practice and shall be mutually agreed upon by the City and
36 State.
37

38 4.2 The UTILITY shall review the STATE's estimate of susceptibility or vulnerability of its
39 facilities to Deformation and provide comments/input. Such input shall be provided to assist the
40 STATE only, and shall not be interpreted as waiving or limiting in any way the STATE's
41 responsibility for Deformation Mitigation Work.
42

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1 4.3 The STATE shall develop a preliminary plan for UTILITY Facilities Deformation
2 Mitigation. PARTIES will work collaboratively to finalize and implement the UTILITY
3 Facilities Deformation Mitigation plan. UTILITY's input shall be provided to assist the STATE
4 only, and shall not be interpreted as waiving or limiting in any way the STATE's responsibility
5 for Deformation Mitigation Work.
6

7 4.4 As a component of the UTILITY Facilities Deformation Mitigation plan Work, the
8 STATE will implement a construction monitoring Task Force responsible for the planning and
9 implementation of the instrumentation and monitoring program and processing data, evaluating
10 results, and developing recommendations to mitigate deformation.
11

12 4.56 The CITY-UTILITY will advise the STATE and participate in construction monitoring
13 and deformation management activities when these activities pertain to CITY
14 Infrastructure Facilities. The CITY-UTILITY will provide the STATE all necessary access to
15 CITY Infrastructure Facilities for the purposes of design or implementation of mitigation
16 measures. The CITY-UTILITY may perform mitigation measures on behalf of the STATE in a
17 manner and schedule that supports the STATE's project requirements. UTILITY's advice,
18 participation, and access shall be provided to assist the STATE only, and shall not be interpreted
19 as waiving or limiting in any way the STATE's responsibility for Deformation Mitigation.
20

21 4.6 The STATE is responsible for repairing, replacing or otherwise remedying UTILITY
22 Facilities that have lost function, capacity, or aesthetic quality as a consequence of the
23 PROJECT.
24

Comment [P32]: Do we need to put bounds around how the "consequence of the PROJECT" is defined? Temporal dimension, e.g. from start of construction (or once SPU has fixed all pre-existing leaks) through the completion of the D-B contractor's monitoring responsibilities (2 years following tunneling, per L. Laird).

25
26
27
28 4.7 Unless otherwise agreed, the STATE is responsible for complying with SPU's Settlement
29 Monitoring Requirements for Cast Iron Water Mains, attached hereto as Exhibit B and
30 incorporated by reference. This compliance includes requirements for replacement of
31 affected pipe segments when settlement occurs in excess of the maximum allowable
32 settlement allowances.
33

34 4.8 Unless otherwise agreed, the STATE is responsible for complying with SPU's Settlement
35 Monitoring Requirements for Ductile Iron Water Mains, attached hereto as Exhibit C and
36 incorporated by reference. This compliance includes requirements for replacement of
37 affected pipe segments when settlement occurs in excess of the maximum allowable
38 settlement allowances.
39

Comment [P33]: Needs more City discussion re: STATE responsibility for preemptive replacements.

Formatted: No bullets or numbering

HIGHLIGHTED TEXT = Elevate to Leadership
GREEN HIGHLIGHT = Staff to resolve

Joint
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1 **5. DESIGN, PLAN REVIEW, CHANGE MANAGEMENT**

2
3 5.1 Where the STATE is performing the design of UTILITY Facilities Work, ~~t~~The STATE
4 and UTILITY shall comply with all provisions outlined in Section 6 of the SDOT SR 99 Bored
5 Tunnel Agreement. The STATEPARTIES shall facilitate the design as provided herein and shall
6 allow UTILITY adequate time for detailed design review. UTILITY will meet agreed-upon
7 timelines for review. The STATEPARTIES shall address and resolve each design review
8 comment to UTILITY's and the STATE's satisfaction. In the event the PARTIES are unable to
9 mutually resolve comments, the PARTIES shall initiate the dispute resolution process pursuant
10 to Section 23 of the SDOT SR 99 Bored Tunnel Agreement.

11
12 5.2 In the event the STATE designates as a Limited Access Facility any area in or near the
13 tunnel portals on which a UTILITY Facility exists or will be relocated, the PARTIES agree to
14 make every effort to develop a design that minimizes the need for regular, on-going maintenance
15 access.

16
17 5.3 The STATE agrees to incorporate qualification criteria mutually agreed upon by the
18 PARTIES for construction contractors in the performance of Specialty Work into the contract
19 bid document. The STATE shall consult with UTILITY on the contractors and subcontractors
20 bidder qualifications for Specialty Work. UTILITY shall provide comments to the STATE on
21 known bidder qualifications. The STATE shall not allow unqualified contractors to perform
22 Specialty Work.

23
24
25 **6. CONSTRUCTION MANAGEMENT, INSPECTION AND CONTRACT**
26 **ADMINISTRATION**

27
28 6.1 The PARTIES shall comply with all provisions contained within Section 14 of GCA
29 6486, regarding Construction Management, Inspection and Contract Administration for the
30 PROJECT, and such provisions shall apply equally to this Agreement.

31
32 6.2 Where UTILITY staff or crews are performing work requested by the STATE, the
33 STATE shall provide all labor, materials, equipment, and tools required to excavate, provide
34 trench support systems, and handle and dispose of all spoils (including contaminated soils,
35 groundwater, and other debris), and provide a safe workplace for UTILITY staff per applicable
36 State and Federal laws, and City of Seattle standards, for the UTILITY Facilities Work in
37 accordance with the Approved Plans and any UTILITY-approved revisions to the Approved
38 Plans. The STATE will not provide personal protective equipment for UTILITY staff.

39
40 6.3 The STATE agrees to provide advance notice of service outages needed for construction
41 to schedule crews, notify customers and accommodate other previously scheduled outage
42 requests in accordance with ~~UTILITY procedures~~CITY Standards.

HIGHLIGHTED TEXT = Elevate to Leadership
GREEN HIGHLIGHT = Staff to resolve

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1 **7. MONITORING**

2
3 7.1 The PARTIES agree to comply with all provisions contained within Section 12 of the
4 SDOT Bored Tunnel Agreement, regarding Monitoring for the PROJECT, and such provisions
5 shall apply equally to this Agreement.

6
7 **8. NOTICES AND DESIGNATED REPRESENTATIVES**

8
9 8.1 Any notice required or permitted to be given pursuant to this Agreement shall be in
10 writing and shall be sent postage prepaid by U.S. Mail to the Designated Representatives.

11
12 8.2 The Designated Representatives for each Party are as follows:

13
14 STATE:
15 Program Administrator
16 Alaskan Way Viaduct & Seawall Replacement Program
17 Washington State Department of Transportation
18 999 3rd Avenue, Suite 2424
19 Seattle, WA 98104

20
21 CITY/UTILITY:
22 Project Manager, Alaskan Way Viaduct & Seawall Replacement Program
23 Seattle City Light
24 P.O. Box 34018
25 700 Fifth Avenue, Suite 4900
26 Seattle, WA 98124-4018

Comment [SLS34]: Change for SPU

27
28 **9. FUNDING OF UTILITY FACILITIES WORK AND TASK ORDERS**

29
30 9.1 The STATE shall provide necessary funding for all PROJECT costs without
31 reimbursement from the City of Seattle, except for the City of Seattle cost responsibilities
32 established in this Agreement, in SDOT Agreement GCA 6486, [and in UT 01474/ UT
33 01476.add.respective.UTILITY.Agreement].

34
35 ~~9.2 If for any reason PROJECT costs exceed the State funding limit established by RCW
36 47.01.402, the STATE shall have the sole responsibility for obtaining any needed additional
37 spending authority without recourse to any funding device that burdens Seattle area taxpayers or
38 property owners or the City of Seattle.~~

Comment [SLS35]: Not appropriate/necessary for the Utility agreements.

39
40 9.3 Each PARTY shall fund work for which it is responsible pursuant to this agreement.

41
42 9.4 The STATE will request, obtain and fund any temporary and permanent utility services
43 required for the PROJECT through separate utility service agreements with UTILITY.

HIGHLIGHTED TEXT = Elevate to Leadership
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1
2 9.5 While SDOT is the City lead agency for the PROJECT, the STATE understands and
3 agrees that all PROJECT decisions that are likely to result in expenditure of UTILITY funds, and
4 all PROJECT decisions that may have operational, maintenance, or access impacts to UTILITY
5 Facilities, require concurrence of UTILITY.
6

7 **10. UTILITY'S RIGHT TO CORRECT NON-CONFORMING, UNAUTHORIZED**
8 **AND DEFECTIVE WORK**
9

10 10.1 If the STATE or its contractor fails to remedy, or fails to properly remedy, non-
11 conforming, unauthorized or Defective Work within the time specified by UTILITY, which is
12 not to be less than ten (10) Business Days, UTILITY may, but is not required to, correct and
13 remedy such work by any means as UTILITY may deem necessary, including the use of
14 UTILITY staff or contractors.
15

16 10.2 If the STATE or its contractor fails to comply with a written notice to remedy what
17 UTILITY determines to be an emergency situation, UTILITY may, but is not required to, have
18 the non-conforming, unauthorized or Defective Work corrected immediately, have such work
19 removed and replaced, or have work the STATE or its contractor refuses to correct completed.
20 An emergency situation shall mean a condition that calls for immediate action to respond to
21 danger to health, safety or property.
22

23 10.3 Direct and indirect costs incurred by UTILITY attributable to correcting and remedying
24 unauthorized, non-conforming or Defective Work, or work the STATE or its contractor failed or
25 refused to perform, shall be paid by the STATE to UTILITY within thirty (30) calendar days
26 after receipt of an invoice with appropriate documentation of such costs.
27

Comment [P36]: Need more City discussion
re: invoicing requirements and language

28 10.4 Except in an emergency situation as defined under Section 109.2, disagreements between
29 UTILITY and the STATE on what constitutes non-conforming, unauthorized or Defective Work
30 shall be resolved using the dispute resolution process established in Section 19 herein prior to
31 UTILITY performing any work.
32

33 10.5 Any and all services, including direction, provided by UTILITY pursuant to this section
34 shall be subject to all limitations on the CITY's liability contained in the SDOT Bored Tunnel
35 Agreement, including but not limited to Section 167, Risk Allocation.
36

37 **11. UTILITY ACCESS AND INSPECTION OF UTILITY FACILITIES WORK**
38

39 11.1 Neither the STATE nor its contractor shall require UTILITY to interrupt electrical
40 service without (a) written notice to UTILITY at least fourteen (14) calendar days prior to the
41 planned interruption and (b) UTILITY's written approval. UTILITY may restrict electrical
42 service interruptions to the extent necessary to maintain electrical system operations and
43 adequate power supply to customers.

Comment [SLS37]: Remember to insert the
equivalent for SPU from the SPU H2K2 agreement.

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1
2 11.2 The STATE shall ensure the UTILITY has the right to safe access to their facilities at any
3 time to operate and maintain existing and newly installed UTILITY Facilities or to inspect or
4 perform UTILITY Facilities Work. For purposes of this Agreement, “access” shall mean that the
5 vaults, vault openings, handholes, power poles, ductbanks, substation equipment or substation
6 entrances shall not be blocked, covered or otherwise inaccessible to SCL. UTILITIES staff other
7 than UTILITIES’ on-site inspector will notify the STATE in advance of their arrival on site
8 except in the case of emergency in accordance with site access procedures to be developed by the
9 PARTIES.

Comment [SL338]: For SPU – hydrants, meter, valves, or similar surface water system facilities, and drainage and wastewater system facilities.

10
11 11.3 Under no circumstances shall the STATE, its contractor, or anyone other than UTILITY
12 personnel enter any energized UTILITY Facilities or operate any portion of the existing or new
13 UTILITY Facilities, without UTILITY personnel approval and supervision.

14
15 11.4 The STATE agrees and acknowledges that UTILITY shall have an on-site inspector
16 available during the construction of UTILITY Facilities for UTILITY’s quality assurance. The
17 STATE agrees and acknowledges the UTILITY’s on-site inspector shall (a) have timely and
18 complete access to the construction work associated with the UTILITY Facilities Work; (b) be
19 timely informed of all relevant construction timelines associated with such work; and (c) have
20 the authority to, but not be required to, reject and have corrected and/or replaced any
21 construction or materials deemed to be deficient, or which deviate from the Approved Plans or
22 any SCL-approved revisions to the Approved Plans. In such instances, UTILITY’s on-site
23 inspector, or UTILITY’s project manager, will immediately direct comments and issues to the
24 STATE’s construction project engineer or designated representative, which will be followed up
25 in writing as soon as possible but no later than ten (10) Business Days of the date of any
26 inspection. The STATE shall promptly address each comment or issue presented by UTILITY
27 to UTILITY’s satisfaction. UTILITY staff will continue to be supervised by UTILITY
28 management.

29
30 11.5 The STATE will allow UTILITY’s on-site inspector or Designated Representative to
31 consult with and inquire of the STATE construction Pproject Eengineer, attend all meetings, and
32 have timely and complete access to all documentation as to all matters concerning the UTILITY
33 Facilities Work. UTILITY shall not provide direction, directly or indirectly, to the STATE’s
34 consultant(s) or contractor.

35
36 11.6 The STATE shall provide UTILITY with timely notice prior to commencement and
37 completion of all material stages of the UTILITY Facilities Work and shall invite UTILITY to
38 inspect such work upon completion of any material stage. The STATE shall timely address each
39 comment or issue presented by UTILITY to UTILITY’s satisfaction. Both Parties agree to act as
40 expeditiously as possible to assure a timely resolution of any deficiencies.

41
42 11.7 UTILITY shall observe the work on UTILITY Facilities performed by the STATE to
43 satisfy any UTILITY’s needs for quality assurance. UTILITY will notify the STATE if

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GREEN HIGHLIGHT = Staff to resolve

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1 | Utility ~~UTIL~~ITY observes defective UTILITY Facilities Work is observed, such as improper
2 | installation or unsafe conditions.

3
4 | **12. FINAL INSPECTION AND PROJECT ACCEPTANCE**

5
6 | 12.1 The PARTIES agree to comply with all provisions contained within Section 15 of the
7 | GCA 6486, regarding Final Inspection and Project Acceptance, and such provisions shall apply
8 | equally to this Agreement.

9
10 | 12.2 UTILITY Facilities shall not be placed into interim use or operation, or transferred to the
11 | City, unless or until: (a) UTILITY has participated in an inspection of the UTILITY Facilities;
12 | (b) any deficiencies or Defective Work have been resolved or corrected to UTILITY's
13 | satisfaction; and (c) UTILITY confirms with the STATE in writing that UTILITY's minimum
14 | inspection and testing requirements for the UTILITY Facilities have been met, including
15 | completion of the Washington State Department of Health Completion Report for watermain.

Comment [SLS39]: For SPU only

16
17 | **13. WARRANTIES**

18
19 | 13.1 The PARTIES agree to comply with all provisions contained within Section 17 of the
20 | GCA 6486, regarding Final Inspection and Project Acceptance, and such provisions shall apply
21 | equally to this Agreement

22 | **14. ACQUISITION AND TRANSFER OF EASEMENTS AND FRANCHISES**

23
24 | 14.1 The UTILITY is responsible for identifying and acquiring, at its sole cost and expense,
25 | all property rights needed to complete Relocation Work, except for property otherwise required
26 | for the PROJECT.

27
28 | 14.2 The STATE is responsible for identifying and acquiring, at its sole cost and expense, all
29 | property rights needed to complete UTILITY Facilities Deformation Mitigation Work.

30
31 | 14.3 The PARTIES recognize that their property acquisition responsibilities include the
32 | performance of all appraisal, appraisal review, title review, surveys, property investigation,
33 | relocation assistance and all other investigations and services in connection with the acquisition
34 | of the permanent easement rights necessary for the UTILITY Facilities, including, without
35 | limitation, identification and investigation of Hazardous Substances as provided in Section 54 of
36 | the GCA 6486. The STATE shall provide to UTILITY, as soon as available to the STATE, all
37 | reports and documents prepared or obtained in connection with any of the reviews and
38 | investigations described above.

39
40 | 14.4 Where the State is acquiring easement rights for UTILITY Facilities Deformation
41 | Mitigation Work, unless the Parties otherwise agree in writing, prior to commencement of
42 | construction, the STATE shall convey to the CITY the easement rights referred to in Section 14.6

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GREEN HIGHLIGHT = Staff to resolve

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1 by conveying them substantially in the form as, and containing the same conditions as, the
2 approved Utility Easement form attached and identified as Exhibit A. The Utility Easements
3 conveyed to the CITY shall not be subject to any lien, encumbrance or exception of title of any
4 kind.

5
6 14.5 The legal descriptions will be developed based on the Approved Plans. The Parties
7 acknowledge that due to unforeseen field conditions the location of one or more of the easements
8 may need to change after commencement of construction. In that case, the STATE shall provide
9 UTILITY with documents, reports and information identified in Subsection 14.3 above, relevant
10 to the new or modified easement area. All requirements and conditions pertaining to the original
11 permanent Utility Easements shall apply to all amendments and modifications.

Comment [g40]: Joint – RES needs to review

12
13 14.6 Where UTILITY Facilities are located in or near an area which the STATE designates as
14 a Limited Access Facility, the STATE will ensure that UTILITY continues to be allowed fully
15 access to its UTILITIES for operation, maintenance and repair, and will not be required to
16 relocate its Utility Facility without full compensation from the STATE.

Comment [RF41]: TBD – RES needs to review

17 14.6.1 The STATE's Limited Access Facility designation for the tunnel shall contain a
18 vertical and horizontal boundary.

19 14.6.2 The STATE agrees that any Limited Access Facility designation for the tunnel
20 will end at a maximum of three (3) feet above the tunnel in order to allow UTILITY to access its
21 UTILITY Facilities.

22
23 14.6.3 The area below City streets in the vertical dimension, and outside between the
24 Limited Access Facility boundaries, and the CITY street shall continue to be CITY Street Right-
25 of-Way.

Comment [P42]: Under discussion

Comment [P43]: Under discussion

26 14.6.4 In the event the STATE designates as a Limited Access Facility any area in or
27 near the tunnel portals on which a UTILITY Facility exists or will be relocated, the STATE
28 agrees to provide UTILITY a UTILITY franchise Easement in the form attached hereto as
29 Exhibit AD, pursuant to the requirements of this Section 14 herein [OR provide for access to
30 operate and maintain 24/7.] and will make every effort to develop a design that minimizes the
31 need for regular, on-going maintenance access.

Comment [RF44]: May need elevation

32 33 34 15. ENVIRONMENTAL REMEDIATION

35
36 15.1 The PARTIES shall comply with all provisions of GCA 6486, regarding Environmental
37 Remediation, including but not limited to all provisions in Section 5 therein, and such provisions
38 shall apply equally to this Agreement.

39 40 16. RISK ALLOCATION

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1 16.1 The PARTIES shall comply with all provisions of the GCA 6486, regarding Risk
2 Allocation and Indemnification, including but not limited to all provisions in Section 19 therein,
3 and such provisions shall apply equally to this Agreement.

4
5 **17. INSURANCE**

6
7 17.1 The PARTIES shall comply with all provisions of the GCA 6486, regarding Insurance,
8 including but not limited to all provisions in Section 20 therein, and such provisions shall apply
9 equally to this Agreement.

10
11 **18. THIRD PARTY BENEFICIARY**

12
13 18.1 The PARTIES shall comply with all provisions of GCA 6486, regarding Third Party
14 Beneficiary, including but not limited to all provisions in Section 21 therein, and such provisions
15 shall apply equally to this Agreement.

16
17
18 **19. DISPUTE RESOLUTION**

19
20 ~~19.1 Dispute Resolution Representatives. The Dispute Resolution Representatives for the~~
21 ~~Parties are as follows:~~

22
23 ~~For the STATE: Bored Tunnel Project Design Project Engineer or, if~~
24 ~~appropriate, Construction Project Engineer,~~
25 ~~Alaskan Way Viaduct & Seawall Replacement Program~~
26 ~~Washington State Department of Transportation~~
27 ~~999 3rd Avenue, Suite 2424~~
28 ~~Seattle, WA 98104~~

29
30 ~~For UTILITY: UTILITY AWV Project Manager~~
31 ~~P.O. Box 34023~~
32 ~~700 Fifth Avenue, Suite 3200~~
33 ~~Seattle, WA 98124-4023~~

34
35 19.1 Good Faith. UTILITY and the STATE shall make good faith efforts to resolve any
36 dispute arising under or in connection with this Agreement. The dispute resolution process
37 outlined in this Section applies to disputes arising under or in connection with the terms of this
38 Agreement. In the event that the Parties cannot resolve a disagreement arising under or in
39 connection with this Agreement, the Parties shall follow the dispute resolution steps set forth
40 below.

41
42 19.2 Notice. A Party's Designated Representative, as defined in Section 8 above, shall notify
43 the other Party's Designated Representative in writing of any problem or dispute that a Party

Comment [SLS45]: We changed this to make it consistent with SDOT's process. Confirm that the appropriate people are listed in 19.5 and 19.7.

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1 believes needs resolution. The written notice shall include (a) a description of the issue to be
2 resolved; (b) a description of the differences between the Parties on the issue; and (c) a summary
3 of any steps taken to resolve the issue.
4

5 19.3 Meeting. Upon receipt of a written notice of request for dispute resolution, the
6 Designated Representatives for the Parties shall meet within ten (10) Business Days and attempt
7 to resolve the dispute. Any resolution of the dispute requires the agreement of all Designated
8 Representatives attending the meeting or who requested to attend the meeting.
9

10 19.4 Notice of Second Level Meeting. If the Parties have not resolved the dispute within five
11 (5) Business Days after the meeting, at any time thereafter either Party may request that the
12 dispute be elevated to the next level by notifying the other Party's Designated Representative in
13 writing, requesting that the dispute be raised to the Second Level Meeting. The written
14 notification shall include a) a description of the remaining issues to be resolved; b) a description
15 of the differences between the Parties on the issues, c) a summary of the steps already taken to
16 resolve the issues, and d) the resolution of any issues that were initially involved in the dispute.
17

18 19.5 Second Level Meeting. Upon receiving a written request that the dispute be elevated to
19 the next level, a meeting shall be held within ten (10) Business Days between the Project
20 Director of WSDOT and the Customer Service and Energy Delivery Officer of Seattle City
21 Light/SPU Project Delivery Branch Deputy Director to resolve the dispute. Any resolution of the
22 dispute requires the agreement of all Representatives attending the meeting or who requested to
23 attend the meeting.
24

25 19.6 Notice of Third Level Meeting. If the Parties have not resolved the dispute within five
26 (5) Business Days after the Second Level Meeting, at any time thereafter either Party may
27 request that the dispute be elevated to the next level by notifying the other Party's Designated
28 Representative in writing, requesting that the dispute be raised to the Third Level Meeting. The
29 written notification shall include a) a description of the remaining issues to be resolved; b) a
30 description of the differences between the Parties on the issues, c) a summary of the steps
31 already taken to resolve the issue, and d) the resolution of any issues that were initially involved
32 in the dispute.
33

34 19.7 Third Level Meeting. Elevate to the Executive Committee. Upon receiving a written
35 request that the dispute be elevated to the third level, a meeting shall be held within ten (10)
36 Business Days between the Washington State Deputy Secretary of Transportation and
37 Superintendent of Seattle City Light/Director of Seattle Public Utilities to resolve the dispute.
38 Any resolution of the dispute requires the agreement of all Representatives attending the meeting
39 or who requested to attend the meeting.
40

41 19.8 Court of Law. If the Parties have not resolved the dispute within five (5) Business Days
42 after the third level meeting, at any time thereafter either Party may seek relief under this

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1 Agreement in a court of law. The Parties agree that they have no right to relief in a court of law
2 until they have completed the dispute resolution process outlined in this Section.
3

4 19.9 A Party's request to utilize this Dispute Resolution process is not evidence that either Party
5 is in breach of this Agreement, and does not relieve any Party from complying with its obligations
6 under this Agreement.

7 19.2 Dispute Resolution Process. The designated representatives established under Section
8 19.12 shall use their best efforts to resolve disputes between the Parties. If these individuals are
9 unable to resolve a dispute, Customer Service and Energy Delivery Officer of Seattle City
10 Light/SPU Project Delivery Branch Deputy Director and the Alaskan Way Viaduct Program
11 Administrator for the Washington State Department of Transportation shall review the matter and
12 attempt to resolve it. If they are unable to resolve the dispute, the matter shall be reviewed by the
13 Superintendent of Seattle City Light/Director of Seattle Public Utilities and the Washington State
14 Deputy Secretary of Transportation. The Parties agree to exhaust each of these procedural steps
15 before seeking to resolve disputes in a court of law or any other forum.
16

17 20. REMEDIES; ENFORCEMENT

18
19 20.1 The PARTIES agree that provisions of GCA 6486, regarding Remedies, Enforcement,
20 including but not limited to Section 24 therein, shall apply equally to this Agreement.
21

22 21. TERMINATION

23
24 21.1 This Term of this Agreement may be terminated as shall be the Term provided in
25 Section 28 of GCA 6486 regarding Termination which shall apply equally to this Agreement.
26

27 22. CONFIDENTIALITY OF INFORMATION AND RECORDS

28
29 22.1 The provisions of the SDOT Bored Tunnel Agreement, regarding Confidentiality of
30 Information and Records, including but not limited to Section 27 therein, shall apply equally to
31 this UTILITY Bored Tunnel Agreement. In addition, the Federal Energy Regulatory
32 Commission (FERC) and the North American Electric Reliability Corporation (NERC) require
33 that SCL limit access and disclosure of certain sensitive Critical Energy Infrastructure
34 Information. Therefore, SCL shall require the STATE and its contractors who have access to
35 documents marked "confidential" or "proprietary" to sign the Non-Disclosure Agreement
36 attached hereto as Exhibit BC.
37

Comment [SLS46]: SCL only

38 23. EFFECTIVENESS AND DURATION

39
40 23.1 This Agreement shall be effective as of the date the last PARTY signs and, unless sooner
41 terminated pursuant to the terms hereof, shall remain in effect until final completion of all
42 PARTIES' obligations contained or referred to in this Agreement and GCA 6486, the SCL
43 Agreement, UT 01474, and the SPU Agreement, UT 01476.

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1
2
3
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5
6

24. GENERAL PROVISIONS

24.1 The General Provisions set forth in the GCA 6486, including but not limited to Section 30 therein, shall apply equally to this Agreement.

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1
2 IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the last day
3 and year written below.
4
5

6 | **SEATTLE PUBLIC UTILITIES/CITY LIGHT** **WASHINGTON STATE**
7 **DEPARTMENT OF**
8 **TRANSPORTATION**
9 _____

11 **By:**
12 Ray Hoffman/Jorge Carrasco
13 **Director/Superintendent:**

By: _____
Print: _____
Title: _____

15 Date: _____

Date: _____

20 APPROVED AS TO FORM:

22 _____
23 By (print)

27 _____
28 Signature
29 Assistant Attorney General

32 Date: _____

ATG MI TPC TRANSFER

From: Salay, Ann (ATG)
Sent: Thursday, May 13, 2010 1:00 PM
To: Galvin, Daniel (ATG)
Cc: Lagerberg, Elizabeth (ATG)
Subject: Salay 5/13/10 Review of 5/7/10 Suzanne Smith's changes: Revised UTILITY MOA UT01474/UT 01476 draft
Attachments: Bored_Tunnel_Utility_MOA-LED GP comments to State.docx; Bored_Tunnel_Utility_MOA-LED GP comments to State (2)[5-11-10 SSmith comments Salay rev 5-13-10.docx
Importance: High

Dan, per your below request, I have reviewed & commented upon the 5/7/10 changes made by Suzanne Smith of the City's legal department. Please note: Many of my 5/6/10 initial review

[1d]

The version of the UT agreement is attached, and I am attaching my 5/13/10 review document.

Feel free to forward to Theresa.

Thanks, Annie

Ann E. Salay, AAG

POB 40113 -- 7141 Cleanwater Dr. SW

Olympia, Wa 98504-0113

360-753-6130

Fax: 360-586-6847

anns@atg.wa.gov

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From: Galvin, Daniel (ATG)
Sent: Thursday, May 13, 2010 7:17 AM
To: Lagerberg, Elizabeth (ATG); Salay, Ann (ATG)
Subject: FW: Revised UTILITY MOA draft

I just got this from Theresa

Daniel W. Galvin, P.E.
Assistant Attorney General
Transportation and Public Construction Division
7141 Cleanwater Drive SW
PO Box 40113
Olympia, WA 98504-0113

Phone(360)753-1626

Fax (360)586-6847
Blackberry (360) 584-4329

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From: Greco, Theresa [mailto:GrecoT@wsdot.wa.gov]
Sent: Wednesday, May 12, 2010 6:29 PM
To: Galvin, Daniel (ATG)
Subject: Fw: Revised UTILITY MOA draft

Just received.

From: Patterson, Gavin <Gavin.Patterson@seattle.gov>
To: McIntosh, Hannah <Hannah.McIntosh@seattle.gov>; Coordination,AWVUtilities <AWVUtilities.Coordination@seattle.gov>; Kling, Joyce; Hathaway, Ross <Ross.Hathaway@seattle.gov>; Rian, Jodi <Jodi.Rian@seattle.gov>; Smith, Suzanne <Suzanne.Smith@seattle.gov>; Smith, Dave <Dave.Smith@seattle.gov>; Groh,John <John.Groh@seattle.gov>; Deboldt, Linda <Linda.Deboldt@seattle.gov>; Kelly, Liz <Liz.Kelly@seattle.gov>; Conte, Rick (Consultant); Greco, Theresa
Cc: Marquardt, Carl <Carl.Marquardt@seattle.gov>; DuComb, Darby <Darby.DuComb@seattle.gov>; Chandler, Bob (Seattle.Gov); Boler, Jean <Jean.Boler@seattle.gov>; Madden, Charlie <Charlie.Madden@seattle.gov>
Sent: Wed May 12 17:14:37 2010
Subject: Revised UTILITY MOA draft

Attached is the draft Utility MOA. As indicated yesterday, there are still some issues we are trying to resolve internally.

Theresa and Rick, please distribute at the State.

Thanks,
Gavin

*** eSafel scanned this email for malicious content ***
*** IMPORTANT: Do not open attachments from unrecognized senders ***

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MEMORANDUM OF AGREEMENT

UT 01474/ UT 01476
SR 99 ALASKAN WAY VIADUCT REPLACEMENT
BORED TUNNEL PROJECT
UTILITY FACILITIES WORK

Comment [SLS1]: To be changed to SPU or SCL
in each agreement

THIS Memorandum of Agreement, UT 01474/ 01476, SR 99 Alaskan Way Viaduct Replacement, Bored Tunnel, UTILITY Facilities Work (“UTILITY Bored Tunnel Agreement”) is made and entered into between the State of Washington Department of Transportation, hereinafter the “STATE,” and the City of Seattle, hereinafter the CITY, (managed by Seattle City Light/Seattle Public Utilities, hereinafter “UTILITY”), collectively the “Parties” and individually the “Party.”

Comment [SLS2]: To be changed to SPU or SCL

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

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

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

WHEREAS, the January 2009 letter of agreement between the parties affirmed that the State would be responsible for the bored tunnel project, and that “the allocation of specific project responsibility to each jurisdiction carries with it the responsibility for project management, environmental work, design, construction, and project cost overruns”; and

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

HIGHLIGHTED TEXT = Elevate to Leadership
GREEN HIGHLIGHT = Staff to resolve

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1
2 | WHEREAS, the AWVSR Program (PROGRAM)-consists of a four-lane bored tunnel and
3 improvements to City streets, the City waterfront, and transit; and the Moving Forward Projects;
4 and
5
6 WHEREAS, the Proposed Bored Tunnel Project (PROJECT), the subject of this Agreement, is
7 the part of the PROGRAM that replaces SR 99 from South Royal Brougham Street to Mereer
8 Roy Street that consists of designing and constructing a four-lane bored tunnel from South King
9 Street to Thomas Street, north and south tunnel portals and access streets; re-establishment of the
10 City street grid in the vicinity of the portals (Battery Street Tunnel decommissioning and
11 Alaskan Way Viaduct demolition will be addressed in a future agreement); and associated utility
12 relocations; and
13
14 WHEREAS, the Washington State Legislature passed Engrossed Substitute Senate Bill 5768 and
15 the Governor signed the bill into law designating and funding a Bored Tunnel Program as the
16 replacement for the Alaskan Way Viaduct; and
17
18 WHEREAS, in January 2009, the Governor, the King County Executive and the Mayor of
19 Seattle recommended replacement of the existing AWV structure in the central waterfront area
20 with a bored tunnel; and
21
22 ~~WHEREAS, RCW 47.01.402, which became law July 1, 2009, provides that State funding for~~
23 ~~the PROJECT is not to exceed two billion eight hundred million dollars (\$2,800,000,000.00) of~~
24 ~~which no more four hundred million shall be from tolls, and~~
25
26 ~~WHEREAS, RCW 47.01.402(6)(b) provides that any costs in excess of two billion eight hundred~~
27 ~~million dollars (\$2,800,000,000.00) shall be borne by property owners in the Seattle area who~~
28 ~~benefit from replacement of the existing viaduct with the deep bore tunnel, and~~
29
30 WHEREAS, the CITY and STATE agree to work collaboratively toward the successful jointly
31 pursue the implementation and completion of the PROJECT and endeavor to open the tunnel by
32 the end of 2015 and demolish the Alaska Way viaduct in 2016; and
33
34 WHEREAS, the PROJECT is consistent with the CITY of Seattle's adopted Comprehensive
35 Plan; and
36
37 ~~WHEREAS, review of the PROJECT pursuant to the State and City environmental policy laws~~
38 ~~is currently underway and the parties recognize that changes in the alternative chosen would~~
39 ~~require a new agreement, and~~
40
41 WHEREAS, the CITY and the STATE will deliver the PROJECT within the financial
42 commitments made in the Memorandum of Agreement, GCA 6366, executed by the PARTIES
43 on October 24, 2009; and

Comment [SLS3]: These recitals and the other yellow one below re: environmental policy laws don't belong in the Utility agreements.

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1
2 | WHEREAS, concurrently with this GCA-6486/UT 01476 Agreement, the STATE and CITY,
3 through Seattle City Light (SCL), are entering into an agreement, UT 01474; and
4
5 | WHEREAS, concurrently with this GCA-6486/UT 01474 Agreement, the STATE and CITY,
6 through its Seattle Public Utilities Department (SPU), are entering into an agreement, UT 01476;
7 and
8
9 | WHEREAS, concurrently with this UTILITY Bored Tunnel UT 01474/UT 01476 Agreement, the
10 STATE and CITY, through the Seattle Department of Transportation, are entering into an
11 agreement, GCA 6486; and
12
13 | ~~WHEREAS, the PROJECT will in some instances require the use of existing CITY Street Right-~~
14 ~~of-Way; and~~
15
16 WHEREAS, the CITY will own and/or maintain significant infrastructure to be constructed as
17 part of the PROJECT; and
18
19 | ~~WHEREAS, some portion of SR 99 is within the PROJECT and is a city street serving as part of~~
20 ~~a State Highway under RCW 47.24.010; and~~
21
22 | ~~WHEREAS, the Parties wish to establish protocols and procedures for property acquisition,~~
23 ~~environmental remediation, design review, permitting, and construction coordination to govern~~
24 ~~their relationship during the course of the PROJECT.~~
25
26 WHEREAS, some or all of the work covered by this Agreement may be accomplished by
27 executed "Task Order" documents.
28
29 | ~~WHEREAS, concurrently with this UTILITY Bored Tunnel Agreement, the STATE and CITY,~~
30 ~~through the Seattle Department of Transportation, are entering into an agreement, GCA-6486;~~
31 ~~and~~
32
33 | ~~WHEREAS, the PROJECT will require the removal of existing City electrical, water, drainage~~
34 ~~and wastewater facilities that directly conflict with the tunnel portals and tunnel portal~~
35 ~~excavations ("Conflicting Facilities"), and the construction of new facilities and service~~
36 ~~connections, (excluding temporary construction and permanent electrical services for the~~
37 ~~PROJECT) to a permanent and one final location to replace the conflicting facilities (together,~~
38 ~~the "Relocation Work"); and~~
39
40 | WHEREAS, the PROJECT will also require the planning, operational and construction
41 management practices, monitoring and other work to avoid and/or remedy damage
42 ("Deformation Mitigation Work"); and
43

Comment [SLS4]: Remember to delete either this recital or the next one, depending on which Agreement

Comment [SLS5]: In response to Rick (comment below), we confirmed that the definitions here are now consistent with those in Section 1. We also deleted the "one" per Rick's comment. We do think this should be included as a recital, because it explains what this agreement is about (just like the recitals regarding street use, etc., which we have suggested deleting here, make sense as recitals in the SDOT MOA). And the next recital which we added completes the story of what this agreement is about.

Comment [rlc6]: Not sure these should be recitals. Need to edited to be consistent with accepted terminology Also reflects the "one relocation" position of City. Needs Management decision on "one relocation"

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1 WHEREAS, together the Relocation Work and the UTILITY Facilities Deformation Mitigation
2 Work will comprise the "UTILITY Facilities Work" of the PROJECT; and
3

4 ~~NOW, THEREFORE, pursuant to RCW 47.29.140 and RCW 47.91.401 and in consideration of~~
5 ~~the terms, conditions, covenants, and performances contained herein, or attached and~~
6 ~~incorporated and made a part hereof.~~
7

8 NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performances
9 contained herein, or attached and incorporated and made a part hereof.
10

11 IT IS MUTUALLY AGREED AS FOLLOWS:
12

13 **1. DEFINITIONS**
14

15 Words not otherwise defined, which have well-known technical or construction industry
16 meanings, are used in accordance with such recognized meanings.
17

18 1.1 Approved Plans means the construction plans and provisions that evidence the CITY's
19 determination, through the processes described in Section 6 and 75 and Exhibit B of the SDOT is
20 Agreement GCA 6366, that the plans including ~~Released for Construction Submittal Plans for~~
21 ~~Design-Build contracts conform to the Street Use Code and other requirements, and that plan~~
22 ~~review comments are resolved to both Parties' satisfaction conform to the criteria in Sections 6~~
23 ~~and 7 and Exhibit B of the SDOT Agreement GCA 6366; Approved Plans are included in the~~
24 contract documents evidencing the agreement between the STATE and its contractors for
25 construction of a given element of the PROJECT.
26

27 1.2 AWV means the Alaskan Way Viaduct structure on State Route 99, currently a non-
28 limited-access highway over a portion of CITY Street Right-of-Way and located partially in the
29 City of Seattle.
30

31 1.3 Betterment means any upgrading of the UTILITY Facilities, or the design and
32 construction of any new UTILITY Facilities that is not attributable to the PROJECT or
33 PROGRAM and is made solely for the benefit of and at the election of UTILITY. Examples of
34 work that will not constitute a Betterment, so that UTILITY shall not bear cost responsibility,
35 are:

36 1.3.1 If existing devices or materials are no longer regularly manufactured or cannot be
37 obtained in time to meet the PROJECT schedule, needs or requests by the STATE, then devices
38 or materials of equivalent standards although not identical, of the next highest grade or size; or

39 1.3.2 Upgrades to UTILITY Facilities necessary to meet current code requirements and
40 UTILITY published standards; or

41 1.3.3 Work required by UTILITY to maintain current service and capacity; or

42 1.3.4 Work required by current design and construction practices regularly followed by
43 UTILITY in its own work and/or considered an industry design or construction standard.

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- 1
2 1.4 Business Days means Monday through Friday, inclusive, except for official City of
3 Seattle and state holidays and ~~City mandated furlough days.~~
4
5 1.5 CITY means the City of Seattle, a Washington municipal corporation.
6
7 1.6 City Construction Project Engineer means the person designated by SDOT to act as the
8 City's coordinator and primary representative in matters arising during the course of construction
9 as set forth in this Agreement.
10
11 1.7 CITY Facilities means SCL Facilities, SDOT Facilities, SPU Facilities and facilities
12 impacted by, or constructed as part of, the PROJECT that are owned or will be owned by any
13 other CITY agency.
14 ~~1.7.....CITY Designated Representative means the CITY official listed in Section xx of this~~
15 ~~Agreement.~~
16
17 1.8 CITY Infrastructure means the portions of SPU Facilities, SCL Facilities and City Street
18 Right-of-Way improvements constructed or modified as part of the PROJECT to be owned,
19 operated and maintained by the CITY.
20
21 1.9 ~~CITY Interest Property~~ means CITY Street Right-of-Way plus all other real property that
22 the CITY owns or in which the CITY has a real property interest on the effective date of this
23 Agreement, or in connection with the PROGRAM is to acquire ownership of or an interest in
24 real property ~~by a different utility related fund from the STATE, which includes, but is not~~
25 ~~limited to Program Transfer Property, - in addition, City Interest Property means any property or~~
26 ~~property interest that will, at the completion of the PROJECT, be transferred by the STATE to~~
27 ~~the CITY~~ - CITY Interest Property does not include real property acquired or to be acquired by
28 the STATE for planned limited access facilities such as the bored tunnel, portals and access for
29 which no real property interest or ~~different utility related fund~~ will be transferred to the CITY.
30
31 1.10 City of Seattle means CITY.
32
33 1.11 City Standards means all City of Seattle laws, rules, regulations and standards and all
34 applicable federal and state laws, rules, regulations and standards, including but not limited to
35 the following, except as otherwise provided in this Agreement, UT 01474 and UT 01476:
36 The Seattle Municipal Code
37 The City of Seattle Standard Specifications for Road, Bridge and Municipal Construction
38 The City of Seattle Standard Plans for Municipal Construction,
39 SDOT, SCL, DPD and SPU Director's Rules, including the City of Seattle Right of Way
40 Improvements Manual, 2005-22.
41 SCL Material Standards
42 SCL Construction Guidelines

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1 1.12 CITY Street Right-of-Way means public street right-of-way under the jurisdiction of
2 SDOT pursuant to Title 15 of the Seattle Municipal Code.

3
4 1.13 Conceptual Utility Relocation Plan means a work product that defines the general scope
5 of Relocation Work Utility relocations including a planning level estimate of design and
6 construction costs, as further described in Section 3 herein.

Comment [SL57]: May need more City
discussion.

7
8 1.14 Conflicting Facilities means all SCL Facilities and all SPU Facilities identified by the
9 STATE that directly conflict with the bored tunnel portals and tunnel portal excavations.

10
11 1.15 Contract Award means the STATE's written decision accepting bid for construction of a
12 Project.

13
14 ~~1.16 Damage means loss of function, capacity, or aesthetic quality. For the purposes of this~~
15 ~~Agreement, "Damage" shall not be construed to include reduction of design life of any structure~~
16 ~~or utility.~~

17
18 ~~1.17 Damage means any direct or indirect consequence of the PROJECT that causes harm to,~~
19 ~~or reduces value or usefulness of, CITY Infrastructure, private property, CITY property or other~~
20 ~~public property, including but not limited to structural damage or physical failure, loss of~~
21 ~~function, capacity or aesthetic quality, reduced service capacity, including intended future~~
22 ~~capacity, reduced service life, a measurable reduction of design life of an SPU Facility or an~~
23 ~~SCL Facility, water main movement in excess of established thresholds, or any other impact to~~
24 ~~an SPU Facility or an SCL Facility such as stress or Deformation.~~

25
26 1.18 Defective Work means design or construction work or materials that fail to comply with
27 the Approved Plans, CITY-approved modifications to the Approved Plans, or the laws, rules,
28 regulations or standards as specified in this Agreement.

29
30 1.19 Deformation means any 3-dimensional displacement, for a structure (such as tilt of a
31 structure), and strain (relative displacements of structures or the ground) and includes any
32 settlement, heave, and lateral movement. Any use of the defined term Deformation, and related
33 terms are used as being in the manner commonly used in industry terminology. Where such
34 industry terminology is used for convenience herein, it does not imply that the broad definition
35 of Ddeformation has been limited.

36
37 1.20 Deformation Mitigation Work means any planning, operational and construction
38 management practices, monitoring and temporary or permanent UTILITY Facilities Work
39 undertaken to avoid and/or remedy dDamage to UTILITY Facility as a result of Deformation, as
40 further described in Section 4 herein.

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1 1.21 ~~Design Bid Build Contract~~ means a project delivery method in which the STATE
2 provides a complete design, advertises for bids, and awards a contract to the lowest responsive
3 bidder who is responsible for completing the construction of the project.

Comment [SLS8]: We propose that this definition be deleted from here and put in the definitions section of SDOT MOA Exhibit B. The term is not referenced in this agreement.

4
5 1.22 ~~Design Build Contract~~ means a project delivery method in which the STATE develops a
6 conceptual design and requests proposals from pre-qualified contractors. The contract is
7 awarded to the contractor with the best value responsive proposal. The contractor is responsible
8 to complete the design and construct the project.

Comment [SLS9]: We propose that this definition be deleted from here and put in the definitions section of SDOT MOA Exhibit B. The term is not referenced in this agreement.

9
10 1.23 ~~Design Builder~~ means the entity with whom the STATE enters into a Design-Build
11 contract and who is responsible to complete the design and construct the project.

Comment [SLS10]: We propose that this definition be deleted from here and put in the definitions section of SDOT MOA Exhibit B. The term is not referenced in this agreement.

12 1.24 DPD means the City of Seattle Department of Planning and Development.

13
14
15 1.25 Engineer of Record means the engineer licensed in the State of Washington who has been
16 commissioned by the STATE as the prime engineer of the PROJECT, having overall
17 responsibility for the adequacy of the design and the coordination of the design work of other
18 engineers and whose professional seal is on the Approved Plans.

19
20 1.26 ~~Environmental Compliance Assurance Procedure (ECAP)~~ means procedures incorporated
21 into the ~~WSDOT Construction Manual M41-01.05~~ (Section 1.2.2k(1))
22 and the ~~WSDOT Environmental Procedures Manual M31-11.05~~ (Sections 610 and 690) dated
23 ~~11/13/2008~~, as modified by this Agreement, which provide guidance on compliance with
24 Environmental Laws and environmental Remediation. The purpose of the ECAP is to recognize
25 and eliminate environmental violations during the construction phase on STATE construction
26 sites and to ensure prompt notification to STATE management and agencies. For purposes of the
27 ECAP, violations are defined as actions that are not in compliance with environmental standards,
28 permits, or laws.

Comment [SLS11]: This term is not referenced in this agreement.

29 1.27 Environmental Law(s) means any environmentally related local, state or federal law,
30 regulation, ordinance or order (including without limitation any final order of any court of
31 competent jurisdiction of which the STATE has knowledge), now or hereafter in effect
32 including, but not limited to: the Federal Clean Air Act; the Federal Water Pollution Control Act;
33 the Federal Safe Drinking Water Act; the Federal Comprehensive Environmental Response
34 Compensation and Liability Act, as amended by the Superfund Amendments and
35 Reauthorization Act of 1986; the Federal Resource Conservation and Recovery Act, as amended
36 by the Solid and Hazardous Waste Amendments of 1984; the Federal Occupational Safety and
37 Health Act; the Federal Emergency Planning and Right to Know Act of 1986; the Federal
38 Hazardous Materials Transportation Control Act of 1980; the Federal Clean Water Act of 1977;
39 the Federal Insecticide, Fungicide and Rodenticide Act; the Federal Waste Management
40 Recovery and Recycling Act; the Washington Hazardous Waste Management Act; the
41 Washington Hazardous Waste Fees Act; Washington Model Toxics Control Act; the Washington
42 Nuclear Energy and Radiation Act; the Washington Radioactive Waste Storage and

Comment [SLS12]: This term is not referenced anywhere in this agreement.

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1 Transportation Act; the Washington Underground Petroleum Storage Tanks Act; and any
2 regulations promulgated thereunder from time to time.

3
4 ~~1.28 Final Design Submittal means plans, specifications, and design documentation~~
5 ~~representing complete design of a given project element in a Design-Build Contract. The Final~~
6 ~~Design Submittal addresses and incorporates review comments from the Preliminary Design~~
7 ~~Submittal.~~

Comment [SLS13]: We propose that this definition be deleted from here and put in the definitions section of SDOT MOA Exhibit B. The term is not referenced in this agreement.

8
9 ~~1.29 Final Plan Review Package means the Plan Review Package submitted to the CITY that~~
10 ~~is comprised of the STATE's contract documents including contract addenda and fully~~
11 ~~incorporates or otherwise addresses all CITY plan review comments and all applicable~~
12 ~~conditions of the Street Use Permit.~~

Comment [SLS14]: We propose that this definition be deleted from here and put in the definitions section of SDOT MOA Exhibit B. The term is not referenced in this agreement.

13
14 1.30 Hazardous Substance(s) means any substance, or substance containing any component,
15 now or hereafter designated as a hazardous, dangerous, toxic or harmful substance, material or
16 waste, subject to regulation under any federal, state or local law, regulation or ordinance relating
17 to environmental protection, contamination or cleanup including, but not limited to, those
18 substances, materials and wastes listed in the United States Department of Transportation
19 Hazardous Materials Table (49 C.F.R. §172.101) or by the United States Environmental
20 Protection Agency as hazardous substances (40 C.F.R. pt. 302 and amendments thereto) or in the
21 Washington Hazardous Waste Management Act (Ch. 70.105 RCW) or the Washington Model
22 Toxics Control Act (Chs. 70.105D RCW and 82.21 RCW), petroleum products and their
23 derivatives, and such other substances, materials and wastes as become regulated or subject to
24 cleanup authority under any Environmental Law.

25
26 1.31 Letter of Acceptance means the written document that signifies the CITY's acceptance of
27 CITY Infrastructure to be owned by the CITY, and shall signify the STATE's transfer of CITY
28 Infrastructure to be owned by the CITY. The Letter of Acceptance will not transfer any interest
29 in real property. The Letter of Acceptance shall be jointly executed by the Parties. A Letter of
30 Acceptance for SPU Facilities requires SPU approval and a Letter of Acceptance for SCL
31 Facilities requires SCL approval.

32
33 1.32 Letter of Plan Approval means the letter provided to the STATE by the CITY following
34 the completion of the plan review process, signifying that the plans and specifications identified
35 in the letter are the Approved Plans.

36
37 ~~1.33 MTCA means the Washington Model Toxics Control Act (Chs. 70.105D RCW and 82.21~~
38 ~~RCW).~~

Comment [SLS15]: This term is not referenced in this agreement.

39
40 1.34 New Work means the design and construction by or at the direction of UTILITY of a new
41 utility other than (a) as part of a relocation associated with the PROJECT, or (b) to provide
42 service to the PROJECT. New Work shall be entirely the financial obligation of UTILITY.

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- 1 1.35 Preliminary Engineering means the portion of the Project engineering which advances the
2 Project design to address Type, Size, and Location (“TS&L”) for all components of the Project.
3 Design will have advanced sufficiently to define alignments and identify conflicts. Preliminary
4 engineering will include an estimate for final design and a preliminary cost for construction.
5
- 6 1.36 Plan Review Package means clear and complete plans, specifications, and the necessary
7 assumptions, studies, models and calculations upon which the design was based, and corrections
8 previously requested by the CITY with respect to Design Bid-Build Projects.
9
- 10 1.37 100% Plan Review Package means the Plan Review Package submitted to the CITY
11 concurrent with STATE’s final internal review of the construction contract plans and contract
12 provisions that shall evidence the agreement between the STATE and its contractors for
13 construction of Design Bid-Build Projects.
14
- 15 1.38 Plans, Specifications, and Estimate (“PS&E”) means the portion of the PROJECT
16 engineering after the Preliminary Engineering, which advances the PROJECT design by
17 preparing contract-ready documents and the engineer’s cost estimate. At this stage the
18 specifications are written and tailored to the plans so that all work can be measured and has a pay
19 item. The cost estimate is formalized using the established specifications, pay items and quantity
20 takeoffs, for 60% through 100% completion of the total design effort.
21
- 22 1.39 Preliminary Design Submittal means in a Design-Build Contract, a formal opportunity for
23 the STATE, the Design-Builder, various design team disciplines, and other approved Project
24 stakeholders to review the construction documents in order to ensure that the design is
25 progressing appropriately and proceeding in the right direction; the plans reflect Design-Builder
26 requirements for construction; design features are coordinated; and there are no fatal flaws
27 within a given discipline or between disciplines
28
- 29 1.40 Private Utilities means utility uses, excluding facilities owned and operated by the CITY,
30 approved through franchise agreements and/or Street Use Permits by the CITY and governed and
31 enforced through City Ordinance.
32
- 33 1.40 Procedures means *Design Review, Construction Management, Inspection and Record*
34 *Drawing Procedures*, attached as Exhibit B to the SDOT Agreement GCA 6366.
35
- 36 1.41 PROJECT means the Proposed Bored Tunnel Project, the part of the PROGRAM that
37 replaces SR 99 from South Royal Brougham Street to Meece-Roy Street and that consists of
38 designing and constructing a four-lane bored tunnel from South King Street to Thomas Street,
39 north and south tunnel portals and access streets, re-establishment of the City street grid in the
40 vicinity of the portals (Battery Street Tunnel decommissioning and Alaskan Way Viaduct
41 demolition will be addressed in a future agreement); and associated utility relocations. A
42 PROJECT description is attached as Exhibit A to the SDOT Agreement GCA 6366.
43

Comment [SLS16]: This term is no longer referenced in this agreement.

Comment [SLS17]: We propose that this definition be deleted from here and put in the definitions section of SDOT MOA Exhibit B. The term is not referenced in this agreement.

Comment [SLS18]: We propose that this definition be deleted from here and put in the definitions section of SDOT MOA Exhibit B. The term is not referenced in this agreement.

Comment [SLS19]: This term is no longer referenced in this agreement.

Comment [SLS20]: We propose that this definition be deleted from here and put in the definitions section of SDOT MOA Exhibit B. The term is not referenced in this agreement.

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1 1.42 PROGRAM means all the projects, collectively, implemented by the STATE and the
2 CITY that remove and replace the AWW and seawall.
3 the AWVSR Program which consists of a four-lane bored-tunnel and improvements to City
4 streets, the City waterfront, and transit; and the Moving Forward Projects as defined in GCA
5 6366

6
7 1.43 Project Engineer means the persons appointed by the STATE to lead the PROJECT
8 during design and/or construction or his or her designee.

9
10 1.44 ~~Released for Construction Submittal means in a Design-Build Contract, plans and~~
11 ~~specifications for a given project element that are construction-ready and have been certified by~~
12 ~~the Design-Builder as having met all contract requirements and received all approvals and~~
13 ~~permits. The Released for Construction submittal addresses all review comments from the~~
14 ~~Preliminary and Final Design submittals.~~

Comment [SLS21]: We propose that this definition be deleted from here and put in the definitions section of SDOT MOA Exhibit B. The term is not referenced in this agreement.

15
16 1.45 Relocation Work means the removal or abandonment of each Conflicting Facility and the
17 installation or reconstruction of each Conflicting Facility to its permanent and final location.

18
19 1.46 Remediation means the same as Remedy or Remedial Action defined in MTCA which
20 includes any action or expenditure consistent with the purposes of MTCA to identify, eliminate,
21 or minimize any threat or potential threat posed by Hazardous Substances to human health or the
22 environment including any investigative and monitoring activities with respect to any release or
23 threatened release of a Hazardous Substance and any assessments to determine the risk or
24 potential risk to human health or the environment.

25
26 1.47 ~~Round Table Meeting means a meeting typically held five (5) weeks following the~~
27 ~~submittal of the 100% Plan Review Package to the CITY and STATE, and commonly attended~~
28 ~~by the STATE's Project team and STATE reviewers to resolve and address STATE comments~~
29 ~~on the 100% Plan Review Package.~~

Comment [SLS22]: We propose that this definition be deleted from here and put in the definitions section of SDOT MOA Exhibit B. The term is not referenced in this agreement.

30
31 1.48 SCL means Seattle City Light.

32
33 1.49 SCL Facilities means the electrical facilities impacted by, or constructed as part of, the
34 PROJECT that are owned or will be owned by the CITY.

35
36 1.50 SCL Facilities Work means work required to design, construct and protect the SCL
37 Facilities as part of the PROJECT.

38
39 1.51 SDOT means the Seattle Department of Transportation.

40
41 SDOT Facilities means the transportation facilities impacted by, or constructed as part of, the
42 PROJECT that are owned or will be owned by the CITY.

43

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1 1.52 Specialty Work means the construction and installation of all 13.8kV or above rated
2 equipment and associated materials and infrastructure needed to accomplish the SCL Facilities
3 Work.

4
5 1.53 SPU means Seattle Public Utilities.

6
7 1.54 SPU Facilities means the water, drainage and wastewater facilities impacted by, or
8 constructed as part of, the PROJECT that are owned or will be owned by the CITY.

9
10 1.55 SPU Facilities Work means work required to design, construct and protect the SPU
11 Facilities as part of the PROJECT.

12
13 1.56 STATE means the State of Washington Department of Transportation and may include
14 its Contractors, Subcontractors, Agents and Assigns.

15
16 1.57 STATE Designated Representative means the State of Washington official listed in
17 Section 1.57 of this Agreement.

18
19 ~~1.58 Street Use Permit means written authorization secured by the STATE from the Director
20 of SDOT for use of the CITY Street Right of Way pursuant to Title 15 of the Seattle Municipal
21 Code.~~

Comment [SLS23]: We propose that this definition be deleted from here and put in the definitions section of SDOT MOA Exhibit B. The term is not referenced in this agreement.

22
23 ~~1.59 Submittal Control Document means a list of all documents or reports that are required by
24 the Approved Plans or construction contract documents or applicable law to be provided to or
25 submitted to the STATE and the CITY.~~

Comment [SLS24]: We propose that this definition be deleted from here and put in the definitions section of SDOT MOA Exhibit B. The term is not referenced in this agreement.

26
27 1.60 Task Force means a group consisting of State, City, contractor, and other stakeholder
28 staff meeting regularly to review and reach decisions relating to a particular subject, e.g., traffic,
29 structures.

30
31 1.61 Task Order means a document executed by the PARTIES under this Agreement
32 authorizing work by one party to be done on behalf of the other party and that defines the scope
33 and the obligations of the PARTIES for the given element of work. All terms and conditions of
34 the Agreement shall apply to each Task Order.

35
36 1.62 UTILITY Facilities means SPU Facilities and SCL Facilities.

37
38 1.63 UTILITY Facilities Work means SPU Facilities Work and SCL Facilities Work.

39
40 ~~1.64 UTILITY Easement means a non-exclusive permanent easement over real property for
41 the operation, maintenance, repair and replacement of the relocated UTILITY Facilities in the
42 form attached as Exhibit A.~~

Comment [g25]: Confirm definition with RES

43

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GREEN HIGHLIGHT = Staff to resolve

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1 1.65 Utility Service Work means any facilities required to provide temporary Utility services
2 for construction of the PROJECT; and any work needed to obtain permanent UTILITY services
3 to the bored tunnel or UTILITY customers.

4
5 1.66 WSDOT means Washington State Department of Transportation.

6
7 Words not otherwise defined, which have well-known technical or construction industry
8 meanings, are used in accordance with such recognized meanings.

9
10
11 | **2. GENERAL RESPONSIBILITIES**

12
13 2.1 The Parties shall manage risk, produce design and conduct construction in a manner that
14 maximizes cumulative public benefits and minimizes cumulative public costs as mutually agreed
15 to by the Parties.

16
17 2.2 This Agreement in conjunction with GCA 6486 and UT 01476 is prepared by the STATE
18 and CITY to govern relationships between the Parties and establish each Party's responsibilities
19 regarding the PROJECT as described in Exhibit A of GCA 6486, Project Description.

20
21 2.3 The Parties understand that environmental review of the proposed PROJECT is underway
22 at the date of this agreement and agree that if an alternative other than the Proposed Bored
23 Tunnel is selected, this agreement may be terminated pursuant to the provisions of Section 21
24 herein shall not be applicable.

25
26 2.4 The Parties shall work collaboratively to resolve issues in a manner that endeavors to
27 open the Proposed Bored Tunnel to the public on schedule.

28
29 | 2.5 The design and construction of CITY ~~infrastructure~~ Facilities, including ~~infrastructure~~
30 ~~repair~~, shall comply with City of Seattle codes, rules, regulations and standards.

31
32 2.6 Each Party shall provide the funding and resources necessary to fulfill the responsibility
33 of that Party as established in this Agreement.

34
35 2.7 The Parties agree to work cooperatively with each other and make reasonable, good faith
36 efforts to timely and expeditiously complete the PROJECT, as provided in this Agreement,
37 including, but not limited to, the selection of a preferred SR 99 design alternative; development
38 of preliminary engineering and final design and construction. In order to optimize design and
39 minimize conflicts, the STATE shall coordinate design and construction of the various contracts
40 making up the PROJECT with design of subsequent PROGRAM stages, and with construction of
41 previous stages of the PROGRAM. The STATE shall be prepared to modify design of the
42 contracts making up the PROJECT, the subsequent PROGRAM stage and/or previous phase if
43 both Parties determine the modifications are necessary and reasonable, to minimize conflicts.

Comment [SLS26]: May need more City discussion: SPU and SCL still need time to review this Exhibit.

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1
2 2.8 The STATE shall pay for all costs associated with the ~~UTILITY Facilities Deformation~~
3 ~~Mitigation~~ Work, including but not limited to design; design review; purchase of materials;
4 construction; inspection; preparation of record drawings; CITY crew time and costs; any
5 temporary UTILITY services required for construction of the PROJECT; and any work needed
6 to obtain permanent UTILITY services to the bored tunnel or UTILITY customers; regardless of
7 whether such UTILITY Facilities Deformation Mitigation Work is performed by the UTILITY
8 or other CITY staff, the STATE, or its contractor, as set forth in the Approved Plans, and any
9 UTILITY-approved revisions to the Approved Plans, without reimbursement from UTILITY,
10 including ~~cChange oOrders pursuant to Section 8 of this UTILITY Bored Tunnel Agreement,~~
11 but excluding Betterments or New Work as defined in ~~Section 2 of this UTILITY Bored Tunnel~~
12 ~~Agreement.~~ No delay costs shall be paid for by UTILITY.
13

14 2.9 The STATE is responsible for designing and constructing the Proposed Bored Tunnel
15 portion of the ~~Project~~PROJECT. The STATE is responsible for ~~will take reasonable measures to~~
16 ~~minimizing, limiting, and mitigating~~ ~~d~~damage to private property and CITY Facilities
17 ~~infrastructure~~ including CITY streets, CITY telecommunications facilities and ~~CITY~~UTILITY
18 ~~Facilities~~utilities that may result from the ~~PROJECT Proposed Bored Tunnel~~ construction,
19 including ~~d~~Damage that may result from tunnel-induced ~~D~~deformation. ~~The STATE~~WSDOT is
20 responsible for ~~remediating~~ such ~~d~~Damage should it occur.
21

22 ~~2.10 CITY-UTILITY is responsible for the cost of relocating those existing CITY-UTILITY~~
23 ~~Facilities~~utilities that have alignments intersecting the final configuration of the proposed SR 99
24 bored tunnel portals and tunnel portal excavations. ~~UTILITY's CITY's~~ relocation responsibility
25 is limited to the ~~typical cost for a single final relocation of each UTILITY Conflicting Facility.~~
26 During preliminary design, the Parties will jointly identify UTILITY Conflicting Facilities that
27 will need to be relocated more than once
28

Comment [P27]: May need more City discussion

29 2.11 The Parties agree that it is in the public interest for one Party to implement portions of the
30 other Party's ~~PROJECT~~reject responsibilities. Therefore, this ~~SDOT~~Agreement establishes a
31 Task Order process for use by a Party to authorize the other Party to conduct work on its behalf,
32 and as may be documented through each Task Order, agree to reimburse the other Party for such
33 services.
34

35 2.12 The ~~general terms, and conditions, and requirements~~ of GCA 6486 and this Agreement
36 ~~shall apply to each Task Order performed as part of the PROJECT, unless otherwise specified in~~
37 ~~an executed Task Order.~~
38

39 2.13 For UTILITY Facilities Work which the STATE will design and construct, the STATE
40 ~~and UTILITY~~ agrees to document key design-related decisions to ensure that issues are resolved
41 to ~~PARTIES~~SPU's/SCL's satisfaction, pursuant to Section 5 herein and Section 6 and Exhibit B
42 of ~~GCA 6486~~, so that the STATE can proceed with the design of the PROJECT. These decisions
43 will be evidenced through the use of a concurrence letter signed by both PARTIES.

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1
2 | 2.14 The STATE agrees to take the lead in consulting and coordinating with Private Utilities
3 affected by the PROJECT.

4
5 2.15 The PARTIES shall apply for and obtain all necessary federal, state and City of Seattle-
6 issued permits and approvals for the work for which they are responsible prior to commencing
7 work that requires such permits, including but not limited to all permits, approvals or permission
8 for exploratory investigations, testing, site preparations, demolition and construction.

9
10 | 2.16 The PARTIES-STATE shall comply with the regulatory requirements and agree to meet
11 operational and customer service requirements of each existing UTILITY Facility.

12
13 | 2.17 The ~~STATE/PARTIES~~ shall minimize utility service interruptions to UTILITY customers.

14
15 2.18 To the extent necessary, SCL agrees to lead the coordination of the PROJECT with all
16 applicable electrical regulatory agencies.

Comment [P28]: SCL only

17
18 | **3. RESPONSIBILITIES REGARDING SCL AND SPU RELOCATIONS**
19 **(PORTALS)CONFLICTING FACILITIES**

20
21 3.1 The STATE shall identify all SCL Facilities and all SPU Facilities that directly conflict
22 with the bored tunnel portals and tunnel portal excavations (“Conflicting Facilities”).

23
24 | 3.2 UTILITY shall ~~inform the STATE of any additional Conflicting Facilities or New Work~~
25 ~~and confirm that each UTILITY Facility which the STATE has identified as a Conflicting~~
26 ~~Facility does in fact directly conflict with the bored tunnel portals or bored tunnel portal~~
27 ~~excavations. In the event that, after the STATE identifies the Conflicting Facilities, UTILITY~~
28 ~~builds new UTILITY Facilities that conflict with the bored tunnel portals or bored tunnel portal~~
29 ~~excavations, UTILITY shall so inform the STATE.~~

30
31 | 3.3 The STATE is responsible for ~~to~~ preparing a Conceptual Utility Rrelocation Pplan that
32 documents a functional and efficient approach to relocating Conflicting Facilities in a manner
33 that accommodates the PROJECT. The Conceptual Utility Relocation Plan shall include:

34 | 3.3.1 The STATE’s preliminary design of the PROJECT that includes Type,
35 Size and Location for all components; and

36 | 3.3.2 The STATE’s preliminary design of the Relocation Work that is
37 functional and efficient, that is in compliance with City Standards, and
38 that demonstrates compatibility with existing infrastructure to remain.

39 | 3.3.3 Identification of Conflicting Facilities; and

40 | 3.3.4 The STATE’s request for UTILITY to relocate Conflicting Facilities
41 based on the STATE’s current design of the PROJECT; and

42 | 3.3.5 Plan view drawings developed in collaboration with UTILITY;
43 incorporating UTILITY comments and input; drafted to an engineering

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- 1 scale of 1 inch equals 20 feet; showing the existing configuration of
2 Conflicting Facilities, proposed configuration of relocated CITY
3 Infrastructure, and all existing infrastructure to remain adjacent to
4 relocated CITY Infrastructure; and confirming no conflicts with other
5 utilities or infrastructure; and
6 3.3.6 Roadway and utility cross-sections necessary to demonstrate the feasibility
7 of the conceptual design; showing the existing configuration of
8 Conflicting Facilities, proposed configuration of relocated CITY
9 Infrastructure, and all existing infrastructure to remain adjacent to
10 relocated CITY Infrastructure; and confirming no conflicts with other
11 utilities or infrastructure; and
12 3.3.7 Utility profiles and elevations necessary to demonstrate the feasibility of
13 the conceptual design; showing the existing configuration of Conflicting
14 Facilities, proposed configuration of relocated CITY Infrastructure, and all
15 existing infrastructure to remain adjacent to relocated CITY Infrastructure;
16 and confirming no conflicts with other utilities or infrastructure; and
17 3.3.8 A cost estimate of all costs associated with relocating the Conflicting
18 Facilities including design, permitting, construction costs, and
19 contingency. The cost estimate shall be prepared and sealed by a Licensed
20 Professional Engineer in the State of Washington. All costs shall be
21 developed on a per linear foot unit basis for the separate types, sizes and
22 segments of Conflicting Facilities and the new relocated Utility Facilities.
23 The estimate shall document the construction costs of the relocated Utility
24 Facility including associated appurtenances, trench safety systems, traffic
25 control, service connections, inspection, surface restoration and all other
26 costs associated with each new and abandoned UTILITY Facility. The
27 costs shall be developed on the basis of typical construction costs in the
28 area and on the basis of a single relocation, unless single relocation is
29 mutually agreed upon by the City and State to be infeasible, in which case
30 the costs shall be based on a mutually agreed upon relocation plan
31 between SPU and the State; and
32 3.3.9 A schedule for relocation of Conflicting Facilities that includes the list of
33 specific tasks and associated costs developed in the cost estimate. The
34 schedule shall be coordinated with the proposed design and construction
35 schedule for other work within the PROJECT.

37 3.4 The STATE shall deliver the Conceptual Utility Relocation Plan to UTILITY no later
38 than September 1, 2010.

39
40 3.5 Within thirty (30) days of receipt of the Conceptual Utility Relocation Plan, UTILITY
41 shall provide comments the STATE, including informing the STATE whether any requirements
42 listed in Section 3.3 above are missing or incomplete. Within thirty (30) days of the STATE's
43 receipt of UTILITY's comments, the STATE shall address UTILITY's comments to the

Comment [P29]: Needs more City discussion.
Intent is that we set a reasonable timeline

Comment [P30]: Needs more City discussion.

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1 UTILITY's satisfaction. UTILITY's responsibility for the Relocation Work begins when the
2 PARTIES have written mutual agreement of the Conceptual Utility Relocation Plan.
3

4 3.6 The PARTIES shall use the Conceptual Utility Relocation Plan as the basis for
5 establishing the scope, schedule and estimated cost of design and construction services to be
6 documented in Task Orders under this Agreement.
7

8 3.7 In instances where the STATE's revisions to the PROJECT design differ so significantly
9 from the Conceptual Utility Relocation Plan as to render the UTILITY's design or construction
10 work obsolete, the STATE shall reimburse UTILITY for the accrued costs of the obsolete work.
11

12
13 3.87 The STATE is responsible for shall protect avoiding damage to UTILITY Facilities,
14 including those installed as part of the PROJECT or PROGRAM.
15

16 ~~3.95 UTILITY is responsible for relocating each identified Conflicting Facility one time, to its~~
17 ~~final and permanent relocation, which work is Relocation Work.~~
18

19 ~~3.106 Interim or temporary relocations required in order to move a Conflicting Facility to its~~
20 ~~final and permanent location, including but not limited to relocations necessary to stage any~~
21 ~~PROJECT construction, is not Relocation Work, and shall be the responsibility of the STATE.~~
22

Comment [P31]: Needs more City discussion

23 **4. STATE RESPONSIBILITIES REGARDING UTILITY FACILITIES**
24 **DEFORMATION MITIGATION**
25

26 4.1 The STATE is responsible for performing all planning, operational and construction
27 management practices, monitoring and temporary or permanent UTILITY Facilities Work
28 undertaken to avoid or remedy damage as a result of Deformation ("Deformation Mitigation
29 Work").
30

31 4.1 The STATE will undertake an assessment of potential impacts of Deformation on private
32 property and CITY infrastructure Facilities including CITY streets, CITY telecommunications
33 facilities and UTILITY Facilities CITY utilities. Where the CITY has established deformation
34 criteria for its Facilities Utilities, the criteria will be used in analysis. Otherwise, criteria will be
35 derived using accepted engineering practice and shall be mutually agreed upon by the City and
36 State.
37

38 4.2 The UTILITY shall review the STATE's estimate of susceptibility or vulnerability of its
39 facilities to Deformation and provide comments/input. Such input shall be provided to assist the
40 STATE only, and shall not be interpreted as waiving or limiting in any way the STATE's
41 responsibility for Deformation Mitigation Work.
42

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1 4.3 The STATE shall develop a preliminary plan for UTILITY Facilities Deformation
2 Mitigation. PARTIES will work collaboratively to finalize and implement the UTILITY
3 Facilities Deformation Mitigation plan. UTILITY's input shall be provided to assist the STATE
4 only, and shall not be interpreted as waiving or limiting in any way the STATE's responsibility
5 for Deformation Mitigation Work.
6

7 4.4 As a component of the UTILITY Facilities Deformation Mitigation plan Work, the
8 STATE will implement a construction monitoring Task Force responsible for the planning and
9 implementation of the instrumentation and monitoring program and processing data, evaluating
10 results, and developing recommendations to mitigate deformation.
11

12 4.56 The CITY-UTILITY will advise the STATE and participate in construction monitoring
13 and deformation management activities when these activities pertain to CITY
14 Infrastructure Facilities. The CITY-UTILITY will provide the STATE all necessary access to
15 CITY Infrastructure Facilities for the purposes of design or implementation of mitigation
16 measures. The CITY-UTILITY may perform mitigation measures on behalf of the STATE in a
17 manner and schedule that supports the STATE's project requirements. UTILITY's advice,
18 participation, and access shall be provided to assist the STATE only, and shall not be interpreted
19 as waiving or limiting in any way the STATE's responsibility for Deformation Mitigation.
20

21 4.6 The STATE is responsible for repairing, replacing or otherwise remedying UTILITY
22 Facilities that have lost function, capacity, or aesthetic quality as a consequence of the
23 PROJECT.
24

Comment [P32]: Do we need to put bounds around how the "consequence of the PROJECT" is defined? Temporal dimension, e.g. from start of construction (or once SPU has fixed all pre-existing leaks) through the completion of the D-B contractor's monitoring responsibilities (2 years following tunneling, per L. Laird).

25
26
27
28 4.7 Unless otherwise agreed, the STATE is responsible for complying with SPU's Settlement
29 Monitoring Requirements for Cast Iron Water Mains, attached hereto as Exhibit B and
30 incorporated by reference. This compliance includes requirements for replacement of
31 affected pipe segments when settlement occurs in excess of the maximum allowable
32 settlement allowances.
33

34 4.8 Unless otherwise agreed, the STATE is responsible for complying with SPU's Settlement
35 Monitoring Requirements for Ductile Iron Water Mains, attached hereto as Exhibit C and
36 incorporated by reference. This compliance includes requirements for replacement of
37 affected pipe segments when settlement occurs in excess of the maximum allowable
38 settlement allowances.
39

Comment [P33]: Needs more City discussion re: STATE responsibility for preemptive replacements.

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1 **5. DESIGN, PLAN REVIEW, CHANGE MANAGEMENT**

2
3 5.1 Where the STATE is performing the design of UTILITY Facilities Work, the STATE
4 and UTILITY shall comply with all provisions outlined in Section 6 of the SDOT SR 99 Bored
5 Tunnel Agreement. The STATE PARTIES shall facilitate the design as provided herein and shall
6 allow UTILITY adequate time for detailed design review. UTILITY will meet agreed-upon
7 timelines for review. The STATE PARTIES shall address and resolve each design review
8 comment to UTILITY's and the STATE's satisfaction. In the event the PARTIES are unable to
9 mutually resolve comments, the PARTIES shall initiate the dispute resolution process pursuant
10 to Section 23 of the SDOT SR 99 Bored Tunnel Agreement.

11
12 5.2 In the event the STATE designates as a Limited Access Facility any area in or near the
13 tunnel portals on which a UTILITY Facility exists or will be relocated, the PARTIES agree to
14 make every effort to develop a design that minimizes the need for regular, on-going maintenance
15 access.

16
17 5.3 The STATE agrees to incorporate qualification criteria mutually agreed upon by the
18 PARTIES for construction contractors in the performance of Specialty Work into the contract
19 bid document. The STATE shall consult with UTILITY on the contractors and subcontractors
20 bidder qualifications for Specialty Work. UTILITY shall provide comments to the STATE on
21 known bidder qualifications. The STATE shall not allow unqualified contractors to perform
22 Specialty Work.

23
24
25 **6. CONSTRUCTION MANAGEMENT, INSPECTION AND CONTRACT**
26 **ADMINISTRATION**

27
28 6.1 The PARTIES shall comply with all provisions contained within Section 14 of GCA
29 6486, regarding Construction Management, Inspection and Contract Administration for the
30 PROJECT, and such provisions shall apply equally to this Agreement.

31
32 6.2 Where UTILITY staff or crews are performing work requested by the STATE, the
33 STATE shall provide all labor, materials, equipment, and tools required to excavate, provide
34 trench support systems, and handle and dispose of all spoils (including contaminated soils,
35 groundwater, and other debris), and provide a safe workplace for UTILITY staff per applicable
36 State and Federal laws, and City of Seattle standards, for the UTILITY Facilities Work in
37 accordance with the Approved Plans and any UTILITY-approved revisions to the Approved
38 Plans. The STATE will not provide personal protective equipment for UTILITY staff.

39
40 6.3 The STATE agrees to provide advance notice of service outages needed for construction
41 to schedule crews, notify customers and accommodate other previously scheduled outage
42 requests in accordance with UTILITY procedures CITY Standards.

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1 **7. MONITORING**

2
3 7.1 The PARTIES agree to comply with all provisions contained within Section 12 of the
4 SDOT Bored Tunnel Agreement, regarding Monitoring for the PROJECT, and such provisions
5 shall apply equally to this Agreement.

6
7 **8. NOTICES AND DESIGNATED REPRESENTATIVES**

8
9 8.1 Any notice required or permitted to be given pursuant to this Agreement shall be in
10 writing and shall be sent postage prepaid by U.S. Mail to the Designated Representatives.

11
12 8.2 The Designated Representatives for each Party are as follows:

13
14 STATE:
15 Program Administrator
16 Alaskan Way Viaduct & Seawall Replacement Program
17 Washington State Department of Transportation
18 999 3rd Avenue, Suite 2424
19 Seattle, WA 98104

20
21 CITY/UTILITY:
22 Project Manager, Alaskan Way Viaduct & Seawall Replacement Program
23 Seattle City Light
24 P.O. Box 34018
25 700 Fifth Avenue, Suite 4900
26 Seattle, WA 98124-4018

Comment [SLS34]: Change for SPU

27
28 **9. FUNDING OF UTILITY FACILITIES WORK AND TASK ORDERS**

29
30 9.1 The STATE shall provide necessary funding for all PROJECT costs without
31 reimbursement from the City of Seattle, except for the City of Seattle cost responsibilities
32 established in this Agreement, in SDOT Agreement GCA 6486, [and in UT 01474/ UT
33 01476.add.respective.UTILITY.Agreement].

34
35 ~~9.2 If for any reason PROJECT costs exceed the State funding limit established by RCW
36 47.01.402, the STATE shall have the sole responsibility for obtaining any needed additional
37 spending authority without recourse to any funding device that burdens Seattle area taxpayers or
38 property owners or the City of Seattle.~~

Comment [SLS35]: Not appropriate/necessary for the Utility agreements.

39
40 9.3 Each PARTY shall fund work for which it is responsible pursuant to this agreement.

41
42 9.4 The STATE will request, obtain and fund any temporary and permanent utility services
43 required for the PROJECT through separate utility service agreements with UTILITY.

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1
2 9.5 While SDOT is the City lead agency for the PROJECT, the STATE understands and
3 agrees that all PROJECT decisions that are likely to result in expenditure of UTILITY funds, and
4 all PROJECT decisions that may have operational, maintenance, or access impacts to UTILITY
5 Facilities, require concurrence of UTILITY.
6

7 **10. UTILITY'S RIGHT TO CORRECT NON-CONFORMING, UNAUTHORIZED**
8 **AND DEFECTIVE WORK**
9

10 10.1 If the STATE or its contractor fails to remedy, or fails to properly remedy, non-
11 conforming, unauthorized or Defective Work within the time specified by UTILITY, which is
12 not to be less than ten (10) Business Days, UTILITY may, but is not required to, correct and
13 remedy such work by any means as UTILITY may deem necessary, including the use of
14 UTILITY staff or contractors.
15

16 10.2 If the STATE or its contractor fails to comply with a written notice to remedy what
17 UTILITY determines to be an emergency situation, UTILITY may, but is not required to, have
18 the non-conforming, unauthorized or Defective Work corrected immediately, have such work
19 removed and replaced, or have work the STATE or its contractor refuses to correct completed.
20 An emergency situation shall mean a condition that calls for immediate action to respond to
21 danger to health, safety or property.
22

23 10.3 Direct and indirect costs incurred by UTILITY attributable to correcting and remedying
24 unauthorized, non-conforming or Defective Work, or work the STATE or its contractor failed or
25 refused to perform, shall be paid by the STATE to UTILITY within thirty (30) calendar days
26 after receipt of an invoice with appropriate documentation of such costs.
27

Comment [P36]: Need more City discussion
re: invoicing requirements and language

28 10.4 Except in an emergency situation as defined under Section 109.2, disagreements between
29 UTILITY and the STATE on what constitutes non-conforming, unauthorized or Defective Work
30 shall be resolved using the dispute resolution process established in Section 19 herein prior to
31 UTILITY performing any work.
32

33 10.5 Any and all services, including direction, provided by UTILITY pursuant to this section
34 shall be subject to all limitations on the CITY's liability contained in the SDOT Bored Tunnel
35 Agreement, including but not limited to Section 167, Risk Allocation.
36

37 **11. UTILITY ACCESS AND INSPECTION OF UTILITY FACILITIES WORK**
38

39 11.1 Neither the STATE nor its contractor shall require UTILITY to interrupt electrical
40 service without (a) written notice to UTILITY at least fourteen (14) calendar days prior to the
41 planned interruption and (b) UTILITY's written approval. UTILITY may restrict electrical
42 service interruptions to the extent necessary to maintain electrical system operations and
43 adequate power supply to customers.

Comment [SLS37]: Remember to insert the
equivalent for SPU from the SPU H2K2 agreement.

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1
2 11.2 The STATE shall ensure the UTILITY has the right to safe access to their facilities at any
3 time to operate and maintain existing and newly installed UTILITY Facilities or to inspect or
4 perform UTILITY Facilities Work. For purposes of this Agreement, “access” shall mean that the
5 vaults, vault openings, handholes, power poles, ductbanks, substation equipment or substation
6 entrances shall not be blocked, covered or otherwise inaccessible to SCL. UTILITIES staff other
7 than UTILITIES’ on-site inspector will notify the STATE in advance of their arrival on site
8 except in the case of emergency in accordance with site access procedures to be developed by the
9 PARTIES.

Comment [SL338]: For SPU – hydrants, meter, valves, or similar surface water system facilities, and drainage and wastewater system facilities.

10
11 11.3 Under no circumstances shall the STATE, its contractor, or anyone other than UTILITY
12 personnel enter any energized UTILITY Facilities or operate any portion of the existing or new
13 UTILITY Facilities, without UTILITY personnel approval and supervision.

14
15 11.4 The STATE agrees and acknowledges that UTILITY shall have an on-site inspector
16 available during the construction of UTILITY Facilities for UTILITY’s quality assurance. The
17 STATE agrees and acknowledges the UTILITY’s on-site inspector shall (a) have timely and
18 complete access to the construction work associated with the UTILITY Facilities Work; (b) be
19 timely informed of all relevant construction timelines associated with such work; and (c) have
20 the authority to, but not be required to, reject and have corrected and/or replaced any
21 construction or materials deemed to be deficient, or which deviate from the Approved Plans or
22 any SCL-approved revisions to the Approved Plans. In such instances, UTILITY’s on-site
23 inspector, or UTILITY’s project manager, will immediately direct comments and issues to the
24 STATE’s construction project engineer or designated representative, which will be followed up
25 in writing as soon as possible but no later than ten (10) Business Days of the date of any
26 inspection. The STATE shall promptly address each comment or issue presented by UTILITY
27 to UTILITY’s satisfaction. UTILITY staff will continue to be supervised by UTILITY
28 management.

29
30 11.5 The STATE will allow UTILITY’s on-site inspector or Designated Representative to
31 consult with and inquire of the STATE construction Pproject Eengineer, attend all meetings, and
32 have timely and complete access to all documentation as to all matters concerning the UTILITY
33 Facilities Work. UTILITY shall not provide direction, directly or indirectly, to the STATE’s
34 consultant(s) or contractor.

35
36 11.6 The STATE shall provide UTILITY with timely notice prior to commencement and
37 completion of all material stages of the UTILITY Facilities Work and shall invite UTILITY to
38 inspect such work upon completion of any material stage. The STATE shall timely address each
39 comment or issue presented by UTILITY to UTILITY’s satisfaction. Both Parties agree to act as
40 expeditiously as possible to assure a timely resolution of any deficiencies.

41
42 11.7 UTILITY shall observe the work on UTILITY Facilities performed by the STATE to
43 satisfy any UTILITY’s needs for quality assurance. UTILITY will notify the STATE if

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1 | Utility ~~UTILITY observes~~ defective UTILITY Facilities Work ~~is observed~~, such as improper
2 | installation or unsafe conditions.

3
4 | **12. FINAL INSPECTION AND PROJECT ACCEPTANCE**

5
6 | 12.1 The PARTIES agree to comply with all provisions contained within Section 15 of the
7 | GCA 6486, regarding Final Inspection and Project Acceptance, and such provisions shall apply
8 | equally to this Agreement.

9
10 | 12.2 UTILITY Facilities shall not be placed into interim use or operation, or transferred to the
11 | City, unless or until: (a) UTILITY has participated in an inspection of the UTILITY Facilities;
12 | (b) any deficiencies or Defective Work have been resolved or corrected to UTILITY's
13 | satisfaction; and (c) UTILITY confirms with the STATE in writing that UTILITY's minimum
14 | inspection and testing requirements for the UTILITY Facilities have been met, including
15 | completion of the Washington State Department of Health Completion Report for watermain.

Comment [SLS39]: For SPU only

16
17 | **13. WARRANTIES**

18
19 | 13.1 The PARTIES agree to comply with all provisions contained within Section 17 of the
20 | GCA 6486, regarding Final Inspection and Project Acceptance, and such provisions shall apply
21 | equally to this Agreement

22 | **14. ACQUISITION AND TRANSFER OF EASEMENTS AND FRANCHISES**

23
24 | 14.1 The UTILITY is responsible for identifying and acquiring, at its sole cost and expense,
25 | all property rights needed to complete Relocation Work, except for property otherwise required
26 | for the PROJECT.

27
28 | 14.2 The STATE is responsible for identifying and acquiring, at its sole cost and expense, all
29 | property rights needed to complete UTILITY Facilities Deformation Mitigation Work.

30
31 | 14.3 The PARTIES recognize that their property acquisition responsibilities include the
32 | performance of all appraisal, appraisal review, title review, surveys, property investigation,
33 | relocation assistance and all other investigations and services in connection with the acquisition
34 | of the permanent easement rights necessary for the UTILITY Facilities, including, without
35 | limitation, identification and investigation of Hazardous Substances as provided in Section 54 of
36 | the GCA 6486. The STATE shall provide to UTILITY, as soon as available to the STATE, all
37 | reports and documents prepared or obtained in connection with any of the reviews and
38 | investigations described above.

39
40 | 14.4 Where the State is acquiring easement rights for UTILITY Facilities Deformation
41 | Mitigation Work, unless the Parties otherwise agree in writing, prior to commencement of
42 | construction, the STATE shall convey to the CITY the easement rights referred to in Section 14.6

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1 by conveying them substantially in the form as, and containing the same conditions as, the
2 approved Utility Easement form attached and identified as Exhibit A. The Utility Easements
3 conveyed to the CITY shall not be subject to any lien, encumbrance or exception of title of any
4 kind.

5
6 14.5 The legal descriptions will be developed based on the Approved Plans. The Parties
7 acknowledge that due to unforeseen field conditions the location of one or more of the easements
8 may need to change after commencement of construction. In that case, the STATE shall provide
9 UTILITY with documents, reports and information identified in Subsection 14.3 above, relevant
10 to the new or modified easement area. All requirements and conditions pertaining to the original
11 permanent Utility Easements shall apply to all amendments and modifications.

Comment [g40]: Joint – RES needs to review

12
13 14.6 Where UTILITY Facilities are located in or near an area which the STATE designates as
14 a Limited Access Facility, the STATE will ensure that UTILITY continues to be allowed fully
15 access to its UTILITIES for operation, maintenance and repair, and will not be required to
16 relocate its Utility Facility without full compensation from the STATE.

Comment [RF41]: TBD – RES needs to review

17 14.6.1 The STATE's Limited Access Facility designation for the tunnel shall contain a
18 vertical and horizontal boundary.

19 14.6.2 The STATE agrees that any Limited Access Facility designation for the tunnel
20 will end at a maximum of three (3) feet above the tunnel in order to allow UTILITY to access its
21 UTILITY Facilities.

22
23 14.6.3 The area below City streets in the vertical dimension, and outside between the
24 Limited Access Facility boundaries, and the CITY street shall continue to be CITY Street Right-
25 of-Way.

Comment [P42]: Under discussion

Comment [P43]: Under discussion

26 14.6.4 In the event the STATE designates as a Limited Access Facility any area in or
27 near the tunnel portals on which a UTILITY Facility exists or will be relocated, the STATE
28 agrees to provide UTILITY a UTILITY franchise Easement in the form attached hereto as
29 Exhibit AD, pursuant to the requirements of this Section 14 herein [OR provide for access to
30 operate and maintain 24/7.] and will make every effort to develop a design that minimizes the
31 need for regular, on-going maintenance access.

Comment [RF44]: May need elevation

32
33
34 **15. ENVIRONMENTAL REMEDIATION**

35
36 15.1 The PARTIES shall comply with all provisions of GCA 6486, regarding Environmental
37 Remediation, including but not limited to all provisions in Section 5 therein, and such provisions
38 shall apply equally to this Agreement.

39
40 **16. RISK ALLOCATION**

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GREEN HIGHLIGHT = Staff to resolve

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1 16.1 The PARTIES shall comply with all provisions of the GCA 6486, regarding Risk
2 Allocation and Indemnification, including but not limited to all provisions in Section 19 therein,
3 and such provisions shall apply equally to this Agreement.

4
5 **17. INSURANCE**
6

7 17.1 The PARTIES shall comply with all provisions of the GCA 6486, regarding Insurance,
8 including but not limited to all provisions in Section 20 therein, and such provisions shall apply
9 equally to this Agreement.

10
11 **18. THIRD PARTY BENEFICIARY**
12

13 18.1 The PARTIES shall comply with all provisions of GCA 6486, regarding Third Party
14 Beneficiary, including but not limited to all provisions in Section 21 therein, and such provisions
15 shall apply equally to this Agreement.

16
17
18 **19. DISPUTE RESOLUTION**
19

20 ~~19.1 Dispute Resolution Representatives. The Dispute Resolution Representatives for the~~
21 ~~Parties are as follows:~~

22
23 ~~For the STATE: Bored Tunnel Project Design Project Engineer or, if~~
24 ~~appropriate, Construction Project Engineer,~~
25 ~~Alaskan Way Viaduct & Seawall Replacement Program~~
26 ~~Washington State Department of Transportation~~
27 ~~999 3rd Avenue, Suite 2424~~
28 ~~Seattle, WA 98104~~

29
30 ~~For UTILITY: UTILITY AWV Project Manager~~
31 ~~P.O. Box 34023~~
32 ~~700 Fifth Avenue, Suite 3200~~
33 ~~Seattle, WA 98124-4023~~
34

35 19.1 Good Faith. UTILITY and the STATE shall make good faith efforts to resolve any
36 dispute arising under or in connection with this Agreement. The dispute resolution process
37 outlined in this Section applies to disputes arising under or in connection with the terms of this
38 Agreement. In the event that the Parties cannot resolve a disagreement arising under or in
39 connection with this Agreement, the Parties shall follow the dispute resolution steps set forth
40 below.

41
42 19.2 Notice. A Party's Designated Representative, as defined in Section 8 above, shall notify
43 the other Party's Designated Representative in writing of any problem or dispute that a Party

Comment [SLS45]: We changed this to make it consistent with SDOT's process. Confirm that the appropriate people are listed in 19.5 and 19.7.

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1 believes needs resolution. The written notice shall include (a) a description of the issue to be
2 resolved; (b) a description of the differences between the Parties on the issue; and (c) a summary
3 of any steps taken to resolve the issue.
4

5 19.3 Meeting. Upon receipt of a written notice of request for dispute resolution, the
6 Designated Representatives for the Parties shall meet within ten (10) Business Days and attempt
7 to resolve the dispute. Any resolution of the dispute requires the agreement of all Designated
8 Representatives attending the meeting or who requested to attend the meeting.
9

10 19.4 Notice of Second Level Meeting. If the Parties have not resolved the dispute within five
11 (5) Business Days after the meeting, at any time thereafter either Party may request that the
12 dispute be elevated to the next level by notifying the other Party's Designated Representative in
13 writing, requesting that the dispute be raised to the Second Level Meeting. The written
14 notification shall include a) a description of the remaining issues to be resolved; b) a description
15 of the differences between the Parties on the issues, c) a summary of the steps already taken to
16 resolve the issues, and d) the resolution of any issues that were initially involved in the dispute.
17

18 19.5 Second Level Meeting. Upon receiving a written request that the dispute be elevated to
19 the next level, a meeting shall be held within ten (10) Business Days between the Project
20 Director of WSDOT and the Customer Service and Energy Delivery Officer of Seattle City
21 Light/SPU Project Delivery Branch Deputy Director to resolve the dispute. Any resolution of the
22 dispute requires the agreement of all Representatives attending the meeting or who requested to
23 attend the meeting.
24

25 19.6 Notice of Third Level Meeting. If the Parties have not resolved the dispute within five
26 (5) Business Days after the Second Level Meeting, at any time thereafter either Party may
27 request that the dispute be elevated to the next level by notifying the other Party's Designated
28 Representative in writing, requesting that the dispute be raised to the Third Level Meeting. The
29 written notification shall include a) a description of the remaining issues to be resolved; b) a
30 description of the differences between the Parties on the issues, c) a summary of the steps
31 already taken to resolve the issue, and d) the resolution of any issues that were initially involved
32 in the dispute.
33

34 19.7 Third Level Meeting. Elevate to the Executive Committee. Upon receiving a written
35 request that the dispute be elevated to the third level, a meeting shall be held within ten (10)
36 Business Days between the Washington State Deputy Secretary of Transportation and
37 Superintendent of Seattle City Light/Director of Seattle Public Utilities to resolve the dispute.
38 Any resolution of the dispute requires the agreement of all Representatives attending the meeting
39 or who requested to attend the meeting.
40

41 19.8 Court of Law. If the Parties have not resolved the dispute within five (5) Business Days
42 after the third level meeting, at any time thereafter either Party may seek relief under this

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1 Agreement in a court of law. The Parties agree that they have no right to relief in a court of law
2 until they have completed the dispute resolution process outlined in this Section.
3

4 19.9 A Party's request to utilize this Dispute Resolution process is not evidence that either Party
5 is in breach of this Agreement, and does not relieve any Party from complying with its obligations
6 under this Agreement.

7 19.2 Dispute Resolution Process. The designated representatives established under Section
8 19.12 shall use their best efforts to resolve disputes between the Parties. If these individuals are
9 unable to resolve a dispute, Customer Service and Energy Delivery Officer of Seattle City
10 Light/SPU Project Delivery Branch Deputy Director and the Alaskan Way Viaduct Program
11 Administrator for the Washington State Department of Transportation shall review the matter and
12 attempt to resolve it. If they are unable to resolve the dispute, the matter shall be reviewed by the
13 Superintendent of Seattle City Light/Director of Seattle Public Utilities and the Washington State
14 Deputy Secretary of Transportation. The Parties agree to exhaust each of these procedural steps
15 before seeking to resolve disputes in a court of law or any other forum.
16

17 20. REMEDIES; ENFORCEMENT

18
19 20.1 The PARTIES agree that provisions of GCA 6486, regarding Remedies, Enforcement,
20 including but not limited to Section 24 therein, shall apply equally to this Agreement.
21

22 21. TERMINATION

23
24 21.1 This Term of this Agreement may be terminated as shall be the Term provided in
25 Section 28 of GCA 6486 regarding Termination which shall apply equally to this Agreement.
26

27 22. CONFIDENTIALITY OF INFORMATION AND RECORDS

28
29 22.1 The provisions of the SDOT Bored Tunnel Agreement, regarding Confidentiality of
30 Information and Records, including but not limited to Section 27 therein, shall apply equally to
31 this UTILITY Bored Tunnel Agreement. In addition, the Federal Energy Regulatory
32 Commission (FERC) and the North American Electric Reliability Corporation (NERC) require
33 that SCL limit access and disclosure of certain sensitive Critical Energy Infrastructure
34 Information. Therefore, SCL shall require the STATE and its contractors who have access to
35 documents marked "confidential" or "proprietary" to sign the Non-Disclosure Agreement
36 attached hereto as Exhibit BC.
37

Comment [SLS46]: SCL only

38 23. EFFECTIVENESS AND DURATION

39
40 23.1 This Agreement shall be effective as of the date the last PARTY signs and, unless sooner
41 terminated pursuant to the terms hereof, shall remain in effect until final completion of all
42 PARTIES' obligations contained or referred to in this Agreement and GCA 6486, the SCL
43 Agreement, UT 01474, and the SPU Agreement, UT 01476.

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24. GENERAL PROVISIONS

24.1 The General Provisions set forth in the GCA 6486, including but not limited to Section 30 therein, shall apply equally to this Agreement.

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

SEATTLE PUBLIC UTILITIES/CITY LIGHT **WASHINGTON STATE**
DEPARTMENT OF
TRANSPORTATION

By:
Ray Hoffman/Jorge Carrasco
Director/Superintendent:

By: _____
Print: _____
Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM:

By (print)

Signature
Assistant Attorney General

Date: _____

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MEMORANDUM OF AGREEMENT

UT 01474/ UT 01476
SR 99 ALASKAN WAY VIADUCT REPLACEMENT
BORED TUNNEL PROJECT
UTILITY FACILITIES WORK

Comment [SLS1]: To be changed to SPU or SCL
in each agreement

THIS Memorandum of Agreement, UT 01474/ 01476, SR 99 Alaskan Way Viaduct Replacement, Bored Tunnel, UTILITY Facilities Work (“UTILITY Bored Tunnel Agreement”) is made and entered into between the State of Washington Department of Transportation, hereinafter the “STATE,” and the City of Seattle, hereinafter the CITY, (managed by Seattle City Light/Seattle Public Utilities, hereinafter “UTILITY”), collectively the “Parties” and individually the “Party.”

Comment [SLS2]: To be changed to SPU or SCL

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

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

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

WHEREAS, the January 2009 letter of agreement between the parties affirmed that the State would be responsible for the bored tunnel project, and that “the allocation of specific project responsibility to each jurisdiction carries with it the responsibility for project management, environmental work, design, construction, and project cost overruns”; and

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

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1
2 | WHEREAS, the AWVSR Program (PROGRAM)-consists of a four-lane bored tunnel and
3 improvements to City streets, the City waterfront, and transit; and the Moving Forward Projects;
4 and
5
6 | WHEREAS, the Proposed Bored Tunnel Project (PROJECT), the subject of this Agreement, is
7 the part of the PROGRAM that replaces SR 99 from South Royal Brougham Street to Mereer
8 Roy Street that consists of designing and constructing a four-lane bored tunnel from South King
9 Street to Thomas Street, north and south tunnel portals and access streets; re-establishment of the
10 City street grid in the vicinity of the portals (Battery Street Tunnel decommissioning and
11 Alaskan Way Viaduct demolition will be addressed in a future agreement); and associated utility
12 relocations; and
13
14 | WHEREAS, the Washington State Legislature passed Engrossed Substitute Senate Bill 5768 and
15 the Governor signed the bill into law designating and funding a Bored Tunnel Program as the
16 replacement for the Alaskan Way Viaduct; and
17
18 | WHEREAS, in January 2009, the Governor, the King County Executive and the Mayor of
19 Seattle recommended replacement of the existing AWV structure in the central waterfront area
20 with a bored tunnel; and
21
22 | ~~WHEREAS, RCW 47.01.402, which became law July 1, 2009, provides that State funding for~~
23 ~~the PROJECT is not to exceed two billion eight hundred million dollars (\$2,800,000,000.00) of~~
24 ~~which no more four hundred million shall be from tolls, and~~
25
26 | ~~WHEREAS, RCW 47.01.402(6)(b) provides that any costs in excess of two billion eight hundred~~
27 ~~million dollars (\$2,800,000,000.00) shall be borne by property owners in the Seattle area who~~
28 ~~benefit from replacement of the existing viaduct with the deep bore tunnel, and~~
29
30 | ~~WHEREAS, the CITY and STATE agree to work collaboratively toward the successful jointly~~
31 ~~pursue the implementation and completion of the PROJECT and endeavor to open the tunnel by~~
32 ~~the end of 2015 and demolish the Alaska Way viaduct in 2016; and~~
33
34 | WHEREAS, the PROJECT is consistent with the CITY of Seattle's adopted Comprehensive
35 Plan; and
36
37 | ~~WHEREAS, review of the PROJECT pursuant to the State and City environmental policy laws~~
38 ~~is currently underway and the parties recognize that changes in the alternative chosen would~~
39 ~~require a new agreement, and~~
40
41 | WHEREAS, the CITY and the STATE will deliver the PROJECT within the financial
42 commitments made in the Memorandum of Agreement, GCA 6366, executed by the PARTIES
43 on October 24, 2009; and

Comment [SLS3]: These recitals and the other yellow one below re: environmental policy laws don't belong in the Utility agreements.

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1
2 WHEREAS, concurrently with this GCA-6486/UT 01476 Agreement, the STATE and CITY,
3 through Seattle City Light (SCL), are entering into an agreement, UT 01474; and
4
5 WHEREAS, concurrently with this GCA-6486/UT 01474 Agreement, the STATE and CITY,
6 through its Seattle Public Utilities Department (SPU), are entering into an agreement, UT 01476;
7 and
8
9 WHEREAS, concurrently with this UTILITY Bored Tunnel/UT 01474/UT 01476 Agreement, the
10 STATE and CITY, through the Seattle Department of Transportation, are entering into an
11 agreement, GCA 6486; and
12
13 WHEREAS, the PROJECT will in some instances require the use of existing CITY Street Right-
14 of-Way; and
15
16 WHEREAS, the CITY will own and/or maintain significant infrastructure to be constructed as
17 part of the PROJECT; and
18
19 WHEREAS, some portion of SR 99 is within the PROJECT and is a city street serving as part of
20 a State Highway under RCW 47.24.010; and
21
22 WHEREAS, the Parties wish to establish protocols and procedures for property acquisition,
23 environmental remediation, design review, permitting, and construction coordination to govern
24 their relationship during the course of the PROJECT.
25
26 WHEREAS, some or all of the work covered by this Agreement may be accomplished by
27 executed "Task Order" documents; and
28
29 WHEREAS, concurrently with this UTILITY Bored Tunnel Agreement, the STATE and CITY,
30 through the Seattle Department of Transportation, are entering into an agreement, GCA-6486;
31 and
32
33 WHEREAS, the PROJECT will require the removal of existing City electrical, water, drainage
34 and wastewater facilities that directly conflict with the tunnel portals and tunnel portal
35 excavations ("Conflicting Facilities"), and the construction of new facilities and service
36 connections, (excluding temporary construction and permanent electrical services for the
37 PROJECT) to a permanent and one final location to replace the conflicting facilities (together,
38 the "Relocation Work"); and
39
40 WHEREAS, the PROJECT will also require the planning, operational and construction
41 management practices, monitoring and other work to avoid and/or remedy damage
42 ("Deformation Mitigation Work"); and
43

Comment [SLS4]: Remember to delete either this recital or the next one, depending on which Agreement

Comment [SLS5]: In response to Rick (comment below), we confirmed that the definitions here are now consistent with those in Section 1. We also deleted the "one" per Rick's comment. We do think this should be included as a recital, because it explains what this agreement is about (just like the recitals regarding street use, etc., which we have suggested deleting here, make sense as recitals in the SDOT MOA). And the next recital which we added completes the story of what this agreement is about.

Comment [rlc6]: Not sure these should be recitals. Need to edited to be consistent with accepted terminology Also reflects the "one relocation" position of City. Needs Management decision on "one relocation"

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1 WHEREAS, together the Relocation Work and the UTILITY Facilities Deformation Mitigation
2 Work will comprise the "UTILITY Facilities Work" of the PROJECT; and
3

4 ~~NOW, THEREFORE, pursuant to RCW 47.29.140 and RCW 47.91.401 and in consideration of~~
5 ~~the terms, conditions, covenants, and performances contained herein, or attached and~~
6 ~~incorporated and made a part hereof;~~
7

8 NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performances
9 contained herein, or attached and incorporated and made a part hereof;
10

11 IT IS MUTUALLY AGREED AS FOLLOWS:
12

13 **1. DEFINITIONS**
14

15 Words not otherwise defined, which have well-known technical or construction industry
16 meanings, are used in accordance with such recognized meanings.
17

18 1.1 Approved Plans means the construction plans and provisions that evidence the CITY's
19 determination, through the processes described in Section 6 and 75 and Exhibit B of the SDOT is
20 Agreement GCA 6366, that the plans including ~~Released for Construction Submittal Plans for~~
21 ~~Design-Build contracts conform to the Street Use Code and other requirements, and that plan~~
22 ~~review comments are resolved to both Parties' satisfaction conform to the criteria in Sections 6~~
23 ~~and 7 and Exhibit B of the SDOT Agreement GCA 6366; Approved Plans are included in the~~
24 contract documents evidencing the agreement between the STATE and its contractors for
25 construction of a given element of the PROJECT.
26

27 1.2 AWV means the Alaskan Way Viaduct structure on State Route 99, currently a non-
28 limited-access highway over a portion of CITY Street Right-of-Way and located partially in the
29 City of Seattle.
30

31 1.3 Betterment means any upgrading of the UTILITY Facilities, or the design and
32 construction of any new UTILITY Facilities that is not attributable to the PROJECT or
33 PROGRAM and is made solely for the benefit of and at the election of UTILITY. Examples of
34 work that will not constitute a Betterment, so that UTILITY shall not bear cost responsibility,
35 are:

36 1.3.1 If existing devices or materials are no longer regularly manufactured or cannot be
37 obtained in time to meet the PROJECT schedule, needs or requests by the STATE, then devices
38 or materials of equivalent standards although not identical, of the next highest grade or size; or

39 1.3.2 Upgrades to UTILITY Facilities necessary to meet current code requirements and
40 UTILITY published standards; or

41 1.3.3 Work required by UTILITY to maintain current service and capacity; or

42 1.3.4 Work required by current design and construction practices regularly followed by
43 UTILITY in its own work and/or considered an industry design or construction standard.

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- 1
2 1.4 Business Days means Monday through Friday, inclusive, except for official City of
3 Seattle and state holidays and ~~City mandated furlough days.~~
4
5 1.5 CITY means the City of Seattle, a Washington municipal corporation.
6
7 1.6 City Construction Project Engineer means the person designated by SDOT to act as the
8 City's coordinator and primary representative in matters arising during the course of construction
9 as set forth in this Agreement.
10
11 1.7 CITY Facilities means SCL Facilities, SDOT Facilities, SPU Facilities and facilities
12 impacted by, or constructed as part of, the PROJECT that are owned or will be owned by any
13 other CITY agency.
14 ~~1.7 CITY Designated Representative means the CITY official listed in Section xx of this~~
15 ~~Agreement.~~
16
17 1.8 CITY Infrastructure means the portions of SPU Facilities, SCL Facilities and City Street
18 Right-of-Way improvements constructed or modified as part of the PROJECT to be owned,
19 operated and maintained by the CITY.
20
21 1.9 ~~CITY Interest Property~~ means CITY Street Right-of-Way plus all other real property that
22 the CITY owns or in which the CITY has a real property interest on the effective date of this
23 Agreement, or in connection with the PROGRAM is to acquire ownership of or an interest in
24 real property ~~by a different utility related fund from the STATE, which includes, but is not~~
25 ~~limited to Program Transfer Property, - in addition City Interest Property means any property or~~
26 ~~property interest that will, at the completion of the PROJECT, be transferred by the STATE to~~
27 ~~the CITY - CITY Interest Property does not include real property acquired or to be acquired by~~
28 the STATE for planned limited access facilities such as the bored tunnel, portals and access for
29 which no real property interest or ~~different utility related fund~~ will be transferred to the CITY.
30
31 1.10 City of Seattle means CITY.
32
33 1.11 City Standards means all City of Seattle laws, rules, regulations and standards and all
34 applicable federal and state laws, rules, regulations and standards, including but not limited to
35 the following, except as otherwise provided in this Agreement, UT 01474 and UT 01476:
36 The Seattle Municipal Code
37 The City of Seattle Standard Specifications for Road, Bridge and Municipal Construction
38 The City of Seattle Standard Plans for Municipal Construction,
39 SDOT, SCL, DPD and SPU Director's Rules, including the City of Seattle Right of Way
40 Improvements Manual, 2005-22.
41 SCL Material Standards
42 SCL Construction Guidelines

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1 1.12 CITY Street Right-of-Way means public street right-of-way under the jurisdiction of
2 SDOT pursuant to Title 15 of the Seattle Municipal Code.

3
4 1.13 Conceptual Utility Relocation Plan means a work product that defines the general scope
5 of Relocation Work Utility relocations including a planning level estimate of design and
6 construction costs, as further described in Section 3 herein.

Comment [SL57]: May need more City
discussion.

7
8 1.14 Conflicting Facilities means all SCL Facilities and all SPU Facilities identified by the
9 STATE that directly conflict with the bored tunnel portals and tunnel portal excavations.

10
11 1.15 Contract Award means the STATE's written decision accepting bid for construction of a
12 Project.

13
14 ~~1.16 Damage means loss of function, capacity, or aesthetic quality. For the purposes of this~~
15 ~~Agreement, "Damage" shall not be construed to include reduction of design life of any structure~~
16 ~~or utility.~~

17
18 ~~1.17 Damage means any direct or indirect consequence of the PROJECT that causes harm to,~~
19 ~~or reduces value or usefulness of, CITY Infrastructure, private property, CITY property or other~~
20 ~~public property, including but not limited to structural damage or physical failure, loss of~~
21 ~~function, capacity or aesthetic quality, reduced service capacity, including intended future~~
22 ~~capacity, reduced service life, a measurable reduction of design life of an SPU Facility or an~~
23 ~~SCL Facility, water main movement in excess of established thresholds, or any other impact to~~
24 ~~an SPU Facility or an SCL Facility such as stress or Deformation.~~

25
26 1.18 Defective Work means design or construction work or materials that fail to comply with
27 the Approved Plans, CITY-approved modifications to the Approved Plans, or the laws, rules,
28 regulations or standards as specified in this Agreement.

29
30 1.19 Deformation means any 3-dimensional displacement, for a structure (such as tilt of a
31 structure), and strain (relative displacements of structures or the ground) and includes any
32 settlement, heave, and lateral movement. Any use of the defined term Deformation, and related
33 terms are used as being in the manner commonly used in industry terminology. Where such
34 industry terminology is used for convenience herein, it does not imply that the broad definition
35 of Ddeformation has been limited.

36
37 1.20 Deformation Mitigation Work means any planning, operational and construction
38 management practices, monitoring and temporary or permanent UTILITY Facilities Work
39 undertaken to avoid and/or remedy dDamage to UTILITY Facility as a result of Deformation, as
40 further described in Section 4 herein.

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1 1.21 ~~Design Bid Build Contract~~ means a project delivery method in which the STATE
2 provides a complete design, advertises for bids, and awards a contract to the lowest responsive
3 bidder who is responsible for completing the construction of the project.

Comment [SLS8]: We propose that this definition be deleted from here and put in the definitions section of SDOT MOA Exhibit B. The term is not referenced in this agreement.

4
5 1.22 ~~Design Build Contract~~ means a project delivery method in which the STATE develops a
6 conceptual design and requests proposals from pre-qualified contractors. The contract is
7 awarded to the contractor with the best value responsive proposal. The contractor is responsible
8 to complete the design and construct the project.

Comment [SLS9]: We propose that this definition be deleted from here and put in the definitions section of SDOT MOA Exhibit B. The term is not referenced in this agreement.

9
10 1.23 ~~Design Builder~~ means the entity with whom the STATE enters into a Design-Build
11 contract and who is responsible to complete the design and construct the project.

Comment [SLS10]: We propose that this definition be deleted from here and put in the definitions section of SDOT MOA Exhibit B. The term is not referenced in this agreement.

12 1.24 DPD means the City of Seattle Department of Planning and Development.

13
14
15 1.25 Engineer of Record means the engineer licensed in the State of Washington who has been
16 commissioned by the STATE as the prime engineer of the PROJECT, having overall
17 responsibility for the adequacy of the design and the coordination of the design work of other
18 engineers and whose professional seal is on the Approved Plans.

19
20 1.26 ~~Environmental Compliance Assurance Procedure (ECAP)~~ means procedures incorporated
21 into the ~~WSDOT Construction Manual M41-01.05 dated 11/23/2008~~ (Section 1-2.2k(1))
22 and the ~~WSDOT Environmental Procedures Manual M31-11.05~~ (Sections 610 and 690) dated
23 ~~11/23/2008~~, as modified by this Agreement, which provide guidance on compliance with
24 Environmental Laws and environmental Remediation. The purpose of the ECAP is to recognize
25 and eliminate environmental violations during the construction phase on STATE construction
26 sites and to ensure prompt notification to STATE management and agencies. For purposes of the
27 ECAP, violations are defined as actions that are not in compliance with environmental standards,
28 permits, or laws.

Comment [SLS11]: This term is not referenced in this agreement.

29 1.27 ~~Environmental Law(s)~~ means any environmentally related local, state or federal law,
30 regulation, ordinance or order (including without limitation any final order of any court of
31 competent jurisdiction of which the STATE has knowledge), now or hereafter in effect
32 including, but not limited to: the Federal Clean Air Act; the Federal Water Pollution Control Act;
33 the Federal Safe Drinking Water Act; the Federal Comprehensive Environmental Response
34 Compensation and Liability Act, as amended by the Superfund Amendments and
35 Reauthorization Act of 1986; the Federal Resource Conservation and Recovery Act, as amended
36 by the Solid and Hazardous Waste Amendments of 1984; the Federal Occupational Safety and
37 Health Act; the Federal Emergency Planning and Right to Know Act of 1986; the Federal
38 Hazardous Materials Transportation Control Act of 1980; the Federal Clean Water Act of 1977;
39 the Federal Insecticide, Fungicide and Rodenticide Act; the Federal Waste Management
40 Recovery and Recycling Act; the Washington Hazardous Waste Management Act; the
41 Washington Hazardous Waste Fees Act; Washington Model Toxics Control Act; the Washington
42 Nuclear Energy and Radiation Act; the Washington Radioactive Waste Storage and

Comment [SLS12]: This term is not referenced anywhere in this agreement.

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1 Transportation Act; the Washington Underground Petroleum Storage Tanks Act; and any
2 regulations promulgated thereunder from time to time.

3
4 ~~1.28 Final Design Submittal means plans, specifications, and design documentation~~
5 ~~representing complete design of a given project element in a Design-Build Contract. The Final~~
6 ~~Design Submittal addresses and incorporates review comments from the Preliminary Design~~
7 ~~Submittal.~~

Comment [SLS13]: We propose that this definition be deleted from here and put in the definitions section of SDOT MOA Exhibit B. The term is not referenced in this agreement.

8
9 ~~1.29 Final Plan Review Package means the Plan Review Package submitted to the CITY that~~
10 ~~is comprised of the STATE's contract documents including contract addenda and fully~~
11 ~~incorporates or otherwise addresses all CITY plan review comments and all applicable~~
12 ~~conditions of the Street Use Permit.~~

Comment [SLS14]: We propose that this definition be deleted from here and put in the definitions section of SDOT MOA Exhibit B. The term is not referenced in this agreement.

13
14 1.30 Hazardous Substance(s) means any substance, or substance containing any component,
15 now or hereafter designated as a hazardous, dangerous, toxic or harmful substance, material or
16 waste, subject to regulation under any federal, state or local law, regulation or ordinance relating
17 to environmental protection, contamination or cleanup including, but not limited to, those
18 substances, materials and wastes listed in the United States Department of Transportation
19 Hazardous Materials Table (49 C.F.R. §172.101) or by the United States Environmental
20 Protection Agency as hazardous substances (40 C.F.R. pt. 302 and amendments thereto) or in the
21 Washington Hazardous Waste Management Act (Ch. 70.105 RCW) or the Washington Model
22 Toxics Control Act (Chs. 70.105D RCW and 82.21 RCW), petroleum products and their
23 derivatives, and such other substances, materials and wastes as become regulated or subject to
24 cleanup authority under any Environmental Law.

25
26 1.31 Letter of Acceptance means the written document that signifies the CITY's acceptance of
27 CITY Infrastructure to be owned by the CITY, and shall signify the STATE's transfer of CITY
28 Infrastructure to be owned by the CITY. The Letter of Acceptance will not transfer any interest
29 in real property. The Letter of Acceptance shall be jointly executed by the Parties. A Letter of
30 Acceptance for SPU Facilities requires SPU approval and a Letter of Acceptance for SCL
31 Facilities requires SCL approval.

32
33 1.32 Letter of Plan Approval means the letter provided to the STATE by the CITY following
34 the completion of the plan review process, signifying that the plans and specifications identified
35 in the letter are the Approved Plans.

36
37 ~~1.33 MTCA means the Washington Model Toxics Control Act (Chs. 70.105D RCW and 82.21~~
38 ~~RCW).~~

Comment [SLS15]: This term is not referenced in this agreement.

39
40 1.34 New Work means the design and construction by or at the direction of UTILITY of a new
41 utility other than (a) as part of a relocation associated with the PROJECT, or (b) to provide
42 service to the PROJECT. New Work shall be entirely the financial obligation of UTILITY.

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- 1 1.35 Preliminary Engineering means the portion of the Project engineering which advances the
2 Project design to address Type, Size, and Location (“TS&L”) for all components of the Project.
3 Design will have advanced sufficiently to define alignments and identify conflicts. Preliminary
4 engineering will include an estimate for final design and a preliminary cost for construction.
5
- 6 1.36 Plan Review Package means clear and complete plans, specifications, and the necessary
7 assumptions, studies, models and calculations upon which the design was based, and corrections
8 previously requested by the CITY with respect to Design Bid-Build Projects.
9
- 10 1.37 100% Plan Review Package means the Plan Review Package submitted to the CITY
11 concurrent with STATE’s final internal review of the construction contract plans and contract
12 provisions that shall evidence the agreement between the STATE and its contractors for
13 construction of Design Bid-Build Projects.
14
- 15 1.38 Plans, Specifications, and Estimate (“PS&E”) means the portion of the PROJECT
16 engineering after the Preliminary Engineering, which advances the PROJECT design by
17 preparing contract-ready documents and the engineer’s cost estimate. At this stage the
18 specifications are written and tailored to the plans so that all work can be measured and has a pay
19 item. The cost estimate is formalized using the established specifications, pay items and quantity
20 takeoffs, for 60% through 100% completion of the total design effort.
21
- 22 1.39 Preliminary Design Submittal means in a Design-Build Contract, a formal opportunity for
23 the STATE, the Design-Builder, various design team disciplines, and other approved Project
24 stakeholders to review the construction documents in order to ensure that the design is
25 progressing appropriately and proceeding in the right direction; the plans reflect Design-Builder
26 requirements for construction; design features are coordinated; and there are no fatal flaws
27 within a given discipline or between disciplines
28
- 29 1.40 Private Utilities means utility uses, excluding facilities owned and operated by the CITY,
30 approved through franchise agreements and/or Street Use Permits by the CITY and governed and
31 enforced through City Ordinance.
32
- 33 1.40 Procedures means *Design Review, Construction Management, Inspection and Record*
34 *Drawing Procedures*, attached as Exhibit B to the SDOT Agreement GCA 6366.
35
- 36 1.41 PROJECT means the Proposed Bored Tunnel Project, the part of the PROGRAM that
37 replaces SR 99 from South Royal Brougham Street to Mereer Roy Street and that consists of
38 designing and constructing a four-lane bored tunnel from South King Street to Thomas Street,
39 north and south tunnel portals and access streets, re-establishment of the City street grid in the
40 vicinity of the portals (Battery Street Tunnel decommissioning and Alaskan Way Viaduct
41 demolition will be addressed in a future agreement); and associated utility relocations. A
42 PROJECT description is attached as Exhibit A to the SDOT Agreement GCA 6366.
43

Comment [SLS16]: This term is no longer referenced in this agreement.

Comment [SLS17]: We propose that this definition be deleted from here and put in the definitions section of SDOT MOA Exhibit B. The term is not referenced in this agreement.

Comment [SLS18]: We propose that this definition be deleted from here and put in the definitions section of SDOT MOA Exhibit B. The term is not referenced in this agreement.

Comment [SLS19]: This term is no longer referenced in this agreement.

Comment [SLS20]: We propose that this definition be deleted from here and put in the definitions section of SDOT MOA Exhibit B. The term is not referenced in this agreement.

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1 1.42 PROGRAM means all the projects, collectively, implemented by the STATE and the
2 CITY that remove and replace the AWW and seawall.
3 the AWVSR Program which consists of a four-lane bored-tunnel and improvements to City
4 streets, the City waterfront, and transit; and the Moving Forward Projects as defined in GCA
5 6366

6
7 1.43 Project Engineer means the persons appointed by the STATE to lead the PROJECT
8 during design and/or construction or his or her designee.

9
10 1.44 ~~Released for Construction Submittal means in a Design-Build Contract, plans and~~
11 ~~specifications for a given project element that are construction-ready and have been certified by~~
12 ~~the Design-Builder as having met all contract requirements and received all approvals and~~
13 ~~permits. The Released for Construction submittal addresses all review comments from the~~
14 ~~Preliminary and Final Design submittals.~~

Comment [SLS21]: We propose that this definition be deleted from here and put in the definitions section of SDOT MOA Exhibit B. The term is not referenced in this agreement.

15
16 1.45 Relocation Work means the removal or abandonment of each Conflicting Facility and the
17 installation or reconstruction of each Conflicting Facility to its permanent and final location.

18
19 1.46 Remediation means the same as Remedy or Remedial Action defined in MTCA which
20 includes any action or expenditure consistent with the purposes of MTCA to identify, eliminate,
21 or minimize any threat or potential threat posed by Hazardous Substances to human health or the
22 environment including any investigative and monitoring activities with respect to any release or
23 threatened release of a Hazardous Substance and any assessments to determine the risk or
24 potential risk to human health or the environment.

25
26 1.47 ~~Round Table Meeting means a meeting typically held five (5) weeks following the~~
27 ~~submittal of the 100% Plan Review Package to the CITY and STATE, and commonly attended~~
28 ~~by the STATE's Project team and STATE reviewers to resolve and address STATE comments~~
29 ~~on the 100% Plan Review Package.~~

Comment [SLS22]: We propose that this definition be deleted from here and put in the definitions section of SDOT MOA Exhibit B. The term is not referenced in this agreement.

30
31 1.48 SCL means Seattle City Light.

32
33 1.49 SCL Facilities means the electrical facilities impacted by, or constructed as part of, the
34 PROJECT that are owned or will be owned by the CITY.

35
36 1.50 SCL Facilities Work means work required to design, construct and protect the SCL
37 Facilities as part of the PROJECT.

38
39 1.51 SDOT means the Seattle Department of Transportation.

40
41 SDOT Facilities means the transportation facilities impacted by, or constructed as part of, the
42 PROJECT that are owned or will be owned by the CITY.

43

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1 1.52 Specialty Work means the construction and installation of all 13.8kV or above rated
2 equipment and associated materials and infrastructure needed to accomplish the SCL Facilities
3 Work.

4
5 1.53 SPU means Seattle Public Utilities.

6
7 1.54 SPU Facilities means the water, drainage and wastewater facilities impacted by, or
8 constructed as part of, the PROJECT that are owned or will be owned by the CITY.

9
10 1.55 SPU Facilities Work means work required to design, construct and protect the SPU
11 Facilities as part of the PROJECT.

12
13 1.56 STATE means the State of Washington Department of Transportation and may include
14 its Contractors, Subcontractors, Agents and Assigns.

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15
16 1.57 STATE Designated Representative means the State of Washington official listed in
17 Section 1.7 of this Agreement. ~~[Salary: Section 1.7, City Designated Rep has been deleted; do~~
18 ~~you want to delete this section?]~~

19
20 1.58 Street Use Permit means written authorization secured by the STATE from the Director
21 of SDOT for use of the CITY Street Right-of-Way pursuant to Title 15 of the Seattle Municipal
22 Code.

Comment [SLS23]: We propose that this definition be deleted from here and put in the definitions section of SDOT MOA Exhibit B. The term is not referenced in this agreement.

23
24 1.59 Submittal Control Document means a list of all documents or reports that are required by
25 the Approved Plans or construction contract documents or applicable law to be provided to or
26 submitted to the STATE and the CITY.

Comment [SLS24]: We propose that this definition be deleted from here and put in the definitions section of SDOT MOA Exhibit B. The term is not referenced in this agreement.

27
28 1.60 Task Force means a group consisting of State, City, contractor, and other stakeholder
29 staff meeting regularly to review and reach decisions relating to a particular subject, e.g., traffic,
30 structures.

31
32 1.61 Task Order means a document executed by the PARTIES under this Agreement
33 authorizing work by one party to be done on behalf of the other party and that defines the scope
34 and the obligations of the PARTIES for the given element of work. All terms and conditions of
35 the Agreement shall apply to each Task Order.

36
37 1.62 UTILITY Facilities means SPU Facilities and SCL Facilities.

38
39 1.63 UTILITY Facilities Work means SPU Facilities Work and SCL Facilities Work.

40
41 1.64 UTILITY Easement means a non-exclusive permanent easement over real property for
42 the operation, maintenance, repair and replacement of the relocated UTILITY Facilities, in the
43 form attached as Exhibit A.

Comment [g25]: Confirm definition with RES

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1
2 1.65 Utility Service Work means any facilities required to provide temporary Utility services
3 for construction of the PROJECT; and any work needed to obtain permanent UTILITY services
4 to the bored tunnel or UTILITY customers.

5
6 1.66 WSDOT means Washington State Department of Transportation.

7
8 Words not otherwise defined, which have well-known technical or construction industry
9 meanings, are used in accordance with such recognized meanings.

10
11
12 **2. GENERAL RESPONSIBILITIES**

13
14 2.1 The Parties shall manage risk, produce design and conduct construction in a manner that
15 maximizes cumulative public benefits and minimizes cumulative public costs as mutually agreed
16 to by the Parties.

17
18 2.2 This Agreement in conjunction with GCA 6486 and UT 01476 is prepared by the STATE
19 and CITY to govern relationships between the Parties and establish each Party's responsibilities
20 regarding the PROJECT as described in Exhibit A of GCA 6486, Project Description.

Comment [SLS26]: May need more City
discussion: SPU and SCL still need time to review
this Exhibit.

21
22 2.3 The Parties understand that environmental review of the proposed PROJECT is underway
23 at the date of this agreement and agree that if an alternative other than the Proposed Bored
24 Tunnel is selected, this agreement may be terminated pursuant to the provisions of Section 21
25 ~~herein, shall not be applicable.~~

26
27 2.4 The Parties shall work collaboratively to resolve issues in a manner that endeavors to
28 open the Proposed Bored Tunnel to the public on schedule.

29
30 2.5 The design and construction of CITY infrastructureFacilities, including infrastructure
31 repair, shall comply with City of Seattle codes, rules, regulations and standards.

32
33 2.6 Each Party shall provide the funding and resources necessary to fulfill the responsibility
34 of that Party as established in this Agreement.

35
36 2.7 The Parties agree to work cooperatively with each other and make reasonable, good faith
37 efforts to timely and expeditiously complete the PROJECT, as provided in this Agreement,
38 including, but not limited to, the selection of a preferred SR 99 design alternative; development
39 of preliminary engineering and final design and construction. In order to optimize design and
40 minimize conflicts, the STATE shall coordinate design and construction of the various contracts
41 making up the PROJECT with design of subsequent PROGRAM stages, and with construction of
42 previous stages of the PROGRAM. The STATE shall be prepared to modify design of the

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1 contracts making up the PROJECT, the subsequent PROGRAM stage and/or previous phase if
2 both Parties determine the modifications are necessary and reasonable, to minimize conflicts.

3
4 2.8 The STATE shall pay for all costs associated with the ~~UTILITY Facilities Deformation~~
5 ~~Mitigation~~ Work, including but not limited to design; design review; purchase of materials;
6 construction; inspection; preparation of record drawings; CITY crew time and costs; any
7 temporary UTILITY services required for construction of the PROJECT; and any work needed
8 to obtain permanent UTILITY services to the bored tunnel or UTILITY customers; regardless of
9 whether such UTILITY Facilities Deformation Mitigation Work is performed by the UTILITY
10 or other CITY staff, the STATE, or its contractor, as set forth in the Approved Plans, and any
11 UTILITY-approved revisions to the Approved Plans, without reimbursement from UTILITY,
12 including ~~cChange oOrders pursuant to Section 8 of this UTILITY-Bored Tunnel Agreement,~~
13 but excluding Betterments or New Work as defined in Section 2 of this ~~UTILITY-Bored Tunnel~~
14 Agreement. No delay costs shall be paid for by UTILITY.

15
16 2.9 The STATE is responsible for designing and constructing the Proposed Bored Tunnel
17 portion of the ProjectPROJECT. The STATE is responsible for ~~will take reasonable measures to~~
18 ~~minimize, limit, and mitigate dDamage to private property and CITY Facilities~~
19 ~~infrastructure including CITY streets, CITY telecommunications facilities and CITY UTILITY~~
20 ~~Facilitiesutilities~~ that may result from the PROJECT~~roposed Bored Tunnel~~ construction,
21 including ~~dDamage~~ that may result from tunnel-induced ~~Ddeformation~~. The STATE~~WSDOT~~ is
22 responsible for remedying such ~~dDamage~~ should it occur. ~~[Salav.]~~ [1b]

[1b]

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23
24
25
26
27
28 2.10 CITY-UTILITY is responsible for ~~the cost of relocating those existing CITY-UTILITY~~
29 ~~Facilitiesutilities~~ that have alignments intersecting the final configuration of the proposed SR 99
30 bored tunnel portals and tunnel portal excavations. UTILITY's ~~CITY's~~ relocation responsibility
31 is limited to the ~~typical cost for a single~~ final relocation of each UTILITY Conflicting Facility.
32 During preliminary design, the Parties will jointly identify UTILITY Conflicting Facilities that
33 will need to be relocated more than once

Comment [P27]: May need more City discussion

34
35 2.11 The Parties agree that it is in the public interest for one Party to implement portions of the
36 other Party's PROJECT~~roject~~ responsibilities. Therefore, this ~~SDOT~~ Agreement establishes a
37 Task Order process for use by a Party to authorize the other Party to conduct work on its behalf,
38 and as may be documented through each Task Order, agree to reimburse the other Party for such
39 services.

40
41 2.12 The ~~general terms, and conditions, and requirements~~ of GCA 6486 and this Agreement
42 shall apply to each Task Order performed as part of the PROJECT, ~~unless otherwise specified in~~
43 an ~~executed Task Order~~.

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1
2 2.13 For UTILITY Facilities Work which the STATE will design and construct, the STATE
3 and UTILITY agrees to document key design-related decisions to ensure that issues are resolved
4 to PARTIES/SPU's/SCL's satisfaction, pursuant to Section 5 herein and Section 6 and Exhibit B
5 of GCA 6486, so that the STATE can proceed with the design of the PROJECT. These decisions
6 will be evidenced through the use of a concurrence letter signed by both PARTIES.
7

8 2.14 The STATE agrees to take the lead in consulting and coordinating with Private Utilities
9 affected by the PROJECT.
10

11 2.15 The PARTIES shall apply for and obtain all necessary federal, state and City of Seattle-
12 issued permits and approvals for the work for which they are responsible prior to commencing
13 work that requires such permits, including but not limited to all permits, approvals or permission
14 for exploratory investigations, testing, site preparations, demolition and construction.
15

16 2.16 The PARTIES-STATE shall comply with the regulatory requirements and agree to meet
17 operational and customer service requirements of each existing UTILITY Facility.
18

19 2.17 The [REDACTED] shall minimize utility service interruptions to UTILITY
20 customers. [Salav] [1b]
21 [1b]
22 [REDACTED]
23 [REDACTED]

24 2.18 To the extent necessary, SCL agrees to lead the coordination of the PROJECT with all
25 applicable electrical regulatory agencies.

Comment [P28]: SCL only

27 **3. RESPONSIBILITIES REGARDING SCL AND SPU RELOCATIONS**
28 **(PORTALS)CONFLICTING FACILITIES**
29

30 3.1 The STATE shall identify all SCL Facilities and all SPU Facilities that directly conflict
31 with the bored tunnel portals and tunnel portal excavations ("Conflicting Facilities").
32

33 3.2 UTILITY shall inform the STATE of any additional Conflicting Facilities or New Work
34 and confirm that each UTILITY Facility which the STATE has identified as a Conflicting
35 Facility does in fact directly conflict with the bored tunnel portals or bored tunnel portal
36 excavations. In the event that, after the STATE identifies the Conflicting Facilities, UTILITY
37 builds new UTILITY Facilities that conflict with the bored tunnel portals or bored tunnel portal
38 excavations, UTILITY shall so inform the STATE. [Salav] [1b]
39 [1b]
40 [REDACTED]
41 [REDACTED]

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- 1 3.3 The STATE is responsible for preparing a Conceptual Utility Relocation Plan that
2 documents a functional and efficient approach to relocating Conflicting Facilities in a manner
3 that accommodates the PROJECT. The Conceptual Utility Relocation Plan shall include:
- 4 3.3.1 The STATE's preliminary design of the PROJECT that includes Type,
5 Size and Location for all components; and
- 6 3.3.2 The STATE's preliminary design of the Relocation Work that is
7 functional and efficient, that is in compliance with City Standards, and
8 that demonstrates compatibility with existing infrastructure to remain; and
- 9 3.3.3 Identification of Conflicting Facilities; and
- 10 3.3.4 The STATE's request for UTILITY to relocate Conflicting Facilities
11 based on the STATE's current design of the PROJECT; and [Salary:
12 [b]
13
14
- 15 3.3.5 Plan view drawings developed in collaboration with UTILITY;
16 incorporating UTILITY comments and input; drafted to an engineering
17 scale of 1 inch equals 20 feet; showing the existing configuration of
18 Conflicting Facilities, proposed configuration of relocated CITY
19 Infrastructure, and all existing infrastructure to remain adjacent to
20 relocated CITY Infrastructure; and confirming no conflicts with other
21 utilities or infrastructure; and
- 22 3.3.6 Roadway and utility cross-sections necessary to demonstrate the feasibility
23 of the conceptual design; showing the existing configuration of
24 Conflicting Facilities, proposed configuration of relocated CITY
25 Infrastructure, and all existing infrastructure to remain adjacent to
26 relocated CITY Infrastructure; and confirming no conflicts with other
27 utilities or infrastructure; and
- 28 3.3.7 Utility profiles and elevations necessary to demonstrate the feasibility of
29 the conceptual design; showing the existing configuration of Conflicting
30 Facilities, proposed configuration of relocated CITY Infrastructure, and all
31 existing infrastructure to remain adjacent to relocated CITY Infrastructure;
32 and confirming no conflicts with other utilities or infrastructure; and
- 33 3.3.8 A cost estimate of all costs associated with relocating the Conflicting
34 Facilities including design, permitting, construction costs, and
35 contingency. The cost estimate shall be prepared and sealed by a Licensed
36 Professional Engineer in the State of Washington. All costs shall be
37 developed on a per linear foot unit basis for the separate types, sizes and
38 segments of Conflicting Facilities and the new relocated Utility UTILITY
39 Facilities. The estimate shall document the construction costs of the
40 relocated Utility UTILITY Facility including associated appurtenances,
41 trench safety systems, traffic control, service connections, inspection,
42 surface restoration and all other costs associated with each new and
43 abandoned UTILITY Facility. The costs shall be developed on the basis of

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1 typical construction costs in the area and on the basis of a single
2 relocation, unless single relocation is mutually agreed upon by the
3 CityCITY and StateSTATE to be infeasible, in which case the costs shall
4 be based on a mutually agreed upon relocation plan between SPU/SCL
5 and the StateSTATE; and

6 3.3.9 A schedule for relocation of Conflicting Facilities that includes the list of
7 specific tasks and associated costs developed in the cost estimate. The
8 schedule shall be coordinated with the proposed design and construction
9 schedule for other work within the PROJECT.

10
11 3.4 The STATE shall deliver the Conceptual Utility Relocation Plan to UTILITY no later
12 than September 1, 2010.

Comment [P29]: Needs more City discussion.
Intent is that we set a reasonable timeline

13
14 3.5 Within thirty (30) calendar days of receipt of the Conceptual Utility Relocation Plan,
15 UTILITY shall provide comments the STATE, including informing the STATE whether any
16 requirements listed in Section 3.3 above are missing or incomplete. Within thirty (30) calendar
17 days of the STATE's receipt of UTILITY's comments, the STATE shall address UTILITY's
18 comments to the UTILITY's satisfaction. UTILITY's responsibility for the Relocation Work
19 begins when the PARTIES have written mutual agreement of the Conceptual Utility Relocation
20 Plan.

Comment [P30]: Needs more City discussion.

21
22 3.6 The PARTIES shall use the Conceptual Utility Relocation Plan as the basis for
23 establishing the scope, schedule and estimated cost of design and construction services to be
24 documented in Task Orders under this Agreement.

25
26 3.7 In instances where the STATE's revisions to the PROJECT design differ so significantly
27 from the Conceptual Utility Relocation Plan as to render the UTILITY's design or construction
28 work obsolete, the STATE shall reimburse UTILITY for the accrued costs of the obsolete work.
29

30
31 3.87 The STATE is responsible for shall protect avoiding damage to UTILITY Facilities,
32 including those installed as part of the PROJECT or PROGRAM.

33
34 3.95 UTILITY is responsible for relocating each identified Conflicting Facility one time, to its
35 final and permanent relocation, which work is Relocation Work.

36
37 3.106 Interim or temporary relocations required in order to move a Conflicting Facility to its
38 final and permanent location, including but not limited to relocations necessary to stage any
39 PROJECT construction, is not Relocation Work, and shall be the responsibility of the STATE.
40

Comment [P31]: Needs more City discussion

41 **4. STATE RESPONSIBILITIES REGARDING UTILITY FACILITIES**
42 **DEFORMATION MITIGATION**
43

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1 4.1.....The STATE is responsible for performing all planning, operational and construction
2 management practices, monitoring and temporary or permanent UTILITY Facilities Work
3 undertaken to avoid or remedy damage as a result of Deformation (“Deformation Mitigation
4 Work”).
5

6 4.1 The STATE will undertake an assessment of potential impacts of Deformation on private
7 property and CITY infrastructure Facilities including CITY streets, CITY telecommunications
8 facilities and UTILITY Facilities CITY utilities. Where the CITY has established deformation
9 criteria for its Facilities Utilities, the criteria will be used in analysis. Otherwise, criteria will be
10 derived using accepted engineering practice and shall be mutually agreed upon by the City CITY
11 and State STATE. **Salary:** [1b]

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[1b]

12
13
14
15
16
17 4.2 The UTILITY shall review the STATE’s estimate of susceptibility or vulnerability of its
18 facilities to Deformation and provide comments/input. Such input shall be provided to assist the
19 STATE only, and shall not be interpreted as waiving or limiting in any way the STATE’s
20 responsibility for Deformation Mitigation Work.
21

22 4.3 The STATE shall develop a preliminary plan for UTILITY Facilities Deformation
23 Mitigation. PARTIES will work collaboratively to finalize and implement the UTILITY
24 Facilities Deformation Mitigation plan. UTILITY’s input shall be provided to assist the STATE
25 only, and shall not be interpreted as waiving or limiting in any way the STATE’s responsibility
26 for Deformation Mitigation Work.
27

28 4.4 As a component of the UTILITY Facilities Deformation Mitigation plan Work, the
29 STATE will implement a construction monitoring Task Force responsible for the planning and
30 implementation of the instrumentation and monitoring program and processing data, evaluating
31 results, and developing recommendations to mitigate deformation.
32

33 4.56 The CITY-UTILITY will advise the STATE and participate in construction monitoring
34 and deformation management activities when these activities pertain to CITY
35 Infrastructure Facilities. The CITY-UTILITY will provide the STATE all necessary access to
36 CITY Infrastructure Facilities for the purposes of design or implementation of mitigation
37 measures. The CITY-UTILITY may perform mitigation measures on behalf of the STATE in a
38 manner and schedule that supports the STATE’s project requirements. UTILITY’s advice,
39 participation, and access shall be provided to assist the STATE only, and shall not be interpreted
40 as waiving or limiting in any way the STATE’s responsibility for Deformation Mitigation Work.
41

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1 4.6 The STATE is responsible for repairing, replacing or otherwise remedying UTILITY
2 Facilities that have lost function, capacity, or aesthetic quality as a consequence of the
3 PROJECT. [AES: [REDACTED] [1b]

Comment [P32]: Do we need to put bounds around how the "consequence of the PROJECT" is defined? Temporal dimension, e.g. from start of construction (or once SPU has fixed all pre-existing leaks) through the completion of the D-B contractor's monitoring responsibilities (2 years following tunneling, per L. Laird).

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4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 4.7 Unless otherwise agreed, the STATE is responsible for complying with SPU's Settlement
10 Monitoring Requirements for Cast Iron Water Mains, attached hereto as Exhibit B and
11 incorporated by reference. This compliance includes requirements for replacement of
12 affected pipe segments when settlement occurs in excess of the maximum allowable
13 settlement allowances. [Salay: Exh B has already been defined as something else,
14 should this be Ex C?]

15 [REDACTED]
16 4.8 Unless otherwise agreed, the STATE is responsible for complying with SPU's Settlement
17 Monitoring Requirements for Ductile Iron Water Mains, attached hereto as Exhibit C and
18 incorporated by reference. This compliance includes requirements for replacement of
19 affected pipe segments when settlement occurs in excess of the maximum allowable
20 settlement allowances. [Salay: Should be exhibit D? see comment to 4.8]

Comment [P33]: Needs more City discussion re: STATE responsibility for preemptive replacements.

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21 22 23 24 25 5. DESIGN, PLAN REVIEW, CHANGE MANAGEMENT

26
27 5.1 Where the STATE is performing the design of UTILITY Facilities Work, the STATE
28 and UTILITY shall comply with all provisions outlined in Section 6 of the SDOT SR 99 Bored
29 Tunnel Agreement. The STATE PARTIES shall facilitate the design as provided herein and shall
30 allow UTILITY adequate time for detailed design review. UTILITY will meet agreed-upon
31 timelines for review. The STATE PARTIES shall address and resolve each design review
32 comment to UTILITY's and the STATE's satisfaction. In the event the PARTIES are unable to
33 mutually resolve comments, the PARTIES shall initiate the dispute resolution process pursuant
34 to Section 23 of the SDOT SR 99 Bored Tunnel Agreement. [Salay: [REDACTED] [1b]
35 [REDACTED] [1b]

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36
37 5.2 In the event the STATE designates as a Limited Access Facility any area in or near the
38 tunnel portals on which a UTILITY Facility exists or will be relocated, the PARTIES agree to
39 make every effort to develop a design that minimizes the need for regular, on-going maintenance
40 access.

41
42 5.3 The STATE agrees to incorporate qualification criteria mutually agreed upon by the
43 PARTIES for construction contractors in the performance of Specialty Work into the contract

HIGHLIGHTED TEXT = Elevate to Leadership
GREEN HIGHLIGHT = Staff to resolve

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1 bid document. The STATE shall consult with UTILITY on the contractors and subcontractors
2 bidder qualifications for Specialty Work. UTILITY shall provide comments to the STATE on
3 known bidder qualifications. The STATE shall not allow unqualified contractors to perform
4 Specialty Work.

6 |
7 **6. CONSTRUCTION MANAGEMENT, INSPECTION AND CONTRACT**
8 **ADMINISTRATION**

9
10 6.1 The PARTIES shall comply with all provisions contained within Section 14 of GCA
11 6486, regarding Construction Management, Inspection and Contract Administration for the
12 PROJECT, and such provisions shall apply equally to this Agreement.

13
14 6.2 Where UTILITY staff or crews are performing work requested by the STATE. [Salary:
15 [b]

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16
17 the STATE shall provide all labor, materials, equipment, and tools
18 required to excavate, provide trench support systems, and handle and dispose of all spoils
19 (including contaminated soils, groundwater, and other debris), and provide a safe workplace for
20 UTILITY staff per applicable State and Federal laws, and City of Seattle standards, for the
21 UTILITY Facilities Work in accordance with the Approved Plans and any UTILITY-approved
22 revisions to the Approved Plans. The STATE will not provide personal protective equipment for
23 UTILITY staff.

24
25 6.3 The STATE agrees to provide advance notice of service outages needed for construction
26 to schedule crews, notify customers and accommodate other previously scheduled outage
27 requests in accordance with UTILITY procedures CITY Standards.

28
29 **7. MONITORING**

30
31 7.1 The PARTIES agree to comply with all provisions contained within Section 12 of the
32 SDOT Bored Tunnel Agreement, regarding Monitoring for the PROJECT, and such provisions
33 shall apply equally to this Agreement.

34
35 **8. NOTICES AND DESIGNATED REPRESENTATIVES**

36
37 8.1 Any notice required or permitted to be given pursuant to this Agreement shall be in
38 writing and shall be sent postage prepaid by U.S. Mail to the Designated Representatives.

39
40 8.2 The Designated Representatives for each Party are as follows:

41
42 STATE:
43 Program Administrator

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1 Alaskan Way Viaduct & Seawall Replacement Program
2 Washington State Department of Transportation
3 999 3rd Avenue, Suite 2424
4 Seattle, WA 98104

5
6 CITY UTILITY:
7 Project Manager, Alaskan Way Viaduct & Seawall Replacement Program
8 Seattle City Light
9 P.O. Box 34018
10 700 Fifth Avenue, Suite 4900
11 Seattle, WA 98124-4018
12

Comment [SLS34]: Change for SPU

13 **9. FUNDING OF UTILITY FACILITIES WORK AND TASK ORDERS**

14
15 9.1 The STATE shall provide necessary funding for all PROJECT costs without
16 reimbursement from the City of Seattle, except for the City of Seattle cost responsibilities
17 established in this Agreement, in SDOT Agreement GCA 6486, [and in UT 01474/ UT
18 01476, add respective UTILITY Agreement].
19

20 ~~9.2..... If for any reason PROJECT costs exceed the State funding limit established by RCW
21 47.01.402, the STATE shall have the sole responsibility for obtaining any needed additional
22 spending authority without recourse to any funding device that burdens Seattle area taxpayers or
23 property owners or the City of Seattle.~~
24

Comment [SLS35]: Not appropriate/necessary
for the Utility agreements.

25 9.3 Each PARTY shall fund work for which it is responsible pursuant to this agreement.
26

27 9.4 The STATE will request, obtain and fund any temporary and permanent utility services
28 required for the PROJECT through separate utility service agreements with UTILITY.
29

30 9.5 While SDOT is the City lead agency for the PROJECT, the STATE understands and
31 agrees that all PROJECT decisions that are likely to result in expenditure of UTILITY funds, and
32 all PROJECT decisions that may have operational, maintenance, or access impacts to UTILITY
33 Facilities, require concurrence of UTILITY.
34

35 **10. UTILITY'S RIGHT TO CORRECT NON-CONFORMING, UNAUTHORIZED
36 AND DEFECTIVE WORK**
37

38 10.1 If the STATE or its contractor fails to remedy, or fails to properly remedy, non-
39 conforming, unauthorized or Defective Work within the time specified by UTILITY, which is
40 not to be less than ten (10) Business Days, UTILITY may, but is not required to, correct and
41 remedy such work by any means as UTILITY may deem necessary, including the use of
42 UTILITY staff or contractors.
43

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1 10.2 If the STATE or its contractor fails to comply with a written notice to remedy what
2 UTILITY determines to be an emergency situation, UTILITY may, but is not required to, have
3 the non-conforming, unauthorized or Defective Work corrected immediately, have such work
4 removed and replaced, or have work the STATE or its contractor refuses to correct completed.
5 An emergency situation shall mean a condition that calls for immediate action to respond to
6 danger to health, safety or property.
7

8 10.3 Direct and indirect costs incurred by UTILITY attributable to correcting and remedying
9 unauthorized, non-conforming or Defective Work, or work the STATE or its contractor failed or
10 refused to perform, shall be paid by the STATE to UTILITY within thirty (30) calendar days
11 after receipt of an invoice with appropriate documentation of such costs. [Salav: [1b]

Comment [P36]: Need more City discussion
re: invoicing requirements and language

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12 [1b]
13
14 10.4 Except in an emergency situation as defined under Section 109.2, disagreements between
15 UTILITY and the STATE on what constitutes non-conforming, unauthorized or Defective Work
16 shall be resolved using the dispute resolution process established in Section 19 herein prior to
17 UTILITY performing any work.
18

19 10.5 Any and all services, including direction, provided by UTILITY pursuant to this section
20 shall be subject to all limitations on the CITY's liability contained in the SDOT Bored Tunnel
21 Agreement, including but not limited to Section 167, Risk Allocation.
22

23 11. UTILITY ACCESS AND INSPECTION OF UTILITY FACILITIES WORK

24
25 11.1 Neither the STATE nor its contractor shall require UTILITY to interrupt electrical
26 service without (a) written notice to UTILITY at least fourteen (14) calendar days prior to the
27 planned interruption and (b) UTILITY's written approval. UTILITY may restrict electrical
28 service interruptions to the extent necessary to maintain electrical system operations and
29 adequate power supply to customers. [Salav: [1b]

Comment [SLS37]: Remember to insert the
equivalent for SPU from the SPU H2K2 agreement.

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30 [1b]
31
32

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1 | 11.2 The STATE shall ensure the UTILITY has the right to safe access to their facilities at any
2 | time to operate and maintain existing and newly installed UTILITY Facilities or to inspect or
3 | perform UTILITY Facilities Work. For purposes of this Agreement, "access" shall mean that the
4 | vaults, vault openings, handholes, power poles, ductbanks, substation equipment or substation
5 | entrances shall not be blocked, covered or otherwise inaccessible to SCL. UTILITIES staff other
6 | than UTILITIES' on-site inspector will notify the STATE in advance of their arrival on site
7 | except in the case of emergency in accordance with site access procedures to be developed by the
8 | PARTIES. **Salav:** [1b]
9 | [REDACTED]

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Comment [SLS38]: For SPU – hydrants, meter, valves, or similar surface water system facilities, and drainage and wastewater system facilities.

11 | 11.3 Under no circumstances shall the STATE, its contractor, or anyone other than UTILITY
12 | personnel enter any energized UTILITY Facilities or operate any portion of the existing or new
13 | UTILITY Facilities, without UTILITY personnel approval and supervision.

15 | 11.4 The STATE agrees and acknowledges that UTILITY shall have an on-site inspector
16 | available during the construction of UTILITY Facilities for UTILITY's quality assurance. The
17 | STATE agrees and acknowledges the UTILITY's on-site inspector shall (a) have timely and
18 | complete access to the construction work associated with the UTILITY Facilities Work; (b) be
19 | timely informed of all relevant construction timelines associated with such work; and (c) have
20 | the authority to, but not be required to, reject and have corrected and/or replaced any
21 | construction or materials deemed to be deficient, or which deviate from the Approved Plans or
22 | any SCL-approved revisions to the Approved Plans. In such instances, UTILITY's on-site
23 | inspector, or UTILITY's project manager, will immediately direct comments and issues to the
24 | STATE's construction project engineer or designated representative, which will be followed up
25 | in writing as soon as possible but no later than ten (10) Business Days of the date of any
26 | inspection. The STATE shall promptly address each comment or issue presented by UTILITY
27 | to UTILITY's satisfaction. UTILITY staff will continue to be supervised by UTILITY
28 | management.

30 | 11.5 The STATE will allow UTILITY's on-site inspector or Designated Representative to
31 | consult with and inquire of the STATE construction Project Engineer, attend all meetings, and
32 | have timely and complete access to all documentation as to all matters concerning the UTILITY
33 | Facilities Work. UTILITY shall not provide direction, directly or indirectly, to the STATE's
34 | consultant(s) or contractor.

36 | 11.6 The STATE shall provide UTILITY with timely notice prior to commencement and
37 | completion of all material stages of the UTILITY Facilities Work and shall invite UTILITY to
38 | inspect such work upon completion of any material stage. The STATE shall timely address each
39 | comment or issue presented by UTILITY to UTILITY's satisfaction. Both Parties agree to act as
40 | expeditiously as possible to assure a timely resolution of any deficiencies.

42 | 11.7 UTILITY shall observe the work on UTILITY Facilities performed by the STATE to
43 | satisfy any UTILITY's needs for quality assurance. UTILITY will notify the STATE if

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1 | Utility ~~UTIL~~ITY observes defective UTILITY Facilities Work is observed, such as improper
2 | installation or unsafe conditions.

3
4 | **12. FINAL INSPECTION AND PROJECT ACCEPTANCE**

5
6 | 12.1 The PARTIES agree to comply with all provisions contained within Section 15 of the
7 | GCA 6486, regarding Final Inspection and Project Acceptance, and such provisions shall apply
8 | equally to this Agreement.

9
10 | 12.2 UTILITY Facilities shall not be placed into interim use or operation, or transferred to the
11 | City, unless or until: (a) UTILITY has participated in an inspection of the UTILITY Facilities;
12 | (b) any deficiencies or Defective Work have been resolved or corrected to UTILITY's
13 | satisfaction; and (c) UTILITY confirms with the STATE in writing that UTILITY's minimum
14 | inspection and testing requirements for the UTILITY Facilities have been met, including
15 | completion of the Washington State Department of Health Completion Report for watermain.

Comment [SLS39]: For SPU only

16
17 | **13. WARRANTIES**

18
19 | 13.1 The PARTIES agree to comply with all provisions contained within Section 17 of the
20 | GCA 6486, regarding Final Inspection and Project Acceptance, and such provisions shall apply
21 | equally to this Agreement

22 | **14. ACQUISITION AND TRANSFER OF EASEMENTS AND FRANCHISES**

23
24 | 14.1 The UTILITY is responsible for identifying and acquiring, at its sole cost and expense,
25 | all property rights needed to complete Relocation Work, except for property otherwise required
26 | for the PROJECT.

27
28 | 14.2 The STATE is responsible for identifying and acquiring, at its sole cost and expense, all
29 | property rights needed to complete UTILITY Facilities Deformation Mitigation Work.

30
31 | 14.3 The PARTIES recognize that their property acquisition responsibilities include the
32 | performance of all appraisal, appraisal review, title review, surveys, property investigation,
33 | relocation assistance and all other investigations and services in connection with the acquisition
34 | of the permanent easement rights necessary for the UTILITY Facilities, including, without
35 | limitation, identification and investigation of Hazardous Substances as provided in Section 54 of
36 | the GCA 6486. The STATE shall provide to UTILITY, as soon as available to the STATE, all
37 | reports and documents prepared or obtained in connection with any of the reviews and
38 | investigations described above.

39
40 | 14.4 Where the State is acquiring easement rights for UTILITY Facilities Deformation
41 | Mitigation Work, unless the Parties otherwise agree in writing, prior to commencement of
42 | construction, the STATE shall convey to the CITY the easement rights referred to in Section 14.6

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1 by conveying them substantially in the form as, and containing the same conditions as, the
2 approved Utility Easement form attached and identified as Exhibit A. The Utility Easements
3 conveyed to the CITY shall not be subject to any lien, encumbrance or exception of title of any
4 kind.

5
6 14.5 The legal descriptions will be developed based on the Approved Plans. The Parties
7 acknowledge that due to unforeseen field conditions the location of one or more of the easements
8 may need to change after commencement of construction. In that case, the STATE shall provide
9 UTILITY with documents, reports and information identified in Subsection 14.3 above, relevant
10 to the new or modified easement area. All requirements and conditions pertaining to the original
11 permanent Utility Easements shall apply to all amendments and modifications.

Comment [g40]: Joint – RES needs to review

12
13 14.6 Where UTILITY Facilities are located in or near an area which the STATE designates as
14 a Limited Access Facility, the STATE will ensure that UTILITY continues to be allowed fully
15 access to its UTILITIES for operation, maintenance and repair, and will not be required to
16 relocate its Utility Facility without full compensation from the STATE. [Salav: [1b]

Comment [RF41]: TBD – RES needs to review

[1b]

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17
18
19
20
21
22
23
24
25
26 14.6.1 The STATE's Limited Access Facility designation for the tunnel shall contain a
27 vertical and horizontal boundary.

28 14.6.2 The STATE agrees that any Limited Access Facility designation for the tunnel
29 will end at a maximum of three (3) feet above the tunnel in order to allow UTILITY to access its
30 UTILITY Facilities.

31
32 14.6.3 The area below City streets in the vertical dimension, and outside between the
33 Limited Access Facility boundaries, and the CITY street shall continue to be CITY Street Right-
34 of-Way.

Comment [P42]: Under discussion

35
36 In the event the STATE designates as a Limited Access Facility any area in or
37 near the tunnel portals on which a UTILITY Facility exists or will be relocated, the STATE
38 agrees to provide UTILITY a UTILITY franchise Easement in the form attached hereto as
39 Exhibit AD, pursuant to the requirements of this Section 14 herein [OR provide for access to
40 operate and maintain 24/7.] and will make every effort to develop a design that minimizes the
41 need for regular, on-going maintenance access. [Salav: [1b]

Comment [P43]: Under discussion

Comment [RF44]: May need elevation

[1b]

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[1b]

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15. ENVIRONMENTAL REMEDIATION

15.1 The PARTIES shall comply with all provisions of GCA 6486, regarding Environmental Remediation, including but not limited to all provisions in Section 5 therein, and such provisions shall apply equally to this Agreement.

16. RISK ALLOCATION

16.1 The PARTIES shall comply with all provisions of the GCA 6486, regarding Risk Allocation and Indemnification, including but not limited to all provisions in Section 19 therein, and such provisions shall apply equally to this Agreement.

17. INSURANCE

17.1 The PARTIES shall comply with all provisions of the GCA 6486, regarding Insurance, including but not limited to all provisions in Section 20 therein, and such provisions shall apply equally to this Agreement.

18. THIRD PARTY BENEFICIARY

18.1 The PARTIES shall comply with all provisions of GCA 6486, regarding Third Party Beneficiary, including but not limited to all provisions in Section 21 therein, and such provisions shall apply equally to this Agreement.

19. DISPUTE RESOLUTION

19.1 ~~Dispute Resolution Representatives.~~ The Dispute Resolution Representatives for the Parties are as follows:

~~For the STATE:~~ Bored Tunnel Project Design Project Engineer or, if appropriate, Construction Project Engineer;
~~Alaskan Way Viaduct & Seawall Replacement Program~~
~~Washington State Department of Transportation~~
~~999 3rd Avenue, Suite 2424~~
~~Seattle, WA 98104~~

~~For UTILITY:~~ UTILITY AWW Project Manager
~~P.O. Box 34023~~

Comment [SLS45]: We changed this to make it consistent with SDOT's process. Confirm that the appropriate people are listed in 19.5 and 19.7.

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1 _____ 700 Fifth Avenue, Suite 3200
2 Seattle, WA 98124-4023
3

4 19.1 Good Faith. ~~UTILITY and the STATE~~ The Parties shall make good faith efforts to
5 resolve any dispute arising under or in connection with this Agreement. The dispute resolution
6 process outlined in this Section applies to disputes arising under or in connection with the terms
7 of this Agreement. In the event that the Parties cannot resolve a disagreement arising under or in
8 connection with this Agreement, the Parties shall follow the dispute resolution steps set forth
9 below. [Salary: [1b]

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10 [1b]

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11
12
13 19.2 Notice. A Party's Designated Representative, as defined in Section 8 above, shall notify
14 the other Party's Designated Representative in writing of any problem or dispute that a Party
15 believes needs resolution. The written notice shall include (a) a description of the issue to be
16 resolved; (b) a description of the differences between the Parties on the issue; and (c) a summary
17 of any steps taken to resolve the issue.

18
19 19.3 Meeting. Upon receipt of a written notice of request for dispute resolution, the
20 Designated Representatives for the Parties shall meet within ten (10) Business Days and attempt
21 to resolve the dispute. Any resolution of the dispute requires the agreement of all Designated
22 Representatives attending the meeting or who requested to attend the meeting.

23
24 19.4 Notice of Second Level Meeting. If the Parties have not resolved the dispute within five
25 (5) Business Days after the meeting, at any time thereafter either Party may request that the
26 dispute be elevated to the next level by notifying the other Party's Designated Representative in
27 writing, requesting that the dispute be raised to the Second Level Meeting. The written
28 notification shall include a) a description of the remaining issues to be resolved; b) a description
29 of the differences between the Parties on the issues; c) a summary of the steps already taken to
30 resolve the issues, and d) the resolution of any issues that were initially involved in the dispute.

31
32 19.5 Second Level Meeting. Upon receiving a written request that the dispute be elevated to
33 the next level, a meeting shall be held within ten (10) Business Days between the Project
34 Director of WSDOT and the Customer Service and Energy Delivery Officer of Seattle City
35 Light/SPU Project Delivery Branch Deputy Director to resolve the dispute. Any resolution of the
36 dispute requires the agreement of all Representatives attending the meeting or who requested to
37 attend the meeting.

38
39 19.6 Notice of Third Level Meeting. If the Parties have not resolved the dispute within five
40 (5) Business Days after the Second Level Meeting, at any time thereafter either Party may
41 request that the dispute be elevated to the next level by notifying the other Party's Designated
42 Representative in writing, requesting that the dispute be raised to the Third Level Meeting. The
43 written notification shall include a) a description of the remaining issues to be resolved; b) a

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

4
5 19.7 Third Level Meeting. Elevate to the Executive Committee. Upon receiving a written
6 request that the dispute be elevated to the third level, a meeting shall be held within ten (10)
7 Business Days between the Washington State Deputy Secretary of Transportation and
8 Superintendent of Seattle City Light/Director of Seattle Public Utilities to resolve the dispute.
9 Any resolution of the dispute requires the agreement of all Representatives attending the meeting
10 of who requested to attend the meeting. [Salary: [b]

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11 [b]

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12
13
14 19.8 Court of Law. If the Parties have not resolved the dispute within five (5) Business Days
15 after the third level meeting, at any time thereafter either Party may seek relief under this
16 Agreement in a court of law. The Parties agree that they have no right to relief in a court of law
17 until they have completed the dispute resolution process outlined in this Section.

18
19 19.9 A Party's request to utilize this Dispute Resolution process is not evidence that either Party
20 is in breach of this Agreement, and does not relieve any Party from complying with its obligations
21 under this Agreement.

22 ~~19.2 Dispute Resolution Process. The designated representatives established under Section~~
23 ~~19.12 shall use their best efforts to resolve disputes between the Parties. If these individuals are~~
24 ~~unable to resolve a dispute, Customer Service and Energy Delivery Officer of Seattle City~~
25 ~~Light/SPU Project Delivery Branch Deputy Director and the Alaskan Way Viaduct Program~~
26 ~~Administrator for the Washington State Department of Transportation shall review the matter and~~
27 ~~attempt to resolve it. If they are unable to resolve the dispute, the matter shall be reviewed by the~~
28 ~~Superintendent of Seattle City Light/Director of Seattle Public Utilities and the Washington State~~
29 ~~Deputy Secretary of Transportation. The Parties agree to exhaust each of these procedural steps~~
30 ~~before seeking to resolve disputes in a court of law or any other forum.~~

31 32 20. REMEDIES; ENFORCEMENT

33
34 20.1 The PARTIES agree that provisions of GCA 6486, regarding Remedies; Enforcement,
35 including but not limited to Section 24 therein, shall apply equally to this Agreement.

36 37 21. TERMINATION

38
39 21.1 This Term of this Agreement may be terminated as shall be the Term provided in
40 Section 28 of GCA 6486 regarding Termination which shall apply equally to this Agreement.

41 42 22. CONFIDENTIALITY OF INFORMATION AND RECORDS

43
JOINT EDITION UT 01474/UT 01476 WSDOT/UTILITY Memorandum of Agreement
Bored Tunnel
Page 27 of 29

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1 22.1 The provisions of the SDOT Bored Tunnel Agreement, regarding Confidentiality of
2 Information and Records, including but not limited to Section 27 therein, shall apply equally to
3 this UTILITY Bored Tunnel Agreement. In addition, the Federal Energy Regulatory
4 Commission (FERC) and the North American Electric Reliability Corporation (NERC) require
5 that SCL limit access and disclosure of certain sensitive Critical Energy Infrastructure
6 Information. Therefore, SCL shall require the STATE and its contractors who have access to
7 documents marked “confidential” or “proprietary” to sign the Non-Disclosure Agreement
8 attached hereto as Exhibit BG.

Comment [SLS46]: SCL only

9
10 **23. EFFECTIVENESS AND DURATION**

11
12 23.1 This Agreement shall be effective as of the date the last PARTY signs and, unless sooner
13 terminated pursuant to the terms hereof, shall remain in effect until final completion of all
14 PARTIES’ obligations contained or referred to in this Agreement and GCA 6486, the SCL
15 Agreement, UT 01474, and the SPU Agreement, UT 01476.

16
17 **24. GENERAL PROVISIONS**

18
19 24.1 The General Provisions set forth in the GCA 6486, including but not limited to Section
20 30 therein, shall apply equally to this Agreement.
21

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1
2 IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the last day
3 and year written below.
4
5

6 | **SEATTLE PUBLIC UTILITIES/CITY LIGHT** **WASHINGTON STATE**
7 **DEPARTMENT OF**
8 **TRANSPORTATION**
9 _____

10
11 **By:**
12 Ray Hoffman/Jorge Carrasco
13 **Director/Superintendent:**

By: _____
Print: _____
Title: _____

14
15 Date: _____

Date: _____

16
17
18
19
20 APPROVED AS TO FORM:

21
22 _____
23 By (print)

24
25
26
27 _____
28 Signature
29 Assistant Attorney General

30
31
32 Date: _____
33
34
35

ATG MI TPC TRANSFER

From: Salay, Ann (ATG)
Sent: Monday, May 24, 2010 9:39 AM
To: Brown, Bryce (ATG)
Subject: GCA 6486 SDOT + UT 01474/UT 01476 SCL & SPU

Importance: High

Salay's May 13, 2010 last review of the UT agreements: Dan, per your below request, I have reviewed & commented upon the 5/7/10 changes made by Suzanne Smith of the City's legal department. Please note: [1d]

[Redacted]

The version of the UT agreement is attached, and I am attaching my 5/13/10 review document.



Bored_Tunnel
_Utility_MOA-LED ...

Salay's May 10, 2010 Only Review of the GCA 6486 (SDOT). Please note [1d]

[Redacted]



Joint SDOT MOA
5-4-10.doc

[1d]

[Redacted]

[1d]



Ann E. Salay, AAG
POB 40113 -- 7141 Cleanwater Dr. SW
Olympia, Wa 98504-0113
360-753-6130
Fax: 360-586-6847
anns@atg.wa.gov

NOTICE: This communication may contain legally privileged or other confidential information. If you have received it in error, please advise the sender by reply e-mail and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

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MEMORANDUM OF AGREEMENT

UT 01474/ UT 01476
SR 99 ALASKAN WAY VIADUCT REPLACEMENT
BORED TUNNEL PROJECT
UTILITY FACILITIES WORK

Comment [SLS1]: To be changed to SPU or SCL
in each agreement

THIS Memorandum of Agreement, UT 01474/ 01476, SR 99 Alaskan Way Viaduct Replacement, Bored Tunnel, UTILITY Facilities Work (“UTILITY Bored Tunnel Agreement”) is made and entered into between the State of Washington Department of Transportation, hereinafter the “STATE,” and the City of Seattle, hereinafter the CITY, (managed by Seattle City Light/Seattle Public Utilities, hereinafter “UTILITY”), collectively the “Parties” and individually the “Party.”

Comment [SLS2]: To be changed to SPU or SCL

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

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

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

WHEREAS, the January 2009 letter of agreement between the parties affirmed that the State would be responsible for the bored tunnel project, and that “the allocation of specific project responsibility to each jurisdiction carries with it the responsibility for project management, environmental work, design, construction, and project cost overruns”; and

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

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1
2 | WHEREAS, the AWVSR Program (PROGRAM)-consists of a four-lane bored tunnel and
3 improvements to City streets, the City waterfront, and transit; and the Moving Forward Projects;
4 and
5
6 WHEREAS, the Proposed Bored Tunnel Project (PROJECT), the subject of this Agreement, is
7 the part of the PROGRAM that replaces SR 99 from South Royal Brougham Street to Mereer
8 Roy Street that consists of designing and constructing a four-lane bored tunnel from South King
9 Street to Thomas Street, north and south tunnel portals and access streets; re-establishment of the
10 City street grid in the vicinity of the portals (Battery Street Tunnel decommissioning and
11 Alaskan Way Viaduct demolition will be addressed in a future agreement); and associated utility
12 relocations; and
13
14 WHEREAS, the Washington State Legislature passed Engrossed Substitute Senate Bill 5768 and
15 the Governor signed the bill into law designating and funding a Bored Tunnel Program as the
16 replacement for the Alaskan Way Viaduct; and
17
18 WHEREAS, in January 2009, the Governor, the King County Executive and the Mayor of
19 Seattle recommended replacement of the existing AWV structure in the central waterfront area
20 with a bored tunnel; and
21
22 ~~WHEREAS, RCW 47.01.402, which became law July 1, 2009, provides that State funding for~~
23 ~~the PROJECT is not to exceed two billion eight hundred million dollars (\$2,800,000,000.00) of~~
24 ~~which no more four hundred million shall be from tolls, and~~
25
26 ~~WHEREAS, RCW 47.01.402(6)(b) provides that any costs in excess of two billion eight hundred~~
27 ~~million dollars (\$2,800,000,000.00) shall be borne by property owners in the Seattle area who~~
28 ~~benefit from replacement of the existing viaduct with the deep bore tunnel, and~~
29
30 WHEREAS, the CITY and STATE agree to work collaboratively toward the successful jointly
31 pursue the implementation and completion of the PROJECT and endeavor to open the tunnel by
32 the end of 2015 and demolish the Alaska Way viaduct in 2016; and
33
34 WHEREAS, the PROJECT is consistent with the CITY of Seattle's adopted Comprehensive
35 Plan; and
36
37 ~~WHEREAS, review of the PROJECT pursuant to the State and City environmental policy laws~~
38 ~~is currently underway and the parties recognize that changes in the alternative chosen would~~
39 ~~require a new agreement, and~~
40
41 WHEREAS, the CITY and the STATE will deliver the PROJECT within the financial
42 commitments made in the Memorandum of Agreement, GCA 6366, executed by the PARTIES
43 on October 24, 2009; and

Comment [SLS3]: These recitals and the other yellow one below re: environmental policy laws don't belong in the Utility agreements.

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1
2 WHEREAS, concurrently with this GCA-6486/UT 01476 Agreement, the STATE and CITY,
3 through Seattle City Light (SCL), are entering into an agreement, UT 01474; and
4
5 WHEREAS, concurrently with this GCA-6486/UT 01474 Agreement, the STATE and CITY,
6 through its Seattle Public Utilities Department (SPU), are entering into an agreement, UT 01476;
7 and
8
9 WHEREAS, concurrently with this UTILITY Bored Tunnel UT 01474/UT 01476 Agreement, the
10 STATE and CITY, through the Seattle Department of Transportation, are entering into an
11 agreement, GCA 6486; and
12
13 WHEREAS, the PROJECT will in some instances require the use of existing CITY Street Right
14 of Way; and
15
16 WHEREAS, the CITY will own and/or maintain significant infrastructure to be constructed as
17 part of the PROJECT; and
18
19 WHEREAS, some portion of SR 99 is within the PROJECT and is a city street serving as part of
20 a State Highway under RCW 47.24.010; and
21
22 WHEREAS, the Parties wish to establish protocols and procedures for property acquisition,
23 environmental remediation, design review, permitting, and construction coordination to govern
24 their relationship during the course of the PROJECT.
25
26 WHEREAS, some or all of the work covered by this Agreement may be accomplished by
27 executed "Task Order" documents; and
28
29 WHEREAS, concurrently with this UTILITY Bored Tunnel Agreement, the STATE and CITY,
30 through the Seattle Department of Transportation, are entering into an agreement, GCA-6486;
31 and
32
33 WHEREAS, the PROJECT will require the removal of existing City electrical, water, drainage
34 and wastewater facilities that directly conflict with the tunnel portals and tunnel portal
35 excavations ("Conflicting Facilities"), and the construction of new facilities and service
36 connections, (excluding temporary construction and permanent electrical services for the
37 PROJECT) to a permanent and one final location to replace the conflicting facilities (together,
38 the "Relocation Work"); and
39
40 WHEREAS, the PROJECT will also require the planning, operational and construction
41 management practices, monitoring and other work to avoid and/or remedy damage
42 ("Deformation Mitigation Work"); and
43

Comment [SLS4]: Remember to delete either this recital or the next one, depending on which Agreement

Comment [SLS5]: In response to Rick (comment below), we confirmed that the definitions here are now consistent with those in Section 1. We also deleted the "one" per Rick's comment. We do think this should be included as a recital, because it explains what this agreement is about (just like the recitals regarding street use, etc., which we have suggested deleting here, make sense as recitals in the SDOT MOA). And the next recital which we added completes the story of what this agreement is about.

Comment [rlc6]: Not sure these should be recitals. Need to edited to be consistent with accepted terminology Also reflects the "one relocation" position of City. Needs Management decision on "one relocation"

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1 WHEREAS, together the Relocation Work and the UTILITY Facilities Deformation Mitigation
2 Work will comprise the "UTILITY Facilities Work" of the PROJECT; and
3

4 ~~NOW, THEREFORE, pursuant to RCW 47.29.140 and RCW 47.91.401 and in consideration of~~
5 ~~the terms, conditions, covenants, and performances contained herein, or attached and~~
6 ~~incorporated and made a part hereof.~~
7

8 NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performances
9 contained herein, or attached and incorporated and made a part hereof.
10

11 IT IS MUTUALLY AGREED AS FOLLOWS:

12
13 **1. DEFINITIONS**

14
15 Words not otherwise defined, which have well-known technical or construction industry
16 meanings, are used in accordance with such recognized meanings.
17

18 1.1 Approved Plans means the construction plans and provisions that evidence the CITY's
19 determination, through the processes described in Section 6 and 75 and Exhibit B of the SDOT is
20 Agreement GCA 6366, that the plans including ~~Released for Construction Submittal Plans for~~
21 ~~Design-Build contracts conform to the Street Use Code and other requirements, and that plan~~
22 ~~review comments are resolved to both Parties' satisfaction conform to the criteria in Sections 6~~
23 ~~and 7 and Exhibit B of the SDOT Agreement GCA 6366; Approved Plans are included in the~~
24 contract documents evidencing the agreement between the STATE and its contractors for
25 construction of a given element of the PROJECT.
26

27 1.2 AWV means the Alaskan Way Viaduct structure on State Route 99, currently a non-
28 limited-access highway over a portion of CITY Street Right-of-Way and located partially in the
29 City of Seattle.
30

31 1.3 Betterment means any upgrading of the UTILITY Facilities, or the design and
32 construction of any new UTILITY Facilities that is not attributable to the PROJECT or
33 PROGRAM and is made solely for the benefit of and at the election of UTILITY. Examples of
34 work that will not constitute a Betterment, so that UTILITY shall not bear cost responsibility,
35 are:

36 1.3.1 If existing devices or materials are no longer regularly manufactured or cannot be
37 obtained in time to meet the PROJECT schedule, needs or requests by the STATE, then devices
38 or materials of equivalent standards although not identical, of the next highest grade or size; or

39 1.3.2 Upgrades to UTILITY Facilities necessary to meet current code requirements and
40 UTILITY published standards; or

41 1.3.3 Work required by UTILITY to maintain current service and capacity; or

42 1.3.4 Work required by current design and construction practices regularly followed by
43 UTILITY in its own work and/or considered an industry design or construction standard.

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- 1
2 1.4 Business Days means Monday through Friday, inclusive, except for official City of
3 Seattle and state holidays and ~~City mandated furlough days.~~
4
5 1.5 CITY means the City of Seattle, a Washington municipal corporation.
6
7 1.6 City Construction Project Engineer means the person designated by SDOT to act as the
8 City's coordinator and primary representative in matters arising during the course of construction
9 as set forth in this Agreement.
10
11 1.7 CITY Facilities means SCL Facilities, SDOT Facilities, SPU Facilities and facilities
12 impacted by, or constructed as part of, the PROJECT that are owned or will be owned by any
13 other CITY agency.
14 ~~1.7 CITY Designated Representative means the CITY official listed in Section xx of this~~
15 ~~Agreement.~~
16
17 1.8 CITY Infrastructure means the portions of SPU Facilities, SCL Facilities and City Street
18 Right-of-Way improvements constructed or modified as part of the PROJECT to be owned,
19 operated and maintained by the CITY.
20
21 1.9 ~~CITY Interest Property~~ means CITY Street Right-of-Way plus all other real property that
22 the CITY owns or in which the CITY has a real property interest on the effective date of this
23 Agreement, or in connection with the PROGRAM is to acquire ownership of or an interest in
24 real property ~~by a different utility related fund from the STATE, which includes, but is not~~
25 ~~limited to Program Transfer Property, - in addition City Interest Property means any property or~~
26 ~~property interest that will, at the completion of the PROJECT, be transferred by the STATE to~~
27 ~~the CITY - CITY Interest Property does not include real property acquired or to be acquired by~~
28 the STATE for planned limited access facilities such as the bored tunnel, portals and access for
29 which no real property interest or ~~different utility related fund~~ will be transferred to the CITY.
30
31 1.10 City of Seattle means CITY.
32
33 1.11 City Standards means all City of Seattle laws, rules, regulations and standards and all
34 applicable federal and state laws, rules, regulations and standards, including but not limited to
35 the following, except as otherwise provided in this Agreement, UT 01474 and UT 01476:
36 The Seattle Municipal Code
37 The City of Seattle Standard Specifications for Road, Bridge and Municipal Construction
38 The City of Seattle Standard Plans for Municipal Construction,
39 SDOT, SCL, DPD and SPU Director's Rules, including the City of Seattle Right of Way
40 Improvements Manual, 2005-22.
41 SCL Material Standards
42 SCL Construction Guidelines

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1 1.12 CITY Street Right-of-Way means public street right-of-way under the jurisdiction of
2 SDOT pursuant to Title 15 of the Seattle Municipal Code.

3
4 1.13 Conceptual Utility Relocation Plan means a work product that defines the general scope
5 of Relocation Work Utility relocations including a planning level estimate of design and
6 construction costs, as further described in Section 3 herein.

Comment [SL57]: May need more City
discussion.

7
8 1.14 Conflicting Facilities means all SCL Facilities and all SPU Facilities identified by the
9 STATE that directly conflict with the bored tunnel portals and tunnel portal excavations.

10
11 1.15 Contract Award means the STATE's written decision accepting bid for construction of a
12 Project.

13
14 ~~1.16 Damage means loss of function, capacity, or aesthetic quality. For the purposes of this~~
15 ~~Agreement, "Damage" shall not be construed to include reduction of design life of any structure~~
16 ~~or utility.~~

17
18 ~~1.17 Damage means any direct or indirect consequence of the PROJECT that causes harm to,~~
19 ~~or reduces value or usefulness of, CITY Infrastructure, private property, CITY property or other~~
20 ~~public property, including but not limited to structural damage or physical failure, loss of~~
21 ~~function, capacity or aesthetic quality, reduced service capacity, including intended future~~
22 ~~capacity, reduced service life, a measurable reduction of design life of an SPU Facility or an~~
23 ~~SCL Facility, water main movement in excess of established thresholds, or any other impact to~~
24 ~~an SPU Facility or an SCL Facility such as stress or Deformation.~~

25
26 1.18 Defective Work means design or construction work or materials that fail to comply with
27 the Approved Plans, CITY-approved modifications to the Approved Plans, or the laws, rules,
28 regulations or standards as specified in this Agreement.

29
30 1.19 Deformation means any 3-dimensional displacement, for a structure (such as tilt of a
31 structure), and strain (relative displacements of structures or the ground) and includes any
32 settlement, heave, and lateral movement. Any use of the defined term Deformation, and related
33 terms are used as being in the manner commonly used in industry terminology. Where such
34 industry terminology is used for convenience herein, it does not imply that the broad definition
35 of Ddeformation has been limited.

36
37 1.20 Deformation Mitigation Work means any planning, operational and construction
38 management practices, monitoring and temporary or permanent UTILITY Facilities Work
39 undertaken to avoid and/or remedy dDamage to UTILITY Facility as a result of Deformation, as
40 further described in Section 4 herein.

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1 1.21 ~~Design Bid Build Contract~~ means a project delivery method in which the STATE
2 provides a complete design, advertises for bids, and awards a contract to the lowest responsive
3 bidder who is responsible for completing the construction of the project.

Comment [SLS8]: We propose that this definition be deleted from here and put in the definitions section of SDOT MOA Exhibit B. The term is not referenced in this agreement.

4
5 1.22 ~~Design Build Contract~~ means a project delivery method in which the STATE develops a
6 conceptual design and requests proposals from pre-qualified contractors. The contract is
7 awarded to the contractor with the best value responsive proposal. The contractor is responsible
8 to complete the design and construct the project.

Comment [SLS9]: We propose that this definition be deleted from here and put in the definitions section of SDOT MOA Exhibit B. The term is not referenced in this agreement.

9
10 1.23 ~~Design Builder~~ means the entity with whom the STATE enters into a Design-Build
11 contract and who is responsible to complete the design and construct the project.

Comment [SLS10]: We propose that this definition be deleted from here and put in the definitions section of SDOT MOA Exhibit B. The term is not referenced in this agreement.

12 1.24 DPD means the City of Seattle Department of Planning and Development.

13
14
15 1.25 Engineer of Record means the engineer licensed in the State of Washington who has been
16 commissioned by the STATE as the prime engineer of the PROJECT, having overall
17 responsibility for the adequacy of the design and the coordination of the design work of other
18 engineers and whose professional seal is on the Approved Plans.

19
20 1.26 ~~Environmental Compliance Assurance Procedure (ECAP)~~ means procedures incorporated
21 into the ~~WSDOT Construction Manual M41-01.05 dated 11/13/2008~~ (Section 1-2.2k(1))
22 and the ~~WSDOT Environmental Procedures Manual M31-11.05~~ (Sections 610 and 690) dated
23 ~~11/13/2008~~, as modified by this Agreement, which provide guidance on compliance with
24 Environmental Laws and environmental Remediation. The purpose of the ECAP is to recognize
25 and eliminate environmental violations during the construction phase on STATE construction
26 sites and to ensure prompt notification to STATE management and agencies. For purposes of the
27 ECAP, violations are defined as actions that are not in compliance with environmental standards,
28 permits, or laws.

Comment [SLS11]: This term is not referenced in this agreement.

29 1.27 ~~Environmental Law(s)~~ means any environmentally related local, state or federal law,
30 regulation, ordinance or order (including without limitation any final order of any court of
31 competent jurisdiction of which the STATE has knowledge), now or hereafter in effect
32 including, but not limited to: the Federal Clean Air Act; the Federal Water Pollution Control Act;
33 the Federal Safe Drinking Water Act; the Federal Comprehensive Environmental Response
34 Compensation and Liability Act, as amended by the Superfund Amendments and
35 Reauthorization Act of 1986; the Federal Resource Conservation and Recovery Act, as amended
36 by the Solid and Hazardous Waste Amendments of 1984; the Federal Occupational Safety and
37 Health Act; the Federal Emergency Planning and Right to Know Act of 1986; the Federal
38 Hazardous Materials Transportation Control Act of 1980; the Federal Clean Water Act of 1977;
39 the Federal Insecticide, Fungicide and Rodenticide Act; the Federal Waste Management
40 Recovery and Recycling Act; the Washington Hazardous Waste Management Act; the
41 Washington Hazardous Waste Fees Act; Washington Model Toxics Control Act; the Washington
42 Nuclear Energy and Radiation Act; the Washington Radioactive Waste Storage and

Comment [SLS12]: This term is not referenced anywhere in this agreement.

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1 Transportation Act; the Washington Underground Petroleum Storage Tanks Act; and any
2 regulations promulgated thereunder from time to time.

3
4 ~~1.28 Final Design Submittal means plans, specifications, and design documentation~~
5 ~~representing complete design of a given project element in a Design-Build Contract. The Final~~
6 ~~Design Submittal addresses and incorporates review comments from the Preliminary Design~~
7 ~~Submittal.~~

Comment [SLS13]: We propose that this definition be deleted from here and put in the definitions section of SDOT MOA Exhibit B. The term is not referenced in this agreement.

8
9 ~~1.29 Final Plan Review Package means the Plan Review Package submitted to the CITY that~~
10 ~~is comprised of the STATE's contract documents including contract addenda and fully~~
11 ~~incorporates or otherwise addresses all CITY plan review comments and all applicable~~
12 ~~conditions of the Street Use Permit.~~

Comment [SLS14]: We propose that this definition be deleted from here and put in the definitions section of SDOT MOA Exhibit B. The term is not referenced in this agreement.

13
14 1.30 Hazardous Substance(s) means any substance, or substance containing any component,
15 now or hereafter designated as a hazardous, dangerous, toxic or harmful substance, material or
16 waste, subject to regulation under any federal, state or local law, regulation or ordinance relating
17 to environmental protection, contamination or cleanup including, but not limited to, those
18 substances, materials and wastes listed in the United States Department of Transportation
19 Hazardous Materials Table (49 C.F.R. §172.101) or by the United States Environmental
20 Protection Agency as hazardous substances (40 C.F.R. pt. 302 and amendments thereto) or in the
21 Washington Hazardous Waste Management Act (Ch. 70.105 RCW) or the Washington Model
22 Toxics Control Act (Chs. 70.105D RCW and 82.21 RCW), petroleum products and their
23 derivatives, and such other substances, materials and wastes as become regulated or subject to
24 cleanup authority under any Environmental Law.

25
26 1.31 Letter of Acceptance means the written document that signifies the CITY's acceptance of
27 CITY Infrastructure to be owned by the CITY, and shall signify the STATE's transfer of CITY
28 Infrastructure to be owned by the CITY. The Letter of Acceptance will not transfer any interest
29 in real property. The Letter of Acceptance shall be jointly executed by the Parties. A Letter of
30 Acceptance for SPU Facilities requires SPU approval and a Letter of Acceptance for SCL
31 Facilities requires SCL approval.

32
33 1.32 Letter of Plan Approval means the letter provided to the STATE by the CITY following
34 the completion of the plan review process, signifying that the plans and specifications identified
35 in the letter are the Approved Plans.

36
37 ~~1.33 MTCA means the Washington Model Toxics Control Act (Chs. 70.105D RCW and 82.21~~
38 ~~RCW).~~

Comment [SLS15]: This term is not referenced in this agreement.

39
40 1.34 New Work means the design and construction by or at the direction of UTILITY of a new
41 utility other than (a) as part of a relocation associated with the PROJECT, or (b) to provide
42 service to the PROJECT. New Work shall be entirely the financial obligation of UTILITY.

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- 1 1.35 Preliminary Engineering means the portion of the Project engineering which advances the
2 Project design to address Type, Size, and Location (“TS&L”) for all components of the Project.
3 Design will have advanced sufficiently to define alignments and identify conflicts. Preliminary
4 engineering will include an estimate for final design and a preliminary cost for construction.
5
- 6 1.36 Plan Review Package means clear and complete plans, specifications, and the necessary
7 assumptions, studies, models and calculations upon which the design was based, and corrections
8 previously requested by the CITY with respect to Design Bid Build Projects.
9
- 10 1.37 100% Plan Review Package means the Plan Review Package submitted to the CITY
11 concurrent with STATE’s final internal review of the construction contract plans and contract
12 provisions that shall evidence the agreement between the STATE and its contractors for
13 construction of Design Bid Build Projects.
14
- 15 1.38 Plans, Specifications, and Estimate (“PS&E”) means the portion of the PROJECT
16 engineering after the Preliminary Engineering, which advances the PROJECT design by
17 preparing contract-ready documents and the engineer’s cost estimate. At this stage the
18 specifications are written and tailored to the plans so that all work can be measured and has a pay
19 item. The cost estimate is formalized using the established specifications, pay items and quantity
20 takeoffs, for 60% through 100% completion of the total design effort.
21
- 22 1.39 Preliminary Design Submittal means in a Design Build Contract, a formal opportunity for
23 the STATE, the Design Builder, various design team disciplines, and other approved Project
24 stakeholders to review the construction documents in order to ensure that the design is
25 progressing appropriately and proceeding in the right direction; the plans reflect Design Builder
26 requirements for construction; design features are coordinated; and there are no fatal flaws
27 within a given discipline or between disciplines
28
- 29 1.40 Private Utilities means utility uses, excluding facilities owned and operated by the CITY,
30 approved through franchise agreements and/or Street Use Permits by the CITY and governed and
31 enforced through City Ordinance.
32
- 33 1.40 Procedures means *Design Review, Construction Management, Inspection and Record*
34 *Drawing Procedures*, attached as Exhibit B to the SDOT Agreement GCA 6366.
35
- 36 1.41 PROJECT means the Proposed Bored Tunnel Project, the part of the PROGRAM that
37 replaces SR 99 from South Royal Brougham Street to Mereer Roy Street and that consists of
38 designing and constructing a four-lane bored tunnel from South King Street to Thomas Street,
39 north and south tunnel portals and access streets, re-establishment of the City street grid in the
40 vicinity of the portals (Battery Street Tunnel decommissioning and Alaskan Way Viaduct
41 demolition will be addressed in a future agreement); and associated utility relocations. A
42 PROJECT description is attached as Exhibit A to the SDOT Agreement GCA 6366.
43

Comment [SLS16]: This term is no longer referenced in this agreement.

Comment [SLS17]: We propose that this definition be deleted from here and put in the definitions section of SDOT MOA Exhibit B. The term is not referenced in this agreement.

Comment [SLS18]: We propose that this definition be deleted from here and put in the definitions section of SDOT MOA Exhibit B. The term is not referenced in this agreement.

Comment [SLS19]: This term is no longer referenced in this agreement.

Comment [SLS20]: We propose that this definition be deleted from here and put in the definitions section of SDOT MOA Exhibit B. The term is not referenced in this agreement.

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1 1.42 PROGRAM means all the projects, collectively, implemented by the STATE and the
2 CITY that remove and replace the AWW and seawall.
3 the AWVSR Program which consists of a four-lane bored-tunnel and improvements to City
4 streets, the City waterfront, and transit; and the Moving Forward Projects as defined in GCA
5 6366

6
7 1.43 Project Engineer means the persons appointed by the STATE to lead the PROJECT
8 during design and/or construction or his or her designee.

9
10 1.44 ~~Released for Construction Submittal means in a Design-Build Contract, plans and~~
11 ~~specifications for a given project element that are construction-ready and have been certified by~~
12 ~~the Design-Builder as having met all contract requirements and received all approvals and~~
13 ~~permits. The Released for Construction submittal addresses all review comments from the~~
14 ~~Preliminary and Final Design submittals.~~

Comment [SLS21]: We propose that this definition be deleted from here and put in the definitions section of SDOT MOA Exhibit B. The term is not referenced in this agreement.

15
16 1.45 Relocation Work means the removal or abandonment of each Conflicting Facility and the
17 installation or reconstruction of each Conflicting Facility to its permanent and final location.

18
19 1.46 Remediation means the same as Remedy or Remedial Action defined in MTCA which
20 includes any action or expenditure consistent with the purposes of MTCA to identify, eliminate,
21 or minimize any threat or potential threat posed by Hazardous Substances to human health or the
22 environment including any investigative and monitoring activities with respect to any release or
23 threatened release of a Hazardous Substance and any assessments to determine the risk or
24 potential risk to human health or the environment.

25
26 1.47 ~~Round Table Meeting means a meeting typically held five (5) weeks following the~~
27 ~~submittal of the 100% Plan Review Package to the CITY and STATE, and commonly attended~~
28 ~~by the STATE's Project team and STATE reviewers to resolve and address STATE comments~~
29 ~~on the 100% Plan Review Package.~~

Comment [SLS22]: We propose that this definition be deleted from here and put in the definitions section of SDOT MOA Exhibit B. The term is not referenced in this agreement.

30
31 1.48 SCL means Seattle City Light.

32
33 1.49 SCL Facilities means the electrical facilities impacted by, or constructed as part of, the
34 PROJECT that are owned or will be owned by the CITY.

35
36 1.50 SCL Facilities Work means work required to design, construct and protect the SCL
37 Facilities as part of the PROJECT.

38
39 1.51 SDOT means the Seattle Department of Transportation.

40
41 SDOT Facilities means the transportation facilities impacted by, or constructed as part of, the
42 PROJECT that are owned or will be owned by the CITY.

43

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1 1.52 Specialty Work means the construction and installation of all 13.8kV or above rated
2 equipment and associated materials and infrastructure needed to accomplish the SCL Facilities
3 Work.

4
5 1.53 SPU means Seattle Public Utilities.

6
7 1.54 SPU Facilities means the water, drainage and wastewater facilities impacted by, or
8 constructed as part of, the PROJECT that are owned or will be owned by the CITY.

9
10 1.55 SPU Facilities Work means work required to design, construct and protect the SPU
11 Facilities as part of the PROJECT.

12
13 1.56 STATE means the State of Washington Department of Transportation and may include
14 its Contractors, Subcontractors, Agents and Assigns.

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15
16 1.57 STATE Designated Representative means the State of Washington official listed in
17 Section 1.7 of this Agreement. ~~[Salary: Section 1.7, City Designated Rep has been deleted; do~~
18 ~~you want to delete this section?]~~

19
20 1.58 ~~Street Use Permit~~ means written authorization secured by the STATE from the Director
21 of SDOT for use of the CITY Street Right-of-Way pursuant to Title 15 of the Seattle Municipal
22 Code.

Comment [SLS23]: We propose that this definition be deleted from here and put in the definitions section of SDOT MOA Exhibit B. The term is not referenced in this agreement.

23
24 1.59 ~~Submittal Control Document~~ means a list of all documents or reports that are required by
25 the Approved Plans or construction contract documents or applicable law to be provided to or
26 submitted to the STATE and the CITY.

Comment [SLS24]: We propose that this definition be deleted from here and put in the definitions section of SDOT MOA Exhibit B. The term is not referenced in this agreement.

27
28 1.60 Task Force means a group consisting of State, City, contractor, and other stakeholder
29 staff meeting regularly to review and reach decisions relating to a particular subject, e.g., traffic,
30 structures.

31
32 1.61 Task Order means a document executed by the PARTIES under this Agreement
33 authorizing work by one party to be done on behalf of the other party and that defines the scope
34 and the obligations of the PARTIES for the given element of work. All terms and conditions of
35 the Agreement shall apply to each Task Order.

36
37 1.62 UTILITY Facilities means SPU Facilities and SCL Facilities.

38
39 1.63 UTILITY Facilities Work means SPU Facilities Work and SCL Facilities Work.

40
41 1.64 ~~UTILITY Easement~~ means a non-exclusive permanent easement over real property for
42 the operation, maintenance, repair and replacement of the relocated UTILITY Facilities, in the
43 form attached as Exhibit A.

Comment [g25]: Confirm definition with RES

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1
2 1.65 Utility Service Work means any facilities required to provide temporary Utility services
3 for construction of the PROJECT; and any work needed to obtain permanent UTILITY services
4 to the bored tunnel or UTILITY customers.

5
6 1.66 WSDOT means Washington State Department of Transportation.

7
8 Words not otherwise defined, which have well-known technical or construction industry
9 meanings, are used in accordance with such recognized meanings.

10
11
12 **2. GENERAL RESPONSIBILITIES**

13
14 2.1 The Parties shall manage risk, produce design and conduct construction in a manner that
15 maximizes cumulative public benefits and minimizes cumulative public costs as mutually agreed
16 to by the Parties.

17
18 2.2 This Agreement in conjunction with GCA 6486 and UT 01476 is prepared by the STATE
19 and CITY to govern relationships between the Parties and establish each Party's responsibilities
20 regarding the PROJECT as described in Exhibit A of GCA 6486, Project Description.

Comment [SLS26]: May need more City
discussion: SPU and SCL still need time to review
this Exhibit.

21
22 2.3 The Parties understand that environmental review of the proposed PROJECT is underway
23 at the date of this agreement and agree that if an alternative other than the Proposed Bored
24 Tunnel is selected, this agreement may be terminated pursuant to the provisions of Section 21
25 ~~herein, shall not be applicable.~~

26
27 2.4 The Parties shall work collaboratively to resolve issues in a manner that endeavors to
28 open the Proposed Bored Tunnel to the public on schedule.

29
30 2.5 The design and construction of CITY infrastructureFacilities, including infrastructure
31 repair, shall comply with City of Seattle codes, rules, regulations and standards.

32
33 2.6 Each Party shall provide the funding and resources necessary to fulfill the responsibility
34 of that Party as established in this Agreement.

35
36 2.7 The Parties agree to work cooperatively with each other and make reasonable, good faith
37 efforts to timely and expeditiously complete the PROJECT, as provided in this Agreement,
38 including, but not limited to, the selection of a preferred SR 99 design alternative; development
39 of preliminary engineering and final design and construction. In order to optimize design and
40 minimize conflicts, the STATE shall coordinate design and construction of the various contracts
41 making up the PROJECT with design of subsequent PROGRAM stages, and with construction of
42 previous stages of the PROGRAM. The STATE shall be prepared to modify design of the

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1 contracts making up the PROJECT, the subsequent PROGRAM stage and/or previous phase if
2 both Parties determine the modifications are necessary and reasonable, to minimize conflicts.

3
4 2.8 The STATE shall pay for all costs associated with the ~~UTILITY Facilities Deformation~~
5 ~~Mitigation~~ Work, including but not limited to design; design review; purchase of materials;
6 construction; inspection; preparation of record drawings; CITY crew time and costs; any
7 temporary UTILITY services required for construction of the PROJECT; and any work needed
8 to obtain permanent UTILITY services to the bored tunnel or UTILITY customers; regardless of
9 whether such UTILITY Facilities Deformation Mitigation Work is performed by the UTILITY
10 or other CITY staff, the STATE, or its contractor, as set forth in the Approved Plans, and any
11 UTILITY-approved revisions to the Approved Plans, without reimbursement from UTILITY,
12 including ~~cChange oOrders pursuant to Section 8 of this UTILITY Bored Tunnel Agreement,~~
13 but excluding Betterments or New Work as defined in Section 2 of this ~~UTILITY Bored Tunnel~~
14 Agreement. No delay costs shall be paid for by UTILITY.

15
16 2.9 The STATE is responsible for designing and constructing the Proposed Bored Tunnel
17 portion of the ProjectPROJECT. The STATE is responsible for ~~will take reasonable measures to~~
18 ~~minimize, limit, and mitigate dDamage to private property and CITY Facilities~~
19 ~~infrastructure including CITY streets, CITY telecommunications facilities and CITY UTILITY~~
20 ~~Facilitiesutilities~~ that may result from the PROJECT~~roposed Bored Tunnel~~ construction,
21 including ~~dDamage~~ that may result from tunnel-induced ~~Ddeformation~~. The STATE~~SDOT~~ is
22 responsible for remedying such ~~dDamage~~ should it occur. ~~[Salary: [b]~~

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23
24
25
26
27
28 2.10 CITY-UTILITY is responsible for ~~the cost of~~ relocating those existing CITY-UTILITY
29 Facilitiesutilities that have alignments intersecting the final configuration of the proposed SR 99
30 bored tunnel portals and tunnel portal excavations. UTILITY's ~~CITY's~~ relocation responsibility
31 is limited to the ~~typical cost for a single~~ final relocation of each UTILITY Conflicting Facility.
32 During preliminary design, the Parties will jointly identify UTILITY Conflicting Facilities that
33 will need to be relocated more than once

Comment [P27]: May need more City discussion

34
35 2.11 The Parties agree that it is in the public interest for one Party to implement portions of the
36 other Party's PROJECT~~roject~~ responsibilities. Therefore, this ~~SDOT~~ Agreement establishes a
37 Task Order process for use by a Party to authorize the other Party to conduct work on its behalf,
38 and as may be documented through each Task Order, agree to reimburse the other Party for such
39 services.

40
41 2.12 The ~~general terms, and conditions, and requirements~~ of GCA 6486 and this Agreement
42 shall apply to each Task Order performed as part of the PROJECT, ~~unless otherwise specified in~~
43 an ~~executed Task Order~~.

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1
2 2.13 For UTILITY Facilities Work which the STATE will design and construct, the STATE
3 and UTILITY agrees to document key design-related decisions to ensure that issues are resolved
4 to PARTIES/SPU's/SCL's satisfaction, pursuant to Section 5 herein and Section 6 and Exhibit B
5 of GCA 6486, so that the STATE can proceed with the design of the PROJECT. These decisions
6 will be evidenced through the use of a concurrence letter signed by both PARTIES.
7

8 2.14 The STATE agrees to take the lead in consulting and coordinating with Private Utilities
9 affected by the PROJECT.
10

11 2.15 The PARTIES shall apply for and obtain all necessary federal, state and City of Seattle-
12 issued permits and approvals for the work for which they are responsible prior to commencing
13 work that requires such permits, including but not limited to all permits, approvals or permission
14 for exploratory investigations, testing, site preparations, demolition and construction.
15

16 2.16 The PARTIES-STATE shall comply with the regulatory requirements and agree to meet
17 operational and customer service requirements of each existing UTILITY Facility.
18

19 2.17 The [REDACTED] shall minimize utility service interruptions to UTILITY
20 customers. [Salary: [REDACTED] [1b]
21 [REDACTED] [1b]
22 [REDACTED]
23 [REDACTED]

24 2.18 To the extent necessary, SCL agrees to lead the coordination of the PROJECT with all
25 applicable electrical regulatory agencies.

Comment [P28]: SCL only

27 **3. RESPONSIBILITIES REGARDING SCL AND SPU RELOCATIONS**
28 **(PORTALS)CONFLICTING FACILITIES**
29

30 3.1 The STATE shall identify all SCL Facilities and all SPU Facilities that directly conflict
31 with the bored tunnel portals and tunnel portal excavations ("Conflicting Facilities").
32

33 3.2 UTILITY shall inform the STATE of any additional Conflicting Facilities or New Work
34 and confirm that each UTILITY Facility which the STATE has identified as a Conflicting
35 Facility does in fact directly conflict with the bored tunnel portals or bored tunnel portal
36 excavations. In the event that, after the STATE identifies the Conflicting Facilities, UTILITY
37 builds new UTILITY Facilities that conflict with the bored tunnel portals or bored tunnel portal
38 excavations, UTILITY shall so inform the STATE. [Salary: [REDACTED] [1b]
39 [REDACTED] [1b]
40 [REDACTED]
41 [REDACTED]

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- 1 3.3 The STATE is responsible for preparing a Conceptual Utility Relocation Plan that
2 documents a functional and efficient approach to relocating Conflicting Facilities in a manner
3 that accommodates the PROJECT. The Conceptual Utility Relocation Plan shall include:
- 4 3.3.1 The STATE's preliminary design of the PROJECT that includes Type,
5 Size and Location for all components; and
- 6 3.3.2 The STATE's preliminary design of the Relocation Work that is
7 functional and efficient, that is in compliance with City Standards, and
8 that demonstrates compatibility with existing infrastructure to remain; and
- 9 3.3.3 Identification of Conflicting Facilities; and
- 10 3.3.4 The STATE's request for UTILITY to relocate Conflicting Facilities
11 based on the STATE's current design of the PROJECT; and [Salay:
12 [1b]
13
14
- 15 3.3.5 Plan view drawings developed in collaboration with UTILITY;
16 incorporating UTILITY comments and input; drafted to an engineering
17 scale of 1 inch equals 20 feet; showing the existing configuration of
18 Conflicting Facilities, proposed configuration of relocated CITY
19 Infrastructure, and all existing infrastructure to remain adjacent to
20 relocated CITY Infrastructure; and confirming no conflicts with other
21 utilities or infrastructure; and
- 22 3.3.6 Roadway and utility cross-sections necessary to demonstrate the feasibility
23 of the conceptual design; showing the existing configuration of
24 Conflicting Facilities, proposed configuration of relocated CITY
25 Infrastructure, and all existing infrastructure to remain adjacent to
26 relocated CITY Infrastructure; and confirming no conflicts with other
27 utilities or infrastructure; and
- 28 3.3.7 Utility profiles and elevations necessary to demonstrate the feasibility of
29 the conceptual design; showing the existing configuration of Conflicting
30 Facilities, proposed configuration of relocated CITY Infrastructure, and all
31 existing infrastructure to remain adjacent to relocated CITY Infrastructure;
32 and confirming no conflicts with other utilities or infrastructure; and
- 33 3.3.8 A cost estimate of all costs associated with relocating the Conflicting
34 Facilities including design, permitting, construction costs, and
35 contingency. The cost estimate shall be prepared and sealed by a Licensed
36 Professional Engineer in the State of Washington. All costs shall be
37 developed on a per linear foot unit basis for the separate types, sizes and
38 segments of Conflicting Facilities and the new relocated Utility UTILITY
39 Facilities. The estimate shall document the construction costs of the
40 relocated Utility UTILITY Facility including associated appurtenances,
41 trench safety systems, traffic control, service connections, inspection,
42 surface restoration and all other costs associated with each new and
43 abandoned UTILITY Facility. The costs shall be developed on the basis of

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1 typical construction costs in the area and on the basis of a single
2 relocation, unless single relocation is mutually agreed upon by the
3 CityCITY and StateSTATE to be infeasible, in which case the costs shall
4 be based on a mutually agreed upon relocation plan between SPU/SCL
5 and the StateSTATE; and

6 3.3.9 A schedule for relocation of Conflicting Facilities that includes the list of
7 specific tasks and associated costs developed in the cost estimate. The
8 schedule shall be coordinated with the proposed design and construction
9 schedule for other work within the PROJECT.

10
11 3.4 The STATE shall deliver the Conceptual Utility Relocation Plan to UTILITY no later
12 than September 1, 2010.

Comment [P29]: Needs more City discussion.
Intent is that we set a reasonable timeline

13
14 3.5 Within thirty (30) calendar days of receipt of the Conceptual Utility Relocation Plan,
15 UTILITY shall provide comments the STATE, including informing the STATE whether any
16 requirements listed in Section 3.3 above are missing or incomplete. Within thirty (30) calendar
17 days of the STATE's receipt of UTILITY's comments, the STATE shall address UTILITY's
18 comments to the UTILITY's satisfaction. UTILITY's responsibility for the Relocation Work
19 begins when the PARTIES have written mutual agreement of the Conceptual Utility Relocation
20 Plan.

Comment [P30]: Needs more City discussion.

21
22 3.6 The PARTIES shall use the Conceptual Utility Relocation Plan as the basis for
23 establishing the scope, schedule and estimated cost of design and construction services to be
24 documented in Task Orders under this Agreement.

25
26 3.7 In instances where the STATE's revisions to the PROJECT design differ so significantly
27 from the Conceptual Utility Relocation Plan as to render the UTILITY's design or construction
28 work obsolete, the STATE shall reimburse UTILITY for the accrued costs of the obsolete work.

29
30
31 3.87 The STATE is responsible for shall protect avoiding damage to UTILITY Facilities,
32 including those installed as part of the PROJECT or PROGRAM.

33
34 3.95 UTILITY is responsible for relocating each identified Conflicting Facility one time, to its
35 final and permanent relocation, which work is Relocation Work.

36
37 3.106 Interim or temporary relocations required in order to move a Conflicting Facility to its
38 final and permanent location, including but not limited to relocations necessary to stage any
39 PROJECT construction, is not Relocation Work, and shall be the responsibility of the STATE.

Comment [P31]: Needs more City discussion

40
41 **4. STATE RESPONSIBILITIES REGARDING UTILITY FACILITIES**
42 **DEFORMATION MITIGATION**
43

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1 4.1.....The STATE is responsible for performing all planning, operational and construction
2 management practices, monitoring and temporary or permanent UTILITY Facilities Work
3 undertaken to avoid or remedy damage as a result of Deformation (“Deformation Mitigation
4 Work”).

5
6 4.1 The STATE will undertake an assessment of potential impacts of Deformation on private
7 property and CITY infrastructure Facilities including CITY streets, CITY telecommunications
8 facilities and UTILITY Facilities CITY utilities. Where the CITY has established deformation
9 criteria for its Facilities Utilities, the criteria will be used in analysis. Otherwise, criteria will be
10 derived using accepted engineering practice and shall be mutually agreed upon by the City CITY
11 and State STATE. **Salary:** [1b]

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[1b]

12
13
14
15
16
17 4.2 The UTILITY shall review the STATE’s estimate of susceptibility or vulnerability of its
18 facilities to Deformation and provide comments/input. Such input shall be provided to assist the
19 STATE only, and shall not be interpreted as waiving or limiting in any way the STATE’s
20 responsibility for Deformation Mitigation Work.

21
22 4.3 The STATE shall develop a preliminary plan for UTILITY Facilities Deformation
23 Mitigation. PARTIES will work collaboratively to finalize and implement the UTILITY
24 Facilities Deformation Mitigation plan. UTILITY’s input shall be provided to assist the STATE
25 only, and shall not be interpreted as waiving or limiting in any way the STATE’s responsibility
26 for Deformation Mitigation Work.

27
28 4.4 As a component of the UTILITY Facilities Deformation Mitigation plan Work, the
29 STATE will implement a construction monitoring Task Force responsible for the planning and
30 implementation of the instrumentation and monitoring program and processing data, evaluating
31 results, and developing recommendations to mitigate deformation.

32
33 4.56 The CITY-UTILITY will advise the STATE and participate in construction monitoring
34 and deformation management activities when these activities pertain to CITY
35 Infrastructure Facilities. The CITY-UTILITY will provide the STATE all necessary access to
36 CITY Infrastructure Facilities for the purposes of design or implementation of mitigation
37 measures. The CITY-UTILITY may perform mitigation measures on behalf of the STATE in a
38 manner and schedule that supports the STATE’s project requirements. UTILITY’s advice,
39 participation, and access shall be provided to assist the STATE only, and shall not be interpreted
40 as waiving or limiting in any way the STATE’s responsibility for Deformation Mitigation Work.

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1 4.6 The STATE is responsible for repairing, replacing or otherwise remedying UTILITY
2 Facilities that have lost function, capacity, or aesthetic quality as a consequence of the
3 PROJECT. [AES: [b)] [1b]

4 [1b]

Comment [P32]: Do we need to put bounds around how the "consequence of the PROJECT" is defined? Temporal dimension, e.g. from start of construction (or once SPU has fixed all pre-existing leaks) through the completion of the D-B contractor's monitoring responsibilities (2 years following tunneling, per L. Laird).

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8
9 4.7 Unless otherwise agreed, the STATE is responsible for complying with SPU's Settlement
10 Monitoring Requirements for Cast Iron Water Mains, attached hereto as Exhibit B and
11 incorporated by reference. This compliance includes requirements for replacement of
12 affected pipe segments when settlement occurs in excess of the maximum allowable
13 settlement allowances. [Salav: Exh B has already been defined as something else,
14 should this be Ex C?]

16 4.8 Unless otherwise agreed, the STATE is responsible for complying with SPU's Settlement
17 Monitoring Requirements for Ductile Iron Water Mains, attached hereto as Exhibit C and
18 incorporated by reference. This compliance includes requirements for replacement of
19 affected pipe segments when settlement occurs in excess of the maximum allowable
20 settlement allowances. [Salav: Should be exhibit D? see comment to 4.8]

Comment [P33]: Needs more City discussion re: STATE responsibility for preemptive replacements.

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25 5. DESIGN, PLAN REVIEW, CHANGE MANAGEMENT

27 5.1 Where the STATE is performing the design of UTILITY Facilities Work, the STATE
28 and UTILITY shall comply with all provisions outlined in Section 6 of the SDOT SR 99 Bored
29 Tunnel Agreement. The STATE PARTIES shall facilitate the design as provided herein and shall
30 allow UTILITY adequate time for detailed design review. UTILITY will meet agreed-upon
31 timelines for review. The STATE PARTIES shall address and resolve each design review
32 comment to UTILITY's and the STATE's satisfaction. In the event the PARTIES are unable to
33 mutually resolve comments, the PARTIES shall initiate the dispute resolution process pursuant
34 to Section 23 of the SDOT SR 99 Bored Tunnel Agreement. [Salav: [b)] [1b]

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37 5.2 In the event the STATE designates as a Limited Access Facility any area in or near the
38 tunnel portals on which a UTILITY Facility exists or will be relocated, the PARTIES agree to
39 make every effort to develop a design that minimizes the need for regular, on-going maintenance
40 access.

42 5.3 The STATE agrees to incorporate qualification criteria mutually agreed upon by the
43 PARTIES for construction contractors in the performance of Specialty Work into the contract

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1 bid document. The STATE shall consult with UTILITY on the contractors and subcontractors
2 bidder qualifications for Specialty Work. UTILITY shall provide comments to the STATE on
3 known bidder qualifications. The STATE shall not allow unqualified contractors to perform
4 Specialty Work.

6 |
7 **6. CONSTRUCTION MANAGEMENT, INSPECTION AND CONTRACT**
8 **ADMINISTRATION**

9
10 6.1 The PARTIES shall comply with all provisions contained within Section 14 of GCA
11 6486, regarding Construction Management, Inspection and Contract Administration for the
12 PROJECT, and such provisions shall apply equally to this Agreement.

13
14 6.2 Where UTILITY staff or crews are performing work requested by the STATE, [Salary:

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[1b]

15
16
17 [1b] the STATE shall provide all labor, materials, equipment, and tools
18 required to excavate, provide trench support systems, and handle and dispose of all spoils
19 (including contaminated soils, groundwater, and other debris), and provide a safe workplace for
20 UTILITY staff per applicable State and Federal laws, and City of Seattle standards, for the
21 UTILITY Facilities Work in accordance with the Approved Plans and any UTILITY-approved
22 revisions to the Approved Plans. The STATE will not provide personal protective equipment for
23 UTILITY staff.

24
25 6.3 The STATE agrees to provide advance notice of service outages needed for construction
26 to schedule crews, notify customers and accommodate other previously scheduled outage
27 requests in accordance with UTILITY procedures CITY Standards.

28
29 **7. MONITORING**

30
31 7.1 The PARTIES agree to comply with all provisions contained within Section 12 of the
32 SDOT Bored Tunnel Agreement, regarding Monitoring for the PROJECT, and such provisions
33 shall apply equally to this Agreement.

34
35 **8. NOTICES AND DESIGNATED REPRESENTATIVES**

36
37 8.1 Any notice required or permitted to be given pursuant to this Agreement shall be in
38 writing and shall be sent postage prepaid by U.S. Mail to the Designated Representatives.

39
40 8.2 The Designated Representatives for each Party are as follows:

41
42 STATE:
43 Program Administrator

JOINT EDITION UT 01474/UT 01476 WSDOT/UTILITY Memorandum of Agreement
Bored Tunnel
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1 Alaskan Way Viaduct & Seawall Replacement Program
2 Washington State Department of Transportation
3 999 3rd Avenue, Suite 2424
4 Seattle, WA 98104

5
6 CITY UTILITY:
7 Project Manager, Alaskan Way Viaduct & Seawall Replacement Program
8 Seattle City Light
9 P.O. Box 34018
10 700 Fifth Avenue, Suite 4900
11 Seattle, WA 98124-4018
12

Comment [SLS34]: Change for SPU

13 **9. FUNDING OF UTILITY FACILITIES WORK AND TASK ORDERS**

14
15 9.1 The STATE shall provide necessary funding for all PROJECT costs without
16 reimbursement from the City of Seattle, except for the City of Seattle cost responsibilities
17 established in this Agreement, in SDOT Agreement GCA 6486, [and in UT 01474/ UT
18 01476, add respective UTILITY Agreement].
19

20 ~~9.2 If for any reason PROJECT costs exceed the State funding limit established by RCW
21 47.01.402, the STATE shall have the sole responsibility for obtaining any needed additional
22 spending authority without recourse to any funding device that burdens Seattle area taxpayers or
23 property owners or the City of Seattle.~~
24

Comment [SLS35]: Not appropriate/necessary
for the Utility agreements.

25 9.3 Each PARTY shall fund work for which it is responsible pursuant to this agreement.
26

27 9.4 The STATE will request, obtain and fund any temporary and permanent utility services
28 required for the PROJECT through separate utility service agreements with UTILITY.
29

30 9.5 While SDOT is the City lead agency for the PROJECT, the STATE understands and
31 agrees that all PROJECT decisions that are likely to result in expenditure of UTILITY funds, and
32 all PROJECT decisions that may have operational, maintenance, or access impacts to UTILITY
33 Facilities, require concurrence of UTILITY.
34

35 **10. UTILITY'S RIGHT TO CORRECT NON-CONFORMING, UNAUTHORIZED
36 AND DEFECTIVE WORK**
37

38 10.1 If the STATE or its contractor fails to remedy, or fails to properly remedy, non-
39 conforming, unauthorized or Defective Work within the time specified by UTILITY, which is
40 not to be less than ten (10) Business Days, UTILITY may, but is not required to, correct and
41 remedy such work by any means as UTILITY may deem necessary, including the use of
42 UTILITY staff or contractors.
43

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1 10.2 If the STATE or its contractor fails to comply with a written notice to remedy what
2 UTILITY determines to be an emergency situation, UTILITY may, but is not required to, have
3 the non-conforming, unauthorized or Defective Work corrected immediately, have such work
4 removed and replaced, or have work the STATE or its contractor refuses to correct completed.
5 An emergency situation shall mean a condition that calls for immediate action to respond to
6 danger to health, safety or property.
7

8 10.3 Direct and indirect costs incurred by UTILITY attributable to correcting and remedying
9 unauthorized, non-conforming or Defective Work, or work the STATE or its contractor failed or
10 refused to perform, shall be paid by the STATE to UTILITY within thirty (30) calendar days
11 after receipt of an invoice with appropriate documentation of such costs. [Salav: [b]

Comment [P36]: Need more City discussion
re: invoicing requirements and language

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12 [b]
13 [b]
14 10.4 Except in an emergency situation as defined under Section 109.2, disagreements between
15 UTILITY and the STATE on what constitutes non-conforming, unauthorized or Defective Work
16 shall be resolved using the dispute resolution process established in Section 19 herein prior to
17 UTILITY performing any work.
18

19 10.5 Any and all services, including direction, provided by UTILITY pursuant to this section
20 shall be subject to all limitations on the CITY's liability contained in the SDOT Bored Tunnel
21 Agreement, including but not limited to Section 167, Risk Allocation.
22

23 11. UTILITY ACCESS AND INSPECTION OF UTILITY FACILITIES WORK

24
25 11.1 Neither the STATE nor its contractor shall require UTILITY to interrupt electrical
26 service without (a) written notice to UTILITY at least fourteen (14) calendar days prior to the
27 planned interruption and (b) UTILITY's written approval. UTILITY may restrict electrical
28 service interruptions to the extent necessary to maintain electrical system operations and
29 adequate power supply to customers. [Salav: [b]

Comment [SLS37]: Remember to insert the
equivalent for SPU from the SPU H2K2 agreement.

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30 [b]
31 [b]
32 [b]

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1 11.2 The STATE shall ensure the UTILITY has the right to safe access to their facilities at any
2 time to operate and maintain existing and newly installed UTILITY Facilities or to inspect or
3 perform UTILITY Facilities Work. For purposes of this Agreement, "access" shall mean that the
4 vaults, vault openings, handholes, power poles, ductbanks, substation equipment or substation
5 entrances shall not be blocked, covered or otherwise inaccessible to SCL. UTILITIES staff other
6 than UTILITIES' on-site inspector will notify the STATE in advance of their arrival on site
7 except in the case of emergency in accordance with site access procedures to be developed by the
8 PARTIES. Salary: [1b]
9 [1b]
10

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Comment [SLS38]: For SPU - hydrants, meter, valves, or similar surface water system facilities, and drainage and wastewater system facilities.

11 11.3 Under no circumstances shall the STATE, its contractor, or anyone other than UTILITY
12 personnel enter any energized UTILITY Facilities or operate any portion of the existing or new
13 UTILITY Facilities, without UTILITY personnel approval and supervision.

14
15 11.4 The STATE agrees and acknowledges that UTILITY shall have an on-site inspector
16 available during the construction of UTILITY Facilities for UTILITY's quality assurance. The
17 STATE agrees and acknowledges the UTILITY's on-site inspector shall (a) have timely and
18 complete access to the construction work associated with the UTILITY Facilities Work; (b) be
19 timely informed of all relevant construction timelines associated with such work; and (c) have
20 the authority to, but not be required to, reject and have corrected and/or replaced any
21 construction or materials deemed to be deficient, or which deviate from the Approved Plans or
22 any SCL-approved revisions to the Approved Plans. In such instances, UTILITY's on-site
23 inspector, or UTILITY's project manager, will immediately direct comments and issues to the
24 STATE's construction project engineer or designated representative, which will be followed up
25 in writing as soon as possible but no later than ten (10) Business Days of the date of any
26 inspection. The STATE shall promptly address each comment or issue presented by UTILITY
27 to UTILITY's satisfaction. UTILITY staff will continue to be supervised by UTILITY
28 management.
29

30 11.5 The STATE will allow UTILITY's on-site inspector or Designated Representative to
31 consult with and inquire of the STATE construction Project Engineer, attend all meetings, and
32 have timely and complete access to all documentation as to all matters concerning the UTILITY
33 Facilities Work. UTILITY shall not provide direction, directly or indirectly, to the STATE's
34 consultant(s) or contractor.
35

36 11.6 The STATE shall provide UTILITY with timely notice prior to commencement and
37 completion of all material stages of the UTILITY Facilities Work and shall invite UTILITY to
38 inspect such work upon completion of any material stage. The STATE shall timely address each
39 comment or issue presented by UTILITY to UTILITY's satisfaction. Both Parties agree to act as
40 expeditiously as possible to assure a timely resolution of any deficiencies.
41

42 11.7 UTILITY shall observe the work on UTILITY Facilities performed by the STATE to
43 satisfy any UTILITY's needs for quality assurance. UTILITY will notify the STATE if

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1 | Utility ~~UTILITY observes~~ defective UTILITY Facilities Work is observed, such as improper
2 | installation or unsafe conditions.

3
4 | **12. FINAL INSPECTION AND PROJECT ACCEPTANCE**

5
6 | 12.1 The PARTIES agree to comply with all provisions contained within Section 15 of the
7 | GCA 6486, regarding Final Inspection and Project Acceptance, and such provisions shall apply
8 | equally to this Agreement.

9
10 | 12.2 UTILITY Facilities shall not be placed into interim use or operation, or transferred to the
11 | City, unless or until: (a) UTILITY has participated in an inspection of the UTILITY Facilities;
12 | (b) any deficiencies or Defective Work have been resolved or corrected to UTILITY's
13 | satisfaction; and (c) UTILITY confirms with the STATE in writing that UTILITY's minimum
14 | inspection and testing requirements for the UTILITY Facilities have been met, including
15 | completion of the Washington State Department of Health Completion Report for watermain.

Comment [SLS39]: For SPU only

16
17 | **13. WARRANTIES**

18
19 | 13.1 The PARTIES agree to comply with all provisions contained within Section 17 of the
20 | GCA 6486, regarding Final Inspection and Project Acceptance, and such provisions shall apply
21 | equally to this Agreement

22 | **14. ACQUISITION AND TRANSFER OF EASEMENTS AND FRANCHISES**

23
24 | 14.1 The UTILITY is responsible for identifying and acquiring, at its sole cost and expense,
25 | all property rights needed to complete Relocation Work, except for property otherwise required
26 | for the PROJECT.

27
28 | 14.2 The STATE is responsible for identifying and acquiring, at its sole cost and expense, all
29 | property rights needed to complete UTILITY Facilities Deformation Mitigation Work.

30
31 | 14.3 The PARTIES recognize that their property acquisition responsibilities include the
32 | performance of all appraisal, appraisal review, title review, surveys, property investigation,
33 | relocation assistance and all other investigations and services in connection with the acquisition
34 | of the permanent easement rights necessary for the UTILITY Facilities, including, without
35 | limitation, identification and investigation of Hazardous Substances as provided in Section 54 of
36 | the GCA 6486. The STATE shall provide to UTILITY, as soon as available to the STATE, all
37 | reports and documents prepared or obtained in connection with any of the reviews and
38 | investigations described above.

39
40 | 14.4 Where the State is acquiring easement rights for UTILITY Facilities Deformation
41 | Mitigation Work, unless the Parties otherwise agree in writing, prior to commencement of
42 | construction, the STATE shall convey to the CITY the easement rights referred to in Section 14.6

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1 by conveying them substantially in the form as, and containing the same conditions as, the
2 approved Utility Easement form attached and identified as Exhibit A. The Utility Easements
3 conveyed to the CITY shall not be subject to any lien, encumbrance or exception of title of any
4 kind.
5

6 14.5 The legal descriptions will be developed based on the Approved Plans. The Parties
7 acknowledge that due to unforeseen field conditions the location of one or more of the easements
8 may need to change after commencement of construction. In that case, the STATE shall provide
9 UTILITY with documents, reports and information identified in Subsection 14.3 above, relevant
10 to the new or modified easement area. All requirements and conditions pertaining to the original
11 permanent Utility Easements shall apply to all amendments and modifications.
12

Comment [g40]: Joint – RES needs to review

13 14.6 Where UTILITY Facilities are located in or near an area which the STATE designates as
14 a Limited Access Facility, the STATE will ensure that UTILITY continues to be allowed fully
15 access to its UTILITIES for operation, maintenance and repair, and will not be required to
16 relocate its Utility Facility without full compensation from the STATE. [Salav: [b]

Comment [RF41]: TBD – RES needs to review

[b]

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26 14.6.1 The STATE's Limited Access Facility designation for the tunnel shall contain a
27 vertical and horizontal boundary.

28 14.6.2 The STATE agrees that any Limited Access Facility designation for the tunnel
29 will end at a maximum of three (3) feet above the tunnel in order to allow UTILITY to access its
30 UTILITY Facilities.
31

32 14.6.3 The area below City streets in the vertical dimension, and outside between the
33 Limited Access Facility boundaries, and the CITY street shall continue to be CITY Street Right-
34 of-Way.

Comment [P42]: Under discussion

35 [b] In the event the STATE designates as a Limited Access Facility any area in or
36 near the tunnel portals on which a UTILITY Facility exists or will be relocated, the STATE
37 agrees to provide UTILITY a UTILITY franchise Easement in the form attached hereto as
38 Exhibit AD, pursuant to the requirements of this Section 14 herein [OR provide for access to
39 operate and maintain 24/7.] and will make every effort to develop a design that minimizes the
40 need for regular, on-going maintenance access. [Salav: [b]

Comment [P43]: Under discussion

[b]

Comment [RF44]: May need elevation

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[1b]

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15. ENVIRONMENTAL REMEDIATION

15.1 The PARTIES shall comply with all provisions of GCA 6486, regarding Environmental Remediation, including but not limited to all provisions in Section 5 therein, and such provisions shall apply equally to this Agreement.

16. RISK ALLOCATION

16.1 The PARTIES shall comply with all provisions of the GCA 6486, regarding Risk Allocation and Indemnification, including but not limited to all provisions in Section 19 therein, and such provisions shall apply equally to this Agreement.

17. INSURANCE

17.1 The PARTIES shall comply with all provisions of the GCA 6486, regarding Insurance, including but not limited to all provisions in Section 20 therein, and such provisions shall apply equally to this Agreement.

18. THIRD PARTY BENEFICIARY

18.1 The PARTIES shall comply with all provisions of GCA 6486, regarding Third Party Beneficiary, including but not limited to all provisions in Section 21 therein, and such provisions shall apply equally to this Agreement.

19. DISPUTE RESOLUTION

19.1 ~~Dispute Resolution Representatives.~~ The Dispute Resolution Representatives for the Parties are as follows:

~~For the STATE:~~ Bored Tunnel Project Design Project Engineer or, if appropriate, Construction Project Engineer;
~~Alaskan Way Viaduct & Seawall Replacement Program~~
~~Washington State Department of Transportation~~
~~999 3rd Avenue, Suite 2424~~
~~Seattle, WA 98104~~

~~For UTILITY:~~ UTILITY AWW Project Manager
~~P.O. Box 34023~~

Comment [SLS45]: We changed this to make it consistent with SDOT's process. Confirm that the appropriate people are listed in 19.5 and 19.7.

HIGHLIGHTED TEXT = Elevate to Leadership
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1 _____ 700 Fifth Avenue, Suite 3200
2 Seattle, WA 98124-4023
3

4 19.1 Good Faith. ~~UTILITY and the STATE~~ The Parties shall make good faith efforts to
5 resolve any dispute arising under or in connection with this Agreement. The dispute resolution
6 process outlined in this Section applies to disputes arising under or in connection with the terms
7 of this Agreement. In the event that the Parties cannot resolve a disagreement arising under or in
8 connection with this Agreement, the Parties shall follow the dispute resolution steps set forth
9 below. [Salary: [b]

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10 [b]

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11
12
13 19.2 Notice. A Party's Designated Representative, as defined in Section 8 above, shall notify
14 the other Party's Designated Representative in writing of any problem or dispute that a Party
15 believes needs resolution. The written notice shall include (a) a description of the issue to be
16 resolved; (b) a description of the differences between the Parties on the issue; and (c) a summary
17 of any steps taken to resolve the issue.

18
19 19.3 Meeting. Upon receipt of a written notice of request for dispute resolution, the
20 Designated Representatives for the Parties shall meet within ten (10) Business Days and attempt
21 to resolve the dispute. Any resolution of the dispute requires the agreement of all Designated
22 Representatives attending the meeting or who requested to attend the meeting.

23
24 19.4 Notice of Second Level Meeting. If the Parties have not resolved the dispute within five
25 (5) Business Days after the meeting, at any time thereafter either Party may request that the
26 dispute be elevated to the next level by notifying the other Party's Designated Representative in
27 writing, requesting that the dispute be raised to the Second Level Meeting. The written
28 notification shall include a) a description of the remaining issues to be resolved; b) a description
29 of the differences between the Parties on the issues; c) a summary of the steps already taken to
30 resolve the issues, and d) the resolution of any issues that were initially involved in the dispute.

31
32 19.5 Second Level Meeting. Upon receiving a written request that the dispute be elevated to
33 the next level, a meeting shall be held within ten (10) Business Days between the Project
34 Director of WSDOT and the Customer Service and Energy Delivery Officer of Seattle City
35 Light/SPU Project Delivery Branch Deputy Director to resolve the dispute. Any resolution of the
36 dispute requires the agreement of all Representatives attending the meeting or who requested to
37 attend the meeting.

38
39 19.6 Notice of Third Level Meeting. If the Parties have not resolved the dispute within five
40 (5) Business Days after the Second Level Meeting, at any time thereafter either Party may
41 request that the dispute be elevated to the next level by notifying the other Party's Designated
42 Representative in writing, requesting that the dispute be raised to the Third Level Meeting. The
43 written notification shall include a) a description of the remaining issues to be resolved; b) a

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

4
5 19.7 Third Level Meeting. Elevate to the Executive Committee. Upon receiving a written
6 request that the dispute be elevated to the third level, a meeting shall be held within ten (10)
7 Business Days between the Washington State Deputy Secretary of Transportation and
8 Superintendent of Seattle City Light/Director of Seattle Public Utilities to resolve the dispute.
9 Any resolution of the dispute requires the agreement of all Representatives attending the meeting
10 of who requested to attend the meeting. [Salary: [b]

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11 [b]

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12
13
14 19.8 Court of Law. If the Parties have not resolved the dispute within five (5) Business Days
15 after the third level meeting, at any time thereafter either Party may seek relief under this
16 Agreement in a court of law. The Parties agree that they have no right to relief in a court of law
17 until they have completed the dispute resolution process outlined in this Section.

18
19 19.9 A Party's request to utilize this Dispute Resolution process is not evidence that either Party
20 is in breach of this Agreement, and does not relieve any Party from complying with its obligations
21 under this Agreement.

22 ~~19.2 Dispute Resolution Process. The designated representatives established under Section~~
23 ~~19.12 shall use their best efforts to resolve disputes between the Parties. If these individuals are~~
24 ~~unable to resolve a dispute, Customer Service and Energy Delivery Officer of Seattle City~~
25 ~~Light/SPU Project Delivery Branch Deputy Director and the Alaskan Way Viaduct Program~~
26 ~~Administrator for the Washington State Department of Transportation shall review the matter and~~
27 ~~attempt to resolve it. If they are unable to resolve the dispute, the matter shall be reviewed by the~~
28 ~~Superintendent of Seattle City Light/Director of Seattle Public Utilities and the Washington State~~
29 ~~Deputy Secretary of Transportation. The Parties agree to exhaust each of these procedural steps~~
30 ~~before seeking to resolve disputes in a court of law or any other forum.~~

31 32 20. REMEDIES; ENFORCEMENT

33
34 20.1 The PARTIES agree that provisions of GCA 6486, regarding Remedies; Enforcement,
35 including but not limited to Section 24 therein, shall apply equally to this Agreement.

36 37 21. TERMINATION

38
39 21.1 This Term of this Agreement may be terminated as shall be the Term provided in
40 Section 28 of GCA 6486 regarding Termination which shall apply equally to this Agreement.

41 42 22. CONFIDENTIALITY OF INFORMATION AND RECORDS

43
JOINT EDITION UT 01474/UT 01476 WSDOT/UTILITY Memorandum of Agreement
Bored Tunnel
Page 27 of 29

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1 22.1 The provisions of the SDOT Bored Tunnel Agreement, regarding Confidentiality of
2 Information and Records, including but not limited to Section 27 therein, shall apply equally to
3 this UTILITY Bored Tunnel Agreement. In addition, the Federal Energy Regulatory
4 Commission (FERC) and the North American Electric Reliability Corporation (NERC) require
5 that SCL limit access and disclosure of certain sensitive Critical Energy Infrastructure
6 Information. Therefore, SCL shall require the STATE and its contractors who have access to
7 documents marked “confidential” or “proprietary” to sign the Non-Disclosure Agreement
8 attached hereto as Exhibit BG.

Comment [SLS46]: SCL only

9
10 **23. EFFECTIVENESS AND DURATION**

11
12 23.1 This Agreement shall be effective as of the date the last PARTY signs and, unless sooner
13 terminated pursuant to the terms hereof, shall remain in effect until final completion of all
14 PARTIES’ obligations contained or referred to in this Agreement and GCA 6486, the SCL
15 Agreement, UT 01474, and the SPU Agreement, UT 01476.

16
17 **24. GENERAL PROVISIONS**

18
19 24.1 The General Provisions set forth in the GCA 6486, including but not limited to Section
20 30 therein, shall apply equally to this Agreement.
21

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1
2 IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the last day
3 and year written below.
4
5

6 | **SEATTLE PUBLIC UTILITIES/CITY LIGHT** **WASHINGTON STATE**
7 **DEPARTMENT OF**
8 **TRANSPORTATION**
9 _____

11 **By:**
12 Ray Hoffman/Jorge Carrasco
13 **Director/Superintendent:**

By: _____
Print: _____
Title: _____

15 Date: _____

Date: _____

20 APPROVED AS TO FORM:

22 _____
23 By (print)

27 _____
28 Signature
29 Assistant Attorney General

32 Date: _____

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MEMORANDUM OF AGREEMENT
NO. GCA 6486

SR 99 ALASKAN WAY VIADUCT

PROPERTY, ENVIRONMENTAL REMEDIATION, DESIGN REVIEW,
PERMITTING, AND CONSTRUCTION COORDINATION
AGREEMENT
FOR SR 99 BORED TUNNEL PROJECT

Comment [RF1]: City Language

THIS Property, Environmental Remediation, Design Review, Permitting, and Construction Coordination Agreement, No. GCA 6486 for the SR 99 Bored Tunnel Project ("Agreement" or "SDOT Agreement") is made and entered into between the State of Washington Department of Transportation, hereinafter the "STATE," and the City of Seattle hereinafter the "CITY" (managed by the Seattle Department of Transportation, hereinafter "SDOT"), collectively the "PARTIES" and individually the "PARTY,"

Comment [g2]: City

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

Comment [RF4]: Joint

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

Comment [W5]: Joint

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

Comment [W6]: Joint

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

Comment [W7]: Joint

WHEREAS, the January 2009 letter of agreement between the PARTIES affirmed that the State would be responsible for the bored tunnel project, and that "the allocation of specific project responsibility to each jurisdiction carries with it the responsibility for project management, environmental work, design, construction, and project cost overruns"; and

Comment [W8]: City - Not acceptable to WSDOT

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WHEREAS, in October 2009 the Governor and the Mayor executed a Memorandum of Agreement, GCA 6366, which described the basic roles and responsibilities for the implementation of the AWVSR Program. **Salay: AWV is defined below, but AWVSR is not, what is SR, can it be defined under Section 1.2?**

Comment [W9]: Joint
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WHEREAS, the AWVSR Program (PROGRAM) consists of a four-lane bored tunnel and improvements to City streets, the City waterfront, and transit; and the Moving Forward Projects; and

Comment [W10]: Joint

WHEREAS, the Proposed Bored Tunnel Project (PROJECT), the subject of this Agreement, is the part of the PROGRAM that replaces SR 99 from South Royal Brougham Street to Mercer Street that consists of designing and constructing a four-lane bored tunnel from South King Street to Thomas Street, north and south tunnel portals and access streets; re-establishment of the City street grid in the vicinity of the portals (Battery Street Tunnel decommissioning and Alaskan Way Viaduct demolition will be addressed in a future agreement); and associated utility relocations; and **Salay: [1b]**

[1b]

Comment [W11]: Joint
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WHEREAS, the Washington State Legislature passed Engrossed Substitute Senate Bill 5768 and the Governor signed the bill into law designating and funding a Bored Tunnel Program as the replacement for the Alaskan Way Viaduct; and

Comment [W12]: Joint

WHEREAS, RCW 47.01.402, which became law July 1, 2009, provides that State funding for the PROJECT is not to exceed two billion eight hundred million dollars (\$2,800,000,000.00) of which no more four hundred million shall be from tolls; and

Comment [W13]: City - Not Acceptable to WSDOT

WHEREAS, RCW 47.01.402(6)(b) provides that any costs in excess of two billion eight hundred million dollars (\$2,800,000,000.00) shall be borne by property owners in the Seattle area who benefit from replacement of the existing AWV with the deep bore tunnel; and

Comment [W14]: City - Not Acceptable to WSDOT

WHEREAS, the CITY and STATE agree to jointly pursue the implementation and completion of the PROJECT and endeavor to open the tunnel by 2015 and demolish the Alaskan Way Viaduct in 2016; and

Comment [W15]: Joint

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

Comment [W16]: Joint

WHEREAS, review of the PROJECT pursuant to the State STATE and City CITY environmental policy laws is currently underway and the PARTIES recognize that

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[1b]

1 | changes in the alternative chosen would require a new agreement; and [Salay: [1b]
2 | [1b]

Comment [W17]: Joint

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4 WHEREAS, the CITY and the STATE will deliver the PROJECT within the financial
5 commitments made in the Memorandum of Agreement, GCA 6366, executed by the
6 PARTIES on October 24, 2009; and

Comment [W18]: Joint

8 WHEREAS, concurrently with this GCA 6486 Agreement, the STATE and CITY,
9 through Seattle City Light (SCL), are entering into an agreement, UT 01474; and

Comment [W19]: Joint

11 WHEREAS, concurrently with this , GCA 6486, the STATE and CITY, through its
12 Seattle Public Utilities Department (SPU), are entering into an agreement, UT 01476; and

Comment [W20]: Joint

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

Comment [W21]: Joint

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

Comment [W22]: Joint

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

Comment [W23]: Joint

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

Comment [W24]: City

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

Comment [W25]: Joint

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

Comment [W26]: City - Need to choose

33 NOW, THEREFORE, pursuant to RCW 47.28.140 and RCW 47.01.401 and in
34 consideration of the terms, conditions, covenants, and performances contained herein, or
35 attached and incorporated and made a part hereto;

Comment [W27]: WSDOT - Need to choose

38 **IT IS MUTUALLY AGREED AS FOLLOWS:**

40 **1. DEFINITIONS**

Comment [W28]: WSDOT

42 Words not otherwise defined, which have well-known technical or construction industry
43 meanings, are used in accordance with such recognized meanings;

Comment [g29]: Joint

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1 1.1 Approved Plans means the construction plans and provisions that evidence the
2 CITY's determination, through the processes described in Section 8 and Exhibit B of this
3 Agreement, that the plans including Released for Construction Submittal pPlans for
4 Design-Build Ccontracts[Salay: changed to reflect language used below conform to
5 the Street Use Code Salay, not defined below, suggest change to Title 15 of the Seattle
6 Municipal Code] and other requirements, and that plan review comments are resolved to
7 both PARTIES' satisfaction; Approved Plans are included in the contract documents
8 evidencing the agreement between the STATE and its contractors for construction of a
9 given element of the PROJECT].

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Comment [g30]: Joint

11 1.2 AWV means the Alaskan Way Viaduct structure on State Route 99, currently a
12 non-limited-access highway over a portion of CITY Street Right-of-Way and located
13 partially in the City of Seattle. [Salay: The AWV is located totally within Seattle, why
14 are you using "located partially" ? Also, can you include 'SR' in this definition, as in
15 AWVSR?]

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Comment [g31]: Joint - requires clean up

17 1.3 Betterment means any upgrading of SDOT Facilities that is made solely for the
18 benefit of and at the election of SDOT. Betterments will be the cost responsibility of
19 SDOT. [Salay: SDOT Facilities is not defined below.]

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Comment [g32]: Joint

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21 1.4 Business Days means Monday through Friday, inclusive, except for official City
22 of Seattle and state holidays.

Comment [g33]: Joint

24 1.5 CITY means the City of Seattle, a Washington municipal corporation.

Comment [g34]: Joint

26 1.6 City Construction Project Engineer means the person designated by SDOT to act
27 as the City's CITY's coordinator and primary representative in matters arising during the
28 course of construction as set forth in this Agreement.

Comment [g35]: Joint

30 1.7 CITY Designated Representative means the CITY official listed in Section 25 of
31 this Agreement.

Comment [g36]: Joint

33 1.8 CITY Infrastructure means the portions of SFU Facilities, SCL Facilities and City
34 CITY Street Right-of-Way improvements constructed or modified as part of the
35 PROJECT to be owned, operated and maintained by the CITY. [Salay: SDOT Facilities
36 is not defined below.]

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Comment [g37]: Joint

Comment [g38]: Joint

38 1.9 CITY Interest Property means CITY Street Right-of-Way plus all other real
39 property that the CITY owns or in which the CITY has a real property interest on the
40 effective date of this Agreement, or in connection with the PROGRAM is to acquire
41 ownership of or an interest in real property or a different utility related right from the
42 STATE, which includes, but is not limited to Program Transfer Property. CITY Interest
43 Property does not include real property acquired or to be acquired by the STATE for
44 planned limited access facilities such as the bored tunnel, portals and access for which no

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1 real property interest or different utility-related right will be transferred to the

2 CITY [Salary: [1b]

3 [1b]

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8 1.10 City of Seattle means CITY.

Comment [g39]: Joint

10 1.11 City Standards means all City of Seattle laws, rules, regulations and standards and
11 all applicable federal and state laws, rules, regulations and standards, including but not
12 limited to the following, except as otherwise provided in this Agreement, UT 01474 and
13 UT 01476:

Comment [RF40]: Joint

14 The Seattle Municipal Code;

15 The City of Seattle Standard Specifications for Road, Bridge and Municipal
16 Construction;

17 The City of Seattle Standard Plans for Municipal Construction;,
18 SDOT, SCL, DPD and SPU Director's Rules, including the City of Seattle CITY
19 Street Right of Way Improvements Manual, 2005-22;.

20 SCL Material Standards; and

21 SCL Construction Guidelines

Comment [RF41]: Joint

23 1.12 CITY Street Right-of-Way means public street right-of-way under the jurisdiction
24 of SDOT pursuant to Title 15 of the Seattle Municipal Code.

Comment [g42]: Joint

26 1.13 Conceptual Relocation Plan means a work product that defines the general scope
27 of utility relocations including a planning level estimate of design and construction
28 costs.

Comment [g43]: WSDOT

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30 1.14 Conflicting Facilities means all SCL Facilities and all SPU Facilities identified by
31 the STATE that directly conflict with the bored tunnel portals and tunnel portal
32 excavations.

Comment [RF44]: City - Add to SDOT?

34 1.15 Contract Award means the STATE's written decision accepting bid for
35 construction of a Project. **Salary: rather than "a Project" do you mean the**
36 **"PROJECT?" "Project" is not defined. Maybe it should be lower case.**

Comment [g45]: Joint

38 1.16 Damage means loss of function, capacity, or aesthetic quality. For the purposes
39 of this Agreement, "Damage" shall not be construed to include reduction of design life
40 of any structure or utility. [Salary: [1b]

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Comment [g46]: WSDOT

44 1.16 Damage means any direct or indirect consequence of the PROJECT that causes
44 harm to, or reduces value or usefulness of, CITY Infrastructure, private property, CITY

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1 | property or **other public property**, including but not limited to structural damage or
2 | physical failure; loss of function, capacity or **aesthetic quality**; reduced service capacity,
3 | including intended future capacity; reduced service life; a measurable reduction of design
4 | life of an SPU Facility or an SCL Facility; water main movement in excess of established
5 | thresholds; or any other impact to an SPU Facility or an SCL Facility such as stress or

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6 | Deformation. **[Salary: [b] [1b]**

Comment [g47]: City

15 | 1.17 Defective Work means design or construction work or materials that fail to
16 | comply with the Approved Plans, CITY-approved modifications to the Approved Plans,
17 | or the laws, rules, regulations or standards as specified in this Agreement.

Comment [g48]: Joint

19 | 1.18 Deformation means any 3-dimensional displacement, for a structure (such as tilt
20 | of a structure), and strain (relative displacements of structures or the ground) and includes
21 | any settlement, heave, lateral movement, and related terms are used as being common
22 | industry terminology. Where such industry terminology is used for convenience herein, it
23 | does not imply that the broad definition of Deformation has been limited.

Comment [g49]: Joint

25 | 1.19 Design-Bid-Build Contract means a project delivery method in which the STATE
26 | provides a complete design, advertises for bids, and awards a contract to the lowest
27 | responsive bidder who is responsible for completing the construction of the project.

Comment [g50]: Joint

29 | 1.20 Design-Build Contract means a project delivery method in which the STATE
30 | develops a conceptual design and requests proposals from pre-qualified contractors. The
31 | contract is awarded to the contractor with the best value responsive proposal. The
32 | contractor is responsible to complete the design and construct the project.

Comment [g51]: Joint

34 | 1.21 Design Builder means the entity with whom the STATE enters into a Design-
35 | Build contract and who is responsible to complete the design and construct the project.

Comment [RF52]: Joint

37 | 1.22 DPD means the City of Seattle Department of Planning and Development.

Comment [g53]: Joint

39 | 1.23 Engineer of Record means the engineer licensed in the State of Washington who
40 | has been commissioned by the STATE as the prime engineer of the PROJECT, having
41 | overall responsibility for the adequacy of the design and the coordination of the design
42 | work of other engineers and whose professional seal is on the Approved Plans.

Comment [g54]: Joint

44 | 1.24 Environmental Compliance Assurance Procedure (ECAP) means procedures

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1 incorporated into the ~~current~~ WSDOT *Construction Manual* M41-01.05 ~~dated July 2008~~
2 (Section 1-2.2k(1)) and the WSDOT *Environmental Procedures Manual* M31-11.05
3 (Sections 610 and 690) ~~dated October 2008~~, as modified by this Agreement, which
4 provide guidance on compliance with Environmental Laws and environmental
5 Remediation. The purpose of the ECAP is to recognize and eliminate environmental
6 violations during the construction phase on STATE construction sites and to ensure
7 prompt notification to STATE management and agencies. For purposes of the ECAP,
8 violations are defined as actions that are not in compliance with environmental standards,
9 permits, or laws.

Comment [g55]: Joint

10 1.24 Environmental Law(s) means any environmentally related local, state or federal
11 law, regulation, ordinance or order (including without limitation any final order of any
12 court of competent jurisdiction of which the STATE has knowledge), now or hereafter in
13 effect including, but not limited to: the Federal Clean Air Act; the Federal Water
14 Pollution Control Act; the Federal Safe Drinking Water Act; the Federal Comprehensive
15 Environmental Response Compensation and Liability Act, as amended by the Superfund
16 Amendments and Reauthorization Act of 1986; the Federal Resource Conservation and
17 Recovery Act, as amended by the Solid and Hazardous Waste Amendments of 1984; the
18 Federal Occupational Safety and Health Act; the Federal Emergency Planning and Right-
19 to-Know Act of 1986; the Federal Hazardous Materials Transportation Control Act of
20 1980; the Federal Clean Water Act of 1977; the Federal Insecticide, Fungicide and
21 Rodenticide Act; the Federal Waste Management Recovery and Recycling Act; the
22 Washington Hazardous Waste Management Act; the Washington Hazardous Waste Fees
23 Act; Washington Model Toxics Control Act; the Washington Nuclear Energy and
24 Radiation Act; the Washington Radioactive Waste Storage and Transportation Act; the
25 Washington Underground Petroleum Storage Tanks Act; and any regulations
26 promulgated thereunder from time to time.

Comment [g56]: Joint

27
28 1.25 Final Design Submittal means plans, specifications, and design documentation
29 representing complete design of a given project element in a Design-Build Contract. The
30 Final Design Submittal addresses and incorporates review comments from the
31 Preliminary Design Submittal.

Comment [RF57]: Joint

32
33 1.26 Final Plan Review Package means the Plan Review Package submitted to the
34 CTEY that is comprised of the STATE's contract documents including contract addenda
35 and fully incorporates or otherwise addresses all CTEY plan review comments and all
36 applicable conditions of the Street Use Permit.

Comment [RF58]: Move to Exhibit

37
38 1.27 Hazardous Substance(s) means any substance, or substance containing any
39 component, now or hereafter designated as a hazardous, dangerous, toxic or harmful
40 substance, material or waste, subject to regulation under any federal, state or local law,
41 regulation or ordinance relating to environmental protection, contamination or cleanup
42 including, but not limited to, those substances, materials and wastes listed in the United
43 States Department of Transportation Hazardous Materials Table (49 C.F.R. §172.101) or
44 by the United States Environmental Protection Agency as hazardous substances (40

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1 C.F.R. pt. 302 and amendments thereto) or in the Washington Hazardous Waste
2 Management Act (Ch. 70.105 RCW) or the Washington Model Toxics Control Act (Chs.
3 70.105D RCW and 82.21 RCW), petroleum products and their derivatives, and such
4 other substances, materials and wastes as become regulated or subject to cleanup
5 authority under any Environmental Law.

Comment [g59]: Joint

7 1.28 Letter of Acceptance means the written document that signifies the CITY's
8 acceptance of CITY Infrastructure to be owned by the CITY, and shall signify the
9 STATE's transfer of CITY Infrastructure to be owned by the CITY. The Letter of
10 Acceptance will not transfer any interest in real property. The Letter of Acceptance shall
11 be jointly executed by the PARTIES. A Letter of Acceptance for SPU Facilities requires
12 SPU approval and a Letter of Acceptance for SCL Facilities requires SCL approval.

Comment [g60]: Joint

14 1.29 Letter of Plan Approval means the letter provided to the STATE by the CITY
15 following the completion of the plan review process, signifying that the plans and
16 specifications identified in the letter are the Approved Plans.

Comment [g61]: Joint

18 1.30 MTCA means the Washington Model Toxics Control Act (Chs. 70.105D RCW
19 and 82.21 RCW).

Comment [g62]: Joint

21 New Work means the design and construction by or at the direction of UTILITY
22 of a new utility other than (a) as part of a relocation associated with the PROJECT, or (b)
23 to provide service to the PROJECT. New Work shall be entirely the financial obligation
24 of UTILITY. **[Salay: UTILITY is not defined in this agreement, either define it or
25 call it SCL and SPU.]**

Comment [RF63]: Is this needed in SDOT?

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27 1.32 Preliminary Engineering means the portion of the pProject engineering which
28 advances the pProject design to address Type, Size, and Location ("TS&L") for all
29 components of the pProject. Design will have advanced sufficiently to define alignments
30 and identify conflicts. Preliminary engineering will include an estimate for final design
31 and a preliminary cost for construction. **[Salay, throughout these definitions, you use
32 "project" rather than PROJECT, and sometimes Project. "Project is not defined
33 and it appears that all references to project should not be PROJECT. So, I have
34 used a lower case, unless you need to define Project as opposed to PROJECT.]**

Comment [g64]: Joint

Comment [RF65]: Joint

36 1.33 Plan Review Package means clear and complete plans, specifications, and the
37 necessary assumptions, studies, models and calculations upon which the design was
38 based, and corrections previously requested by the CITY with respect to Design-Bid-
39 Build pProjects.

Comment [g66]: Joint

41 1.34 100% Plan Review Package means the Plan Review Package submitted to the
42 CITY concurrent with STATE's final internal review of the construction contract plans
43 and contract provisions that shall evidence the agreement between the STATE and its
44 contractors for construction of Design-Bid-Build pProjects.

Comment [RF67]: Joint

HIGHLIGHTED TEXT = Elevate to Leadership

GREEN HIGHLIGHT = Staff to resolve

Joint
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1
2 1.35 Plans, Specifications, and Estimate (“PS&E”) means the portion of the PROJECT
3 engineering after the Preliminary Engineering, which advances the PROJECT design by
4 preparing contract-ready documents and the engineer’s cost estimate. At this stage the
5 specifications are written and tailored to the plans so that all work can be measured and
6 has a pay item. The cost estimate is formalized using the established specifications, pay
7 items and quantity takeoffs, for 60% through 100% completion of the total design
8 effort. **Salay: look at section 1.32, where you do not fully cap PROJECT. Which**
9 **meaning do you wish to impart to keep these definitions consistent?!**

Comment [RF68]: Joint
Comment [RF69]: Joint

10
11 1.36 Preliminary Design Submittal means in a Design-Build Contract, a formal
12 opportunity for the STATE, the Design -Builder, various design team disciplines, and
13 other approved stakeholders to review the construction documents in order to
14 ensure that the design is progressing appropriately and proceeding in the right direction;
15 the plans reflect Design -Builder requirements for construction; design features are
16 coordinated; and there are no fatal flaws within a given discipline or between disciplines.
17 **Salay, should this be PROJECT? Or project?!**

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Comment [g70]: Joint

18
19 1.37 Private Utilities means utility uses, excluding facilities owned and operated by the
20 CITY, approved through franchise agreements and/or Street Use Permits by the CITY
21 and governed and enforced through City-CITY Ordinance. AES: [1b]

22 [1b]
23
24
25
26

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Comment [g71]: Joint

27 1.38 PROJECT means the proposed bored tunnel project, the part of the
28 PROGRAM that replaces SR 99 from South Royal Brougham Street to Mercer Street and
29 that consists of designing and constructing a four-lane bored tunnel from South King
30 Street to Thomas Street, north and south tunnel portals and access streets, re-
31 establishment of the City-CITY street grid in the vicinity of the portals, **Battery Street**
32 **Tunnel decommissioning and Alaskan Way Viaduct demolition will be addressed in a**
33 **future agreement**, and associated utility relocations.

Comment [g72]: Joint. This definition does not currently include the demolition of the Alaskan Way Viaduct and the decommissioning of the Battery Street Tunnel.

34
35 1.39 PROGRAM means the AWVSR program which consists of a four-lane bored
36 tunnel and improvements to City-CITY streets, the City-CITY waterfront, and transit; and
37 the Moving Forward Projects as defined in GCA 6366.

Comment [RF73]: Joint

38
39 Program Property means all real property interests acquired and to be acquired by the
40 STATE for the PROGRAM.

41
42 Program Transfer Property means all Program Property identified by the STATE and the
43 CITY for transfer from the STATE to the CITY in **the future**. **Salay:** [1b]

44 [1b]

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HIGHLIGHTED TEXT = Elevate to Leadership

GREEN HIGHLIGHT = Staff to resolve

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1
2 Project Property means all real property interests acquired and to be acquired by the
3 STATE and used for the PROJECT.

4
5 1.40 Project Engineer means the persons appointed by the STATE to lead the
6 PROJECT during design and/or construction or his or her designee.

Comment [RF74]: Joint

7
8 1.41 Released for Construction Submittal means in a Design-Build Contract, plans and
9 specifications for a given project element that are construction ready and have been
10 certified by the Design-Builder as having met all contract requirements and received all
11 approvals and permits. The Released for Construction Submittal addresses all review
12 comments from the Preliminary Design Submittal and Final Design Submittals.

Comment [RF75]: Joint

13 Relinquishment Property

Comment [g76]: TBD

14
15
16 1.42 Remediation means the same as Remedy or Remedial Action defined in MTCA
17 which includes any action or expenditure consistent with the purposes of MTCA to
18 identify, eliminate, or minimize any threat or potential threat posed by Hazardous
19 Substances to human health or the environment including any investigative and
20 monitoring activities with respect to any release or threatened release of a Hazardous
21 Substance and any assessments to determine the risk or potential risk to human health or
22 the environment.

Comment [RF77]: Joint

23
24 1.43 Round Table Meeting means a meeting typically held five (5) weeks following
25 the submittal of the 100% Plan Review Package to the CITY and STATE, and commonly
26 attended by the STATE's Project team and STATE reviewers to resolve and address
27 STATE comments on the 100% Plan Review Package.

Comment [RF78]: Joint

28
29 1.43 SCL means Seattle City Light.

Comment [RF79]: Joint

30
31 1.44 SCL Facilities means the electrical facilities impacted by, or constructed as part
32 of, the PROJECT that are owned or to be owned by the CITY.

Comment [RF80]: Joint

33
34 1.45 SCL Facilities Work means work required to design, construct and protect the
35 SCL Facilities as part of the PROJECT.

Comment [g81]: Joint

36
37 1.46 SDOT means the Seattle Department of Transportation.
38 **Salay: There is no SDOT Facilities or SDOT Facilities Work defined in this**
39 **agreement.**

Comment [RF82]: Joint

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40
41 1.47 SPU means Seattle Public Utilities.

Comment [RF83]: Joint

42
43 1.48 SPU Facilities means the water, drainage and wastewater facilities impacted by,
44 or constructed as part of, the PROJECT that are owned or to be owned by the CITY.

Comment [RF84]: Joint

HIGHLIGHTED TEXT = Elevate to Leadership

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1
2 1.49 SPU Facilities Work means work required to design, construct and protect the
3 SPU Facilities as part of the PROJECT.

4
5 1.50 STATE means the State of Washington Department of Transportation and may
6 include its cContractors, sSubcontractors, authorized aAgents and aAssigns.

Comment [RF85]: Joint

7
8 1.51 STATE Designated Representative means the STATE official listed in Section 25
9 of this Agreement.

Comment [RF86]: Joint

10
11 1.52 Street Use Permit means written authorization secured by the STATE from the
12 Director of SDOT for use of the CITY Street Right-of-Way pursuant to Title 15 of the
13 Seattle Municipal Code.

Comment [RF87]: Joint

14
15 1.53 Submittal Control Document means a list of all documents or reports that are
16 required by the Approved Plans or construction contract documents or applicable law to
17 be provided to or submitted to the STATE and the CITY.

Comment [RF88]: Joint

18
19 Surplus Property means Program Property, excluding Program Transfer Property and
20 other CITY Interest Property, that upon completion of the PROJECT has not been
21 designated as part of the limited access or non-limited access right-of-way of State Route
22 99.

23
24 1.54 Task Force means a group consisting of StateSTATE, CityCITY, contractor, and
25 other stakeholder staff meeting regularly to review and reach decisions relating to a
26 particular subject, e.g., traffic, structures.

Comment [g89]: Joint

27
28 1.55 Task Order means a document executed by the PARTIES under this Agreement
29 authorizing work by one party-PARTY to be done on behalf of the other party-PARTY
30 and that defines the scope and the obligations of the PARTIES for the given element of
31 work. All terms and conditions of the Agreement shall apply to each Task Order.

Comment [g90]: Joint

32
33 1.56 WSDOT means Washington State Department of Transportation.

Comment [RF91]: Joint

34
35 Words not otherwise defined, which have well-known technical or construction industry
36 meanings, are used in accordance with such recognized meanings.

Comment [W92]: Joint

37
38
39 **2. GENERAL RESPONSIBILITIES**

40
41 2.1 The PARTIES shall manage risk, produce design and conduct construction in a
42 manner that maximizes cumulative public benefits and minimizes cumulative public costs
43 as mutually agreed to by the PARTIES.

Comment [W93]: Joint Language

HIGHLIGHTED TEXT = Elevate to Leadership

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1 2.2 This Agreement in conjunction with UT 01474 and UT 01476 is prepared by the
2 STATE and CITY to govern relationships between the PARTIES and establish each
3 Party's PARTY's responsibilities regarding the PROJECT as described in Exhibit A.
4 Project Description. [Salav: Exhibit A has not been provided; do you want "Project"
5 to be PROJECT or project?]

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Comment [W94]: Joint

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6
7 2.3 The PARTIES understand that environmental review of the proposed PROJECT
8 is underway at the date of this Agreement and agree that if an alternative other than the
9 Proposed Bored Tunnel is selected, this Agreement shall not be applicable.

Comment [W95]: City

10
11 2.4 The PARTIES shall work collaboratively to resolve issues in a manner that
12 endeavors to open the Proposed Bored Tunnel to the public on schedule.

Comment [W96]: Joint

13
14 2.5 The design and construction of CITY Infrastructure, including infrastructure
15 repair, shall comply with City of Seattle codes, rules, regulations and standards.

Comment [W97]: Joint

16
17 2.6 Each Party-PARTY shall provide the funding and resources necessary to fulfill
18 the responsibility of that Party-PARTY as established in this Agreement. [Salav: [1b]
19 [1b]
20 [REDACTED]
21 [REDACTED]

Comment [W98]: Joint

Comment [W99]: Joint

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22 2.7 The PARTIES agree to work cooperatively with each other and make reasonable,
23 good faith efforts to timely and expeditiously complete the PROJECT, as provided in this
24 Agreement, including, but not limited to, the selection of a preferred SR 99 design
25 alternative; development of preliminary engineering and final design and construction. In
26 order to optimize design and minimize conflicts, the STATE shall coordinate design and
27 construction of the various contracts making up the PROJECT with design of subsequent
28 PROGRAM stages, and with construction of previous stages of the PROGRAM. The
29 STATE shall be prepared to modify design of the contracts making up the PROJECT, the
30 subsequent PROGRAM stage and/or previous phase if both PARTIES determine the
31 modifications are necessary and reasonable, to minimize conflicts.
32

Comment [W100]: Joint

33 2.8 The PARTIES agree to work cooperatively with each other and make reasonable,
34 good faith efforts to timely and expeditiously complete the PROJECT, as provided in this
35 Agreement, including, but not limited to, the selection of a preferred SR 99 design
36 alternative; development of preliminary engineering and final design and construction.
37 [Salav: This section is the same as Section 2.7, except for lines 30-36. Should this be
38 deleted?]

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Comment [W101]: Joint

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39
40 2.9 The STATE is responsible for designing and constructing the Proposed Bored
41 Tunnel portion of the ProjectPROJECT. The STATE will take reasonable measures to
42 minimize, limit, and mitigate Damage to private property and CITY infrastructure
43 including CITY streets, CITY telecommunications facilities and CITY utilities that may
44 result from the Proposed Bored Tunnel construction, including Damage that may result

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1 from tunnel-induced Ddeformation. WSDOT-STATE is responsible for-to remedy such
2 Damage should it occur. **Salav:** [1b]

3 [1b]

Comment [W102]: Joint - Damage definition pending

8 2.10 The CITY is responsible for relocating those existing UTILITY Facilities that
9 have alignments intersecting the final configuration of the proposed SR 99 bored tunnel
10 portals and tunnel portal excavations.

Comment [JRB103]: Remove from the SDOT MoA and just use in UTILITY MoAs

11
12 2.11 The PARTIES agree that it is in the public interest for one PARTY to implement
13 portions of the other PARTY's PROJECT responsibilities. Therefore, this Agreement
14 establishes a Task Order process for use by a PARTY to authorize the other PARTY to
15 conduct work on its behalf, and as may be documented through each Task Order, agree to
16 reimburse the other PARTY for such services.

17
18 2.12 During conceptual and preliminary design of the PROJECT, the PARTIES shall
19 jointly identify Conflicting Facilities and plan for the relocation of these Conflicting
20 Utilities. The STATE agrees to prepare a Conceptual ~~Utility~~ Relocation Plan **[Salav:**
21 **Just using actual defined wording of concept. If you want Utility in the definition,**
22 **then fix section 1.13]**, that documents a feasible conceptual approach to relocating
23 Conflicting Facilities in a manner that accommodates the PROJECT. The PARTIES shall
24 mutually determine the feasibility of the Conceptual ~~Utility~~ Relocation Plan. The
25 Conceptual ~~Utility~~ Relocation Plan shall include:

Comment [JRB104]: Just include in UTILITY MoAs.

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26
27 2.12.1 The STATE's conceptual design of the PROJECT.

28 2.12.2 Identification of Conflicting Facilities.

29 2.12.3 The STATE's request for ~~UTILITY~~ SCL and/or SPU **[Salav, UTILITY**
30 **is not defined in this agreement. See suggested change.]** to relocate Conflicting
31 Facilities based on the STATE's conceptual design of the PROJECT.

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32 2.12.4 A feasible conceptual design that demonstrates compatibility with
33 existing infrastructure to remain.

34 2.12.5 Plan view drawings drafted to an engineering scale of 1 inch equals 40
35 feet showing the existing configuration of Conflicting Facilities, proposed
36 configuration of relocated CITY Infrastructure, and all existing infrastructure to
37 remain adjacent to relocated CITY Infrastructure.

38 2.12.6 Roadway and utility cross-sections necessary to demonstrate the
39 feasibility of the conceptual design.

40 2.12.7 Utility profiles and elevations necessary to demonstrate the feasibility of
41 the conceptual design.

42 2.12.8 Identification of Conflicting Facilities that require multiple relocations
43 in order to accommodate the PROJECT along with the circumstances that cause
44 the need for such multiple relocations.

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1 2.12.9 A schedule for relocation of Conflicting Facilities that is coordinated
 2 with the proposed design and construction schedule for other work within the
 3 PROJECT.
 4 2.12.10 A contracting strategy for design and construction of each Conflicting
 5 Facility identified for relocation including a proposal for Task Orders necessary
 6 for [REDACTED] SCL and/or SPU to authorize the STATE to perform services on its
 7 behalf. **Salav, UTILITY is not defined in this agreement. See suggested**
 8 **change.]**
 9 2.12.11 An estimate of design services to be performed by the STATE on behalf
 10 of the SCL and/or SPU [REDACTED]. **Salav, UTILITY is not defined in this**
 11 **agreement. See suggested change.]**
 12 2.12.12 An estimate of construction costs commensurate with the level of
 13 conceptual design.
 14 2.12.13 [what else??]
 15
 16 2.13 [REDACTED] SCL and/or SPU [REDACTED] UTILITY shall review and comment on the Conceptual [REDACTED]
 17 **[Salav: Just using actual defined wording of concept. If you want Utility in the**
 18 **definition, then fix section 1.13]** Relocation Plan. The PARTIES shall address
 19 [REDACTED] SCL's and/or SPU's comments on the Conceptual [REDACTED] Relocation Plan to
 20 the PARTIES' mutual satisfaction. **Salav, UTILITY is not defined in this agreement.**
 21 **See suggested change.]**
 22
 23 2.14 [REDACTED] The PARTIES shall use the final Conceptual [REDACTED] Relocation Plan as the basis
 24 for negotiating each PARTY's design, construction and funding responsibilities for
 25 multiple utility relocations. **[Salav: Elsewhere in these agreements you have**
 26 **highlighted in Yellow, concerns [1b]**
 27 [REDACTED] [1b]
 28 [REDACTED]
 29 [REDACTED]
 30 [REDACTED]
 31 [REDACTED]
 32 [REDACTED]
 33 [REDACTED]
 34 2.15 SCL's and/or SPU's [REDACTED] UTILITY's responsibility for the design and construction of
 35 Conflicting Facilities relocations begins when the PARTIES STATE and SPU and/or
 36 SCL have a written mutual agreement regarding the content of the Conceptual [REDACTED]
 37 Relocation Plan and the STATE's, SPU's and SCL's each PARTY's responsibilities for
 38 multiple utility relocations. **Salav, UTILITY is not defined in this agreement. See**
 39 **suggested change. Further, PARTIES in this agreement means SDOT & State, the**
 40 **Conceptual plan and agreement should be between State & SPU & SCL, not SDOT,**
 41 **Correct?]**
 42

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1 | 2.16 The PARTIES shall use the Conceptual ~~Utility~~ Relocation Plan as the basis for
2 | establishing the STATE's scope, schedule and estimated costs of design and construction
3 | services to be documented in Task Orders under this Agreement.
4 |

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5 | ~~2.17~~—In instances where the STATE's revisions to the PROJECT design differ so
6 | significantly from the conceptual design presented in the Conceptual Utility Relocation
7 | Plan as to render UTILITY's SPU's and/or SCL's relocation design or construction work
8 | obsolete, the STATE shall reimburse UTILITY-SPU and/or SCL for the accrued costs of
9 | obsolete work. Salay: UTILITY is not defined in this agreement. See suggested
10 | change.

11 | **3. PROPERTY ACQUISITION AND TRANSFER; RELINQUISHMENT;**
12 | **SURPLUS PROPERTY**

Comment [W105]: TBD

13 | 3.1 Acquisition
14 |

15 | 3.1.1 The STATE has or will acquire, at its expense, the Project Property. The
16 | CITY will acquire, at its expense, any utility-related property right necessary for the
17 | relocation of SPU Facilities or SCL Facilities that cannot be accommodated within
18 | Project Property or existing CITY right of way.
19 |

20 | 3.1.2 The STATE is responsible, at its expense, for performance of all
21 | appraisals, appraisal review, title review, surveys, property investigation, relocation
22 | assistance and all other investigations and services in connection with the acquisition of
23 | the Project Property. For each parcel of Program Transfer Property, the STATE shall
24 | deliver to the CITY, as soon as practicable after a parcel is acquired and identified by the
25 | PARTIES as Program Transfer Property, all documents created, commissioned or
26 | received in connection with the STATE's acquisition of such parcel. Such documents
27 | shall include, to the extent applicable, appraisals, appraisal reviews, title reports and all
28 | documentation concerning title encumbrances, title policies, surveys, geotechnical
29 | reports, purchase agreements, term sheets, options, leases, deeds, indemnities, and all
30 | other documents and information created, commissioned or received by the STATE.
31 | Salay: As this language stands, it just requires that all property documents be
32 | provided to the city. Please be careful that this does not morph into requiring the
33 | WSDOT to actually create or provide documentation that it does not normally
34 | have.
35 |

Comment [HMc106]: Hannah and Theresa to verify that the documentation listed here matches the requirements in WSDOT's ROW Manual. If it does, consider just referencing ROW Manual.

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36 | 3.1.3 The STATE is responsible for identification and investigation of
37 | Hazardous Substances on Program Property following procedures set in the WSDOT
38 | *Environmental Procedures Manual M 31-11* and WSDOT *Right of Way Manual M 26-01*
39 | that are in effect on the date of property acquisition. The STATE shall provide to
40 | SDOT's Real Property and Environmental Manager, as soon as practicable after a parcel
41 | is identified by the PARTIES as Program Transfer Property, copies of all documentation
42 |
43 |
44 |

Comment [HMc107]: Theresa to share with WSDOT environmental team.

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1 of environmental investigation concerning the Program Transfer Property, remedial
2 actions, reports, studies or other documentation, whether received by or prepared by or
3 for the benefit of the STATE, including, but not limited to, (1) documents relating to due
4 diligence and/or all appropriate inquiry, environmental assessments, and remedial,
5 removal or cleanup activities related to the Program Transfer Property; (2) documents
6 relating to allegations, orders, claims, regulatory demands, or losses relating to the
7 alleged existence or migration of any Hazardous Substance from or on any parcel of
8 Program Transfer Property; and (3) any alleged violation of any Environmental Law or
9 other information relating to environmental condition of the Program Transfer Property.

10
11 3.2 Transfer

12
13 3.2.1 On or before December 31, 2011, the STATE and the CITY shall enter
14 into a separate written agreement governing transfer of Program Transfer Property to the
15 CITY. The agreement shall provide that each transfer to the CITY shall be by deed. The
16 agreement shall also provide the following: timing of transfer, condition of title,
17 protection for utilities in the event of future sale, the following release and
18 indemnification provision:

19
20 “The STATE hereby releases and indemnifies, protects and holds harmless the
21 City of Seattle and its officers, officials, employees, and authorized agents
22 working within the scope of their employment from all liability and claims
23 (including but not limited to liability and claims for response and remediation
24 costs, administrative costs, fines, charges, penalties, attorney fees and cost
25 recovery or similar actions brought by a governmental or private party, including
26 third party tort liability) arising, directly or indirectly, from any presence or
27 release of any Hazardous Substance remaining within or transported from the real
28 property in which an interest is transferred.”

29
30 and the definitions of Hazardous Substance and Environmental Law contained in this
31 SDOT Agreement. The foregoing is not an exclusive list.

32
33 3.2.2 Whether or not any separate agreement or transfer document is made,
34 effective beginning on the date of transfer of each real property interest from the STATE
35 to the CITY in connection with the PROGRAM, the STATE shall release and indemnify,
36 protect and hold harmless the City of Seattle and its officers, officials, employees, and
37 authorized agents working within the scope of their employment from all liability and
38 claims (including but not limited to liability and claims for response and remediation
39 costs, administrative costs, fines, charges, penalties, attorney fees and cost recovery or
40 similar actions brought by a governmental or private party, including third party tort
41 liability) arising, directly or indirectly, from any presence or release of any Hazardous
42 Substance remaining within or transported from the real property in which an interest is
43 transferred.

Comment [HM108]: Theresa to share with
WSDOT environmental team.

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1 3.3 Surplus Property. Within two (2) years after completion of the PROJECT, the
2 STATE shall complete its disposal of all Surplus Property pursuant to the provisions of
3 chapter 47.12 RCW and following the procedures in the WSDOT *Right of Way Manual*
4 *M 26-01.02*, dated August 2009, Chapter 11, Sections 11-7.1 – 11-7.4.2. Disposal
5 includes any of the disposal methods described in Chapter 11, Sections 11-7.1 – 11-7.4.2.
6 The parties PARTIES may agree to extend the two year period if disposal of surplus
7 property is not reasonably feasible. **[Salav: [1b]**

8 [1b]
9 [Redacted]

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11 3.4 Survival. The obligations set forth in this Section 3 shall survive termination of
12 this SDOT Agreement unless otherwise expressly negotiated by the PARTIES and
13 memorialized by written amendment to this SDOT Agreement.

15 3.5 Where ~~UTILITY~~ SCL Facilities and/or SPU Facilities are located in or near an
16 area which the STATE designates as a Limited Access Facility, the STATE will ensure
17 that ~~UTILITY~~ SCL and/or SPU continues to be allowed access to its
18 ~~UTILITY~~ facilities. **Salav, UTILITY is not defined in this agreement. See suggested**
19 **change.**

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20 3.5.1 The STATE's Limited Access Facility designation for the tunnel shall
21 contain a vertical and horizontal boundary.

22 3.5.2 The STATE agrees that any Limited Access Facility designation for the
23 tunnel will allow ~~UTILITY~~ SCL and/or SPU to access its ~~UTILITY~~ facilities.

24 3.5.3 The area between the Limited Access Facility boundaries and the CITY
25 streets shall continue to be CITY Street Right-of-Way. **[Salav: [1b]**
26 [1b]

28 3.5.4 In the event the STATE designates as a Limited Access Facility any area
29 in or near the tunnel portals on which a SPU Facilities and/or SCL Facilities ~~UTILITY~~
30 Facility exists or will be relocated, the STATE agrees to provide ~~UTILITY~~ SCL and/or
31 SPU a ~~UTILITY~~-utility franchise in the form attached hereto as ~~Exhibit A~~, pursuant to the
32 requirements of Section 14 herein [OR provide for access to operate and maintain 24/7,]
33 and will make every effort to develop a design that minimizes the need for regular, on-
34 going maintenance access as reasonably feasible. **[AES: Exhibit A is designated as a**
35 **project design; please fix this designation.** [1b]

36 [1b]
37 [Redacted]
38 [Redacted]
39 [Redacted]

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41 THIS SECTION TO BE PREPARED BY Theresa and Hannah

Comment [g109]: Needs elevation

4. TASK ORDERS

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1 4.1 Some or all of the work undertaken pursuant to this Agreement may be governed
2 by Task Orders. Each Task Order shall be substantially similar to Exhibit C and shall
3 document the scope of services, schedule of services, itemized estimate of costs, and any
4 provisions specific to the scope of services. Task Orders shall be subject to the
5 provisions of this Agreement. Either PARTY may initiate a Task Order which will be
6 jointly executed by the PARTIES.

Comment [g110]: Joint

8 4.2 Partial Task Order payments, if any, shall be made upon invoice from the Party
9 PARTY providing services, to cover actual direct and related indirect costs incurred at
10 rates established in each Task Order. It is agreed that any such partial payment will not
11 constitute agreement as to the appropriateness of services costs and that, at the time of
12 final audit, all required adjustments will be made and reflected in a final payment. The
13 Party-PARTY providing services shall submit itemized invoices within sixty (60)
14 calendar days of the end of the calendar month in which the services were performed.
15 Invoices for partial payment shall not be submitted more frequently than once per month.
16 The invoices shall substantially conform to the invoice requirements shown in Exhibit D.
17 The PARTIES agree to make payment for services completed and invoiced within thirty
18 (30) calendar days of receiving an invoice. [AES: [b] [1b]

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Comment [W111]: Joint

22 4.3 Audit Requirements for Task Order Activity

23 THIS SECTION TO BE PREPARED BY Theresa and Hannah

26 4.4 Task Order Closeout Requirement

27 THIS SECTION TO BE PREPARED BY Theresa and Hannah

31 5. ENVIRONMENTAL REMEDIATION DURING CONSTRUCTION

Comment [g112]: Joint

32 5.1 STATE Responsibilities. For CITY Interest Property the STATE shall be
33 responsible for identification, investigation and Remediation of Hazardous Substances
34 found within the limits of the PROJECT during its environmental due diligence of the
35 Project Property and shall identify areas of known Hazardous Substances in the Plan
36 Review Packages circulated for CITY review and in Design-Build Contract-related
37 documentation, including Preliminary and Final Design Submittals, that are relevant to
38 CITY Interest Property. In addition, the STATE shall be responsible for identification,
39 investigation and Remediation of Hazardous Substances discovered during construction
40 at CITY Interest Property. For CITY Interest Property, provisions for Remediation of
41 known Hazardous Substances, approved Remediation plans, and provisions for
42 Remediation of Hazardous Substances discovered during construction shall be included
43 in the Plan Review Packages and Approved Plans and in Design-Build Contract-related
44 documentation, including Preliminary and Final Design Submittals, that are relevant to

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GREEN HIGHLIGHT = Staff to resolve

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1 CITY Interest Property. Nothing in this Agreement is intended to alter the legal
2 obligations of the STATE with respect to Hazardous Substances that may remain in
3 place after completion of the PROJECT except for release and indemnity provisions of
4 this Agreement.

Comment [RF113]: Joint

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.

Comment [RF114]: Joint

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.

Comment [RF115]: Joint

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:

Comment [RF116]: Joint

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.

Comment [RF117]: Joint

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1 5.5 All work at CITY Interest Property shall comply with the then-current WSDOT
2 *Environmental Procedures Manual M 31-11* and WSDOT *Construction Manual M41-01*,
3 Environmental Law, and all applicable CITY regulations except as modified by this
4 Agreement.

Comment [RF118]: Joint

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

Comment [RF119]: Joint

11 5.7 The STATE's Project Engineer shall determine, in consultation with the CITY,
12 Remediation of known and unanticipated Hazardous Substances at or adjacent to CITY
13 Interest Property within the limits of the PROJECT. In instances where the CITY
14 disputes the STATE's plan(s) for Remediation in connection with CITY Interest
15 Property, the CITY and STATE will resolve the dispute through the dispute resolution
16 process in Section 21 of this Agreement.

Comment [RF120]: Joint

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

Comment [RF121]: Joint

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

Comment [RF122]: Joint

32 5.10 The PARTIES shall obtain all required permits and approvals for Remediation at
33 CITY Interest Property.

Comment [RF123]: Joint

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

Comment [RF124]: Joint

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

Comment [RF125]: Joint

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1 5.13 All costs associated with testing, handling, storing, removing, transporting,
2 disposing, or treating Hazardous Substances that are excavated in connection with the
3 PROJECT relating to CITY Interest Property shall be paid by the STATE. In addition,
4 STATE shall be responsible for all costs associated with Remediation of any releases that
5 are caused or exacerbated by its own employees or contractors. The STATE shall be
6 identified as the generator for these Hazardous Substances.

Comment [RF126]: Joint

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.

Comment [RF127]: Joint

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.

Comment [RF128]: Joint

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 authorized agents, while acting
28 within the scope of their employment, from all liability and claims (including but not
29 limited to liability and claims for response and remediation costs, administrative costs,
30 fines, 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-CITY has a real property interest on that date or in which the
36 City-CITY later acquires a real property interest for the purposes of the Program
37 PROGRAM from an entity other than the STATE, and (2) the removal, transport or
38 disposal in connection with the PROJECT of any Hazardous Substance for which the
39 STATE or any person, contractor or other entity working on behalf of the STATE is a
40 generator.

Comment [RF129]: Joint

41 **6. PERMITTING AND RIGHT-OF-WAY USE**
42
43

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1 6.1 The PARTIES shall apply for and obtain all necessary federal, state and City of
2 Seattle-issued permits and approvals for the work for which they are responsible prior to
3 commencing work that requires such permits, including but not limited to all permits,
4 approvals or permission for exploratory investigations, testing, site preparations,
5 demolition and construction.

Comment [W130]: Joint

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

Comment [g131]: Joint

Comment [g132]: Joint

14 6.3 The PARTIES agree that for both design-build and design-bid-build portions of
15 the PROJECT, the PARTIES shall obtain a Street Use Permit consistent with the
16 provisions in Section 3 of this Agreement prior to undertaking work in the CITY Street
17 Right of Way. [Salay: do you really mean section 5, or should it be section 6?]

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Comment [RF133]: Joint

[1b]

25 6.4 Conditions applicable to the Street Use Permits issued for CITY Street Right-of-
26 Way in connection with the PROJECT will apply to Project PROJECT work outside the
27 current CITY Street Right of Way. [Salay:] [1b]

Comment [RF134]: Needs clarification for application to Limited Access

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31 6.5 The PARTIES agrees to abide by and comply with all requirements and
32 conditions of the Street Use Permit. After the Street Use Permit is issued, the responsible
33 PARTY will obtain Letters of Plan Approval for any subsequent revisions for
34 advancement of design or amendments to the Street Use Permit as set forth in the
35 Procedures. [Salay: "Procedures" is not defined, where is the term "as set forth in
36 the Procedures"? Please clarify]

Comment [g135]: Joint

Comment [g136]: Joint

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38 6.6 The Street Use Permit and Letters of Plan Approval are not a representation or
39 assurance that the design or plans comply with applicable laws, regulations, ordinances or
40 codes, nor shall the Street Use Permit or Letter of Plan Approval be construed to
41 authorize any failure to comply with any of the foregoing.

Comment [g137]: Joint

43 6.7 The STATE shall be responsible for ordering and managing the relocation of any
44 and all private utilities required for performance of the work on the PROJECT, and the

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1 STATE shall require its construction contractors to schedule and coordinate their
2 activities with the relocation of private utilities so that neither the construction contractors
3 nor the private utilities are adversely impacted by the other's activities. The city-CITY
4 shall assist and cooperate with the state-STATE as the state-STATE performs its
5 obligations under this provision, including, but not limited, the CITY co-signing the state
6 STATE relocation notices to the private utility owners and the city-CITY joining the state
7 STATE as an additional plaintiff in any litigation the state-STATE may need to pursue in
8 order to require the private utilities to relocate. The STATE shall protect, defend,
9 indemnify, and save harmless the CITY and CITY officers, officials, employees, and
10 authorized agents (while acting in their official capacities) for any claims, costs,
11 demands, judgments, or other liabilities that the CITY or its officers employees or
12 authorized agents may incur that arise out of, result from, are connected to, or are due to
13 the orders to relocate, or to the relocation of, any and all private utilities for the
14 PROJECT

Comment [g138]: City

16 7. DESIGN, PLAN REVIEW AND CHANGE MANAGEMENT

17
18 7.1 The PARTIES agree to work cooperatively with each other and shall make
19 reasonable, good faith efforts to timely and expeditiously complete PROJECT designs

Comment [RF139]: Joint

20
21 7.2 The STATE shall consult the CITY with regard to planning, design and
22 construction of the PROJECT

Comment [RF140]: Joint

23
24 7.3 This Agreement addresses the design and plan review process for SDOT, SCL,
25 and SPU and the process for issuance of the SDOT Street Use Permits; it does not
26 address plan review or permits issued by other departments of the City of Seattle

Comment [g141]: Fire Department -- separate agreement?

27
28 7.4 The PARTIES agree to prepare PROJECT designs and Plan Review Packages,
29 and Release for Construction Submittals pursuant to the provisions established in this
30 Agreement and the procedures defined in Exhibit B

Comment [RF142]: Joint

31
32 7.5 The PARTIES shall mutually prepare PROJECT schedules that afford the
33 PARTIES adequate plan review and comment resolution periods sufficient to promote
34 the quality of design consistent with the provisions of this Agreement

Comment [RF143]: Joint

35
36 7.6 The PARTIES shall conduct reviews of at all stages of design to ascertain that
37 CITY Infrastructure designs, and provisions for PROJECT construction within CITY
38 Street Right-of-Way comply with City-CITY Standards

Comment [g144]: Joint

39
40 7.7 The STATE shall address all CITY plan review comments from each stage of
41 plan review to the PARTIES' mutual satisfaction and incorporate agreed comment
42 resolution into subsequent plan review submittals. [Salary] [1b]

Comment [RF145]: Joint

43 [1b]
44 [Redacted]

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1
2 7.8 The PARTIES shall provide sufficient staff and resources for timely preparation
3 and review of the PROJECT designs.

Comment [RF146]: Joint

4
5 7.9 The CITY shall not give direction to the STATE's consultants or contractors
6 during the design collaboration and design review.

Comment [RF147]: Joint

7
8 7.10 Both Parties-PARTIES shall endeavor to identify and address issues as early as
9 possible during the design process.

Comment [RF148]: Joint

10
11 7.11 The STATE shall obtain the CITY's design approval for all City Infrastructure,
12 and for PROJECT work within City Street Right-of-Way prior to constructing such work.

Comment [RF149]: TBD

13
14 7.12 CITY Infrastructure designs and provisions for PROJECT construction shall
15 comply with City-CITY Standards.

Comment [RF150]: Joint

16
17 7.13 The PARTIES agree that design of CITY Infrastructure shall consider long-term
18 operation and maintenance costs and requirements, and minimize potential interruptions
19 and disruptions to CITY utility customers.

Comment [RF151]: Joint

20
21 7.14 The STATE shall obtain the CITY's approval prior to incorporating any
22 deviations from City-CITY Standards into the design or construction of all City-CITY
23 Infrastructure.

Comment [RF152]: Joint

24
25 7.15 The PARTIES agree that Approved Plans or Released for Construction Submittal
26 for each component of the PROJECT shall be stamped by an Engineer of Record
27 representing the PARTY preparing the Approved Plans pursuant to the requirements of
28 sState law.

Comment [RF153]: Joint - stamped or sealed?

29
30 7.16 The PARTIES shall first obtain the review and concurrence of the CITY prior to
31 making or implementing revisions or deviations from the Approved Plans for any such
32 revisions or deviations pertaining to the following:

Comment [RF154]: Joint

33
34 7.16.1 CITY Infrastructure.

35 7.16.2 PROJECT work that alters or impacts the configuration, condition or
36 use of CITY property including existing and proposed CITY roadway-streets and
37 utility facilities.

38 7.16.3 PROJECT work that alters access to existing and proposed CITY
39 roadways-streets and utility facilities.

40 7.16.4 PROJECT work that alters or impacts private property. [AES: [1b]

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41 [1b]
42 [1b]
43 [1b]
44 7.16.5 PROJECT urban design as established in Section 8.

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1 | 7.16.6 The temporary or permanent use or operation of CITY Street Right-of-
2 | Way including ~~maintenane~~ of traffic control.

3 | 7.16.7 Mitigation measures established by the STATE's review and
4 | determination of PROJECT environmental impacts pursuant to sState and cCity
5 | environmental policy laws.

6 | 7.16.8 Private utilities within CITY Street Rright-of-Wway.

7 | 7.16.9 ~~Private utilities within CITY Street Rright-of-Wway~~ [Salary] [1b]

8 | [1b]

Comment [RF155]: Joint

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9 |
10 | 7.17 The PARTIES acknowledge that the STATE may request the CITY to operate
11 | and maintain certain STATE-owned PROJECT facilities as may be established by
12 | separate agreement. The CITY shall, at the request of the STATE, review the design of
13 | such facilities to determine the compatibility of the design with the CITY's existing
14 | operational capabilities, standard practices, equipment and other resources required to
15 | operate and maintain such facilities.

Comment [RF156]: Joint

17 | 8. URBAN DESIGN

Comment [g157]: WSDOT

18 |
19 | 8.1 The STATE and CITY agree to work together to develop standards that will
20 | promote appropriate urban and architectural design of the PROJECT.

21 |
22 | 8.2 The STATE and CITY have prepared the Bored Tunnel Design Goals and
23 | Objectives which were submitted to the Seattle Design Commission on January 21, 2010
24 | and Guiding Principals which were submitted to the Seattle Design Commission March
25 | 18, 2010 and Building Design Principles which were submitted to the Seattle Design
26 | Commission on February 18, 2010.

27 |
28 | 8.3 The STATE has developed visual guidelines based on these Bored Tunnel Design
29 | Goals and Objectives and Guiding Principles. The visual guidelines include:

- 30 | • Functional transportation and development configurations,
- 31 | • Landscaping concepts,
- 32 | • Architectural and design concepts for walls, bridges and tunnel portals,
- 33 | • Highway appurtenances architectural concepts (ie barrier type, light standards,
34 | sign support types, sidewalk patterns, etc.), and
- 35 | • Trail and plaza architectural concepts.

36 | The visual guidelines were submitted to the Seattle Design Commission for review and
37 | comment. The final visual guidelines were approved by the Seattle Department of
38 | Transportation. The visual guidelines will be used as the basis for the PROJECT design.

39 |
40 | 8.4 The STATE has prepared Building Architectural Design Guidelines based on
41 | Building Design Principals. The Building Architectural Design Guidelines include:

- 42 | • Height and scale, and
- 43 | • Façade treatments, including those that may not fully conform with façade
44 | requirements generally applicable in the zones in which they are located.

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1 The Building Architectural Design Guidelines were submitted to the Seattle Design
2 Commission for review and comment. The Building Architectural Design Guidelines
3 were approved by the Seattle Department of Transportation. The Building Architectural
4 Design Guidelines will be used as the basis for the PROJECT design.

5
6 8.5 Conceptual designs that include building blocking, stacking, façade treatments,
7 façade materials and elevations shall be prepared in accordance with the Building
8 Architectural Design Guidelines and presented to the Seattle Design Commission (SDC)
9 in accordance with chapter 3.58.010 thru 3.59.080 of the Seattle Municipal Code.

Comment [sle158]: Include portal areas

Comment [sle159]: Design/builder will bring draft designs.

10
11 8.6 The STATE shall endeavor to develop designs that incorporate SDC
12 recommendations. The CITY shall verify the STATE's incorporation of SCD
13 recommendations through the CITY review processes set forth in Section 5 in this
14 agreement. [Salary: Section 5 is an incorrect section, please correct.]

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15
16 8.7 If SDOT and WSDOT-STATE cannot come to an agreement on an urban design
17 or architectural issue or the incorporation of a SCD comment, the issue shall be referred
18 to Disputes Resolution in Section 23 of this Agreement.

19
20
21 **9. SCHEDULE**

Comment [W160]: WSDOT

22
23 9.1 The PARTIES will work together to develop Project-PROJECT sSchedule(s) for
24 work associated with the PROJECT whether performed by the STATE or CITY.

Comment [W161]: Joint

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

Comment [RF162]: Joint

29
30 **10. FUNDING AND COMPENSATION**

31
32 10.1 The STATE shall provide necessary funding for all PROJECT costs as defined by
33 this Agreement without reimbursement from the City of SeattleCITY, except for the City
34 of SeattleCITY's cost responsibilities established in this Agreement, in SCL Agreement
35 UT01474, and in SPU Agreement UT 01476. If for any reason PROJECT costs exceed
36 the sState funding limit established by RCW 47.01.402, the STATE shall have the sole
37 responsibility for obtaining any needed additional spending authority without recourse to
38 any funding device that burdens Seattle area taxpayers or property owners or the City of
39 Seattle.

Comment [RF163]: WSDOT

Comment [W164]: City

40
41 10.1.1 The STATE will reimburse SDOT for Project Services through the
42 process provided for in Agreement GCA 5739, entitled Project Services
43 Agreement for State Route 99 Alaskan Way Viaduct and Seawall Replacement
44 Program and SR 519/I-90 Intermodal Access Project – I/C Improvements

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1 (“Project Services Agreement”), and as amended by the PARTIES to modify the
2 process for the STATE’s reimbursement of the CITY and to extend the
3 duration of the Project Services Agreement. The the reimbursement terms for
4 Project Services contained within GCA 5739 are incorporated herein as if fully set
5 forth below. **Salav: please note the inclusion of these terms by reference. I**
6 **would suggest that you identify the GCA 5739 terms by section numbers so**
7 **that there is no confusion.**

Comment [W165]: City

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8
9 10.1.2 The categories of services to be provided by the CITY are: project
10 management, project controls and coordination, design review and consultation, permit
11 development and coordination, right of way services, and services to support construction
12 activities.

Comment [W166]: Joint

13 11. PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES

14
15
16 11.1 The STATE and the CITY agree that it is good public policy to utilize the
17 services of Disadvantaged Business Enterprises in the construction of public works
18 projects, to the fullest extent permitted by law.

Comment [RF167]: Joint

19
20 11.2 In furtherance of the foregoing public policy, the STATE agrees to include
21 Disadvantaged Business Enterprise (DBE) provisions in its construction contracts to the
22 extent required by federal law for the Projects PROJECT under this Agreement.

Comment [RF168]: Joint

23 12. MONITORING

24
25
26 12.1 The STATE will design and implement a comprehensive instrumentation and
27 monitoring program for open cut, cut-and-cover, and tunnel construction, and the develop
28 and action plan for mitigating impacts of Deformation.

Comment [g169]: Joint

29
30 12.2 The STATE will implement a Construction Monitoring Task Force
31 responsible for the planning and implementation of the instrumentation and
32 monitoring program and processing data, evaluating results, and developing
33 recommendations to mitigate Deformation. The Task Force has authority to direct rapid
34 and effective changes in construction to achieve Deformation mitigation.

Comment [g170]: Joint

35
36 12.3 The CITY will advise the STATE and participate in construction monitoring and
37 Deformation management activities when these activities pertain to CITY Infrastructure.
38 The CITY will provide the STATE all necessary access to CITY Infrastructure for the
39 purposes of design or implementation of Deformation mitigation measures. The CITY
40 may perform Deformation mitigation measures on behalf of the STATE in a manner and
41 schedule that supports the STATE’s project-PROJECT requirements.

Comment [g171]: Joint

42 13. MAINTENANCE OF TRAFFIC

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1 13.1 The PARTIES agree that it is the goal of this PROJECT to maintain local
2 motorized and non-motorized traffic in safe corridors through the project-PROJECT area
3 while minimizing impact to the existing street system. To achieve this goal, the
4 PARTIES shall formulate plans to maintain traffic flow during construction of the
5 PROJECT and shall comply with Approved Plans and conditions of the Street Use
6 Permit. [SALAY: [REDACTED] [1b]
7 [1b]
8 [REDACTED]
9 [REDACTED]

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Comment [RF172]: Joint

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10 13.2 The PARTIES agree to develop an outreach plan specifically focused on
11 maintenance-of-traffic issues. This outreach plan will elicit input from affected
12 stakeholders in the vicinity of the PROJECT. Affected stakeholders shall be determined
13 by the PARTIES. [SALAY: [REDACTED] [1b]
14 [REDACTED]

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Comment [RF173]: Joint

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15 13.3 The STATE agrees to create a Maintenance-of-Traffic (MOT) Task Force for the
16 PROGRAM. The CITY agrees to be an active member on the Task Force. [SALAY:
17 [REDACTED] [1b]
18 [REDACTED]

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Comment [RF174]: Joint

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19 13.4 The CITY agrees be a participant in all planning for haul routes, and all haul route
20 traffic shall be regulated pursuant to the Street Use Permit and the provisions of this
21 Agreement. Haul routes and times shall be approved by the CITY prior to the
22 commencement of hauling, and all haul routes shall be along arterial streets designated as
23 major truck streets and must comply with downtown traffic control zone restrictions as
24 defined by the Seattle Municipal Code and implementing regulations.
25 [REDACTED]

Comment [RF175]: Joint

26 **14. CONSTRUCTION MANAGEMENT, INSPECTION AND CONTRACT**
27 **ADMINISTRATION**

28
29 14.1 It is anticipated that the STATE will develop and issue multiple construction
30 contracts to fulfill its PROJECT responsibilities. The STATE's construction contracts
31 will be conducted in accordance with current Washington State Department of
32 Transportation contracting practices.
33 [REDACTED]

Comment [g176]: Joint

34 14.2 The STATE shall act as the sole authority in the administration of the STATE
35 construction contracts. The STATE shall allow the CITY to consult with and make
36 inquiries of the STATE Project Engineer or designee, attend meetings, and have access to
37 documentation concerning the PROJECT. The CITY shall not provide direction, directly
38 or indirectly, to the STATE's consultant(s) or contractors. Except in the instances listed
39 below, the CITY shall direct all communications to the STATE's Project Engineer or
40 designee, including communications regarding compliance with Street Use Permits,
41 quality of construction and contractor performance.
42 [REDACTED]

Comment [g177]: Joint

43 14.3 The STATE will manage any requests from the CITY that have contractual or
44 scope-of-work impacts and will coordinate responses. The CITY will communicate with
[REDACTED]

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1 STATE's consultants or contractors (1) where authorized to do so by the STATE's
2 Designated Representative; (2) to arrange for regulatory permitting and inspections made
3 pursuant to permits issued by the CITY other than the Street Use Permits, e.g. electrical
4 permits or other permits obtained from the CITY by the consultant or contractor; and (3)
5 for the Street Use Permits, if necessary because of a threat to health or safety.

Comment [g178]: Joint

7 14.4 The CITY will provide qualified staff and consultants during construction. CITY
8 staff and consultants will communicate with the STATE Project Engineer or designee in
9 evaluating the conformity of CITY Infrastructure with the Approved Plans or Release for
10 Construction Submittal and will immediately notify the Project Engineer or designee of
11 any compliance issues. Notwithstanding any act or omission by the CITY pursuant to
12 this subsection, the STATE shall not be relieved of any of its authority over, and
13 responsibility for, the PROJECT, as provided for in Section 13.2 of this Agreement or
14 elsewhere in this Agreement. **[Salav: Section 13.2 does not appear to be correct,**
15 **please fix]**

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Comment [g179]: Joint

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17 14.5 The PARTIES agree to follow the process and procedure set forth in the
18 *Construction Management and Inspection Procedures* attached as Exhibit B to facilitate
19 compliance with the STATE and CITY processes. Revisions to the Procedures do not
20 require additional approval beyond execution of this Agreement.

Comment [g180]: Process to address administrative changes to Exhibit will be dealt with in City ordinance.

21 15. FINAL INSPECTION AND PROJECT ACCEPTANCE

22 15.1 The PARTIES agree to follow the process and procedure set forth in the
23 *Construction Management and Inspection Procedures* attached as Exhibit B to facilitate
24 interim and final inspections and acceptance of CITY Infrastructure. Revisions to the
25 pProcedures do not require additional approval beyond execution of this Agreement.

Comment [g181]: Process to address administrative changes to Exhibit will be dealt with in City ordinance.

27 15.2 Following the satisfactory completion of the pre-final and final inspection
28 processes described in the *Construction Management and Inspection Procedures* attached
29 as Exhibit B, the CITY shall submit a written response notifying the STATE that CITY
30 Infrastructure has been constructed in accordance with the Approved Plans and Release
31 for Construction Submittal.

Comment [g182]: Joint

33 15.3 The CITY agrees, upon satisfactory completion of the PROJECT work
34 successfully placing City CITY Infrastructure into operation, transfer and acceptance of
35 any real property on or in which CITY Infrastructure is located, and receipt from the
36 STATE of one color set of the Red-Line Plans, pursuant to Section 165, to deliver a
37 Letter of Acceptance, subject to any Defective Work, Damage or contractor claims
38 caused by the negligent acts or omissions of the STATE.

Comment [g183]: Joint

40 15.4 The PARTIES will execute one Letter of Acceptance for each contract unless
41 both PARTIES agree to phase CITY Infrastructure acceptance by those geographic areas
42 or select portions of the PROJECT in which the STATE has completed all PROJECT

HIGHLIGHTED TEXT = Elevate to Leadership

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1 | work and has satisfied the requirements of Section 14.3. Roadway restoration will not be
2 | considered to be complete until all roadways are fully open to public vehicular and
3 | pedestrian use. **[Salary: Section 14.3 does not seem to be a correct reference, please**
4 | **fix.]**

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Comment [g184]: Joint

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6 | 15.5 In instances where portions of CITY Infrastructure must be placed into the
7 | CITY's use and operation prior to the execution of the Letter of Acceptance, and after the
8 | CITY has determined that these portions of CITY Infrastructure meet with the minimum
9 | inspection and testing requirements necessary for placing the CITY Infrastructure into
10 | use, the CITY will notify the STATE in writing that it is assuming responsibility for and
11 | cost of the interim use and operation of the CITY Infrastructure until the terms of Section
12 | 14.3 are satisfied and the PARTIES execute the Letter of Acceptance. **[Salary: Section**
13 | **14.3 does not seem to be a correct reference, please fix.]**

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Comment [g185]: Joint

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15 | **16. RED-LINES AND RECORD DRAWINGS**

17 | 16.1 The STATE shall maintain red lines in general conformance with WSDOT's
18 | *Construction Manual*, WSDOT manual M4-01. The STATE shall maintain one set of
19 | Approved Plans as the official contract drawings and provisions to which the STATE
20 | shall make drawings and notations in either red ink or red pencil to show the constructed
21 | configuration of all infrastructure that deviates from the design and contract requirements
22 | shown in the Approved Plans as typically recorded per STATE and City of Seattle
23 | standard practices. These documents shall be referred to as the Red-Line Plans.

Comment [RF186]: Joint

25 | 16.2 The Red-Line Plans shall be kept current throughout construction with accurate
26 | and comprehensive information detailing the constructed configuration of the
27 | infrastructure. The Red-Line Plans shall reflect the same level of detail as the Approved
28 | Plans, and shall provide the drawing accuracy necessary for public and private utility
29 | purveyors to locate their respective utilities in accordance with state law.

Comment [RF187]: Joint

31 | 16.3 Prior to placing infrastructure into service during the course of construction, the
32 | STATE shall provide the CITY with color photocopies of portions of the Red-Line Plans
33 | showing the constructed configuration of the infrastructure being placed into service.

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Comment [RF188]: Joint

34 | **[Salary: [REDACTED] [1b]**
35 | **[REDACTED] [1b]**

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37 | 16.4 The PARTIES shall prepare Record Drawings for the work for which they are
38 | responsible under this Agreement with two full scale bond copies plus the digital files of
39 | the Record Drawings within six months after the PARTIES execute the Letter of
40 | Acceptance. The PARTIES shall prepare Record Drawings in general conformance with
41 | the standards of the facility owner.

Comment [RF189]: Joint

43 | 16.5 The Red-Line Plans and Record Drawings will be prepared as described in the
44 | *Construction Management and Inspection Procedures* attached as Exhibit B. Revisions

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1 to the pProcedures do not require additional approval beyond execution of this

2 Agreement | **Salav:** [1b]

3 [1b]

Comment [g190]: Process to address administrative changes to Exhibit will be dealt with in City ordinance.

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6 **17. WARRANTIES**
7 **Warranty of Work**

9 17.1 The STATE warrants for a minimum period of twelve (12) months that all CITY
10 Infrastructure being accepted by the CITY for ownership, operation and maintenance: (1)
11 meet with the requirements of the Approved Plans; and all CITY-approved modifications
12 to the Approved Plans made during the course of construction; (2) are constructed in
13 accordance with CityCITY-issued permits; (3) are free of defects in material and
14 workmanship; and (4) are free of defects in design(s). The warranty of work shall apply
15 to any corrective work required to address non-conforming and Defective Work that is
16 discovered and communicated by the CITY to the STATE within the warranty period.
17 The STATE's warranty of work shall begin following the execution of the Letter of
18 Acceptance of CITY Infrastructure or as otherwise provided in the STATE's contract,
19 whichever occurs later.

Comment [RF191]: Joint

21 17.2 If within the warranty of work period, the CITY discovers and gives written
22 notice to the STATE of non-conforming or Defective Work in the accepted CITY
23 Infrastructure, the STATE shall promptly investigate the work the CITY believes is non-
24 conforming or defective. The STATE shall promptly remedy non-conforming or
25 Defective Work. Disagreements between the CITY and the STATE on what constitutes
26 non-conforming or Defective Work shall be resolved using the dispute resolution process
27 established in Section 232. The STATE shall diligently prosecute the corrective work
28 and shall procure materials using the fastest means available as necessary to minimize the
29 loss of use and operation of the accepted CITY Infrastructure. Corrective work shall be
30 completed within the time frame specified by the CITY and mutually agreed upon by the
31 STATE.

Comment [RF192]: Joint

33 17.3 If, during construction, the CITY encounters an emergency situation caused by
34 non-conforming or Defective Work, it must immediately notify the STATE. The STATE
35 will take immediate corrective action. If, after the warranty period begins, the CITY
36 encounters an emergency situation caused by non-conforming or Defective Work, it may
37 have to immediately correct it. Direct and indirect costs incurred by the CITY,
38 attributable to correcting an emergency situation associated with non-conforming or
39 Defective Work, shall be paid by the STATE to the CITY. **Salav:** [1b]

Comment [RF193]: Joint

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40 [1b]

42 **Transfer of Title and Warranty of Title**

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1 17.4 All right and title to the CITY Infrastructure accepted by the CITY will be
2 transferred by the STATE to the CITY as of the date of the State's STATE's signature
3 acknowledging the CITY's Letter of Acceptance pursuant to the provisions of Section 6.
4 Neither the STATE nor its contractors shall hold a property right in any of the CITY
5 Infrastructure accepted by the CITY for ownership, including the materials and
6 equipment comprising the CITY Infrastructure. [Salay: Section 6 appears to be an
7 incorrect reference, please fix. [1b]

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Comment [RF194]: Joint

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 17.5 The STATE shall warrant good and merchantable title to all materials, supplies,
12 equipment and items installed or incorporated into the accepted CITY Infrastructure. The
13 STATE shall further warrant that all CITY Infrastructure transferred to, and accepted by,
14 the CITY is free from claims, liens and charges.

Comment [RF195]: Joint

15 **Manufacturers' Warranties**

16
17
18 17.6 The STATE shall provide the CITY all manufacturers' and suppliers' guarantees
19 and warranties furnished to the STATE's contractor as a customary trade practice in
20 connection with the contractor's purchase of any equipment, materials, or items
21 incorporated into the CITY Infrastructure. The STATE shall further warrant that it has
22 the right to transfer such warranties and guarantees furnished to the STATE through its
23 construction contract to the CITY and that such transfer shall not adversely affect such
24 warranties and guarantees. These guarantees and warranties shall not relieve the STATE
25 from its obligations under Warranty of Work.

Comment [RF196]: Joint

26
27 **Warranty Inspections**

28
29 17.7 During the warranty period, the CITY shall have the right to inspect the accepted
30 CITY Infrastructure for non-conforming and Defective Work, and will promptly report
31 any such work to the STATE for remedy through corrective work. The CITY shall bear
32 the cost of these inspections.

Comment [RF197]: Joint

33
34 **18. PUBLIC OUTREACH**

35
36 18.1 The STATE agrees to lead and manage the public outreach effort for the
37 PROJECT. In recognition of the CITY's experience in working with the Seattle
38 community, the STATE will solicit CITY input and work with the CITY in all public
39 outreach activities. The STATE will not publicly distribute outreach information,
40 planning materials and documents without first obtaining the CITY's review. However,
41 the STATE shall be free to comply with any public records requests received under
42 chapter 42.56 RCW for such materials; provided that, prior to releasing any sensitive or
43 confidential material, the STATE shall first provide written notice to the CITY in
44 accordance with Section 27 of this Agreement and provisions in the [SCL Agreement,

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1 UT 0174 and the SPU Agreement, UT 0176.] **[Salav: You have referenced two**
2 **additional agreement, but it is unclear as to whether you are attempting to**
3 **incorporate any of those terms into this agreement. The references that you have**
4 **made as to how these prior agreements are to be utilized. If you want specific terms**
5 **incorporated, please do so and add the language that I provided in section 10.1.1]**
6

Comment [RF198]: Joint

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7 **19. RISK ALLOCATION AND INDEMNIFICATION**

8
9 19.1 Limits of Liability

10
11 19.1.1 No CITY Liability for Assistance, Inspection, Review, or Approvals. The
12 review or approval of any of the STATE's PROJECT plans or specifications, or the
13 inspection of the STATE's work, or any assistance provided to the STATE by the CITY
14 is for the CITY's sole benefit and shall not constitute an opinion or representation by the
15 CITY as to any compliance with any law, ordinance, rule, or regulation or any adequacy
16 for other than the CITY's own purposes; and such assistance, inspection, review or
17 approval shall not create or form the basis of any liability on the part of the CITY or any
18 of its officials, officers, employees, or authorized agents for any injury, damage, or other
19 liability resulting from, or relating to, any inadequacy, error, or omission therein or any
20 failure to comply with applicable law, ordinance, rule, or regulation; and such assistance,
21 inspection, review, or approval shall not relieve the STATE of any of its obligations
22 under this Agreement, the SCL Agreement, UT 01474, and the SPU Agreement, UT
23 01476 Agreement or under applicable law. **[Salav: [1b]**

Comment [g199]: Joint

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24 [1b]
25
26
27
28 19.1.2 No CITY Liability for Delay, Consequential, or Liquidated Damages. The
29 CITY shall not be liable in damages for any failure to act within any time limits
30 established by law or for any other delay in issuing permits, other approvals, or
31 concurrences to the STATE or the STATE's contractors, nor shall the CITY have any
32 liability for consequential or liquidated damages, and, to the maximum extent allowed by
33 law, the STATE shall protect, defend, indemnify, and save harmless the CITY, and its
34 officials, officers, employees, and authorized agents, from any and all costs, claims,
35 demands, judgments, damages, or liability of any kind caused by, resulting from, relating
36 to, or connected to delays in issuing permits, other approvals, or concurrences. **[Salav, I**

Comment [g200]: Joint

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37 [1b]
38
39
40
41 19.1.3 No CITY Liability for Third Party Claims of Diminution in Value of
42 Property. The CITY shall not be liable in damages for any third party claims alleging

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1 diminution in value of property, including, but not limited to, claims of elimination or
2 impairment of rights to light and air and quiet enjoyment, or alleging a taking of property
3 rights, nor shall the CITY have any liability for related consequential or liquidated
4 damages, and, to the maximum extent allowed by law, the STATE shall protect, defend,
5 indemnify, and save harmless the CITY, and its officials, officers, employees, and
6 authorized agents, from any and all costs, claims, demands, judgments, damages, or
7 liability of any kind caused by, resulting from, relating to, or connected to the third party
8 claims of diminution in value of property arising out of the PROJECT.

Comment [g201]: Joint

9 19.1.4 STATE Contractor's Bonds. The STATE shall require its construction
10 contractors to provide performance bonds to the STATE and to maintain those bonds at
11 all times pertinent to the respective contractor's obligations under its contracts. The
12 penal sums of those bonds shall be for one hundred percent (100%) of the total contract
13 price, including change orders and other modifications. Such bonds shall be executed by
14 an approved surety that is registered with the Washington State Insurance
15 Commissioner, and that appears on the current Authorized Insurance List in the State of
16 Washington published by the Office of the Insurance Commissioner, and that shall be
17 conditioned upon the faithful performance of the contract by the contractor, and that shall
18 include the City-CITY as an additional named obligee. The STATE shall ensure faithful
19 completion of the PROJECT by use of the STATE's contractor bonds or other means,
20 and in the event of any claim for payment is presented to the CITY for any PROJECT
21 work, the STATE upon timely notice and investigation, resulting in STATE
22 responsibility under this Agreement, the SCL Agreement, UT01474, and the SPU
23 Agreement, UT 01476 shall promptly pay such claim. [b] [b]
24 [b]

Comment [g202]: City

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25 19.2 General Indemnification.

26 19.2.1 Indemnity. To the extent permitted by law, the STATE shall
27 protect, defend, indemnify, and save harmless the City of Seattle and its officers,
28 officials, employees, and authorized agents, while acting within the scope of their
29 employment, from any and all costs, claims, demands, judgments, damages, or liability of
30 any kind, including injuries to persons or damages to property, that arise out of, or in any
31 way result from, or are connected to, or are due to any acts or omissions, or intentional
32 misconduct, of the STATE or the STATE's contractors, consultants, or authorized agents
33 including any and all claims and litigation arising out of, or resulting from, any state or
34 federal environmental review process in any way relating to the PROJECT, and including
35 any private utility relocations required for the STATE's PROJECT work. The STATE's
36 obligations under this paragraph also extend to claims asserted by third PARTIES against
37 the City of Seattle arising out of, or in any way resulting from, any state or federal
38 environmental review process in any way related to the PROJECT or the PROGRAM,
39 and all of the foregoing protection, defense, indemnity and hold harmless obligations
40 shall extend to claims asserted by sState agencies other than the Washington State
41 Department of Transportation. [b]
42 [b]

Comment [g203]:

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[1b]

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[REDACTED]

[Salary: [1b]

Comment [g204]: Joint

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14 19.2.2 The STATE further agrees that the City of Seattle shall have no liability to the
15 STATE, which in any way arises out of the City of Seattle's decision making processes in
16 agreeing to go forward with the PROJECT; however, and the STATE shall not be
17 required to indemnify, defend, or save harmless the City of Seattle if the claim, suit, or
18 action for injuries, death, or damages is caused by the sole negligence-negligent acts or
19 omissions of the City of Seattle. Where such claims, suits, or actions result from the
20 concurrent negligence of the PARTIES, the indemnity provisions provided herein shall
21 be valid and enforceable only to the extent of the STATE's own negligence. In the event
22 of any claims, demands, actions, or lawsuits, the STATE upon notice from the City of
23 Seattle, shall assume all costs of defense thereof, including the reasonable legal fees
24 incurred by the City of Seattle, and of all resulting judgments that may be obtained
25 against the City of Seattle, to the extent of the STATE's liability. In the event that the
26 City of Seattle incurs reasonable attorneys' fees, costs, or other legal expenses to enforce
27 the indemnity provisions of this Agreement, the SCL Agreement UT 01474, and the SPU
28 Agreement, UT 01476, all such reasonable fees, costs, and expenses shall be recoverable
29 by the City of Seattle. Environmental protection and indemnification, as provided
30 elsewhere in this Agreement, shall be in addition to the foregoing general

31 indemnification [Salary: [1b]
32 [1b]

Comment [g205]: Joint

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38 19.2.2 Indemnity. To the extent permitted by law, the City of Seattle shall
39 protect, defend, indemnify, and save harmless the STATE and its officers, officials,
40 employees, and authorized agents, while acting within the scope of their employment,
41 from any and all costs, claims, demands, judgments, damages, or liability of any kind,
42 including injuries to persons or damages to property, that arise out of, or in any way

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

Comment [g206]: Joint

16 19.2.3 Title 51 RCW. Solely with respect to claims for indemnification under this
17 Agreement, including environmental indemnification, the STATE and the City of Seattle
18 waive, as to each other only, and expressly not for the benefit of their employees or third
19 PARTIES, their immunity under Title 51 RCW, the Industrial Insurance Act, and
20 acknowledge that this waiver has been mutually negotiated by the PARTIES. The
21 STATE and the City of Seattle agree that their respective indemnity obligations extend to
22 any claim, demand, or cause of action brought by, or on behalf of, any of their respective
23 employees or authorized agents. The STATE agrees that in the event that any employee
24 or authorized agent of the STATE’s contractors, subcontractors, consultants, or
25 authorized agents asserts a claim against the City of Seattle, the STATE waives any right
26 it may have to assert its Title 51 immunity as a defense against a City of Seattle claim to
27 the STATE that otherwise would be covered by the STATE’s indemnity obligations to
28 the City of Seattle. [Salav: [b] [1b]

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Comment [g207]: Joint

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33 19.2.4 Survival of Indemnification and Waiver Obligations. Any liability of the
34 STATE or the City of Seattle/CITY arising under any indemnity or waiver provision of
35 this Agreement shall survive termination of this Agreement, whether or not any claim
36 giving rise to such liability shall have accrued.

Comment [g208]: Joint

37 **20. INSURANCE**

38
39 20.1 The STATE shall require in writing that the STATE’s contractors, and each of
40 their sub-contractors of any tier where not covered by contractor provided insurance,
41 include “The City of Seattle” as an additional insured for primary and non-contributory
42 limits of liability for Commercial General Liability, Commercial Automobile Liability

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1 and (if required) Contractor's Pollution Liability as established in the construction
2 contract documents, including Products and Completed Operations coverage following
3 the completion of each PROJECT stage. STATE standard insurance specification
4 paragraph 1-07.18 (Public Liability and Property Damage Insurance) applicable to the
5 construction contract documents protecting both the STATE and the CITY for the
6 PROJECT shall be amended for coverages, minimum limits of liability and/or terms and
7 conditions as may be mutually agreed upon by the STATE and the CITY. [Salary: [1b]
8 [1b]

Comment [RF209]: Joint

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10 20.2 The STATE's contractors and subcontractors of any tier shall cause certification
11 of insurance meeting the requirements herein to be issued to "The City of Seattle, Risk
12 Management Division, P.O. Box 94669, Seattle, WA 98124-4669." Such certification
13 shall not be mailed, but shall be delivered electronically to fax number (206) 470-1279 or
14 as an e-mail attachment in PDF format to riskmanagement@seattle.gov.

Comment [RF210]: Joint

16 21. THIRD PARTY BENEFICIARY

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

Comment [g211]: Joint

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

Comment [g212]: City

38 22. LIENS

40 22.1 In the event that any City of Seattle CITY-owned property interest becomes
41 subject to any claims for mechanics', artisans' or materialmen's liens, or other
42 encumbrances chargeable to, or through, the STATE that the STATE does not contest in
43 good faith, the STATE shall cause such lien, claim, or encumbrance to be discharged or
44 released of record (by payment, posting of bond, court deposit, or other appropriate

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1 | means), without cost to the City of Seattle CITY, and shall indemnify the City of
2 | Seattle CITY against all costs and expenses (including attorneys' fees) incurred in
3 | discharging and releasing such claim, lien, or encumbrance prior to completion of the
4 | PROJECT.

Comment [g213]: Joint

5 |
6 | **23. DISPUTE RESOLUTION**

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

Comment [RF214]: Joint

14 |
15 | 23.2 Notice. A Party's PARTY's Designated Representative, as defined in Section 256
16 | below, shall notify the other Party's PARTY's Designated Representative in writing of
17 | any problem or dispute that a Party PARTY believes needs resolution. The written notice
18 | shall include (a) a description of the issue to be resolved; (b) a description of the
19 | differences between the PARTIES on the issue; and (c) a summary of any steps taken to
20 | resolve the issue.

Comment [RF215]: Joint

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

Comment [RF216]: Joint

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

Comment [RF217]: Joint

36 |
37 | 23.5 Second Level Meeting. Upon receiving a written request that the dispute be
38 | elevated to the next level, a meeting shall be held within ten (10) Business Days between
39 | the STATE Project Director of WSDOT and the appropriate City CITY Designated
40 | Representative(s) to resolve the dispute. Any resolution of the dispute requires the
41 | agreement of all Representatives attending the meeting or who requested to attend the
42 | meeting.

Comment [RF218]: Joint

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1 23.6 Notice of Third Level Meeting. If the PARTIES have not resolved the dispute
2 within five (5) Business Days after the Second Level Meeting, at any time thereafter
3 either Party-PARTY may request that the dispute be elevated to the next level by
4 notifying the other Party's-PARTY's Designated Representative in writing, requesting
5 that the dispute be raised to the Third Level Meeting. The written notification shall
6 include a) a description of the remaining issues to be resolved; b) a description of the
7 differences between the PARTIES on the issues, c) a summary of the steps already taken
8 to resolve the issue, and d) the resolution of any issues that were initially involved in the
9 dispute.

Comment [RF219]: Joint

11 23.7 Third Level Meeting. Elevate to the Executive Committee. **[Salary: Executive
12 Committee is not defined in this agreement, do you want to define it here?]**

Comment [RF220]: Joint

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14 23.8 Court of Law. If the PARTIES have not resolved the dispute within five (5)
15 Business Days after the third level meeting, at any time thereafter either Party-PARTY
16 may seek relief under this Agreement in a court of law. The PARTIES agree that they
17 have no right to relief in a court of law until they have completed the dispute resolution
18 process outlined in this Section.

Comment [RF221]: Joint

20 23.9 A Party's-PARTY's request to utilize this Dispute Resolution Process is not
21 evidence that either Party-PARTY is in breach of this Agreement, and does not relieve
22 any Party-PARTY from complying with its obligations under this Agreement.

24. REMEDIES; ENFORCEMENT

26 24.1 Subject to the Dispute Resolution provisions in Section 24.2, the City of
27 Seattle-CITY and the STATE shall have, in addition to any remedies available at law or
28 equity, the right to demand specific performance of this Agreement, the SCL Agreement,
29 01474, and the SPU Agreement, UT 01476. **[Salary: [1b]**

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Comment [RF222]: Joint

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25. NOTICE AND DESIGNATED REPRESENTATIVES

36 25.1 The Designated Representatives for each Party-PARTY are as follows: **Any
37 notice required or permitted to be given pursuant to this Agreement shall be in writing
38 and shall be sent postage prepaid by U.S. Mail to the Designated Representatives.**

40 [STATE];

Comment [RF223]: Joint

41 Program Administrator
42 Alaskan Way Viaduct & Seawall Replacement Program
43 Washington State Department of Transportation
44 999 3rd Avenue, Suite 2424

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1 Seattle, WA 98104
2
3 CITY:
4 SDOT Deputy Director
5 Seattle Department of Transportation
6 P.O. Box 34996
7 700 Fifth Avenue, Suite 3800
8 Seattle, WA 98124-4996
9

Comment [RF224]: Joint

10 **26. EFFECTIVENESS AND DURATION**

11
12 26.1 This Agreement shall be effective as of the date the last Party-PARTY signs and,
13 unless sooner terminated pursuant to the terms hereof, shall remain in effect until final
14 completion of all PARTIES' obligations contained or referred to in this Agreement, the
15 SCL Agreement, UT 01474, and the SPU Agreement, UT 01476.
16

Comment [RF225]: Joint

17 **27. NOTICE**

18
19 27.1 Except for the Dispute Resolution Process in Section 231-above, for which notice
20 shall be given to the officials listed in Section 231, all notices, demands, requests,
21 consents and approvals that may or are required to be given by either Party-PARTY to the
22 other Party-PARTY shall be in writing and shall be deemed to have been duly given (i)
23 upon actual receipt or refusal to accept delivery if delivered personally to the Designated
24 Representative, (ii) upon actual receipt or refusal to accept delivery if sent by a nationally
25 recognized overnight delivery service to the Designated Representative, or (iii) upon
26 actual receipt if electronically transmitted to the Designated Representative with
27 confirmation sent by another method specified in this Section. Notice of a change of
28 Designated Representative or the address for the Designated Representative shall be
29 given as provided in this Section.
30

Comment [RF226]: Joint

31 **28. TERMINATION AND SUSPENSION**

32
33 28.1 This Agreement may be terminated by either Party-PARTY upon sixty (60)
34 calendar days written notice. Said notice shall set forth the reasons for termination,
35 including reasons of convenience, and the effective date of termination. [Salav: [1b]

Comment [RF227]: Joint

36 [Redacted block]

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39
40 28.2 Termination of this Agreement, the SCL Agreement, UT 01474, or the SPU
41 Agreement, UT 01476 shall not relieve the PARTIES of any obligations that are required
42 to be performed prior to the date of termination, nor shall it relieve the PARTIES of any
43 obligations that are intended to survive termination of this Agreement, the SCL

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GREEN HIGHLIGHT = Staff to resolve

Joint
042310

1 Agreement, UT 01474, or the SPU Agreement, UT 01476. Further, the PARTIES agree
2 that, in the event the STATE exercises its right to terminate pursuant to this Section after
3 construction of the PROJECT begins, **or if the STATE suspends the work or materially**
4 **delays the work** then the STATE, at its cost and expense, shall modify the PROJECT, in
5 consultation with the CITY, to provide for the restoration, continued service, operation,
6 and maintenance of existing infrastructure, PROJECT infrastructure, CITY Street right-
7 of-way, or any other CITY property or facility, and the STATE shall ensure that the
8 modified PROJECT is completed. The STATE shall also ensure that all SPU and SCL
9 utility services can continue to be provided by SPU and SCL either in substantially the
10 same manner as occurred prior to the initiation of work, or in the manner intended by the
11 proposed work, unless otherwise agreed to by the affected utility.

Comment [RF228]: City

Comment [RF229]: City

29. CONFIDENTIALITY OF INFORMATION AND RECORDS

15 29.1 It is understood that certain information about the infrastructure is deemed by the
16 CITY to be sensitive and may be confidential under state or federal law. The STATE
17 agrees that all documents and information collected from field activities known to include
18 confidential information will be maintained in a locked file at the project office and
19 access will be controlled by its consultants. Furthermore, confidential information will
20 only be provided to the selected contractor in conformed documents following contract
21 award if such information is considered necessary for construction. The CITY will
22 provide clear written guidelines that specifically define the information that is deemed
23 sensitive and/or confidential.

Comment [RF230]: Joint

25 29.2 Should any of those confidential or sensitive documents become the subject of a
26 request for public disclosure under chapter 42.56 RCW, the STATE shall use its best
27 efforts to immediately notify the CITY of such request and the date by which the STATE
28 anticipates responding, which date shall in no event be less than fifteen (15) calendar
29 days after STATE's first notice of the disclosure request to the CITY. The CITY must
30 then within a reasonable time of receipt of said notice in writing to the STATE (a)
31 specifically identify each record, or part thereof, and (b) fully explain why such
32 records(s) are exempt from disclosure under chapter 42.56 RCW or any other law so that
33 the STATE may respond to the records requester. The STATE shall withhold or redact
34 those public records which the CITY reasonably claims are exempt from disclosure based
35 upon the CITY's information. The CITY at its sole expense may seek a judicial
36 declaration or injunction with respect to the public records request. The CITY further
37 agrees that it will, at its sole expense, defend the non-disclosure of that information it
38 claims is exempt from disclosure and indemnify the STATE for any and all penalties
39 assessed and costs that the STATE incurs, if any.

Comment [RF231]: Joint

41 29.3 The provisions of this Section shall survive the termination of this Agreement.

43 30. GENERAL PROVISIONS

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GREEN HIGHLIGHT = Staff to resolve

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1 30.1 This Agreement shall be effective independently from any and all permits that
2 may be issued by the CITY.

Comment [RF232]: Joint

3 30.2 Each PARTIES PARTY shall ensure that its employees, agents, and contractors
4 comply with the obligations of this Agreement.

Comment [RF233]: Joint

5 30.3 The PARTIES shall not be deemed to be in default under this Agreement if
6 performance is rendered impossible by war, riots, or civil disturbances, or by floods or
7 other natural catastrophes beyond the PARTIES' control; the unforeseeable unavailability
8 of labor or materials; or labor stoppages or slowdowns or power outages exceeding back-
9 up power supplies. This Agreement shall not be terminated or the PARTIES penalized
10 for such noncompliance, provided that each Party PARTY takes immediate and diligent
11 steps to bring itself back into compliance and to comply as soon as practicable under the
12 circumstances without unduly endangering the health, safety, or integrity of the Party's
13 PARTY's employees or property, or the health, safety, or integrity of the public, street
14 rights-of-way, public property, or private property.

Comment [RF234]: Joint

15 30.4 This Agreement, including the definition of the PROJECT as more particularly
16 described in the Project Description attached as Exhibit A, may be amended only by a
17 written instrument, duly authorized by the CITY and the STATE, and executed by their
18 duly authorized representatives.

Comment [RF235]: Joint

19 30.5 No failure to exercise, and no delay in exercising, on the part of either Party
20 PARTY hereto, any rights, powers, or privileges hereunder shall operate as a waiver
21 thereof, except as expressly provided herein.

Comment [RF236]: Joint

22 30.6 This Agreement, together with the GCA 6366, the SCL Agreement No. [UT 01474
23 and the SPU Agreement No., UT 01476], with the attached Exhibits and the documents,
24 terms and provisions incorporated in any of the foregoing, constitute the entire
25 Agreement of the PARTIES with respect to the PROJECT, and supersede any and all
26 prior negotiations and understandings with respect hereto.

Comment [RF237]: Joint

27 30.7 Section and subsection headings are intended as information only, and shall not
28 be construed with the substance of the section or subsection they caption.

Comment [RF238]: Joint

29 30.8 All exhibits or other attachments are by this reference hereby incorporated into
30 this Agreement, including Agreements UT 01474 and UT 01476.

Comment [RF239]: Joint

31 30.9 This Agreement may be executed in counterparts, each of which shall be deemed
32 an original, and all counterparts together shall constitute but one and the same instrument.

Comment [RF240]: Joint

33 30.10 The [REDACTED] acknowledge the right of the other to exercise its police power
34 pursuant to general law and applicable statutes for the protection of the health, safety, and
35 welfare of its citizens and their properties. Nothing in this Agreement shall be construed
36 as waiving the [REDACTED] rights to exercise its police power or to preclude

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exercising such regulatory power in connection with this PROJECT. [Salary: [b]]
[b]

Comment [g241]: Confirm change with attys.

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

Comment [RF242]: Joint

31. RECORDS RETENTION AND AUDIT

THIS SECTION TO BE PREPARED BY Karen.

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

CITY OF SEATTLE

WASHINGTON STATE
DEPARTMENT OF
TRANSPORTATION

By _____
Peter E. Hahn
Director of Transportation
City of Seattle

By _____
Ronald J. Paananen
Program Administrator
Alaskan Way Viaduct and Seawall
Replacement Program

Date: _____

Date: _____

APPROVED AS TO FORM:

By _____
Elizabeth M. Lagerberg
Assistant Attorney General

Date: _____

ATG MI TPC TRANSFER

From: Greco, Theresa [GrecoT@wsdot.wa.gov]
Sent: Thursday, June 17, 2010 12:57 PM
To: Brown, Bryce (ATG); Lagerberg, Elizabeth (ATG); Galvin, Daniel (ATG); Salay, Ann (ATG)
Cc: Farley, Kimberly
Subject: GCA 6486 SDOT; UT 01474 SPU; UT 01476 SCL - Final Drafts from City- 6-15-10
Attachments: 2_SPU 6-15-10 Exhibit A - Easement Deed.docx; 3_Exhibit B for Franchise-Utility Permit 6-15-10(1).docx; 5_UT 01476 Exhibit C - Non-Disclosure-AgreementTemplate.pdf; 5_SDOT MOA 6-15-10 Exhibit B Procedures.docx; 6_Exhibit C - Task Order Template 6-15-10.doc.doc; 4_Exhibit A Bored Tunnel MOA Project Description.docx; 2_SDOT_MOA_6-15-10.docx; 3_Elevated City proposed language 6 15 10.docx; 1_WSDOT-SDOT_Agreements Transmittal_Ltr.pdf; 1_SCL MOA 6-15-10.docx; 2_SCL Exhibit A - Easement Deed.docx; 3_Exhibit B for Franchise-Utility Permit 6-15-10.docx; 4_SCL MOA 6-15-10 Exhibit C Cover.docx; 1_SPU MOA 6-15-10.docx

Good afternoon to all. Attached is the package of agreements between AWW and the City....finally. Our sincere thanks to each of you in this long endurance test. I know Bob Powers transmitted the package to the Mayor's office and I know the Council has a courtesy copy.

Take care.

Theresa

From: McIntosh, Hannah [mailto:Hannah.McIntosh@seattle.gov]
Sent: Tuesday, June 15, 2010 6:25 PM
To: Paananen, Ron; Powers, Bob; Enright, Kelly; Deboldt, Linda
Cc: Greco, Theresa; Patterson, Gavin; Rian, Jodi; Coordination, AWWUtilities
Subject: State-City SR 99 Agreements Package - 6-15-10

Ron, Bob, Kelly and Linda,
Please find attached the final staff drafts of the SCL, SPU and SDOT agreements with WSDOT and a transmittal letter and attachment. A detailed list of attachments is below.

Thank you,

Theresa and Hannah

The SDOT package includes:

1. SDOT-WSDOT MOA
2. Exhibit A – Project Description
3. Exhibit B – Procedures
4. Exhibit C – Task Order Template

The SCL package includes:

1. SCL-WSDOT MOA
2. Exhibit A – Easement Deed
3. Exhibit B – Franchise-Utility Permit Provisions
4. Exhibit C – Non-disclosure Agreement Template and cover page

The SPU package includes:

1. SPU-WSDOT MOA
2. Exhibit A – Easement Deed
3. Exhibit B – Franchise-Utility Permit Provisions

*** eSafe2 scanned this email for malicious content ***

*** IMPORTANT: Do not open attachments from unrecognized senders ***

MEMORANDUM OF AGREEMENT

UT 01474

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

EXHIBIT A
EASEMENT DEED
TEMPLATE

(Permanent Easement - ~~WSDOT~~ to City of Seattle, SPU)

AFTER RECORDING RETURN TO:

ATTN: ~~REAL ESTATE SERVICES~~
DEPARTMENT OF TRANSPORTATION
P.O. BOX 4 7338
OLYMPIA, WA 98504 7338

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

Document Title: Easement Deed
Reference Number of Related Document:
Grantor(s): ~~State of Washington~~
Grantee(s): City of Seattle
Legal Description: TBD
Additional Legal Description is on Page ___ of document
Assessor's Tax Parcel Number: TBD

EASEMENT DEED

SR 99, ~~_____ S. Atlantic St. Vic. to S. Dearborn St.~~ [insert summary description of vicinity]

This NON-EXCLUSIVE PERMANENT EASEMENT is made this _____ day of _____, 20___, between, ~~the State of Washington, Department of Transportation~~, hereinafter referred to as the Grantor and the City of Seattle, a municipal corporation, acting through and by Seattle Public Utilities, hereinafter referred to as the Grantee, pursuant to Agreement No. ~~UT-1393-01474~~ between the parties; WITNESSTH:

That the Grantor, for and in consideration of the sum of TEN DOLLARS AND NO/100, (\$10.00) and other good and valuable consideration, receipt of which is hereby acknowledged,

RES 413

Page 1 of 7

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hereby conveys and grants to the Grantee, its successors and assigns, a non-exclusive permanent easement over, under, upon and across the hereinafter described lands and premises.

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

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

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

A. Purpose and Uses

1. As used in this Section A, "Grantor" shall include Grantor's employees, contractors, tenants, lessees, agents, invitees, consultants, successors and assigns. As used in this Section A, "Grantee" shall include Grantee's employees, contractors, agents, invitees, consultants, successors and assigns.
2. Grantee shall have the right to use the Easement Area to install, construct, alter, repair, operate, improve and maintain water, sewer or drainage infrastructure including appurtenances (collectively hereinafter "Utility Facilities") and the right at any time to remove all or any part of said Utility Facilities from said lands.
3. Grantee's Access. Grantee shall have twenty-four hour access to the Easement Area across, over or from Grantor's property for the purposes and uses stated above. Grantee's rights of ingress and egress shall include the right to limit or eliminate parking in the vicinity of the Easement Area in order to facilitate necessary and convenient access to the Utility Facilities.
4. Utility Facilities. Without limiting the generality of the purpose and use stated above, Grantee, at its own expense, shall have the right to replace any of the Utility Facilities within the Easement Area with utility facilities of the same or larger diameter and capacity and to install additional or replacement utility facilities within the Easement Area.
5. Grantee shall have the right without prior institution of any suit or proceeding at law, at such times as may be necessary, to enter upon said Easement Area for the purposes herein described, without incurring any legal obligation or liability therefor.
6. Restoration of Easement Area. Grantee will restore the Easement Area following any maintenance, repair, replacement or construction of the Utility Facilities, to match the Easement Area's existing condition, prior to Utility Facilities construction,

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

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

B. Grantor's Obligations and Activities in Easement Area

1. As used in this Section B, "Grantor" shall include Grantor's employees, contractors, tenants, lessees, agents, invitees, consultants, successors and assigns. As used in this Section B, "Grantee" shall include Grantee's employees, contractors, agents, invitees, consultants, successors and assigns.
2. Subject to the conditions set forth below, Grantor shall have the right to use the Easement Area in any way and for any legal purpose, including the granting of utility franchises, not inconsistent with the rights herein granted to Grantee and the terms and conditions of this Easement Deed.
3. Grantor hereby agrees that no building, fence, wall, rockery, trees, shrubbery or obstruction of any kind shall be erected or planted, or any fill material placed within the boundaries of said Easement Area without prior written permission of the Grantee.
4. Grantor shall not nor permit others to place any fill material over Utility Facilities within the Easement Area without Grantee's prior written approval. Such approval may not be unreasonably withheld, but may include such restrictions and conditions as are appropriate to protect existing and future planned Utility Facilities.
5. If Grantor intends to either carry out construction work in the Easement Area, or permit others to do so, Grantor shall request Grantee's approval by submitting detailed work plans to Grantee no less than ninety (90) days prior to the commencement of the proposed work. Grantee shall provide said approval, including such restrictions and conditions as reasonably appropriate to protect any Utility Facilities and operations, including future planned utility facilities, or written objections, specifying the grounds therefore, within thirty (30) days of submittal of Grantor's work plans. Grantee's authorization shall not be unreasonably denied and, but may include such restrictions and conditions as are appropriate to protect existing and future planned Utility Facilities.

6. In the event Grantor erects or plants any building, fence, wall, rockery, trees, shrubbery or obstruction of any kind in the Easement Area in violation of Section B.3 or places fill material over Utility Facilities in violation of B.4., Grantee shall have the right to remove the same at the Grantor's expense. In the event such improvements are destroyed or damaged by Grantee or its Utility Facilities, Grantee shall not be responsible for the restoration or repair of such improvements.
7. Grantor hereby agrees that no other utility facilities, whether public or private, will be installed within five (5) horizontal feet of the Utility Facilities. All utility crossings must maintain a minimum vertical clearance of no less than eighteen (18) inches from the Utility Facilities. Where possible, sewer and storm drains shall be laid at a lower invert elevation than water mains.
8. Grantor shall not blast or discharge any explosives within 50 feet of the Easement Area, nor permit the same, without prior written permission of the Grantee.
9. Parking of vehicles or storage of materials over water meter or valve boxes is not allowed.

C. Indemnification

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

D. Compliance with Laws

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

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

E. Venue

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

the Superior Court for King County, Washington.

Dated at Olympia, Washington, this _____ day of _____, 20_____

~~STATE OF WASHINGTON~~ GRANTOR

~~[Insert signatory's name]~~ Paula J. Hammond, P.E.
Secretary of Transportation

APPROVED AS TO FORM:

By: _____
~~Assistant Attorney General~~

REVIEWED AS TO FORM:

By: _____
~~(Variable 10)~~

CITY OF SEATTLE, Seattle Public Utilities
a municipal corporation

By: _____
Authorized Signatory Date

RES 413 Page 5 of 7 IC#
RES 413 Page 2 of 8 Pages I.C. #

STATE OF WASHINGTON)

) : ss

County of ~~Thurston~~ _____)

On this _____ day of _____, 20____, before me personally appeared ~~Paula J. Hammond, P.E.,~~ _____ Grantor, known to me as the ~~Secretary of Transportation, Washington State Department of Transportation,~~ and executed the foregoing instrument, acknowledging said instrument to be the free and voluntary act and deed of the State of Washington, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

Given under my hand and official seal the day and year last above written.

Notary (print name) _____

Notary Public in and for the State of Washington, residing
at ~~Olympia~~ _____

My Appointment Expires _____

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Attachment-Exhibit A

Easement Area:

~~TTD~~[Insert legal description of the Easement Area]

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RES 413

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Page 2 of 8 Pages

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Proposed Franchise/Utility Permit Conditions for Utility Facilities located within Limited Access areas designated for the AWVSRP – SCL and SPU.

Introduction

Below are the terms and conditions that will apply to Franchises / Utility Permits issued to SCL and SPU associated with areas designated new Limited Access Facility for the Proposed Bored Tunnel Project (Project).

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The exact location of the Limited Access limits is still not completely defined, and SPU and SCL will likely have pre-existing infrastructure that will fall within the Limited Access area. In addition, there are utilities that will be replaced or relocated that may be installed in areas of Limited Access, though there is a strong preference to limit these occurrences. The Franchise/Utility Permit conditions outlined below would not apply to the building of utility new facilities within the Limited Access areas.

Comment [kaf1]: This sets the context for where the permit example will apply.

Comment [P2]: Why not? How would these new utility facilities be permitted? An additional permit? Won't this get confusing over time? Linda De Boldt

Utility Permit Example Conditions

The Washington State Department of Transportation ("STATE") hereby grants to the ("CITY") the non-exclusive permission to use a portion of the _____, situated in Seattle, Washington. The rights herein granted are subject to all other easements and permits affecting the lands subject to this Permit.

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1. **Background.** The Proposed Bored Tunnel Project (Project) replaces State Route 99 from South Royal Brougham Way to Roy Street and consists of designing and constructing a four-lane bored tunnel from South King Street to Thomas Street; north and south tunnel portals and access streets; re-establishment of the City/CITY street grid in the vicinity of the portals; and associated utility relocations. The Project is located in Seattle, which is a very densely developed urban environment, with utility infrastructure that has been woven into the fabric of the city/CITY. There is no alternative but to have the portals associated with the Project emerge into city/CITY street right of way where CITY owned Utility Facilities currently reside. The cost of purchasing right of way outside of these CITY streets is prohibitive, and the STATE has no choice but to declare portions of the CITY right of way as a Limited Access Facility as part of this Project. This Permit addresses the situation where CITY owned Utility Facilities will have to be modified, incorporated, or replaced in newly-designated Limited Access Facility, which was once CITY street right of way that formed part of State/STATE Route 99 as provided in RCW 47.24.010 and RCW 47.24.020. The STATE has endeavored to limit the scope of instances where CITY-owned Utility Facilities are relocated into Limited Access Facility or where the Limited Access Facility incorporates existing CITY-owned Utility Facilities.

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2. **Purpose.** The purpose of the Permit is to provide for the location, operation, maintenance, replacement, modification, and repair of all existing CITY Utility Facilities, including, but not limited to, wires, pipelines, fibers, cables, communications devices and associated facilities and equipment both at or below-grade owned by the CITY. The location of the Utility Facilities is within portions of the areas legally described in Exhibit A, and depicted on Exhibit B, each of which is attached and incorporated by reference.

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3. **Reservation.** This Permit shall not be deemed or held to be an exclusive one and shall not prohibit the STATE from granting rights of like or other nature to other public or private utilities, nor shall it prevent the STATE from using any of its roads, streets, or public places, or affect its right to full supervision and control over all or any part of them, none of which is hereby surrendered.

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4. Term. The Permit shall have a duration of fifty (50) years, and shall be renewed upon request in writing to the STATE and shall contain the same terms and conditions as this permit, unless otherwise requested by the City and approved by the State, and unless the City permanently removes and/or abandons all Utility Facilities from Limited Access areas, The Permit, and shall be transferable to any third party fulfilling the function of CITY, and the third party shall have all of the same rights, obligations, and benefits herein provided to CITY.

Comment [kaf3]: This what we agreed to on Thursday.
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5. Permitted Users. The STATE acknowledges that CITY may choose to allow its agents, contractors, employees, lessees, successors and assigns use of the lands subject to this Permit for the intended purpose. The rights, title, privileges and authority hereby granted in this Permit shall continue and be in force until such time as the CITY, its successors and assigns, shall permanently remove all Utility Facilities from the area or permanently abandon the Utility Facilities.

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6. Relocation of Utility Facilities. Due to the fact that there may be are no reasonable alternative locations within which to relocate the CITY-owned utility facilities, and further due to the STATE's obligations to mitigate damages and limit Project costs, there may be a need to relocate the CITY-owned Utility Facilities within the STATE's Limited Access Facility. Whenever necessary for the construction, repair, improvement, alteration, or relocation of any portion of Project in Limited Access as determined by the STATE, or if the STATE shall determine that the removal of any or all Utility Facilities from the said lands is necessary, incidental, or convenient to the construction, repair, improvement, alteration, or relocation of the any public road or street located in tehhe StateSTATE's Limited Access Facility, the CITY shall, upon written notice by the STATE, which will be given three years in advance of the needed relocation, relocate or remove any or all of such Utility Facilities from the Limited Access Facility XXX as may be required by the STATE. The STATE agrees to pay the full reasonable costs of such relocations and agrees to give the CityCITY 3 years advance notice of the needed relocations in order for the CityCITY to adequately plan, design and construct the relocations. In the event CITY fails to remove or relocate the utility-Utility facilities-Facilities within a reasonable time, the STATE may undertake such removal or relocation, at the sole expense of the STATE and with all necessary coordination with the CityCITY.

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Comment [kaf4]: Has to have this language if we are to be allowed to pay for a potential future move on the State's dime.
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7. Maintenance, Replacement, Repair, and Modification. All maintenance, replacement, repair, and modification of the Utility Facilities by CITY, for that area depicted on Exhibit B, shall be done in such manner as will cause the least interference with any of the STATE's performance in the operation and maintenance of XXX. All costs for such work shall be at the sole expense of the CITY, unless the need for such work is caused by the STATE. Any replacement or modification of existing Utility Facilities, within the area depicted on Exhibit B, that require the placement of above-ground facilities, shall require the issuance of an additional new-Utility Permit by the STATE for such construction of above-ground facilities., which permit shall not be unreasonably withheld, and shall conform with the Control Zone guidelines referenced in WAC 468-34-170 and WAC 468-34-350.

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8. Restoration of Highway. Except as set forth in paragraph 5-6 above, the CITY agrees, at its own expense, to restore paving, grading, landscaping and other improvements damaged by CITY's activities under this Permit to at least as good a condition as such paving, grading, landscaping and other improvements were in immediately prior to the CITY's commencement of work. All material and workmanship shall conform to the Washington State Department of Transportation Standard Specification for Road, Bridge and Municipal Construction, as it may exist at that time, and may be subject to inspection by the STATE. Upon failure, neglect, or refusal of the CITY to timely restore the highway as required of the CITY, the STATE may undertake and perform such restoration, at the sole cost and expense of the CITY.

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Comment [kaf6]: We agreed to this Thursday.
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9. Emergency Access to CITY-Owned Utility Facilities. In the event of an emergency, the CITY will have 24 hour access to CITY-owned Utility Facilities located in STATE Limited Access. In an emergency, the STATE shall cooperate with the requests of the CITY, to facilitate CITY's response to the situation in order to protect the public health, safety and welfare. In situations of non-emergency, the CITY will have access to CITY-owned Utility Facilities as outlined in paragraph 10.

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10. Construction and Maintenance of Utility Facilities in Non-Emergency Situations.

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A. Except in an emergency, no work provided for herein shall be performed until the CITY is authorized by the following STATE representative: XXXXXX. The CITY shall submit work plans depicting the work to be performed by the CITY. WSDOT will respond within five business days.

Comment [P7]: SPU is concerned that historically a WSDOT Highway Permit can take months to obtain, which is unduly onerous, especially in the case of maintenance. If th ... [10]
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B.

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C.A. The CITY has the right to install, construct, alter, repair, operate, improve and maintain all CITY-owned Utility Facilities, including appurtenances associated with this Permit. The CITY has the right to replace any of the permitted Utility Facilities with facilities of the similar size or configuration, in the same location as the originally-permitted Utility Facilities without requesting a change to this Permit.

Comment [ka8]: This is the permit. Thr ... [11]
Comment [P9]: I can see why this paragraph ... [12]

D.B. The CITY shall provide the STATE fifteen (15) business days written notice prior to commencement of maintenance activities under this Permit, and at least forty-five (45) business days written notice prior to commencement of construction activities under this Permit. In both cases, the CITY shall submit to the STATE work plans depicting the work to be performed by the CITY, and shall coordinate with the STATE (WSDOT NW Region Maintenance Engineer anticipated coordination through State representative XXXXX) during these time periods. WSDOT will respond with comments within five (5) business days. The STATE will make all reasonable effort to provide a letter of authorization to the CITY within fifteen (15) business days for maintenance activities and sixty (60) business days for construction activities.

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E.C. Prior to the beginning of construction, a preconstruction conference shall be held, at which time the STATE, the CITY, and appropriate engineers and inspectors shall be present.

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F.D. A copy of this Permit must be posted on the job site, and protected from the elements, at all times during any construction authorized by this Permit.

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G.E. In the event any milestone, right of way marker, fence or guard rail is located within the limits of CITY's construction and will be disturbed during construction, these items will be carefully removed prior to construction and reset or replaced at the conclusion of construction to the satisfaction of the STATE. All signs and traffic control devices must be maintained in operation during construction.

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H.F. Prior to construction, the CITY shall contact the STATE representative to ascertain the location of survey control monuments within the project limits. In the event any monuments will be altered, damaged or destroyed by the project, appropriate action will be taken by the STATE, prior to construction, to reference or reset the monuments. Any monuments altered, damaged or destroyed by the CITY's operation will be reset or replaced by the STATE at the sole expense of the CITY.

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Comment [ka12]: This is standard language.
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I.G. During the construction and/or maintenance of the utilities, the CITY shall comply with the "Manual on Uniform Traffic Control Devices for Streets and Highways" as it may exist at that time, as well as any applicable Washington statutes or regulation. Any closure or restriction of the Limited Access Facility requested by the CITY pursuant to this Permit shall require the CITY to submit a traffic control plan for the STATE's timely approval. The timely approval will be commensurate with the scope of the work proposed. Except in case of emergency, no work pursuant to this Permit can be performed on the XXX until the STATE has approved the traffic control plan.

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Comment [kaf13]: XXX was supposed to be a more defied description of the Limited Access limits, and since we didn't have the exact words, we used XXX. Other comments used XXX for some other reason that I didn't understand, and so I struck those instances.

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J.H. Should the CITY choose to perform the work outlined herein with other than its own forces, a representative of the CITY shall be present at all times unless otherwise agreed to by the STATE representative. All contact between the STATE and the CITY's contractor shall be through the representative of the CITY. Where the CITY chooses to perform the work with its own forces, it may elect to appoint one of its own employees engaged in the construction as its representative. Failure to comply with this provision shall be grounds for restricting any further work by the CITY within the STATE right of way until said requirement is met. The CITY, at its own expense, shall adequately police and supervise all construction work by itself, its contractor, subcontractor, agent, and others, so as not to endanger or injure any person or property.

K.I. Except in an emergency or unless authorized by the STATE, work shall be restricted to between the hours of 9:00 a.m. and 3:30 p.m. and the hours of 7:00 p.m. and 5:00 a.m., and not work shall be allowed on the right of way on holidays.

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L.J. All trenches, boring or jacking pits, etc., shall be backfilled as soon as possible and not left open during non-working hours unless covered with material of sufficient strength to withstand traffic loads, or protected by an alternate method approved by the STATE.

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M.K. All slopes, slope treatment, top soil, ditches, pipes, etc., disturbed by this operation shall be restored to their original cross section and condition. All open trenches shall be marked by warning signs, barricades, lights, and if necessary, flagmen shall be employed for the purpose of protecting the traveling public.

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N.L. The responsibility of the CITY for proper performance, safe conduct, and adequate policing and supervision of the work shall not be lessened or otherwise affected by STATE approval of plans, specifications, or work or by the presence at the work site of STATE representatives, or by compliance by the CITY with any requests for recommendations made by such representatives.

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Comment [P15]: Compromise and say 60 days?

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O...

11. STATE's Construction and Maintenance of XXX. The STATE shall inform the CITY in writing no less than forty-five (9045) days in advance of planned work to coordinate with the CITY regarding the planned STATE work. Such writing shall include submittal of the STATE's work plans.

A. In the event that construction and maintenance of XXX within the proximity of the CITY-owned Utility Facilities becomes necessary, it is expressly understood that, upon request from the STATE's representative, the CITY will promptly identify and

locate by suitable field markings any and all of their underground Utility Facilities in accordance with RCW 19.122.030.

A.
B. The CITY shall provide comments and requests in writing to the STATE regarding the STATE's planned work within ~~thirty-five (15)~~ ~~(30)~~ business days of submittal of the STATE's work plans for maintenance activities, and within forty five (45) business days for construction activities. The STATE shall endeavor to resolve and incorporate CITY comments, and will coordinate with the CITY regarding their comments and concerns.

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B. The CITY may have an on-site inspector, as it deems necessary, during any excavation or construction work within the permitted area. The inspector shall have complete access to area work and be timely informed of all relevant construction timelines associated with such work.

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C.
D. CITY Construction Guidelines will be followed when considering the placement of other utility facilities in the vicinity of CITY-owned Utility Facilities. No other utility facilities, whether public or private, will be installed within five (5) horizontal feet or eighteen (18) vertical inches of the utility facilities without informing and coordinating with the CITY. Where possible, sewer and storm drains shall be laid at a lower invert elevation than water mains.

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D.
E. No permanent structure will be erected or permitted within the area without coordination with the CITY.

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E.
F. No construction of buildings, fences, walls, or placement of trees, shrubbery, obstruction, or fill material will be placed within the boundaries of area covered by this permit without prior notification and coordination with the CITY. No digging or other construction activity will be undertaken adjacent to the CITY-owned Utility Facilities without prior notification and coordination with the CITY.

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F.
G. No blasting or discharge of any explosives will be undertaken within 50 ft of CITY-owned Utility Facilities without prior notification and coordination with the CITY.

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12. Hold Harmless/Indemnification. The CITY, its successors and assigns agree to indemnify, defend and hold the STATE, its officers and employees harmless from all claims, demands, damages, expenses or suits that: (1) arise out of or are incident to any negligence by the CITY, its agents, contractors or employees in the use of the highway right of way pursuant to this Permit, or (2) are caused by the breach of any of the conditions of the Permit by the CITY, its contractors, agents or employees. Nothing herein shall require the CITY to indemnify and hold harmless the STATE and its officers and employees from claims, demands, damages, expenses or suits based solely upon the conduct or negligence of the STATE, its agents, officers, employees and contractors; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the STATE, its agents, or employees, and (b) the CITY, its agents or employees, including those actions covered by RCW4.24.115, the foregoing obligations shall be valid and enforceable only to the extent of CITY's negligence. [The] STATE, its successors and assigns, agree to indemnify, defend and hold the CITY, its officers and employees harmless from all claims, demands, damages, expenses or suits that: (1) arise out of or are incident to any negligence by the STATE, its agents, contractors or employees in the use of the highway right of way pursuant to this Permit, or (2) are caused by the breach of any of the conditions of the Permit by the STATE, its contractors, agents or employees. Nothing herein shall require the STATE to indemnify and hold

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Comment [kaf16]: Fine.
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harmless the CITY and its officers and employees from claims, demands, damages, expenses or suits based solely upon the conduct or negligence of the CITY, its agents, officers, employees and contractors; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CITY, its agents, or employees, and (b) the STATE, its agents or employees, including those actions covered by RCW 4.24.115, the foregoing obligations shall be valid and enforceable only to the extent of STATE's negligence.

In Witness whereof, the parties have executed this Permit as of the _____ day of _____ 2010.

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Accepted on Behalf of XXXXX

STATE OF WASHINGTON
Department of Transportation

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By: _____

By: _____

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Page 3: [10] Comment [P7] PatterG 6/14/2010 11:10:00 PM

SPU is concerned that historically a WSDOT Highway Permit can take months to obtain, which is unduly onerous, especially in the case of maintenance. If the conditions of this document are agreeable, they are intended to cover this eventuality.

Page 3: [11] Comment [kaf8] Kimberly Farley 6/15/2010 10:52:00 AM

This is the permit. Through the process outlined in the permit, we give Utilities authorization to do work in our operating highway – remember this is after construction on a tolled Limited Access highway.

Page 3: [12] Comment [P9] Peter 6/15/2010 2:35:00 PM

I can see why this paragraph was problematic to City staff. See addition in "B" below>

Page 3: [13] Comment [P10] Peter 6/15/2010 2:36:00 PM

City wanted 5 days, State wanted 15 days; how about we compromise and say 10 days?

Page 3: [14] Comment [P11] PatterG 6/14/2010 11:10:00 PM

Not realistic many years from now. If this is very important, how else might we meet State needs?

City of Seattle Non-Disclosure Agreement

This Non-Disclosure Agreement ("Agreement") is made and entered into as of _____ 2010, between **The City of Seattle**, by and through its **City Light Department** ("Disclosing Party") and _____ ("Recipient Party"), Disclosing Party and Recipient agree as follows:

1. DEFINITIONS

"Confidential Information" shall mean: (i) all information disclosed in tangible form by Disclosing Party and marked "confidential" or "proprietary." (ii) Any oral information designated as Confidential Information by the Disclosing Party at the time the oral information is provided.

2. PURPOSE

The Recipient shall use the Confidential Information only for the following purposes:

- a. to _____ evaluate
- _____
- _____

3. OBLIGATION OF CONFIDENTIALITY

The Recipient will use the same degree of care, but not less than a reasonable degree of care to prevent the unauthorized use, dissemination or publication of the Confidential Information as the Recipient uses to protect its own confidential or proprietary information of a like nature. The Recipient shall limit the use of and access to Disclosing Party's Confidential Information to the Recipient's employees or independent contractors who need to know such Confidential Information, for the purpose set forth in Section 2 above and who have entered into binding obligations of confidentiality substantially similar to the obligations set forth herein.

4. CONFIDENTIALITY PERIOD

The Recipient's obligations to protect Confidential Information hereunder shall expire three (3) years from the date of each such disclosure of Confidential Information.

5. EXCEPTIONS

The Recipient has no obligation of confidentiality to any Confidential Information that:

- a. is or becomes a matter of public knowledge through no fault of the Recipient; or
- b. was in the Recipient's possession or known by it prior to receipt from Disclosing Party; or

c. was rightfully disclosed to the Recipient by another party without restriction; or

d. is independently developed by the Recipient without access to Disclosing Party's Confidential Information.

The Recipient may disclose Confidential Information pursuant to any statutory or regulatory requirement or court order, provided that Disclosing Party is, to the extent legally permitted, given ten (10) days advance notice of any proposed disclosure, in order for Disclosing Party to pursue a protective order. If a protective order is not obtained by Disclosing Party at the conclusion of this ten (10) day period, the Recipient may disclose the requested Confidential Information without further liability.

6. EQUITABLE RELIEF

The Recipient acknowledges and agrees that due to the unique nature of Disclosing Party's Confidential Information, there may be no adequate remedy at law for any breach of its obligation. Recipient further acknowledges that any such breach may allow the Recipient or third parties to unfairly compete with the Disclosing Party resulting in irreparable harm to the Disclosing Party, and therefore, upon any such breach or threat thereof, Disclosing Party shall be entitled to seek appropriate equitable relief. The Recipient will notify Disclosing Party in writing immediately upon the occurrence of any such unauthorized release or other breach.

7. INTELLECTUAL PROPERTY RIGHTS

Recipient does not acquire any intellectual property rights under this Agreement or through any disclosure hereunder, except the limited right to use such Confidential Information in accordance with this Agreement.

8. Return of Information

At any time, the Disclosing Party may request the return or the destruction, of all tangible Confidential Information previously delivered to the Recipient. Upon receipt of such request, all such Confidential Information, including without limitation any copies, summaries or compilations of such information,

still in the Recipient's possession or under its control shall be promptly returned or destroyed, as requested.

9. GENERAL

This Agreement supersedes all prior discussions and writing with respect to the subject matter hereof. No waiver or modification of this Agreement will be binding upon either party unless made in writing and signed by a duly authorized representative of each party and no failure or delay in enforcing any right will be deemed a waiver of such right. The parties understand that nothing herein requires either party to proceed with any proposed transaction or relationship in connection with which the Confidential Information may be disclosed. In the event that any of the provisions of this Agreement shall be

held by a court of competent jurisdiction to be unenforceable, the remaining portions hereof shall remain in full force and effect. This Agreement shall be governed by the laws of the State of Washington without regard to conflicts of laws provisions thereof, and each party submits to the jurisdiction and venue of the Washington state or federal court serving the King County area with respect to the subject matter of this Agreement. The headings to the Sections of this Agreement are included merely for reference and shall not affect the meaning of the language included therein. This Agreement is written in the English language only, which language shall be controlling in all respects. If applicable, this Agreement may be executed in counterparts or by facsimile, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement.

WHEREFORE, the Parties acknowledge that they have read and understood this Agreement and voluntarily accept the duties and obligations set forth herein.

Disclosing Party

Recipient Party

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

By: _____

By: _____

Title:

Title:

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

Address:

~~DRAFT~~ MEMORANDUM OF AGREEMENT

NO. GCA 6486

EXHIBIT B

June 91045, 2010

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

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

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

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

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

2. Plan Review for Design and Permits

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

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

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~~June 109, 2010~~ Project Design, Construction, and Acceptance Procedures

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- Meet project requirements and standards and commitments in the SDOT, SPU, and SCL Agreements;
- Comply with WSDOT procedural requirements in a timely manner;
- Fulfill CITY regulatory requirements set forth in Seattle Municipal Code (SMC) Title 15 in a timely manner;
- Achieve the project schedule;
- Allow construction to proceed in a timely manner; Minimize project scope growth; and
- Minimize impact on CITY Facilities

- 2.3. WSDOT will take the lead in coordinating regular communications and design coordination meetings with the CITY, the WSDOT's consultants and contractors, and other utility owners.
- 2.4. WSDOT will prepare PROJECT designs affecting CITY Facilities in collaboration with SDOT, SCL, and SPU staff and agrees to seek and incorporate input from the CITY in the early stages of preliminary engineering, preparation of Plan Review Packages and Design Submittals, and throughout the PROJECT design and permitting process.
- 2.5. Design and construction of CITY Infrastructure will meet CITY Standards. Design of CITY Infrastructure will include consideration of long-term operation and maintenance costs, in addition to up-front design and construction costs.
- 2.6. The CITY will review all plans within the scope of its regulatory responsibility; its interests as owner, operator or maintainer of the infrastructure; for the provision of services by the CITY; and with respect to protection of CITY and private property potentially affected by the work.
- 2.7. WSDOT will coordinate and obtain written concurrence from the CITY on any requested deviation from CITY of Seattle standards prior to the beginning of construction.
- 2.8. WSDOT and the City agree that the WSDOT will submit plans for CITY Infrastructure prepared in accordance with SR 99 Alaskan Way Viaduct and Seawall Replacement CADD Manual, Revision 2.0, dated April 2010.
- 2.9. WSDOT will coordinate and obtain written concurrence from the CITY prior to implementing revisions or deviations from the Approved Plans.
- 2.10. The City shall will immediately notify WSDOT in good faith when the City becomes aware of any reason issues that may delay issuance of a Street Use Permit. Failure to provide such notice shall not provide grounds to challenge the issuance or non-issuance of a permit.

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Comment [g1]: I noted that we deleted since it did not add clarity and was confusing. You OK with it?

Comment [HMc2]: Theresa, I did not remember deleting this last sentence. I've added it back in. Let me know if you have a different memory of our 6/8/10 conversation.

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3. Procedures for Design-Bid-Build Contracts.

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

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

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

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

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

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

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Table 1: Design-Bid-Build Review Periods

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

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

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

Table 2: Addenda Review Periods

Number of addenda added/revised plan sheets (excluding quantity tabs/structure notes)	CITY Review Period (Number of Business Days)
< 200	55 days
< 400	88 days
< 800	a. 15 days
More than 800	2020 Days

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

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

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responsible to assign appropriate staff to review and provide comment within the established timeframes.

3.7.2. Following its review of the 60% Plan Review Package, SDOT will prepare and deliver to WSDOT draft ~~Street~~ Street Use Permit conditions. SDOT will update the draft conditions after completion of CITY's review of each subsequent Plan Review Package to enable incorporation of the draft conditions into WSDOT's construction contract documents.

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

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

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

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

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

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

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

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3.8.2. The CITY will determine, following the receipt of the 100% Plan Review Package, whether all comments on the previous Plan Review Package have been addressed. At the conclusion of this determination, the CITY will notify WSDOT in writing either that the CITY's comments have been resolved to the CITY's satisfaction or that WSDOT has not addressed all the CITY's comments to the CITY's satisfaction. If the CITY notifies WSDOT that it has not addressed all CITY comments to the CITY's satisfaction, the CITY will submit to WSDOT proposals for addressing the outstanding issues. WSDOT will engage CITY reviewers in resolution of the remaining review comments and, if required, elevate unresolved comments in accordance with the dispute resolution provisions of GCA 6486, UT 01474, and UT 01476.

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3.8.3. WSDOT will invite the CITY to participate in its round-table meeting to enable full discussion of the implications and consequences to CITY Facilities or Street Use Code compliance of changes proposed by WSDOT to the 100% Plan Review Package. WSDOT will coordinate revisions made to the contract plans and provisions after WSDOT submits the 100% Plan Review Package.

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

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

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

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

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3.8.6.2. WSDOT will notify the CITY when the final addendum is issued to prospective bidders. This notice will constitute the Final Plan Review Package submittal. The CITY will review the Final Plan Review Package to confirm whether WSDOT has adequately addressed the CITY plan review comments that all applicable conditions of the Street Use Permit have been addressed to the CITY's satisfaction and that plans conform to the requirements of the SMC Title 15. Prior to Bid Opening, and upon the CITY's determination that a Final Plan Review Package meets requirements, the CITY will issue to WSDOT a Letter of Plan Approval that:

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

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

4. Procedures for Design-Build Contracts

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

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

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design and construction standards in the WSDOT's Design-Build contract documents for CITY Facilities.

- 4.3. WSDOT will apply for a Street Use Permit prior to issuance of the final Request for Proposals. The CITY may review and comment on the Final RFP.
- 4.4. As a requirement of its Design-Build contract(s), the Design-Builder will organize Task Forces for design development, coordination, and management of various elements of the work. The Task Forces are a primary vehicle for coordination with the owner(s) and stakeholders and will provide an opportunity for WSDOT and CITY staff to provide input to the design process. Task Force meetings will also be the primary means to keep reviewers up to date on design development. Over-the-shoulder reviews will be conducted to facilitate quicker turn-around of formal plan reviews. Dependent on the need for coordination with adjacent contracts, some of the Task Forces will be designated as "corridor-wide." In addition to WSDOT and CITY staff, Task Force membership may include representation from other stakeholders such as private utility owners, King County, the Port of Seattle, the stadiums, and adjacent contractors.
- 4.5. The CITY will participate in Task Forces affecting CITY Facilities and for the performance of the CITY's regulatory responsibilities. Based on current project planning, the CITY will participate in the following Task Forces:
- Utilities
 - Construction Monitoring
 - Fire and Life Safety
 - Maintenance of Traffic
 - Road/Traffic
 - Buildings
 - Public Information
 - Quality
- 4.6. Task Forces will meet on a regular basis to solicit input, coordinate design and construction activity, and assure dissemination of critical project information to all members. The Design-Builder or WSDOT will be the designated lead for meetings and recording of meeting minutes. The task forces will work collaboratively to review and provide guidance as the Design-Builder develops Design Submittals.
- 4.7. WSDOT and the CITY recognize that regular attendance at task force meetings by their respective staffs is necessary to discuss and agree upon resolutions of design issues before more formal review processes begin in order to streamline later review and minimize substantial comments when the Preliminary and Final Design plans are submitted.

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

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

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4.10. The Design-Builder will be required to provide three submittals for each design element as indicated below. These submittals are intended to meet the requirements of the design and Street Use Permit plan review processes of both WSDOT and the City. The CITY will review design elements affecting CITY Facilities and CITY interests, and for the performance of the CITY's regulatory responsibilities.

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

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4.10.2. Final Design Submittal. The Final Design Submittal will be prepared when the design for a given element or area is near 100 percent complete. The Final Design Submittal includes plan sheets, specifications, technical memos, reports, calculations, and other pertinent data, as applicable and incorporates design changes or otherwise addresses CITY comments. As a result of the on-going discussion and resolution of design and construction issues through the regularly-scheduled task force meetings and over-the-shoulder reviews, it is anticipated that there will be very few revisions or changes at this stage. The Final Design Submittal will include all specifications, including but not limited to, all Amendments to the Standard Specifications, Special

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Provisions, Technical Requirements, and Technical Specifications, necessary to construct the Work represented in the submittal. Following resolution of all comments, the Final Design Submittal may proceed through the written certification process described below in preparation for being Released for Construction.

4.10.3. Released for Construction (RFC) Document Review. At a minimum, the Design-Builder will provide a preliminary and a final submittal of all plans and Technical Specifications and resolve all comments prior to being Released for Construction. Comments from the CITY concerning design of the CITY's stated requirements for CITY Infrastructure, and comments regarding compliance with SMC Title 15, will be resolved to the CITY's satisfaction. WSDOT will ensure that the RFC Documents reflect all QA, QC, and design reviews required by the QMP and the Contract. WSDOT will also provide a written certification from its contractor to be used to verify to WSDOT and the City that all QA procedures have been completed to ensure that all review comments have been incorporated as agreed to during the comment resolution process among WSDOT, and the Design-Builder, and that the documents are ready to be Released for Construction. Each sheet of the plan set and the cover of each set of Technical Specifications in the RFC Documents will carry the Professional Engineer's stamp registered in the State of Washington and will be stamped "Released for Construction" by the contractor's Design QA Manager.

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

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

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Engineers will jointly determine the design elements to be reviewed by the CITY.

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

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4.10.7. Street Use Permit Issuance. Upon receipt of a Preliminary Design Submittal, SDOT will make a determination as to whether the proposed work package requires a Street Use Permit or Letter of Plan Approval under the provisions of SMC Title 15 and so notify WSDOT. SDOT will issue a Street Use Permit and Letter of Plan Approval for the initial RFC documents within three (3) days of receipt of the RFC submittal and the CITY has determined that the plans for the project element conform to the requirements of SMC Title 15 and that WSDOT has resolved all CITY plan review comments. Upon receipt of the City issued Street Use Permit and Letter of Plan Approval WSDOT will be authorized to proceed with construction subject to the terms and conditions of the permit.

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4.10.8. ~~If the Street Use Permit has not been issued within three (3) Business Days, a board consisting of the Seattle Transportation Department Director, Seattle City Council Transportation Chair and a Mayoral designee will be convened within one Business Day to review the cause of permit delay and resolve address steps to avoid the cause of PROJECT delay. If the Street Use Permit has not been issued within three (3) Business Days, the Seattle Transportation Department Director or his designee will review the cause of permit delay within one Business Day, and meet with the STATE's Program Administrator or his designee to discuss the issues and develop a course of action.~~

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4.10.9. Changes to RFC documents. WSDOT will diligently attempt to avoid the need for plan changes after issuance of RFC documents. In the event such changes occur, the CITY will undertake any additional review and permit re-issuance in as expedited a manner as practicable. WSDOT will require the Design-Builder's QMP to address the process for implementing design changes, including field changes, on Design and RFC Documents. Design

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changes will be subject to the QA and QC measures and procedures, commensurate with those applied to the original design or that portion of the Project under consideration for change. WSDOT will obtain CITY concurrence for all design changes affecting CITY Facilities or permitted interests prior to implementation of the change.

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

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5. Construction Management, Inspection, and Acceptance Procedures

- 5.1. The following procedures govern construction management, inspection, and acceptance processes of CITY Facilities constructed by WSDOT for the PROJECT and address fulfillment of the CITY's regulatory role under SMC Title 15. The procedures will be used for Design-Bid-Build and Design-Build project delivery methods.
- 5.2. WSDOT and the CITY agree to work cooperatively with each other and in good faith to implement these procedures to attempt to accomplish the following:
 - 5.2.1. Enable timely and expeditious execution of the PROJECT in accordance with the agreed standards on schedule.
 - 5.2.2. Facilitate thorough review of all stages of construction to ascertain that CITY Infrastructure constructed by WSDOT is in compliance with CITY of Seattle policy and regulations, and standards and specifications.
 - 5.2.3. Facilitate communications and activities pertaining to construction management, inspection and contract administration, including communications in the field, roles and responsibilities, review of proposed changes to Approved Plans and other submittals by the contractor or Design

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Builder, processes for pre-acceptance inspections, and acceptance of infrastructure.

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

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

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

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

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5.6. The CITY will provide a CITY Construction Project Engineer tasked to: (1) coordinate the activities of CITY of Seattle inspectors, crews and consultants; (2) communicate with the WSDOT Project Engineer regarding the CITY's positions relating to regulatory compliance, changes in design, the CITY's participation in reviewing contractor submittals, and the use of CITY resources; (3) coordinate the final inspection and acceptance of CITY Infrastructure with representatives from CITY departments; and (4) report on construction progress and issues to CITY of Seattle department managers.

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

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

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

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

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

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5.9.3. For Design-Build Projects, the CITY Construction Project Engineer will be responsible for ensuring that CITY reviews are completed within five (5) working days and that the review comments are fully communicated back to WSDOT. WSDOT will track all submittals and discuss the status of active submittal reviews with the CITY Construction Project Engineer on a weekly basis. The CITY's Construction Project Engineer will act as a liaison between the WSDOT and the City Departments in resolving issues regarding disposition of submittal comments.

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5.9.4. CITY reviewers will send their comments on submittals to the CITY Construction Project Engineer. The CITY Construction Project Engineer will consolidate comments if necessary and send comments to WSDOT for dissemination back to contractors. For design submittals on Design-Build contracts, comment responses will be provided to CITY reviewers along with

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the revised design for submittals that need to go through another round of review per Section 3 above.

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

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5.9.6. Pursuant to CITY review comments, WSDOT's Construction Project Engineer will provide disposition instructions for all submittals to its contractors.

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

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

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5.11.1. WSDOT will form quality assurance or verification teams as appropriate for the contract type. The CITY will have representation on these teams. The quality team for each contract will hold meetings to review test and inspection results and address and rectify issues relating to inspection, substandard material quality, adjustments needed for inadequate quality assurance and quality control processes, test results demonstrating that tolerance standards are not met, disparities between quality assurance and quality verification test data, future quality concerns, and any other issues raised by the WSDOT and the City regarding quality of construction of the CITY's Infrastructure.

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5.11.2. WSDOT will provide the CITY with timely notice prior to commencement and completion of all material stages of the CITY Infrastructure Work and will invite the CITY to inspect such work upon completion of any material stage. The CITY on-site inspector will be invited to the weekly construction meeting prior to any work being started on CITY Facilities. The WSDOT

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will provide at least five (5) Business Days notice for each inspection. CITY will submit a complete list of any concerns or deficiencies to the WSDOT within ten (10) Business Days of the date of any inspection. The WSDOT will timely address each comment or issue presented by CITY to CITY's satisfaction. Both WSDOT and the City agree to act as expeditiously as possible to assure a timely resolution of any deficiencies.

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

5.11.4. The CITY will assist WSDOT and communicate regularly if any observations of non-conformance with Approved Plans Defective Work observed by CITY inspectors are made in the field to ensure that the CITY infrastructure will be acceptable prior to any major finish work, such as final street paving, in order to avoid any re-work by the Design Builder. It is in the best interest of all WSDOT and the City to work collaboratively and solve problems quickly to avoid the completion of work that is will not be acceptable.

5.11.5. Testing of CITY Infrastructure will conform to the requirements of the CITY Standard Specifications for Road, Bridge and Municipal Construction. The CITY may observe testing of materials and inspect installation of CITY Infrastructure and provide a written evaluation to the WSDOT regarding whether the materials or facilities tested meet with the requirements of the Approved Plans. WSDOT will endeavor to provide five (5) Business Days notice of all testing required by the Approved Plans, and the CITY will be provided a copy of certified test reports of materials or installation of CITY Infrastructure. The CITY will exercise its right to approve or reject construction or materials of CITY Infrastructure that are deficient, or that (1) do not meet with the requirements of the Approved Plans; (2) are not constructed in accordance with CITY-issued permits; (3) have defects in material and workmanship; and/or (4) have defects in design(s).

5.11.6. Except as otherwise agreed, all deficiencies will be reported through the WSDOT Construction Project Engineer to the respective contractor's appropriate representative for resolution. Appropriate communications will

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be determined for each situation. CITY inspectors will not directly communicate with WSDOT's contractors without the express authorization of the WSDOT Construction Project Engineers except when public or worker safety is in question.

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

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

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

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

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- 5.12.3. The CITY may request additions and changes to the construction contract through WSDOT. WSDOT will comply with the requested changes provided that the changes are within the general scope of the PROJECT and comply with the PROJECT permits, WSDOT and/or Federal law and applicable rules, codes and/or regulations. WSDOT retains the right to reject requested changes if incorporating such changes could result in unwarranted additional cost to the STATE or a delay in the project schedule. Such additions and changes may lead to Change Orders, or they may lead to Betterments or New Work. If the CITY and WSDOT agree to implement the change, the requesting CITY department and WSDOT will document the request in writing by completing and signing a concurrence letter. The CITY agrees to

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reimburse the WSDOT for the costs associated with Betterments and additional New Work.

- 5.12.4. WSDOT will make available to the CITY all Change Order documentation that affects CITY Infrastructure.

5.13. Special Construction Considerations.

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

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

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

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

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

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in accordance with CITY of Seattle standards and will perform tests on the water sample for purity.

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

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

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

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

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5.14.1. The CITY will timely inspect the completed CITY Infrastructure and will exercise its right to approve or reject construction or materials which are deficient, or which deviate from the Approved Plans, or any CITY-approved revisions to the Approved Plans. The CITY will submit a written response within ten (10) Business Days of the date of the pre-final inspection, notifying WSDOT that CITY Infrastructure has been constructed in accordance with the Approved Plans, or rejecting the completed CITY Infrastructure. In the event that the completed CITY Infrastructure is rejected, such response will include written notice of any known deficiencies and Defective Work so that the WSDOT can use the response in its preparation of a contract punch list.

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

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

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

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6. Redlines and Record Drawings.

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

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6.2. The Red-Line Plans shall be kept current throughout construction with accurate and comprehensive information detailing the constructed configuration of the infrastructure. The Red-Line Plans shall reflect the same level of detail as the Approved Plans, and shall provide the drawing accuracy necessary for the CITY and private utility purveyors to locate their respective utilities in accordance with state law.

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6.3. The WSDOT Project Engineer and the City Construction Project Engineer shall jointly review the Red-Line Plans monthly to evaluate whether the Red-Line Plans reflect a

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current, accurate and comprehensive record of the constructed configuration of the infrastructure. If the WSDOT Project Engineer or the City Construction Project Engineer determinedetermines that the Red-Line Plans are not current, accurate or comprehensive, the WSDOT shall immediately revise the Red-Line Plans to remedy deficiencies.

- 6.4. Prior to placing CITY Infrastructure into service during the course of construction, the WSDOT shall provide the CITY with color photocopies of portions of the Red-Line Plans showing the constructed configuration of the CITY Infrastructure being placed into service.
- 6.5. The WSDOT shall submit one color set of the completed Red-Line Plans prior to the Parties executing a Letter of Acceptance provided for in Section 15 of GCA 6486.
- 6.6. All Record Drawings for CITY Infrastructure shall comply with the digital and graphical standards of the City of Seattle Inter-Departmental CADD Standards.
- 6.7. Each PARTY shall provide the other PARTY with the Record Drawings for the portions of PROJECT work for which that PARTY is responsible under this Agreement within six (6) months after the PARTIES execute a Letter of Acceptance. A transmittal of Record Drawings shall include two (2) full-scale bond copies plus the digital files meeting with the requirements established above.

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7. Task Order Invoicing and Payment

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

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

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

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

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

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

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

7.3. In addition, the PARTIES may require other financial documents to verify that the amounts invoiced are included within the budgeted scope of each Task Order, including, but not limited to, (1) work statements or payroll records, (2) invoices for materials and supplies, (3) statements from professionals for services rendered, (4) certifications by the PARTIES that materials and services are satisfactorily rendered, and (5) itemized listings of the charges supported by copies of original bills, invoices, expense accounts, and miscellaneous supporting data retained by the PARTIES.

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7.4. Administration

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

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

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

7.7. 4.3.4 Audit. If an audit is requested by the PARTIES or required by any applicable federal agency requirements, the PARTIES agree to cooperate fully with any such audit and provide documentation as is requested in support of all costs.

[Insert components of a complete invoice including the extent of required documented expenses]
[Insert WSDOT's desired language regarding prompt payment]
[Insert WSDOT's desired language regarding sales tax].

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7.8. ~~7.1~~ The STATE and CITY agree to perform the work through Task Order as defined in GCA 6486 Section 4.

7.9. ~~7.2~~ The PARTIES, in consideration of the faithful performance of the services to be provided by the PARTY through Task Order, agrees to reimburse the PARTY for actual direct and related indirect costs of the scope of work of the Task Order as established in this AGREEMENT.

~~6.8.7.10~~ To ensure prompt payment, the PARTIES will mail via United States Postal Service invoices and appropriate supporting materials to the Designated Representatives as described in Section 25 of GCA 6486 or in the appropriate Task Order.

~~6.9.7.11~~ The PARTIES agrees to submit a final invoice to the PARTY within ninety (90) calendar days after completion of a Task Order.

~~[Move any appropriate provisions from the MoA to this section]~~

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Task Order

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

Task Order Provisions

- 1.0 The Requesting Agency and Service Agency shall issue, conduct and administer this Task Order in compliance with all the provisions of the following Memoranda of Agreement between the State of Washington Department of Transportation and the City of Seattle: GCA 6486, UT 01474 and UT 01476.
- 2.0 The provisions of this Task Order can only be revised through a mutually executed amendment to this Task Order.

3.0 Background

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

4.0 Scope of Services

[Provide a narrative defining the scope of services]

[Reference any attached graphics, plans, specifications, photos or other materials that aid in defining the scope of services]

[List any services specific to the administration of this Task Order including services related to accounting, and measurement and payment services to be provided by the Service Agency]

5.0 Schedule

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

6.0 Task Order Amount

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

7.0 Assumptions and Exclusions

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

8.0 Designated Representatives

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

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

Requesting Agency
[enter agency name]

Service Agency
[enter agency name]

[enter name of agency signatory]
[enter title of agency signatory]

[enter name of agency signatory]
[enter title of agency signatory]

Date

Date

EXHIBIT A TO MEMORANDUM OF AGREEMENT NO. GCA 6486

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

The PROJECT replaces SR 99 from South Royal Brougham Street to Roy Street and consists of designing and constructing a four-lane tunnel from South King Street to Thomas Street, north and south tunnel portals and access streets, re-establishment of the City street grid in the vicinity of the portals, and associated utility relocations.

The PROJECT consists of the following features:

Utility Work:

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

Tunnel:

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

North Tunnel Access and Reconnection of the Surface Street Grid:

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

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

South Tunnel Access and Reconnection of the Surface Street Grid:

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

Other incidental Project work:

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

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”) is made and entered into between the State
14 of Washington Department of Transportation, hereinafter the “STATE,” and the City of
15 Seattle hereinafter the “CITY” (managed by the Seattle Department of Transportation,
16 hereinafter “SDOT”), collectively the “PARTIES” and individually the “PARTY.”
17

18 **[See attached additional City-proposed language for RECITALS.]**
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.

1
2 WHEREAS, the AWVSR Program consists of a four-lane bored tunnel and
3 improvements to City streets, the City waterfront, and transit; and the Moving Forward
4 Projects; and

5
6 WHEREAS, the Proposed Bored Tunnel Project (PROJECT), the subject of this
7 Agreement, is the part of the PROGRAM that replaces SR 99 from South Royal
8 Brougham Street to Roy Street that consists of designing and constructing a four-lane
9 bored tunnel from South King Street to Thomas Street, north and south tunnel portals and
10 access streets; re-establishment of the City street grid in the vicinity of the portals
11 (Battery Street Tunnel decommissioning and Alaskan Way Viaduct demolition will be
12 addressed in a future agreement); and associated utility relocations; and

13
14 WHEREAS, the Washington State Legislature passed Engrossed Substitute Senate Bill
15 5768 and the Governor signed the bill into law designating and funding a Bored Tunnel
16 Program as the replacement for the Alaskan Way Viaduct; 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 Alaskan Way Viaduct 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

1
2 WHEREAS, some portion of SR 99 is within the PROJECT and is a City street serving
3 as part of a State Highway under RCW 47.24.010; and
4

5 WHEREAS, the PARTIES wish to establish protocols and procedures for property
6 acquisition, environmental remediation, design review, permitting, and construction
7 coordination to govern their relationship during the course of the PROJECT; and
8

9 WHEREAS, some or all of the work covered by this Agreement may be accomplished by
10 executed "Task Order" documents.
11

12 NOW, THEREFORE, in consideration of the terms, conditions, covenants, and
13 performances contained herein, or attached and incorporated and made a part hereto,
14

15
16 **IT IS MUTUALLY AGREED AS FOLLOWS:**

17
18 **1. DEFINITIONS**

19
20 Words not otherwise defined, which have well-known technical or construction industry
21 meanings, are used in accordance with such recognized meanings.
22

23 1.1 Approved Plans means the construction plans and provisions that evidence the
24 CITY's determinations, made through the processes described in Sections 6 and 7 and
25 Exhibit B of this Agreement, that the plans conform to the criteria established in this
26 Agreement, UT 01474 and UT 01476; Approved Plans are included in the contract
27 documents evidencing the agreement between the STATE and its contractors for
28 construction of a given element of the PROJECT.
29

30 1.2 AWV means the Alaskan Way Viaduct structure on State Route 99, currently a
31 non-limited-access highway over a portion of CITY Street Right-of-Way.
32

33 1.3 Business Days means Monday through Friday, inclusive, except for official City
34 of Seattle and state holidays.
35

36 1.4 CITY means the City of Seattle, a Washington municipal corporation.
37

38 1.5 City Construction Project Engineer means the person designated by SDOT to act
39 as the City's coordinator and primary representative in matters arising during the course
40 of construction as set forth in this Agreement.
41

42 1.6 CITY Designated Representative means the CITY official listed in Section 25 of
43 this Agreement.
44

- 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.
30 1.11.5 SCL Material Standards
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
- 40 1.14 Contract Award means the STATE's written decision accepting a bid for
41 construction of a Project.
42

- 1 1.15 Defective Work means design or construction work or materials that fail to
2 comply with the Approved Plans, CITY-approved modifications to the Approved Plans,
3 or the laws, rules, regulations or standards as specified in this Agreement.
4
- 5 1.16 Deformation means any 3-dimensional displacement or combination of
6 displacements. The terms “tilt,” “strain,” “settlement,” “heave,” “lateral movement,” and
7 related terminology are used as being common industry terminology for deformation in
8 specific situations. Where such industry terminology is used for convenience herein, it
9 does not imply that the broad definition of deformation has been limited.
10
- 11 1.17 Design-Bid-Build Contract means a project delivery method in which the STATE
12 provides a complete design, advertises for bids, and awards a contract to the lowest
13 responsive bidder who is responsible for completing the construction of the project.
14
- 15 1.18 Design-Build Contract means a project delivery method in which the STATE
16 develops a conceptual design and requests proposals from pre-qualified contractors. The
17 contract is awarded to the contractor with the best value responsive proposal. The
18 contractor is responsible to complete the design and construct the project.
19
- 20 1.19 Design Builder means the entity with whom the STATE enters into a Design-
21 Build contract and who is responsible to complete the design and construct the project.
22
- 23 1.20 Design Submittal means plans, specifications, and design documentation
24 representing design of a given project element in a Design-Build Contract.
25
- 26 1.21 DPD means the City of Seattle Department of Planning and Development.
27
- 28 1.22 Engineer of Record means the engineer licensed in the State of Washington who
29 has been commissioned by the STATE as the prime engineer of the PROJECT, having
30 overall responsibility for the adequacy of the design and the coordination of the design
31 work of other engineers and whose professional seal is on the Approved Plans.
- 32 1.23 Environmental Compliance Assurance Procedure (ECAP) means procedures
33 incorporated into the then-current WSDOT *Construction Manual* M41-01.05 (Section 1-
34 2.2k(1)) and WSDOT *Environmental Procedures Manual* M31-11.05 (Sections 610 and
35 690) , as modified by this Agreement, which provide guidance on compliance with
36 Environmental Laws and environmental Remediation. The purpose of the ECAP is to
37 recognize and eliminate environmental violations during the construction phase on
38 STATE construction sites and to ensure prompt notification to STATE management and
39 agencies. For purposes of the ECAP, violations are defined as actions that are not in
40 compliance with environmental standards, permits, or laws.
- 41 1.24 Environmental Law(s) means any environmentally related local, state or federal
42 law, regulation, ordinance or order (including without limitation any final order of any
43 court of competent jurisdiction of which the STATE has knowledge), now or hereafter in

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

15
16 1.25 Final Design Submittal means plans, specifications, and design documentation
17 representing complete design of a given project element in a Design-Build Contract. The
18 Final Design Submittal addresses and incorporates review comments from the
19 Preliminary Design Submittal.

20
21 1.26 Final Plan Review Package means the Plan Review Package submitted to the
22 CITY that comprises the STATE's contract documents including contract addenda and
23 fully incorporates or otherwise addresses all CITY plan review comments and all
24 applicable conditions of the Street Use Permit.

25
26 1.27 Hazardous Substance(s) means any substance, or substance containing any
27 component, now or hereafter designated as a hazardous, dangerous, toxic or harmful
28 substance, material or waste, subject to regulation under any federal, state or local law,
29 regulation or ordinance relating to environmental protection, contamination or cleanup
30 including, but not limited to, those substances, materials and wastes listed in the United
31 States Department of Transportation Hazardous Materials Table (49 C.F.R. §172.101) or
32 by the United States Environmental Protection Agency as hazardous substances (40
33 C.F.R. pt. 302 and amendments thereto) or in the Washington Hazardous Waste
34 Management Act (Ch. 70.105 RCW) or the Washington Model Toxics Control Act (Chs.
35 70.105D RCW and 82.21 RCW), petroleum products and their derivatives, and such
36 other substances, materials and wastes as become regulated or subject to cleanup
37 authority under any Environmental Law.

38
39 1.28 Letter of Acceptance means the written document that signifies the CITY's
40 acceptance of CITY Infrastructure to be owned by the CITY, and shall signify the
41 STATE's transfer of CITY Infrastructure to be owned by the CITY. The Letter of
42 Acceptance will not transfer any interest in real property. The Letter of Acceptance shall
43 be jointly executed by the PARTIES. A Letter of Acceptance for SPU Facilities requires
44 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.
5
6 1.30 MTCA means the Washington Model Toxics Control Act (Chs. 70.105D RCW
7 and 82.21 RCW).
8
9 1.31 Plan Review Package means clear and complete plans, specifications, and the
10 necessary assumptions, studies, models and calculations upon which the design was
11 based, and corrections previously requested by the CITY with respect to Design Bid
12 Build Projects.
13
14 1.32 100% Plan Review Package means the Plan Review Package submitted to the
15 CITY concurrent with STATE's final internal review of the construction contract plans
16 and contract provisions that shall evidence the agreement between the STATE and its
17 contractors for construction of Design-Bid-Build Projects.
18
19 1.33 Private Utilities mean utility uses, excluding facilities owned and operated by the
20 CITY, approved through franchise agreements and/or Street Use Permits by the CITY
21 and governed and enforced through City Ordinance.
22
23 1.34 Procedures means *Design Review, Construction Management, Inspection and*
24 *Record Drawing Procedures*, attached as Exhibit B.
25
26 1.35 PROJECT means the Proposed Bored Tunnel Project, the part of the PROGRAM
27 that replaces SR 99 from South Royal Brougham Street to Roy Street and that consists of
28 designing and constructing a four-lane bored tunnel from South King Street to Thomas
29 Street, north and south tunnel portals and access streets, re-establishment of the City
30 street grid in the vicinity of the portals (Battery Street Tunnel decommissioning and
31 Alaskan Way Viaduct demolition will be addressed in a future agreement);and associated
32 utility relocations. A PROJECT description is attached as Exhibit A.
33
34 1.36 PROGRAM means all the projects, collectively, implemented by the STATE and
35 the CITY that remove and replace the AWW and seawall.
36
37 1.37 Program Property means all real property interests acquired and to be acquired by
38 the STATE for the PROGRAM.
39
40 1.38 Program Transfer Property means all Program Property identified by the STATE
41 and the CITY for transfer from the STATE to the CITY in fee simple.
42
43 1.39 Project Engineer means the person appointed by the STATE to lead the
44 PROJECT during design and/or construction or his or her designee.

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

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

1.42 Relocation Work means the removal or abandonment of each Conflicting Facility, maintenance of service for those facilities and the installation or reconstruction of each Conflicting Facility to its permanent and final location.

1.43 Remediation means the same as Remedy or Remedial Action defined in MTCA which includes any action or expenditure consistent with the purposes of MTCA to identify, eliminate, or minimize any threat or potential threat posed by Hazardous Substances to human health or the environment including any investigative and monitoring activities with respect to any release or threatened release of a Hazardous Substance and any assessments to determine the risk or potential risk to human health or the environment.

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

1.45 SCL means Seattle City Light.

1.46 SCL Facilities means the electrical facilities impacted by, or constructed as part of, the PROJECT that are owned or will be owned by the CITY.

1.47 SDOT means the Seattle Department of Transportation.

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

1.49 SPU means Seattle Public Utilities.

1.50 SPU Facilities means the water, drainage and wastewater facilities impacted by, or constructed as part of, the PROJECT that are owned or will be owned by the CITY.

1.51 STATE means the State of Washington Department of Transportation

1 1.52 STATE Designated Representative means the STATE official listed in Section 25
2 of this Agreement.

3
4 1.53 Street Use Permit means written authorization secured by the STATE from the
5 Director of SDOT for use of the CITY Street Right-of-Way pursuant to Title 15 of the
6 Seattle Municipal Code.

7
8 1.54 Surplus Property means Program Property, excluding Program Transfer Property
9 and other CITY Interest Property that upon completion of the PROJECT has not been
10 designated as part of the limited access or non-limited access right-of-way of State Route
11 99.

12
13 1.55 Task Force means a group consisting of State, City, contractor, and other
14 stakeholder staff meeting regularly to review and reach decisions relating to a particular
15 subject, e.g., traffic, structures.

16
17 1.56 Task Order means a document executed by the PARTIES under this Agreement
18 authorizing work by one PARTY to be done on behalf of the other PARTY and that
19 defines the scope and the obligations of the PARTIES for the given element of work. All
20 terms and conditions of the Agreement shall apply to each Task Order.

21
22 1.57 UTILITY means City of Seattle Utility Departments, Seattle City Light and
23 Seattle Public Utilities.

24
25 1.58 WSDOT means Washington State Department of Transportation.

26
27
28 **2. GENERAL RESPONSIBILITIES**

29
30 2.1 The PARTIES shall manage risk, produce design and conduct construction in a
31 manner that maximizes cumulative public benefits and minimizes cumulative public costs
32 as mutually agreed to by the PARTIES.

33
34 2.2 This Agreement in conjunction with UT 01474 and UT 01476 is prepared by the
35 STATE and CITY to govern relationships between the PARTIES and establish each
36 PARTY's responsibilities regarding the PROJECT as described in Exhibit A, Project
37 Description.

38
39 2.3 The PARTIES understand that environmental review of the proposed PROJECT
40 is underway at the date of this Agreement and agree that if an alternative other than the
41 Proposed Bored Tunnel is selected, this Agreement may be terminated pursuant to the
42 provisions of Section 28 herein.

43

1 2.4 The PARTIES shall work collaboratively to resolve issues in a manner that
2 endeavors to open the Proposed Bored Tunnel to the public on schedule.

3
4 2.5 The design and construction of CITY Facilities, including repair, shall comply
5 with City Standards.

6
7 2.6 Each PARTY shall provide the funding and resources necessary to fulfill the
8 responsibility of that PARTY as established in this Agreement.

9
10 2.7 The PARTIES agree to work cooperatively with each other and make reasonable,
11 good faith efforts to timely and expeditiously complete the PROJECT, as provided in this
12 Agreement, including, but not limited to, the selection of a preferred SR 99 design
13 alternative, development of preliminary engineering and final design and construction. In
14 order to optimize design and minimize conflicts, the STATE shall coordinate design and
15 construction of the various contracts making up the PROJECT with design of subsequent
16 PROGRAM stages, and with construction of previous stages of the PROGRAM. The
17 STATE shall be prepared to modify design of the contracts making up the PROJECT, the
18 subsequent PROGRAM stage and/or previous stage if both PARTIES determine the
19 modifications are necessary and reasonable, to minimize design conflicts.

20
21 2.9 The STATE is responsible for designing and constructing the Proposed Bored
22 Tunnel portion of the PROJECT. The STATE is responsible for taking measures to
23 minimize, limit, and mitigate damage to private property and CITY Facilities including
24 CITY streets, CITY telecommunications facilities and UTILITY Facilities that may result
25 from the PROJECT construction, including damage that may result from tunnel-induced
26 Deformation. The STATE is responsible for remedying such damage should it occur.

27
28 2.10 The PARTIES agree that it is in the public interest for one PARTY to implement
29 portions of the other PARTY's PROJECT responsibilities. Therefore, this SDOT
30 Agreement establishes a Task Order process for use by a PARTY to authorize the other
31 PARTY to conduct work on its behalf, and as may be documented through each Task
32 Order, agree to reimburse the other PARTY for such services.

33
34 **[See attached additional City- and State-proposed language for SECTION 2.]**

35
36 **3. PROPERTY ACQUISITION AND TRANSFER; SURPLUS PROPERTY**

37
38 **3.1 Acquisition**

39
40 3.1.1 The STATE has or will acquire, at its expense, the Project Property.
41 CITY responsibility for acquisition of real property interest or other utility-related
42 property rights, if any, is set forth in Section 14.1 of UT 01474 and UT 01476.

1 3.1.2 The STATE is responsible, at its expense, for performance of all
2 appraisals, appraisal review, title review, surveys, property investigation, relocation
3 assistance and all other investigations and services in connection with the acquisition of
4 the Project Property. For each parcel of Program Transfer Property, the STATE shall
5 deliver to the CITY, as soon as practicable after a parcel is acquired and identified by the
6 PARTIES as Program Transfer Property, all documents created, commissioned or
7 received in connection with the STATE's acquisition of such parcel. Such documents
8 shall include, to the extent applicable, appraisals, appraisal reviews, title reports and all
9 documentation concerning title encumbrances, title policies, surveys, geotechnical
10 reports, purchase agreements, term sheets, options, leases, deeds, indemnities, and all
11 other documents and information created, commissioned or received by the STATE.
12

13 3.1.3 The STATE is responsible for identification and investigation of
14 Hazardous Substances on Program Property following procedures set in the WSDOT
15 *Environmental Procedures Manual M 31-11* and WSDOT *Right of Way Manual M 26-01*
16 that are in effect on the date of property acquisition. The STATE shall provide to
17 SDOT's Real Property and Environmental Manager, as soon as practicable after a parcel
18 is identified by the PARTIES as Program Transfer Property, copies of all documentation
19 of environmental investigation concerning the Program Transfer Property, remedial
20 actions, reports, studies or other documentation, whether received by or prepared by or
21 for the benefit of the STATE, including, but not limited to, (1) documents relating to due
22 diligence and/or all appropriate inquiry, environmental assessments, and remedial,
23 removal or cleanup activities related to the Program Transfer Property; (2) documents
24 relating to allegations, orders, claims, regulatory demands, or losses relating to the
25 alleged existence or migration of any Hazardous Substance from or on any parcel of
26 Program Transfer Property; and (3) any alleged violation of any Environmental Law or
27 other information relating to environmental condition of the Program Transfer Property.
28

29 3.2 Transfer.

30
31 3.2.1 Prior to the start of construction, the STATE and the CITY agree to enter
32 into a separate written agreement governing transfer of Program Transfer Property
33 to the CITY. The agreement shall provide that each transfer to the CITY shall be
34 by quit claim deed. The agreement shall also provide the following: timing of
35 transfer, condition of title, protection for utilities in the event of future sale, the
36 definitions of Hazardous Substance and Environmental Law contained in this
37 SDOT Agreement, and the following release and indemnification provision:
38

39 "The STATE hereby releases and indemnifies, protects and holds harmless the
40 City of Seattle and its officers, officials, employees, and agents working within
41 the scope of their employment from all liability and claims (including but not
42 limited to liability and claims for response and remediation costs, administrative
43 costs, fines, charges, penalties, attorney fees and cost recovery or similar actions
44 brought by a governmental or private party, including third party tort liability)

1 arising, directly or indirectly, from any presence or release of any Hazardous
2 Substance remaining within or transported from the real property in which an
3 interest is transferred.”
4

5 The foregoing is not an exclusive list.
6

7 3.2.2 The PARTIES shall prepare and attach to the future agreement governing
8 transfer of Program Transfer Property and this SDOT Agreement an exhibit
9 containing a complete list of legal descriptions of the Program Transfer Property,
10 which may be created and amended as necessary by the PARTIES’ Designated
11 Representatives without other approval by the PARTIES. A detailed property
12 description with map may be substituted for any legal description not yet
13 available at the time the PARTIES execute the future agreement governing
14 transfer of Program Transfer Property.
15

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

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

30 **4. TASK ORDERS, PAYMENT AND ADMINISTRATION**

31
32 4.1 Some or all of the work undertaken pursuant to this Agreement may be governed
33 by Task Orders. Task Orders shall be subject to the provisions of this Agreement.
34

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

38 4.1.2 Authority to Execute Task Orders
39 The PARTIES will prepare and execute Task Orders by contract package or as
40 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

1 4.1.3 The general terms and conditions of this Agreement shall be applicable to
2 all Task Orders issued under this Agreement, unless specific terms are modified
3 by the Task Order or by amendment to the Task Order.
4

5 4.1.4 The form of each Task Order shall substantially conform to the Task
6 Order Template set forth in Exhibit C. Each task order shall contain a general
7 description and scope of work, a schedule for completion, an itemized estimate of
8 costs for the work, a cash flow projection and any provisions specific to the scope
9 of work.
10

11 4.1.5 Each PARTY shall designate a manager for each Task Order. The
12 designated Task Order managers are deemed to have the authority to modify the
13 scope, schedule, and budget of the Task Order within the parameters of this
14 Agreement.
15

16 4.2 Payment

17 4.2.1 Maximum Payment Obligation
18 The PARTIES shall not be obligated to reimburse any expenditure in excess of
19 the maximum amount stated in each Task Order, unless the PARTIES have
20 agreed to such additional reimbursements and the Task Order has been amended
21 to describe the additional work in excess of the budgeted scope of work. The
22 initiating PARTY shall promptly notify the other PARTY in writing as soon as it
23 is known when the maximum funding obligation will be reached and shall also
24 specify in writing its position regarding any remaining work covered by a Task
25 Order which it believes was contained within the budgeted scope of work. Should
26 its estimated costs on any Task Order exceed the amount authorized, the PARTY
27 performing the work under the Task Order shall promptly notify the other
28 PARTY in writing and shall specify in writing its position regarding why the
29 estimated cost will or has been exceeded.
30

31 4.2.2 The PARTIES shall negotiate the total authorized amount for each Task
32 Order. Reimbursement will not be made for activities that are not covered in a
33 Task Order. The PARTIES will establish a budget contingency for the estimated
34 cost of the work covered under each Task Order as a part of the cost estimate for
35 that Task Order.
36
37

38 5. ENVIRONMENTAL REMEDIATION DURING CONSTRUCTION

39 5.1 STATE Responsibilities. For CITY Interest Property the STATE shall be
40 responsible for identification, investigation and Remediation of Hazardous Substances
41 found within the limits of the PROJECT during its environmental due diligence of the
42 Project Property and shall identify areas of known Hazardous Substances in conjunction
43 with the Plan Review Packages and Design Submittals circulated for CITY review. In
44

1 addition, the STATE shall be responsible for identification, investigation and
2 Remediation of Hazardous Substances discovered during construction at CITY Interest
3 Property. For CITY Interest Property, provisions for Remediation of known Hazardous
4 Substances, approved Remediation plans, and provisions for Remediation of Hazardous
5 Substances discovered during construction shall be included in the Plan Review Packages
6 and Design Submittals circulated for CITY review. Nothing in this Agreement is
7 intended to alter the legal obligations of the STATE with respect to hazardous substances
8 that may remain in place after completion of the PROJECT except for release and
9 indemnity provisions of this Agreement.

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

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

29
30 5.4 At or adjacent to CITY Interest Property, under certain circumstances, and in
31 consultation with the CITY, the STATE may conduct additional Remediation of
32 contaminated areas, including areas outside the limits of the PROJECT. These
33 circumstances may include, but are not limited to:

34
35 5.4.1 Instances in which Remediation may be necessary to prevent adverse
36 water quality impacts and/or to comply with other State and Federal permit
37 conditions;

38 5.4.2 Instances that in the judgment of the STATE Project Engineer require
39 immediate Remediation to protect public health and safety;

40 5.4.3 Where regulatory agencies with jurisdiction require additional
41 Remediation;

42 5.4.4 Where additional Remediation is necessary to prevent recontamination of
43 the limits of the PROJECT, address subsurface utility facilities located or planned

1 within or near the limits of the PROJECT or within the Project Property, or
2 address disturbance or exacerbation of existing contamination; and
3 5.4.5 Where additional Remediation is necessary to meet mutually acceptable
4 risk management standards in accordance with STATE and CITY protocols.
5
6 5.5 All work at CITY Interest Property shall comply with the then-current WSDOT
7 *Environmental Procedures Manual M 31-11* and WSDOT *Construction Manual M 41-*
8 *01*, Environmental Law, and all applicable CITY regulations except as modified by this
9 Agreement.
10
11 5.6 The STATE shall include the CITY in its ECAP when unanticipated
12 contamination is found within the limits of the PROJECT at or adjacent to CITY Interest
13 Property. Notification procedures will include notifying the CITY orally followed by
14 written notification.
15
16 5.7 The STATE's Project Engineer shall determine, in consultation with the CITY,
17 Remediation of known and unanticipated Hazardous Substances at or adjacent to CITY
18 Interest Property within the limits of the PROJECT. In instances where the CITY
19 disputes the STATE's plan(s) for Remediation in connection with CITY Interest
20 Property, the CITY and STATE will resolve the dispute through the dispute resolution
21 process in Section 23 of this Agreement.
22
23 5.8 The STATE shall prepare plans in consultation with the CITY for Remediation of
24 known and unanticipated Hazardous Substances in connection with the CITY Street
25 Right-of-Way and other CITY Interest Property, and shall obtain CITY concurrence prior
26 to implementing Remedial Actions there. In instances where the CITY finds the
27 STATE's plans for Remediation of these areas unacceptable, the CITY or STATE may
28 request resolution through the dispute resolution process in Section 23 of this Agreement.
29
30 5.9 Prior to the start of construction, and after the contractor has been selected, the
31 STATE shall initiate and host an environmental preconstruction meeting. The STATE
32 shall invite City of Seattle staff, STATE staff and the STATE contractor to discuss
33 known contamination, environmental procedures, environmental Remediation and permit
34 conditions that apply to CITY Interest Property in connection with the PROJECT.
35
36 5.10 The STATE shall obtain all required permits and approvals for Remediation at
37 CITY Interest Property, except for permits or approvals that this Agreement, UT 01474,
38 or UT 01476 otherwise obligates SPU or SCL to obtain for SPU or SCL Relocation
39 Work.
40
41 5.11 Remediation work at or adjacent to CITY Interest Property shall not proceed in
42 areas outside of the limits of the PROJECT unless the STATE has obtained written
43 permission of the property owner and appropriate permits to work on property that is not
44 part of the PROJECT. The STATE shall make reasonable efforts to obtain permission of

1 the property owner. The STATE may utilize the assistance of the State Department of
2 Ecology as provided in the MTCA regulations.
3

4 5.12 The STATE shall provide the CITY with copies of environmental close-out
5 reports for Remediation activities at CITY Interest Property.
6

7 5.13 All costs associated with testing, handling, storing, removing, transporting,
8 disposing, or treating Hazardous Substances that are excavated in connection with the
9 PROJECT relating to CITY Interest Property shall be paid by the STATE, with the
10 exception of such costs incurred during and directly caused by Relocation Work which SPU
11 or SCL is obligated to fund under the terms of this Agreement, UT 01474, or UT 01476. In
12 addition, STATE shall be responsible for all costs associated with Remediation of any
13 releases that are caused or exacerbated by its own employees or contractors. The STATE
14 shall be identified as the generator for these Hazardous Substances.
15

16 5.14 The CITY shall provide to the STATE all records regarding any known areas
17 where Hazardous Substances may be located at CITY Interest Property within the limits
18 of the PROJECT, including but not limited to environmental investigation reports for
19 properties located in the PROJECT. The reports shall be provided for the STATE's
20 information only, shall not be relied upon by the STATE, and the CITY's provision of
21 these records shall not constitute a representation or warranty as to the accuracy of the
22 information contained in the reports.
23

24 5.15 The STATE shall provide to the CITY all records regarding any known areas
25 where Hazardous Substances may be located at CITY Interest Property within the limits
26 of the PROJECT and Project Property, including but not limited to environmental
27 investigation reports for the Project Property. In addition, the STATE shall notify and
28 provide information to the CITY regarding any contamination encountered during
29 construction at or adjacent to CITY Interest Property. Reports provided by the STATE
30 are for information only, and shall not be relied upon by the CITY, and the STATE's
31 provision of these records shall not constitute a representation or warranty as to the
32 accuracy of the information contained in the reports.
33

34 5.16 The STATE shall release and indemnify, protect, defend and hold harmless the
35 City of Seattle and its officers, officials, employees, and agents, while acting within the
36 scope of their employment, from all liability and claims (including but not limited to
37 liability and claims for response and remediation costs, administrative costs, fines,
38 charges, penalties, attorney fees and cost recovery or similar actions brought by a
39 governmental or private party, including third party tort liability) arising, directly or
40 indirectly, from any of the following: (1) any presence or release of any Hazardous
41 Substance within or from the limits of the PROJECT, except for the presence of any
42 Hazardous Substance as of the effective date of this Agreement within the portion of real
43 property in which the City has a real property interest on that date or in which the City
44 later acquires a real property interest for the purposes of the Program from an entity other

1 than the STATE, and (2) the removal, transport or disposal in connection with the
2 PROJECT of any Hazardous Substance for which the STATE or any person, contractor
3 or other entity working on behalf of the STATE is a generator.

4
5 **6. PERMITTING AND RIGHT-OF-WAY USE**

6
7 6.1 The PARTIES shall apply for and obtain all necessary federal, state and City of
8 Seattle-issued permits and approvals for the work for which they are responsible prior to
9 commencing work that requires such permits, including but not limited to all permits,
10 approvals or permission for exploratory investigations, testing, site preparations,
11 demolition and construction.

12
13 6.2 The CITY authorizes the STATE to use CITY Street Right-of-Way for the
14 PROJECT, subject to issuance and provisions of Street Use Permits and the conditions
15 contained in this Agreement. The STATE's use of CITY Street Right-of-Way shall
16 comply with the Seattle Municipal Code and all other applicable laws, including but not
17 limited to the Shoreline Management Act, the National Environmental Policy Act and the
18 State Environmental Policy Act.

19
20 6.3 The PARTIES agree that for both design-build and design-bid-build portions of
21 the PROJECT, the PARTIES shall obtain Street Use Permits prior to undertaking work in
22 the CITY Street Right of Way. The CITY shall provide for Street Use inspections
23 pursuant to Title 15 of the Seattle Municipal Code, the Street Use Permit, and this
24 Agreement.

25
26 6.4 The PARTIES agree to apply the conditions of the Street Use Permits issued for
27 City Street Right of Way in connection with the PROJECT to PROJECT work outside
28 CITY Street Right of Way if that work has a surface component and either is or will
29 become CITY or STATE right-of-way or surplus property upon completion of the
30 PROJECT.

31
32 6.5 The PARTIES agrees to abide by and comply with all requirements and
33 conditions of the Street Use Permits. After a Street Use Permit is issued, the responsible
34 PARTY will obtain Letters of Plan Approval for any subsequent revisions for
35 advancement of design or amendments to the Street Use Permit as set forth in the
36 Procedures.

37
38 6.6 The Street Use Permits and Letters of Plan Approval are not a representation or
39 assurance that the design or plans comply with applicable laws, regulations, ordinances or
40 codes, nor shall the Street Use Permits or Letters of Plan Approval be construed to
41 authorize any failure to comply with any of the foregoing.

42
43 6.7 The PARTIES will jointly order the relocation of any and all Private Utilities
44 required for performance of the work on the PROJECT. The STATE shall manage the

1 timely relocation of the Private Utilities. The STATE shall require its construction
2 contractors to schedule and coordinate their activities with the relocation of Private
3 Utilities. The PARTIES agree to perform their obligations under this provision,
4 including, but not limited to, the CITY co-signing the relocation notices to the Private
5 Utility owners and the CITY joining the STATE as an additional plaintiff in any litigation
6 the STATE may need to pursue in order to require the Private Utilities to relocate. The
7 STATE shall indemnify the CITY pursuant to Section 19 of this agreement.

8
9 6.8 The PARTIES agree to establish alternative CITY regulatory process cost
10 reimbursement in lieu of Use Fees as set forth in GCA 5739, Project Services Agreement
11 and future amendments, as described in Section 10.

12 13 **7. DESIGN, PLAN REVIEW AND CHANGE MANAGEMENT**

14
15 7.1 The PARTIES agree to work cooperatively with each other and shall make
16 reasonable, good faith efforts to timely and expeditiously execute their respective roles
17 and responsibilities related to the design and plan review and permitting called for in this
18 Agreement.

19
20 7.2 This Agreement addresses design and plan review process for SDOT, SCL, and
21 SPU and the process for issuance of SDOT Street Use Permits; it does not address plan
22 review or permits issued by other departments of the City of Seattle.

23
24 7.3 Within the scope of this agreement, the STATE agrees to consult with the CITY
25 with regard to planning, design and construction of the PROJECT. The scope of the
26 design and plan review by the CITY addressed by this Agreement is limited to the
27 following areas:

28 7.3.1 CITY Infrastructure.

29 7.3.2 PROJECT work to the extent that it alters or impacts the configuration,
30 condition or use of CITY property including CITY Facilities.

31 7.3.3 PROJECT work to the extent that it alters access to CITY Facilities.

32 7.3.4 PROJECT work in CITY Street Right-of-Way to the extent that it alters
33 or impacts private property.

34 7.3.5 PROJECT urban design as established in Section 8.

35 7.3.6 The temporary or permanent use or operation of CITY Street Right-of-
36 Way for the PROJECT including maintenance of traffic.

37 7.3.7 Mitigation measures established by the STATE's review and
38 determination of PROJECT environmental impacts pursuant to State and City
39 environmental policy laws.

40 7.3.8 Private utilities within CITY Street Right-of-Way.

41 7.3.9 Transit facilities within CITY Street Right-of-Way.

42 7.3.10 As provided in Section 5 of this Agreement, evidence of the STATE's
43 environmental remediation-related commitments.

- 1 7.4 The CITY will conduct reviews of all stages of design to ascertain that the design
2 of CITY Infrastructure and the design of PROJECT work and construction activity within
3 CITY Street Right-of-Way comply with City Standards.
4
- 5 7.5 The PARTIES agree to prepare PROJECT designs, Plan Review Packages, and
6 Design Submittals pursuant to the provisions established in this Agreement and the
7 Procedures.
8
- 9 7.6 The PARTIES shall mutually prepare PROJECT schedules that afford the
10 PARTIES adequate plan review and comment resolution periods sufficient to promote
11 the quality of design consistent with the provisions of this Agreement.
12
- 13 7.7 The STATE shall address all CITY plan review comments from each stage of
14 plan review and incorporate agreed comment resolution into subsequent plan review
15 submittals.
16
- 17 7.8 The PARTIES shall provide sufficient staff and resources for timely preparation
18 and review of the PROJECT designs.
19
- 20 7.9 The CITY shall not give direction to the STATE's consultants or contractors
21 during the design and review processes set forth in this Agreement and the Procedures.
22
- 23 7.10 Both PARTIES shall endeavor to identify and address issues as early as possible
24 during the design process.
25
- 26 7.11 The STATE shall obtain the CITY's design approval for all City Infrastructure,
27 and regulatory approval for PROJECT work within City Street Right-of-Way prior to
28 constructing such work.
29
- 30 7.12 Designs and construction provisions for CITY Infrastructure shall comply with
31 City Standards.
32
- 33 7.13 The PARTIES agree that design of CITY Infrastructure shall consider long-term
34 operation and maintenance costs and requirements, and minimize potential interruptions
35 and disruptions to CITY UTILITY customers.
36
- 37 7.14 The STATE shall obtain the CITY's approval prior to incorporating any
38 deviations from City Standards into the design or construction of all City Infrastructure
39 and City Facilities work.
40
- 41 7.15 The PARTIES agree that Approved Plans or Released for Construction Submittal
42 for each component of the PROJECT shall be stamped by an Engineer of Record
43 representing the PARTY preparing the Approved Plans pursuant to the requirements of
44 State law.

1
2 7.16 The PARTIES shall first obtain the review and concurrence of the CITY prior to
3 making or implementing revisions or deviations from the Approved Plans for any such
4 revisions or deviations pertaining to design elements listed in Section 7.2 of this
5 Agreement.
6

7 7.17 The PARTIES acknowledge that the STATE may request the CITY to operate
8 and maintain certain STATE-owned PROJECT facilities as may be established by
9 separate agreement. The CITY shall, at the request of the STATE, review the design of
10 such facilities to determine the compatibility of the design with the CITY's existing
11 operational capabilities, standard practices, equipment and other resources required to
12 operate and maintain such facilities.
13

14 **8. URBAN DESIGN**

15

16 8.1 The STATE and CITY agree to work together to develop standards that will
17 promote appropriate urban and architectural design of the PROJECT.
18

19 8.2 The STATE and CITY have prepared the Bored Tunnel Design Goals and
20 Objectives which were submitted to the Seattle Design Commission on January 21, 2010,
21 Building Design Principles, which were submitted to the Seattle Design Commission on
22 February 18, 2010, and Project Guiding Principles for the Portal Areas, which were
23 submitted to the Seattle Design Commission on March 18, 2010.
24

25 8.3 The STATE and CITY have developed Portal Area Design Guidelines based on
26 these Bored Tunnel Design Goals and Objectives and Guiding Principles. The Portal
27 Area Design Guidelines include:

28 8.3.1 Functional highway, surface street and development configurations,

29 8.3.2 Landscaping concepts,

30 8.3.3 Architectural and urban design concepts for walls, bridges and tunnel
31 portals,

32 8.3.4 Design guidance for highway appurtenances (i.e. barrier type, light
33 standards, sign support types, etc.)

34 8.3.5 Conceptual designs for city streets, including sidewalks and plazas, and
35 bicycle/pedestrian trails.
36

37 The Portal Area Design Guidelines were submitted to the Seattle Design Commission for
38 review and comment. The final Portal Area Design Guidelines will be subject to final
39 approval by the Seattle Department of Transportation. The Portal Area Design
40 Guidelines will be used as the basis for the PROJECT design. The STATE agrees to
41 develop a final design substantially in conformance with the Portal Area Design
42 Guidelines.
43

1 8.4 The STATE has prepared Building Architectural Design Guidelines for the tunnel
2 operations buildings based on the Building Design Principals. The tunnel operations
3 buildings are physically part of and integrally related to the operation of the bored tunnel.
4 The Building Architectural Design Guidelines were submitted to the Seattle Design
5 Commission for review and comment. The final Building Architectural Design
6 Guidelines will be subject to final approval by the Seattle Department of Transportation.
7 The Building Architectural Design Guidelines will be used as the basis for the PROJECT
8 design. The STATE agrees to develop a final design substantially in conformance with
9 the Building Architectural Design Guidelines.

10
11 8.5 The State agrees to create an Urban Design Task Force for the PROGRAM. The
12 Urban Design Task Force shall include CITY, STATE and Design/Build Contractor
13 representatives. This Urban Design Task Force will endeavor to resolve Urban Design
14 and Architectural issues.

15
16 8.6 The following items shall be presented to the Seattle Design Commission (SDC)
17 in accordance with chapters 3.58.010 thru 3.59.080 of the Seattle Municipal Code:

18 8.6.1 Preliminary and Final Tunnel Operations Building designs that include
19 building blocking, stacking, façade treatments, façade materials and elevations
20 shall be prepared in accordance with the Building Architectural Design
21 Guidelines.

22 8.6.2 For areas within the design/build contract, preliminary and final portal
23 area designs prepared in accordance with the Portal Area Design Guidelines

24 8.6.3 For areas outside the design/build contract, 30%, 60% and 90% portal area
25 design plans prepared in accordance with the Portal Area Design Guidelines.

26
27 8.7 The STATE shall endeavor to develop Tunnel Operations Building and Portal
28 Area designs that incorporate SDC recommendations. The CITY shall verify the
29 STATE's incorporation of SDC recommendations through the CITY review processes set
30 forth in Section 5 in this Agreement.

31
32 8.8 Urban design issues lacking mutual agreement by the PARTIES will be referred
33 to Disputes Resolution in Section 23 of this Agreement.

34 35 **9. SCHEDULE**

36
37 9.1 The PARTIES will work together to develop schedule(s) for PROJECT work
38 performed by the STATE or CITY.

39
40 9.2 The STATE will be responsible for developing and updating its PROJECT
41 schedule(s) that identifies milestones for performing the work associated with the
42 PROJECT with CITY input.

43 44 **10. FUNDING AND COMPENSATION**

1
2 **[See attached additional City-proposed language for SECTION 10.]**
3

4 10.1 The STATE shall provide necessary funding for all PROJECT costs as defined by
5 this Agreement without reimbursement from the City of Seattle, except for the CITY cost
6 responsibilities established in this Agreement, in SCL Agreement UT01476, and in SPU
7 Agreement UT 01474.
8

9 10.1.1 The STATE will reimburse SDOT for Project Services through the
10 process provided for in Agreement GCA 5739, entitled Project Services
11 Agreement for State Route 99 Alaskan Way Viaduct and Seawall Replacement
12 Program and SR 519/I-90 Intermodal Access Project – I/C Improvements
13 (“Project Services Agreement”), and as amended by the PARTIES to modify the
14 process for the STATE’s reimbursement of the CITY services and to extend the
15 duration of the Project Services Agreement.
16

17 10.1.2 The categories of services to be provided by the CITY are: project
18 management, project controls and coordination, design review and consultation,
19 permit development and coordination, right of way services, and services to
20 support construction activities.
21

22 **11. PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES**
23

24 11.1 The STATE and the CITY agree that it is good public policy to utilize the
25 services of Disadvantaged Business Enterprises in the construction of public works
26 projects, to the fullest extent permitted by law.
27

28 11.2 In furtherance of the foregoing public policy, the STATE agrees to include
29 Disadvantaged Business Enterprise (DBE) provisions in its construction contracts to the
30 extent required by federal law for projects associated with this Agreement.
31

32 **12. MONITORING AND DEFORMATION MITIGATION**
33

34 12.1 The STATE agrees to assess potential impacts of Deformation on private property
35 and CITY Facilities. Where the CITY has established deformation criteria for its
36 Facilities, the criteria will be used in analysis. Otherwise, criteria will be derived using
37 accepted engineering practice and shall be mutually agreed upon by the CITY and
38 STATE.
39

40 12.2 The CITY shall review the STATE’s estimate of susceptibility or vulnerability of
41 CITY Facilities to Deformation and provide comments and input. Such input shall be
42 provided to assist the STATE only, and shall not be interpreted as waiving or limiting in
43 any way the STATE’s responsibility for Deformation Mitigation Work.
44

1 12.3 The STATE agrees to develop a preliminary plan for deformation mitigation.
2 PARTIES will work collaboratively to finalize and implement the Deformation
3 Mitigation Work. The CITY's input shall be provided to assist the STATE only, and
4 shall not be interpreted as waiving or limiting in any way the STATE's responsibility for
5 Deformation.

6
7 12.4 The STATE agrees to design and implement a comprehensive instrumentation
8 and monitoring program for open cut, cut-and-cover, and tunnel construction including
9 pre- and post-construction condition surveys and developing an action plan for mitigating
10 impacts of Deformation.

11
12 12.5 The STATE agrees to implement a construction monitoring Task Force
13 responsible for the planning and implementation of the instrumentation and monitoring
14 program and processing data, evaluating results, and developing recommendations to
15 mitigate Deformation. The Task Force has authority to direct rapid and effective changes
16 in construction to achieve Deformation mitigation.

17
18 12.6 The CITY shall advise the STATE and participate in construction monitoring and
19 Deformation management activities when these activities pertain to CITY Facilities. The
20 CITY shall provide the STATE all necessary access to CITY Facilities for the purposes
21 of design or implementation of mitigation measures. The CITY may perform mitigation
22 measures on behalf of the STATE in a manner and schedule that supports the STATE's
23 project requirements. The CITY's advice, participation, and access shall be provided to
24 assist the STATE, and shall not be interpreted as waiving or limiting in any way the
25 STATE's responsibility for Deformation.

26 27 **13. MAINTENANCE OF TRAFFIC**

28
29 13.1 The PARTIES agree that it is the goal of this PROJECT to maintain local
30 motorized and non-motorized traffic in safe corridors through the project area while
31 minimizing impact to the existing street system. To achieve this goal, the PARTIES shall
32 formulate plans to maintain traffic flow during construction of the PROJECT and shall
33 comply with Approved Plans and conditions of the Street Use Permits.

34
35 13.2 The PARTIES agree to develop an outreach plan specifically focused on
36 maintenance-of-traffic issues. This outreach plan will elicit input from affected
37 stakeholders in the vicinity of the PROJECT. Affected stakeholders shall be determined
38 by the PARTIES.

39
40 13.3 The STATE agrees to create a Maintenance-of-Traffic (MOT) Task Force for the
41 PROGRAM. The CITY agrees to be an active member on the Task Force.

42
43 13.4 The CITY agrees be a participant in all planning for haul routes, and all haul route
44 traffic shall be regulated pursuant to the Street Use Permit and the provisions of this

1 agreement. Haul routes and times shall be approved by the CITY prior to the
2 commencement of hauling, and all haul routes shall be along arterial streets designated as
3 major truck streets and must comply with downtown traffic control zone restrictions as
4 defined by the Seattle Municipal Code and implementing regulations.
5

6 **14. CONSTRUCTION MANAGEMENT, INSPECTION, AND CONTRACT**
7 **ADMINISTRATION**
8

9 14.1 It is anticipated that the STATE will develop and issue multiple construction
10 contracts to fulfill its PROJECT responsibilities. The STATE's construction contracts
11 will be conducted in accordance with current Washington State Department of
12 Transportation contracting practices.
13

14 14.2 The STATE shall act as the sole authority in the administration of the STATE
15 construction contracts. The STATE shall allow the CITY to consult with and make
16 inquiries of the STATE Project Engineer or designee, attend meetings, and have access to
17 all documentation concerning those portions of the PROJECT subject to City review as
18 defined in Section 7.3 of this Agreement. The CITY shall not provide direction, directly
19 or indirectly, to the STATE's consultant(s) or contractors. Except in the instances listed
20 below, the CITY shall direct all communications to the STATE's Project Engineer or
21 designee, including communications regarding compliance with Street Use Permits,
22 quality of construction, and contractor performance.
23

24 14.3 The STATE will manage any requests from the CITY that have contractual or
25 scope-of-work impacts and will coordinate responses. The CITY may communicate with
26 STATE's consultants or contractors (1) where authorized to do so by the STATE's
27 Designated Representative; (2) to arrange for regulatory permitting and inspections made
28 pursuant to permits issued by the CITY other than Street Use Permits, e.g. electrical
29 permits or other permits obtained from the CITY by the consultant or contractor; and (3)
30 for the Street Use Permits, if necessary because of a threat to health or safety.
31

32 14.4 The CITY will provide qualified staff and consultants during construction. CITY
33 staff and consultants will communicate with the STATE Project Engineer or designee in
34 evaluating the conformity of CITY Infrastructure with the Approved Plans or Released-
35 for-Construction Submittal and will immediately notify the Project Engineer or designee
36 of any compliance issues. Notwithstanding any act or omission by the CITY pursuant to
37 this subsection, the STATE shall not be relieved of any of its authority over, and
38 responsibility for, the PROJECT, as provided for in Section 14.2 of this Agreement or
39 elsewhere in this Agreement.
40

41 14.5 The PARTIES agree to follow the Procedures. The PARTIES may amend the
42 Procedures by written mutual agreement executed by the PARTIES' Designated
43 Representatives without other approval by the PARTIES.
44

1 **15. FINAL INSPECTION AND PROJECT ACCEPTANCE**

2
3 15.1 The PARTIES agree to follow the Procedures. The PARTIES may amend the
4 Procedures by written mutual agreement executed by the PARTIES' Designated
5 Representatives without other approval by the PARTIES.

6
7 15.2 Following the satisfactory completion of the pre-final and final inspection
8 processes described in the Procedures, the CITY shall submit a written response notifying
9 the STATE that CITY Infrastructure has been constructed in accordance with the
10 Approved Plans or Released-for-Construction Submittal.

11
12 15.3 The CITY agrees, upon satisfactory completion of the PROJECT work
13 successfully placing City Infrastructure into operation, transfer and acceptance of any real
14 property on or in which CITY Infrastructure is located, and receipt from the STATE of
15 one color set of the Red-Line Plans, pursuant to Section 16, to deliver a Letter of
16 Acceptance, subject to any Defective Work, damage or contractor claims caused by the
17 negligent acts or omissions of the STATE.

18
19 15.4 The PARTIES will execute one Letter of Acceptance for each contract unless
20 both PARTIES agree to phase CITY Infrastructure acceptance by those geographic areas
21 or select portions of the PROJECT in which the STATE has completed all PROJECT
22 work and has satisfied the requirements of Section 15.3. Roadway restoration will not be
23 considered to be complete until all roadways are fully open to public vehicular and
24 pedestrian use.

25
26 15.5 In instances where portions of CITY Infrastructure must be placed into the
27 CITY's use and operation prior to the execution of the Letter of Acceptance, and after the
28 CITY has determined that these portions of CITY Infrastructure meet with the minimum
29 inspection and testing requirements necessary for placing the CITY Infrastructure into
30 use, the CITY will notify the STATE in writing that it is assuming responsibility for and
31 cost of the interim use and operation of the CITY Infrastructure until the terms of Section
32 14.3 are satisfied and the PARTIES execute the Letter of Acceptance.

33
34 **16. RED-LINES AND RECORD DRAWINGS**

35
36 16.1 Each PARTY is responsible for preparing construction records for the portions of
37 PROJECT work for which they are responsible under this Agreement. Except as
38 otherwise established in this Agreement, the STATE shall document construction in
39 general conformance with WSDOT's *Construction Manual*, WSDOT manual M4-01 for
40 PROJECT work that the STATE constructs including work performed on behalf of the
41 CITY through a Task Order.

1 16.2 The STATE agrees to record the constructed configuration of PROJECT work
2 that deviates from the Approved Plans as further established in the Procedures. This
3 record shall be referred to as the Red-Line Plans.

4
5 16.3 The STATE may choose to delegate preparation and maintenance of the Red-Line
6 Plans to its construction contractors. However, the STATE remains responsible for the
7 quality, condition and completion of Red-Line Plans. If the STATE chooses to delegate
8 these responsibilities, the STATE's construction contracts shall require contractors to
9 provide the STATE and the CITY access to the Red-Line Plans during the working hours
10 established in the STATE contract.

11
12 16.4 Each PARTY shall prepare digital drawings showing the constructed
13 configuration of the PROJECT work for which they are responsible under this Agreement
14 (Record Drawings). Each PARTY shall provide the other PARTY with the Record
15 Drawings for the portions of PROJECT work for which that PARTY is responsible under
16 this Agreement within six (6) months after the PARTIES execute a Letter of Acceptance.
17 The PARTIES shall prepare Record Drawings in conformance with the Procedures.

18 19 **17. WARRANTIES**

20 21 **Warranty of Work**

22
23 17.1 The STATE warrants for a minimum period of twelve (12) months that all CITY
24 Infrastructure being accepted by the CITY for ownership, operation and maintenance: (1)
25 meets with the requirements of the Approved Plans, and all CITY-approved
26 modifications to the Approved Plans made during the course of construction; (2) is
27 constructed in accordance with City-issued permits; (3) is free of defects in material and
28 workmanship; and (4) is free of defects in design(s). The warranty of work shall apply to
29 any corrective work required to address non-conforming and Defective Work that is
30 discovered and communicated by the CITY to the STATE within the warranty period.
31 The STATE's warranty of work shall begin following the execution of the Letter of
32 Acceptance of CITY Infrastructure or as otherwise provided in the STATE's contract,
33 whichever occurs later.

34
35 17.2 If within the warranty of work period, the CITY discovers and gives written
36 notice to the STATE of non-conforming or Defective Work in the accepted CITY
37 Infrastructure, the STATE shall promptly investigate the work the CITY believes is non-
38 conforming or defective. The STATE shall promptly remedy non-conforming or
39 Defective Work. Disagreements between the CITY and the STATE on what constitutes
40 non-conforming or Defective Work shall be resolved using the dispute resolution process
41 established in Section 23. The STATE shall diligently prosecute the corrective work and
42 shall procure materials using the fastest means available as necessary to minimize the
43 loss of use and operation of the accepted CITY Infrastructure. Corrective work shall be

1 completed within the time frame specified by the CITY and mutually agreed upon by the
2 STATE.

3
4 17.3 If, during construction, the CITY encounters an emergency situation caused by
5 non-conforming or Defective Work, it must immediately notify the STATE. The STATE
6 will take immediate corrective action. If, after the warranty period begins, the CITY
7 encounters an emergency situation caused by non-conforming or Defective Work, it may
8 have to immediately correct it. Direct and indirect costs incurred by the CITY,
9 attributable to correcting an emergency situation associated with non-conforming or
10 Defective Work, shall be paid by the STATE to the CITY.

11 12 **Transfer of Title and Warranty of Title**

13
14 17.4 All right and title to the CITY Infrastructure accepted by the CITY will be
15 transferred by the STATE to the CITY as of the date of the State's signature
16 acknowledging the CITY's Letter of Acceptance pursuant to the provisions of Section 15.
17 Neither the STATE nor its contractors shall hold a property right in any of the CITY
18 Infrastructure accepted by the CITY for ownership, including the materials and
19 equipment comprising the CITY Infrastructure.

20
21 17.5 The STATE shall warrant good and merchantable title to all materials, supplies,
22 equipment and items installed or incorporated into the accepted CITY Infrastructure. The
23 STATE shall further warrant that all CITY Infrastructure transferred to, and accepted by,
24 the CITY is free from claims, liens and charges.

25 26 **Manufacturers' Warranties**

27
28 17.6 The STATE shall provide the CITY all manufacturers' and suppliers' guarantees
29 and warranties furnished to the STATE's contractor as a customary trade practice in
30 connection with the contractor's purchase of any equipment, materials, or items
31 incorporated into the CITY Infrastructure. The STATE shall further warrant that it has
32 the right to transfer such warranties and guarantees furnished to the STATE through its
33 construction contract to the CITY and that such transfer shall not adversely affect such
34 warranties and guarantees. These guarantees and warranties shall not relieve the STATE
35 from its obligations under Warranty of Work.

36 37 **Warranty Inspections**

38
39 17.7 During the warranty period, the CITY shall have the right to inspect the accepted
40 CITY Infrastructure for non-conforming and Defective Work, and will promptly report
41 any such work to the STATE for remedy through corrective work. The CITY shall bear
42 the cost of these inspections.

43 44 **18. PUBLIC OUTREACH**

1
2 18.1 The STATE agrees to lead and manage the public outreach effort for the
3 PROJECT. In recognition of the CITY's experience in working with the Seattle
4 community, the STATE will solicit CITY input and work with the CITY in public
5 outreach activities. The STATE will not publicly distribute outreach information,
6 planning materials and documents without first soliciting the CITY's review. However,
7 the STATE shall be free to comply with any public records request received under
8 chapter 42.56 RCW for such materials, provided that prior to releasing any sensitive or
9 confidential material, the STATE shall first provide written notice to the CITY in
10 accordance with Section 27 of this Agreement and provisions in UT 01474 and UT
11 01476.

12 13 **19. RISK ALLOCATION**

14
15 **[See attached additional City-proposed language for SECTION 19.]**

16 17 19.1 Limits of Liability

18
19 19.1.1 No CITY Liability for Assistance, Inspection, Review, or Approvals. The
20 review or approval of any of the STATE's PROJECT plans or specifications, or the
21 inspection of the STATE's work, or any assistance provided to the STATE by the CITY
22 is for the CITY's sole benefit and shall not constitute an opinion or representation by the
23 CITY as to any compliance with any law, ordinance, rule, or regulation or any adequacy
24 for other than the CITY's own purposes; and such assistance, inspection, review or
25 approval shall not create or form the basis of any liability on the part of the CITY or any
26 of its officials, officers, employees, or agents for any injury, damage, or other liability
27 resulting from, or relating to, any inadequacy, error, or omission therein or any failure to
28 comply with applicable law, ordinance, rule, or regulation; and such assistance,
29 inspection, review, or approval shall not relieve the STATE of any of its obligations
30 under this Agreement, the SCL Agreement, UT 01476, and the SPU Agreement, UT
31 01474 Agreement or under applicable law.

32 19.1.2 No CITY Liability for Delay, Consequential, or Liquidated Damages. The
33 CITY shall not be liable in damages for any failure to act within any time limits
34 established by law or for any other delay to the STATE or the STATE's contractors, nor
35 shall the CITY have any liability for consequential or liquidated damages, and, to the
36 maximum extent allowed by law, the STATE shall protect, defend, indemnify, and save
37 harmless the CITY, and its officials, officers, employees, and agents, from any and all
38 costs, claims, demands, judgments, damages, or liability of any kind caused by, resulting
39 from, relating to, or connected to delays. The PARTIES agree that this Agreement, the
40 SCL Agreement, UT 01476, and the SPU Agreement, UT 01474, are not to be construed
41 as being construction agreements.

42 19.1.3 No CITY Liability for Third Party Claims of Diminution in Value of
43 Property. The CITY shall not be liable in damages for any third party claims alleging

1 diminution in value of property, including, but not limited to, claims of elimination or
2 impairment of rights to light and air and quiet enjoyment, or alleging a taking of property
3 rights, nor shall the CITY have any liability for related consequential or liquidated
4 damages, and, to the maximum extent allowed by law, the STATE shall protect, defend,
5 indemnify, and save harmless the CITY, and its officials, officers, employees, and agents,
6 from any and all costs, claims, demands, judgments, damages, or liability of any kind
7 caused by, resulting from, relating to, or connected to the third party claims of diminution
8 in value of property arising out of the PROJECT.

9 19.1.4 STATE Contractor's Bonds. The STATE shall require its construction
10 contractors to provide performance bonds to the STATE and to maintain those bonds at
11 all times pertinent to the respective contractor's obligations under its contracts.—Such
12 bonds shall be executed by an approved Surety that is registered with the Washington
13 State Insurance Commissioner, and that appears on the current Authorized Insurance List
14 in the State of Washington published by the Office of the Insurance Commissioner, and
15 that shall be conditioned upon the faithful performance of the contract by the contractor.
16 The STATE shall ensure faithful completion of the PROJECT by use of the STATE's
17 contractor bonds or other means, and in the event any claim for payment is presented to
18 the CITY for any PROJECT work, the STATE upon timely notice and investigation,
19 resulting in STATE responsibility under this Agreement, the SCL Agreement, UT 01476,
20 and the SPU Agreement, UT 01474 shall promptly pay such claim.

21 19.2 General Indemnification.

22 19.2.1 Indemnity. To the extent permitted by law, the STATE shall protect,
23 defend, indemnify, and save harmless the City of Seattle and its officers, officials,
24 employees, and agents, while acting within the scope of their employment, from any and
25 all costs, claims, demands, judgments, damages, or liability of any kind, including
26 injuries to persons or damages to property, that arise out of, or in any way result from, or
27 are connected to, or are due to any acts or omissions, or intentional misconduct, of the
28 STATE or the STATE's contractors, consultants, or agents including any and all claims
29 and litigation arising out of, or resulting from, any state or federal environmental review
30 process in any way relating to the PROJECT, and including any private utility relocations
31 required for the STATE's PROJECT work. The STATE's obligations under this
32 paragraph also extend to claims asserted by third PARTIES against the City of Seattle
33 arising out of, or in any way resulting from NEPA or SEPA compliance related to
34 portions of Mercer Corridor Project West Phase. The STATE's obligations under this
35 paragraph also extend to claims asserted by third PARTIES against the City of Seattle
36 arising out of, or in any way resulting from, any state or federal environmental review
37 process in any way related to the PROJECT, removal of the Alaskan Way Viaduct and
38 Battery Street Tunnel decommissioning, and all of the foregoing protection, defense,
39 indemnity and hold harmless obligations shall extend to claims asserted by State agencies
40 other than the Washington State Department of Transportation.

1 19.2.2 The STATE further agrees that the City of Seattle shall have no liability
2 to the STATE, which in any way arises out of the City of Seattle's decision making
3 processes in agreeing to go forward with the PROJECT, and the STATE shall not be
4 required to indemnify, defend, or save harmless the City of Seattle if the claim, suit, or
5 action for injuries, death, or damages is caused by the sole negligence of the City of
6 Seattle. Where such claims, suits, or actions result from the concurrent negligence of the
7 PARTIES, the indemnity provisions provided herein shall be valid and enforceable only
8 to the extent of the STATE's own negligence. In the event of any claims, demands,
9 actions, or lawsuits, the STATE upon notice from the City of Seattle, shall assume all
10 costs of defense thereof, including legal fees incurred by the City of Seattle, and of all
11 resulting judgments that may be obtained against the City of Seattle, to the extent of the
12 STATE's liability. In the event that the City of Seattle incurs attorneys' fees, costs, or
13 other legal expenses to enforce the indemnity provisions of this Agreement, the SCL
14 Agreement UT 01476, and the SPU Agreement, UT 01474, all such fees, costs, and
15 expenses shall be recoverable by the City of Seattle. Environmental protection and
16 indemnification, as provided elsewhere in this Agreement, shall be in addition to the
17 foregoing general indemnification.

18 19.2.3 Indemnity. To the extent permitted by law, the City of Seattle shall
19 protect, defend, indemnify, and save harmless the STATE and its officers, officials,
20 employees, and agents, while acting within the scope of their employment, from any and
21 all costs, claims, demands, judgments, damages, or liability of any kind, including
22 injuries to persons or damages to property, that arise out of, or in any way result from, or
23 are connected to, or are due to any acts or omissions, or intentional misconduct, of the
24 City of Seattle or the City of Seattle's contractors, consultants, or agents. The City of
25 Seattle shall not be required to indemnify, defend, or save harmless the STATE if the
26 claim, suit, or action for injuries, death, or damages is caused by the sole negligence of
27 the STATE. Where such claims, suits, or actions result from the concurrent negligence
28 of the PARTIES, the indemnity provisions provided herein shall be valid and enforceable
29 only to the extent of the City of Seattle's own negligence. In the event of any claims,
30 demands, actions, or lawsuits, the City of Seattle upon notice from the STATE, shall
31 assume all costs of defense thereof, including legal fees incurred by the STATE, and of
32 all resulting judgments that may be obtained against the STATE, to the extent of the City
33 of Seattle's liability. In the event that the STATE incurs attorneys' fees, costs, or other
34 legal expenses to enforce the indemnity provisions of this Agreement, the SCL
35 Agreement, UT 01476, and the SPU Agreement, UT 01474, all such fees, costs, and
36 expenses shall be recoverable by the STATE.

37 19.2.4 Title 51 RCW. Solely with respect to claims for indemnification under
38 this Agreement, including environmental indemnification, the STATE and the City of
39 Seattle waive, as to each other only, and expressly not for the benefit of their employees
40 or third PARTIES, their immunity under Title 51 RCW, the Industrial Insurance Act, and
41 acknowledge that this waiver has been mutually negotiated by the PARTIES. The
42 STATE and the City of Seattle agree that their respective indemnity obligations extend to
43 any claim, demand, or cause of action brought by, or on behalf of, any of their respective

1 employees or agents. The STATE agrees that in the event that any employee or agent of
2 the STATE's contractors, subcontractors, consultants, or agents asserts a claim against
3 the City of Seattle, the STATE waives any right it may have to assert its Title 51
4 immunity as a defense against a City of Seattle claim to the STATE that otherwise would
5 be covered by the STATE's indemnity obligations to the City of Seattle.

6 19.2.5 Survival of Indemnification Obligations. Any liability of the STATE or
7 the City of Seattle arising under any indemnity provision of this Agreement shall survive
8 termination of this Agreement, whether or not any claim giving rise to such liability shall
9 have accrued.

10 **20. INSURANCE**

11
12 20.1 The STATE shall require in writing that the STATE's contractors, and each of
13 their sub-contractors of any tier where not covered by contractor provided insurance,
14 include "The City of Seattle" as an additional insured for primary and non-contributory
15 limits of liability for Commercial General Liability, Commercial Automobile Liability
16 and (if required) Contractor's Pollution Liability as established in the construction
17 contract documents, including Products and Completed Operations coverage following
18 the completion of each PROJECT stage. STATE standard insurance specification
19 paragraph 1-07.18 (Public Liability and Property Damage Insurance) applicable to the
20 construction contract documents protecting both the STATE and the CITY for the
21 PROJECT shall be amended for coverages, minimum limits of liability and/or terms and
22 conditions as may be mutually agreed upon by the STATE and the CITY.

23
24 20.2 The STATE's contractors and subcontractors of any tier shall cause certification
25 of insurance meeting the requirements herein to be issued to "The City of Seattle, Risk
26 Management Division, P.O. Box 94669, Seattle, WA 98124-4669." Such certification
27 shall not be mailed, but shall be delivered electronically to fax number (206) 470-1279 or
28 as an e-mail attachment in PDF format to riskmanagement@seattle.gov.

30 **21. THIRD PARTY BENEFICIARY**

31
32 **[See attached additional City-proposed language for SECTION 21.]**

33
34 21.1 The STATE shall require the STATE's contractors, consultants, and designers
35 and each of their subcontractors to perform the STATE's work contemplated by this
36 Agreement, the SCL Agreement, UT 01476, and the SPU Agreement, UT 01474 at no
37 cost to the City of Seattle; and because a portion of the PROJECT will be conducted on
38 City of Seattle Street Right-of-Way and on or for the benefit of the City of Seattle, the
39 contracts between the STATE and its contractors, consultants, and designers will include
40 the following requirements:

- 41
42 (1) With respect to any and all of the City of Seattle's interests, including, but
43 not limited to, excavation, restoration, and traffic control responsibilities of

1 the STATE, the STATE and the contractor will acknowledge that the City of
2 Seattle is an intended third party beneficiary of the contracts; (2) the STATE
3 and the contractor will include the City of Seattle as a named third party
4 beneficiary of the STATE's contracts; and (3) the STATE and the contractor
5 will include the City of Seattle in the indemnification, and insurance
6 provisions contained in the STATE's contracts. The STATE and CITY do not
7 intend that this paragraph be interpreted to create any obligation, liability, or
8 benefit to any third party, other than the STATE and the City of Seattle for
9 purposes of design and construction of the PROJECT as described in this
10 Agreement, the SCL Agreement, UT 01476, and the SPU Agreement, UT
11 01474.
12

13 **22. LIENS**
14

15 22.1 In the event that any City of Seattle-owned property interest becomes subject to
16 any claims for mechanics', artisans' or materialmen's liens, or other encumbrances
17 chargeable to, or through, the STATE that the STATE does not contest in good faith, the
18 STATE shall cause such lien, claim, or encumbrance to be discharged or released of
19 record (by payment, posting of bond, court deposit, or other appropriate means), without
20 cost to the City of Seattle, and shall indemnify the City of Seattle against all costs and
21 expenses (including attorneys' fees) incurred in discharging and releasing such claim,
22 lien, or encumbrance prior to completion of the PROJECT.
23

24 **23. DISPUTE RESOLUTION**
25

26 23.1 Good Faith. The CITY and the State shall make good faith efforts to resolve any
27 dispute arising under or in connection with this Agreement. The dispute resolution
28 process outlined in this Section applies to disputes arising under or in connection with the
29 terms of this Agreement. In the event that the PARTIES cannot resolve a disagreement
30 arising under or in connection with this Agreement, the PARTIES shall follow the
31 dispute resolution steps set forth below.
32

33 23.2 Notice. A PARTY's Designated Representative, as defined in Section 25 below,
34 shall notify the other PARTY's Designated Representative in writing of any problem or
35 dispute that a PARTY believes needs resolution. The written notice shall include (a) a
36 description of the issue to be resolved; (b) a description of the differences between the
37 PARTIES on the issue; and (c) a summary of any steps taken to resolve the issue.
38

39 23.3 Meeting. Upon receipt of a written notice of request for dispute resolution, the
40 project engineer/project manager for the PARTIES shall meet within ten (10) Business
41 Days and attempt to resolve the dispute. Any resolution of the dispute requires the
42 agreement of all Designated Representatives attending the meeting or who requested to
43 attend the meeting.
44

1 23.4 Notice of Second Level Meeting. If the PARTIES have not resolved the dispute
2 within five (5) Business Days after the meeting, at any time thereafter either PARTY may
3 request that the dispute be elevated to the next level by notifying the other PARTY's
4 Designated Representative in writing, requesting that the dispute be raised to the Second
5 Level Meeting. The written notification shall include a) a description of the remaining
6 issues to be resolved; b) a description of the differences between the PARTIES on the
7 issues, c) a summary of the steps already taken to resolve the issues, and d) the resolution
8 of any issues that were initially involved in the dispute.
9

10 23.5 Second Level Meeting. Upon receiving a written request that the dispute be
11 elevated to the next level, a meeting shall be held within ten (10) Business Days between
12 the project director of WSDOT and the appropriate program manager(s) to resolve the
13 dispute. Any resolution of the dispute requires the agreement of all Representatives
14 attending the meeting or who requested to attend the meeting.
15

16 23.6 Notice of Third Level Meeting. If the PARTIES have not resolved the dispute
17 within five (5) Business Days after the Second Level Meeting, at any time thereafter
18 either PARTY may request that the dispute be elevated to the next level by notifying the
19 other PARTY's Designated Representative in writing, requesting that the dispute be
20 raised to the Third Level Meeting. The written notification shall include a) a description
21 of the remaining issues to be resolved; b) a description of the differences between the
22 PARTIES on the issues, c) a summary of the steps already taken to resolve the issue, and
23 d) the resolution of any issues that were initially involved in the dispute.
24

25 23.7 Third Level Meeting. Elevate to the Designated Representatives.
26

27 23.8 Court of Law. If the PARTIES have not resolved the dispute within five (5)
28 Business Days after the third level meeting, at any time thereafter either PARTY may
29 seek relief under this Agreement in a court of law. The PARTIES agree that they have no
30 right to relief in a court of law until they have completed the dispute resolution process
31 outlined in this Section.
32

33 23.9 A PARTY's request to utilize this Dispute Resolution Process is not evidence that
34 either PARTY is in breach of this Agreement, and does not relieve any PARTY from
35 complying with its obligations under this Agreement.
36

37 **24. REMEDIES; ENFORCEMENT**

38

39 24.1 Subject to the Dispute Resolution provisions in Section 23, the City of Seattle and
40 the STATE shall have, in addition to any remedies available at law or equity, the right to
41 demand specific performance of this Agreement, the SCL Agreement, UT 01476, and the
42 SPU Agreement, UT 01474.
43

44 **25. DESIGNATED REPRESENTATIVES**

1
2 25.1 The Designated Representatives for each PARTY are as follows:
3

4 STATE:

5 Program Administrator
6 Alaskan Way Viaduct & Seawall Replacement Program
7 Washington State Department of Transportation
8 999 3rd Avenue, Suite 2424
9 Seattle, WA 98104
10

11 CITY:

12 SDOT Deputy Director
13 Seattle Department of Transportation
14 P.O. Box 34996
15 700 Fifth Avenue, Suite 3800
16 Seattle, WA 98124-4996
17

18 **26. EFFECTIVENESS AND DURATION**

19
20 26.1 This Agreement shall be effective as of the date the last PARTY signs and, unless
21 sooner terminated pursuant to the terms hereof, shall remain in effect until final
22 completion of all PARTIES' obligations contained or referred to in this Agreement, the
23 SCL Agreement, UT 01476, and the SPU Agreement, UT 01474.
24

25 **27. NOTICE**

26
27 27.1 Except for the Dispute Resolution Process in Section 23 above, for which notice
28 shall be given to the officials listed in Section 25, all notices, demands, requests,
29 consents and approvals that may or are required to be given by either PARTY to the other
30 PARTY shall be in writing and shall be deemed to have been duly given (i) upon actual
31 receipt or refusal to accept delivery if delivered personally to the Designated
32 Representative, (ii) upon actual receipt or refusal to accept delivery if sent by a nationally
33 recognized overnight delivery service to the Designated Representative, or (iii) upon
34 actual receipt if electronically transmitted to the Designated Representative with
35 confirmation sent by another method specified in this Section. Notice of a change of
36 Designated Representative or the address for the Designated Representative shall be
37 given as provided in this Section.
38

39 **28. TERMINATION AND SUSPENSION**

40
41 28.1 This Agreement may be terminated for cause by either PARTY upon ninety (90)
42 calendar days written notice. Said notice shall set forth the reasons for termination and
43 the effective date of termination.

1 28.2 Termination of this Agreement, the SCL Agreement, UT 01476, or the SPU
2 Agreement, UT 01474 shall not relieve the PARTIES of any obligations that are required
3 to be performed prior to the date of termination, nor shall it relieve the PARTIES of any
4 obligations that are intended to survive termination of this Agreement, the SCL
5 Agreement, UT 01476, or the SPU Agreement, UT 01474. Further, the PARTIES agree
6 that, in the event the STATE exercises its right to terminate pursuant to this Section or
7 the STATE suspends the work or materially delays the work after construction of the
8 PROJECT begins, then the STATE, at its cost and expense, shall modify the PROJECT,
9 in consultation with the CITY, to provide for the restoration, continued service,
10 operation, and maintenance of CITY Facilities, PROJECT infrastructure, CITY Street
11 Right-of-Way, or any other CITY property and the STATE shall ensure that the modified
12 PROJECT is completed. The STATE shall also ensure that all SPU and SCL utility
13 services can continue to be provided by SPU and SCL either in substantially the same
14 manner as occurred prior to the initiation of work, or in the manner intended by the
15 proposed work, unless otherwise agreed to by the affected utility.

16
17 **29. CONFIDENTIALITY OF INFORMATION AND RECORDS**

18
19 29.1 It is understood that certain information about the infrastructure is deemed by the
20 CITY to be sensitive and may be confidential under state or federal law. The STATE
21 agrees that all documents and information collected from field activities known to include
22 confidential information will be maintained in a locked file at the project office and
23 access will be controlled by its consultants. Furthermore, confidential information will
24 only be provided to the selected contractor in conformed documents following Contract
25 Award if such information is considered necessary for construction. The CITY will
26 provide clear written guidelines that specifically define the information that is deemed
27 sensitive and/or confidential.

28
29 29.2 Should any of those confidential or sensitive documents become the subject of a
30 request for public disclosure under chapter 42.56 RCW, the STATE shall use its best
31 efforts to immediately notify the CITY of such request and the date by which the STATE
32 anticipates responding, which date shall in no event be less than fifteen (15) calendar
33 days after STATE's first notice of the disclosure request to the CITY. The CITY must
34 then within a reasonable time of receipt of said notice in writing to the STATE (a)
35 specifically identify each record, or part thereof, and (b) fully explain why such
36 records(s) are exempt from disclosure under chapter 42.56 RCW or any other law so that
37 the STATE may respond to the records requester. The STATE shall withhold or redact
38 those public records which the CITY reasonably claims are exempt from disclosure based
39 upon the CITY's information. The CITY at its sole expense may seek a judicial
40 declaration or injunction with respect to the public records request. The CITY further
41 agrees that it will, at its sole expense, defend the non-disclosure of that information it
42 claims is exempt from disclosure and indemnify the STATE for any and all penalties
43 assessed and costs that the STATE incurs, if any.

1 29.3 The provisions of this Section survive the termination of this Agreement.
2

3 **30. GENERAL PROVISIONS**
4

5 30.1 This Agreement shall be effective independently from any and all permits that
6 may be issued by the CITY.

7 30.2 Each PARTY shall ensure that its employees, agents, and contractors comply with
8 the obligations of this Agreement.

9 30.3 The PARTIES shall not be deemed to be in default under this Agreement if
10 performance is rendered impossible by war, riots, or civil disturbances, or by floods or
11 other natural catastrophes beyond the PARTIES' control; the unforeseeable unavailability
12 of labor or materials; or labor stoppages or slowdowns or power outages exceeding back-
13 up power supplies. This Agreement shall not be terminated or the PARTIES penalized
14 for such noncompliance, provided that each PARTY takes immediate and diligent steps
15 to bring itself back into compliance and to comply as soon as practicable under the
16 circumstances without unduly endangering the health, safety, or integrity of the
17 PARTY's employees or property, or the health, safety, or integrity of the public, street
18 rights-of-way, public property, or private property.

19 30.4 This Agreement including the definition of the PROJECT as more particularly
20 described in the Project Description attached as Exhibit A may be amended only by a
21 written instrument, duly authorized by the CITY and the STATE, and executed by their
22 duly authorized representatives.

23 30.5 No failure to exercise, and no delay in exercising, on the part of either PARTY
24 hereto, any rights, power, or privilege hereunder shall operate as a waiver thereof, except
25 as expressly provided herein.

26 30.6 This Agreement, together with GCA 6366, the SCL Agreement, UT 01476 and
27 the SPU Agreement, UT 01474, with the attached Exhibits and the documents, terms and
28 provisions incorporated in any of the foregoing, constitute the entire agreement of the
29 PARTIES with respect to the PROJECT, and supersede any and all prior negotiations and
30 understandings with respect hereto.

31 30.7 Section and subsection headings are intended as information only, and shall not
32 be construed with the substance of the section or subsection they caption.

33 30.8 All exhibits or other attachments are by this reference hereby incorporated into
34 this Agreement.

35 30.9 This Agreement may be executed in counterparts, each of which shall be deemed
36 an original, and all counterparts together shall constitute but one and the same instrument.

1 30.10 The PARTIES acknowledge the right of each PARTY to exercise its police power
2 pursuant to general law and applicable statutes for the protection of the health, safety, and
3 welfare of its citizens and their properties. Nothing in this Agreement shall be construed
4 as waiving or limiting the STATE's or CITY's rights to exercise its police power or to
5 preclude or limit exercising any regulatory power in connection with this PROJECT.
6

7 30.11 This Agreement shall be interpreted, construed, and enforced in accordance with
8 the laws of the State of Washington. The venue for any action under this Agreement
9 shall be in the Superior Court for King County, Washington.
10

11 30.12 A judicial determination that any term, provision, condition, or other portion of
12 this Agreement, whether in whole or in part, is inoperative, invalid, void, or
13 unenforceable shall not affect the remaining terms, provisions, conditions, or other
14 portions of this Agreement, whether in whole or in part, and the remaining terms,
15 provisions, conditions, or other portions of this Agreement, whether in whole or in part,
16 shall remain valid and enforceable to the fullest extent permitted by law.
17

18
19 IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement as of the
20 last date written below.
21

22 CITY OF SEATTLE

WASHINGTON STATE
DEPARTMENT OF
TRANSPORTATION

23
24
25
26
27 By _____
28 Peter E. Hahn
29 Director of Transportation
30 City of Seattle
31

By _____
Ronald J. Paananen
Program Administrator
Alaskan Way Viaduct and Seawall
Replacement Program
32

33 Date: _____
34
35

Date: _____
36

37 APPROVED AS TO FORM:

38 By _____
39 Elizabeth M. Lagerberg
40 Assistant Attorney General
41

42 Date: _____
43
44

June 15, 2010

Remaining Items for SR 99 Bored Tunnel Project City-State Agreement Negotiation

The City has proposed the following language to be included in the SDOT-STATE MEMORANDUM OF AGREEMENT, NO. GCA 6486.

State negotiators have not accepted the proposed language for inclusion.

I. Proposed for inclusion in the RECITALS:

WHEREAS, the January 2009 letter of agreement between the PARTIES affirmed that the State would be responsible for the bored tunnel project, and that “the allocation of specific project responsibility to each jurisdiction carries with it the responsibility for project management, environmental work, design, construction, and project cost overruns”; and

WHEREAS, RCW 47.01.402, which became law July 1, 2009, provides that State funding for the replacement of the Alaskan Way Viaduct and related improvements is not to exceed two billion eight hundred million dollars (\$2,800,000,000.00) of which no more four hundred million shall be from tolls, and

WHEREAS, RCW 47.01.402(6)(b) provides that any costs in excess of two billion eight hundred million dollars (\$2,800,000,000.00) shall be borne by property owners in the Seattle area who benefit from replacement of the existing AWW with the deep bore tunnel, and

II. Proposed for inclusion in Section 2: GENERAL RESPONSIBILITIES

City-proposed language:

2.11 The PARTIES agree that the STATE is responsible for funding the design and construction of a re-located surface street from King Street to Pine Street, a new surface street from Pine Street to Battery Street, the demolition of the existing Alaskan Way Viaduct, and Battery Street Tunnel decommissioning. The PARTIES also agree that the CITY will perform the design and construction of the Alaskan Way surface street and the Viaduct demolition. Additional details regarding of the funding, design, and construction provisions for the street and Alaskan Way Viaduct demolition may be the subject of a future agreement.

2.12 The STATE agrees to reserve at least \$290 million (reserved project funds) for the sole purpose of designing and constructing a re-located surface street from King Street to Pine Street, a new surface street from Pine Street to Battery Street, the demolition of the existing Alaskan Way Viaduct, and Battery Street Tunnel decommissioning, and to complete these projects regardless of cost. These reserved project funds may only be used for other or interim purposes by the mutual written agreement of the PARTIES.

2.13 The PARTIES recognize that the STATE may implement tolling as part of the PROJECT. In the event that PROJECT tolling is required to support the STATE's revenue needs for the PROGRAM, the STATE agrees to work collectively with the CITY to establish a regional tolling strategy. The PARTIES agree that any facility toll on the PROJECT shall be coordinated with a mutually agreeable regional tolling strategy that examines holistic impacts and that establishes regionally coordinated toll rates with the goal of minimizing diversion to CITY streets in addition to collecting toll revenue to supplement PROGRAM funding. The STATE also agrees to evaluate and mitigate the effects that any such toll rates may have with respect to diversion of vehicular traffic from the PROJECT to the CITY. The STATE agrees that such evaluation and mitigation shall include effects on both vehicular traffic circulation on CITY streets as well as effects on CITY's ability to achieve its "Complete Streets" policy goals articulated in CITY's Resolution No. 30915, including but not limited to making CITY streets function well for bicycles, pedestrians, freight, and automobiles.

State-proposed language:

2.12 The PARTIES agree that the STATE is responsible for funding the design and construction of a re-located surface street from King Street to Pine Street, a new surface street from Pine Street to Battery Street – connecting to Elliot and Western Avenues, the demolition of the existing Alaskan Way Viaduct, and Battery Street Tunnel decommissioning. It is anticipated that the CITY will perform the design and construction of the Alaskan Way surface street and the Viaduct demolition. Additional details regarding of the funding, design, and construction provisions for the street and Alaskan Way Viaduct demolition may be the subject of a future agreement.

2.13 The current estimated cost of designing and constructing a re-located surface street from King Street to Pine Street, a new surface street from Pine Street to Battery Street, the demolition of the existing Alaskan Way Viaduct, and Battery Street Tunnel decommissioning, is \$290 million, and this amount is included in the STATE's budget for the AWV Program. The STATE will advise the CITY of any changes to the estimated cost of this work and any use of Program funds established for this purpose.

2.14 The PARTIES recognize that the STATE intends to implement tolling the proposed bored tunnel as part of the PROJECT. The STATE also agrees to evaluate and work with the CITY to identify mitigation strategies for the effects that any such toll rates may have with respect to diversion of vehicular traffic from the PROJECT to the CITY. The STATE agrees that such evaluation and mitigation shall include effects on both vehicular traffic circulation on CITY streets as well as effects on CITY's ability to achieve its "Complete Streets" policy goals articulated in CITY's Resolution No. 30915, including but not limited to making CITY streets function well for bicycles, pedestrians, freight, and automobiles.

III. Proposed for inclusion in Section 10: FUNDING AND COMPENSATION

10.1 **(underline portion only)** The STATE shall provide necessary funding for all PROJECT costs as defined by this Agreement without reimbursement from the City of Seattle, except for

the CITY cost responsibilities established in this Agreement, in SCL Agreement UT01476, and in SPU Agreement UT 01474. If for any reason the STATE's costs for design and construction of the bored tunnel, including without limitation costs for construction management, right-of-way acquisition, and risk and escalation, exceed \$1,960,000,000, the STATE shall have the sole responsibility for obtaining any needed additional spending authority without recourse to any funds allocated to S. Holgate St. to S. King St. viaduct replacement, other Moving Forward projects, Alaskan Way surface street and viaduct removal, or central waterfront construction mitigation, and without recourse to any funding device that burdens Seattle area taxpayers or property owners or the City of Seattle.

IV. Proposed for inclusion in Section 19: RISK ALLOCATION

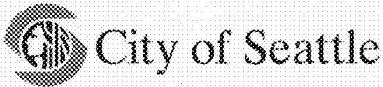
19.1.4 **(underlined portions only)** STATE Contractor's Bonds. The STATE shall require its construction contractors to provide performance bonds to the STATE and to maintain those bonds at all times pertinent to the respective contractor's obligations under its contracts. The penal sums of those bonds shall be for one hundred percent (100%) of the total contract price, including change orders and other modifications. Such bonds shall be executed by an approved Surety that is registered with the Washington State Insurance Commissioner, and that appears on the current Authorized Insurance List in the State of Washington published by the Office of the Insurance Commissioner, and that shall be conditioned upon the faithful performance of the contract by the contractor, and that shall include the City as an additional named obligee. The STATE shall ensure faithful completion of the PROJECT by use of the STATE's contractor bonds or other means, and in the event any claim for payment is presented to the CITY for any PROJECT work, the STATE upon timely notice and investigation, resulting in STATE responsibility under this Agreement, the SCL Agreement, UT 01476, and the SPU Agreement, UT 01474 shall promptly pay such claim.

V. Proposed for inclusion in Section 21: THIRD PARTY BENEFICIARY

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

(1) With respect to any and all of the City of Seattle's interests, including, but not limited to, excavation, restoration, and traffic control responsibilities of the STATE, the STATE and the contractor will acknowledge that the City of Seattle is an intended third party beneficiary of the contracts; (2) the STATE and the contractor will include the City of Seattle as a named third party beneficiary of the STATE's contracts; and (3) the STATE and the contractor will include the City of Seattle in the indemnification, and insurance, and performance bond provisions contained in the STATE's contracts. The STATE and CITY do not intend that this paragraph be

interpreted to create any obligation, liability, or benefit to any third party, other than the STATE and the City of Seattle for purposes of design and construction of the PROJECT as described in this Agreement, the SCL Agreement, UT 01476, and the SPU Agreement, UT 01474.



City of Seattle



Washington State
Department of Transportation

June 15, 2010

Robert M. Powers, P.E.
Deputy Director
Seattle Department of Transportation
P.O. Box 34996
700 Fifth Avenue, Suite 3800
Seattle, WA 98124-4996

Ron Paananen, P.E.
Program Administrator
Alaskan Way Viaduct & Seawall Replacement Program
Washington State Department of Transportation
999 3rd Avenue, Suite 2424
Seattle, WA 98104

Dear Bob and Ron:

Please find attached drafts of the three City-State agreements governing roles and responsibilities for the proposed SR 99 Bored Tunnel Project. The agreements are between the Seattle Department of Transportation and the Washington State Department of Transportation (GCA 6486), Seattle City Light and WSDOT (UT 01476), and Seattle Public Utilities and WSDOT (UT 01474). Project managers at SPU, SCL and SDOT have worked extensively with the WSDOT team over the past three months to develop these agreements.

All issues that can be resolved at the staff and department management level have been negotiated to all parties' satisfaction. Additional items that cannot be resolved at a staff or department management level are attached.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Theresa Greco'.

Theresa Greco
Director of Program Management
Alaskan Way Viaduct & Seawall Replacement Program
Washington State Department of Transportation

A handwritten signature in cursive script, appearing to read 'Hannah McIntosh'.

Hannah McIntosh
Alaskan Way Viaduct and Seawall Replacement Program Coordinator
Seattle Department of Transportation

Agreements Transmittal

June 15, 2010

Page Two

Cc: Kelly Enright, Seattle City Light, Director, Customer Care Division
Linda DeBoldt, P.E., Seattle Public Utilities, Deputy Director, Project Delivery Branch
Gavin Patterson, Alaskan Way Viaduct and Seawall Replacement Program Manager, Seattle
Public Utilities
Jodi Rian, Alaskan Way Viaduct and Seawall Replacement Program Manager, Seattle City
Light

Attachments: Remaining Items for City-State Agreement Negotiation, June 15, 2010

1 MEMORANDUM OF AGREEMENT
2 UT 01476
3 SR 99 ALASKAN WAY VIADUCT REPLACEMENT
4 SCL FACILITIES WORK AGREEMENT
5 FOR SR99 BORED TUNNEL PROJECT
6

7 THIS Memorandum of Agreement, UT 01476, SR 99 Alaskan Way Viaduct Replacement, Bored
8 Tunnel, SCL Facilities Work (“SCL Bored Tunnel Agreement”) is made and entered into
9 between the State of Washington Department of Transportation, hereinafter the “STATE,” and
10 the City of Seattle, hereinafter the CITY, (managed by Seattle City Light, hereinafter “SCL”),
11 collectively the “PARTIES” and individually the “PARTY.”
12

13 WHEREAS, the Alaskan Way Viaduct (AWV or Viaduct) and seawall are at risk of sudden and
14 catastrophic failure in an earthquake and are nearing the end of their useful lives; and
15

16 WHEREAS, the STATE and the Federal Highway Administration (FHWA), in consultation with
17 the CITY, are proposing improvements to State Route 99 (SR 99), currently a non-limited access
18 highway that includes the Viaduct; and
19

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

28 WHEREAS, in January 2009, the Governor, the King County Executive and the Mayor of
29 Seattle recommended replacement of the existing viaduct structure in the central waterfront area
30 with a bored tunnel; and,
31

32 WHEREAS, in October 2009 the Governor and the Mayor executed a Memorandum of
33 Agreement, GCA 6366, which described the basic roles and responsibilities for the
34 implementation of the AWVSR Program.
35

36 WHEREAS, the AWVSR Program (PROGRAM) consists of a four-lane bored tunnel and
37 improvements to City streets, the City waterfront, and transit; and the Moving Forward Projects;
38 and
39

40 WHEREAS, the Proposed Bored Tunnel Project (PROJECT), the subject of this Agreement, is
41 the part of the PROGRAM that replaces SR 99 from South Royal Brougham Street to Roy Street
42 that consists of designing and constructing a four-lane bored tunnel from South King Street to
43 Thomas Street, north and south tunnel portals and access streets; re-establishment of the City
44 street grid in the vicinity of the portals (Battery Street Tunnel decommissioning and Alaskan

1 Way Viaduct demolition will be addressed in a future agreement); and associated utility
2 relocations; and
3

4 WHEREAS, the Washington State Legislature passed Engrossed Substitute Senate Bill 5768 and
5 the Governor signed the bill into law designating and funding a Bored Tunnel Program as the
6 replacement for the Alaskan Way Viaduct; and
7

8 WHEREAS, in January 2009, the Governor, the King County Executive and the Mayor of
9 Seattle recommended replacement of the existing AWV structure in the central waterfront area
10 with a bored tunnel; and
11

12 WHEREAS, the CITY and STATE agree to work collaboratively toward the successful
13 completion of the PROJECT and endeavor to open the tunnel by the end of 2015 and demolish
14 the Alaskan Way viaduct in 2016; and
15

16 WHEREAS, the PROJECT is consistent with the CITY of Seattle's adopted Comprehensive
17 Plan; and
18

19 WHEREAS, the CITY and the STATE will deliver the PROJECT within the financial
20 commitments made in the Memorandum of Agreement, GCA 6366, executed by the PARTIES
21 on October 24, 2009; and
22

23 WHEREAS, concurrently with this UT 01476 Agreement, the STATE and CITY, through its
24 Seattle Public Utilities Department (SPU), are entering into an agreement, UT 01474; and
25

26 WHEREAS, concurrently with this UT 01476 Agreement, the STATE and CITY, through the
27 Seattle Department of Transportation (SDOT), are entering into an agreement, GCA 6486; and
28

29 WHEREAS, the CITY will own and/or maintain significant infrastructure to be constructed as
30 part of the PROJECT; and
31

32 WHEREAS, some or all of the work covered by this Agreement may be accomplished by
33 executed "Task Order" documents.
34

35 WHEREAS, the PROJECT will require the removal of existing City electrical, water, drainage
36 and wastewater facilities that directly conflict with the tunnel portals and tunnel portal
37 excavations ("Conflicting Facilities"), and the construction of new facilities and service
38 connections, (excluding temporary construction and permanent electrical services for the
39 PROJECT) to a permanent and final location to replace the conflicting facilities (together, the
40 "Relocation Work"); and
41

42 WHEREAS, the PROJECT will also require the planning, operational and construction
43 management practices, monitoring and other work to avoid and/or remedy damage
44 ("Deformation Mitigation Work"); and
45

1 WHEREAS, together the Relocation Work and the SCL Facilities Deformation Mitigation Work
2 will comprise the “SCL Facilities Work” of the PROJECT; and
3

4 NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performances
5 contained herein, or attached and incorporated and made a part hereof,
6

7 IT IS MUTUALLY AGREED AS FOLLOWS:
8

9 **1. DEFINITIONS**

10 Words not otherwise defined, which have well-known technical or construction industry
11 meanings, are used in accordance with such recognized meanings.
12

13
14 1.1 Approved Plans means the construction plans and provisions that evidence the CITY’s
15 determinations, made through the processes described in Sections 6 and 7 and Exhibit B of GCA
16 6486, that the plans conform to the criteria established in GCA 6486 and this Agreement;
17 Approved Plans are included in the contract documents evidencing the agreement between the
18 STATE and its contractors for construction of a given element of the PROJECT.
19

20 1.2 AWV means the Alaskan Way Viaduct structure on State Route 99, currently a non-
21 limited-access highway over a portion of CITY Street Right-of-Way.
22

23 1.3 Betterment means any upgrading of the SCL Facilities, or the design and construction of
24 any new SCL Facilities that is not attributable to the PROJECT or PROGRAM and is made
25 solely for the benefit of and at the election of SCL. Examples of work that will not constitute a
26 Betterment, so that SCL shall not bear cost responsibility, are:

27 1.3.1 If existing devices or materials are no longer regularly manufactured or cannot be
28 obtained in time to meet the PROJECT schedule, needs or requests by the STATE, then devices
29 or materials of equivalent standards although not identical, of the next highest grade or size; or

30 1.3.2 Upgrades to SCL Facilities necessary to meet current code requirements and SCL
31 published standards; or

32 1.3.3 Work required by SCL to maintain current service and capacity; or

33 1.3.4 Work required by current design and construction practices regularly followed by
34 SCL in its own work and/or considered an industry design or construction standard.
35

36 1.4 Business Days means Monday through Friday, inclusive, except for official City of
37 Seattle and state holidays.
38

39 1.5 CITY means the City of Seattle, a Washington municipal corporation.
40

41 1.6 City Construction Project Engineer means the person designated by SDOT to act as the
42 City’s coordinator and primary representative in matters arising during the course of construction
43 as set forth in this Agreement.
44

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

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

8
9 1.9 City of Seattle means CITY.

10
11 1.10 City Standards means all City of Seattle laws, rules, regulations and standards and all
12 applicable federal and state laws, rules, regulations and standards, including but not limited to
13 the following, except as otherwise provided in this Agreement, UT 01474 and UT 01476:

14 The Seattle Municipal Code

15 The City of Seattle Standard Specifications for Road, Bridge and Municipal Construction

16 The City of Seattle Standard Plans for Municipal Construction,

17 SDOT, SCL, DPD and SPU Director's Rules, including the City of Seattle Right of Way
18 Improvements Manual, 2005-22.

19 SCL Material Standards

20 SCL Construction Guidelines

21
22 1.11 CITY Street Right-of-Way means public street right-of-way under the jurisdiction of
23 SDOT pursuant to Title 15 of the Seattle Municipal Code.

24
25 1.12 Conceptual Relocation Plan means a work product that defines the general scope of
26 Relocation Work including a planning level estimate of design and construction costs, as further
27 described in Section 3 herein.

28
29 1.13 Conflicting Facilities means all SCL Facilities and all SPU Facilities identified by the
30 STATE that have alignments intersecting or that directly conflict with the final configuration of
31 the proposed SR 99 bored tunnel portals and tunnel portal excavations.

32
33 1.14 Contract Award means the STATE's written decision accepting bid for construction of a
34 Project.

35
36 1.15 Defective Work means design or construction work or materials that fail to comply with
37 the Approved Plans, CITY-approved modifications to the Approved Plans, or the laws, rules,
38 regulations or standards as specified in this Agreement.

39
40 1.16 Deformation means any 3-dimensional displacement or combination of displacements.
41 The terms "tilt," "strain," "settlement," "heave," "lateral movement," and related terminology are
42 used as being common industry terminology for deformation in specific situations. Where such
43 industry terminology is used for convenience herein, it does not imply that the broad definition
44 of deformation has been limited.

1 1.17 Deformation Mitigation Work means any planning, operational and construction
2 management practices, monitoring and temporary or permanent SCL Facilities Work including
3 maintenance of service undertaken to avoid or remedy damage as a result of Deformation, as
4 further described in Section 4 herein.

5
6 1.18 DPD means the City of Seattle Department of Planning and Development.
7

8 1.19 Engineer of Record means the engineer licensed in the State of Washington who has been
9 commissioned by the STATE as the prime engineer of the PROJECT, having overall
10 responsibility for the adequacy of the design and the coordination of the design work of other
11 engineers and whose professional seal is on the Approved Plans.

12
13 1.20 Hazardous Substance(s) means any substance, or substance containing any component,
14 now or hereafter designated as a hazardous, dangerous, toxic or harmful substance, material or
15 waste, subject to regulation under any federal, state or local law, regulation or ordinance relating
16 to environmental protection, contamination or cleanup including, but not limited to, those
17 substances, materials and wastes listed in the United States Department of Transportation
18 Hazardous Materials Table (49 C.F.R. §172.101) or by the United States Environmental
19 Protection Agency as hazardous substances (40 C.F.R. pt. 302 and amendments thereto) or in the
20 Washington Hazardous Waste Management Act (Ch. 70.105 RCW) or the Washington Model
21 Toxics Control Act (Chs. 70.105D RCW and 82.21 RCW), petroleum products and their
22 derivatives, and such other substances, materials and wastes as become regulated or subject to
23 cleanup authority under any Environmental Law.
24

25 1.21 Letter of Acceptance means the written document that signifies the CITY's acceptance of
26 CITY Infrastructure to be owned by the CITY, and shall signify the STATE's transfer of CITY
27 Infrastructure to be owned by the CITY. The Letter of Acceptance will not transfer any interest
28 in real property. The Letter of Acceptance shall be jointly executed by the PARTIES. A Letter
29 of Acceptance for SPU Facilities requires SPU approval and a Letter of Acceptance for SCL
30 Facilities requires SCL approval.
31

32 1.22 Letter of Plan Approval means the letter provided to the STATE by the CITY following
33 the completion of the plan review process, signifying that the plans and specifications identified
34 in the letter are the Approved Plans.
35

36 1.23 New Work means the design and construction by or at the direction of SCL of a new
37 utility other than (a) as part of a relocation associated with the PROJECT, or (b) to provide
38 service to the PROJECT. New Work shall be entirely the financial obligation of SCL.
39

40 1.24 Private Utilities mean utility uses, excluding facilities owned and operated by the CITY,
41 approved through franchise agreements and/or Street Use Permits by the CITY and governed and
42 enforced through City Ordinance.
43

44 1.25 Procedures mean *Design Review, Construction Management, Inspection and Record*
45 *Drawing Procedures*, attached as Exhibit B to the SDOT Agreement GCA 6486.

- 1
2 1.26 PROJECT means the Proposed Bored Tunnel Project, the part of the PROGRAM that
3 replaces SR 99 from South Royal Brougham Street to Roy Street and that consists of designing
4 and constructing a four-lane bored tunnel from South King Street to Thomas Street, north and
5 south tunnel portals and access streets, re-establishment of the City street grid in the vicinity of
6 the portals (Battery Street Tunnel decommissioning and Alaskan Way Viaduct demolition are
7 not part of the PROJECT and will be addressed in a future agreement);and associated utility
8 relocations. PROJECT description is attached as Exhibit A to the SDOT Agreement GCA 6486.
9
- 10 1.27 PROGRAM means all the projects, collectively, implemented by the STATE and the
11 CITY that remove and replace the AWV and seawall.
12
- 13 1.28 Project Engineer means the persons appointed by the STATE to lead the PROJECT
14 during design and/or construction or his or her designee.
15
- 16 1.29 Relocation Work means the removal or abandonment of each Conflicting Facility,
17 maintenance of service for those facilities, and the installation or reconstruction of each
18 Conflicting Facility to its permanent and final location.
19
- 20 1.30 Remediation means the same as Remedy or Remedial Action defined in MTCA which
21 includes any action or expenditure consistent with the purposes of MTCA to identify, eliminate,
22 or minimize any threat or potential threat posed by Hazardous Substances to human health or the
23 environment including any investigative and monitoring activities with respect to any release or
24 threatened release of a Hazardous Substance and any assessments to determine the risk or
25 potential risk to human health or the environment.
26
- 27 1.31 SCL means Seattle City Light.
28
- 29 1.32 SCL Facilities means the electrical facilities impacted by, or constructed as part of, the
30 PROJECT that are owned or will be owned by the CITY.
31
- 32 1.33 SCL Facilities Work means work required to design, construct and protect the SCL
33 Facilities as part of the PROJECT.
34
- 35 1.34 SDOT means the Seattle Department of Transportation.
36
- 37 1.35 SDOT Facilities means the streets and roadway facilities impacted by, or constructed as
38 part of, the PROJECT that are owned or will be owned by the CITY.
39
- 40 1.36 Specialty Work means the construction and installation of all 13.8kV or above rated
41 equipment and associated materials and infrastructure needed to accomplish the SCL Facilities
42 Work.
43
- 44 1.37 SPU means Seattle Public Utilities.
45

1 1.38 SPU Facilities means the water, drainage and wastewater facilities impacted by, or
2 constructed as part of, the PROJECT that are owned or will be owned by the CITY.

3
4 1.39 SPU Facilities Work means work required to design, construct and protect the SPU
5 Facilities as part of the PROJECT.

6
7 1.40 STATE means the State of Washington Department of Transportation.

8
9 1.41 Task Force means a group consisting of State, City, contractor, and other stakeholder
10 staff meeting regularly to review and reach decisions relating to a particular subject, e.g., traffic,
11 structures.

12
13 1.42 Task Order means a document executed by the PARTIES under this Agreement
14 authorizing work by one PARTY to be done on behalf of the other PARTY and that defines the
15 scope and the obligations of the PARTIES for the given element of work. All terms and
16 conditions of the Agreement shall apply to each Task Order.

17
18 1.43 Utility Easement means a non-exclusive permanent right over real property for the
19 operation, maintenance, repair and replacement of the SCL Facilities, in the form attached as
20 Exhibit A.

21
22 1.44 Utility Service Work means any facilities required to provide temporary Utility services
23 for construction of the PROJECT; and any work needed to obtain permanent SCL services to the
24 bored tunnel or SCL customers.

25
26 1.45 WSDOT means Washington State Department of Transportation.

27
28 Words not otherwise defined, which have well-known technical or construction industry
29 meanings, are used in accordance with such recognized meanings.

30
31 **2. GENERAL RESPONSIBILTIES**

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

36
37 2.2 This Agreement in conjunction with GCA 6486 and UT 01474 is prepared by the STATE
38 and CITY to govern relationships between the PARTIES and establish each PARTY's
39 responsibilities regarding the PROJECT.

40
41 2.3 The PARTIES understand that environmental review of the proposed PROJECT is
42 underway at the date of this agreement and agree that if an alternative other than the Proposed
43 Bored Tunnel is selected, this agreement may be terminated pursuant to the provisions of Section
44 21 herein.

1 2.4 The PARTIES shall work collaboratively to resolve issues in a manner that endeavors to
2 open the Proposed Bored Tunnel to the public on schedule.

3
4 2.5 The design and construction of CITY Facilities, including repair, shall comply with City
5 Standards.

6
7 2.6 Each PARTY shall provide the funding and resources necessary to fulfill the
8 responsibility of that PARTY as established in this Agreement.

9
10 2.7 The PARTIES agree to work cooperatively with each other and make reasonable, good
11 faith efforts to timely and expeditiously complete the PROJECT, as provided in this Agreement,
12 including, but not limited to, the selection of a preferred SR 99 design alternative; development
13 of preliminary engineering and final design and construction. In order to optimize design and
14 minimize conflicts, the STATE shall coordinate design and construction of the various contracts
15 making up the PROJECT with design of subsequent PROGRAM stages, and with construction of
16 previous stages of the PROGRAM. The STATE shall be prepared to modify design of the
17 contracts making up the PROJECT, the subsequent PROGRAM stage and/or previous phase if
18 both PARTIES determine the modifications are necessary and reasonable, to minimize conflicts.

19
20 2.8 The STATE shall pay for all costs associated with the SCL Facilities Deformation
21 Mitigation Work, including but not limited to design; design review; purchase of materials;
22 construction; inspection; preparation of record drawings; CITY crew time and costs; any
23 temporary SCL services required for construction of the PROJECT; and any work needed to
24 obtain permanent SCL services to the bored tunnel or SCL customers; regardless of whether such
25 SCL Facilities Deformation Mitigation Work is performed by the SCL or other CITY staff, the
26 STATE, or its contractor, as set forth in the Approved Plans, and any SCL-approved revisions to
27 the Approved Plans, without reimbursement from SCL, including change orders, but excluding
28 Betterments or New Work as defined in this Agreement. No delay costs shall be paid for by
29 SCL.

30
31 2.9 The STATE is responsible for designing and constructing the Proposed Bored Tunnel
32 portion of the PROJECT. The STATE is responsible for taking measures to minimize, limit, and
33 mitigate damage to private property and CITY Facilities including CITY streets, CITY
34 telecommunications facilities and SCL Facilities that may result from the PROJECT
35 construction, including damage that may result from tunnel-induced Deformation. The STATE is
36 responsible for remedying such damage should it occur.

37
38 2.10 SCL is responsible for relocating SCL Conflicting Facilities. SCL's relocation
39 responsibility is limited to the final relocation of each SCL Conflicting Facility unless otherwise
40 agreed to by the PARTIES during the PARTIES' evaluation of the Conceptual Relocation Plan.

41
42 2.11 The PARTIES agree that it is in the public interest for one PARTY to implement portions
43 of the other PARTY's PROJECT responsibilities. Therefore, this Agreement establishes a Task
44 Order process for use by a PARTY to authorize the other PARTY to conduct work on its behalf,

1 and as may be documented through each Task Order pursuant to Section 9 of this Agreement and
2 Section 4 in GCA 6486, agree to reimburse the other PARTY for such services.

3
4 2.12 The terms, conditions, and requirements of GCA 6486 and this Agreement shall apply to
5 each Task Order performed as part of the PROJECT.

6
7 2.13 The PARTIES agree to document design-related decisions through the use of
8 concurrence letters executed by both PARTIES.

9
10 2.14 The STATE agrees to take the lead in consulting and coordinating with all utility owners
11 affected by the PROJECT.

12
13 2.15 The PARTIES shall apply for and obtain all necessary federal, state and City of Seattle-
14 issued permits and approvals for the work for which they are responsible prior to commencing
15 work that requires such permits, including but not limited to all permits, approvals or permission
16 for exploratory investigations, testing, site preparations, demolition and construction.

17
18 2.16 The PARTIES shall comply with the regulatory requirements and agree to meet
19 operational and customer service requirements of each existing SCL Facility.

20
21 2.17 The PARTIES shall minimize utility service interruptions to SCL customers.

22
23 2.18 To the extent necessary, SCL agrees to lead the coordination of the PROJECT with all
24 applicable electrical regulatory agencies.

25
26 **3. RESPONSIBILITIES REGARDING SCL CONFLICTING FACILITIES**

27
28 3.1 The STATE shall identify all Conflicting Facilities.

29
30 3.2 SCL shall inform the STATE of any additional Conflicting Facilities. In the event that
31 SCL builds new Conflicting Facilities, SCL shall inform the STATE.

32
33 3.3 The STATE is responsible for preparing Conceptual Relocation Plans that documents a
34 feasible and efficient approach to relocating Conflicting Facilities in a manner that
35 accommodates the PROJECT. The STATE's Conceptual Relocation Plans shall include:

36 3.3.1 The STATE's conceptual design of the PROJECT; and

37 3.3.2 Identification of Conflicting Facilities; and

38 3.3.3 The STATE's conceptual design of the Relocation Work that is feasible
39 and efficient, that is in compliance with City Standards, and that
40 demonstrates compatibility with existing infrastructure to remain; and

41 3.3.4 Plan view drawings developed in collaboration with SCL; incorporating
42 SCL comments and input; drafted on roll plots in accordance with
43 AWVSR Program CADD standards presented at an engineering scale of
44 one inch equals 40 feet; showing the existing configuration of Conflicting
45 Facilities, proposed configuration of relocated CITY Infrastructure, and all

1 CITY Facilities; that confirms no apparent conflicts with other utilities or
2 infrastructure; and

3 3.3.5 Identification of Conflicting Facilities that require multiple relocations in
4 order to accommodate the PROJECT along with the circumstances that
5 creates the need for such multiple relocations; and

6 3.3.6 Potential conflicts, constraints, and deviations from City Standards; and

7 3.3.7 A conceptual-level construction cost estimate of all costs to construct the
8 Relocation Work shown in the Conceptual Relocation Plan. All costs shall
9 be developed on a per-unit cost to install basis for the separate types, sizes
10 and segments of Relocation Work. The costs shall be developed on the
11 basis of typical construction costs in the area; and

12 3.3.8 A conceptual schedule for relocation of Conflicting Facilities. The
13 schedule shall be coordinated with the proposed design and construction
14 schedule for other work within the PROJECT; and

15 3.3.9 A contracting strategy for design and construction of each component of
16 Relocation Work; and

17 3.3.10 In instances where Relocation Work will be performed by the STATE
18 through a Design-Build Contract, the STATE shall confirm and modify as
19 necessary the Conceptual Relocation Plan in a manner consistent with the
20 Design-Builder's conceptual design and coordinated with the Design-
21 Builder's staging plans.
22

23 3.4 The STATE agrees to provide the Conceptual Relocation Plan to SCL in a timely manner
24 that accommodates the project schedule. SCL agrees to promptly provide either its comments on,
25 or approval of, the Conceptual Relocation Plan. SCL's responsibility for the Relocation Work
26 begins when the PARTIES have written mutual agreement in the form of a Task Order or letter
27 of concurrence regarding the scope of Relocation Work and each PARTY's responsibilities,
28 including multiple utility relocation responsibilities.
29

30 3.5 The PARTIES shall use the Conceptual Relocation Plan as the basis for establishing the
31 scope, schedule and estimated cost of design and construction services to be documented in Task
32 Orders under this Agreement
33

34 3.6 In instances where the STATE's revisions to the PROJECT design differ so significantly
35 from the Conceptual Relocation Plan as to render all or portions of SCL's design or construction
36 work obsolete, the STATE shall reimburse SCL for the accrued costs of the obsolete work.
37

38 3.7 The STATE is responsible for avoiding damage to SCL Facilities, including those
39 installed as part of the PROJECT or PROGRAM.
40

41 **4. STATE RESPONSIBILITIES REGARDING SCL FACILITIES DEFORMATION** 42 **MITIGATION WORK** 43

44 4.1 The STATE will assess potential impacts of Deformation on private property and CITY
45 Facilities including CITY streets, CITY telecommunications facilities and SCL Facilities. Where

1 the CITY has established deformation criteria for its facilities, these criteria will be used.
2 Otherwise, criteria will be derived using accepted engineering practice and shall be mutually
3 agreed upon by the PARTIES.
4

5 4.2 SCL shall review the STATE's estimate of susceptibility or vulnerability of its facilities
6 to Deformation and provide comments. Such comments shall be provided to assist the STATE
7 only, and shall not be interpreted as waiving or limiting in any way the STATE's responsibility
8 for Deformation Mitigation Work or other damages.
9

10 4.3 The STATE, with SCL input, shall develop and implement a plan for Deformation
11 Mitigation Work. SCL's input shall be provided to assist the STATE only, and shall not be
12 interpreted as waiving or limiting in any way the STATE's responsibility for Deformation
13 Mitigation Work or other damages.
14

15 4.4 As a component of the Deformation Mitigation Work, the STATE shall implement a
16 construction monitoring Task Force responsible for the planning and implementation of the
17 instrumentation and monitoring program and processing data, evaluating results, and developing
18 recommendations to mitigate deformation. SCL shall participate on the task force and inform
19 the STATE on feasibility and functionality of the Deformation Mitigation Work on SCL
20 Facilities.
21

22 4.5 SCL shall provide input to the STATE regarding construction monitoring and
23 deformation management activities when these activities pertain to SCL Facilities. SCL shall
24 provide the STATE all necessary access to SCL Facilities for the purposes of design or
25 implementation of mitigation measures. SCL may perform mitigation measures on behalf of the
26 STATE in a manner and schedule that supports the STATE's project requirements. SCL's input,
27 advice, participation, and access shall be provided to assist the STATE only, and shall not be
28 interpreted as waiving or limiting in any way the STATE's responsibility for Deformation
29 Mitigation or other damages.
30

31 4.6 The STATE is responsible for repairing, replacing or otherwise remedying, loss of
32 function or capacity of SCL Facilities as a consequence of Deformation for a maximum of two
33 (2) years after completion of tunneling or earlier if the PARTIES agree that monitoring indicates
34 that the rate of Deformation is not significant and further monitoring is unwarranted.
35

36 4.7 The STATE's monitoring program shall measure and document Deformation that occurs
37 between initiation of construction and completion of the monitoring period. In addition to soil
38 monitoring points, the STATE shall include pre- and post-construction survey of accessible
39 portions of electrical facilities where excessive Deformation is anticipated such as Alaskan Way
40 south of Yesler Way and 6th Avenue north of Denny Way.
41

42 **5. DESIGN, PLAN REVIEW, CHANGE MANAGEMENT**

43

44 5.1 Where the STATE is performing the design of SCL Facilities Work, the STATE and SCL
45 shall comply with all provisions outlined in Section 7 and Exhibit B of GCA 6486.

1
2 5.2 In the event the STATE designates as limited access any area in or near the tunnel portals
3 on which a SCL Facility exists or will be relocated, the PARTIES agree to make every effort to
4 develop a design that minimizes the need for regular, on-going maintenance access or avoids
5 placing the SCL Facility within limited access boundaries.
6

7 5.3 The STATE agrees to incorporate qualification criteria mutually agreed upon by the
8 PARTIES for construction contractors in the performance of Specialty Work into the contract
9 bid document. The STATE shall consult with SCL on the contractors and subcontractors bidder
10 qualifications for Specialty Work. SCL shall provide comments to the STATE on known bidder
11 qualifications. The STATE shall not allow unqualified contractors to perform Specialty Work.
12

13 **6. CONSTRUCTION MANAGEMENT, INSPECTION AND CONTRACT**
14 **ADMINISTRATION**
15

16 6.1 The PARTIES shall comply with all provisions contained within Section 14 of GCA
17 6486, regarding Construction Management, Inspection and Contract Administration for the
18 PROJECT, and such provisions shall apply equally to this Agreement.
19

20 6.2 Where SCL staff or crews are performing work requested by the STATE, the STATE
21 shall provide all labor, materials, equipment, and tools required to excavate, provide trench
22 support systems, and handle and dispose of all spoils (including contaminated soils,
23 groundwater, and other debris), and provide a safe workplace for SCL staff per applicable State
24 and Federal laws, and City of Seattle standards, for the SCL Facilities Work in accordance with
25 the Approved Plans and any SCL-approved revisions to the Approved Plans. The STATE will
26 not provide personal protective equipment for SCL staff.
27

28 6.3 The STATE agrees to provide advance notice of service outages needed for construction
29 to schedule crews, notify customers and accommodate other previously scheduled outage
30 requests in accordance with CITY Standards.
31

32 **7. MONITORING AND DEFORMATION MITIGATION**
33

34 7.1 The PARTIES agree to comply with all provisions contained within Section 12 of the
35 GCA 6486, regarding Monitoring and Deformation Mitigation for the PROJECT, and such
36 provisions shall apply equally to this Agreement
37

38 **8. NOTICES AND DESIGNATED REPRESENTATIVES**
39

40 8.1 Any notice required or permitted to be given pursuant to this Agreement shall be in
41 writing and shall be sent postage prepaid by U.S. Mail to the Designated Representatives.
42

43 8.2 The Designated Representatives for each PARTY are as follows:
44
45

1 STATE:
2 Program Administrator
3 Alaskan Way Viaduct & Seawall Replacement Program
4 Washington State Department of Transportation
5 999 3rd Avenue, Suite 2424
6 Seattle, WA 98104
7

8 SCL:
9 Project Manager, Alaskan Way Viaduct & Seawall Replacement Program
10 Seattle City Light
11 P.O. Box 34018
12 700 Fifth Avenue, Suite 4900
13 Seattle, WA 98124-4018
14

15 **9. FUNDING OF SCL FACILITIES WORK AND TASK ORDERS**
16

17 9.1 The PARTIES agree to comply with all provisions contained within Section 4 of GCA
18 6486, regarding Task Orders, and such provisions shall apply equally to this Agreement

19 9.2 The STATE shall provide necessary funding for all PROJECT costs without
20 reimbursement from the City of Seattle, except for the City of Seattle cost responsibilities
21 established in this Agreement, in SDOT Agreement GCA 6486, and SPU Agreement UT 01474.
22

23 9.3 Each PARTY shall fund work for which it is responsible pursuant to this agreement.
24

25 9.4 The STATE will request, obtain and fund any temporary and permanent utility services
26 required for the PROJECT through separate utility service agreements with SCL.
27

28 9.5 While SDOT is the City lead agency for the PROJECT, the STATE understands and
29 agrees that all PROJECT decisions that are likely to result in expenditure of SCL funds, and all
30 PROJECT decisions that may have operational, maintenance, or access impacts to SCL
31 Facilities, require concurrence of SCL.
32

33 **10. SCL'S RIGHT TO CORRECT NON-CONFORMING, UNAUTHORIZED AND**
34 **DEFECTIVE WORK**
35

36 10.1 If the STATE or its contractor fails to remedy, or fails to properly remedy, non-
37 conforming, unauthorized or Defective Work within the time specified by SCL, which is not to
38 be less than ten (10) Business Days, SCL may, but is not required to, correct and remedy such
39 work by any means as SCL may deem necessary, including the use of SCL staff or contractors.
40

41 10.2 If the STATE or its contractor fails to comply with a written notice to remedy what SCL
42 determines to be an emergency situation, SCL may, but is not required to, have the non-
43 conforming, unauthorized or Defective Work corrected immediately, have such work removed
44 and replaced, or have work the STATE or its contractor refuses to correct completed. An

1 emergency situation shall mean a condition that calls for immediate action to respond to danger
2 to health, safety or property.

3
4 10.3 Direct and indirect costs incurred by SCL attributable to correcting and remedying
5 unauthorized, non-conforming or Defective Work, or work the STATE or its contractor failed or
6 refused to perform, shall be paid by the STATE to SCL within 45 calendar days after receipt of
7 an invoice, as further defined in Exhibit B of GCA 6486.

8
9 10.4 Except in an emergency situation as defined under Section 10.2, disagreements between
10 SCL and the STATE on what constitutes non-conforming, unauthorized or Defective Work shall
11 be resolved using the dispute resolution process established in Section 19 herein prior to SCL
12 performing any work.

13
14 10.5 Any and all services, including direction, provided by SCL pursuant to this section shall be
15 subject to all limitations on the CITY's liability contained in GCA 6486, including but not limited
16 to Section 16, Risk Allocation.

17
18 **11. SCL ACCESS AND INSPECTION OF SCL FACILITIES WORK**

19
20 11.1 Neither the STATE nor its contractor shall require SCL to interrupt electrical service
21 without (a) written notice to SCL at least fourteen (14) calendar days prior to the planned
22 interruption and (b) SCL's written approval. SCL may restrict electrical service interruptions to
23 the extent necessary to maintain electrical system operations and adequate power supply to
24 customers.

25
26 11.2 The STATE shall ensure the SCL has the right to safe access to their facilities at any time
27 to operate and maintain existing and newly installed SCL Facilities or to inspect or perform SCL
28 Facilities Work. For purposes of this Agreement, "access" shall mean that the vaults, vault
29 openings, handholes, power poles, ductbanks, substation equipment or substation entrances shall
30 not be blocked, covered or otherwise inaccessible to SCL. With the exception of SCL's on-site
31 inspector, SCL staff will notify the STATE in advance of their arrival on site except in the case
32 of emergency in accordance with site access procedures to be developed by the PARTIES.

33
34 11.3 Under no circumstances shall the STATE, its contractor, or anyone other than SCL
35 personnel enter any energized SCL Facilities or operate any portion of the existing or new SCL
36 Facilities, without SCL personnel approval and supervision.

37
38 11.4 The STATE agrees and acknowledges that SCL shall have an on-site inspector available
39 during the construction of SCL Facilities for SCL's quality assurance. The STATE agrees and
40 acknowledges SCL's on-site inspector shall (a) have timely and complete access to the
41 construction work associated with the SCL Facilities Work; (b) be timely informed of all
42 relevant construction timelines associated with such work; and (c) have the authority to, but not
43 be required to, reject and have corrected and/or replaced any construction or materials deemed to
44 be deficient, or which deviate from the Approved Plans or any SCL-approved revisions to the
45 Approved Plans. In such instances, SCL's on-site inspector, or SCL's project manager, will

1 immediately direct comments and issues to the STATE's construction project engineer or
2 designated representative, which will be followed up in writing as soon as possible but no later
3 than ten (10) Business Days of the date of any inspection. The STATE shall promptly address
4 each comment or issue presented by SCL to SCL's satisfaction. SCL staff will continue to be
5 supervised by SCL management.
6

7 11.5 The STATE will allow SCL's on-site inspector or Designated Representative to consult
8 with and inquire of the STATE construction Project Engineer, attend all meetings, and have
9 timely and complete access to all documentation as to all matters concerning the SCL Facilities
10 Work. SCL shall not provide direction, directly or indirectly, to the STATE's consultant(s) or
11 contractor.
12

13 11.6 The STATE shall provide SCL with timely notice prior to commencement and
14 completion of all material stages of the SCL Facilities Work and shall invite SCL to inspect such
15 work upon completion of any material stage. The STATE shall timely address each comment or
16 issue presented by SCL to SCL's satisfaction. Both PARTIES agree to act as expeditiously as
17 possible to assure a timely resolution of any deficiencies.
18

19 11.7 SCL shall observe the work on SCL Facilities performed by the STATE to satisfy SCL's
20 needs for quality assurance. SCL will notify the STATE if SCL observes defective SCL
21 Facilities Work, such as improper installation or unsafe conditions.
22

23 **12. FINAL INSPECTION AND PROJECT ACCEPTANCE**

24

25 12.1 The PARTIES agree to comply with all provisions contained within Section 15 of GCA
26 6486, regarding Final Inspection and Project Acceptance, and such provisions shall apply equally
27 to this Agreement
28

29 12.2 SCL Facilities shall not be placed into interim use or operation, or transferred to the City,
30 unless or until: (a) SCL has participated in an inspection of the SCL Facilities; (b) any
31 deficiencies or Defective Work have been resolved or corrected to SCL's satisfaction; and (c)
32 SCL confirms with the STATE in writing that SCL's minimum inspection and testing
33 requirements for the SCL Facilities have been met.
34

35 **13. WARRANTIES**

36

37 13.1 The PARTIES agree to comply with all provisions contained within Section 17 of GCA
38 6486, regarding Final Inspection and Project Acceptance, and such provisions shall apply equally
39 to this Agreement

40 **14. ACQUISITION AND TRANSFER OF EASEMENTS AND FRANCHISES**

41

42 14.1 SCL is responsible for identifying and acquiring, at its sole cost and expense, all property
43 rights needed to complete Relocation Work, except for property otherwise required for the
44 PROJECT.

1
2 14.2 The STATE is responsible for identifying and acquiring, at its sole cost and expense, all
3 property rights needed to complete SCL Facilities Deformation Mitigation Work.
4

5 14.3 The PARTIES recognize that their property acquisition responsibilities include the
6 performance of all appraisal, appraisal review, title review, surveys, property investigation,
7 relocation assistance and all other investigations and services in connection with the acquisition
8 of the permanent easement rights necessary for the SCL Facilities, including, without limitation,
9 identification and investigation of Hazardous Substances as provided in Section 5 of the GCA
10 6486. The STATE shall provide to SCL, as soon as available to the STATE, all reports and
11 documents prepared or obtained in connection with any of the reviews and investigations
12 described above.
13

14 14.4 Where the State is acquiring easement rights for SCL Deformation Mitigation Work, unless
15 the PARTIES otherwise agree in writing, prior to commencement of construction, the STATE
16 shall convey to the CITY the easement rights referred to in Section 14.6 by conveying them
17 substantially in the form as, and containing the same conditions as, the approved Utility Easement
18 form attached and identified as Exhibit A. The Utility Easements conveyed to the CITY shall not
19 be subject to any lien, encumbrance or exception of title of any kind.
20

21 14.5 The legal descriptions will be developed based on the Approved Plans. The PARTIES
22 acknowledge that due to unforeseen field conditions the location of one or more of the easements
23 may need to change after commencement of construction. In that case, the STATE shall provide
24 SCL with documents, reports and information identified in Subsection 14.3 above, relevant to the
25 new or modified easement area. All requirements and conditions pertaining to the original
26 permanent easement shall apply to all amendments and modifications.
27

28 14.6 Where SCL Facilities are located in or near an area which the STATE designates as a
29 limited access facility as defined by RCW 47.52.010, the STATE will ensure that SCL continues
30 to be allowed access to its facilities.

31 14.6.1 The STATE's limited access facility designation for the tunnel shall contain a
32 vertical and horizontal boundary.

33 14.6.2 The STATE agrees that any limited access facility designation for the tunnel will
34 allow SCL to access its SCL Facilities.

35 14.6.3 The area between the limited access facility boundaries and the CITY street shall
36 continue to be CITY Street Right-of-Way.

37 14.6.4 To the extent possible, limited access facility boundaries will be defined in a
38 manner that places SCL Facilities of a significant size, or that are difficult to relocate, outside of
39 the limited access boundaries.

40 14.6.5 In the event the STATE designates as limited access facility any area in or near
41 the tunnel portals on which a SCL Facility exists or will be relocated, the STATE agrees to
42 provide SCL a SCL franchise/utility permit in the form attached hereto as Exhibit B, pursuant to
43 the requirements of Section 14 herein and will make every effort to develop a design that
44 minimizes the need for regular, on-going maintenance access as reasonably feasible.
45

1 **15. ENVIRONMENTAL REMEDIATION**

2
3 15.1 The PARTIES shall comply with all provisions of GCA 6486, regarding Environmental
4 Remediation, including but not limited to all provisions in Section 5 therein, and such provisions
5 shall apply equally to this Agreement.
6

7 **16. RISK ALLOCATION**

8
9 16.1 The PARTIES shall comply with all provisions of the GCA 6486, regarding Risk
10 Allocation and Indemnification, including but not limited to all provisions in Section 20 therein,
11 and such provisions shall apply equally to this Agreement.
12

13 **17. INSURANCE**

14
15 17.1 The PARTIES shall comply with all provisions of the GCA 6486, regarding Insurance,
16 including but not limited to all provisions in Section 20 therein, and such provisions shall apply
17 equally to this Agreement.
18

19 **18. THIRD PARTY BENEFICIARY**

20
21 18.1 The PARTIES shall comply with all provisions of GCA 6486, regarding Third PARTY
22 Beneficiary, including but not limited to all provisions in Section 21 therein, and such provisions
23 shall apply equally to this Agreement.
24

25 **19. DISPUTE RESOLUTION**

26
27 19.1 Good Faith. SCL and the STATE shall make good faith efforts to resolve any dispute
28 arising under or in connection with this Agreement. The dispute resolution process outlined in
29 this Section applies to disputes arising under or in connection with the terms of this Agreement.
30 In the event that the Parties cannot resolve a disagreement arising under or in connection with
31 this Agreement, the PARTIES shall follow the dispute resolution steps set forth below.
32

33 19.2 Notice. A PARTIES Designated Representative, as defined in Section 8 above, shall
34 notify the other PARTIES Designated Representative in writing of any problem or dispute that a
35 PARTY believes needs resolution. The written notice shall include (a) a description of the issue
36 to be resolved; (b) a description of the differences between the PARTIES on the issue; and (c) a
37 summary of any steps taken to resolve the issue.
38

39 19.3 Meeting. Upon receipt of a written notice of request for dispute resolution, the WSDOT
40 project engineer and the SCL project manager shall meet within ten (10) Business Days and
41 attempt to resolve the dispute. Any resolution of the dispute requires the agreement of all
42 Designated Representatives attending the meeting or who requested to attend the meeting.
43

44 19.4 Notice of Second Level Meeting. If the PARTIES have not resolved the dispute within
45 five (5) Business Days after the meeting, at any time thereafter either PARTY may request that

1 the dispute be elevated to the next level by notifying the other PARTIES Designated
2 Representative in writing, requesting that the dispute be raised to the Second Level Meeting. The
3 written notification shall include a) a description of the remaining issues to be resolved; b) a
4 description of the differences between the PARTIES on the issues, c) a summary of the steps
5 already taken to resolve the issues, and d) the resolution of any issues that were initially involved
6 in the dispute.

7
8 19.5 Second Level Meeting. Upon receiving a written request that the dispute be elevated to
9 the next level, a meeting shall be held within ten (10) Business Days between the WSDOT
10 project director and the Customer Service and Energy Delivery Officer of Seattle City Light to
11 resolve the dispute. Any resolution of the dispute requires the agreement of all Representatives
12 attending the meeting or who requested to attend the meeting.

13
14 19.6 Notice of Third Level Meeting. If the PARTIES have not resolved the dispute within
15 five (5) Business Days after the Second Level Meeting, at any time thereafter either PARTY may
16 request that the dispute be elevated to the next level by notifying the other PARTIES Designated
17 Representative in writing, requesting that the dispute be raised to the Third Level Meeting. The
18 written notification shall include a) a description of the remaining issues to be resolved; b) a
19 description of the differences between the PARTIES on the issues, c) a summary of the steps
20 already taken to resolve the issue, and d) the resolution of any issues that were initially involved
21 in the dispute.

22
23 19.7 Third Level Meeting. Elevate to the Executive Committee. Upon receiving a written
24 request that the dispute be elevated to the third level, a meeting shall be held within ten (10)
25 Business Days between the WSDOT Program Administrator and Superintendent of Seattle City
26 Light to resolve the dispute. Any resolution of the dispute requires the agreement of all
27 Representatives attending the meeting or who requested to attend the meeting.

28
29 19.8 Court of Law. If the PARTIES have not resolved the dispute within five (5) Business
30 Days after the third level meeting, at any time thereafter either PARTY may seek relief under
31 this Agreement in a court of law. The PARTIES agree that they have no right to relief in a court
32 of law until they have completed the dispute resolution process outlined in this Section.

33
34 19.9 A PARTIES request to utilize this Dispute Resolution process is not evidence that either
35 PARTY is in breach of this Agreement, and does not relieve any PARTY from complying with its
36 obligations under this Agreement.

37 38 **20. REMEDIES; ENFORCEMENT**

39
40 20.1 The PARTIES agree that provisions of GCA 6486, regarding Remedies; Enforcement,
41 including but not limited to Section 24 therein, shall apply equally to this Agreement.

1 **21. TERMINATION**

2
3 21.1 This Agreement may be terminated as provided in Section 28 of GCA 6486 regarding
4 Termination which shall apply equally to this Agreement.
5

6 **22. CONFIDENTIALITY OF INFORMATION AND RECORDS**

7
8 22.1 The provisions of the SDOT Bored Tunnel Agreement, regarding Confidentiality of
9 Information and Records, including but not limited to Section 27 therein, shall apply equally to
10 this SCL Bored Tunnel Agreement. In addition, the Federal Energy Regulatory Commission
11 (FERC) and the North American Electric Reliability Corporation (NERC) require that SCL limit
12 access and disclosure of certain sensitive Critical Energy Infrastructure Information. Therefore,
13 SCL shall require the STATE and its contractors who have access to documents marked
14 “confidential” or “proprietary” to sign the Non-Disclosure Agreement attached hereto as Exhibit
15 C.
16

17 **23. EFFECTIVENESS AND DURATION**

18
19 23.1 This Agreement shall be effective as of the date the last PARTY signs and, unless sooner
20 terminated pursuant to the terms hereof, shall remain in effect until final completion of all
21 PARTIES’ obligations contained or referred to in this Agreement, GCA 6486, and the SPU
22 Agreement, UT 01474.
23

24 **24. GENERAL PROVISIONS**

25
26 24.1 The General Provisions set forth in the GCA 6486, including but not limited to Section
27 30 therein, shall apply equally to this Agreement.
28

1 IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement as of the last day
2 and year written below.
3

4
5 **SEATTLE CITY LIGHT**

**WASHINGTON STATE
DEPARTMENT OF
TRANSPORTATION**

6
7
8
9
10
11
12 **By:** _____
13 Jorge Carrasco
14 Superintendent
15 Seattle City Light
16

By: _____
Ronald J. Paananen
Program Administrator
Alaskan Way Viaduct and Seawall
Replacement Program

17
18 **Date:** _____
19

Date: _____

20
21
22
23 APPROVED AS TO FORM:

24
25 _____
26 By (print)

27
28
29
30 _____
31 Signature
32 Assistant Attorney General

33
34
35 **Date:** _____
36
37
38

MEMORANDUM OF AGREEMENT

UT 01476

SR 99 ALASKAN WAY VIADUCT REPLACEMENT
SCL FACILITIES WORK AGREEMENT
FOR SR 99 BORED TUNNEL PROJECT

EXHIBIT A
EASEMENT DEED
TEMPLATE

UT 01476

EXHIBIT A

Easement Format

AFTER RECORDING RETURN TO:

ATTN: REAL ESTATE SERVICES
SEATTLE CITY LIGHT
P.O. BOX 34023
SEATTLE, WA 98124-4023

Document Title: Easement Deed
Reference Number of Related Document:
Grantor(s):
Grantee(s): City of Seattle
Legal Description: TBD
Additional Legal Description is on Page 6-_____ of document
Assessor's Tax Parcel Number: TBD

EASEMENT DEED

[Insert summary description of vicinity]

This NON-EXCLUSIVE PERMANENT EASEMENT is made this _____ day of _____, 20___, between, ~~the State of Washington, Department of Transportation~~, herein after referred to as the Grantor, and the City of Seattle, a municipal corporation, hereinafter referred to as the Grantee, ~~pursuant to the Agreement No. UT-01476 between the parties~~; WITNESSTH:

That the Grantor, for and in consideration of the sum of TEN DOLLARS AND NO/100, (\$10.00) and other good and valuable consideration, receipt of which is hereby acknowledged, hereby conveys and grants to the Grantee, its successors and assigns, a non-exclusive permanent easement for the right, privilege and authority to install, construct, erect, alter, improve, repair, energize, operate and maintain underground electric distribution and transmission facilities at depths not exceeding 15 feet, which consist of transformers, vaults, manholes, cabinets, containers, ducts, conduits, cables, wires and other necessary or convenient appurtenances necessary to make said underground installations an integrated electric system, hereinafter "electrical system." All such electric system is to be located upon, under, and across the following described lands:

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

See Attachment 1 attached hereto and made a part hereof.

Together with the right at all times to the Grantee, its successors and assigns, of ingress to and egress from said lands across adjacent lands of the Grantor for the purpose of installing, constructing, reconstructing, repairing, renewing, altering, changing, patrolling, energizing and operating said electric system, and the right at any time to remove all or any part of said electric system from said lands. However, prior to construction or reconstruction, Grantee will notify Grantor and provide a plan for Grantor's review and approval. Such approval shall not be unreasonably withheld.

The Grantor, its successors and assigns, hereby covenants and agrees that no permanent structure or fire hazards will be erected or permitted within the above described Easement Area without prior written approval from the Grantee, its successors or assigns; that no digging or other construction activity will be done or permitted within the Easement Area which will in any manner disturb the electric system or its solidity or unearth any portion thereof; and that no blasting or discharge of any explosives will be permitted within fifty (50) feet of said electric system and appurtenances.

The Grantor agrees that any excavation or work performed within, above, or that in any way affects the Easement Area, will be designed and constructed in such a manner that does not during or after construction, materially damage in any way any part or element of the electric system or the access, operation or repair thereof. Any such work shall comply with Seattle City Light Construction Guideline U2-10/NDK-50, incorporated herein by reference.

The Grantor shall furnish Grantee with two copies of all plans and specifications for any new proposed work or improvements located within the Easement Area.

The Grantee shall furnish Grantor with two copies of all plans and specifications for any new proposed work or improvements located within the Easement Area.

The Grantor shall notify Grantee at least five (5) days prior to commencing any construction work within the Easement Area.

The Grantee shall notify Grantor at least five (5) days prior to commencing any construction work within the Easement Area. No notice is required for inspection and maintenance within the Easement Area.

The Grantor acknowledges that Grantee may have an on-site inspector, as it determines necessary, during any excavation and/or construction work within the Easement Area. The inspector shall (a) have timely and complete access to Easement Area work; (b) be timely informed of all relevant construction timelines associated with such work; and (c) have the

authority to reject and have corrected and/or replaced any construction or materials deemed to be deficient or which deviate from the plans and specifications as it relates to the electric system.

Grantee is to be responsible, as provided by law, for any damages to the Grantor, through its negligence in the construction, maintenance and operation of said electric system across, over, upon and under the property of said Grantor.

The rights, title, privileges and authority hereby granted shall continue and be in force until such time as Grantee, its successors and assigns, shall permanently remove all said electric system from said lands or shall permanently abandon said electric system, at which time all such rights, title, privileges and authority hereby granted shall terminate.

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

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

Wherever in this Easement written notices are to be given or made, they will be served, personally delivered or sent by certified or overnight mail addressed to the parties at the addresses listed below unless a different address has been designated in writing and delivered to the other party.

GRANTOR:

GRANTEE:

City of Seattle
Attn: Seattle City Light Real Property Services
700 Fifth Avenue, Suite 3900
Seattle, WA 98124

Dated at Olympia, Washington, this _____ day of _____, 20_____.

STATE OF WASHINGTON GRANTOR

.....
[Insert signatory's name] Paula J. Hammond, P.E.
Secretary of Transportation

APPROVED AS TO FORM:

By:.....
Assistant Attorney General

REVIEWED AS TO FORM:

By:.....
(Variable 10)

CITY OF SEATTLE, Seattle Public Utilities
a municipal corporation

By:.....
Authorized Signatory Date

STATE OF WASHINGTON)
.....) ss
County of.....)

On this _____ day of _____, 20____, before me personally
appeared Paula J. Hammond, P.E...... Grantor, known
to me as the Secretary of Transportation, Washington State Department of Transportation, and
executed the foregoing instrument, acknowledging said instrument to be the free and voluntary

act and deed of the State of Washington, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

..... Given under my hand and official seal the day and year last above written.

.....
Notary (print name).....
Notary Public in and for the State of Washington, residing
at Olympia.....

My Appointment Expires.....

S.T.A.T.E. O.F. W.A.S.H.I.N.G.T.O.N

.....
Paula J. Hammond, P.E.
Secretary of Transportation

APPROVED AS TO FORM:

By:.....
Assistant Attorney General

REVIEWED AS TO FORM:

By:.....
CITY OF SEATTLE,
a municipal corporation

By:.....
Authorized Signatory..... Date

STATE OF WASHINGTON)

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.....) : ss
County of Thurston.....)

..... On this day of, 20....., before me personally
appeared Paula J. Hammond, P.E., known to me as the Secretary of Transportation, Washington
State Department of Transportation, and executed the foregoing instrument, acknowledging said
instrument to be the free and voluntary act and deed of the State of Washington, for the uses and
purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

..... Given under my hand and official seal the day and year last above written.

.....
Notary (print name).....
Notary Public in and for the State of Washington, residing
at Olympia

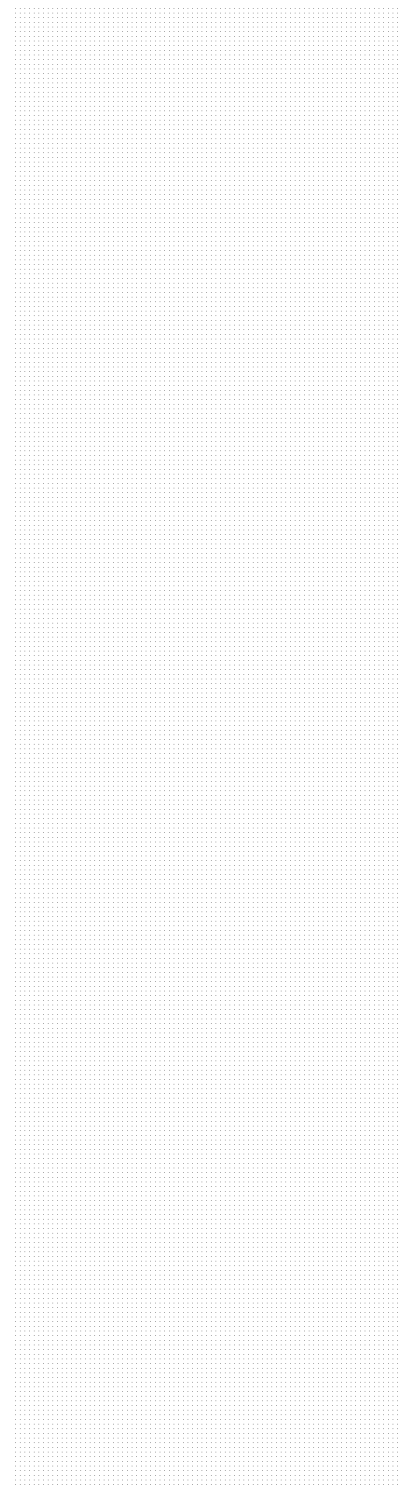
..... My Appointment Expires

Attachment 1

Easement Area:

TBD

A.



Proposed Franchise/Utility Permit Conditions for Utility Facilities located within Limited Access areas designated for the AWVSRP – SCL and SPU.

Introduction

Below are the terms and conditions that will apply to Franchises / Utility Permits issued to SCL and SPU associated with areas designated new Limited Access Facility for the Proposed Bored Tunnel Project (Project).

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The exact location of the Limited Access limits is still not completely defined, and SPU and SCL will likely have pre-existing infrastructure that will fall within the Limited Access area. In addition, there are utilities that will be replaced or relocated that may be installed in areas of Limited Access, though there is a strong preference to limit these occurrences. The Franchise/Utility Permit conditions outlined below would not apply to the building of utility new facilities within the Limited Access areas.

Comment [kaf1]: This sets the context for where the permit example will apply.

Comment [P2]: Why not? How would these new utility facilities be permitted? An additional permit? Won't this get confusing over time? Linda De Boldt

Utility Permit Example Conditions

The Washington State Department of Transportation ("STATE") hereby grants to the ("CITY") the non-exclusive permission to use a portion of the _____, situated in Seattle, Washington. The rights herein granted are subject to all other easements and permits affecting the lands subject to this Permit.

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1. **Background.** The Proposed Bored Tunnel Project (Project) replaces State Route 99 from South Royal Brougham Way to Roy Street and consists of designing and constructing a four-lane bored tunnel from South King Street to Thomas Street; north and south tunnel portals and access streets; re-establishment of the City/CITY street grid in the vicinity of the portals; and associated utility relocations. The Project is located in Seattle, which is a very densely developed urban environment, with utility infrastructure that has been woven into the fabric of the city/CITY. There is no alternative but to have the portals associated with the Project emerge into city/CITY street right of way where CITY owned Utility Facilities currently reside. The cost of purchasing right of way outside of these CITY streets is prohibitive, and the STATE has no choice but to declare portions of the CITY right of way as a Limited Access Facility as part of this Project. This Permit addresses the situation where CITY owned Utility Facilities will have to be modified, incorporated, or replaced in newly-designated Limited Access Facility, which was once CITY street right of way that formed part of State/STATE Route 99 as provided in RCW 47.24.010 and RCW 47.24.020. The STATE has endeavored to limit the scope of instances where CITY-owned Utility Facilities are relocated into Limited Access Facility or where the Limited Access Facility incorporates existing CITY-owned Utility Facilities.

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2. **Purpose.** The purpose of the Permit is to provide for the location, operation, maintenance, replacement, modification, and repair of all existing CITY Utility Facilities, including, but not limited to, wires, pipelines, fibers, cables, communications devices and associated facilities and equipment both at or below-grade owned by the CITY. The location of the Utility Facilities is within portions of the areas legally described in Exhibit A, and depicted on Exhibit B, each of which is attached and incorporated by reference.

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3. **Reservation.** This Permit shall not be deemed or held to be an exclusive one and shall not prohibit the STATE from granting rights of like or other nature to other public or private utilities, nor shall it prevent the STATE from using any of its roads, streets, or public places, or affect its right to full supervision and control over all or any part of them, none of which is hereby surrendered.

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4. Term. ~~The~~ Permit shall have a duration of fifty (50) years, and shall be renewed upon request in writing to the STATE and shall contain the same terms and conditions as this permit, unless otherwise requested by the City and approved by the State STATE, and unless the City permanently removes and/or abandons all Utility Facilities from Limited Access areas, The Permit, and shall be transferable to any third party fulfilling the function of CITY, and the third party shall have all of the same rights, obligations, and benefits herein provided to CITY.

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5. Permitted Users. The STATE acknowledges that CITY may choose to allow its agents, contractors, employees, lessees, successors and assigns use of the lands subject to this Permit for the intended purpose. The rights, title, privileges and authority hereby granted in this Permit shall continue and be in force until such time as the CITY, its successors and assigns, shall permanently remove all Utility Facilities from the area or permanently abandon the Utility Facilities.

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6. Relocation of Utility Facilities. Due to the fact that there may be are no reasonable alternative locations within which to relocate the CITY-owned utility facilities, and further due to the STATE's obligations to mitigate damages and limit Project costs, there may be a need to relocate the CITY-owned Utility Facilities within the STATE's Limited Access Facility. Whenever necessary for the construction, repair, improvement, alteration, or relocation of any portion of Project in Limited Access as determined by the STATE, or if the STATE shall determine that the removal of any or all Utility Facilities from the said lands is necessary, incidental, or convenient to the construction, repair, improvement, alteration, or relocation of the any public road or street located in tehhe StateSTATE's Limited Access Facility, the CITY shall, upon written notice by the STATE, which will be given three years in advance of the needed relocation, relocate or remove any or all of such Utility Facilities from the Limited Access Facility XXX as may be required by the STATE. The STATE agrees to pay the full reasonable costs of such relocations and agrees to give the CityCITY 3 years advance notice of the needed relocations in order for the CityCITY to adequately plan, design and construct the relocations. In the event CITY fails to remove or relocate the utility-Utility facilities-Facilities within a reasonable time, the STATE may undertake such removal or relocation, at the sole expense of the STATE and with all necessary coordination with the CityCITY.

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Comment [kaf4]: Has to have this language if we are to be allowed to pay for a potential future move on the State's dime.
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7. Maintenance, Replacement, Repair, and Modification. All maintenance, replacement, repair, and modification of the Utility Facilities by CITY, for that area depicted on Exhibit B, shall be done in such manner as will cause the least interference with any of the STATE's performance in the operation and maintenance of XXX[LIMITED ACCESS AREA]. All costs for such work shall be at the sole expense of the CITY, unless the need for such work is caused by the STATE. Any replacement or modification of existing Utility Facilities, within the area depicted on Exhibit B, that require the placement of above-ground facilities, shall require the issuance of an additional new Utility Permit by the STATE for such construction of above-ground facilities., which permit shall not be unreasonably withheld, and shall conform with the Control Zone guidelines referenced in WAC 468-34-170 and WAC 468-34-350.

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Comment [P5]: What kind of permit?
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8. Restoration of Highway. Except as set forth in paragraph 5 6 above, the CITY agrees, at its own expense, to restore paving, grading, landscaping and other improvements damaged by CITY's activities under this Permit to at least as good a condition as such paving, grading, landscaping and other improvements were in immediately prior to the CITY's commencement of work. All material and workmanship shall conform to the Washington State Department of Transportation Standard Specification for Road, Bridge and Municipal Construction, as it may exist at that time, and may be subject to inspection by the STATE. Upon failure, neglect, or refusal of the CITY to timely restore the highway as required of the CITY, the STATE may undertake and perform such restoration, at the sole cost and expense of the CITY.

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Comment [kaf6]: We agreed to this Thursday.
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9. Emergency Access to CITY-Owned Utility Facilities. In the event of an emergency, the CITY will have 24 hour access to CITY-owned Utility Facilities located in STATE Limited Access. In an emergency, the STATE shall cooperate with the requests of the CITY, to facilitate CITY's response to the situation in order to protect the public health, safety and welfare. In situations of non-emergency, the CITY will have access to CITY-owned Utility Facilities as outlined in paragraph 10.

10. Construction and Maintenance of Utility Facilities in Non-Emergency Situations.

A. Except in an emergency, no work provided for herein shall be performed until the CITY is authorized by the following STATE representative: XXXXXX. The CITY shall submit work plans depicting the work to be performed by the CITY. WSDOT will respond within five business days.

B.

C.A. The CITY has the right to install, construct, alter, repair, operate, improve and maintain all CITY-owned Utility Facilities, including appurtenances associated with this Permit. The CITY has the right to replace any of the permitted Utility Facilities with facilities of the similar size or configuration, in the same location as the originally-permitted Utility Facilities without requesting a change to this Permit.

D.B. The CITY shall provide the STATE fifteen (15) business days written notice prior to commencement of maintenance activities under this Permit, and at least forty-five (45) business days written notice prior to commencement of construction activities under this Permit. In both cases, the CITY shall submit to the STATE work plans depicting the work to be performed by the CITY and shall coordinate with the STATE (WSDOT NW Region Maintenance Engineer anticipated coordination through State representative XXXXX-) during these time periods. WSDOT will respond with comments within five (5) business days. The STATE will make all reasonable effort to provide a letter of authorization to the CITY within fifteen (15) business days for maintenance activities and sixty (60) business days for construction activities.

E.C. Prior to the beginning of construction, a preconstruction conference shall be held, at which time the STATE, the CITY, and appropriate engineers and inspectors shall be present.

F.D. A copy of this Permit must be posted on the job site, and protected from the elements, at all times during any construction authorized by this Permit.

G.E. In the event any milepost, right of way marker, fence or guard rail is located within the limits of CITY's construction and will be disturbed during construction, these items will be carefully removed prior to construction and reset or replaced at the conclusion of construction to the satisfaction of the STATE. All signs and traffic control devices must be maintained in operation during construction.

H.F. Prior to construction, the CITY shall contact the STATE representative to ascertain the location of survey control monuments within the project limits. In the event any monuments will be altered, damaged or destroyed by the project, appropriate action will be taken by the STATE, prior to construction, to reference or reset the monuments. Any monuments altered, damaged or destroyed by the CITY's operation will be reset or replaced by the STATE at the sole expense of the CITY.

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- Comment [P7]: SPU is concerned that historically a WSDOT Highway Permit can take months to obtain, which is unduly onerous, especially in the case of maintenance. If the conditions of this document are agreeable, they are intended to cover this eventuality.
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- Comment [ka8]: This is the permit. Through the process outlined in the permit, we give Utilities authorization to do work in our operating highway - remember this is after construction on a tolled Limited Access highway.
- Comment [P9]: I can see why this paragraph was problematic to City staff. See addition in "B" below>
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- Comment [P10]: City wanted 5 days, State wanted 15 days; how about we compromise and say 10 days?
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- Comment [P11]: Not realistic many yea ... [11]
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- Comment [ka12]: This is standard language.
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I.G. During the construction and/or maintenance of the utilities, the CITY shall comply with the "Manual on Uniform Traffic Control Devices for Streets and Highways" as it may exist at that time, as well as any applicable Washington statutes or regulation. Any closure or restriction of the Limited Access Facility requested by the CITY pursuant to this Permit shall require the CITY to submit a traffic control plan for the STATE's timely approval. The timely approval will be commensurate with the scope of the work proposed. Except in case of emergency, no work pursuant to this Permit can be performed on the XXX[LIMITED ACCESS AREA] until the STATE has approved the traffic control plan.

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Comment [kaf13]: XXX was supposed to be a more defied description of the Limited Access limits, and since we didn't have the exact words, we used XXX. Other comments used XXX for some other reason that I didn't understand, and so I struck those instances.

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J.H. Should the CITY choose to perform the work outlined herein with other than its own forces, a representative of the CITY shall be present at all times unless otherwise agreed to by the STATE representative. All contact between the STATE and the CITY's contractor shall be through the representative of the CITY. Where the CITY chooses to perform the work with its own forces, it may elect to appoint one of its own employees engaged in the construction as its representative. Failure to comply with this provision shall be grounds for restricting any further work by the CITY within the STATE right of way until said requirement is met. The CITY, at its own expense, shall adequately police and supervise all construction work by itself, its contractor, subcontractor, agent, and others, so as not to endanger or injure any person or property.

K.I. Except in an emergency or unless authorized by the STATE, work shall be restricted to between the hours of 9:00 a.m. and 3:30 p.m. and the hours of 7:00 p.m. and 5:00 a.m., and not work shall be allowed on the right of way on holidays.

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L.J. All trenches, boring or jacking pits, etc., shall be backfilled as soon as possible and not left open during non-working hours unless covered with material of sufficient strength to withstand traffic loads, or protected by an alternate method approved by the STATE.

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M.K. All slopes, slope treatment, top soil, ditches, pipes, etc., disturbed by this operation shall be restored to their original cross section and condition. All open trenches shall be marked by warning signs, barricades, lights, and if necessary, flagmen shall be employed for the purpose of protecting the traveling public.

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Comment [kaf14]: To correspond to your new section.

Comment [P15]: Compromise and say 60 days?

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11. STATE's Construction and Maintenance of XXX[LIMITED ACCESS AREA]. The STATE shall inform the CITY in writing no less than forty-five (9045) days in advance of planned work to coordinate with the CITY regarding the planned STATE work. Such writing shall include submittal of the STATE's work plans.

- A. In the event that construction and maintenance of XXX[LIMITED ACCESS AREA] within the proximity of the CITY-owned Utility Facilities becomes necessary, it is expressly understood that, upon request from the STATE's representative, the CITY will promptly identify and locate by suitable field markings any and all of their underground Utility Facilities in accordance with RCW 19.122.030.
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- A.
 - B. The CITY shall provide comments and requests in writing to the STATE regarding the STATE's planned work within ~~thirty-five (15)~~ (30) business days of submittal of the STATE's work plans for maintenance activities, and within forty five (45) business days for construction activities. The STATE shall endeavor to resolve and incorporate CITY comments, and will coordinate with the CITY regarding their comments and concerns.
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 - B.
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 - C. The CITY may have an on-site inspector, as it deems necessary, during any excavation or construction work within the permitted area. The inspector shall have complete access to area work and be timely informed of all relevant construction timelines associated with such work.
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 - D. CITY Construction Guidelines will be followed when considering the placement of other utility facilities in the vicinity of CITY-owned Utility Facilities. No other utility facilities, whether public or private, will be installed within five (5) horizontal feet or eighteen (18) vertical inches of the utility facilities without informing and coordinating with the CITY. Where possible, sewer and storm drains shall be laid at a lower invert elevation than water mains.
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- D.
 - E. No permanent structure will be erected or permitted within the area without coordination with the CITY.
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- E.
 - F. No construction of buildings, fences, walls, or placement of trees, shrubbery, obstruction, or fill material will be placed within the boundaries of area covered by this permit without prior notification and coordination with the CITY. No digging or other construction activity will be undertaken adjacent to the CITY-owned Utility Facilities without prior notification and coordination with the CITY.
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- F.
 - G. No blasting or discharge of any explosives will be undertaken within 50 ft of CITY-owned Utility Facilities without prior notification and coordination with the CITY.
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12. Hold Harmless/Indemnification. The CITY, its successors and assigns agree to indemnify, defend and hold the STATE, its officers and employees harmless from all claims, demands, damages, expenses or suits that: (1) arise out of or are incident to any negligence by the CITY, its agents, contractors or employees in the use of the highway right of way pursuant to this Permit, or (2) are caused by the breach of any of the conditions of the Permit by the CITY, its contractors, agents or employees. Nothing herein shall require the CITY to indemnify and hold harmless the STATE and its officers and employees from claims, demands, damages, expenses or suits based solely upon the conduct or negligence of the STATE, its agents, officers, employees and contractors; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the STATE, its agents, or employees, and (b) the CITY, its agents or employees, including those actions covered by RCW4.24.115, the foregoing obligations shall be valid and enforceable only to the extent of CITY's negligence. The STATE, its successors and assigns, agree to indemnify, defend and hold the CITY, its officers and employees harmless from all claims, demands, damages, expenses or suits that: (1) arise out of or are incident to any negligence by the

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- Comment [kaf16]: Fine.
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STATE, its agents, contractors or employees in the use of the highway right of way pursuant to this Permit, or (2) are caused by the breach of any of the conditions of the Permit by the STATE, its contractors, agents or employees. Nothing herein shall require the STATE to indemnify and hold harmless the CITY and its officers and employees from claims, demands, damages, expenses or suits based solely upon the conduct or negligence of the CITY, its agents, officers, employees and contractors; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CITY, its agents, or employees, and (b) the STATE, its agents or employees, including those actions covered by RCW 4.24.115, the foregoing obligations shall be valid and enforceable only to the extent of STATE's negligence.

In Witness whereof, the parties have executed this Permit as of the _____ day of _____ 2010.

Accepted on Behalf of
~~XXX[CITY UTILITY]XX~~

STATE OF WASHINGTON
Department of Transportation

By: _____

By: _____

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Page 3: [11] Comment [P11] **PatterG** **6/14/2010 11:10:00 PM**

Not realistic many years from now. If this is very important, how else might we meet State needs?

MEMORANDUM OF AGREEMENT

UT 01476

SR 99 ALASKAN WAY VIADUCT REPLACEMENT
SCL FACILITIES WORK AGREEMENT
FOR SR99 BORED TUNNEL PROJECT

EXHIBIT C

NON-DISCLOSURE AGREEMENT

1 MEMORANDUM OF AGREEMENT
2 UT 01474
3 SR 99 ALASKAN WAY VIADUCT REPLACEMENT
4 SPU FACILITIES WORK AGREEMENT
5 FOR SR99 BORED TUNNEL PROJECT
6

7 THIS Memorandum of Agreement, UT 01474, SR 99 Alaskan Way Viaduct Replacement, Bored
8 Tunnel, SPU Facilities Work (“SPU Bored Tunnel Agreement”) is made and entered into
9 between the State of Washington Department of Transportation, hereinafter the “STATE,” and
10 the City of Seattle, hereinafter the CITY, (managed by Seattle Public Utilities, hereinafter
11 “SPU”), collectively the “PARTIES” and individually the “PARTY.”
12

13 WHEREAS, the Alaskan Way Viaduct (AWV or Viaduct) and seawall are at risk of sudden and
14 catastrophic failure in an earthquake and are nearing the end of their useful lives; and
15

16 WHEREAS, the STATE and the Federal Highway Administration (FHWA), in consultation with
17 the CITY, are proposing improvements to State Route 99 (SR 99), currently a non-limited access
18 highway that includes the Viaduct; and
19

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

28 WHEREAS, in January 2009, the Governor, the King County Executive and the Mayor of
29 Seattle recommended replacement of the existing viaduct structure in the central waterfront area
30 with a bored tunnel; and,
31

32 WHEREAS, in October 2009 the Governor and the Mayor executed a Memorandum of
33 Agreement, GCA 6366, which described the basic roles and responsibilities for the
34 implementation of the AWVSR Program.
35

36 WHEREAS, the AWVSR Program (PROGRAM) consists of a four-lane bored tunnel and
37 improvements to City streets, the City waterfront, and transit; and the Moving Forward Projects;
38 and
39

40 WHEREAS, the Proposed Bored Tunnel Project (PROJECT), the subject of this Agreement, is
41 the part of the PROGRAM that replaces SR 99 from South Royal Brougham Street to Roy Street
42 that consists of designing and constructing a four-lane bored tunnel from South King Street to
43 Thomas Street, north and south tunnel portals and access streets; re-establishment of the City
44 street grid in the vicinity of the portals (Battery Street Tunnel decommissioning and Alaskan

1 Way Viaduct demolition will be addressed in a future agreement); and associated utility
2 relocations; and
3

4 WHEREAS, the Washington State Legislature passed Engrossed Substitute Senate Bill 5768 and
5 the Governor signed the bill into law designating and funding a Bored Tunnel Program as the
6 replacement for the Alaskan Way Viaduct; and
7

8 WHEREAS, in January 2009, the Governor, the King County Executive and the Mayor of
9 Seattle recommended replacement of the existing AWV structure in the central waterfront area
10 with a bored tunnel; and
11

12 WHEREAS, the CITY and STATE agree to work collaboratively toward the successful
13 completion of the PROJECT and endeavor to open the tunnel by the end of 2015 and demolish
14 the Alaskan Way viaduct in 2016; and
15

16 WHEREAS, the PROJECT is consistent with the CITY of Seattle's adopted Comprehensive
17 Plan; and
18

19 WHEREAS, the CITY and the STATE will deliver the PROJECT within the financial
20 commitments made in the Memorandum of Agreement, GCA 6366, executed by the PARTIES
21 on October 24, 2009; and
22

23 WHEREAS, concurrently with this UT 01474 Agreement, the STATE and CITY, through
24 Seattle City Light (SCL), are entering into an agreement, UT 01476; and
25

26 WHEREAS, concurrently with this UT 01474 Agreement, the STATE and CITY, through the
27 Seattle Department of Transportation, are entering into an agreement, GCA 6486; and
28

29 WHEREAS, the CITY will own and/or maintain significant infrastructure to be constructed as
30 part of the PROJECT; and
31

32 WHEREAS, some or all of the work covered by this Agreement may be accomplished by
33 executed "Task Order" documents.
34

35 WHEREAS, the PROJECT will require the removal of existing City electrical, water, drainage
36 and wastewater facilities that directly conflict with the tunnel portals and tunnel portal
37 excavations ("Conflicting Facilities"), and the construction of new facilities and service
38 connections, (excluding temporary construction and permanent electrical services for the
39 PROJECT) to a permanent and final location to replace the conflicting facilities (together, the
40 "Relocation Work"); and
41

42 WHEREAS, the PROJECT will also require the planning, operational and construction
43 management practices, monitoring and other work to avoid and/or remedy damage
44 ("Deformation Mitigation Work"); and
45

1 WHEREAS, together the Relocation Work and the SPU Facilities Deformation Mitigation Work
2 will comprise the “SPU Facilities Work” of the PROJECT; and
3

4 NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performances
5 contained herein, or attached and incorporated and made a part hereof,
6

7 IT IS MUTUALLY AGREED AS FOLLOWS:
8

9 **1. DEFINITIONS**

10 Words not otherwise defined, which have well-known technical or construction industry
11 meanings, are used in accordance with such recognized meanings.
12
13

14 1.1 Approved Plans means the construction plans and provisions that evidence the CITY’s
15 determinations, made through the processes described in Sections 6 and 7 and Exhibit B of GCA
16 6486, that the plans conform to the criteria established in GCA 6486 and this Agreement;
17 Approved Plans are included in the contract documents evidencing the agreement between the
18 STATE and its contractors for construction of a given element of the PROJECT.
19

20 1.2 AWV means the Alaskan Way Viaduct structure on State Route 99, currently a non-
21 limited-access highway over a portion of CITY Street Right-of-Way.
22

23 1.3 Betterment means any upgrading of the SPU Facilities, or the design and construction of
24 any new SPU Facilities that is not attributable to the PROJECT or PROGRAM and is made
25 solely for the benefit of and at the election of SPU. Examples of work that will not constitute a
26 Betterment, so that SPU shall not bear cost responsibility, are:

27 1.3.1 If existing devices or materials are no longer regularly manufactured or cannot be
28 obtained in time to meet the PROJECT schedule, needs or requests by the STATE, then devices
29 or materials of equivalent standards although not identical, of the next highest grade or size; or

30 1.3.2 Upgrades to SPU Facilities necessary to meet current code requirements and SPU
31 published standards; or

32 1.3.3 Work required by SPU to maintain current service and capacity; or

33 1.3.4 Work required by current design and construction practices regularly followed by
34 SPU in its own work and/or considered an industry design or construction standard.
35

36 1.4 Business Days means Monday through Friday, inclusive, except for official City of
37 Seattle and state holidays.
38

39 1.5 CITY means the City of Seattle, a Washington municipal corporation.
40

41 1.6 City Construction Project Engineer means the person designated by SDOT to act as the
42 City’s coordinator and primary representative in matters arising during the course of construction
43 as set forth in this Agreement.
44

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

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

8
9 1.9 City of Seattle means CITY.

10
11 1.10 City Standards means all City of Seattle laws, rules, regulations and standards and all
12 applicable federal and state laws, rules, regulations and standards, including but not limited to
13 the following, except as otherwise provided in this Agreement, UT 01474 and UT 01476:
14 The Seattle Municipal Code
15 The City of Seattle Standard Specifications for Road, Bridge and Municipal Construction
16 The City of Seattle Standard Plans for Municipal Construction,
17 SDOT, SCL, DPD and SPU Director's Rules, including the City of Seattle Right of Way
18 Improvements Manual, 2005-22.
19 SCL Material Standards
20 SCL Construction Guidelines

21
22 1.11 CITY Street Right-of-Way means public street right-of-way under the jurisdiction of
23 SDOT pursuant to Title 15 of the Seattle Municipal Code.

24
25 1.12 Conceptual Relocation Plan means a work product that defines the general scope of
26 Relocation Work including a planning level estimate of design and construction costs, as further
27 described in Section 3 herein.

28
29 1.13 Conflicting Facilities means all SCL Facilities and all SPU Facilities identified by the
30 STATE that have alignments intersecting or that directly conflict with the final configuration of
31 the proposed SR 99 bored tunnel portals and tunnel portal excavations.

32
33 1.14 Contract Award means the STATE's written decision accepting bid for construction of a
34 Project.

35
36 1.15 Defective Work means design or construction work or materials that fail to comply with
37 the Approved Plans, CITY-approved modifications to the Approved Plans, or the laws, rules,
38 regulations or standards as specified in this Agreement.

39
40 1.16 Deformation means any 3-dimensional displacement or combination of displacements.
41 The terms "tilt," "strain," "settlement," "heave," "lateral movement," and related terminology are
42 used as being common industry terminology for deformation in specific situations. Where such
43 industry terminology is used for convenience herein, it does not imply that the broad definition
44 of deformation has been limited.

1 1.17 Deformation Mitigation Work means any planning, operational and construction
2 management practices, monitoring and temporary or permanent SPU Facilities Work including
3 maintenance of service undertaken to avoid or remedy damage as a result of Deformation, as
4 further described in Section 4 herein.

5
6 1.18 DPD means the City of Seattle Department of Planning and Development.

7
8 1.19 Engineer of Record means the engineer licensed in the State of Washington who has been
9 commissioned by the STATE as the prime engineer of the PROJECT, having overall
10 responsibility for the adequacy of the design and the coordination of the design work of other
11 engineers and whose professional seal is on the Approved Plans.

12
13 1.20 Hazardous Substance(s) means any substance, or substance containing any component,
14 now or hereafter designated as a hazardous, dangerous, toxic or harmful substance, material or
15 waste, subject to regulation under any federal, state or local law, regulation or ordinance relating
16 to environmental protection, contamination or cleanup including, but not limited to, those
17 substances, materials and wastes listed in the United States Department of Transportation
18 Hazardous Materials Table (49 C.F.R. §172.101) or by the United States Environmental
19 Protection Agency as hazardous substances (40 C.F.R. pt. 302 and amendments thereto) or in the
20 Washington Hazardous Waste Management Act (Ch. 70.105 RCW) or the Washington Model
21 Toxics Control Act (Chs. 70.105D RCW and 82.21 RCW), petroleum products and their
22 derivatives, and such other substances, materials and wastes as become regulated or subject to
23 cleanup authority under any Environmental Law.

24
25 1.21 Letter of Acceptance means the written document that signifies the CITY's acceptance of
26 CITY Infrastructure to be owned by the CITY, and shall signify the STATE's transfer of CITY
27 Infrastructure to be owned by the CITY. The Letter of Acceptance will not transfer any interest
28 in real property. The Letter of Acceptance shall be jointly executed by the PARTIES. A Letter
29 of Acceptance for SPU Facilities requires SPU approval and a Letter of Acceptance for SCL
30 Facilities requires SCL approval.

31
32 1.22 Letter of Plan Approval means the letter provided to the STATE by the CITY following
33 the completion of the plan review process, signifying that the plans and specifications identified
34 in the letter are the Approved Plans.

35
36 1.23 New Work means the design and construction by or at the direction of SPU of a new
37 utility other than (a) as part of a relocation associated with the PROJECT, or (b) to provide
38 service to the PROJECT. New Work shall be entirely the financial obligation of SPU.

39
40 1.24 Private Utilities mean utility uses, excluding facilities owned and operated by the CITY,
41 approved through franchise agreements and/or Street Use Permits by the CITY and governed and
42 enforced through City Ordinance.

43
44 1.25 Procedures mean *Design Review, Construction Management, Inspection and Record*
45 *Drawing Procedures*, attached as Exhibit B to the SDOT Agreement GCA 6486.

1
2 1.26 PROJECT means the Proposed Bored Tunnel Project, the part of the PROGRAM that
3 replaces SR 99 from South Royal Brougham Street to Roy Street and that consists of designing
4 and constructing a four-lane bored tunnel from South King Street to Thomas Street, north and
5 south tunnel portals and access streets, re-establishment of the City street grid in the vicinity of
6 the portals (Battery Street Tunnel decommissioning and Alaskan Way Viaduct demolition are
7 not part of the PROJECT and will be addressed in a future agreement); and associated utility
8 relocations. PROJECT description is attached as Exhibit A to the SDOT Agreement GCA 6486.
9

10 1.27 PROGRAM means all the projects, collectively, implemented by the STATE and the
11 CITY that remove and replace the AWW and seawall.
12

13 1.28 Project Engineer means the persons appointed by the STATE to lead the PROJECT
14 during design and/or construction or his or her designee.
15

16 1.29 Relocation Work means the removal or abandonment of each Conflicting Facility,
17 maintenance of service for those facilities, and the installation or reconstruction of each
18 Conflicting Facility to its permanent and final location.
19

20 1.30 Remediation means the same as Remedy or Remedial Action defined in MTCA which
21 includes any action or expenditure consistent with the purposes of MTCA to identify, eliminate,
22 or minimize any threat or potential threat posed by Hazardous Substances to human health or the
23 environment including any investigative and monitoring activities with respect to any release or
24 threatened release of a Hazardous Substance and any assessments to determine the risk or
25 potential risk to human health or the environment.
26

27 1.31 SCL means Seattle City Light.
28

29 1.32 SCL Facilities means the electrical facilities impacted by, or constructed as part of, the
30 PROJECT that are owned or will be owned by the CITY.
31

32 1.33 SCL Facilities Work means work required to design, construct and protect the SCL
33 Facilities as part of the PROJECT.
34

35 1.34 SDOT means the Seattle Department of Transportation.
36

37 1.35 SDOT Facilities means the streets and roadway facilities impacted by, or constructed as
38 part of, the PROJECT that are owned or will be owned by the CITY.
39

40 1.36 Specialty Work means the construction and installation of all 13.8kV or above rated
41 equipment and associated materials and infrastructure needed to accomplish the SCL Facilities
42 Work.
43

44 1.37 SPU means Seattle Public Utilities.
45

1 1.38 SPU Facilities means the water, drainage and wastewater facilities impacted by, or
2 constructed as part of, the PROJECT that are owned or will be owned by the CITY.
3

4 1.39 SPU Facilities Work means work required to design, construct and protect the SPU
5 Facilities as part of the PROJECT.
6

7 1.40 STATE means the State of Washington Department of Transportation.
8

9 1.41 Task Force means a group consisting of STATE, City, contractor, and other stakeholder
10 staff meeting regularly to review and reach decisions relating to a particular subject, e.g., traffic,
11 structures.
12

13 1.42 Task Order means a document executed by the PARTIES under this Agreement
14 authorizing work by one PARTY to be done on behalf of the other PARTY and that defines the
15 scope and the obligations of the PARTIES for the given element of work. All terms and
16 conditions of the Agreement shall apply to each Task Order.
17

18 1.43 Utility Easement means a non-exclusive permanent right over real property for the
19 operation, maintenance, repair and replacement of the SPU Facilities, in the form attached as
20 Exhibit A.
21

22 1.44 Utility Service Work means any facilities required to provide temporary Utility services
23 for construction of the PROJECT; and any work needed to obtain permanent SPU services to the
24 bored tunnel or SPU customers.
25

26 1.45 WSDOT means Washington State Department of Transportation.
27

28 Words not otherwise defined, which have well-known technical or construction industry
29 meanings, are used in accordance with such recognized meanings.
30

31 **2. GENERAL RESPONSIBILITIES** 32

33 2.1 The PARTIES shall manage risk, produce design and conduct construction in a manner
34 that maximizes cumulative public benefits and minimizes cumulative public costs as mutually
35 agreed to by the PARTIES.
36

37 2.2 This Agreement in conjunction with GCA 6486 and UT 01476 is prepared by the STATE
38 and CITY to govern relationships between the PARTIES and establish each PARTY's
39 responsibilities regarding the PROJECT.
40

41 2.3 The PARTIES understand that environmental review of the proposed PROJECT is
42 underway at the date of this agreement and agree that if an alternative other than the Proposed
43 Bored Tunnel is selected, this agreement may be terminated pursuant to the provisions of Section
44 21 herein.
45

1 2.4 The PARTIES shall work collaboratively to resolve issues in a manner that endeavors to
2 open the Proposed Bored Tunnel to the public on schedule.

3
4 2.5 The design and construction of CITY Facilities, including repair, shall comply with City
5 Standards.

6
7 2.6 Each PARTY shall provide the funding and resources necessary to fulfill the
8 responsibility of that PARTY as established in this Agreement.

9
10 2.7 The PARTIES agree to work cooperatively with each other and make reasonable, good
11 faith efforts to timely and expeditiously complete the PROJECT, as provided in this Agreement,
12 including, but not limited to, the selection of a preferred SR 99 design alternative; development
13 of preliminary engineering and final design and construction. In order to optimize design and
14 minimize conflicts, the STATE shall coordinate design and construction of the various contracts
15 making up the PROJECT with design of subsequent PROGRAM stages, and with construction of
16 previous stages of the PROGRAM. The STATE shall be prepared to modify design of the
17 contracts making up the PROJECT, the subsequent PROGRAM stage and/or previous phase if
18 both PARTIES determine the modifications are necessary and reasonable, to minimize conflicts.

19
20 2.8 The STATE shall pay for all costs associated with the SPU Facilities Deformation
21 Mitigation Work, including but not limited to design; design review; purchase of materials;
22 construction; inspection; preparation of record drawings; CITY crew time and costs; any
23 temporary SPU services required for construction of the PROJECT; and any work needed to
24 obtain permanent SPU services to the bored tunnel or SPU customers; regardless of whether such
25 SPU Facilities Deformation Mitigation Work is performed by the SPU or other CITY staff, the
26 STATE, or its contractor, as set forth in the Approved Plans, and any SPU-approved revisions to
27 the Approved Plans, without reimbursement from SPU, including change orders, but excluding
28 Betterments or New Work as defined in this Agreement. No delay costs shall be paid for by
29 SPU.

30
31 2.9 The STATE is responsible for designing and constructing the Proposed Bored Tunnel
32 portion of the PROJECT. The STATE is responsible for taking measures to minimize, limit, and
33 mitigate damage to private property and CITY Facilities including CITY streets, CITY
34 telecommunications facilities and SPU Facilities that may result from the PROJECT
35 construction, including damage that may result from tunnel-induced Deformation. The STATE is
36 responsible for remedying such damage should it occur.

37
38 2.10 SPU is responsible for relocating SPU Conflicting Facilities. SPU's relocation
39 responsibility is limited to the final relocation of each SPU Conflicting Facility unless otherwise
40 agreed to by the PARTIES during the PARTIES' evaluation of the Conceptual Relocation Plan.

41
42 2.11 The PARTIES agree that it is in the public interest for one PARTY to implement portions
43 of the other PARTY's PROJECT responsibilities. Therefore, this Agreement establishes a Task
44 Order process for use by a PARTY to authorize the other PARTY to conduct work on its behalf,

1 and as may be documented through each Task Order pursuant to Section 9 of this Agreement and
2 Section 4 in GCA 6486, agree to reimburse the other PARTY for such services.

3
4 2.12 The terms, conditions, and requirements of GCA 6486 and this Agreement shall apply to
5 each Task Order performed as part of the PROJECT.

6
7 2.13 The PARTIES agree to document design-related decisions through the use of
8 concurrence letters executed by both PARTIES.

9
10 2.14 The STATE agrees to take the lead in consulting and coordinating with all utility owners
11 affected by the PROJECT.

12
13 2.15 The PARTIES shall apply for and obtain all necessary federal, state and City of Seattle-
14 issued permits and approvals for the work for which they are responsible prior to commencing
15 work that requires such permits, including but not limited to all permits, approvals or permission
16 for exploratory investigations, testing, site preparations, demolition and construction.

17
18 2.16 The PARTIES shall comply with the regulatory requirements and agree to meet
19 operational and customer service requirements of each existing SPU Facility.

20
21 2.17 The PARTIES shall minimize utility service interruptions to SPU customers.

22
23 **3. RESPONSIBILITIES REGARDING SPU CONFLICTING FACILITIES**

24
25 3.1 The STATE shall identify all Conflicting Facilities.

26
27 3.2 SPU shall inform the STATE of any additional Conflicting Facilities. In the event that
28 SPU builds new Conflicting Facilities, SPU shall inform the STATE.

29
30 3.3 The STATE is responsible for preparing Conceptual Relocation Plans that documents a
31 feasible and efficient approach to relocating Conflicting Facilities in a manner that
32 accommodates the PROJECT. The STATE's Conceptual Relocation Plans shall include:

33 3.3.1 The STATE's conceptual design of the PROJECT; and

34 3.3.2 Identification of Conflicting Facilities; and

35 3.3.3 The STATE's conceptual design of the Relocation Work that is feasible
36 and efficient, that is in compliance with City Standards, and that
37 demonstrates compatibility with existing infrastructure to remain; and

38 3.3.4 Plan view drawings developed in collaboration with SPU; incorporating
39 SPU comments and input; drafted on roll plots in accordance with
40 AWVSR Program CADD standards presented at an engineering scale of
41 one inch equals 40 feet; showing the existing configuration of Conflicting
42 Facilities, proposed configuration of relocated CITY Infrastructure, and all
43 CITY Facilities; that confirms no apparent conflicts with other utilities or
44 infrastructure; and

- 1 3.3.5 Identification of Conflicting Facilities that require multiple relocations in
2 order to accommodate the PROJECT along with the circumstances that
3 creates the need for such multiple relocations; and
4 3.3.6 Potential conflicts, constraints, and deviations from City Standards; and
5 3.3.7 A conceptual-level construction cost estimate of all costs to construct the
6 Relocation Work shown in the Conceptual Relocation Plan. All costs shall
7 be developed on a per-unit cost to install basis for the separate types, sizes
8 and segments of Relocation Work. The costs shall be developed on the
9 basis of typical construction costs in the area; and
10 3.3.8 A conceptual schedule for relocation of Conflicting Facilities. The
11 schedule shall be coordinated with the proposed design and construction
12 schedule for other work within the PROJECT; and
13 3.3.9 A contracting strategy for design and construction of each component of
14 Relocation Work; and
15 3.3.10 In instances where Relocation Work will be performed by the STATE
16 through a Design-Build Contract, the STATE shall confirm and modify, as
17 necessary, the Conceptual Relocation Plan in a manner consistent with the
18 Design-Builder's conceptual design, and coordinated with the Design-
19 Builder's construction staging plans.
20

21 3.4 The STATE agrees to provide the Conceptual Relocation Plan to SPU in a timely manner
22 that accommodates the project schedule. SPU agrees to promptly provide either its comments
23 on, or approval of, the Conceptual Relocation Plan. SPU's responsibility for the Relocation
24 Work begins when the PARTIES have written mutual agreement, in the form of a Task Order or
25 a letter of concurrence, regarding the scope of Relocation Work and each PARTY's
26 responsibilities, including multiple utility relocation responsibilities.
27

28 3.5 The PARTIES shall use the Conceptual Relocation Plan as the basis for establishing the
29 scope, schedule and estimated cost of design and construction services to be documented in Task
30 Orders under this Agreement
31

32 3.6 In instances where the STATE's revisions to the PROJECT design differ so significantly
33 from the Conceptual Relocation Plan as to render all or portions of the SPU's design or
34 construction work obsolete, the STATE shall reimburse SPU for the accrued costs of the
35 obsolete work.
36

37 3.7 The STATE is responsible for avoiding damage to SPU Facilities, including those
38 installed as part of the PROJECT or PROGRAM.
39

40 **4. STATE RESPONSIBILITIES REGARDING SPU FACILITIES DEFORMATION** 41 **MITIGATION WORK** 42

43 4.1 The STATE will assess potential impacts of Deformation on private property and CITY
44 Facilities including CITY streets, CITY telecommunications facilities and SPU Facilities. Where
45 the CITY has established deformation criteria for its facilities, these criteria will be used.

1 Otherwise, criteria will be derived using accepted engineering practice and shall be mutually
2 agreed upon by the PARTIES.
3

4 4.2 SPU shall review the STATE's estimate of susceptibility or vulnerability of its facilities
5 to Deformation and provide comments. Such comments shall be provided to assist the STATE
6 only, and shall not be interpreted as waiving or limiting in any way the STATE's responsibility
7 for Deformation Mitigation Work or other damages.
8

9 4.3 The STATE, with SPU input, shall develop and implement a plan for Deformation
10 Mitigation Work. SPU's input shall be provided to assist the STATE only, and shall not be
11 interpreted as waiving or limiting in any way the STATE's responsibility for Deformation
12 Mitigation Work or other damages.
13

14 4.4 As a component of the Deformation Mitigation Work, the STATE shall implement a
15 construction monitoring Task Force responsible for the planning and implementation of the
16 instrumentation and monitoring program and processing data, evaluating results, and developing
17 recommendations to mitigate deformation. SPU shall participate on the task force and inform
18 the STATE on feasibility and functionality of the Deformation Mitigation Work on SPU
19 Facilities.
20

21 4.5 SPU shall provide input to the STATE regarding construction monitoring and
22 deformation management activities when these activities pertain to SPU Facilities. SPU shall
23 provide the STATE all necessary access to SPU Facilities for the purposes of design or
24 implementation of mitigation measures. SPU may perform mitigation measures on behalf of the
25 STATE in a manner and schedule that supports the STATE's project requirements. SPU's input,
26 advice, participation, and access shall be provided to assist the STATE only, and shall not be
27 interpreted as waiving or limiting in any way the STATE's responsibility for Deformation
28 Mitigation or other damages.
29

30 4.6 The STATE is responsible for repairing, replacing or otherwise remedying, loss of
31 function or capacity of SPU Facilities as a consequence of Deformation, or exceedance of
32 watermain total displacement criteria for a maximum of two (2) years after completion of
33 tunneling or earlier if the PARTIES agree that monitoring indicates that the rate of Deformation
34 is not significant and further monitoring is unwarranted.
35

36 4.7 The STATE's monitoring program shall measure and documents Deformation that occurs
37 between initiation of construction and completion of the monitoring period. As part of the
38 monitoring program, the STATE agrees to conduct pre-construction video inspection surveys of
39 gravity systems and leak surveys of water mains. Additionally, along with soil monitoring points,
40 the STATE shall include pre-construction survey of accessible portions of the watermains and
41 services, such as valves stems and meters. These points shall be monitored in the event that
42 adjacent monitoring points approach the total displacement criteria for water mains or
43 differential Deformation indicates a risk to services. For locations where direct monitoring of
44 watermains and services is not provided, the STATE shall use spatial interpolation
45 methodologies, to be agreed upon by the PARTIES, to estimate settlement at any point within

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

6
7 4.8 The STATE agrees to perform Deformation Mitigation Work on watermains that are
8 subject to displacement in excess of the criteria established in the tables below.

9
10 Table 1. Maximum Total Displacement Criteria

11 Max Total Displacement at any one point (inches)

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

12
13
14 4.9 For cast iron watermains, unless otherwise agreed by the PARTIES, the STATE shall be
15 responsible to replace the impacted watermain to the nearest joint or appurtenance where the
16 interpolated amount of Deformation is half the maximum total displacement criteria. Actual field
17 conditions will be considered in determining the total pipe replacement.

18
19 4.10 For ductile iron watermains, unless otherwise agreed by the PARTIES, the STATE shall
20 be responsible to repair or realign the impacted watermain to the nearest joint or appurtenance
21 where the interpolated amount of Deformation is half the maximum total displacement criteria.
22 Actual field conditions will be considered in determining the total pipe repair or realignment.

23
24 **5. DESIGN, PLAN REVIEW, CHANGE MANAGEMENT**

25
26 5.1 Where the STATE is performing the design of SPU Facilities Work, the STATE and SPU
27 shall comply with all provisions outlined in Section 7 and Exhibit B of GCA 6486.

28
29 5.2 In the event the STATE designates as limited access facility any area in or near the tunnel
30 portals on which a SPU Facility exists or will be relocated, the PARTIES agree to make every
31 effort to develop a design that minimizes the need for regular, on-going maintenance access or
32 avoids placing the SPU Facility within limited access boundaries.

33
34 **6. CONSTRUCTION MANAGEMENT, INSPECTION AND CONTRACT**
35 **ADMINISTRATION**

36
37 6.1 The PARTIES shall comply with all provisions contained within Section 14 of GCA
38 6486, regarding Construction Management, Inspection and Contract Administration for the
39 PROJECT, and such provisions shall apply equally to this Agreement.

1 6.2 Where SPU staff or crews are performing work requested by the STATE, the STATE
2 shall provide all labor, materials, equipment, and tools required to excavate, provide trench
3 support systems, and handle and dispose of all spoils (including contaminated soils,
4 groundwater, and other debris), and provide a safe workplace for SPU staff per applicable State
5 and Federal laws, and City of Seattle standards, for the SPU Facilities Work in accordance with
6 the Approved Plans and any SPU-approved revisions to the Approved Plans. The STATE will
7 not provide personal protective equipment for SPU staff.
8

9 6.3 The STATE agrees to provide advance notice of service outages needed for construction
10 to schedule crews, notify customers and accommodate other previously scheduled outage
11 requests in accordance with CITY Standards.
12

13 7. MONITORING AND DEFORMATION MITIGATION

14
15 7.1 The PARTIES agree to comply with all provisions contained within Section 12 of the
16 GCA 6486, regarding Monitoring and Deformation Mitigation for the PROJECT, and such
17 provisions shall apply equally to this Agreement
18

19 8. NOTICES AND DESIGNATED REPRESENTATIVES

20
21 8.1 Any notice required or permitted to be given pursuant to this Agreement shall be in
22 writing and shall be sent postage prepaid by U.S. Mail to the Designated Representatives.
23

24 8.2 The Designated Representatives for each PARTY are as follows:
25

26 STATE:

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

33 SPU:

34 Project Manager, Alaskan Way Viaduct & Seawall Replacement Program
35 Seattle Public Utilities
36 P.O. Box 34018
37 700 Fifth Avenue, Suite 4900
38 Seattle, WA 98124-4018
39

40 9. FUNDING OF SPU FACILITIES WORK AND TASK ORDERS

41
42 9.1 The PARTIES agree to comply with all provisions contained within Section 4 of GCA
43 6486, regarding Task Orders, and such provisions shall apply equally to this Agreement

1 9.2 The STATE shall provide necessary funding for all PROJECT costs without
2 reimbursement from the City of Seattle, except for the City of Seattle cost responsibilities
3 established in this Agreement, in SDOT Agreement GCA 6486, and SCL Agreement UT 01476.
4

5 9.3 Each PARTY shall fund work for which it is responsible pursuant to this agreement.
6

7 9.4 The STATE will request, obtain and fund any temporary and permanent utility services
8 required for the PROJECT through separate utility service agreements with SPU.
9

10 9.5 While SDOT is the City lead agency for the PROJECT, the STATE understands and
11 agrees that all PROJECT decisions that are likely to result in expenditure of SPU funds, and all
12 PROJECT decisions that may have operational, maintenance, or access impacts to SPU
13 Facilities, require concurrence of SPU.
14

15 **10. SPU'S RIGHT TO CORRECT NON-CONFORMING, UNAUTHORIZED AND**
16 **DEFECTIVE WORK**
17

18 10.1 If the STATE or its contractor fails to remedy, or fails to properly remedy, non-
19 conforming, unauthorized or Defective Work within the time specified by SPU, which is not to
20 be less than ten (10) Business Days, SPU may, but is not required to, correct and remedy such
21 work by any means as SPU may deem necessary, including the use of SPU staff or contractors.
22

23 10.2 If the STATE or its contractor fails to comply with a written notice to remedy what SPU
24 determines to be an emergency situation, SPU may, but is not required to, have the non-
25 conforming, unauthorized or Defective Work corrected immediately, have such work removed
26 and replaced, or have work the STATE or its contractor refuses to correct completed. An
27 emergency situation shall mean a condition that calls for immediate action to respond to danger
28 to health, safety or property.
29

30 10.3 Direct and indirect costs incurred by SPU attributable to correcting and remedying
31 unauthorized, non-conforming or Defective Work, or work the STATE or its contractor failed or
32 refused to perform, shall be paid by the STATE to SPU within 45 calendar days after receipt of
33 an invoice, as further defined in Exhibit B of GCA 6486.
34

35 10.4 Except in an emergency situation as defined under Section 10.2, disagreements between
36 SPU and the STATE on what constitutes non-conforming, unauthorized or Defective Work shall
37 be resolved using the dispute resolution process established in Section 19 herein prior to SPU
38 performing any work.
39

40 10.5 Any and all services, including direction, provided by SPU pursuant to this section shall be
41 subject to all limitations on the CITY's liability contained in GCA 6486, including but not limited
42 to Section 16, Risk Allocation.
43
44
45

1 **11. SPU ACCESS AND INSPECTION OF SPU FACILITIES WORK**

2
3 11.1 Neither the STATE nor its contractor shall require SPU to interrupt water service without
4 (a) written notice to SPU at least fourteen (14) calendar days prior to the planned interruption
5 and (b) SPU's written approval. SPU may restrict water service interruptions to the extent
6 necessary to maintain water system operations and adequate water supply to customers. Under
7 no circumstances shall the STATE, its contractor, or anyone other than SPU personnel, damage,
8 repair, modify or operate any portion of the existing water system including but not limited to
9 water services, water mains, valves, test stations, and meters.

10
11 11.2 The STATE shall ensure the SPU has the right to safe access to their facilities at any time
12 to operate and maintain existing and newly installed SPU Facilities or to inspect or perform SPU
13 Facilities Work. For purposes of this Agreement, "access" shall mean that the hydrants, meter,
14 valves, or similar surface water system facilities, and drainage and wastewater system facilities
15 shall not be blocked, covered or otherwise inaccessible to SPU. With the exception of SPU's on-
16 site inspector, SPU staff will notify the STATE in advance of their arrival on site except in the
17 case of emergency in accordance with site access procedures to be developed by the PARTIES.

18
19 11.3 The STATE agrees and acknowledges that SPU shall have an on-site inspector available
20 during the construction of SPU Facilities for SPU's quality assurance. The STATE agrees and
21 acknowledges SPU's on-site inspector shall (a) have timely and complete access to the
22 construction work associated with the SPU Facilities Work; (b) be timely informed of all
23 relevant construction timelines associated with such work; and (c) have the authority to, but not
24 be required to, reject and have corrected and/or replaced any construction or materials deemed to
25 be deficient, or which deviate from the Approved Plans or any SPU-approved revisions to the
26 Approved Plans. In such instances, SPU's on-site inspector, or SPU's project manager, will
27 immediately direct comments and issues to the STATE's construction project engineer or
28 designated representative, which will be followed up in writing as soon as possible but no later
29 than ten (10) Business Days of the date of any inspection. The STATE shall promptly address
30 each comment or issue presented by SPU to SPU's satisfaction. SPU staff will continue to be
31 supervised by SPU management.

32
33 11.4 The STATE will allow SPU's on-site inspector or Designated Representative to consult
34 with and inquire of the STATE construction Project Engineer, attend all meetings, and have
35 timely and complete access to all documentation as to all matters concerning the SPU Facilities
36 Work. SPU shall not provide direction, directly or indirectly, to the STATE's consultant(s) or
37 contractor.

38
39 11.5 The STATE shall provide SPU with timely notice prior to commencement and
40 completion of all material stages of the SPU Facilities Work and shall invite SPU to inspect such
41 work upon completion of any material stage. The STATE shall timely address each comment or
42 issue presented by SPU to SPU's satisfaction. Both PARTIES agree to act as expeditiously as
43 possible to assure a timely resolution of any deficiencies.

1 11.6 SPU shall observe the work on SPU Facilities performed by the STATE to satisfy SPU's
2 needs for quality assurance. SPU will notify the STATE if SPU observes defective SPU
3 Facilities Work, such as improper installation or unsafe conditions.

4
5 **12. FINAL INSPECTION AND PROJECT ACCEPTANCE**

6
7 12.1 The PARTIES agree to comply with all provisions contained within Section 15 of GCA
8 6486, regarding Final Inspection and Project Acceptance, and such provisions shall apply equally
9 to this Agreement

10
11 12.2 SPU Facilities shall not be placed into interim use or operation, or transferred to the City,
12 unless or until: (a) SPU has participated in an inspection of the SPU Facilities; (b) any
13 deficiencies or Defective Work have been resolved or corrected to SPU's satisfaction; and (c)
14 SPU confirms with the STATE in writing that SPU's minimum inspection and testing
15 requirements for the SPU Facilities have been met, including completion of the Washington
16 State Department of Health Completion Report for watermains.

17
18 **13. WARRANTIES**

19
20 13.1 The PARTIES agree to comply with all provisions contained within Section 17 of GCA
21 6486, regarding Final Inspection and Project Acceptance, and such provisions shall apply equally
22 to this Agreement

23 **14. ACQUISITION AND TRANSFER OF EASEMENTS AND**
24 **FRANCHISE/UTILITY PERMITS**

25
26 14.1 SPU is responsible for identifying and acquiring, at its sole cost and expense, all property
27 rights needed to complete Relocation Work, except for property otherwise required for the
28 PROJECT.

29
30 14.2 The STATE is responsible for identifying and acquiring, at its sole cost and expense, all
31 property rights needed to complete SPU Facilities Deformation Mitigation Work.

32
33 14.3 The PARTIES recognize that their property acquisition responsibilities include the
34 performance of all appraisal, appraisal review, title review, surveys, property investigation,
35 relocation assistance and all other investigations and services in connection with the acquisition
36 of the permanent easement rights necessary for the SPU Facilities, including, without limitation,
37 identification and investigation of Hazardous Substances as provided in Section 5 of the GCA
38 6486. The STATE shall provide to SPU, as soon as available to the STATE, all reports and
39 documents prepared or obtained in connection with any of the reviews and investigations
40 described above.

41
42 14.4 Where the STATE is acquiring easement rights for SPU Facilities Deformation Mitigation
43 Work, unless the PARTIES otherwise agree in writing, prior to commencement of construction,
44 the STATE shall convey to the CITY the easement rights substantially in the form of, and

1 containing the same conditions as, the approved Utility Easement form attached and identified as
2 Exhibit A. The Utility Easements conveyed to the CITY shall not be subject to any lien,
3 encumbrance or exception of title of any kind.
4

5 14.5 The legal descriptions will be developed based on the Approved Plans. The PARTIES
6 acknowledge that due to unforeseen field conditions the location of one or more of the easements
7 may need to change after commencement of construction. In that case, the STATE shall provide
8 SPU with documents, reports and information identified in Subsection 14.3 above, relevant to the
9 new or modified easement area. All requirements and conditions pertaining to the original
10 permanent easement shall apply to all amendments and modifications.
11

12 14.6 Where SPU Facilities are located in or near an area which the STATE designates as a
13 limited access facility as defined by RCW 47.52.010, the STATE will ensure that SPU continues
14 to be allowed access to its facilities.

15 14.6.1 The STATE's limited access facility designation for the tunnel shall contain a
16 vertical and horizontal boundary.

17 14.6.2 The STATE agrees that any limited access facility designation for the tunnel will
18 allow SPU to access its SPU Facilities.

19 14.6.3 The area between the limited access facility boundaries and the CITY street shall
20 continue to be CITY Street Right-of-Way.

21 14.6.4 To the extent possible, limited access facility boundaries will be defined in a
22 manner that places SPU Facilities of a significant size, or that are difficult to relocate, outside of
23 the limited access facility boundaries.

24 14.6.5 In the event the STATE designates as a limited access facility any area in or near
25 the tunnel portals on which a SPU Facility exists or will be relocated, the STATE agrees to
26 provide SPU a SPU franchise/utility permit in the form attached hereto as Exhibit B, pursuant to
27 the requirements of Section 14 herein and will make every effort to develop a design that
28 minimizes the need for regular, on-going maintenance access as reasonably feasible.
29

30 **15. ENVIRONMENTAL REMEDIATION**

31
32 15.1 The PARTIES shall comply with all provisions of GCA 6486, regarding Environmental
33 Remediation, including but not limited to all provisions in Section 5 therein, and such provisions
34 shall apply equally to this Agreement.
35

36 **16. RISK ALLOCATION**

37
38 16.1 The PARTIES shall comply with all provisions of the GCA 6486, regarding Risk
39 Allocation and Indemnification, including but not limited to all provisions in Section 20 therein,
40 and such provisions shall apply equally to this Agreement.
41
42
43
44
45

1 **17. INSURANCE**
2

3 17.1 The PARTIES shall comply with all provisions of the GCA 6486, regarding Insurance,
4 including but not limited to all provisions in Section 20 therein, and such provisions shall apply
5 equally to this Agreement.
6

7 **18. THIRD PARTY BENEFICIARY**
8

9 18.1 The PARTIES shall comply with all provisions of GCA 6486, regarding Third Party
10 Beneficiary, including but not limited to all provisions in Section 21 therein, and such provisions
11 shall apply equally to this Agreement.
12

13 **19. DISPUTE RESOLUTION**
14

15 19.1 Good Faith. SPU and the STATE shall make good faith efforts to resolve any dispute
16 arising under or in connection with this Agreement. The dispute resolution process outlined in
17 this Section applies to disputes arising under or in connection with the terms of this Agreement.
18 In the event that the PARTIES cannot resolve a disagreement arising under or in connection with
19 this Agreement, the PARTIES shall follow the dispute resolution steps set forth below.
20

21 19.2 Notice. A PARTY's Designated Representative, as defined in Section 8 above, shall
22 notify the other PARTY's Designated Representative in writing of any problem or dispute that a
23 PARTY believes needs resolution. The written notice shall include (a) a description of the issue
24 to be resolved; (b) a description of the differences between the PARTIES on the issue; and (c) a
25 summary of any steps taken to resolve the issue.
26

27 19.3 Meeting. Upon receipt of a written notice of request for dispute resolution, the WSDOT
28 project engineer and the SPU project manager shall meet within ten (10) Business Days and
29 attempt to resolve the dispute. Any resolution of the dispute requires the agreement of all
30 Designated Representatives attending the meeting or who requested to attend the meeting.
31

32 19.4 Notice of Second Level Meeting. If the PARTIES have not resolved the dispute within
33 five (5) Business Days after the meeting, at any time thereafter either PARTY may request that
34 the dispute be elevated to the next level by notifying the other PARTIES Designated
35 Representative in writing, requesting that the dispute be raised to the Second Level Meeting. The
36 written notification shall include a) a description of the remaining issues to be resolved; b) a
37 description of the differences between the PARTIES on the issues, c) a summary of the steps
38 already taken to resolve the issues, and d) the resolution of any issues that were initially involved
39 in the dispute.
40

41 19.5 Second Level Meeting. Upon receiving a written request that the dispute be elevated to
42 the next level, a meeting shall be held within ten (10) Business Days between the Project
43 Director of WSDOT and the SPU Project Delivery Branch Deputy Director to resolve the
44 dispute. Any resolution of the dispute requires the agreement of all Representatives attending the
45 meeting or who requested to attend the meeting.

1
2 19.6 Notice of Third Level Meeting. If the PARTIES have not resolved the dispute within
3 five (5) Business Days after the Second Level Meeting, at any time thereafter either PARTY may
4 request that the dispute be elevated to the next level by notifying the other PARTY's Designated
5 Representative in writing, requesting that the dispute be raised to the Third Level Meeting. The
6 written notification shall include a) a description of the remaining issues to be resolved; b) a
7 description of the differences between the PARTIES on the issues, c) a summary of the steps
8 already taken to resolve the issue, and d) the resolution of any issues that were initially involved
9 in the dispute.

10
11 19.7 Third Level Meeting. Upon receiving a written request that the dispute be elevated to the
12 third level, a meeting shall be held within ten (10) Business Days between the WSDOT AWW
13 Program Administrator and Director of Seattle Public Utilities to resolve the dispute. Any
14 resolution of the dispute requires the agreement of all Representatives attending the meeting or
15 who requested to attend the meeting.

16
17 19.8 Court of Law. If the PARTIES have not resolved the dispute within five (5) Business
18 Days after the third level meeting, at any time thereafter either PARTY may seek relief under
19 this Agreement in a court of law. The PARTIES agree that they have no right to relief in a court
20 of law until they have completed the dispute resolution process outlined in this Section.

21
22 19.9 A PARTY's request to utilize this Dispute Resolution process is not evidence that either
23 PARTY is in breach of this Agreement, and does not relieve any PARTY from complying with its
24 obligations under this Agreement.

25 26 **20. REMEDIES; ENFORCEMENT**

27
28 20.1 The PARTIES agree that provisions of GCA 6486, regarding Remedies; Enforcement,
29 including but not limited to Section 24 therein, shall apply equally to this Agreement.

30 31 **21. TERMINATION**

32
33 21.1 This Agreement may be terminated as provided in Section 28 of GCA 6486 regarding
34 Termination which shall apply equally to this Agreement.

35 36 **22. CONFIDENTIALITY OF INFORMATION AND RECORDS**

37
38 22.1 The provisions of the SDOT Bored Tunnel Agreement, regarding Confidentiality of
39 Information and Records, including but not limited to Section 27 therein, shall apply equally to
40 this SPU Bored Tunnel Agreement.

41 42 **23. EFFECTIVENESS AND DURATION**

43
44 23.1 This Agreement shall be effective as of the date the last PARTY signs and, unless sooner
45 terminated pursuant to the terms hereof, shall remain in effect until final completion of all

1 PARTIES' obligations contained or referred to in this Agreement and GCA 6486, UT 01474, and
2 UT 01476.

3

4 **24. GENERAL PROVISIONS**

5

6 24.1 The General Provisions set forth in the GCA 6486, including but not limited to Section
7 30 therein, shall apply equally to this Agreement.

8

1 IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement as of the last day
2 and year written below.
3

4
5 **SEATTLE PUBLIC UTILITIES**

**WASHINGTON STATE
DEPARTMENT OF
TRANSPORTATION**

6 _____
7

8
9
10 **By:**
11 Ray Hoffman
12 Director

By: _____
Print: _____
Title: _____

13
14 Date: _____

Date: _____

15
16
17
18
19 APPROVED AS TO FORM:

20
21 _____
22 By (print)

23
24
25
26
27 _____
28 Signature
29 Assistant Attorney General

30
31 Date: _____
32
33
34

~~DRAFT~~ MEMORANDUM OF AGREEMENT

NO. GCA 6486

EXHIBIT B

June 9/10/15, 2010

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

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

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

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

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

2. Plan Review for Design and Permits

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

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

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~~June 109, 2010~~ Project Design, Construction, and Acceptance Procedures

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- Meet project requirements and standards and commitments in the SDOT, SPU, and SCL Agreements;
- Comply with WSDOT procedural requirements in a timely manner;
- Fulfill CITY regulatory requirements set forth in Seattle Municipal Code (SMC) Title 15 in a timely manner;
- Achieve the project schedule;
- Allow construction to proceed in a timely manner; Minimize project scope growth; and
- Minimize impact on CITY Facilities

- 2.3. WSDOT will take the lead in coordinating regular communications and design coordination meetings with the CITY, the WSDOT's consultants and contractors, and other utility owners.
- 2.4. WSDOT will prepare PROJECT designs affecting CITY Facilities in collaboration with SDOT, SCL, and SPU staff and agrees to seek and incorporate input from the CITY in the early stages of preliminary engineering, preparation of Plan Review Packages and Design Submittals, and throughout the PROJECT design and permitting process.
- 2.5. Design and construction of CITY Infrastructure will meet CITY Standards. Design of CITY Infrastructure will include consideration of long-term operation and maintenance costs, in addition to up-front design and construction costs.
- 2.6. The CITY will review all plans within the scope of its regulatory responsibility; its interests as owner, operator or maintainer of the infrastructure; for the provision of services by the CITY; and with respect to protection of CITY and private property potentially affected by the work.
- 2.7. WSDOT will coordinate and obtain written concurrence from the CITY on any requested deviation from CITY of Seattle standards prior to the beginning of construction.
- 2.8. WSDOT and the City agree that the WSDOT will submit plans for CITY Infrastructure prepared in accordance with SR 99 Alaskan Way Viaduct and Seawall Replacement CADD Manual, Revision 2.0, dated April 2010.
- 2.9. WSDOT will coordinate and obtain written concurrence from the CITY prior to implementing revisions or deviations from the Approved Plans.
- 2.10. The City shall will immediately notify WSDOT in good faith when the City becomes aware of any reason issues that may delay issuance of a Street Use Permit. Failure to provide such notice shall not provide grounds to challenge the issuance or non-issuance of a permit.

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Comment [g1]: I noted that we deleted since it did not add clarity and was confusing. You OK with it?

Comment [HMc2]: Theresa, I did not remember deleting this last sentence. I've added it back in. Let me know if you have a different memory of our 6/8/10 conversation.

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3. Procedures for Design-Bid-Build Contracts.

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

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

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

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

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

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

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Table 1: Design-Bid-Build Review Periods

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

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

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

Table 2: Addenda Review Periods

Number of addenda added/revised plan sheets (excluding quantity tabs/structure notes)	CITY Review Period (Number of Business Days)
< 200	55 days
< 400	88 days
< 800	a. 15 days
More than 800	2020 Days

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

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

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responsible to assign appropriate staff to review and provide comment within the established timeframes.

3.7.2. Following its review of the 60% Plan Review Package, SDOT will prepare and deliver to WSDOT draft ~~Street~~draft Street Use Permit conditions. SDOT will update the draft conditions after completion of CITY's review of each subsequent Plan Review Package to enable incorporation of the draft conditions into WSDOT's construction contract documents.

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

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

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

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

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

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

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

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3.8.2. The CITY will determine, following the receipt of the 100% Plan Review Package, whether all comments on the previous Plan Review Package have been addressed. At the conclusion of this determination, the CITY will notify WSDOT in writing either that the CITY's comments have been resolved to the CITY's satisfaction or that WSDOT has not addressed all the CITY's comments to the CITY's satisfaction. If the CITY notifies WSDOT that it has not addressed all CITY comments to the CITY's satisfaction, the CITY will submit to WSDOT proposals for addressing the outstanding issues. WSDOT will engage CITY reviewers in resolution of the remaining review comments and, if required, elevate unresolved comments in accordance with the dispute resolution provisions of GCA 6486, UT 01474, and UT 01476.

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3.8.3. WSDOT will invite the CITY to participate in its round-table meeting to enable full discussion of the implications and consequences to CITY Facilities or Street Use Code compliance of changes proposed by WSDOT to the 100% Plan Review Package. WSDOT will coordinate revisions made to the contract plans and provisions after WSDOT submits the 100% Plan Review Package.

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

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

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Comment [c4]: Subject to review

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3.8.5.

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

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

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3.8.6.2. WSDOT will notify the CITY when the final addendum is issued to prospective bidders. This notice will constitute the Final Plan Review Package submittal. The CITY will review the Final Plan Review Package to confirm whether WSDOT has adequately addressed the CITY plan review comments that all applicable conditions of the Street Use Permit have been addressed to the CITY's satisfaction and that plans conform to the requirements of the SMC Title 15. Prior to Bid Opening, and upon the CITY's determination that a Final Plan Review Package meets requirements, the CITY will issue to WSDOT a Letter of Plan Approval that:

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

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

4. Procedures for Design-Build Contracts

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

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

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design and construction standards in the WSDOT's Design-Build contract documents for CITY Facilities.

- 4.3. WSDOT will apply for a Street Use Permit prior to issuance of the final Request for Proposals. The CITY may review and comment on the Final RFP.
- 4.4. As a requirement of its Design-Build contract(s), the Design-Builder will organize Task Forces for design development, coordination, and management of various elements of the work. The Task Forces are a primary vehicle for coordination with the owner(s) and stakeholders and will provide an opportunity for WSDOT and CITY staff to provide input to the design process. Task Force meetings will also be the primary means to keep reviewers up to date on design development. Over-the-shoulder reviews will be conducted to facilitate quicker turn-around of formal plan reviews. Dependent on the need for coordination with adjacent contracts, some of the Task Forces will be designated as "corridor-wide." In addition to WSDOT and CITY staff, Task Force membership may include representation from other stakeholders such as private utility owners, King County, the Port of Seattle, the stadiums, and adjacent contractors.
- 4.5. The CITY will participate in Task Forces affecting CITY Facilities and for the performance of the CITY's regulatory responsibilities. Based on current project planning, the CITY will participate in the following Task Forces:
- Utilities
 - Construction Monitoring
 - Fire and Life Safety
 - Maintenance of Traffic
 - Road/Traffic
 - Buildings
 - Public Information
 - Quality
- 4.6. Task Forces will meet on a regular basis to solicit input, coordinate design and construction activity, and assure dissemination of critical project information to all members. The Design-Builder or WSDOT will be the designated lead for meetings and recording of meeting minutes. The task forces will work collaboratively to review and provide guidance as the Design-Builder develops Design Submittals.
- 4.7. WSDOT and the CITY recognize that regular attendance at task force meetings by their respective staffs is necessary to discuss and agree upon resolutions of design issues before more formal review processes begin in order to streamline later review and minimize substantial comments when the Preliminary and Final Design plans are submitted.

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

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

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4.10. The Design-Builder will be required to provide three submittals for each design element as indicated below. These submittals are intended to meet the requirements of the design and Street Use Permit plan review processes of both WSDOT and the City. The CITY will review design elements affecting CITY Facilities and CITY interests, and for the performance of the CITY's regulatory responsibilities.

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

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4.10.2. Final Design Submittal. The Final Design Submittal will be prepared when the design for a given element or area is near 100 percent complete. The Final Design Submittal includes plan sheets, specifications, technical memos, reports, calculations, and other pertinent data, as applicable and incorporates design changes or otherwise addresses CITY comments. As a result of the on-going discussion and resolution of design and construction issues through the regularly-scheduled task force meetings and over-the-shoulder reviews, it is anticipated that there will be very few revisions or changes at this stage. The Final Design Submittal will include all specifications, including but not limited to, all Amendments to the Standard Specifications, Special

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Provisions, Technical Requirements, and Technical Specifications, necessary to construct the Work represented in the submittal. Following resolution of all comments, the Final Design Submittal may proceed through the written certification process described below in preparation for being Released for Construction.

4.10.3. Released for Construction (RFC) Document Review. At a minimum, the Design-Builder will provide a preliminary and a final submittal of all plans and Technical Specifications and resolve all comments prior to being Released for Construction. Comments from the CITY concerning design of the CITY's stated requirements for CITY Infrastructure, and comments regarding compliance with SMC Title 15, will be resolved to the CITY's satisfaction. WSDOT will ensure that the RFC Documents reflect all QA, QC, and design reviews required by the QMP and the Contract. WSDOT will also provide a written certification from its contractor to be used to verify to WSDOT and the City that all QA procedures have been completed to ensure that all review comments have been incorporated as agreed during the comment resolution process among WSDOT, and the Design-Builder, and that the documents are ready to be Released for Construction. Each sheet of the plan set and the cover of each set of Technical Specifications in the RFC Documents will carry the Professional Engineer's stamp registered in the State of Washington and will be stamped "Released for Construction" by the contractor's Design QA Manager.

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

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

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Engineers will jointly determine the design elements to be reviewed by the CITY.

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

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4.10.7. Street Use Permit Issuance. Upon receipt of a Preliminary Design Submittal, SDOT will make a determination as to whether the proposed work package requires a Street Use Permit or Letter of Plan Approval under the provisions of SMC Title 15 and so notify WSDOT. SDOT will issue a Street Use Permit and Letter of Plan Approval for the initial RFC documents within three (3) days of receipt of the RFC submittal and the CITY has determined that the plans for the project element conform to the requirements of SMC Title 15 and that WSDOT has resolved all CITY plan review comments. Upon receipt of the City issued Street Use Permit and Letter of Plan Approval WSDOT will be authorized to proceed with construction subject to the terms and conditions of the permit.

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4.10.8. ~~If the Street Use Permit has not been issued within three (3) Business Days, a board consisting of the Seattle Transportation Department Director, Seattle City Council Transportation Chair and a Mayoral designee will be convened within one Business Day to review the cause of permit delay and resolve address steps to avoid the cause of PROJECT delay. If the Street Use Permit has not been issued within three (3) Business Days, the Seattle Transportation Department Director or his designee will review the cause of permit delay within one Business Day, and meet with the STATE's Program Administrator or his designee to discuss the issues and develop a course of action.~~

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4.10.9. Changes to RFC documents. WSDOT will diligently attempt to avoid the need for plan changes after issuance of RFC documents. In the event such changes occur, the CITY will undertake any additional review and permit re-issuance in as expedited a manner as practicable. WSDOT will require the Design-Builder's QMP to address the process for implementing design changes, including field changes, on Design and RFC Documents. Design

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changes will be subject to the QA and QC measures and procedures, commensurate with those applied to the original design or that portion of the Project under consideration for change. WSDOT will obtain CITY concurrence for all design changes affecting CITY Facilities or permitted interests prior to implementation of the change.

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

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5. Construction Management, Inspection, and Acceptance Procedures

- 5.1. The following procedures govern construction management, inspection, and acceptance processes of CITY Facilities constructed by WSDOT for the PROJECT and address fulfillment of the CITY's regulatory role under SMC Title 15. The procedures will be used for Design-Bid-Build and Design-Build project delivery methods.
- 5.2. WSDOT and the CITY agree to work cooperatively with each other and in good faith to implement these procedures to attempt to accomplish the following:
 - 5.2.1. Enable timely and expeditious execution of the PROJECT in accordance with the agreed standards on schedule.
 - 5.2.2. Facilitate thorough review of all stages of construction to ascertain that CITY Infrastructure constructed by WSDOT is in compliance with CITY of Seattle policy and regulations, and standards and specifications.
 - 5.2.3. Facilitate communications and activities pertaining to construction management, inspection and contract administration, including communications in the field, roles and responsibilities, review of proposed changes to Approved Plans and other submittals by the contractor or Design

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Builder, processes for pre-acceptance inspections, and acceptance of infrastructure.

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

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

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

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

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5.6. The CITY will provide a CITY Construction Project Engineer tasked to: (1) coordinate the activities of CITY of Seattle inspectors, crews and consultants; (2) communicate with the WSDOT Project Engineer regarding the CITY's positions relating to regulatory compliance, changes in design, the CITY's participation in reviewing contractor submittals, and the use of CITY resources; (3) coordinate the final inspection and acceptance of CITY Infrastructure with representatives from CITY departments; and (4) report on construction progress and issues to CITY of Seattle department managers.

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

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

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

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

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

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5.9.3. For Design-Build Projects, the CITY Construction Project Engineer will be responsible for ensuring that CITY reviews are completed within five (5) working days and that the review comments are fully communicated back to WSDOT. WSDOT will track all submittals and discuss the status of active submittal reviews with the CITY Construction Project Engineer on a weekly basis. The CITY's Construction Project Engineer will act as a liaison between the WSDOT and the City Departments in resolving issues regarding disposition of submittal comments.

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5.9.4. CITY reviewers will send their comments on submittals to the CITY Construction Project Engineer. The CITY Construction Project Engineer will consolidate comments if necessary and send comments to WSDOT for dissemination back to contractors. For design submittals on Design-Build contracts, comment responses will be provided to CITY reviewers along with

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the revised design for submittals that need to go through another round of review per Section 3 above.

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

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5.9.6. Pursuant to CITY review comments, WSDOT's Construction Project Engineer will provide disposition instructions for all submittals to its contractors.

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

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

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5.11.1. WSDOT will form quality assurance or verification teams as appropriate for the contract type. The CITY will have representation on these teams. The quality team for each contract will hold meetings to review test and inspection results and address and rectify issues relating to inspection, substandard material quality, adjustments needed for inadequate quality assurance and quality control processes, test results demonstrating that tolerance standards are not met, disparities between quality assurance and quality verification test data, future quality concerns, and any other issues raised by the WSDOT and the City regarding quality of construction of the CITY's Infrastructure.

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5.11.2. WSDOT will provide the CITY with timely notice prior to commencement and completion of all material stages of the CITY Infrastructure Work and will invite the CITY to inspect such work upon completion of any material stage. The CITY on-site inspector will be invited to the weekly construction meeting prior to any work being started on CITY Facilities. The WSDOT

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will provide at least five (5) Business Days notice for each inspection. CITY will submit a complete list of any concerns or deficiencies to the WSDOT within ten (10) Business Days of the date of any inspection. The WSDOT will timely address each comment or issue presented by CITY to CITY's satisfaction. Both WSDOT and the City agree to act as expeditiously as possible to assure a timely resolution of any deficiencies.

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

5.11.4. The CITY will assist WSDOT and communicate regularly if any observations of non-conformance with Approved Plans Defective Work observed by CITY inspectors are made in the field to ensure that the CITY infrastructure will be acceptable prior to any major finish work, such as final street paving, in order to avoid any re-work by the Design Builder. It is in the best interest of all WSDOT and the City to work collaboratively and solve problems quickly to avoid the completion of work that is will not be acceptable.

5.11.5. Testing of CITY Infrastructure will conform to the requirements of the CITY Standard Specifications for Road, Bridge and Municipal Construction. The CITY may observe testing of materials and inspect installation of CITY Infrastructure and provide a written evaluation to the WSDOT regarding whether the materials or facilities tested meet with the requirements of the Approved Plans. WSDOT will endeavor to provide five (5) Business Days notice of all testing required by the Approved Plans, and the CITY will be provided a copy of certified test reports of materials or installation of CITY Infrastructure. The CITY will exercise its right to approve or reject construction or materials of CITY Infrastructure that are deficient, or that (1) do not meet with the requirements of the Approved Plans; (2) are not constructed in accordance with CITY-issued permits; (3) have defects in material and workmanship; and/or (4) have defects in design(s).

5.11.6. Except as otherwise agreed, all deficiencies will be reported through the WSDOT Construction Project Engineer to the respective contractor's appropriate representative for resolution. Appropriate communications will

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be determined for each situation. CITY inspectors will not directly communicate with WSDOT's contractors without the express authorization of the WSDOT Construction Project Engineers except when public or worker safety is in question.

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

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

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

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

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5.12.3. The CITY may request additions and changes to the construction contract through WSDOT. WSDOT will comply with the requested changes provided that the changes are within the general scope of the PROJECT and comply with the PROJECT permits, WSDOT and/or Federal law and applicable rules, codes and/or regulations. WSDOT retains the right to reject requested changes if incorporating such changes could result in unwarranted additional cost to the STATE or a delay in the project schedule. Such additions and changes may lead to Change Orders, or they may lead to Betterments or New Work. If the CITY and WSDOT agree to implement the change, the requesting CITY department and WSDOT will document the request in writing by completing and signing a concurrence letter. The CITY agrees to

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reimburse the WSDOT for the costs associated with Betterments and additional New Work.

- 5.12.4. WSDOT will make available to the CITY all Change Order documentation that affects CITY Infrastructure.

5.13. Special Construction Considerations.

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

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

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

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

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

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in accordance with CITY of Seattle standards and will perform tests on the water sample for purity.

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

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

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

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

5.14.1. The CITY will timely inspect the completed CITY Infrastructure and will exercise its right to approve or reject construction or materials which are deficient, or which deviate from the Approved Plans, or any CITY-approved revisions to the Approved Plans. The CITY will submit a written response within ten (10) Business Days of the date of the pre-final inspection, notifying WSDOT that CITY Infrastructure has been constructed in accordance with the Approved Plans, or rejecting the completed CITY Infrastructure. In the event that the completed CITY Infrastructure is rejected, such response will include written notice of any known deficiencies and Defective Work so that the WSDOT can use the response in its preparation of a contract punch list.

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

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

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

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6. Redlines and Record Drawings.

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

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6.2. The Red-Line Plans shall be kept current throughout construction with accurate and comprehensive information detailing the constructed configuration of the infrastructure. The Red-Line Plans shall reflect the same level of detail as the Approved Plans, and shall provide the drawing accuracy necessary for the CITY and private utility purveyors to locate their respective utilities in accordance with state law.

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6.3. The WSDOT Project Engineer and the City Construction Project Engineer shall jointly review the Red-Line Plans monthly to evaluate whether the Red-Line Plans reflect a

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current, accurate and comprehensive record of the constructed configuration of the infrastructure. If the WSDOT Project Engineer or the City Construction Project Engineer determinedetermines that the Red-Line Plans are not current, accurate or comprehensive, the WSDOT shall immediately revise the Red-Line Plans to remedy deficiencies.

- 6.4. Prior to placing CITY Infrastructure into service during the course of construction, the WSDOT shall provide the CITY with color photocopies of portions of the Red-Line Plans showing the constructed configuration of the CITY Infrastructure being placed into service.
- 6.5. The WSDOT shall submit one color set of the completed Red-Line Plans prior to the Parties executing a Letter of Acceptance provided for in Section 15 of GCA 6486.
- 6.6. All Record Drawings for CITY Infrastructure shall comply with the digital and graphical standards of the City of Seattle Inter-Departmental CADD Standards.
- 6.7. Each PARTY shall provide the other PARTY with the Record Drawings for the portions of PROJECT work for which that PARTY is responsible under this Agreement within six (6) months after the PARTIES execute a Letter of Acceptance. A transmittal of Record Drawings shall include two (2) full-scale bond copies plus the digital files meeting with the requirements established above.

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7. Task Order Invoicing and Payment

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

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

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

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

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

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

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

7.3. In addition, the PARTIES may require other financial documents to verify that the amounts invoiced are included within the budgeted scope of each Task Order, including, but not limited to, (1) work statements or payroll records, (2) invoices for materials and supplies, (3) statements from professionals for services rendered, (4) certifications by the PARTIES that materials and services are satisfactorily rendered, and (5) itemized listings of the charges supported by copies of original bills, invoices, expense accounts, and miscellaneous supporting data retained by the PARTIES.

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7.4. Administration

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

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

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

7.7. 4.3.4.Audit. If an audit is requested by the PARTIES or required by any applicable federal agency requirements, the PARTIES agree to cooperate fully with any such audit and provide documentation as is requested in support of all costs.

[Insert components of a complete invoice including the extent of required documented expenses]
[Insert WSDOT's desired language regarding prompt payment]
[Insert WSDOT's desired language regarding sales tax].

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7.8. 7.1 The STATE and CITY agree to perform the work through Task Order as defined in GCA 6486 Section 4.

7.9. 7.2 The PARTIES, in consideration of the faithful performance of the services to be provided by the PARTY through Task Order, agrees to reimburse the PARTY for actual direct and related indirect costs of the scope of work of the Task Order as established in this AGREEMENT.

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

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

[Move any appropriate provisions from the MoA to this section]

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