

MEMORANDUM OF AGREEMENT NO. GCB 1217
SR 99 ALASKAN WAY VIADUCT REPLACEMENT PROGRAM
BATTERY STREET TUNNEL DECOMMISSIONING PROJECT

THIS Battery Street Tunnel Decommissioning Agreement (AGREEMENT) is made and entered into between the State of Washington (STATE) and the City of Seattle (CITY); collectively the "PARTIES" and individually the "PARTY."

WHEREAS, by Letter of Agreement dated January 13, 2009, the Governor, the King County Executive, and the Mayor of Seattle recommended replacement of the existing Alaskan Way Viaduct structure in the central waterfront area with a bored tunnel and associated improvements to city streets and transit (Alaskan Way Viaduct and Seawall Replacement Program or PROGRAM); and

WHEREAS, the January 2009 Letter of Agreement allocated responsibility to the STATE for demolishing the existing Alaskan Way Viaduct structure once the bored tunnel is opened to drivers; and

WHEREAS, the January 2009 Letter of Agreement also allocated responsibility to the STATE for decommissioning the Battery Street Tunnel (PROJECT); and

WHEREAS, the STATE Legislature, by enacting RCW 47.01.402 in 2009, endorsed the bored tunnel as the preferred alternative and authorized STATE funding; and

WHEREAS, the SR 99 Tunnel Final EIS signed by the STATE and CITY identified the Tolloed Bored Tunnel Alternative as the preferred alternative, which included removing the Alaskan Way Viaduct along the Seattle waterfront and decommissioning the Battery Street Tunnel; and

WHEREAS, in October 2009 the PARTIES entered into agreement GCA 6366, which was authorized by Seattle City Council Ordinance Number 123133, and which confirmed the STATE's responsibility for demolishing the Alaskan Way Viaduct and for decommissioning the Battery Street Tunnel, and set forth the PARTIES' roles and responsibilities for the PROGRAM; and

WHEREAS, completion of projects identified in GCA 6366 included demolishing the existing Alaskan Way Viaduct and decommissioning the Battery Street Tunnel; and

WHEREAS, in May 2011, the PARTIES entered into agreement GCA 6486, which was accepted by Seattle City Council Ordinance Number 123542 and which recognized that the PROJECT would be subject to a future agreement between the PARTIES; and

WHEREAS, on August 2, 2017, the PARTIES executed GCA 1271, a Funding Agreement for the Alaskan Way Reconstruction Project (Funding Agreement); and

WHEREAS, in December 2017, the PARTIES entered into Agreement GCB 1970 which was accepted by Seattle City Council Ordinance number 119155 and which set forth PARTIES' roles and responsibilities for the Alaskan Way Viaduct demolition; and

WHEREAS, the Funding Agreement commits the PARTIES to complete an Agreement, prior to City Council approval, related to permitting and construction of the PROJECT; and

WHEREAS, the PARTIES have been working diligently and completed the good faith negotiations regarding the PROJECT, and this AGREEMENT is intended to identify roles and responsibilities for the implementation of the PROJECT; and to satisfy the agreement requirement in the Funding Agreement; and

WHEREAS, the PROJECT may be a part of a Design-Build Contract that will also include demolishing the existing Alaskan Way Viaduct and construction of the surface streets north of the Battery Street Tunnel; and

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

WHEREAS, the CITY and STATE agree to work collaboratively toward the successful completion of the PROJECT; and

WHEREAS, the PARTIES will work together to coordinate construction activities that are happening simultaneously in the PROJECT area; and

WHEREAS, the STATE and the CITY through its Seattle Department of Transportation (SDOT), its Seattle Public Utilities Department (SPU), and its Seattle City Light (SCL) are entering into this AGREEMENT; and

WHEREAS, some of the work covered by this AGREEMENT may be accomplished by executed Task Order documents; and

NOW, THEREFORE, the STATE and CITY agree as follows:

1. Definitions

- 1.1. Approved Plans means the construction plans and provisions that evidence the CITY's determinations, made through the processes described in Section 6 and Exhibit C of this AGREEMENT, that the plans conform to the criteria established in this AGREEMENT.
- 1.2. Betterment means any upgrading of the CITY Facilities, or the design and construction of any new CITY Facilities that is not attributable to the PROJECT and is made solely for the benefit of and at the election of the CITY. Except as otherwise noted in Exhibit A, examples of work that will not constitute a Betterment, so that CITY shall not bear cost responsibility, are:
 - 1.2.1. If existing devices or materials are no longer regularly manufactured or cannot be obtained in time to meet the PROJECT schedule, needs or requests by the STATE, then devices or materials of equivalent standards although not identical, of the next highest grade or size; or
 - 1.2.2. Upgrades to CITY Facilities necessary to meet current code requirements and CITY published standards; or
 - 1.2.3. Work required by the CITY to maintain current service and capacity; or
 - 1.2.4. Work required by current design and construction practices regularly followed.
- 1.3. Business Days means Monday through Friday, inclusive, except for official CITY and STATE holidays.
- 1.4. CITY means the City of Seattle, a Washington municipal corporation.
- 1.5. CITY Facilities mean SCL Facilities, SDOT Facilities, SPU Facilities and facilities impacted by, or constructed as part of, the PROJECT that are owned or will be owned by any other CITY agency.
- 1.6. CITY Infrastructure means the portions of SPU Facilities, SCL Facilities and CITY Street Right-of-Way improvements constructed or modified as part of the PROJECT to be owned, operated and maintained by the CITY.
- 1.7. CITY Standards mean all City of Seattle laws, rules, regulations and standards, and all applicable federal and state laws, rules, regulations and standards, including but not limited to the following except as otherwise provided in this AGREEMENT:

- 1.7.1. The Seattle Municipal Code (SMC);
 - 1.7.2. The City of Seattle Standard Specifications for Road, Bridge, and Municipal Construction;
 - 1.7.3. The City of Seattle Standard Plans for Municipal Construction;
 - 1.7.4. SDOT, SCL, Seattle Department of Construction and Inspection (SDCI) and SPU Director’s Rules, including the City of Seattle Streets Illustrated, 2017;
 - 1.7.5. SCL Material Standards;
 - 1.7.6. SCL Construction Guidelines; and
 - 1.7.7. SPU Design Standards and Guidelines
- 1.8. CITY Street Right-of-Way means public street right-of-way under the jurisdiction of SDOT pursuant to Title 15 of the SMC.
- 1.9. Designated Representatives means the individuals identified in Section 13.
- 1.10. Design Submittal means plans, specifications, and design documentation representing design of a given project element in a Design-Build Contract.
- 1.11. Design-Build Contract means the contract that the STATE will award for the PROJECT after the STATE develops a conceptual design and requests proposals from pre-qualified contractors. The Design-Build Contract is awarded to the contractor (Design-Builder) with the best-value responsive proposal. The Design-Builder is responsible for the design and construction of the PROJECT.
- 1.12. Design-Builder means the entity with whom the STATE enters into a Design-Build Contract and who is responsible for the design and construction of the PROJECT. For purposes of this AGREEMENT, the STATE shall be responsible for any and all obligations of the Design-Builder.
- 1.13. Final Design Submittal means plans, specifications, and design documentation representing complete design of a given project element in the Design-Build Contract. The Final Design Submittal addresses and incorporates review comments from the Preliminary Design Submittal.
- 1.14. Hazardous Substances means any substance, or substance containing any component, now or hereafter designated as a hazardous, dangerous, toxic or harmful substance, material or waste, subject to regulation under any federal, state or local law, regulation or ordinance relating to environmental protection, contamination or cleanup including but not limited to those substances, materials

and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 C.F.R. § 172.101) or by the United States Environmental Protection Agency as hazardous substances (40 C.F.R. pt. 302 and amendments thereto) or in the Washington Hazardous Waste Management Act (Ch. 70.105 RCW) or the Washington Model Toxics Control Act (Chs. 70.1 05D RCW) (MTCA), petroleum products and their derivatives, and such other substances, materials and wastes as become regulated or subject to cleanup authority under any Environmental Law.

- 1.15. Environmental Law(s) means any environmentally related local, state or federal law, regulation, ordinance or order (including without limitation any final order of any court of competent jurisdiction of which the STATE has knowledge), now or hereafter in effect including but not limited to: the Federal Clean Air Act; the Federal Water Pollution Control Act; the Federal Safe Drinking Water Act; the Federal Comprehensive Environmental Response Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986; the Federal Resource Conservation and Recovery Act, as amended by the Solid and Hazardous Waste Amendments; the Federal Occupational Safety and Health Act; the Federal Emergency Planning and Right-to-Know Act of 1986; the Federal Hazardous Materials Transportation Control Act of 1980; the Federal Clean Water Act of 1977; the Federal Insecticide, Fungicide and Rodenticide Act; the Federal Waste Management Recovery and Recycling Act; the Washington Hazardous Waste Management Act; the Washington Hazardous Waste Fees Act; Washington Model Toxics Control Act; the Washington Nuclear Energy and Radiation Act; the Washington Radioactive Waste Storage and Transportation Act; the Washington Underground Petroleum Storage Tanks Act; and any regulations promulgated thereunder from time to time.
- 1.16. Letter of Acceptance means the written document that signifies the CITY's acceptance of CITY Infrastructure to be owned by the CITY, and shall signify the STATE transfer of CITY Infrastructure to be owned by the CITY. The Letter of Acceptance will not transfer any interest in real property. The Letter of Acceptance shall be jointly executed by the PARTIES. A Letter of Acceptance for SPU Facilities requires SPU approval and a Letter of Acceptance for SCL Facilities requires SCL approval.
- 1.17. Letter of Plan Approval means the letter provided to the STATE by the CITY following the completion of the plan review process, signifying that the plans and specifications identified in the letter are the Approved Plans. A Letter of Plan Approval for SPU Facilities requires SPU approval and a Letter of Plan Approval

for SCL Facilities requires SCL approval as part of the Procedures outlined in Exhibit C of this AGREEMENT.

- 1.18. Notice to Proceed means a letter from the STATE to the Design-Builder allowing it to proceed with a defined portion of the work.
- 1.19. Non-Conforming Work means PROJECT design, workmanship or materials that do not comply with the Design-Build Contract, Approved Plans, or CITY Standards.
- 1.20. Preliminary Design Submittal means plans, specifications, and design documentation as described in Exhibit C, Section 3.10.1.
- 1.21. Private Utilities means facilities impacted by the PROJECT that are not owned by the CITY or other public agencies.
- 1.22. Procedures means *Design Review, Construction Management, Inspection, Redline and Record Drawing, and Acceptance Procedures*, attached as Exhibit C.
- 1.23. PROJECT means the scope of work the PARTIES have agreed to in Exhibit A.
- 1.24. Released for Construction Submittals mean submittals as described in Exhibit C, Section 3.10.3.
- 1.25. 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 of Hazardous Substances.
- 1.26. SCL means Seattle City Light.
- 1.27. 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.
- 1.28. SDOT means Seattle Department of Transportation.

- 1.29. 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.
- 1.30. SPU means Seattle Public Utilities.
- 1.31. 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
- 1.32. STATE means the Washington State Department of Transportation.
- 1.33. STATE Project Engineer means the person appointed by the STATE to lead the PROJECT during design and/or construction or his or her designee.
- 1.34. Street Use Permits means written authorization secured by the STATE from the Director of SDOT for use of the CITY Street Right-of-Way pursuant to Title 15 of the SMC.
- 1.35. Task Force means a group consisting of STATE, CITY, Design-Builder, and other stakeholder staff meeting regularly to review and reach decisions related to a particular subject, e.g., traffic, structures.
- 1.36. Task Order means a document executed by the PARTIES under this AGREEMENT authorizing work by one PARTY to be done on behalf of the other PARTY and that defines the scope and the obligations of the PARTIES for the given element of work. All terms and conditions of the AGREEMENT shall apply to each Task Order.
- 1.37. UTILITY means the City of Seattle Utility Departments, namely, Seattle City Light and Seattle Public Utilities.

2. STATE Responsibilities

- 2.1. The STATE is solely responsible for managing the PROJECT, as described in Exhibit A, including but not limited to design, permit acquisition, right-of-way activities, schedule, costs, risks, issuing the requests for qualifications and proposals, awarding the Design-Build Contract, and execution of the PROJECT.

- 2.2. The STATE is responsible for funding the PROJECT, unless otherwise described in Exhibit A.
- 2.3. The STATE will follow the current CITY Standards for elements of the PROJECT related to CITY Facilities at the time of the issuance of the request for design-build proposals, unless otherwise agreed by the PARTIES. If the award of the Design-Build Contract occurs more than six (6) months after the issuance of the request for proposals, then CITY Standards will be updated to the current standards at the time of award.
- 2.4. The STATE is responsible for protecting private property in or adjacent to the PROJECT during construction, including utility service connections that are the property owner's responsibility.
- 2.5. The STATE is responsible for leading communications and public involvement elements of the PROJECT. The STATE shall prepare a communications plan and coordinate with the CITY, other public agencies, and stakeholders.

3. CITY Responsibilities

- 3.1. The CITY is responsible for funding and constructing certain elements of the PROJECT, as described in Exhibit A.
- 3.2. The CITY is responsible for issuing permits pursuant to applicable laws and regulations and providing them to the STATE.
- 3.3. The CITY will prepare communications plans for CITY projects to complement the STATE's communications plan for the PROJECT in order to communicate with the public in a coordinated way about CITY projects occurring at the same time as the PROJECT.

4. Shared Responsibilities

- 4.1. The PARTIES agree to work cooperatively and shall make good faith efforts to timely and expeditiously perform their respective obligations and responsibilities in meeting the PROJECT scope, schedule, and budget requirements.

- 4.2. The PARTIES will work together to develop Task Orders to facilitate payment between the PARTIES. The process for the STATE reimbursing the CITY and the CITY reimbursing the STATE for services is described in Section 7.
- 4.3. The PARTIES will develop a cost estimate for the decommissioning of the Battery Street Tunnel. The cost estimate will include UTILITY-related scope that is the CITY's cost responsibility. The cost estimate will be used to establish the CITY's cost responsibility for UTILITY-related scope as a percentage of the decommissioning costs.
 - 4.3.1. The STATE will be responsible for hiring the independent cost estimator. The PARTIES will equally share the costs of developing the cost estimate.
 - 4.3.2. As appropriate, subject matter experts will be part of developing the cost estimate.
 - 4.3.3. Prior to award of the Design-Build Contract, the PARTIES will execute Task Orders reflecting the scope of the UTILITY work and percentage of the CITY's cost responsibility as determined through the independent cost estimate. The CITY's share of the costs to develop the cost estimate will be included in the Task Order.
 - 4.3.4. After award of the Design-Build Contract, the PARTIES will amend the Task Orders to reflect the actual CITY cost responsibility calculated by applying the percentage developed in the independent cost estimate to the proposal price submitted by the successful proposer, provided the successful proposer's scope of work does not differ substantively from that used in developing the independent cost estimate. If the successful proposer's scope of work, including Alternative Technical Concepts, differs substantively from that used in developing the independent cost estimate, the percentage will be adjusted based on the successful proposal to determine actual CITY cost responsibility. In the event the Parties are unable to agree upon adjustments within 90 days of Design-Build Contract award, then the previously agreed to percentages shall be used.
 - 4.3.5. The PARTIES will endeavor to meet the following schedule to accomplish the above work:
 - 4.3.5.1. Independent cost estimate: February 28, 2018
 - 4.3.5.2. Executed Task Orders: March 30, 2018

4.3.5.3. Amend Task Orders: After award of Design-Build
Contract (estimated May 14, 2018)

- 4.4. The PARTIES are responsible for committing resources, including CITY resources funded by the STATE through GCA 5739 and other CITY sources, to coordinate across projects in order to secure the necessary permits or Letters of Plan Approval that are valid for the PROJECT duration. The PARTIES shall work together to complete permitting in a manner that enables the timely and cost-effective delivery of the PROJECT.
- 4.5. The PARTIES shall participate in both the Maintenance of Mobility Task Force group and a more detailed Maintenance of Traffic planning effort to coordinate construction sequencing and associated access and traffic impacts within the Seattle downtown area. Task Force work products will be reviewed among the PARTIES, the Port of Seattle, Sound Transit and King County Metro.
- 4.6. The PARTIES agree to allow each other reasonable access to PROJECT information that may be held by either PARTY, excluding documents that are attorney-client privileged communications or work products.
- 4.7. The PARTIES agree to coordinate stakeholder, other agency, and public communications related to the PROJECT and other adjacent projects.
- 4.8. The PARTIES will work together to coordinate the PROJECT's construction schedule with other STATE and CITY projects to minimize disruptions. If there is a delay to the PROJECT schedule, the PARTIES will use the Maintenance of Mobility Task Force to identify strategies to address the impacts of the delay on other STATE and CITY projects in the surrounding vicinity.
- 4.9. The PARTIES agree to work together on notice of service outages to customers. The STATE agrees to provide advance notice to the CITY of service outages needed for construction to schedule crews and accommodate other previously scheduled outage requests in accordance with CITY Standards. The PARTIES will coordinate on outreach to customers.
- 4.10. The relocation of any and all Private Utilities required for the performance of the work on the PROJECT will be made at the request of the STATE. The PARTIES will work together to facilitate such relocations of Private Utilities by determining and executing engineering solutions to minimize relocation impacts and maintain the progress of work under the Design-Build Contract.

5. CITY UTILITY Monitoring

- 5.1. The STATE shall require the Design-Builder to conduct pre- and post-construction survey for potential displacement of the crossing watermains in the Battery Street Tunnel, and on any other watermains placed at risk by the construction activities, in accordance with the SPU Design Standards and Guidelines, Chapter 5A Settlement Monitoring Requirements for Cast Iron Water Mains.
- 5.2. As between the STATE and the CITY, the STATE shall replace, at the STATE's cost, any watermain for which monitoring shows exceedance of "Max Total Displacement at any one point" in Table B-2 in the SPU Design Standards and Guidelines as measured between the pre- and post-construction surveys over the duration of the PROJECT, including settlement plan monitoring periods (per Exhibit A-1, Section 1.11). The extent of the replacement shall be the entire watermain crossing of the tunnel to the first joint outside the tunnel walls.
- 5.3. The CITY shall perform, or pay for, pre- and post-construction leak detection on the crossing watermains. Pre-existing leaks within the PROJECT boundaries shall be repaired by the CITY at the CITY's cost prior to start of construction. The STATE shall be responsible for the costs of repair of any leak that occurs within the PROJECT boundaries over the duration of construction. For purposes of this subsection, the "PROJECT boundaries" extend to the first joint outside the tunnel walls.

6. Project Management and Construction Administration

- 6.1. The STATE will issue a Design-Build Contract(s) to fulfill its PROJECT responsibilities. The STATE's Design-Build Contract will be issued and managed in accordance with current STATE contracting practices.
- 6.2. The STATE shall act as the sole authority in the administration of the Design-Build Contract(s). The STATE shall allow the CITY to consult with and make inquiries of the STATE Project Engineer or designee, attend meetings, and have access to all documentation concerning those portions of the PROJECT subject to CITY review as described in Exhibit C of this AGREEMENT. The CITY shall not provide direction, directly or indirectly, to the STATE's consultant(s) or Design-Builder, but may communicate with the Design-Builder as provided in Exhibit C.

- 6.3. The PARTIES agree to follow the Procedures as outlined in Exhibit C.

7. Task Orders – Invoicing, Payment, Records Retention, and Audits

- 7.1. Some or all of the work undertaken pursuant to this AGREEMENT, or additional work as agreed to by the PARTIES, may be governed by Task Orders.
- 7.1.1. The STATE and the CITY (either SDOT, SPU, or SCL) (individually the PARTY or collectively the PARTIES) may initiate a Task Order, which will be jointly executed by the STATE and the appropriate CITY department.
- 7.1.2. All Task Orders shall be signed by a Designated Representative of the initiating PARTY and deemed executed when counter-signed by the Designated Representative of the other PARTY.
- 7.1.3. The general terms and conditions of this AGREEMENT shall be applicable to all Task Orders issued under this AGREEMENT.
- 7.1.4. Additional information related to Task Orders, Task Order invoicing and payment, and Task Order administration can be found in attached Exhibit B.
- 7.2. Availability of Records. All PROJECT records in support of all costs incurred and actual expenditures kept by the PARTIES associated with a Task Order generated under this AGREEMENT shall be maintained in accordance with procedures prescribed by the Washington State Auditor's Office. The records shall be open to inspection by the PARTIES 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. Copies of said records shall be furnished to the PARTIES upon request. This requirement shall be included in the Design-Build Contract and any third-party contracts for work entered into by the CITY to fulfill the terms of this AGREEMENT
- 7.3. Audit. If an audit is requested by either PARTY related to Task Orders, the PARTIES agree to cooperate fully with any such audit and provide documentation as is requested in support of all costs.

8. Property Rights Acquisition

- 8.1. The STATE will acquire, at its expense, any real property rights required for the PROJECT, including temporary construction easements.

9. Permitting

- 9.1. The STATE shall apply for and obtain all necessary federal-, state-, and CITY-issued permits and approvals for the work for which it is responsible prior to commencing work that requires such permits, including but not limited to all permits, approvals or permission for exploratory investigations, testing, site preparations, and construction.
- 9.2. The CITY authorizes the STATE to use CITY Street Right-of-Way for the PROJECT, subject to issuance and provisions of Street Use Permits and the conditions contained in this AGREEMENT. The STATE's use of CITY Street Right-of-Way shall comply with the SMC and all other applicable laws, including but not limited to the Shoreline Management Act, the National Environmental Policy Act and the State Environmental Policy Act.
- 9.3. The STATE agrees that for the PROJECT, the STATE shall obtain Street Use Permits prior to undertaking work in the CITY Street Right-of-Way. The CITY shall provide for street use inspections pursuant to Title 15 of the SMC, the Street Use Permit, and this AGREEMENT.
- 9.4. The STATE shall be responsible for compliance with all terms and conditions of permits and approvals and shall be solely responsible for payment of any penalties resulting from the STATE's non-compliance with permits or approvals to the extent said penalties are the result of any action or inaction on the part of the STATE or the STATE's contractors, consultants, or agents. Subject to the foregoing, the STATE shall indemnify and defend the CITY in the event that the CITY is named in any notice of violation or notice of penalty issued for the PROJECT.
- 9.5. The STATE agrees to abide by and comply with all requirements and conditions of the Street Use Permits. The CITY will provide draft Street Use Permit conditions for incorporation into the request for proposal. The CITY will issue a Street Use Permit when an Approved Plan is developed. The STATE will obtain

Letters of Plan Approval for construction packages that will be submitted as Released for Construction Submittals after the Design-Builder finalizes plans.

- 9.6. The Street Use Permits and Letters of Plan Approval are not a representation or assurance that the design or plans comply with applicable laws, regulations, ordinances, or codes, nor shall the Street Use Permits or Letters of Plan Approval be construed to authorize any failure to comply with any of the foregoing.
- 9.7. The PARTIES agree to establish alternative CITY regulatory process cost reimbursement in lieu of Use Fees as set forth in Section 2.1, GCA 5739, Project Services Agreement and future amendments (Exhibit D).

10. Environmental Remediation During Construction

- 10.1. STATE Responsibilities. The STATE shall be responsible for identification, investigation and Remediation of Hazardous Substances found within the limits of the PROJECT during its environmental due diligence and shall identify areas of known Hazardous Substances in conjunction with the Design Submittals circulated for CITY review. In addition, the STATE shall be responsible for identification, investigation and Remediation of Hazardous Substances discovered during construction. Provisions for Remediation of known Hazardous Substances, approved Remediation plans, and provisions for Remediation of Hazardous Substances discovered during construction shall be included in the Design Submittals circulated for CITY review. Nothing in this AGREEMENT is intended to alter the legal obligations of the STATE with respect to hazardous substances that may remain in place after completion of the PROJECT except for release and indemnity provisions of this AGREEMENT.
- 10.2. Environmental Remediation. Environmental Remediation conducted by the STATE will be in accordance with Environmental Law. The STATE shall follow the procedures for remedial actions and comply with applicable Model Toxics Control Act (MTCA) cleanup levels as set forth in (MTCA) and associated procedures approved by the Washington State Department of Ecology for Remedial Action, and the STATE shall undertake Remediation using environmental professional judgment that achieves an overall effectiveness comparable to the substantial equivalent of a Washington State Department of Ecology conducted or supervised Remedial Action appropriate to the specific site

conditions and contaminants with no environmental restrictions or covenants unless otherwise agreed to by the CITY in writing. The STATE is not obligated to implement public notification and documentation procedures common to the substantial equivalent of a Washington State Department of Ecology conducted or supervised Remedial Action.

- 10.3. The STATE shall not use soil found to exceed MTCA Method A cleanup levels or that exhibits visual and/or olfactory indications of Hazardous Substance as earth fill or trench backfill within the PROJECT. There shall be no requirements or agreements concerning ongoing monitoring of soil or groundwater relating to Hazardous Substances unless agreed to by the CITY in writing prior to Remedial Action.
- 10.4. The STATE may conduct additional Remediation of contaminated areas in consultation with the CITY.
- 10.5. All STATE work shall comply with the then-current WSDOT *Environmental Procedures Manual M 31-11* and WSDOT *Construction Manual M 41-01*, Environmental Law, and all applicable CITY regulations except as modified by this AGREEMENT.
- 10.6. The STATE shall include the CITY in its ECAP (Refer to the *WSDOT Environmental Procedures Manual M 31-11*.) when unanticipated contamination is found within the limits of the PROJECT. Notification procedures will include notifying the CITY orally followed by written notification.
- 10.7. The STATE's Project Engineer shall determine, in consultation with the CITY, Remediation of known and unanticipated Hazardous Substances within the limits of the PROJECT. In instances where the CITY disputes the STATE's plan(s) for Remediation, the CITY and STATE will resolve the dispute through the dispute resolution process in Section 18 of this AGREEMENT.
- 10.8. The STATE shall prepare plans in consultation with the CITY for Remediation of known and unanticipated Hazardous Substances, and shall obtain CITY concurrence prior to implementing Remedial Actions. In instances where the CITY finds the STATE's plans for Remediation of these areas unacceptable, the CITY or STATE may request resolution through the dispute resolution process in Section 18 of this AGREEMENT.
- 10.9. Prior to the start of construction, and after the contractor has been selected, the STATE shall initiate and host an environmental preconstruction meeting. The

STATE shall invite CITY staff, STATE staff and the STATE contractor to discuss known contamination, environmental procedures, environmental Remediation and permit conditions that apply to the PROJECT.

- 10.10. The STATE shall obtain all required permits and approvals for Remediation.
- 10.11. The STATE shall provide the CITY with copies of environmental close-out reports for Remediation activities.
- 10.12. All costs associated with testing, handling, storing, removing, transporting, disposing, or treating Hazardous Substances that are excavated in connection with the PROJECT shall be paid by the STATE, with the exception of such costs incurred during and directly caused by Betterment Work. In addition, STATE shall be responsible for all costs associated with Remediation of any releases that are caused or exacerbated by its own employees or contractors. The STATE shall be identified as the generator for these Hazardous Substances.
- 10.13. The CITY shall provide to the STATE all records regarding any known areas where Hazardous Substances may be located within the limits of the PROJECT, including but not limited to environmental investigation reports for properties located in the PROJECT. The reports shall be provided for the STATE's information only, shall not be relied upon by the STATE, and the CITY's provision of these records shall not constitute a representation or warranty as to the accuracy of the information contained in the reports.
- 10.14. The STATE shall provide to the CITY all records regarding any known areas where Hazardous Substances may be located within the limits of the PROJECT, including but not limited to environmental investigation reports. In addition, the STATE shall notify and provide information to the CITY regarding any contamination encountered during construction. Reports provided by the STATE are for information only, and shall not be relied upon by the CITY, and the STATE's provision of these records shall not constitute a representation or warranty as to the accuracy of the information contained in the reports.
- 10.15. The STATE shall release and indemnify, protect, defend and hold harmless the City of Seattle and its officers, officials, employees, and agents, while acting within the scope of their employment, from all liability and claims (including but not limited to liability and claims for response and remediation costs, administrative costs, fines, charges, penalties, attorney fees and cost recovery or similar actions brought by a governmental or private party, including third party

tort liability) arising, directly or indirectly, from any of the following: (1) any presence or release of any Hazardous Substance within or from the limits of the PROJECT, except for the presence of any Hazardous Substance as of the effective date of this Agreement within the portion of real property in which the City has a real property interest on that date or in which the City later acquires a real property interest for the purposes of the PROJECT from an entity other than the STATE, and (2) the removal, transport or disposal in connection with the PROJECT of any Hazardous Substance for which the STATE or any person, contractor or other entity working on behalf of the STATE is a generator.

11. Archaeological and Historical Resources

- 11.1. The STATE will comply with Section 106 of the National Historic Preservation Act, 16 U.S.C. (NHPA), and its implementing regulations (36 CFR Part 800). The STATE shall be responsible for funding costs and expenses for compliance with commitments in the 2011 Memorandum of Agreement between the Federal Highway Administration, Washington State Historic Preservation Office and STATE, including costs for permit compliance for scopes of work transferred by Task Order.

12. Access, Inspection, and Acceptance of CITY Infrastructure

- 12.1 The PARTIES agree to fully comply with the Procedures set forth in Section 4 of Exhibit C, including Final Inspection and Acceptance Procedures.

13. Designated Representatives

- 13.1. The Designated Representative for each PARTY is as follows:

STATE:

Program Administrator

Alaskan Way Viaduct Replacement Program

Washington State Department of Transportation

999 3rd Avenue, Suite 2200

Seattle, WA 98104

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

14. Warranties

- 14.1. The STATE warrants for a minimum period of twelve (12) months that all CITY Infrastructure being accepted by the CITY for ownership, operation and maintenance: (1) meets with the requirements of the Approved Plans, and all CITY-approved modifications to the Approved Plans made during the course of construction; (2) is constructed in accordance with CITY-issued permits; (3) is free of defects in material and workmanship; and (4) is free of defects in design(s). The warranty of work shall apply to any corrective work required to address Non-Conforming Work that is discovered and communicated by the CITY to the STATE within the warranty period. The STATE's warranty of work shall begin following the execution of the Letter of Acceptance of CITY Infrastructure or as otherwise provided in the STATE's contract, whichever occurs later.
- 14.2. If within the warranty of work period, the CITY discovers and gives written notice to the STATE of Non-Conforming Work in the accepted CITY Infrastructure, the STATE shall promptly investigate the work the CITY believes is Non-Conforming. The STATE shall promptly remedy Non-Conforming Work. Disagreements between the CITY and the STATE on what constitutes Non-Conforming Work shall be resolved using the dispute resolution process established in Section 18 of this Agreement. The STATE shall diligently prosecute the corrective work and shall procure materials using the fastest means available as necessary to minimize the loss of use and operation of the accepted CITY Infrastructure. Corrective work shall be completed within the time frame specified by the CITY and mutually agreed upon by the STATE.
- 14.3. If, during construction, the CITY encounters an emergency situation caused by Non-Conforming Work, it must immediately notify the STATE. The STATE will take immediate corrective action. If, after the warranty period begins, the CITY encounters an emergency situation caused by Non-Conforming Work, it may

immediately correct it. Direct and indirect costs incurred by the CITY, attributable to correcting an emergency situation associated with Non-Conforming Work, shall be paid by the STATE to the CITY.

Transfer of Title and Warranty of Title

- 14.4. All right and title to the CITY Infrastructure accepted by the CITY will be transferred by the STATE to the CITY as of the date of the STATE's signature acknowledging the CITY's Letter of Acceptance pursuant to the provisions of Exhibit C. Neither the STATE nor its contractors shall hold a property right in any of the CITY Infrastructure accepted by the CITY for ownership, including the materials and equipment comprising the CITY Infrastructure.
- 14.5. The STATE shall warrant good and merchantable title to all materials, supplies, equipment and items installed or incorporated into the accepted CITY Infrastructure. The STATE shall further warrant that all CITY Infrastructure transferred to, and accepted by, the CITY is free from claims, liens and charges.

Manufacturers' Warranties

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

Warranty Inspections

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

15. Third-Party Beneficiary

- 15.1. The contracts between the STATE and its Design-Builder will include the following requirements:

(a) With respect to any and all of the CITY Infrastructure, the STATE and the Design-Builder will acknowledge that the City of Seattle is an intended third-party beneficiary of the contracts; (b) the STATE and the Design-Builder will include the City of Seattle as a named third-party beneficiary of the STATE's contracts; and (c) the STATE and the Design-Builder will include the City of Seattle in the indemnification and insurance provisions contained in the STATE's contracts. The STATE and CITY do not intend that this paragraph be interpreted to create any obligation, liability, or benefit to any third party, other than the STATE and the City of Seattle for purposes of design and construction of the PROJECT as described in this AGREEMENT.

16. General Indemnification

- 16.1. The STATE shall protect, defend, indemnify, and save harmless the CITY, its officers, officials, employees, and agents (Indemnified Parties), from any and all costs, claims, judgments, and/or awards of damages (both to persons and property), arising out of, or in any way resulting from, the STATE's performance or failure to perform any obligation under this AGREEMENT or breach of this AGREEMENT; the STATE's or the STATE's contractors', consultants', or agents' violation of any applicable law, regulation, or permit; or any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, copyright rights, or inventions for which the STATE or the STATE's contractors, consultants, or agents is responsible in performance of the PROJECT. The STATE's indemnification of the Indemnified Parties includes any and all claims and litigation arising out of, or resulting from, any state or federal environmental review process in any way relating to the PROJECT, and any private utility relocations required for the PROJECT. The STATE will not be required to indemnify, defend, or save harmless the CITY if the claim, suit, or action is caused by the sole negligence of the Indemnified Parties. Where such claims, suits, or actions result from the concurrent negligence of the PARTIES or their agents, employees, consultants, contractors, or vendors of any tier, the indemnity and defense obligations provided herein shall be valid and enforceable only to the extent of the negligence of the STATE or its agents, employees, consultants, contractors, or vendors of any tier.
- 16.2. The CITY shall protect, defend, indemnify, and save harmless the STATE, its officers, officials, employees, and agents (Indemnified Parties), from any and all costs, claims, judgments, and/or awards of damages (both to persons and property), arising out of, or in any way resulting from, the CITY's performance or

failure to perform any obligation under this AGREEMENT or breach of this AGREEMENT; the CITY's or the CITY's contractors', consultants', or agents' violation of any applicable law or regulation; or any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, copyright rights, or inventions for which the CITY or the CITY's contractors, consultants, or agents is responsible. The CITY will not be required to indemnify, defend, or save harmless the STATE if the claim, suit, or action is caused by the sole negligence of the Indemnified Parties. Where such claims, suits, or actions result from the concurrent negligence of the PARTIES or their agents, employees, consultants, contractors, or vendors of any tier, the indemnity and defense obligations provided herein shall be valid and enforceable only to the extent of the negligence of the CITY or its agents, employees, consultants, contractors, or vendors of any tier.

- 16.3. Solely with respect to claims for indemnification herein, both PARTIES waive, as to each other only, and expressly not for the benefit of their employees or third parties, their immunity under Title 51 RCW, the Industrial Insurance Act, and acknowledge that this waiver has been mutually negotiated by the PARTIES. Both PARTIES agree that their respective indemnity obligations extend to any claim, demand, or cause of action brought by, or on behalf of, any of their respective employees or agents.
- 16.4. Survival of Indemnification Obligations. These obligations provided in this section shall survive the termination of this AGREEMENT, whether or not any claim giving rise to such liability shall have accrued.

17. Insurance and Bonds

- 17.1. The STATE shall require the STATE's Design-Builder, and its sub-contractors of any tier where insurance is required by the subcontract, to include "The City of Seattle" as an additional insured for primary and non-contributory limits of liability for Commercial General Liability, Commercial Automobile Liability, and (if required) Contractor's Pollution Liability as established in the Design-Build Contract documents, including Products and Completed Operations coverage following the completion of each PROJECT stage.
- 17.2. The STATE's standard insurance specification is included in Section 1-07.18 (Exhibit E) of the Design-Build Contract and may be amended for coverages, and

minimum limits of liability and/or terms and conditions as mutually established by the PARTIES.

- 17.3. STATE Contractor's Bonds. The STATE shall require its Design-Builder 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 commercially reasonable and consistent with the limits set for similar projects. Such bonds shall be executed by an approved Surety that is registered with the Washington State Insurance Commissioner, and that appears on the current Authorized Insurance List in the State of Washington published by the Office of the Insurance Commissioner, and that shall be conditioned upon the faithful performance of the contract by the contractor. The STATE shall ensure faithful completion of the PROJECT by use of the STATE's contractor bonds or other means.

18. Dispute Resolution

- 18.1. Good Faith. The CITY and the STATE shall make good faith efforts to resolve any dispute arising under or in connection with this AGREEMENT. The dispute resolution process outlined in this Section applies to disputes arising under or in connection with the terms of this AGREEMENT. In the event that the PARTIES cannot resolve a disagreement arising under or in connection with this AGREEMENT, the PARTIES shall follow the dispute resolution steps set forth in this Section.
- 18.2. Notice. A PARTY's Designated Representative, as defined in Section 13, shall notify the other PARTY's Designated Representative in writing of any problem or dispute that a PARTY believes needs resolution. The written notice shall include: (a) a description of the issue to be resolved; (b) a description of the differences between the PARTIES on the issue; and (c) a summary of any steps taken to resolve the issue.
- 18.3. Meeting. Upon receipt of a written notice of request for dispute resolution, the Designated Representatives for the PARTIES shall meet within ten (10) Business Days and attempt to resolve the dispute. If the dispute involves a CITY department other than, or in addition to, SDOT, the CITY's Designated Representative will inform the other CITY department(s) of the dispute and offer the CITY department(s) an opportunity to attend the meeting. Any resolution of the dispute requires the agreement of the Designated Representatives attending

the meeting and the representative of the CITY department that requests to attend the meeting.

- 18.4. Notice of Second Level Meeting. If the PARTIES have not resolved the dispute within five (5) Business Days after the meeting, at any time thereafter either PARTY may request that the dispute be elevated to the next level by notifying the other PARTY's Designated Representative in writing, requesting that the dispute be raised to the Second Level Meeting as described in Subsection 18.5. The written notification shall include: (a) a description of the remaining issues to be resolved; (b) a description of the differences between the PARTIES on the issues; (c) a summary of the steps already taken to resolve the issues; and (d) the resolution of any issues that were initially involved in the dispute.
- 18.5. Second Level Meeting. Upon receiving a written request that the dispute be elevated to the next level, a meeting shall be held within ten (10) Business Days between the STATE Chief Engineer and the appropriate CITY program manager(s) to resolve the dispute. If the dispute involves a CITY department other than, or in addition to, SDOT, the CITY's Designated Representative will inform the other CITY department of the dispute and offer that CITY department an opportunity to attend the meeting. Any resolution of the dispute requires the agreement of the Designated Representatives attending the meeting and the representative of the CITY department that requests to attend the meeting.
- 18.6. Mediation. If the dispute is not resolved in the Second Level Meeting, the PARTIES may initiate a mediation process within sixty (60) Business Days after the Second Level Meeting unless the PARTIES mutually agree to take the dispute to the court of law.
- 18.7. In the event the PARTIES decide to pursue mediation, the PARTIES shall select a mediator by mutual agreement. Each PARTY shall bring to the mediation session, unless excused from doing so by the mediator, a representative from its side with full settlement authority. In addition, each PARTY shall bring counsel and such other persons as needed to contribute to a resolution of the dispute. The mediation process shall be considered settlement negotiations for the purposes of all state and federal rules protecting disclosures made during such negotiations from later discovery or use in evidence; provided, that any settlement agreement as may be executed by the PARTIES shall not be considered confidential and may be disclosed. Each PARTY shall pay its own costs for mediation and share equally in the cost of the mediator (STATE – fifty (50) percent; CITY – fifty (50) percent). If other persons or entities also participate as independent parties to the mediation

then the cost of the mediator shall be divided equally among all participating parties. The venue for mediation shall be in Seattle, Washington, unless the parties mutually agree in writing to a different location.

- 18.8. Court of Law. If the PARTIES have not resolved the dispute within five (5) Business Days after the Second Level Meeting, at any time thereafter either PARTY may seek relief under this Agreement in a court of law. The PARTIES agree that they have no right to relief in a court of law until they have completed the dispute resolution process outlined in this Section.
- 18.9. No evidence of breach. A PARTY'S request to utilize this dispute resolution process is not evidence that either PARTY is in breach of this AGREEMENT, and does not relieve any PARTY from complying with its obligations under this AGREEMENT.

19. Effectiveness and Duration

- 19.1. This AGREEMENT shall be effective as of the date the last PARTY signs and, unless sooner terminated pursuant to the terms hereof, shall remain in effect until final completion of all PARTIES' obligations contained or referred to in this AGREEMENT.

20. Limits of Liability

- 20.1. CITY Assistance, Inspection, Review, or Approvals. The reviewer approval of any of the STATE's PROJECT plans or specifications, or the inspection of the STATE's work, or any assistance provided to the STATE by the CITY is for the CITY's sole benefit and shall not constitute an opinion or representation by the CITY as to any compliance with any law, ordinance, rule, or regulation or any adequacy of this AGREEMENT for other than the CITY's own purposes; and such assistance, inspection, review, or approval shall not create or form the basis of any liability on the part of the CITY or any of its officials, officers, employees, or agents for any injury, damage, or other liability resulting from, or relating to, any inadequacy, error, or omission therein or any failure to comply with applicable law, ordinance, rule, or regulation; and such assistance, inspection, review, or approval shall not relieve the CITY of any of its obligations under this AGREEMENT, or under applicable law.

21. Notice

- 21.1. Except for the dispute resolution process in Section 18, for which notice shall be given to the Designated Representatives listed in Section 13, all notices, demands, requests, consents and approvals that may be or are required to be given by either PARTY to the other PARTY shall be in writing and shall be deemed to have been duly given (a) upon actual receipt or refusal to accept delivery if delivered personally to the Designated Representative; (b) upon actual receipt or refusal to accept delivery if sent by a nationally recognized overnight delivery service to the Designated Representative; or (c) upon actual receipt if electronically transmitted to the Designated Representative with confirmation sent by another method specified in this Section. Notice of a change of Designated Representative or the address of the Designated Representative shall be given as provided in this Section.

22. Amendment

- 22.1. Either PARTY may request changes to the provisions contained in this AGREEMENT. Such changes shall be mutually agreed upon and incorporated by written amendment to this AGREEMENT. No variation or alteration of the terms of this AGREEMENT shall be valid unless made in writing and signed by authorized representatives of the PARTIES hereto.

23. General Provisions

- 23.1. Each PARTY shall ensure that its employees, agents, and contractors, to the extent applicable, comply with the obligations of this AGREEMENT.
- 23.2. No failure to exercise, and no delay in exercising, on the part of either PARTY hereto, any rights, power, or privilege hereunder shall operate as a waiver thereof, except as expressly provided herein.
- 23.3. This AGREEMENT, together with the Exhibits incorporated herein, constitute the entire agreement of the PARTIES with respect to the PROJECT. This AGREEMENT does not relieve the STATE of its obligations in Sections 2 and 3 in Exhibit D of GCA 6486 (Exhibit F).

- 23.4. Section and subsection headings are intended as information only, and shall not be construed with the substance of the section or subsection they caption.
- 23.5. This AGREEMENT may be executed in counterparts each of which shall be deemed an original, and all counterparts together shall constitute but one and the same instrument.
- 23.6. The PARTIES acknowledge the right of each PARTY to exercise its police power pursuant to general law and applicable statutes for the protection of the health, safety, and welfare of its citizens and their properties. Nothing in this AGREEMENT shall be construed as waiving or limiting the STATE's or CITY's rights to exercise its police power or to preclude or limit exercising any regulatory power in connection with this PROJECT or otherwise.
- 23.7. A judicial determination that any term, provision, condition, or other portion of this AGREEMENT, whether in whole or in part, is inoperative, invalid, void, or unenforceable shall not affect the remaining terms, provisions, conditions, or other portions of this AGREEMENT, whether in whole or in part, and the remaining terms, provisions, conditions, or other portions of this AGREEMENT, whether in whole or in part, shall remain valid and enforceable to the fullest extent permitted by law.
- 23.8. 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.

The PARTIES hereto have executed this AGREEMENT as of the latest date written below.

STATE OF WASHINGTON
DEPARTMENT OF TRANSPORTATION

By
Roger Millar, Secretary

Date: _____

CITY OF SEATTLE
DEPARTMENT OF TRANSPORTATION

By
Goran Sparrman, Interim Director

Date: _____

CITY OF SEATTLE
SEATTLE PUBLIC UTILITIES

By
Mami Hara, Director

Date: _____

CITY OF SEATTLE
SEATTLE CITY LIGHT

By
Jim Baggs, Interim General Manager and CEO

Date: _____

EXHIBITS

Exhibit A:

A-1: Project Description and Scope

A-2: Seattle City Light Scope of Work – Battery Street Tunnel Decommissioning

A-3: South Portal Battery Street Tunnel Concept Plan

Exhibit B: Task Order Procedures

Exhibit C: Design Review, Construction Management, Inspection, Redline and Record Drawings, and Acceptance Procedures

Exhibit D: Portion of GCA 5739, Project Services Agreement

Exhibit E: Design-Build Contract, Minimum Insurance Requirements

Exhibit F: GCA 6486, Exhibit D

Exhibit A-1 PROJECT Description and Scope

The STATE and CITY agree on the following scope of work for the decommissioning of the Battery Street Tunnel. Except as indicated in this exhibit, the STATE is responsible for performance of this scope of work, and for the costs of the PROJECT. The STATE shall require its Design Builder to comply with the requirements set forth in this Exhibit A-1 and in the Procedures shown in Exhibit C.

1. Tunnel Decommissioning

- 1.1. All tunnel operation related electrical equipment and machinery, side sewer, water services, and fire suppression systems, including conduits, will be deactivated and removed.
- 1.2. The fire services at the watermain located outside the Battery Street Tunnel will be deactivated by the CITY (SPU crews) with contractor support pursuant to normal service abandonment protocol. The CITY (SPU) will be responsible for the cost of the SPU crew work.
- 1.3. The watermain in the tunnel will be adequately supported, as necessary, before the standpipe is removed. The CITY (SPU crews) will detach the standpipe from the watermain and plug the inline tee. The CITY (SPU) will be responsible for the cost of the SPU crew work.
- 1.4. All drainage and wastewater lateral connections serving the tunnel will be abandoned in place per CITY's Standard (2-02.3(5)B 'Plug Pipe').
- 1.5. All structures outside the tunnel will be demolished to five feet below the existing surface. All structures inside the tunnel will be abandoned in place and filled.
 - 1.5.1. All mechanical ventilation equipment will be removed from the tunnel.
 - 1.5.2. The mechanical spaces and control room and access stairway outside the tunnel walls will be filled.
 - 1.5.3. The headhouse at street level will also be removed per CITY standards.
 - 1.5.4. The vaults will be abandoned, filled, and the surface restored per CITY Standards.
- 1.6. The following CITY Facilities will be left in place:

- 1.6.1. Conduits hanging from the lid of the tunnel, and any other CITY Facilities within the tunnel, unless defined otherwise in this document or further defined in a subsequent Agreement.
 - 1.6.2. Watermains remaining in the tunnel will be coated or wrapped in advance of decommissioning backfill operations to protect from backfill including any heat generated by the curing of backfill materials such as cellular concrete. Any connections such as hangers or bracing between the watermain and the tunnel lid or structure will be removed after backfill is completed such that the remaining components of the tunnel can be removed without damaging or displacing the watermains.
- 1.7. The tunnel lid will be left in place with no structural upgrades and all vent grates will be removed. Vent openings within the sidewalk will be filled with Non-Roadway Cement Concrete in accordance with SDOT Standard Specifications Section 5-05. Within the roadway, the vent frames will be removed, and the openings will be filled with Roadway Cement Concrete, Variable Mixes in accordance with SDOT Standard Specifications Section 5-05.
- 1.8. Portions of the existing base (roadway) slab of the tunnel will be permeated at low spots for nearly the full length of the northbound and southbound directions to eliminate the potential for water ponding. Hole size and opening spacing will be determined by the STATE's Design-Builder based on a rational analysis of free water accumulation. The analysis shall consider only hole size and opening spacing in the invert slab as the primary relief of free water accumulation. If a drainage system is determined to be necessary, the drainage system may be connected to the CITY's conveyance mainline. Any connection to the CITY's conveyance mainline shall be designed and constructed in accordance with the City Stormwater Manual requirements and City Standard Plans and Specifications.
- 1.9. The soot from all surfaces within the tunnel, including utility surfaces, unless otherwise agreed to in writing by the STATE and CITY, will be cleaned and removed before fill material is placed in the tunnel. The STATE's soot removal report prepared in 2008 will be the basis for this work. However, in addition to the 2008 report, the STATE's Design-Builder will submit a final plan for City review and approval that will confirm how existing UTILITY Facilities will be protected and environmental requirements met, including applicable MTCA cleanup standards.

- 1.10. The existing steel (doors, railing, etc.) in the tunnel, control room and stairwell will be removed.
- 1.11. The fill material in the tunnel and equipment rooms will be excavatable with either (a) compaction rate equivalent of 95 percent and consistent with CITY Type 17 compacted granular material, or (b) a Design-Builder proposed equivalent, including a settlement plan if required, that is approved by both PARTIES in writing. In addition:
 - 1.11.1. Flowable material shall not exceed 100 psi compressive strength, including Fluidized Thermal Backfill (FTB).
 - 1.11.2. Fill adjacent to existing and new SCL or SPU Facilities shall also meet the respective UTILITY specifications. The fill material shall meet the same ability to transfer heat from SCL duct banks as having the FTB around the duct bank as defined in SCL's Standard 0222.02 and SCL's Material Standard 7150.00.
 - 1.11.3. The FTB shall be provided by approved vendors noted in CITY Standards. If other vendors are proposed, then testing to demonstrate thermal resistivity will be required, and the other vendors must be approved in writing by SCL.
- 1.12. The existing signal, electrical and communications systems and the existing Intelligent Transportation System will be rebuilt to current standards and a new service installed for each signalized intersection from Western Avenue to Denny Way, including:
 - 1.12.1. Reconstruct underground conduit and handhold system to accommodate rewiring of existing signal as necessary to replace the function of the existing underground routing.
 - 1.12.2. Install new electrical service and service cabinet for signals between Second Avenue and Denny Way.
 - 1.12.3. Maintain the existing signal interconnect system.
 - 1.12.4. Existing conduit and wiring for signal systems inside of tunnel will be replaced and upgraded to provide a route from the controller to a handhole on each corner, including electrical service connections and interconnect through Seattle Information Technology fiber.
- 1.13. The existing 30-inch combined sewer and the associated side sewers under the Battery Street Tunnel between Fourth Avenue and Western Avenue will be redesigned and rebuilt to City Standards. The CITY (SPU) is responsible for the

cost of this work with the exception of the new maintenance holes. The STATE will be responsible for the cost of the new maintenance holes.

- 1.13.1. The sewer and side sewers will be rebuilt at a higher grade with the reconnected side sewers to eliminate the current vertical drop outside and adjacent to the tunnel.
 - 1.13.2. Maintenance holes will be built to the final grade of Battery Street for future access.
 - 1.13.3. The existing side sewers will be abandoned per CITY Standards.
 - 1.13.4. The new system will need to be coated to protect it from backfill materials including heat from curing. Cathodic protection will be installed.
- 1.14. The existing combined sewer under the Battery Street Tunnel will be abandoned and filled with CDF, if not required for long-term drainage of the filled tunnel structure. The sewers at Fifth Avenue and Sixth Avenue will be reconnected in the pre-tunnel configuration.
- 1.15. The ADA ramps on Battery Street will be rebuilt to meet current standards.
- 1.16. Drainage related to restoration of the Battery Street roadway will be evaluated and modified where necessary to meet CITY drainage requirements. The responsibility for these costs will be determined in the Task Orders referenced in Section 7 of the AGREEMENT.
- 1.17. Battery Street will not be reconstructed except for patching tunnel vents and removing tunnel systems equipment and housings. The Battery Street roadway will be restored where required by the scope of the PROJECT work.
- 1.18. Eight (8) new electrical distribution duct banks that cross the tunnel alignment will be constructed shown in Exhibit A-2. These new crossings will either connect to existing vaults, connect to new vaults, or be stubbed outside of tunnel walls. Each duct bank crossing is anticipated to have two (2) 2-in, two (2) 4-in, and ten (10) 5-in conduits. The fill material adjacent to the duct banks shall meet the same ability to transfer heat from CITY duct banks as having the FTB around the duct bank as defined in CITY (SCL) Standard 0222.02 and CITY (SCL) Material Standard 7150.00. The CITY (SCL) is responsible for the cost of this work, including SCL's safety watch.

- 1.19. The existing secondary systems will be maintained in a functional condition until the new secondary systems are installed and energized in their final configuration. The network conductors will be installed and energized by SCL, at SCL's expense. If the Design-Builder chooses to protect in place, WSDOT and SCL will share in the cost of the protection measures.
- 1.20. Two (2) new electrical distribution vaults will be constructed at locations shown in Exhibit A-2. The location of these vaults may be within the existing tunnel bore or located outside of the tunnel walls. Vault sizes are anticipated to have inside dimensions of 10-ft wide by 20-ft long by 10-deep. The CITY (SCL) is responsible for the cost of this work, including SCL's safety watch.
- 1.21. A protective enclosure will be placed around all primary system crossings through the tunnel to prevent cementitious backfill from enveloping the conduits, including the CITY's (SCL) safety watch. Any costs related to future work associated with the protective enclosure is the responsibility of the CITY.
- 1.22. The street lighting system will be replaced to current standards along the full length of the tunnel from First Avenue to Denny Way including new conduits, junction boxes, poles/foundations, light fixtures, and service connections. CITY (SCL) crews will be responsible for connecting the secondary system to the street lighting system. The STATE is responsible for the cost associated with replacing the system within the Battery Street Tunnel, including the electrical service and supply system at luminaires. The CITY is responsible for the cost associated with replacing the system above ground, including luminaires, poles, and foundations, along Battery Street.
- 1.23. The CITY will salvage signal equipment in the tunnel prior to decommissioning.

2. South Transition Structure of the Battery Street Tunnel (from First Avenue to Western Avenue)

- 2.1. The transition area between the existing Alaskan Way Viaduct and the Battery Street Tunnel will be filled to provide a gentle and consistent grade from Western Avenue up to First Avenue.
- 2.2. Grading in the vicinity of the south portal of the Battery Street Tunnel shall be in accordance with the South Portal Battery Street Tunnel Concept Plan (Exhibit A-3).

- 2.3. Cut material generated during regrading operations in the south portal area may be incorporated in the fill of the south portal area.
- 2.4. All fill in this area shall meet the requirements of Common Borrow as per Section 9 of WSDOT Standard Specifications. Compaction of fill material in the vicinity of the Battery Street Tunnel south transition structure shall be to 90 percent of maximum density. The final two (2) feet of fill shall meet the requirements of City of Seattle Parks Department Standards for Soil Preparation (Section 32.91.13, Nov. 1, 2017) for South Portal Battery Street Tunnel Contour Grading.
- 2.5. Hydroseeding shall meet the CITY of Seattle Parks Department Standards for Hydroseeding (Section 32.19.19.16, Nov. 1, 2017).
- 2.6. No construction or modification to private utilities is included.
- 2.7. As part of the reconstruction of the 30-inch combined sewer between Fourth Avenue and Western Avenue, this section between First Avenue and Western Avenue will be rebuilt and connected to the existing sewer in Western Avenue. The CITY (SPU) is responsible for the cost of this work.
- 2.8. The PARTIES will work together to confirm the location of existing public UTILITY facilities in the south transition structure area.

3. Maintenance of Traffic

- 3.1. The STATE will be required to maintain the following access for traffic:
 - 3.1.1. During decommissioning and related construction activities requiring work on the surface of the Battery Street tunnel lid, one twelve (12) foot lane will be maintained on Battery Street at all times from Third Avenue to Denny Way, except between 3 to 7 p.m. on weekdays when two lanes shall be maintained, with one lane for bus only and one lane for general purpose traffic.
 - 3.1.2. Battery Street may be reduced to a single twelve (12) foot lane from Third Avenue to Denny Way. This single lane configuration may remain in place 24 hours a day, seven days a week for a period not to exceed a total of 42 calendar days, continuous or non-continuous. If the closure is continuous, the Design-Builder will be required to actively work in the construction zone. In the request for proposals, the STATE will provide an incentive in the form of a technical credit of \$13,000 for each day less

than 42 days that the Design-Builder proposes for a single-lane configuration on Battery Street. If the successful Design-Builder exceeds the number of their proposed days, the STATE will charge a liquidated damage of \$13,000 for each additional day. During this operation, a mitigation plan will be required to ensure limited delay for transit coaches between Third Avenue and Blanchard Street and Sixth Avenue and Aurora Avenue.

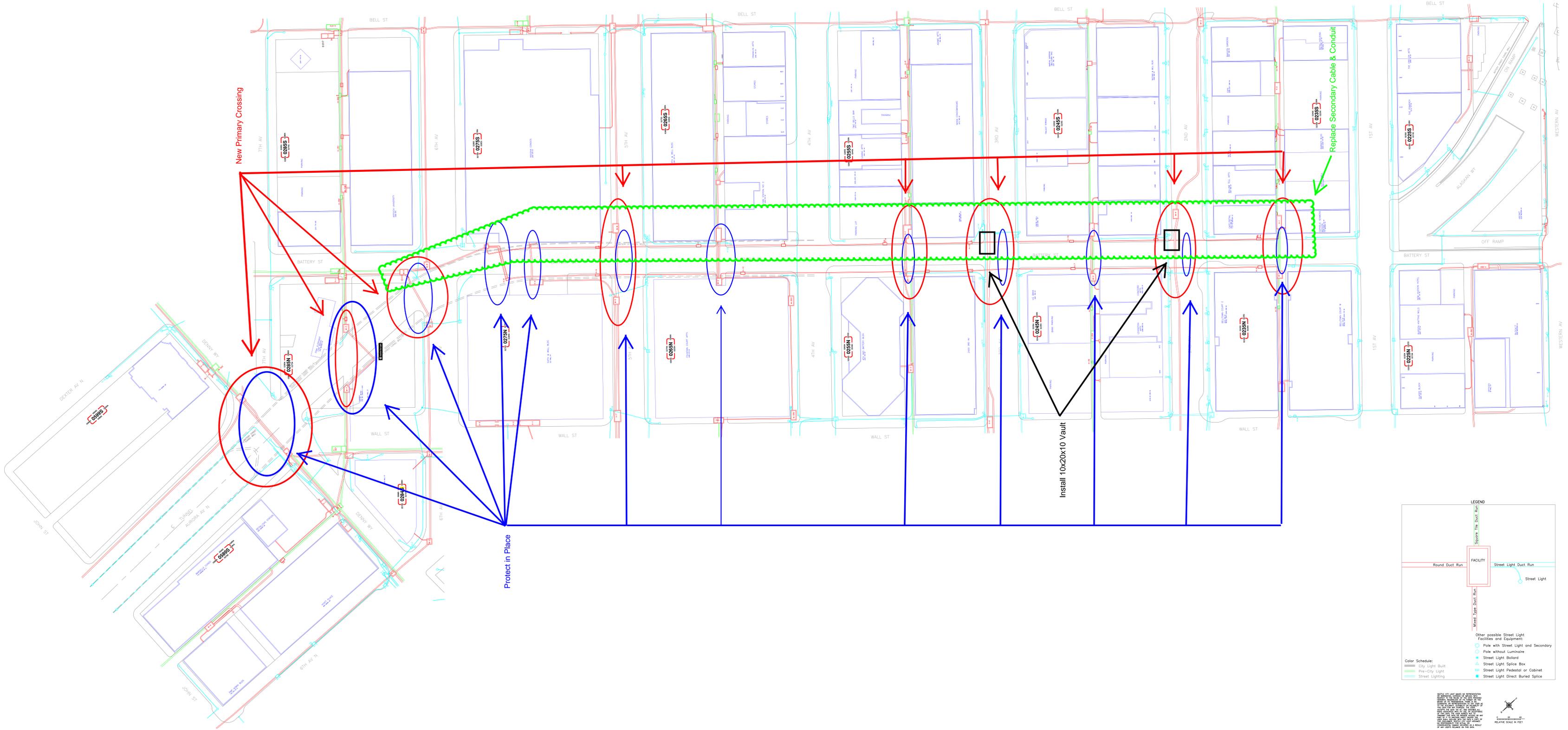
- 3.1.3. Battery Street may be reduced to a single eleven- (11) foot lane at all times from the east side of First Avenue to the west side of Third Avenue as required to decommission the Battery Street Tunnel and perform surface improvement and restoration on Battery Street. Closure of these blocks may be permitted when necessary for specific construction activities. Local access to driveways and garage entrances on Battery Street and southbound lanes, sidewalks, and the protected bicycle lane on Second Avenue shall be maintained.
- 3.1.4. During decommissioning of the Battery Street Tunnel, the Design-Builder will be allowed to close the First Avenue intersection from 9 p.m. to 5 a.m. for up to five (5) non-consecutive nights.
- 3.1.5. All lanes of traffic shall remain open on Denny Way during weekdays between 7 a.m. and 7 p.m. Lanes may be reduced to one in each direction outside of these hours.
- 3.1.6. Closure of the Denny Way and Aurora Avenue intersection will be allowed from 9 p.m. to 5 a.m. for up to seven (7) non-consecutive nights.

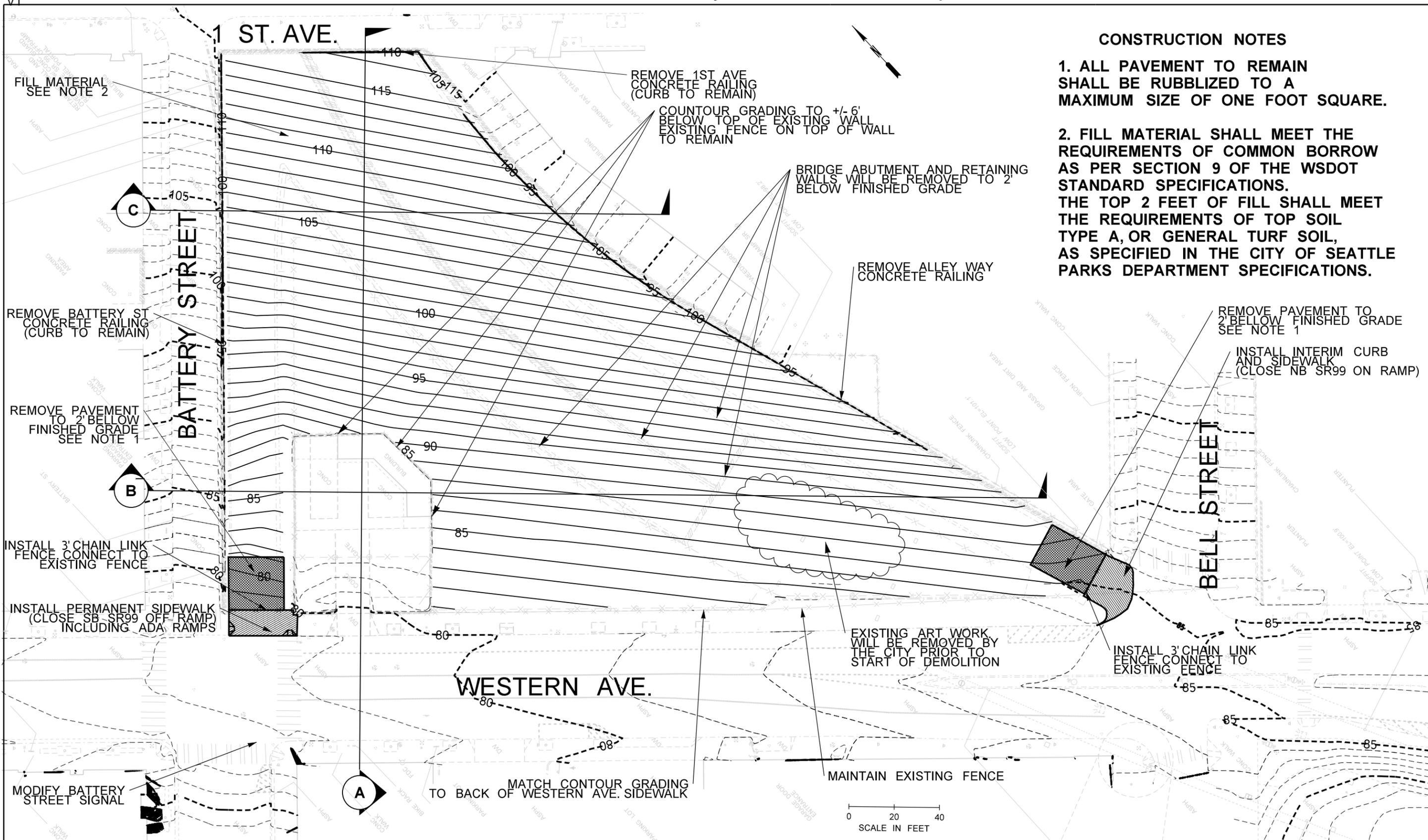
3.2. The Design-Builder will be permitted three weekend closures of Battery Street from the west side of First Avenue to the south side of Denny Way. These weekend closures will be from 9 p.m. on Friday to 5 a.m. on Monday. During weekend closures of Battery Street, crossings shall be maintained unless necessary for construction activities.

- 3.2.1. During one weekend closure, four (4) southbound and four (4) northbound lanes shall be maintained at a minimum between First Avenue and Sixth Avenue.
- 3.2.2. During two weekend closures, three (3) southbound and four (4) northbound lanes shall be maintained between First Avenue and Sixth Avenue
- 3.2.3. The Design-Builder will provide north-south pedestrian access every 320 feet.

- 3.2.4. The Design-Builder will provide signed detours if the Second Avenue protected bicycle lane is closed.
- 3.3. Special consideration will be given to maintaining full access at all times for Fire Station 2 located at 2320 Fourth Avenue for emergency vehicle response. A minimum of two eleven (11) foot wide lane across Battery Street along Fourth Avenue will remain open at all times.
- 3.4. Street and lane closure approvals will be subject to Special Event Limitations.
- 3.5. Depending on the specific design and construction requirements for the PROJECT scope, additional lane closures may be considered and determined in coordination with the CITY and King County Metro.
- 3.6. The Design-Builder is responsible for obtaining SDOT approval for all closures, through preparation of traffic control plans, detour plans, and coordination with other construction projects nearby.

Exhibit A-2: Seattle City Light Scope of Work - Battery Street Tunnel Decommissioning



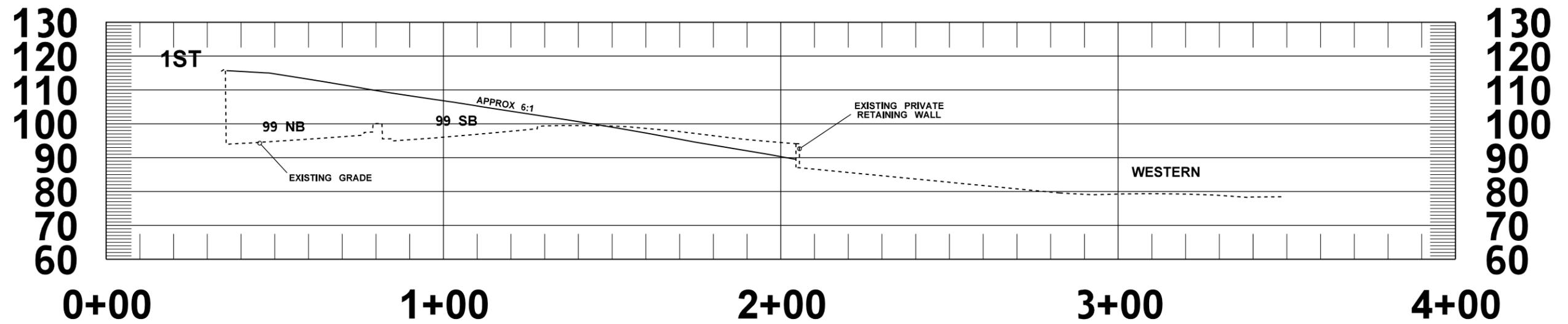


CONSTRUCTION NOTES

1. ALL PAVEMENT TO REMAIN SHALL BE RUBBLIZED TO A MAXIMUM SIZE OF ONE FOOT SQUARE.

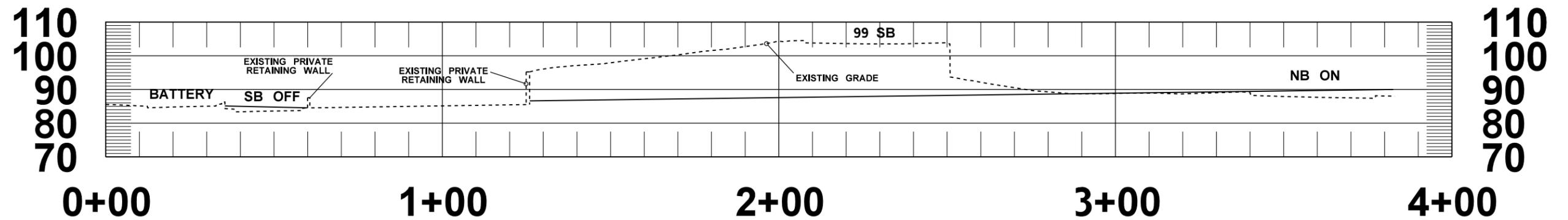
2. FILL MATERIAL SHALL MEET THE REQUIREMENTS OF COMMON BORROW AS PER SECTION 9 OF THE WSDOT STANDARD SPECIFICATIONS. THE TOP 2 FEET OF FILL SHALL MEET THE REQUIREMENTS OF TOP SOIL TYPE A, OR GENERAL TURF SOIL, AS SPECIFIED IN THE CITY OF SEATTLE PARKS DEPARTMENT SPECIFICATIONS.

FILE NAME c:\aawork\pwork\lawv\bielent\dms14841\BST S Portal Concept.DGN		REGION NO. 10	STATE WASH	FED.AID PROJ.NO.	PRELIMINARY NOT FOR CONSTRUCTION	 Washington State Department of Transportation	SR 99 DEMOLITION, DECOMMISSIONING AND SURFACE STREET PROJECT	Plot 1
TIME 2:44:05 PM	DATE 12/20/2017	JOB NUMBER	LOCATION NO.	PLAN REF NO				
PLOTTED BY bielent	DESIGNED BY M. ATABI	CONTRACT NO.						SHEET
ENTERED BY	CHECKED BY							OF
PROJ. ENGR. B. NEBBITT								SHEETS
REGIONAL ADM.	REVISION	DATE	BY					



SECTION A

FILE NAME		c:\aawork\pwwork\law\bielent\dms14841\BST S Portal Concept.DGN		REGION NO.	STATE	FED.AID PROJ.NO.	PRELIMINARY FOR CONSTRUCTION	 Washington State Department of Transportation	SR 99		Plot 21
TIME	3:29:14 PM			10	WASH	NOT			DEMOLITION, DECOMMISSIONING AND SURFACE STREET PROJECT		PLAN REF NO
DATE	12/20/2017			JOB NUMBER					S. PORTAL BST EXHIBIT		SHEET
PLOTTED BY	bielent			CONTRACT NO.	LOCATION NO.						OF
DESIGNED BY	M. ATABI								SHEETS		
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PROJ. ENGR.	B. NEBBITT										
REGIONAL ADM.		REVISION	DATE	BY							

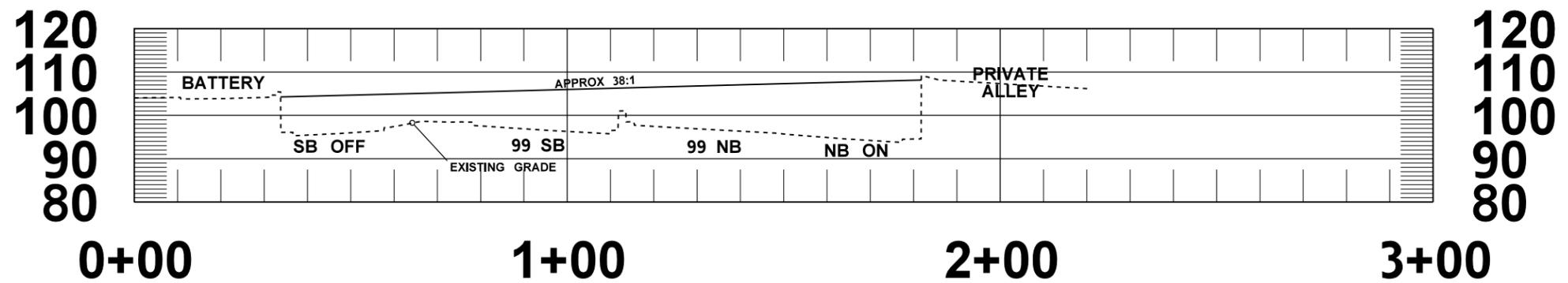


SECTION B

FILE NAME		c:\aawork\pwwork\law\bielent\dms14841\BST S Portal Concept.DGN		REGION NO.		STATE		FED.AID PROJ.NO.		 Washington State Department of Transportation		Plot 22	
TIME		3:29:27 PM		10		WASH						SR 99	
DATE		12/20/2017		JOB NUMBER						DEMOLITION, DECOMMISSIONING AND SURFACE STREET PROJECT		SHEET	
PLOTTED BY		bielent		CONTRACT NO.		LOCATION NO.						OF	
DESIGNED BY		M. ATABI		DATE		BY		P.E. STAMP BOX		DATE		SHEETS	
ENTERED BY				REVISION				P.E. STAMP BOX		DATE		SHEETS	
CHECKED BY													
PROJ. ENGR.		B. NEBBITT											
REGIONAL ADM.													

PRELIMINARY
NOT FOR CONSTRUCTION

S. PORTAL BST EXHIBIT



SECTION C

FILE NAME c:\aawork\pwork\law\bielent\dms14841\BST S Portal Concept.DGN		REGION NO. 10		STATE WASH	FED.AID PROJ.NO.	PRELIMINARY NOT FOR CONSTRUCTION	 Washington State Department of Transportation	SR 99		Plot 23
TIME 3:29:41 PM								DEMOLITION, DECOMMISSIONING AND SURFACE STREET PROJECT		PLAN REF NO
DATE 12/20/2017								S. PORTAL BST EXHIBIT		SHEET
PLOTTED BY bielent										OF SHEETS
DESIGNED BY M. ATABI										
ENTERED BY										
CHECKED BY										
PROJ. ENGR. B. NEBBITT										
REGIONAL ADM.	REVISION	DATE	BY			P.E. STAMP BOX	P.E. STAMP BOX			

Exhibit B Task Orders Procedures

Task Orders developed under this AGREEMENT are subject to the procedures outlined below.

Task Order Development

Each Task Order shall substantially conform to the format of the attached Task Order template and shall contain a general description and scope of work, a schedule for completion, an itemized estimate of costs for the work, provisions for measurement and payment, and any provisions specific to the scope of work.

The PARTIES will work together to agree on the scope and estimated cost, develop the Task Orders, and expeditiously execute them. This should include meetings to discuss and agree on the scope of work and estimated costs prior to initiation of a Task Order. Each PARTY shall designate a manager for each Task Order who has the responsibility to negotiate the scope, schedule, and budget of the Task Order within the parameters of this AGREEMENT.

After the scope of work and estimated costs have been negotiated by the PARTIES and upon receipt of a Task Order from the initiating PARTY, the receiving PARTY will have two (2) weeks to provide comments/feedback to the initiating PARTY, unless otherwise directed to extend the review comment period by the receiving PARTY's designated manager.

The initiating PARTY's designated manager will have one (1) week to respond to comment/feedback from the receiving PARTY's designated manager, unless otherwise directed to extend the review comment period by the initiating PARTY's designated manager.

Designated Task Order deliverables must adhere to the schedule outlined in the Task Order and/or agreed upon by the designated managers of each PARTY.

The PARTIES shall negotiate the total authorized amount for each Task Order. Reimbursement will not be made for activities outside the scope of the Task Order. If needed, the PARTIES may establish a budget contingency for the estimated cost of the work covered under each Task Order as a part of the cost estimate for that Task Order. If included, the Task Order will include information on how the budget contingency will be used and managed.

Each PARTY has the responsibility to promptly notify the other PARTY if conditions occur, which could change the scope of work or exceed the total authorized amount for each Task Order. Notification will be made in writing. Recognizing the need for prompt decisions during execution of the work, after a PARTY receives the notification, a meeting will be held as soon as possible to discuss the changes and whether the Task Order needs to be modified. If the designated managers cannot reach agreement, the dispute resolution process in Section 18 will be used.

Task Orders may be modified by the designated managers as agreed to by the PARTIES. In order to allow work to proceed in a timely manner during execution of the work, a PARTY may

provide written agreement on authorization to proceed with the modified Task Order while the amendment is being executed.

Task Order Invoicing and Payment

The PARTIES shall invoice each other for all eligible cost expenditures. Invoices shall be submitted to the receiving PARTY in a timely manner, with the goal of submitting costs within sixty (60) days after the end of the month in which the work was performed.

Invoices shall include a reference to the Task Order under which the invoiced services were authorized, the billing period, a summary of the work performed during the billing period, the total value of the invoice, the total amount invoiced to date, the budgeted amount, and amount remaining. The invoices will provide an appropriate level of supported detail for the agreed approach to reimbursement.

Billings for non-salary costs, directly identifiable with the PROJECT, shall include an itemized listing of the charges. The invoicing PARTY 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.

To ensure prompt payment by the STATE, the CITY shall transmit electronically to the AWW Agreement Invoice Team invoices and appropriate supporting materials to the designated Task Order Manager.

To ensure prompt payment by the CITY, the STATE will transmit electronically as well as mail via United States Postal Service invoices and appropriate supporting materials to the designated Task Order Manager.

Invoices must be signed by the designated manager and/or 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.

Progress payments for reimbursable costs under this AGREEMENT shall be made for completed work as documented in invoices. The invoiced PARTY shall remit the reimbursement for undisputed costs in a timely manner, with a remittance goal of forty-five (45) calendar days after a PARTY's receipt of any invoice. The PARTIES will work cooperatively to resolve disputed issues related to the accuracy of these invoices so as to avoid any delay in payment. Any invoiced expenditure unsupported by appropriate documentation shall be identified in writing and not included in the reimbursement; provided, however, that the presence of unsupported items within an invoice shall not delay payment of those items that are supported by appropriate documentation. Any disputed costs not resolved by the next billing period will be resolved through dispute resolution. It is agreed that any partial progress 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.

The PARTIES agree to monitor and reconcile actual versus estimated Task Order work and costs. The PARTIES shall not be obligated to reimburse any expenditure in excess of the maximum amount stated in each Task Order, unless the PARTIES have agreed to such additional reimbursements and the Task Order has been amended to describe the additional work in excess of the budgeted scope of work. Either PARTY shall promptly notify the other PARTY in writing as soon as it is known when the maximum funding obligation will be reached or the schedule has changed and shall also specify in writing its position regarding any remaining work covered by a Task Order that it believes was contained within the budgeted scope of work.

The PARTIES agree to promptly submit a final invoice to the PARTY with a goal of ninety (90) calendar days upon completion of a Task Order and/or the Task Order completion date for work performed during the period of performance of the Task Order.

TASK ORDER TEMPLATE



Task Order Template

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

Task Order Provisions

1. Compliance with MOA

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 1970.

2. Amendment

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

3. 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. 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. Schedule

[Insert schedule milestone dates including the required completion date]

[Reference any attached schedule]

6. Task Order Amount

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

7. Invoicing and Payment

[Unit cost reimbursement may include a schedule of values, percent complete for each bid item, total quantity for each bid item, itemized list of materials-on-hand quantities, and itemized indirect charges/rates as appropriate.

For work performed on a time and materials basis, the invoice may 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.

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.]

8. Change Management

[Insert process for reporting changes that occur during execution of the task order consistent with the Task Order Procedures.]

9. Assumptions and Exclusions

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

10. 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

Service Agency

[enter agency name]

[enter agency name]

[enter name of agency signatory]

[enter title of agency signatory]

Exhibit C
**Design Review, Construction Management, Inspection, Redline and Record Drawings, and
Acceptance Procedures**

1. **Scope.** This document establishes the Procedures called for or otherwise required by GCB 1217.
 - 1.1. The STATE is responsible for preparing the Requests for Qualifications (RFQ) and Request for Proposals (RFP) from potential Design-Builders. The STATE will coordinate with the CITY to develop technical requirements related to CITY Facilities and operations and incorporation of permit conditions. The CITY's input provided through this process is solely for the benefit of the CITY and does not relieve the STATE of its obligations. The CITY will be provided an opportunity to review and comment on the RFQ and technical sections of the RFP that are relevant to CITY Facilities and operations. The STATE's RFP will address utilities/CITY Facilities as described in this Exhibit.
 - 1.2. Except in the instances listed in Section 1.3, the CITY shall direct all communications to the STATE's Project Engineer or designee, including communications regarding compliance with Street Use Permits, quality of construction, and contractor performance.
 - 1.3. The STATE will manage any requests from the CITY that have contractual or scope-of-work impacts and will coordinate responses. The CITY may communicate with STATE's consultants or contractor (1) where authorized to do so by the STATE's Designated Representative; (2) to arrange for regulatory permitting and inspections made pursuant to permits issued by the CITY other than Street Use Permits, e.g. electrical permits or other permits obtained from the CITY by the consultant or contractor; and (3) to address concerns associated with the Street Use Permits, if necessary, because of a threat to health or safety.
 - 1.4. With respect to CITY regulatory authority, the scope of this document is limited to the issuance of SDOT Street Use Permits. References to CITY permits, standards, or regulatory authority or responsibility, including references that are not expressly limited, are not intended to extend beyond Street Use Permits or the standards, authority, or responsibility under SMC Title 15.
 - 1.5. 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 AGREEMENT.

- 1.6. Within the scope described in Exhibit A-1, this Exhibit is intended to describe roles and procedural responsibilities, clarify expectations, and standardize business processes for the duration of the PROJECT.
- 1.7. The CITY will provide qualified staff and consultants during construction. CITY staff and consultants will communicate with the STATE Project Engineer or designee in evaluating the conformity of CITY Infrastructure with the Approved Plans or Released-for-Construction Submittal and will immediately notify the STATE Project Engineer or designee of any compliance issues. Notwithstanding any act or omission by the CITY pursuant to this subsection, the STATE shall not be relieved of any of its authority over, and responsibility for, the PROJECT, as provided for in this Exhibit, or elsewhere in this AGREEMENT.
- 1.8. The STATE will seek input from the CITY during the preconstruction phase of the Design-Build Contract and potential Alternative Technical Concepts from the Design-Builder that will impact CITY Facilities and operations. The CITY's input provided through this process is solely for the benefit of the CITY and does not relieve the STATE of its obligations. The STATE will develop a pre-award contract delivery schedule that will include adequate time for CITY review and comment.
- 1.9. The PARTIES agree to follow the *Design Review, Construction Management, Inspection, Redline and Record Drawings, and Acceptance Procedures* as defined in this Exhibit. The PARTIES may amend the Procedures by written mutual agreement and executed by the PARTIES' Designated Representatives.
- 1.10. The PARTIES agree to work cooperatively with each other and shall make reasonable, good faith efforts to timely and expeditiously execute their respective roles and responsibilities related to the design and plan review and permitting called for in this AGREEMENT.
- 1.11. This AGREEMENT addresses design and plan review process for SDOT, SCL, and SPU and the process for issuance of SDOT Street Use Permits; it does not address plan review or permits issued by other departments of the CITY.
- 1.12. Within the scope of this AGREEMENT, the STATE agrees to consult with the CITY with regard to planning, design, and construction of the PROJECT. The scope of the design and plan review by the CITY addressed by this AGREEMENT is limited to the following elements:

- 1.12.1. CITY Infrastructure.
 - 1.12.2. PROJECT work to the extent that it alters or impacts the configuration, condition or use of CITY property including CITY Facilities.
 - 1.12.3. PROJECT work to the extent that it alters access to CITY Facilities.
 - 1.12.4. PROJECT work in CITY Street Right-of-Way to the extent that it alters access or impacts private property in a manner relevant to SMC Title 15.
 - 1.12.5. The temporary or permanent use or operation of CITY Street Right-of-Way for the PROJECT, including maintenance of traffic.
 - 1.12.6. Mitigation measures established by the STATE's review and determination of PROJECT environmental impacts pursuant to state and city environmental policy laws.
 - 1.12.7. Private Utilities within CITY Street Right-of-Way.
 - 1.12.8. Transit facilities within CITY Street Right-of-Way.
 - 1.12.9. As provided in Section 11 (Hazardous Substances and Environmental Remediation) of this AGREEMENT, evidence of the STATE's environmental remediation-related commitments.
- 1.13. The CITY will conduct reviews of all stages of design to ascertain that the design of CITY Infrastructure and the design of PROJECT work and construction activity within CITY Street Right-of-Way comply with City Standards.
 - 1.14. The PARTIES agree to prepare PROJECT designs, plan review packages, and Design Submittals pursuant to the provisions established in this AGREEMENT and in this Exhibit.
 - 1.15. 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.
 - 1.16. The STATE shall address all CITY plan review comments from each stage of plan review and incorporate agreed upon comment resolution into subsequent plan review submittals.
 - 1.17. The PARTIES shall provide sufficient staff and resources for timely preparation and review of the PROJECT designs.
 - 1.18. Both PARTIES shall endeavor to identify and address issues as early as possible during the design process.

- 1.19. The STATE shall obtain the CITY's design approval for all City Infrastructure, and regulatory approval for PROJECT work within City Street Right-of-Way prior to constructing such work.
- 1.20. Design and construction provisions for CITY Infrastructure shall comply with City Standards, unless otherwise agreed by the PARTIES.
- 1.21. The PARTIES agree that design and construction of CITY Infrastructure shall consider long-term operation and maintenance costs and requirements, and minimize potential interruptions and disruptions to CITY UTILITY customers.
- 1.22. The STATE shall obtain the CITY's written approval prior to incorporating any deviations from City Standards into the design or construction of all CITY Infrastructure and work affecting CITY Facilities.
- 1.23. The PARTIES agree that Approved Plans or Released for Construction Submittal for each component of the PROJECT shall be stamped by an engineer of record representing the PARTY preparing the Approved Plans pursuant to the requirements of state law.
- 1.24. The STATE shall first obtain the review and concurrence of the CITY prior to making or implementing revisions or deviations from the Approved Plans pertaining to elements listed in Section 1.12 of this Exhibit.
- 1.25. The PARTIES acknowledge that the STATE may request the CITY to operate and maintain certain STATE-owned PROJECT facilities as may be established by separate agreement. The CITY shall, at the request of the STATE, review the design of such facilities to determine the compatibility of the design with the CITY's existing operational capabilities, standard practices, equipment and other resources required to operate and maintain such facilities.

2. Design Review, Construction Management, Inspection

- 2.1. Plan Review for Design and Permits. These Procedures are based on the expectation that the STATE is responsible for executing the PROJECT work under the STATE's direct responsibilities for PROJECT elements and where the CITY has entered into a Task Order agreement with the STATE.
- 2.2. In implementing the Procedures, the goal of the STATE and the CITY is to facilitate timely and expeditious completion of PROJECT designs that:

- Meet PROJECT requirements and standards and commitments in the AGREEMENT;
 - Comply with WSDOT procedural requirements;
 - Fulfill CITY regulatory requirements set forth in SMC Title 15;
 - Achieve the PROJECT schedule;
 - Allow construction to proceed in a timely manner;
 - Minimize PROJECT scope growth; and
 - Minimize impact on CITY Facilities.
- 2.3. The STATE will take the lead in coordinating regular communications and design coordination meetings with the CITY, the STATE’s consultants and contractor, and other utility owners.
- 2.4. The STATE will prepare PROJECT designs affecting CITY Facilities in collaboration with the CITY, 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. The CITY will review all plans for work described in Section 1.12 of this Exhibit.
- 2.6. The STATE and the CITY agree that the STATE will submit plans for CITY Infrastructure prepared in accordance with City of Seattle Inter-Departmental CAD Requirements (“SPU/SDOT CAD Requirements”).
- 2.7. The CITY will notify the STATE in good faith when the CITY becomes aware of issues that may delay issuance of a Street Use Permit. Failure to provide such notice shall not provide grounds to challenge the issuance or non-issuance of a permit.

3. Procedures for Design-Build Contracts

- 3.1. The Procedures that follow are intended to facilitate meeting requirements, standards, and objectives for the Design-Build portions of the PROJECT.
- 3.2. The STATE 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. The STATE will include

CITY design and construction standards in the STATE's Design-Build Contract for CITY Facilities.

- 3.3. WSDOT will apply for a Street Use Permit prior to issuance of the final RFP. The CITY may review and comment on the Final RFP.
- 3.4. As a requirement of its Design-Build Contract, the Design-Builder will organize Task Forces for design development, coordination, and management of various elements of the work. The Task Forces are a primary vehicle for coordination and will provide an opportunity for the STATE 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 STATE and CITY staff, Task Force membership may include representatives from other stakeholders such as private utility Owners, King County, the Port of Seattle, the stadiums, and adjacent contractors.
- 3.5. The CITY will participate in Task Forces affecting CITY Facilities, for the performance of the CITY's regulatory responsibilities, and/or in coordination with other CITY and STATE projects. The Task Forces will be led by the STATE or its Design-Builder to address demolition, design, construction, maintenance of traffic, and communications.
- 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 the STATE 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. The STATE and the CITY recognize that regular attendance at Task Force meetings by their respective staffs is necessary to discuss and agree upon resolution 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 reviews 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.

- 3.9. The STATE's Design-Builder will submit a Quality Management Plan (QMP) that will define the timing, content, and format of all design reviews. The CITY will be provided an opportunity to review and provide comments on the QMP. The QMP will also include processes and procedures for how regularly scheduled Task Force meetings will be used to support quality goals. These meetings, combined with over-the-shoulder reviews, will be an integral part of the process to discuss and resolve design issues outside of the formal review process and reduce the level of effort required to conduct the formal review process. The QMP will define how over-the-shoulder reviews will be conducted with Task Force members. Over-the-shoulder reviews are in-progress reviews of the design and provide opportunities for the STATE, 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 Street Use Permit plan review processes of both the STATE and the CITY. The CITY will review design elements affecting CITY Facilities and CITY interests, and for the performance of the CITY's regulatory responsibilities, within the scope stated in this AGREEMENT.
 - 3.10.1. Preliminary Design Submittal. The intent of the Preliminary Design Submittal is to provide a formal opportunity for the STATE, 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-Build Contract requirements for construction; whether design features are coordinated; and whether there are no fatal flaws within a given discipline or between disciplines. The contents of the Preliminary Design Submittal will vary by discipline as specified in the RFP or as mutually agreed by members of the applicable Task Force.
 - 3.10.2. 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 STATE Standard Specifications for Road, Bridge and Municipal Construction; City Standards; 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) Submittal. At a minimum, the Design-Builder will provide a preliminary and a final submittal of all plans and technical specifications and resolve all comments prior to being released for construction. Comments from the CITY concerning design of the CITY's stated requirements for CITY Infrastructure, and comments regarding compliance with SMC Title 15, will be resolved to the CITY's satisfaction. The STATE will ensure that the RFC Submittal reflects all Quality Assurance (QA), Quality Control (QC), and design reviews required by the QMP and this AGREEMENT. The STATE will also provide a written certification from the Design-Builder to be used to verify to the STATE and 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 the STATE 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 Submittal will carry the Professional Engineer's stamp registered in the State of Washington and will be stamped "Released for Construction" by the Design-Builder's Design QA Manager.
- 3.10.4. The STATE will provide hard copies and electronic files (in both CADD and PDF formats) of documents pertaining to CITY Facilities or the Street Use Permit as requested by the CITY's Construction Project Engineer. The electronic drawing files will include copies of all sheet and reference files used in the RFC

Submittal. All design submittals will conform to SPU/SDOT CAD Requirements. Construction will not begin until the STATE has determined 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 ten (10) business days 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 for 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 the STATE and the CITY. The STATE's and the CITY's Construction Project Engineer will jointly determine the design elements to be reviewed by the CITY.
- 3.10.6. Comment Resolution. The Design-Builder will schedule and maintain minutes of all resolution meetings with the STATE 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 the STATE disagrees with any CITY comment, the CITY and the STATE 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 this AGREEMENT.
- 3.10.7. Street Use Permit Issuance. The CITY will issue a Street Use Permit as provided in Section 10.5 of the AGREEMENT. For the remaining PROJECT work and upon receipt of a Preliminary Design Submittal, the CITY will make a determination as to whether the proposed work package requires a Street Use Permit under the provisions of SMC Title 15, or Letter of Plan

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

- 3.10.8. If the Street Use Permit has not been issued within three (3) Business Days after receipt of the RFC Submittal, the SDOT Director or his designee will review the cause of permit delay within one (1) Business Day, and meet with the STATE's Program Administrator or his designee to discuss the issues and develop a course of action.
- 3.10.9. Changes to RFC Submittal. The STATE will diligently attempt to avoid the need for plan changes after issuance of a Street Use Permit or Letter of Plan Approval. In the event such changes occur, the CITY will undertake any additional review and permit re-issuance in as expedited a manner as practicable. The STATE will require the Design-Builder's QMP to address the process for implementing design changes, including field changes, on the RFC Submittal. Design changes will be subject to the QA and QC measures and procedures, commensurate with those applied to the original design or that portion of the PROJECT under consideration for change. The STATE will obtain CITY concurrence for all design changes affecting CITY Facilities or permitted interests prior to implementation of the change.
- 3.10.10. The STATE will require the Design-Builder to document all revisions made to the Approved Plans and design documents during the construction phase of the PROJECT by preparing new, revised or supplemental documents (including plan sheets, technical specifications, calculations, reports, and narratives). The new, revised, and supplemental documents will meet all requirements for the original documents. Every revision will be assigned a number. The revision number will be assigned sequentially, with each change in a document or plan sheet identified by the revision number. The assigned number will be found 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. The CITY Project Construction Engineer will review revised RFC Submittals, and will coordinate with CITY departments as required depending upon the nature of the changes and initiate amendment of the Street Use Permit if required, consistent with applicable law.

4. Construction Management, Inspection, and Acceptance Procedures

- 4.1. The following procedures govern construction management, inspection, and acceptance processes of CITY Facilities constructed by the STATE for the PROJECT and address fulfillment of the CITY's regulatory role under SMC Title 15. The procedures will be used for the Design-Build Contract project delivery method.
- 4.2. The STATE 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 the STATE complies with CITY 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 Design-Builder, processes for pre-acceptance inspections, and acceptance of infrastructure.
 - 4.2.4. Enable both the STATE and the CITY to comply with all laws and procedures governing their actions.
- 4.3. The STATE will develop, advertise and award a construction contract(s) to fulfill its PROJECT responsibilities. The STATE's construction contract(s) will be administered in accordance with the current STATE Standard Specifications, STATE Construction Manual, contract forms and documents.

- 4.4. The STATE will construct CITY Infrastructure in the fulfillment of its PROJECT responsibilities and may also construct CITY Infrastructure on the CITY's behalf by reimbursable Task Orders. Construction of CITY Infrastructure will conform to CITY laws, rules, regulations and standards.
- 4.5. The STATE will designate STATE Project Engineers to administer its construction contract(s) 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 this AGREEMENT. The STATE may use consultant(s) in providing some or all of construction management services. The CITY may consult with and make inquiries of the STATE Project Engineer or designee, attend all meetings and have access to all documentation pertinent to CITY Facilities and performance of its regulatory responsibilities.
- 4.6. The CITY will provide a City Construction Project Engineer tasked to: (1) coordinate the activities of CITY inspectors, crews and consultants; (2) communicate with the STATE Project Engineer regarding regulatory compliance, changes in design, the CITY's participation in reviewing contractor submittals, and the use of CITY resources; (3) coordinate the final inspection and acceptance of CITY Infrastructure with representatives from CITY departments; (4) report on construction progress and issues to CITY department managers; and (5) coordinate the issuance of Street Use Permits and Letters of Plan Approval according to the requirements in this Exhibit.
- 4.7. The CITY will provide qualified staff and/or consultants to fulfill its quality verification, construction, and administration responsibilities during construction. CITY staff will work under the general direction of the City Construction Project Engineer. CITY crews, technical and inspection staff and consultants will work in an integrated manner with STATE Project Engineer staff to perform construction related tasks and evaluate conformity of construction of CITY Infrastructure with the Approved Plans. CITY inspectors and compliance officers will immediately notify the STATE Project Engineer or designee of any non-compliance issues.
- 4.8. For the PROJECT contract, the STATE will provide the CITY with a detailed contract execution schedule that includes CITY Infrastructure work, and will coordinate with the CITY to schedule utility shutdowns, cut-overs, and other CITY crew work and inspections. At a minimum, schedule updates will be provided on a monthly basis. Schedule changes will be promptly communicated to the CITY as soon as they become known by the STATE.
- 4.9. Contractor Submittals. Within thirty (30) days of Notice to Proceed, the STATE will prepare or cause its Design-Builder to prepare and submit a preliminary

Submittal Control Document for the construction contract for use by the STATE and the CITY to plan and manage staffing requirements for review of Design-Builder submittals relating to construction of CITY Infrastructure and fulfillment of CITY permit requirements. The Submittal Control Document will include material submittals pursuant to CITY material standards and the City of Seattle Standard Specifications for Road, Bridge and Municipal Construction. The Submittal Control Document is a construction management tool that will be expanded and elaborated as the contract(s) progresses.

- 4.9.1. The STATE 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 the CITY components of the PROJECT, the CITY Construction Project Engineer will return CITY review comments within five (5) business days to the STATE. The STATE will track all submittals and discuss the status of active submittal reviews with the City Construction Project Engineer on a weekly basis. The City Construction Project Engineer will act as a liaison between the STATE and the CITY departments in resolving issues regarding disposition of submittal comments.
- 4.9.3. CITY reviewers will send their comments on Design-Builder submittals to the City Construction Project Engineer. The City Construction Project Engineer will consolidate comments if necessary and send comments to the STATE for dissemination back to the Design-Builder. For design submittals on Design-Build Contracts, comment responses will be provided to CITY reviewers along with the revised design for submittals that need to go through another round of review pursuant to Section 4 in this Exhibit.
- 4.9.4. 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 STATE's approval for a time extension in advance of the due date.
- 4.9.5. Pursuant to CITY review comments, the STATE Project Engineer will provide disposition instructions for all submittals to the Design-Builder.

- 4.10. Access to SPU and SCL Facilities. Unless otherwise approved in writing by the CITY, the STATE 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 STATE in advance of their arrival on site except in the case of emergency. In the case of emergencies, safety practice dictates that CITY staff will make every effort to notify the STATE Project Engineer immediately upon entering a PROJECT construction site or staging area.
- 4.11. Testing and Inspection. The STATE will require the Design-Builder to develop a QMP 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. The STATE will provide the CITY with the opportunity to review the QMP. The CITY will review and comment on the inspection and test plan, and any other provisions regarding CITY Facilities.
- 4.11.1. The STATE will form verification teams as appropriate for the contract type. The CITY will have representation on these teams. The quality team for the 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 STATE and the CITY regarding quality of construction of CITY Infrastructure.
- 4.11.2. The STATE will provide the CITY with timely notice prior to commencement and completion of all material stages of CITY Infrastructure work and will invite the CITY to inspect such work upon completion of any material stage. The CITY on-site inspector will be invited to the weekly construction meeting prior to any work being started on CITY Facilities. The STATE will provide at least five (5) Business Days' notice for each inspection. The CITY will submit a complete list of any concerns or deficiencies to the STATE within ten (10) Business Days after the date of any inspection. The STATE will timely

address each comment or issue presented by the CITY to the CITY's satisfaction. Both the STATE 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 STATE Project Engineer in evaluating contract compliance of CITY Infrastructure built by the STATE's Design-Builder. The STATE will coordinate with the CITY to designate mandatory inspection points (hold points) for CITY Infrastructure. No work will proceed beyond a hold point until inspection has been performed or the option to inspect has been waived by a letter or e-mail from the City Construction Project Engineer to the STATE Project Engineer. The STATE will provide notification to the CITY twenty-four (24) hours in advance of completion of work to be inspected by the CITY so that the CITY may perform inspection if desired.
- 4.11.4. The CITY will notify the STATE promptly of any Non-Conforming Work observed by CITY inspectors.
- 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 STATE Project Engineer regarding whether the materials or facilities tested meet with the requirements of the Approved Plans. The STATE 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 STATE Project Engineer to the respective contractor's appropriate representative for resolution. Appropriate communications will be determined for each

situation. CITY inspectors will not directly communicate with the STATE's Design-Builder without the express authorization of the STATE Project Engineers *except* as otherwise provided in Section 1.3 of this exhibit.

4.11.7. The STATE 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 apply to work affecting CITY Facilities or work subject to CITY-issued Street Use Permits.

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

4.12.2. Within three (3) Business Days of receiving a proposed change to Approved Plans for any CITY Infrastructure work, the STATE or its Design-Builder 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 the STATE and CITY, the STATE 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 the STATE. The STATE will comply with the requested changes provided that the changes are within the general scope of the PROJECT and comply with the PROJECT permits, State and/or Federal law and applicable

rules, codes and/or regulations. The STATE 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. If the CITY and STATE agree to implement the change, the requesting CITY department and the STATE will document the request in writing by completing and signing a concurrence letter. The CITY agrees to reimburse the STATE for the costs associated with Betterments.

4.12.4. The STATE will make available to the CITY all change order documentation that affects CITY Facilities.

4.13. SCL Special Construction Considerations. The following procedures apply specifically to SCL Facilities during construction.

4.13.1. Electrical Clearance Procedures. The STATE's Design-Builder 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 the STATE's Design-Builder an outline of procedures and guidelines to follow at all times during the clearance and the STATE will ensure that such guidelines and procedures are followed. Chief Power Dispatcher, James Noblin 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 Design-Builder crew's qualifications and notify the STATE. The STATE will require the Design-Builder to replace those sub- contractors who do not meet qualifications required under state law.

4.13.2. Advance Notice of Service Outages. The STATE 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 the STATE, or emergency conditions prohibit the outage or limit the availability of crews. If denied, SCL will assist the STATE in finding another outage window. If granted, SCL will outline any conditions related to such outage to the STATE. SCL will be responsible for direct notification of customers impacted by any required service outages.

- 4.14. SPU Special Construction Considerations. The following special considerations apply to construction work associated with SPU Facilities.
- 4.14.1. 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 the STATE's Design-Builder in accordance with CITY Standards and will perform tests on the water sample for purity.
- 4.14.2. Water main connections. SPU will perform the pipe work necessary to connect new water mains or relocated water mains to the existing water system pursuant to CITY Standard Plan No. 300. The STATE 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 STATE has requested the work to be done. The STATE's Design-Builder will be required to perform site preparation and restoration work to support SPU crews, including the provision of traffic control. SPU will be responsible for direct notification of customers impacted by any required service shut downs.
- 4.14.3. New drainage and wastewater system connections. SPU will core drill and install all tees pursuant to CITY standard specification 7-17.3(2)C, Plugs and Connections. The STATE 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 STATE has

requested the work to be done. The STATE's Design-Builder will be required to perform site preparation and restoration work to support SPU crews, including the provision of traffic control.

- 4.14.4. 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.

4.15. Final Inspection and Project Acceptance

- 4.15.1. The STATE 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.
- 4.15.2. The CITY will timely inspect the completed CITY Infrastructure and will exercise its right to approve or reject design, construction or materials that are Non-Conforming Work. The CITY will submit a written response within ten (10) Business Days of the date of the pre-final inspection, notifying the STATE 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 Non-Conforming Work so that the STATE can use the response in its preparation of a contract punch list.
- 4.15.3. The STATE will address the Non-Conforming Work identified by the CITY during the pre-final inspection and will resolve the Non-Conforming Work to comply with the Approved Plans, or any approved revisions to the Approved Plans. If disagreements arise between the CITY and the STATE on what constitutes Non-Conforming Work or whether the CITY Infrastructure meets agreed upon requirements, the disagreement will be resolved using the dispute resolution provisions in the AGREEMENT. The CITY will assist the STATE Project Engineer in determining appropriate remedies for the Non-Conforming Work. Both the STATE and the CITY agree to act as expeditiously as possible to assure a timely resolution of the Non-Conforming Work.

- 4.15.4. Once the STATE Project Engineer determines that the STATE has remedied the Non-Conforming Work identified during the pre-final inspection, the STATE Project Engineer will invite the CITY to participate in a joint final inspection of the completed CITY Infrastructure. The CITY will submit a written response within ten (10) Business Days of the date of the final inspection notifying the STATE that CITY Infrastructure has been constructed in accordance with the Approved Plans, or notifying the STATE of any remaining Non-Conforming Work.
- 4.15.5. Following the satisfactory completion of the pre-final and final inspection processes described in the Section 4.15.1, the CITY shall submit a written response notifying the STATE that CITY Infrastructure has been constructed in accordance with the Approved Plans or Released-for-Construction Submittal.
- 4.15.6. The CITY agrees, upon satisfactory completion of the PROJECT work successfully placing City Infrastructure into operation, transfer and acceptance of any real property on or in which CITY Infrastructure is located, and receipt from the STATE of one color set of the Redline Plans, pursuant to Section 4.16, to deliver a Letter of Acceptance, subject to any Non-Conforming Work, damage or contractor claims caused by the negligent acts or omissions of the STATE.
- 4.15.7. The PARTIES will execute one Letter of Acceptance for each contract unless both PARTIES agree to phase CITY Infrastructure acceptance by those geographic areas or select portions of the PROJECT in which the STATE has completed all PROJECT work and has satisfied the requirements of Section 4.15.6.
- 4.15.8. In instances where portions of CITY Infrastructure must be placed into the CITY's use and operation prior to the execution of the Letter of Acceptance, and after the CITY has determined that these portions of CITY Infrastructure meet with the minimum inspection and testing requirements necessary for placing the CITY Infrastructure into use, the CITY will notify the STATE in writing that it is assuming responsibility for and cost of the interim use and operation of the CITY Infrastructure

until the terms of Section 4.15.6 are satisfied and the PARTIES execute the Letter of Acceptance.

4.16. Redlines and Record Drawings.

- 4.16.1. For PROJECT work that the STATE constructs including work performed on behalf of the CITY through a Task Order, the STATE shall maintain one set of Approved Plans as the official contract drawings and provisions to which the STATE shall make drawings and notations in either red ink or red pencil to show the constructed configuration of all infrastructure that deviates from the design and contract requirements shown in the Approved Plans as typically recorded pursuant to STATE and City of Seattle standard practices. These documents shall be referred to as the redline plans.
- 4.16.2. The redline plans shall be kept current throughout construction with accurate and comprehensive information detailing the constructed configuration of the infrastructure. The redline 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.
- 4.16.3. The STATE Project Engineer and the City Construction Project Engineer shall jointly review the redline plans monthly to evaluate whether the redline plans reflect a current, accurate and comprehensive record of the constructed configuration of the infrastructure. If the STATE Project Engineer or the City Construction Project Engineer determines that the redline plans are not current, accurate or comprehensive, the STATE shall immediately revise the redline plans to remedy deficiencies. Final agreed upon redline plans shall be submitted to the CITY monthly.
- 4.16.4. Prior to placing CITY Infrastructure into service during the course of construction, the STATE shall provide the CITY with color photocopies of portions of the redline plans showing the constructed configuration of the CITY Infrastructure being placed into service.

- 4.16.5. WSDOT shall submit one color set of the completed redline plans prior to the Parties executing a Letter of Acceptance provided for in Section 4.15.6.
- 4.16.6. All record drawings for CITY Infrastructure shall comply with the digital and graphical standards of the SPU/SDOT CAD Requirements.
- 4.16.7. A transmittal of record drawings shall include two (2) full-scale bond copies plus the digital files meeting with the requirements established above.

1.4 SDOT may provide the staff and perform the Services for the Projects as set forth in the Staffing Plan and Cost Estimate, as shown in Exhibits C and D and attached hereto and by this reference made a part of this Agreement. SDOT has consulted with the STATE in the development of the Staffing Plan including the identification of proposed resources. The STATE approves the Staffing Plan and Cost Estimate as part of executing this Agreement.

1.5 During the duration of this Agreement and in accordance with Seattle Municipal Code 11.16.300, SDOT's Traffic Engineer may remove or otherwise decommission existing parking payment devices at regulated parking areas within the Projects' limits of construction that are rendered unusable to the public during the course of construction.

1.6 All SDOT Services governed by this Agreement shall be performed in accordance with the professional standards of performance customarily utilized by SDOT. All City of Seattle regulatory actions shall be taken in accordance with applicable law.

1.7 The STATE will monitor the time and expenditures required to complete the Services to insure the Services are provided as established in this Agreement. The STATE will evaluate SDOT's performance of the Services on a quarterly basis. The STATE reserves the right to dispute SDOT's faithful execution of Services in accordance with Article 6 of this Agreement or request changes in the Services in accordance with Article 5 if the intended benefit of Section 1.3 is not being realized by the STATE.

1.8 The STATE acknowledges the right of the City of Seattle to exercise its regulatory or police powers pursuant to applicable laws, regulations, and ordinances for the protection of the health, safety, welfare, and property of its citizens. Nothing in this Agreement shall be construed as waiving or modifying the City of Seattle's right to exercise its regulatory or police powers in connection with this agreement, the Projects, or the Program.

1.9 Nothing in this Agreement shall be construed as waiving or modifying any provision in any other agreements between the CITY and the STATE, including, but not limited to, GCA 5680, UT01148, and UT01287, and any conflict or inconsistency between this Agreement and any other agreement between the CITY and the STATE shall be resolved in favor of the other agreement.

2. WAIVER OF FEES

2.1 As authorized by Title 15 of the Seattle Municipal Code and in recognition of the public benefit to be achieved by the Projects, SDOT agrees to waive the Use Fees established by City of Seattle Ordinance No. 122295 for SR 99 South Holgate Street to South King Street Viaduct Replacement Project, Phase 1 of the Battery Street Tunnel Fire and Life Safety Upgrades, and SR 519 for the duration of this Agreement.

3. FUNDING

3.1 The STATE shall fund and reimburse the CITY for SDOT Services at a rate of Three

1 **1-07.18 Public Liability and Property Damage Insurance**

2 The Design-Builder shall procure and maintain insurance as specified in Section 1-07.18. The
3 insurance provided hereunder shall be available for the benefit of the Indemnified Parties and the
4 Design-Builder with respect to covered claims, but shall not be interpreted to relieve the Design-
5 Builder of any obligations hereunder. Unless otherwise specified in the Contract, all insurance
6 required hereunder shall be procured from insurance or indemnity companies with an A.M. Best
7 and Company rating level of A- or better, Class VIII or better, or as otherwise approved by
8 WSDOT and with companies or through sources approved by the State Insurance Commissioner
9 pursuant to Chapter 48.05 RCW. If an insurer is not an admitted carrier (unauthorized insurer),
10 the insurance policies and procedures for issuing the insurance policies must comply with
11 Chapter 48.15 RCW and 284-15 WAC. Unless otherwise indicated below, the policies shall be
12 kept in force from the execution date of the Contract until the date of Final Acceptance, as
13 determined pursuant to Section 1-05.12.

14 **1-07.18(1) Minimum Insurance Requirements**

15 **1-07.18(1).1 Workers' Compensation**

16 The Design-Builder and each Related Entity shall provide industrial insurance and medical aid as
17 required under Title 51 RCW. The Design-Builder shall also provide coverage for claims asserted
18 under the Longshore and Harbor Workers Compensation Act (LHWCA) and the Jones Act, as
19 required. The Design-Builder shall maintain such insurance through the expiration of the
20 Warranty periods described in Section 1-05.16. The Design-Builder shall be the named insured
21 on these policies. A Design-Builder who is self-insured under Title 51 RCW shall also provide an
22 endorsement extending coverage to all State operations on an "if any" basis.

23 To the extent not provided under a Design Builder's multi-state workers' compensation policy,
24 the Design Builder shall also provide "stop-gap" liability insurance under its commercial general
25 liability (for bodily injury or disease) with minimum limits of \$1,000,000 per accident for bodily
26 injury by accident, \$1,000,000 per employee for bodily injury by disease, and \$1,000,000
27 aggregate limit for bodily injury by disease.

28 **1-07.18(1).2 Commercial General Liability**

29 The Design-Builder shall provide commercial general liability coverage (CGL), on a primary
30 basis, for bodily injury, property damage, personal injury, and advertising injury liability written
31 on an occurrence form that shall be no less comprehensive and no more restrictive than the
32 coverage provided by Insurance Services Office (ISO) form CG 00 01 12 04. The Design-Builder
33 shall maintain such insurance through the Completion Date, and during any warranty Work.

34 The commercial general liability insurance shall include, at a minimum, coverage for liability
35 arising out of: (i) fire legal liability in an amount not less than *****\$50,000*****; (ii) blanket
36 contractual; (iii) independent contractors; (iv) premises operations; and (v) products and
37 completed operations for a minimum of 3 years following Completion. This coverage shall have
38 an annual minimum limit of *****\$2,000,000***** per occurrence, *****4,000,000***** general annual
39 aggregate, and *****\$2,000,000***** products/completed operations aggregate. If commercial
40 general liability insurance with a general aggregate limit and products and completed operations
41 aggregate limit is used, then both the general liability and products/completed operations
42 aggregate limits shall apply separately and exclusively to the Project, or the Design-Builder may
43 obtain separate insurance to provide the required limit which shall not be subject to depletion
44 because of claims arising out of any other project or activity of the Design-Builder.

1 The Design-Builder shall be the named insured. Each of the Indemnified Parties shall also be
2 added to the CGL as either (a) named insured or (b) additional insureds with respect to liability
3 arising out of the Project or any acts, errors, or omissions of any Related Entity, whether
4 occurring on or off of the Site. If the State is added to this policy as a named insured, then the
5 Design-Builder is not required to obtain the owners and contractors protective (OCP) coverage
6 pursuant to Section 1-07.18(1).11.

7 **1-07.18(1).3 Automobile Liability**

8 The Design-Builder shall provide commercial automobile liability insurance covering the
9 ownership, maintenance, or use of all owned/leased, non-owned and hired vehicles used in the
10 performance of the Work, both on and off the Site, including loading and unloading, with limits
11 of not less than ***\$2,000,000*** per accident, combined single limit for bodily injury and
12 property damage liability. The Design-Builder shall maintain such insurance through Completion;
13 provided, however, that such coverage shall be maintained for vehicles used in the performance
14 of Warranty Work until the expiration of the Warranty periods described in Section 1-05.16.
15 Coverage shall be provided on Insurance Services Office form number CA 0001 or an equivalent
16 and shall include endorsement CA9948 (in transit pollution risks coverage). The Design-Builder
17 shall be the named insured and the Indemnified Parties shall be additional insureds with respect to
18 liability arising out of the Project or any acts, errors, or omissions of any Related Entity. The
19 required limits can be satisfied by a combination of a primary policy and an excess policy.

20 **1-07.18(1).4 Environmental Liability**

21 The Design-Builder shall provide environmental liability coverage, on an occurrence or claims
22 made basis, with annual limits of not less than ***\$10,000,000*** per claim and in the
23 aggregate, including liability arising out of transportation and non-owned disposal sites. The
24 policy shall include as named insureds the State, the Design-Builder and any Related Entity of
25 any tier performing Work for which such coverage is appropriate. The remaining Indemnified
26 Parties shall be additional insureds with respect to liability arising out of the Project or any acts,
27 errors or omissions of any Related Entity, whether occurring on or off of the Site:

28 The policy shall have a 5-year extended reporting period and cover claims made on and prior to
29 Final Acceptance and claims made after Final Acceptance, but within the extended reporting
30 period. The required limits can be satisfied by a combination of a primary policy and an
31 excess policy.

32 **1-07.18(1).5 Excess Liability**

33 Design-Builder shall provide excess liability insurance with limits not less than
34 ***\$50,000,000*** which will provide coverage at least as broad as the primary coverages set
35 forth herein, including Workers' Compensation, Commercial General Liability, Automobile
36 Liability, and Aircraft Liability, in excess of the amounts set forth in Sections 1-07.18(1).1 (for
37 Jones Act and LHWCA liability), 1-07.18(1).2, 1-07.18(1).3, , and 1-07.18(1).9, respectively.
38 The Indemnified Parties shall be additional insureds with respect to liability arising out of the
39 Project or any acts, errors or omissions of any Related Entity, whether occurring on or off the Site
40 to the extent that they are not named on any of the foregoing policies as named insureds.

41 **1-07.18(1).6 Professional Liability**

42 With respect to the demolition of the Alaskan Way Viaduct, the Design-Builder shall provide, or
43 cause to provide, professional liability coverage with limits not less than ***\$10,000,000*** per
44 claim and aggregate. The professional liability coverage shall protect against any negligent act,
45 error, or omission arising out of design or engineering activities with respect to demolition of
the Alaskan

1 Way Viaduct. The policy shall be a Project-specific policy and shall have a retroactive date no
2 later than the date on which the RFP was issued and shall remain in place through Final
3 Acceptance. **The policy shall have an extended reporting period of not less than 6 years after**
4 **Final Acceptance.** The coverage shall include design Subconsultants of any tier. This policy may
5 be excess over coverage for claims which may also be covered pursuant to the commercial
6 general liability policy required in Section 1-07.18. The coverage shall also include an indemnity
7 endorsement to provide coverage for the Indemnified Parties for liability arising out of the
8 activities or any act, error, or omission of any Related Entity providing professional
9 services hereunder.

10 With respect to professional liability not associated with the demolition of the Alaskan Way
11 Viaduct, the Work may be insured by the policy described in this Section 1-07.18(1).6, or,
12 alternatively, the Design-Builder and Related Entities may rely on all existing “practice
13 policies,” which need not be Project specific. Should this coverage option be used, all coverage
14 limits under such practice policies shall apply for liability arising out of this Project, including
15 demolition of the Alaskan Way Viaduct.

16 **1-07.18(1).7 Builders Risk**

17 This Section is intentionally omitted.

18 **1-07.18(1).8 Railroad Protective Liability**

19 The Design-Builder shall provide any coverage as may be required by any railroad as a condition
20 of the railroad’s consent for entry onto railroad facilities or property. Said policy shall be
21 effective during the period any Work is being performed across, under, or adjacent to any railroad
22 tracks or any railroad right-of-way.

23 **1-07.18(1).9 Aircraft Liability**

24 The Design-Builder shall provide insurance, with annual limits of not less than
25 *****\$10,000,000***** per occurrence, in all cases where any aircraft is used on the Project that is
26 owned, leased, or chartered by any Related Entity, protecting against claims for damages
27 resulting from such use. Any aircraft intended for use in performance of the Work, the aircraft
28 crew, flight path, and altitude, including landing of any aircraft on the Site or on any property
29 owned by the State shall be subject to review and written acceptance by WSDOT prior to
30 occurrence of any such usage. If any aircraft are leased or chartered with crew and/or pilot,
31 evidence of non-owned aircraft liability insurance will be acceptable but must be provided prior
32 to use of the aircraft. The Indemnified Parties shall be additional insureds with respect to liability
33 arising out of the Project or any acts, errors, or omissions of any Related Entity, whether
34 occurring on or off the Site.

35 **1-07.18(1).10 Marine Liability**

36 The Design-Builder shall provide marine protection and indemnity (P&I) insurance for all
37 liabilities arising out of the operation of a watercraft or vessel used on the Project that is owned,
38 leased or chartered by the Design-Builder or any Related Entity. The policy shall include, among
39 other things, coverage for bodily injury, illness and/or loss of life to any person or crew member
40 (including any and all claims arising pursuant to the Jones Act and LHWCA and claims for
41 maintenance and cure), damage to cargo while loading, carrying or unloading cargo, damage to
42 piers and docks, pollution liability, charterer’s liability, and removal of wreckage as required by
43 law. Such coverage shall have primary limits of not less than *****\$5,000,000***** per occurrence,
44 and excess limits of not less than *****\$10,000,000***** shall be required in all cases where any
45 watercraft or vessel is used on the Project that is owned, leased, or chartered by any Related

1 Entity. If any watercraft or vessels are leased or chartered with crew, evidence of non-owned
2 watercraft liability insurance complying with the requirements of this Section will be acceptable
3 but must be provided to WSDOT prior to use of the watercraft or vessel. The Indemnified Parties
4 shall be additional insureds with respect to liability arising out of the Project or any acts, errors or
5 omissions of any Related Entity, whether occurring on or off the Site.

6 **1-07.18(1).11 Owners and Contractors Protective Liability Insurance**

7 The Design-Builder shall either include the State as a named insured under the CGL policy
8 required above or provide owners and contractors protective (OCP) liability insurance, with an
9 annual minimum limit of ***\$2,000,000*** per occurrence, ***4,000,000*** general annual
10 aggregate, providing bodily injury and property damage liability coverage until the Final
11 Acceptance date, as determined pursuant to Section 1-05.12, under Insurance Services Office
12 form CG 0009, together with WSDOT Amendatory Endorsement No. CG 29 08, specifying the
13 State as named insured.

14 **1-07.18(2) General Insurance Requirements**

15 **1-07.18(2).1 Premiums, Deductibles and Self-Insured Retentions**

16 The Design-Builder shall be responsible for payment of premiums for all insurance required
17 under Section 1-07.18. The Design-Builder further agrees that for each claim, suit, or action made
18 against insurance provided hereunder, with respect to all matters for which the Design-Builder is
19 responsible hereunder, the Design-Builder shall be solely responsible for all deductibles, self-
20 insured retentions (SIR), and amounts in excess of the coverage provided. Any deductibles or
21 SIR's shall not exceed ***\$500,000***, unless otherwise provided in Section 1-07.18. Any
22 deductibles or SIR's shall not apply to WSDOT or the Indemnified Parties. With respect to any
23 deductibles or SIR's in excess of ***\$100,000***, the Design-Builder shall provide, at the time
24 the policies are delivered, a bond or an irrevocable letter of credit acceptable to WSDOT
25 guaranteeing payment of losses and related investigations, claims administration and defense
26 expenses which may fall within the SIR.

27 **1-07.18(2).2 Verification of Coverage**

28 The Design-Builder shall file with WSDOT, Contract Payment Section, P.O. Box 47420,
29 Olympia, WA 98504-7420, certified copies of all policies required hereunder evidencing the
30 minimum insurance coverages required to be provided, at least 10 Calendar Days prior to
31 Contract execution. WSDOT shall have no duty to pay or perform under the Contract Documents
32 until such policies, in compliance with all requirements of Section 1-07.18, have been provided.
33 By accepting the policies as required hereunder, WSDOT does not acknowledge or represent that
34 the insurance requirements of Section 1-07.18 have been satisfied. WSDOT expressly reserves all
35 rights against the Design-Builder to assert claims for breach of the terms and conditions of
36 Section 1-07.18 at any time in the future. The Design-Builder shall promptly deliver to WSDOT a
37 certificate of insurance with respect to each renewal policy, as necessary to demonstrate the
38 maintenance of the required insurance coverages for the terms specified herein. Such certificates
39 shall be delivered to WSDOT not less than 45 Calendar Days prior to the expiration date of any
40 policy and bear a notation evidencing payment of the premium therefore. If requested by
41 WSDOT from time to time, certified duplicate copies of any renewal policy shall also
42 be provided.

1 **1-07.18(2).3 Subcontractor Insurance Requirements**

2 The Design-Builder shall require each Subcontractor to provide and maintain insurance that
3 complies with the requirements for the Design-Builder-provided insurance set forth in Section 1-
4 07.18 in circumstances where the Subcontractor is not covered by the Design-Builder-provided
5 insurance; provided that the Design-Builder shall have sole responsibility for determining the
6 limits of coverage required to be obtained by the Subcontractors (if any), which determination
7 shall be made in accordance with reasonable and prudent business practices. The Design-Builder
8 shall cause each such Subcontractor to include each of the Indemnified Parties as additional
9 insureds under such Subcontractors' insurance policies obtained pursuant to Sections 1-
10 07.18(1).2, 1-07.18(1).3, 1-07.18(1).4, 1-07.18(1).5, 1-07.18(1).8, 1-07.18(1).9, and 1-
11 07.18(1).10 above. The Design-Builder shall require each such Subcontractor to require that its
12 insurer agree to waive any subrogation rights the insurers may have against the Indemnified
13 Parties. If requested by WSDOT, the Design-Builder shall promptly provide certificates of
14 insurance evidencing coverage for each Subcontractor. WSDOT shall have the right to contact the
15 Subcontractors directly in order to verify the above coverage.

16 **1-07.18(2).4 Endorsements and Waivers**

17 All insurance policies required to be provided by the Design-Builder hereunder shall contain or
18 be endorsed to comply with the following provisions, provided that, for the workers'
19 compensation policy, only Subsections (d) and (g) shall be applicable:

- 20 (a) For claims covered by the insurance specified herein, all insurance coverage shall be primary
21 insurance and non-contributory with respect to the named insureds, additional insureds, and
22 their respective members, directors, officers, employees, agents, and consultants, and shall
23 specify that coverage continues notwithstanding the fact that the Design-Builder has left the
24 Site. Any insurance or self-insurance beyond that specified in this Contract that is maintained
25 by an Indemnified Party, additional insured, or their members, directors, officers, employees,
26 agents, and consultants shall be in excess of, and shall not contribute with, the insurance
27 required herein.
- 28 (b) Any failure on the part of a named insured to comply with reporting provisions or other
29 conditions of the policies, any breach of warranty, any action or inaction of a named insured
30 or others, any foreclosure relating to the Project, or any change in ownership of all or any
31 portion of the Project shall not affect coverage provided to the other insureds or additional
32 insureds (and their respective members, directors, officers, employees, agents, and
33 consultants).
- 34 (c) All liability insurance to be provided herein shall include a "separation of insureds" clause
35 and shall apply separately to each insured and additional insured against whom a claim is
36 made or suit is brought, except with respect to the limits of the insurer's liability. No policy
37 shall contain any provision or exclusion (including but not limited to a "cross-liability" or
38 similar exclusion) that in effect would prevent, bar, or otherwise preclude any insured or
39 additional insured under the policy from making a claim that would otherwise be covered by
40 such policy on the grounds that the claim is brought by an insured or additional insured
41 against an insured or additional insured under the policy. The requirements of this Subsection
42 do not apply to claims by the Design-Builder against any of its Subcontractors or suppliers or
43 to claims between Subcontractors and/or suppliers.
- 44 (d) Each policy shall be endorsed to state that coverage shall not be suspended, voided, canceled,
45 modified, or reduced in coverage or in limits except after 45 Calendar Days (10 Calendar
46 Days for non-payment of premium) prior written notice by certified mail, return receipt

1 requested, has been given to WSDOT. Such endorsement shall not include any limitation of
2 liability of the insurer for failure to provide such notice.

- 3 (e) All endorsements adding additional insureds to required policies shall be on form CG-20-10
4 (1985 edition) or an equivalent form and shall contain no limitations or exclusions with
5 respect to "products/completed operations" coverage. The coverage shall be primary and non-
6 contributory with respect to any other insurance maintained by the additional insured. Any
7 insurance or self-insurance that is maintained by an additional insured, or their members,
8 directors, officers, employees, agents, and consultants shall be in excess of, and shall not
9 contribute with, the insurance required herein.
- 10 (f) The automobile liability insurance policy shall be endorsed to include Motor Carrier Act
11 Endorsement-Hazardous materials clean up (MCS-90) or its equivalent and Form CA 2048.
- 12 (g) Each policy shall provide coverage on an "occurrence" basis and not a "claims made" basis
13 (with the exception of pollution liability, and earth movement policies).
- 14 (h) The commercial general liability insurance policy shall be endorsed to state that coverage for
15 bodily injury to Related Entity employees shall not be excluded.

16 **1-07.18(2).5 Waivers of Subrogation**

17 The Design-Builder waives all rights against the Indemnified Parties, against each of their agents
18 and employees and against Subcontractors and suppliers and their respective members, directors,
19 officers, employees, agents, and consultants for any claims arising out of the performance of
20 Work under this Contract. The Design-Builder shall require all Subcontractors and any Related
21 Entity to provide similar waivers in writing each in favor of the Indemnified Parties. The waivers
22 required in this Subsection do not apply to claims between Subcontractors and/or Subconsultants
23 of the Design-Builder or those claims asserted by the Design-Builder against any Subcontractors
24 and/or suppliers. Each policy, including, but not limited to, workers' compensation coverage, but
25 excluding owners and contractors protective liability insurance, shall include a waiver of any
26 right of subrogation against the Indemnified Parties and any other additional insureds (and their
27 respective members, directors, officers, employees, agents, and consultants).

28 **1-07.18(2).6 Changes in Requirements**

29 WSDOT shall notify the Design-Builder in writing of any changes in the requirements applicable
30 to insurance required to be provided by the Design-Builder. Except as set forth in Section 1-
31 07.18(2), any additional cost from such change shall be paid by WSDOT and any reduction in
32 cost shall reduce the Contract Price pursuant to a Change Order.

33 **1-07.18(2).7 No Recourse**

34 All costs for insurance shall be considered incidental to and included in the Contract Price and no
35 additional payment will be made by WSDOT unless expressly specified in Section 1-07.18(2).

36 **1-07.18(2).8 Support of Indemnifications**

37 The insurance coverage provided hereunder by the Design-Builder shall support but is not
38 intended to limit the Design-Builder's indemnification obligations under the Contract Documents.

39 **1-07.18(2).9 Commercial Unavailability of Required Coverages**

40 If, through no fault of the Design-Builder, any of the coverages required in Section 1-07.18 (or
41 any of the required terms of such coverages, including policy limits) become unavailable or are
42 available only with commercially unreasonable premiums, WSDOT will consider in good faith

1 alternative insurance packages and programs proposed by the Design-Builder, with the goal of
2 reaching agreement on a package providing coverage equivalent to that specified herein. The
3 Design-Builder must demonstrate to WSDOT's reasonable satisfaction that it has used diligent
4 efforts in the global insurance markets to obtain the required insurance coverages, and shall
5 advise WSDOT of the specific results of those efforts. The Design-Builder shall not be entitled to
6 any increase in the Contract Price for increased costs resulting from the unavailability of coverage
7 and the requirement to provide acceptable alternatives. WSDOT shall be entitled to a reduction in
8 the Contract Price if it agrees to accept alternative policies providing less than equivalent
9 coverage, with the amount to be determined by extrapolation using the insurance quotes included
10 in the Escrowed Proposal Documents escrowed pursuant to Section 1-03.15 (or based on other
11 evidence of insurance premiums as of the Proposal Date if the Escrowed Proposal Documents do
12 not provide adequate information).

13 **1-07.18(3) WSDOT's Right to Remedy Breach by Design-Builder**

14 The Design Builder shall provide WSDOT with notice of any cancellation of a policy required
15 hereunder, by facsimile transmission and U.S. Mail, within 2 business days of receipt. Failure on
16 the part of the Design-Builder to maintain the insurance as required hereunder shall constitute a
17 material breach of the Contract, upon which WSDOT may, after giving 5 business days' notice to
18 the Design-Builder to correct the breach, immediately terminate the Contract or, at its discretion,
19 procure or renew such insurance and pay any and all premiums in connection therewith, with any
20 sums so expended to be repaid to WSDOT on demand, or at the sole discretion of WSDOT, offset
21 against funds due to the Design-Builder from WSDOT.

22 **1-07.18(4) Insurance Proceeds and Prosecution of Claims**

23 Unless otherwise directed by WSDOT in writing, the Design-Builder shall be responsible for
24 reporting and processing all potential claims by WSDOT or the Design-Builder against the
25 insurance required to be provided under Section 1-07.18. Except as noted otherwise, the Design-
26 Builder shall not be entitled to receive a Change Order for any costs, which it could have
27 recovered from the insurer. The Design-Builder agrees to report timely to the insurer(s) any and
28 all matters, which may give rise to an insurance claim and to promptly and diligently pursue any
29 and all insurance claims on behalf of WSDOT, the Indemnified Parties, and any additional
30 insureds, whether for defense or indemnity or both. WSDOT agrees to promptly notify the
31 Design-Builder of WSDOT's incidents, potential claims, and matters which may give rise to an
32 insurance claim by WSDOT, to tender its defense of the claim to Design-Builder, and to
33 cooperate with the Design-Builder as necessary for the Design-Builder to fulfill its duties
34 hereunder.

35 **1-07.18(5) Claims Relating to Differing Site Conditions**

36 The Design-Builder shall be responsible for reporting and processing all potential insurance
37 claims relating to Differing Site Conditions. The proceeds of all such claims shall be paid directly
38 to WSDOT. The Design-Builder agrees to report timely to the insurer(s) any such matters which
39 may give rise to an insurance claim and to promptly and diligently pursue such claims on behalf
40 of WSDOT. The Design-Builder shall maintain contemporaneous records of all costs incurred by
41 it with respect to the Differing Site Condition pending a determination by the insurance company
42 regarding the claim. WSDOT agrees to cooperate with the Design-Builder as necessary for the
43 Design-Builder to fulfill its duties hereunder.

1 **1-07.18(6) Commencement of Work**

2 The Design-Builder shall not commence Work under this Contract until it has obtained the
3 insurance required under Section 1-07.18, has furnished original policies of insurance evidencing
4 the required coverage as required hereunder, nor shall Design-Builder allow any Subcontractor to
5 commence Work under any Subcontract until the insurance required of the Subcontractor has
6 been obtained and approved by Design-Builder.

7 **1-07.18(7) Disclaimer**

8 The Design-Builder and each Subcontractor shall have the responsibility to make sure that their
9 insurance programs fit their particular needs, and it is their responsibility to arrange for and
10 secure any insurance coverage which they deem advisable, whether or not specified herein.
11 Nothing in this Contract shall be construed as limiting in any way the extent to which the Design-
12 Builder may be held responsible for any claims resulting from its performance of the Work
13 hereunder. The Design-Builder's obligations to procure insurance are separate and independent of
14 its contractual defense and indemnity obligations. The coverage limits set forth in Section 1-07.18
15 are minimum requirements and WSDOT does not represent that the minimum coverages and
16 limits required hereunder will necessarily be adequate to protect the Design-Builder.

17

Section 1-07.14(1), General Indemnities

Subject to Section 1-07.14(1).2, the Design-Builder shall release, defend, indemnify, and hold harmless the State, Governor, Commission, Secretary, the City of Seattle and all officers and employees of the State and the City of Seattle, the State's and the City of Seattle's agents, consultants, and their respective successors and assigns and their respective shareholders, officers, directors, agents, and employees, (collectively referred to in this Section as the "Indemnified Parties") from and against any and all claims, causes of action, suits, legal or administrative proceedings, damages, losses, liabilities, response costs, costs and expenses, including any injury to or death of Persons or damage to or loss of property (including damage to Utility facilities), and including attorneys' and expert witness fees and costs, arising out of, relating to or resulting from:

Exhibit F - GCA 6486, Exhibit D

EXHIBIT D TO MEMORANDUM OF AGREEMENT NO. GCA 6486

1. Relocated surface street within existing City right-of-way between South King Street and Battery Street consisting of the following three segments: 1) Relocated and reconstructed Alaskan Way between King Street and Pike Street with the necessary elements to accommodate efficient and safe cross traffic movements; 2) a new surface street climbing the hill west of the Pike Place Market from the intersection of Pike Street and Alaskan Way to the intersection of Blanchard Street and Elliot Avenue, including a bridge crossing over the BNSF mainline; 3) final connections from Alaskan Way to Elliott and Western Avenues between Blanchard Street and Battery Street. These streets will be designed to serve all anticipated users, including automobiles, transit, freight, bicycles and pedestrians
2. Demolition, salvage and recycling of the existing Alaskan Way Viaduct and access ramps between S King Street and the Battery Street tunnel;
3. Demolition of the on and off ramps to the existing viaduct at Columbia and Seneca Streets and associated restoration of Columbia and Seneca Streets between Alaskan Way and First Avenue.
4. Replacement, rehabilitation or protection-in-place of the Marion Street pedestrian bridge, as determined feasible, consistent with Item #1 above, and in consideration of the demolition method(s) of the Alaskan Way Viaduct in Item #2 above.
5. North and south tunnel ventilation buildings which will be designed in accordance with Section 8 – Urban Design, as stipulated in this agreement;
6. Re-establishment of the City street grid in the vicinity of the portals: John, Thomas and Harrison Streets between Dexter Avenue N and 6th Avenue N; Denny Way between Dexter Avenue N and 6th Avenue N; S. Dearborn Street between Alaskan Way and 1st Avenue S;
7. Battery Street Tunnel decommissioning, including any associated restoration of Battery Street between the Denny Way tunnel portal and Elliot Avenue that is necessary specifically due to the tunnel decommissioning method;
8. Total WSDOT budget allocated for PROGRAM elements listed in items 1 through 7 above is estimated at: \$380 million.