MEMORANDUM OF AGREEMENT NO. GCA 1271
SR 99 ALASKAN WAY VIADUCT REPLACEMENT PROGRAM
FUNDING AGREEMENT
ALASKAN WAY RECONSTRUCTION PROJECT

THIS agreement for the Alaskan Way Viaduct Replacement Program ("AGREEMENT") is made and entered into between the State of Washington, hereinafter the "STATE," and the City of Seattle hereinafter the "CITY," collectively the "PARTIES" and individually the "PARTY."

WHEREAS, the PARTIES entered into agreement GCA 5739 in September 2008, in which the STATE provided funding to the CITY for services in order to implement a collaborative relationship between the PARTIES in support of effective project delivery and to minimize Alaskan Way Viaduct Replacement delay and costs; and

WHEREAS, the STATE, the CITY, and King County, by Letter of Agreement dated January 13, 2009, committed the PARTIES to a series of improvements to city streets and the city waterfront. The letter allocated responsibility to the STATE for providing a surface connection from approximately Yesler Way to Elliott Avenue; and

WHEREAS, the STATE Legislature endorsed the deep bored tunnel in 2009 as the preferred alternative and authorized funding for the STATE's responsibilities of the Alaskan Way Viaduct and Seawall Replacement Program as reflected in RCW 47.01.402; and

WHEREAS, the STATE and CITY entered into agreement GCA 6366 in October 2009, confirming STATE responsibility for, among other things, funding the design and construction of a surface street from S. King Street along Alaskan Way to Elliott and Western avenues, ending at Battery Street, including replacement of the Marion Street pedestrian overpass and reconstruction of the Lenora Street pedestrian overpass, as part of the Alaskan Way Viaduct and Seawall Replacement Program; and

WHEREAS, in April 2010, the STATE and Port of Seattle entered into agreement GCA 6444 for the SR 99 tunnel project in recognition of the economic importance of an efficient SR 99 roadway network with complementary system improvements for the effective movement of freight and goods locally, nationally, and internationally; and

WHEREAS, the PARTIES entered into agreement GCA 6486 in April 2011, which further confirmed the STATE's responsibility for funding design and construction of a relocated surface street within the Alaskan Way right-of-way from South King Street to Pine Street, a new surface street from the intersection of Pine Street and Alaskan Way to Battery Street, and connecting Alaskan Way to Elliott and Western avenues, and which recognized that the additional details of that obligation would be subject to a future agreement; and

WHEREAS, the PARTIES entered into agreement GCB 1308 in April 2013, in which the STATE provided funding to the CITY to implement the environmental documentation, design and right-of-way phases of a surface street from S. King Street along Alaskan Way to Elliott and Western avenues, ending at Battery Street, including replacement of the Marion Street pedestrian overpass and reconstruction of the Lenora Street pedestrian overpass; and

WHEREAS, the PARTIES entered into a funding commitment on January 12, 2017, which clarified the STATE's funding obligation for new Alaskan Way improvements consistent with GCB 1308, and any amendments thereto, which were presented in the October 2016 jointly held Cost Estimate Validation Process (CEVP) workshop, which established an anticipated cost range for the STATE's funding obligation; and

WHEREAS, the January 12, 2017 funding commitment also established a framework for the development and delivery of this AGREEMENT, and which expires upon execution of this AGREEMENT; and

WHEREAS, the STATE reimbursable portion for new Alaskan Way improvements, is the subject of this AGREEMENT as described in Exhibits A-1 and A-2 to this AGREEMENT (PROJECT); and

WHEREAS, the STATE has completed a National Environmental Policy Act (NEPA) Environmental Impact Statement (EIS), including Record of Decision (ROD), which documented the environmental impacts of the SR 99 bored tunnel, Alaskan Way Viaduct demolition and Battery Street decommissioning projects; and

WHEREAS, the CITY has completed a State Environmental Policy Act (SEPA) EIS, which documented the environmental impacts of the PROJECT, along with other CITY improvements not funded by the STATE (Separate CITY Projects); and

WHEREAS, the CITY and STATE plan to enter into a subsequent agreement to establish maintenance and operational responsibilities for the portion of SR 519 from King Street to Yesler Way within the PROJECT area; and

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

1. Definitions

1.1. 60% CEVP Report means the final Cost Estimate Validation Process (CEVP) report which documented the October 2016 CEVP workshop inputs and results. Inputs included the revised 60% PS&E PROJECT cost estimate, construction schedule and risk register. Outputs included the expected cost and schedule range of the PROJECT based on a probabilistic Monte-Carlo simulation of the PROJECT risks.

1.2. Adjacent STATE Projects mean the SR 99 Bored Tunnel Project, Seattle Ferry Terminal Project at Colman Dock, Alaskan Way Viaduct Demolition, Battery Street Tunnel Decommissioning, South Access Project, and North Surface Streets Project.

1.3. Adjacent CITY Projects means Center City Streetcar, Columbia Street Two-Way Transit Corridor, East-West Connections – Main and Washington Streets, East-West Connections – Pike and Pine Streets, Waterfront Park and Pier 62 Reconstruction, Madison Street Bus Rapid Transit, and the Elliott Bay Seawall Replacement – Pine to Virginia.

1.4. Base Construction Cost means the sum of the PROJECT portion of the Construction Contract bid the CITY intends to award, plus the CITY's construction management and CITY design support services as defined in Exhibit C.

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

1.6. CITY Designated Representative means the CITY official listed in Section 11 of this AGREEMENT.

1.7. CITY's Project Property means the two properties necessary for the completion of the Elliott Way right-of-way acquisition, including tax parcel identification numbers 76620-2380 and 76620-2381 with addresses commonly known as 1500, 1524 and 1528 Alaskan Way, Seattle WA 98101.

1.8. CITY Public Utility Relocation means removing or relocating utilities conflicting with construction of the PROJECT to a location that will allow construction to proceed.

1.9. Contract Award means the CITY's written decision accepting a bid for construction of the PROJECT in accordance with the PROJECT Contract Specifications.

1.10. Construction Contract means a contract between the CITY and its construction contractor.

1.11. Construction Contract Execution means the CITY's issuance of notice to proceed to the contractor in accordance with the PROJECT Contract Specifications.

1.12. Construction Risk Reserve means the fund created by the STATE in Section 5.4 which will be used to pay for conditions or events that arise during construction and must be addressed to complete construction of the PROJECT.

1.13. Cost Escalation Fund means the fund created by the STATE to pay for any difference between the Engineers Estimate and the Construction Contract award amount.

1.14. Early Works Construction Package means the scope of work, including a subset of the PROJECT as well as scope from the Separate CITY Projects that the CITY will contract for prior to start of demolition of the Alaskan Way Viaduct.

1.15. Engineers Estimate means the estimate established as the base cost inputs for the 2016 CEVP workshop and as updated at each design milestone.

1.16. 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 Taxies 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.

1.17. 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 Taxies Control Act (Chs. 32 70.1 05D RCW and 82.21 RCW), petroleum products and their derivatives, and such other substances, materials and wastes as become regulated or subject to cleanup authority under any Environmental Law.

1.18. Non-Conforming Work means PROJECT workmanship or materials that do not comply with the PROJECT Contract.

1.19. Owner's Reserve Account means funds provided by the STATE to the CITY that the CITY may use to pay for PROJECT change order costs and other unanticipated costs during construction.

1.20. Payment Schedule means a document to establish, update, and reconcile the projected spending plan for all PROJECT work. The initial Payment Schedule is attached as Exhibit D to this AGREEMENT.

1.21. Pre-Construction Risk Reserve Fund means the sum of money budgeted by the STATE to pay for PROJECT conditions or events that are realized prior to the commencement of construction.

1.22. Private Utilities means utility uses, excluding facilities owned and operated by the CITY, whether approved or not through franchise agreements and/or Street Use Permits by the CITY and governed and enforced through CITY Ordinance.

1.23. PROJECT means the scope of work which the CITY and STATE have agreed is reimbursable by the STATE as reflected in Exhibit A-1 and A-2.

1.24. PROJECT Acceptance Letter means a written notification from the STATE to the CITY that all PROJECT Work has been completed satisfactorily, along with a final accounting and settlement of the total PROJECT costs, which may result in a payment or billing to the CITY as appropriate.

1.25. PROJECT Contract Specifications means the City of Seattle Standard Specifications for Road, Bridge and Municipal Construction, latest edition, supplemented with any general or special provisions as required.

1.26. PROJECT Work means all work required to deliver and construct the PROJECT, including items such as, but not limited to, construction, construction management, design support services during construction, project administration and oversight, change orders, and claims.

1.27. 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.

1.28. Risk Register means a listing of all identified potential PROJECT risks, together with the estimated magnitude and probability of those risks, as jointly identified by the PARTIES during the 2016 CEVP workshop, and as updated monthly by the CITY during the remainder of PROJECT.

1.29. Separate CITY Projects means the scope that is included in the Construction Contract that is not part of the PROJECT.

1.30. STATE means the Washington State Department of Transportation.

1.31. STATE Designated Representative means the STATE official listed in Section 11 of this AGREEMENT.

1.32. SR 519 means Alaskan Way roadway between S. King Street and Yesler Way.

1.33. 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 obligation of the PARTIES for the

given element of work. All terms and conditions of the AGREEMENT shall apply to each Task Order.

2. General Responsibilities

2.1. The STATE shall fund the PROJECT, as described in Exhibits A1 and A2 to this AGREEMENT, in accordance with the below terms.

2.2. The PARTIES will execute Alaskan Way Viaduct demolition and Battery Street Tunnel decommissioning term sheets and agreements in accordance with the schedule specified in the table below. The agreements will address permitting and construction of both projects. The scope of the term sheets and agreements will be consistent with the definition of those projects described in the STATE's 2011 Final Environmental Impact Statement. Both PARTIES will work together to develop a work plan for developing the final agreements for the Alaskan Way Viaduct demolition and the Battery Street Tunnel decommissioning within the PARTIES' existing budget allocations.

	Viaduct Demolition	**BST Decommissioning**
Final term sheet	June 30, 2017	October 6, 2017
Final agreement (prior to City Council approval, if required)	August 18, 2017	December 15, 2017

2.3. Notwithstanding Section 19 (Dispute Resolution) below, if the conditions in Section 2.2 and 2.5 are not satisfied, the PARTIES will provide written notice to the Designated Representatives identified in Section 11 (Designated Representatives) of this AGREEMENT, escalating the matter for discussion to the STATE Secretary of Transportation and the Deputy Mayor of the CITY. The PARTIES will work in good faith to resolve outstanding issues. Both PARTIES agree that advertisement of the Construction Contract for the Alaskan Way improvements will not occur until the conditions in Sections 2.2 and 2.5 are met. If the conditions of Sections 2.2 and 2.5 are not met by the time the CITY initiates an Early Works Construction Package, the PARTIES agree that GCB 1308 will be amended to provide construction funding for the early works package.

2.4. The CITY issued permits for the SR 99 tunnel project (bored tunnel south, bored tunnel north, south access projects - SR 99 connections and surface street connections) through the current estimated physical completion date of March 31, 2019 of the tunnel project. If the physical completion dates of the tunnel project changes, the PARTIES agree to revisit the permit duration and conditions.

2.5. The PARTIES are responsible for committing resources and coordinating with 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 project durations to meet the schedules for the PROJECT, the SR 99 north surface street project, the SR 99 south access

project, the temporary restoration of Alaskan Way south of Yesler Way, Alaskan Way Viaduct Demolition, Battery Street Tunnel Decommissioning, and the Seattle Multi-Modal Terminal at Colman Dock Project. The PARTIES shall work together to ensure permits are delivered in a manner that enables the timely and cost-effective delivery of the demolition of the Alaskan Way Viaduct and decommissioning of the Battery Street Tunnel. The STATE will provide timely and complete materials to the CITY in order for the CITY to issue permits in a timely manner.

3. Shared Responsibilities

3.1. The PARTIES agree to work cooperatively with each other and shall make good faith efforts to timely and expeditiously perform their respective obligations and responsibilities called for in this AGREEMENT.

3.2. The PARTIES shall each participate in a Maintenance of Mobility Task Force to coordinate construction sequencing and associated access and traffic impacts within the downtown area. The work of this task force will be reviewed between the STATE, the CITY, the Port of Seattle, Sound Transit and King County Metro.

3.3. The PARTIES agree to maintain grade separated pedestrian access to Colman Dock throughout construction, to the greatest extent feasible. The PARTIES anticipate that the new Marion Street Pedestrian Bridge foundations will be constructed as part of the PROJECT. However, no construction funding for Marion Street Pedestrian Bridge or foundations are included herein. The PARTIES anticipate addressing the Marion Street Pedestrian Bridge at a future date.

3.4. 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 communication or work product.

3.5. In order to optimize design and minimize conflicts, the CITY shall coordinate design and construction of the PROJECT with design and construction of Adjacent CITY and STATE Projects. The PARTIES agree to consider modifications to the design making up the PROJECT if both PARTIES determine the modifications are necessary and reasonable to minimize conflicts.

3.6. The PARTIES shall participate in a Construction Coordination Task Force to coordinate activities with CITY and STATE projects under construction along the waterfront during active construction.

3.7. Delay: The STATE is responsible for all increased PROJECT costs due to delay caused by PROJECT-related work during construction, and any delays caused by the STATE's failure to timely perform its obligations under this AGREEMENT. The STATE shall not be responsible for increased PROJECT costs caused by delays on the Separate CITY Projects or the CITY's failure to timely perform its

obligations under this AGREEMENT. If the PARTIES do not agree on the amount of the increased costs, or the cause of the delay, the PARTIES will utilize the dispute resolution process in Section 19.

4. Construction Management, Contract Packaging and Procurement

4.1. Construction Management and Design Support Services. The CITY, using its own forces and consultant(s) hired by the CITY will manage the construction and administration of the PROJECT along with Separate CITY Projects. This work includes, but is not limited to, program and project management, contract administration, project controls, inspection, materials testing, monitoring, and contractor negotiations. In addition, the CITY and consultant(s) hired by the CITY will provide design support services such as engineering review and design input from the Professional Engineers (designers of record) as needed to support construction.

The CITY will take the lead in coordinating regular communications and construction coordination meetings with the STATE, CITY departments, consultants and contractors, and other utility owners.

4.2. The CITY will carry out the management of the Construction Contract according to the CITY's construction administration manual and the PROJECT's construction management plan. The CITY shall provide the PROJECT's construction management plan to the STATE for review.

4.3. Multiple Construction Contracts. It is anticipated that the CITY will issue multiple Construction Contracts to construct the elements of the PROJECT and to construct the Separate CITY Projects funded by the CITY, the work of the PROJECT is expected to be packaged together with some of the work on the Separate CITY Projects in the same Construction Contract in order to provide cost efficiencies and streamline construction for the traveling public and adjacent stakeholders. Division of the PROJECT into separate bid packages does not alter the agreed upon scope and schedule of the PROJECT. The CITY's Construction Contracts that include any portion of the work of the PROJECT will be awarded consistent with the process outlined in Section 4.4.1, and administered in accordance with current CITY contracting policies to the extent they comply with applicable federal, state, and local laws. The CITY will clearly track the CITY and the STATE funding expenditures.

4.4. The PARTIES agree that the design-bid-build delivery method will be used for the Construction Contracts for the PROJECT. The PARTIES agree the CITY has the right to construct the Separate CITY Projects using different delivery methods at its own discretion.

4.4.1. Construction Contract Award. The CITY shall act as the sole authority in the award of Construction Contracts for the work of the PROJECT. The process for Construction Contract Advertisement and Construction

Contract Award will follow the PROJECT Contract Specifications. The PROJECT proposals will be reviewed by the STATE and CITY, and the Construction Contract may be awarded to the lowest responsive and responsible bidder in accordance with the PROJECT Contract Specifications.

If the PROJECT bid price at award exceeds both the Base Construction Cost and the Cost Escalation Fund, both PARTIES will jointly review the PROJECT cost and scope, and consider other funding sources before the CITY determines whether to award the Construction Contract. If the bid price at award exceeds the Base Construction Cost, funds will be drawn from the Cost Escalation Fund first, and if necessary, from the Construction Risk Reserve Fund to reconcile the Payment Schedule in Exhibit D with the bid at award. If the bid price at award is less than the Base Construction Cost, the excess funds will be transferred to the Construction Risk Reserve Fund.

An electronic copy of the awarded Construction Contract will be delivered to the STATE within five (5) days after it is issued to the construction contractor.

4.5. Alaskan Way Viaduct Program and Waterfront Seattle Program Schedule.

4.5.1. Schedule Milestones. Work on the PROJECT is anticipated to generally progress according to the schedule described in Exhibit B.

4.5.2. Contractor's Critical Path Schedule. The CITY shall require the contractor to prepare and provide a critical path schedule according to the PROJECT Contract Specifications. The CITY shall provide each contractor schedule update to the STATE upon receipt from the contractor. The CITY will promptly communicate schedule changes to the STATE after they become known by the CITY.

4.6. The CITY shall act as the sole authority in the administration of the PROJECT, including all decisions related to construction contracting. The CITY shall allow the STATE to consult with and make inquiries of the CITY'S Designated Representative or designee, attend meetings, and have reasonable access to all PROJECT-related documentation with the exception of documents protected under attorney-client privileged communications or attorney work products. The STATE shall not provide direction, directly or indirectly, to the CITY's consultant(s) or contractors. Unless otherwise authorized by the CITY, the STATE shall direct all communications to the CITY'S Designated Representative, including communications regarding quality of construction and contractor performance. The CITY will manage any requests from the STATE that have contractual or scope-of-work impacts and will coordinate responses.

The CITY shall notify the STATE of and provide access to all PROJECT contractor submittals through the STATE Designated Representative as soon as

practicable following CITY receipt from the contractor. The CITY will make available to the STATE all PROJECT documents for review and audit upon request by the STATE Designated Representative. The STATE reserves the right to observe PROJECT work at any time and attend PROJECT construction management meetings.

5. Payment and Administration

5.1. Payment. The maximum not-to-exceed amount that the STATE is required to pay for this PROJECT under this AGREEMENT is $153,043,022 as described in Exhibit C. This amount does not include any amounts that the STATE is responsible to pay for under GCB 1308 or other funding agreements, such as GCA 5739. This amount does not include construction funding for the Marion Street Pedestrian Bridge, which the PARTIES anticipate addressing at a future date. This amount does not include any additional scope or funding agreed to by the PARTIES in accordance with Section 5.6.

The CITY shall invoice the STATE for estimated quarterly PROJECT costs, based on Exhibit D, between sixty (60) and ninety (90) calendar days in advance of the start of the PROJECT Work for that quarter. The STATE will pay each of these quarterly estimates not less than thirty (30) calendar days in advance of the start of the work for that quarter, but in any case, shall have a minimum of thirty (30) days from receipt of the quarterly estimate to make payment.

Final payment, per Section 13, for all costs associated with the AGREEMENT shall be based on the CITY's actual costs. The actual costs shall include direct and indirect salary costs, non-salary costs, and fee as appropriate for consultants. Direct expenses shall be paid at actual costs without a markup. The CITY shall maintain supporting data to verify the costs billed to the STATE. This shall include CITY employee timesheets and payroll ledgers to support employee labor rates.

For the PROJECT's construction costs, the CITY must provide payment in accordance with the PROJECT Contract Specifications. The CITY must have all the required backup documentation to support the contractor progress payments.

It is agreed that any such partial payment shall not constitute agreement as to the appropriateness of any item and that, with each annual reconciliation and at the time of the final billing, all required adjustments will be made and reflected in a final payment.

5.2. Payment Schedule. An estimated quarterly Payment Schedule is attached in Exhibit D to this AGREEMENT for anticipated STATE reimbursable PROJECT costs. The payment schedule will be reconciled according to Section 5.5.

5.3. Payment Documentation. The CITY shall submit monthly payment documentation packages to the STATE describing the work performed and associated cost of STATE reimbursable PROJECT work during the billing period,

including a summary of total costs to date. Documentation shall include an itemized listing of STATE reimbursable costs incurred for the PROJECT. The CITY shall supply copies of the original supporting documents and/or accounting records to the STATE upon request.

The STATE may give notice that it believes a particular cost paid by the STATE is for work outside the scope limits described in Exhibits A1 and A2 of this AGREEMENT or of any PROJECT work that does not meet the requirements of the PROJECT Contract Specifications, including non-conforming work or materials. In this event, the STATE may deduct or withhold the funds in bona fide dispute from a quarterly payment either 180 days from when the STATE provides notice to the CITY of a dispute or during the annual reconciliation of the Payment Schedule, whichever is longer. If there is a bona fide dispute regarding the STATE's withholding or deducting payment as provided herein, this dispute is an excusable event that does not trigger the STATE default provisions under Section 22.2 or the CITY default provision under Section 23.1. The CITY may invoke Section 19 of this AGREEMENT for dispute resolution if the CITY Designated Representative disagrees with the STATE deductions. The CITY shall provide electronic copies of monthly contractor progress payments, including contractor invoices, to the STATE within five (5) working days after the contractor has been paid by the CITY.

5.4. Allocation of PROJECT Cost and Allowances. The STATE will pay for the Construction Contract, construction management, and design services for the PROJECT, defined as the Base Construction Cost in Section 1.4 and as summarized in Exhibit C to this AGREEMENT. In addition, as provided below, the STATE will establish a Design Allowance Fund, Pre-Construction Risk Reserve Fund, Owner's Reserve Account, Cost Escalation Fund, and Construction Risk Reserve Fund at the levels shown below and summarized in Exhibit C to this AGREEMENT. The total of the items above shall be consistent with Section 5.1. Section 12 of this AGREEMENT describes how these funds will be administered.

5.4.1. Design Allowance Fund. The STATE will commit to fund a Design Allowance of $8,965,339. The Design Allowance Fund will be used to address increases to the PROJECT cost estimate, including the addition of new bid items, changes to bid items, or quantity increases discovered during development of the 90 percent, 100 percent, and advertisement ready Plan, Specification, and Estimate (PS&E) packages. The CITY shall update the Design Allowance Fund at these milestones to reflect the bid item or quantity changes, and provide documentation of each update to the STATE. These changes may be needed as a result of an increased level of design detail compared with what was included in the revised 60 percent PS&E.

The CITY shall provide the STATE with sufficient documentation accompanying each Engineers Estimate submittal to demonstrate that any new bid items requiring Design Allowance Funds conform to the scope of the PROJECT. The CITY shall notify the STATE of the remaining

amount of Design Allowance Funds in writing as part of each cost estimate submittal.

Any Design Allowance Funds that remain following Construction Contract advertisement will be added to the Owner's Reserve Account.

5.4.2. Pre-Construction Risk Reserve Fund. The STATE will commit to fund a Pre-Construction Risk Reserve of $6,063,638. This Pre-Construction Risk Reserve Fund will be used to pay for conditions or events that occur during the environmental, design, and right-of-way phases of the PROJECT, according to the Risk and Change Management Procedures described in Section 12. The Pre-Construction Risk Reserve Fund will be held in an account managed by the STATE.

Any funds from the Pre-Construction Risk Reserve Fund not expended during the environmental, design, and right-of-way phases shall be transferred to the Construction Risk Reserve Fund.

5.4.3. Owner's Reserve Account. The STATE will fund an Owner's Reserve Account in an initial amount of $3,227,522, which will be transferred to the CITY. This transfer will occur at Construction Contract execution, including an amount proportional to an Early Works Package(s) consistent with the Payment Schedule. The Owner's Reserve Account will be managed by the CITY, which is the sole authority in the administration of the Construction Contract as described in Section 4.4. These funds shall be used to pay for PROJECT costs that were not included in the Base Construction Cost and occur during construction of the PROJECT in accordance with the change management procedures in Section 12.

The CITY may request an increase to the Owner's Reserve Account if the balance falls below $1,500,000. The STATE will replenish the Owner's Reserve Account using funds from the Construction Risk Reserve Fund unless and until those funds have been depleted. All requests for increases to the Owner's Reserve Account shall be provided in writing to the STATE Designated Representative. Each request shall include documentation describing the nature and cause of the changes that lead to the requested increase and a detailed cost estimate of all said changes.

Any funds from the Owner's Reserve Account not expended during PROJECT construction shall be transferred to the STATE at the time of the PROJECT final payment.

5.4.4. Cost Escalation Fund. The STATE will commit to fund a Cost Escalation Fund of $14,455,436. The Cost Escalation Fund will be used to pay for any difference between the CITY Engineers Estimate and the Construction Contract award, including the award of Construction Contract(s) for the Early Works Package.

If the CITY makes changes to the revised 60% PS&E unit bid costs at any future design deliverable milestone, the Cost Escalation Fund shall be adjusted according to the reconciliation procedures in Section 5.5.

The Cost Escalation Fund will be held in an account managed by the STATE. Any remaining Cost Escalation Fund budget will be transferred to the Construction Risk Reserve Fund at Construction Contract execution for all elements of the PROJECT.

5.4.5. Construction Risk Reserve Fund. The STATE will commit to fund a Construction Risk Reserve of $24,936,362. The Construction Risk Reserve Fund will be used to replenish the Owner's Reserve Account in accordance with Section 5.4.3 and Section 12. The Construction Risk Reserve Fund will be held in an account managed by the STATE.

5.5. Reconciliation. The CITY shall quarterly update the Payment Schedule, attached as Exhibit D to reflect actual payments to the CITY. On an annual basis, the CITY shall reconcile the anticipated Payment Schedule for the remaining PROJECT work. The reconciliation will include a comparison to the Payment Schedule established at the Construction Contract Award.

The CITY shall update the Payment Schedule, attached as Exhibit D to this AGREEMENT, at key PROJECT milestones including 90% PS&E, 100% PS&E, advertisement ready, and Construction Contract advertisement. The Payment Schedule will also be updated at Construction Contract award, which could include an Early Works Package(s), to reflect actual Construction Contract unit bid prices, and the contractors' anticipated schedule. Within 30 days of Construction Contract execution, the CITY will provide the STATE with an updated Payment Schedule, adjusted to account for the contractor award price and the contractor's anticipated schedule for completing the PROJECT. This reconciliation will not require an amendment to this AGREEMENT. The Payment Schedule will be updated quarterly and reconciled annually, and can be modified by mutual agreement of the PARTIES as a result of updates to the contractor-provided PROJECT schedule and the retirement of risks after the mid-point of construction.

5.6. Task Orders

5.6.1. Some or all of the work undertaken pursuant to this AGREEMENT may be governed by Task Orders. Prior to Construction Contract Advertisement, additional work in support of the PROJECT beyond what is undertaken pursuant to this AGREEMENT may be added by Task Order. Task Orders for work beyond what is included in the scope of the PROJECT in Exhibits A1 and A2 shall be accompanied by funding separate from the maximum not-to-exceed amount in Section 5.1. The purpose of Task Order work is to move work to the project in the best position to deliver it at the lowest cost and in a manner that minimizes the duration of waterfront construction impacts. In any case, Task Order work

shall not be undertaken without an environmental review to ensure compliance with all laws, regulations and commitments.

5.6.2. Either PARTY may initiate a Task Order, which will be effective and binding only after jointly executed by the PARTIES.

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

5.6.4. The general terms and conditions of this AGREEMENT shall be applicable to all Task Orders issued under this AGREEMENT.

5.6.5. The form of each Task Order shall substantially conform to the Task Order Template attached as Exhibit E. Each Task Order shall contain a general description and scope of work, a schedule for completion, an itemized estimate of costs for the work, a cash flow projection and any provisions specific to the scope of work.

5.6.6. Each PARTY shall designate a manager for each Task Order. The designated Task Order managers are deemed to have the authority to modify the scope, schedule, and budget of the Task Order within the parameters of this AGREEMENT.

5.6.7. 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. The initiating PARTY shall promptly notify the other PARTY in writing as soon as it is known when the maximum funding obligation will be reached and shall also specify in writing its position regarding any remaining work covered by a Task Order which it believes was contained within the budgeted scope of work.

5.6.8. The PARTIES shall negotiate the total authorized amount for each Task Order. Reimbursement will not be made for activities that are not covered in a Task Order. The PARTIES will 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.

6. Right-of-Way

6.1. The base cost for temporary construction easements and one permanent easement is funded by the STATE in GCB 1308. Budget for temporary construction easement cost risks are included in the Pre-Construction Risk Reserve Fund.

6.2. The CITY has or will acquire, at its expense, permanent property rights for two parcels necessary to construct the PROJECT, defined as the CITY's Project Property. The STATE is responsible for half of the structure demolition costs and all site restoration costs at these locations. These costs were not included in the 60% CEVP Report and will be addressed according to Section 12.

6.3. The STATE shall provide temporary construction easement rights on STATE owned property at no cost to the CITY, as necessary in order to complete the acquisitions and construct the PROJECT. The CITY will request the temporary construction easement(s) from the STATE in writing, and will include a map, duration and purpose of the requested temporary construction easement in the written request.

7. Permitting

7.1. The CITY shall apply for and obtain all necessary federal-, state-, and CITY-issued permits and approvals for the PROJECT prior to commencing work that requires such permits, including, but not limited to, all permits, approvals, or permissions for exploratory investigations, testing, site preparation, demolition and construction. The CITY 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 CITY's non-compliance with permits or approvals. The CITY shall indemnify and defend the STATE in the event that the STATE is named in any notice of violation or notice of penalty issued for the PROJECT.

8. Hazardous Substances and Remediation

8.1. The STATE shall be responsible for funding all costs and expenses of identification, investigation and REMEDIATION of HAZARDOUS SUBSTANCES found within the limits of the PROJECT during the CITY's environmental due diligence, and those that are discovered during construction of the PROJECT. In addition, the STATE shall be responsible for funding all costs associated with REMEDIATION of any releases that are caused or exacerbated during work on the PROJECT, with the exception of those that are caused or exacerbated by the negligence of the CITY or its contractor.

8.1.1. All costs associated with testing, handling, storing, removing, transporting, disposing, or treating HAZARDOUS SUBSTANCES that are required to be excavated in connection with the PROJECT shall be paid by the STATE as a PROJECT cost.

8.2. The STATE shall be responsible for funding the costs of all reasonable steps to prevent recontamination of the PROJECT area when HAZARDOUS SUBSTANCES are migrating from properties adjacent to the PROJECT limits.

8.3. The PROJECT scope of work and anticipated costs necessary for the identification, investigation and REMEDIATION of SUBSTANCES found within the limits of the PROJECT during the CITY's environmental due diligence are included in Exhibits A1, A2 and C. The scope of work and costs necessary for the identification, investigation and REMEDIATION of HAZARDOUS SUBSTANCES found within the limits of the PROJECT during construction of the PROJECT, but not found during the CITY's environmental due diligence, will be addressed with the Construction Risk Reserve described in Section 5.4.5.

8.4. The CITY shall provide immediate verbal notice when after the discovery of HAZARDOUS SUBSTANCES found within or without the limits of the PROJECT that were not identified during the CITY's environmental due diligence. The CITY will provide written notice to the STATE within thirty (30) days.

8.5. In addition to any indemnification obligation provided for in this AGREEMENT, the CITY shall release and indemnify, protect, defend and hold harmless the STATE, 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 the removal, transport or disposal in connection with construction of the PROJECT of any HAZARDOUS SUBSTANCES for which the CITY or any person, contractor or other entity working on behalf of the CITY is a generator.

8.6. In addition to any indemnification obligation provided for in this AGREEMENT, the STATE shall release and indemnify, protect, defend and hold harmless the CITY, 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 the removal, transport or disposal in connection with construction of the PROJECT or the demolition of the Alaskan Way Viaduct of any HAZARDOUS SUBSTANCES for which the STATE or any person, contractor or other entity working on behalf of the STATE is a generator.

8.7. Nothing in this AGREEMENT is intended to alter the legal status of the PARTIES with respect to hazardous substances that may remain in place after completion of the PROJECT or to alter the rights the PARTIES may have to seek

contribution from third parties for the costs of identification, investigation and REMEDIATION of HAZARDOUS SUBSTANCES hereinabove identified.

9. Archaeological and Historical Resources

9.1. The STATE shall be responsible for funding costs and expenses of identification, investigation and compliance with federal and state regulations regarding archaeological and historic preservation for work necessary to construct the PROJECT.

9.2. The scope of work and costs necessary for the identification, investigation and compliance with federal and state regulations regarding archaeological and historic preservation known to the CITY prior to the execution of this AGREEMENT is included in Exhibits A1, A2 and C. Any additional scopes of work and costs necessary for the identification, investigation and compliance with federal and state regulations regarding archaeological and historic preservation will be funded through the Funds established in Section 5.4.

10. Public Outreach

10.1. The CITY agrees to lead and manage the public outreach effort for the PROJECT. The PARTIES will continue to coordinate public outreach activities for CITY and STATE projects that are occurring in the same vicinity as the PROJECT, including the STATE's Seattle Ferry Terminal Project, Alaskan Way Viaduct Demolition and Battery Street Tunnel Decommissioning and the Separate CITY Projects. This outreach will also be coordinated with the projects included in the Maintenance of Mobility Task Force identified in Section 3.2.

11. Designated Representatives

11.1. All contact between the PARTIES will be between the representatives of each PARTY or their designee as shown in Exhibit F:

STATE	**CITY – OFFICE OF THE WATERFRONT**	**CITY – DEPARTMENT OF TRANSPORTATION**
Alaskan Way/Elliott Way Agreement Manager	Waterfront Program Engineering Design and Delivery Manager	Director of Interagency Programs

12. Risk and Change Management Procedures

12.1. The CITY shall conduct PROJECT monthly, or as otherwise agreed to by the PARTIES, risk review and change management meetings during pre-construction and invite the STATE Designated Representative to attend. The meetings will include a review of the risks identified in the October 2016 CEVP workshop and any new risks that develop during final design of the PROJECT.

12.2. The CITY shall maintain and update a PROJECT risk register or database and sortable change management register or database in a format as agreed to by the PARTIES. On a monthly basis during construction, or as otherwise agreed to by the PARTIES, the CITY shall provide access to these documents to the STATE following each update. The CITY shall manage the risk and change management registers to account for active, realized and retired risks and scope changes.

12.3. The CITY is authorized to pay for changes to the PROJECT from the Owner's Reserve Account below either $200,000 or thirty (30) days in PROJECT delay per occurrence without STATE concurrence. The CITY shall provide notification to the STATE of these changes. For changes to the PROJECT above these thresholds, the CITY shall request STATE concurrence. All requests for concurrence shall identify and supply documentation that supports the request, including, as applicable, the needed documentation, such as plans, specifications and estimate changes and reasons for the changes. Provided the documentation demonstrates the change is attributable to the PROJECT, the STATE shall not unreasonably withhold concurrence.

12.4. Provided the STATE concurs with the CITY's request in Section 12.3, the STATE shall release to the CITY the requested funds from the Funds described in Section 5.4 within thirty (30) days of receipt of the CITY's request. If the STATE does not agree with the CITY's request, the PARTIES agree to use the dispute resolution process in Section 19.

13. Completion of Construction Procedures

13.1. PROJECT Closure. The CITY will follow close-out procedures as described in the CITY'S Standard Specifications. Once the PROJECT has been reviewed and closed by the CITY and STATE according to the PROJECT's construction management plan, the STATE Designated Representative will provide the CITY with a PROJECT Acceptance Letter including a final accounting and settlement of the total PROJECT costs, which may result in a payment or billing to the CITY as appropriate.

13.1.1. Final Inspection – The CITY shall send a request for STATE inspection and acceptance to the STATE Designated Representative no later than within fifteen (15) days of substantial completion of work by the contractor. A copy of the completion letter that is sent to the contractor should accompany the request.

13.1.2. Notice of Physical Completion – Within ten (10) calendar days after physical completion of the Construction Contract by the contractor, the CITY Engineer shall notify the contractor by letter that the construction is physically complete, and that the PROJECT is subject to audit and acceptance by the STATE. The CITY shall diligently pursue closure of the Construction Contract.

14. **Audit and Access to Records**

14.1. Maintenance of Records. The CITY, including its contractors (and their subcontractors), its consultants (and their subconsultants), hereto referred as "Subcontractors," shall maintain a complete set of all books, records, documents and other evidence directly pertinent to the performance of work under this AGREEMENT. The CITY shall maintain an index of such records to facilitate access and recovery of such records.

14.2. Access for Audit purposes and inspection. The STATE or any of their duly authorized representatives shall, for the purposes of audit, inspection, and/or examination, have access to and be permitted to inspect such books, records, document and other evidence for inspection, audit, and copying for a period of six (6) years after final payment is made under this Agreement. The STATE shall also have access to such books, records and document during the performance of the work if deemed necessary by the STATE to verify the CITY's and its Subcontractors' work and invoices to assist in discussion for additional work and to resolve claims and disputes. The STATE will give twenty (20) working days' notice to the CITY for the STATE's access to the original records.

14.3. The CITY agrees to the disclosure of all information and reports resulting from access to records under sections 14.1 and 14.2. The CITY will be afforded the opportunity for an audit exit conference and an opportunity to comment and submit any supporting documentation on the pertinent portions of the draft audit report and that the final audit report will include written comments of the CITY.

14.4. All final audit reports will be issued to the STATE's Designated Representative. The report will include any findings of unsupported costs and/or unsupported payments. Any findings of unsupported costs will be considered improper payments, which may require corrective action and possible repayment of the STATE funds. The STATE will provide a copy of the report to the CITY.

14.5. The periods of access and examination for sections 14.1 and 14.2 for records that relate to (1) disputes between the STATE and the CITY, (2) litigation or settlement of claims arising out of the performance of this AGREEMENT, (3) costs and expenses of this AGREEMENT, as to which exception has been taken by the STATE of any of its duly authorized representatives shall continue until all disputes, claims, litigation, appeals, and exceptions have been resolved.

14.6. The City shall ensure that substantially all of the foregoing Sections are included by the Contractor in each Subcontract for work on the PROJECT to the effect that the Subcontractor agrees that the STATE, or any of its duly authorized representatives, shall until expiration of the six (6) years after final payment under the Subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and other records of the Subcontractor. The term Subcontract excludes (1) purchase orders not exceeding $10,000 and (2) Subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

15. Warranties

15.1. The CITY shall provide to the STATE copies of all guarantees and warranties for the PROJECT that the CITY contractor is obligated to provide to the CITY through CITY standard specification 1-05.10. The CITY will act on the STATE's behalf to enforce all guarantees and warranties for the PROJECT.

15.2. The CITY shall warrant good and merchantable title to all materials, supplies, equipment and items installed or incorporated into the accepted PROJECT. The CITY shall further warrant that all STATE SR 519 infrastructure accepted by the STATE is free from claims, liens and charges.

15.3. If, during the warranty period, either PARTY encounters a situation caused by Non-Conforming Work, the PARTIES must immediately notify each other. The CITY will take timely corrective action. In the event the CITY cannot take timely action, it may request the STATE take corrective action. If the STATE takes the corrective action the direct and indirect costs incurred by the STATE, attributable to Non-Conforming Work, shall be paid by the CITY to the STATE. If there is disagreement about the costs, the PARTIES will address the issue according to Section 19 in this AGREEMENT.

16. Risk Allocation

16.1. STATE Assistance, Inspection; Review, or Approvals. The reviewer approval of any of the CITY'S PROJECT plans or specifications, or the inspection of the CITY's work, or any assistance provided to the CITY by the STATE is for the STATE's sole benefit and shall not constitute an opinion or representation by the STATE as to any compliance with any law, ordinance, rule, or regulation or any adequacy of this AGREEMENT for other than the STATE'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 STATE 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 STATE of any of its obligations under this AGREEMENT, or under applicable law.

17. General Indemnification

17.1. Each PARTY shall protect, defend, indemnify, and save harmless the other PARTY, 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 PARTY's: performance or failure to perform any obligation under this AGREEMENT; violation of any applicable law, regulation, or permit; breach of this AGREEMENT; work on the PROJECT; 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 PARTY is responsible in performance of the Work. Neither PARTY will be required to indemnify, defend, or save harmless the other PARTY if the claim, suit, or action is caused by the sole negligence of the indemnified PARTY or its agents, employees, consultants, contractors or vendors of any tier. 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 indemnifying PARTY'S or its agents, employees, consultants, contractors or vendors of any tier, own negligence.

17.2. 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.

17.3. 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.

18. Insurance and Bonds

18.1. Public Liability and Property Damage Insurance. The STATE will be named as additional insured on these policies. The CITY, through its contractor shall obtain and keep in force the following insurance at a minimum, by contract. For the Early Works Construction Package, the CITY may a determine the appropriate level of insurance coverage based on the size of the Construction Contract. The policies shall be with companies or through sources approved by the State Insurance Commissioner pursuant to RCW 48.05. Unless otherwise indicated below, the policies shall be kept in force from the execution date of the Construction Contract until the date of project acceptance.

18.1.1. The CITY maintains a fully funded self-insurance program, approved by the State of Washington, for the protection and handling of the

City's liabilities including injuries to persons and damage to property. The City agrees, at its own expense, to maintain, through its self-funded program, coverage for all of its liability exposures for this Agreement. The City agrees to provide STATE with at least 30 days prior written notice of any material change in the City's self-funded program and, if requested, will provide STATE with a letter of self-insurance as adequate proof of coverage. STATE further acknowledges, agrees and understands that the City does not purchase Owners and Contractors Protective (OCP) insurance and is a self-insured governmental entity; therefore, the City does not have the ability to add WSDOT as an additional insured.

18.1.2. Commercial General Liability (CGL) Insurance written under ISO Form CG0001 or its equivalent, with minimum limits of $5,000,000 per occurrence and in the aggregate for each 1-year policy period. This coverage may be any combination of primary, umbrella, or excess liability coverage affording total liability limits of not less than $5,000,000 per occurrence and in the aggregate. Products and completed operations coverage shall be provided for a period of 3 years following Substantial Completion of the Work.

18.1.3. Commercial Automobile Liability Insurance providing bodily injury and property damage liability coverage for all owned and non-owned vehicles assigned to or used in the performance of the Work, with a combined single limit of not less than $5,000,000 per occurrence. This coverage may be any combination of primary, umbrella, or excess liability coverage affording total liability limits of not less than $5,000,000 per occurrence, with the STATE named as an additional insured or designated insured in connection with the CITY contractor's performance of the Construction Contract.

18.2. The Contractor shall be Named Insured and the CITY, the STATE, the Governor, the Commission, the Secretary, the STATE Department of Transportation, all officers and employees of the State, and their respective members, directors, officers, employees, agents, and consultants (collectively the "Additional Insureds") shall be included as Additional Insureds for all policies and coverages specified in this section, with the exception of the OCP policy. Said insurance coverage shall be primary and noncontributory insurance with respect to the insureds and the Additional Insureds. Any insurance or self-insurance beyond that specified in this AGREEMENT that is maintained by any Additional Insured shall be in excess of such insurance and shall not contribute with it. All insurance coverage required by this section shall be written and provided by "occurrence-based" policy forms rather than by "claims made" forms. All endorsements adding Additional Insureds to required policies shall be issued on (i) form CG 20 10 11 85 or a form deemed equivalent by the STATE, providing the Additional Insureds with all policies and coverages set forth in this section, with the exception of the OCP and Commercial Auto policies or (ii) form CA 20 48 or

forms deemed equivalent by Contracting Agency, providing the Additional Insureds with all coverages required under the Commercial Automobile Liability.

18.3. The coverage limits to be provided by the CITY, through its contractor, for itself and to the STATE and Additional Insureds pursuant to this section or any construction contract provision shall be on a "per project" aggregate basis with the minimum limits of liability as set forth herein for both general liability and products/completed operations claims. The additional insured coverage required under this section for products/completed operations claims shall remain in full force and effect for not less than 3 years following Substantial Completion of the project. If the CITY through its contractor maintains, at any time, coverage limits for itself in excess of limits set forth in this AGREEMENT or any construction contract provision, then those additional coverage limits shall also apply to the STATE and the Additional Insured. This includes, but is not limited to, any coverage limits provided under any risk financing program of any description, whether such limits are primary, excess, contingent, or otherwise.

18.4. All insurance policies and coverages required under this AGREEMENT shall contain a waiver of subrogation against the STATE, and any Additional Insureds, and their respective departments, agencies, boards, and commissions, and their respective officers, officials, agents, and employees for losses arising from Work performed by or on behalf of the CITY. This waiver has been mutually negotiated by the parties.

18.5. Where applicable, the CITY shall cause the contractor and all subcontractors to provide insurance that complies with all applicable requirements of the CITY contractor-provided insurance as set forth herein, in circumstances where the Subcontractor is not covered by the Contractor-provided insurance. The Contractor shall have sole responsibility for determining the limits of coverage required, if any, to be obtained by Subcontractors, which determination shall be made in accordance with reasonable and prudent business practices. In the event that a Subcontractor is required to add the Contractor as an Additional Insured pursuant to its contract for PROJECT work, then the Contractor shall also cause each Subcontractor to include the STATE and the Additional Insureds, as Additional Insureds as well, for primary and noncontributory limits of liability under each Subcontractor's Commercial General Liability, Commercial Automobile Liability, and any other coverages that may be required pursuant to this AGREEMENT or the Construction Contract.

18.6. Unless specifically noted otherwise in the Construction Contract, the PARTIES do not intend by any of the provisions of this AGREEMENT to cause the public or any member thereof or any other Person to be a third-party beneficiary of this AGREEMENT. Nothing in this AGREEMENT authorizes anyone not a party to this AGREEMENT or a designated third-party beneficiary to this AGREEMENT to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Construction Contract. It is the further intent of the PARTIES in executing this AGREEMENT that no individual, firm, corporation, or any

combination thereof that supplies materials, labor, services, or equipment to the CITY or its contractor for the performance of the Work shall become thereby a third-party beneficiary of this AGREEMENT. The AGREEMENT shall not be construed to create a contractual relationship of any kind between the STATE and a Subcontractor or any other Person except the CITY.

18.7. The Commercial General Liability policy and the Commercial Automobile Liability Insurance policy may be subject to a deductible at the discretion of the CITY through its contractor. If a deductible applies to any claim under these policies, then payment of that deductible will be the responsibility of the CITY and its contractor, notwithstanding any claim of liability against the STATE. However, in no event shall any provision for a deductible provide for a deductible in excess of $50,000.00.

18.8. With the exception of the Commercial Automobile liability coverage, no policies of insurance required under this section shall contain an arbitration or alternative dispute resolution clause applicable to disputes between the insurer and its insureds. Any and all disputes concerning (i) terms and scope of insurance coverage afforded by the policies required hereunder and/or (ii) extra contractual remedies and relief, which may be afforded policy holders in connection with coverage disputes, shall be resolved in Washington Superior Court, applying Washington law.

18.9. The CITY, through its Contractor, shall provide to the STATE's Designated Representative, (i) ACORD Form Certificates of Insurance evidencing the minimum insurance coverages required under this section, upon the execution of any Contract contemplated by this AGREEMENT, (ii) complete copies of all insurance policies required under this section within 30 days of execution of any Contract contemplated by this AGREEMENT, and (iii) written notice any policy cancellations within two business days of receipt of cancellation.

19. Dispute Resolution

19.1. 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 below.

19.2. Notice. A PARTY'S Designated Representative, as defined in Section 11, 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.

19.3. 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. Any resolution of the dispute requires the agreement of all Designated Representatives attending the meeting or who requested to attend the meeting.

19.4. 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 19.5. 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.

19.5. 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. Any resolution of the dispute requires the agreement of all Designated Representatives attending the meeting or who requested to attend the meeting.

19.6. 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.

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 – 50%; CITY – 50%). 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.

19.7. 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 19.

19.8. A PARTY'S request to utilize this Section 19 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.

20. Effectiveness and Duration

20.1. 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 two years following final completion of all PARTIES' obligations contained or referred to in this AGREEMENT.

21. Notice

21.1. Except for the dispute resolution process in Section 19 above, for which notice shall be given to the Designated Representatives listed in Section 11, 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 (i) upon actual receipt or refusal to accept delivery if delivered personally to the Designated Representative, (ii) upon actual receipt or refusal to accept delivery if sent by a nationally recognized overnight delivery service to the Designated Representative, or (iii) upon actual receipt if electronically transmitted to the Designated Representative with confirmation sent by another method specified in this Section 11. Notice of a change of Designated Representative or the address of the Designated Representative shall be given as provided in Section 11.

22. Termination by STATE

22.1. The STATE may terminate this AGREEMENT upon forty-five (45) days written notice to CITY, if CITY Defaults (as defined below), and fails to initiate a cure of such default within that forty-five (45) day period, or such longer period, as may be reasonably determined by STATE, if CITY is diligently working to cure the default.

22.2. As used in this SECTION, the term "Defaults" shall mean:

22.2.1. if CITY terminates the Construction Contract for the PROJECT for a reason other than cause without concurrence by the STATE; or

22.2.2. if CITY has abandoned construction of the PROJECT for a period of forty-five (45) consecutive days for reasons not allowed for in the Construction Contract and without concurrence by the STATE; or

22.2.3. if CITY has not commenced construction of the PROJECT within six months of the demolition of the Alaskan Way Viaduct completion date, as defined in the 2016 CEVP workshop, without concurrence by the STATE; or

22.2.4. if CITY uses the STATE's funds provided under this AGREEMENT for purposes other than those described or allowed in this AGREEMENT not otherwise resolved in Section 5.3, Section 5.6 or the dispute resolution process in Section 19.

22.3. If the CITY Defaults on any default provision in Section 22.2 of this AGREEMENT three (3) separate times within a twelve (12)-month period, then the fourth Default shall be deemed "non-curable" and this AGREEMENT may be terminated by STATE on thirty (30) days written notice.

22.4. If the STATE terminates this AGREEMENT pursuant to this Section then the STATE may at its sole option either: 1) direct the CITY to, using funds from the STATE, close out the PROJECT, render the PROJECT site safe and secure for public use; or 2) hire a contractor to complete the PROJECT at the STATE's costs. Regardless of which option herein it choses, the STATE shall reimburse the CITY, subject to the limitation to Section 5.1, for work completed, materials purchased, and costs-to-date or expenses on the PROJECT, prior to the effective date of termination, subject to any offsets that reflect the increased costs due to re-packaging of the contract, procurement of a new contract, or change orders to remove SEPARATE CITY PROJECTS from the Construction Contract, without modifying the scope of the PROJECT, due to the CITY's Default.

22.4.1. If the STATE chooses option 2 above, the CITY agrees to fully cooperate in the transition of the STATE's administration of the PROJECT, including, but not limited to, the assignment of all contracts and permits to the STATE that are necessary for the STATE to perform the work of the PROJECT.

22.5. If the CITY Defaults under Section 22.2.1 and, after receiving a notice of Default from the STATE, cures the Default by obtaining a replacement contractor, the STATE shall not be responsible for any additional costs associated with the CITY obtaining the replacement contractor, including the costs for preparing a new contract, contract advertisement, and the incremental increase between the original and new bid amount for the remaining scope, caused by the original termination by the CITY.

23. **Termination by CITY**

23.1. The CITY may terminate this AGREEMENT upon forty-five (45) days written notice to STATE, if the STATE Defaults by failing to make any payments due under this AGREEMENT and fails to cure such default within that 45-day period, or such longer period, as may be reasonably determined by CITY, if STATE is diligently working to cure the default.

23.2. In the event that that the Legislature has failed to re-appropriate the funds as defined in Section 26.2, either PARTY may terminate this AGREEMENT upon written notice to the other PARTY.

23.3. If this AGREEMENT is terminated pursuant to this Section 23, then the CITY may, at its sole option, subject to the maximum not to exceed amount in Section 5.1, choose to either 1) receive from the STATE the funds needed to render the PROJECT site safe and secure for public use, close out the project, reimburse costs for work completed, materials purchased, and costs-to-date, and the costs associated with terminating the PROJECT elements of the Construction Contract; or 2) complete the work of the PROJECT at the STATE's expense. In the event that the CITY chooses option 2 herein, the STATE will be responsible for the actual costs incurred by the CITY to complete the work. In the event this AGREEMENT is terminated pursuant to Section 23.2, the STATE's obligations under option 2) is subject to available funds.

24. Termination General Terms

24.1. Acceptance of any default of the terms of this AGREEMENT by the PARTIES shall not operate as a waiver or release of responsibility for any prior or subsequent default.

24.2. The termination of this AGREEMENT as provided for herein does not affect the PARTIES' rights or obligations under any other agreement including but not limited to GCA 6366.

24.3. The remedy afforded the parties in Sections 22.4 and 23.3 is not exclusive and does not limit the remedy or the relief that the PARTIES may be entitled to as a result of the termination or breach of this AGREEMENT.

25. Amendment

25.1. 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.

26. General Provisions

26.1. The PARTIES will perform their obligations under this AGREEMENT in compliance with applicable State law.

26.2. The Alaskan Way Viaduct Program budget includes funding for the PROJECT. The STATE commits to include the PROJECT funding needs in future budget requests. The PARTIES anticipate the Washington State Legislature will continue to re-appropriate funding in subsequent STATE bienniums.

26.3. Each PARTY shall ensure that its employees, agents, and contractors comply with the obligations of this AGREEMENT.

26.4. 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.

26.5. This AGREEMENT, together with the Exhibits incorporated herein, constitute the entire agreement of the PARTIES with respect to the PROJECT, and supersede any and all prior negotiations and understandings with respect hereto.

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

26.7. 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.

26.8. 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.

26.9. 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.

26.10. The PARTIES shall not be deemed to be in Default under this AGREEMENT if performance is rendered impossible by war, riots, or civil disturbances, or by floods or other natural catastrophes beyond the PARTIES' control; the

unforeseeable unavailability of labor or materials; or labor stoppages or slowdowns. This AGREEMENT shall not be terminated or the PARTIES penalized for such noncompliance, provided that each PARTY takes immediate and diligent steps to bring itself back into compliance and to comply as soon as practicable under the circumstances without unduly endangering the health, safety, or integrity of the PARTY's employees or property, or the health, safety, or integrity of the public, street rights-of-way, public property, or private property.

26.11. This AGREEMENT shall be interpreted, construed, and enforced in accordance with the laws of the State of Washington. The venue for any action under this AGREEMENT shall be in the Superior Court for King County, Washington.

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
OFFICE OF THE WATERFRONT

_____

By

Marshall Foster, Director

Date: _____

CITY OF SEATTLE
DEPARTMENT OF TRANSPORTATION

_____

By

Scott Kubly, Director

Date: _____

Exhibit A – PROJECT Description

A-1 – Reimbursable Scope Description (replaces GCB 1308 Exhibit A-2)

A-2 – Reimbursable Scope Graphic (replaces GCB 1308 Exhibit A-2)

Exhibit B –Schedule Milestones

Exhibit C – PROJECT Reimbursable Costs Summary

Exhibit D – Payment Schedule

Exhibit E - Task Order Template

Exhibit F – Designated Representatives