

GCA 6624
INTERLOCAL AGREEMENT
FOR
MAJOR PUBLIC PROJECT CONSTRUCTION VARIANCE
SEATTLE DEPARTMENT OF PLANNING AND DEVELOPMENT

ALASKAN WAY VIADUCT AND SEAWALL REPLACEMENT PROGRAM
SR 99 BORED TUNNEL ALTERNATIVE DESIGN-BUILD PROJECT

THIS AGREEMENT is entered into by and between the City of Seattle, a Washington municipal corporation, hereinafter the "CITY," by and through its Department of Planning and Development, hereinafter "DPD," as represented by the DPD Director, and the State of Washington, Department of Transportation, hereinafter the "STATE," collectively the "PARTIES" and individually the "PARTY."

WHEREAS, the STATE is proposing replacement of the Alaskan Way Viaduct with a bored tunnel, generally following First Avenue between South Royal Brougham Way and Stewart Street and crossing diagonally across the street grid between Stewart Street, and a connection to the existing alignment of SR 99 at Mercer Street. The tunnel will be constructed as part of the State Route (SR) 99 Bored Tunnel Alternative Design-Build Project, hereinafter the "PROJECT"; and

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

WHEREAS, the PROJECT is considered a "major public project" as defined in Seattle Municipal Code "SMC" 25.08.168; and

WHEREAS, RCW 47.01.402 requires the STATE to take the necessary steps to expedite the environmental review and design processes for the PROJECT, including permits required by the SMC for the PROJECT; and

WHEREAS, the STATE submitted a Major Public Project Construction Variance application, hereinafter "MPPCV Application," as required in SMC 25.08.655 for review and approval by the CITY; and

WHEREAS, the STATE's MPPCV Application was submitted to DPD on August 23, 2010; and

WHEREAS, the CITY is required to promulgate rules and regulations governing the application for and granting of noise variances as provided in SMC 25.08 and CITY DPD Director's Rule 3-2009; and

WHEREAS, DPD has retained a consulting firm, hereinafter the "CONSULTANT(S)," to analyze the STATE's MPPCV Application.

NOW, THEREFORE, pursuant to chapter 39.34.080 RCW and in consideration of the terms, conditions, covenants, and performances contained herein, or attached and incorporated and made a part hereof,

IT IS MUTUALLY AGREED AS FOLLOWS:

1. PURPOSE

1.1 DPD staff on behalf of the STATE, and using CONSULTANTS as set forth in this AGREEMENT, agrees to perform and complete the work in support of the evaluation of the STATE's MPPCV Application as described in Exhibit A – Scope of Work for the PROJECT, hereafter referred to as "WORK," attached hereto and by this reference made a part of this AGREEMENT.

1.2 The STATE agrees to reimburse DPD for the WORK as provided in Section 3 of this AGREEMENT and as defined in Exhibit A, Scope of Work, and Exhibit B – Cost Estimate, attached hereto and by this reference made a part of this AGREEMENT.

2. CITY AND STATE RESPONSIBILITIES

2.1 CITY RESPONSIBILITIES

2.1.1 Designated DPD staff will receive and review CONSULTANT(S)' invoices; supervise CONSULTANT(S)' WORK and WORK products; and provide the CONSULTANT(S) with the necessary resources to complete the WORK and deliverables identified in Exhibit A – Scope of Work. The activities to be performed by DPD staff include reviewing the STATE's MPPCV Application, participating in three public meetings (one DPD-led and two STATE-led) regarding the MPPCV application, issuing the MPPCV decision, and coordinating the CONSULTANT(S)' WORK in these efforts.

2.1.2 DPD will work with its CONSULTANT(S) to facilitate and conduct one DPD public meeting for the MPPCV application (the DPD-led public meeting).

2.1.3 One DPD staff member will attend the STATE's two proposed public meetings (the STATE-led public meetings), as described in Section 2.2.2 of this AGREEMENT, and DPD will ensure that one of its CONSULTANT(S)' staff members will attend such meetings.

2.1.4. DPD will work with its CONSULTANT(S) to consolidate public comments generated at the DPD-led public meeting or otherwise provided to the DPD regarding the contents of the MPPCV Application (Consolidated Comments) and DPD will provide one set of such Consolidated Comments to the STATE.

2.1.5 DPD will provide monthly progress reports to the STATE that include working drafts, WORK milestones achieved, and other jointly agreed-upon deliverables as described in Exhibit A – Scope of Work.

2.1.6 When the STATE's MPPCV Application is deemed complete by DPD and all requirements of SMC 25.08 and Director's Rule 3-2009 have been met, DPD will issue a final MPPCV to the STATE for construction of the PROJECT.

2.2 STATE RESPONSIBILITIES

2.2.1 The STATE will respond to one set of Consolidated Comments provided by DPD as set forth above regarding the contents of, and public comments on, the MPPCV Application. Upon review of such Consolidated Comments, the STATE will provide appropriate revisions to its MPPCV application.

2.2.2 The STATE will facilitate and conduct two public meetings regarding the MPPCV Application separately and independently from the DPD-led public meeting.

2.2.3 The STATE will prepare for and attend the DPD-led public meeting for the MPPCV application.

2.2.4 The STATE will modify the MPPCV Application as necessary to address public comments raised at the two STATE-led public meetings and the one DPD-led public meeting.

2.2.5 The STATE will issue a notice to proceed to its Design-Build contractor for the WORK related to the MPPCV Application no sooner than thirty (30) calendar days following issuance of a final MPPCV decision that deems the STATE's MPPCV Application is complete.

3. PAYMENT

3.1 The STATE, in consideration of the faithful performance of the Services to be provided by DPD and its CONSULTANT(S) as described in Exhibit A – Scope of Work, agrees to reimburse DPD for actual direct and related indirect costs of the WORK to a not-to-exceed maximum amount of Twenty Three Thousand Dollars (\$23,000), as established in this AGREEMENT.

3.2 An itemized estimate of costs for Services to be performed by DPD and its

CONSULTANT(S) at the STATE's expense is marked Exhibit B – Cost Estimate, and is attached hereto and by this reference made a part of the AGREEMENT.

3.3 Upon request of DPD and upon DPD's submission to the STATE of invoices and supporting materials as deemed appropriate by the STATE, partial payments shall be made by the STATE to DPD, to cover DPD's costs incurred. Invoices through the end of the calendar month shall be submitted to the STATE no later than sixty (60) calendar days following the end of the month in which materials and equipment were purchased or Services performed. Payments are not to be more frequent than one (1) per month. It is agreed that any such partial payment will not constitute agreement as to the appropriateness of any item and that, at the time of the final billing all required adjustments will be made and reflected in a final payment.

3.4 DPD shall submit invoices to the STATE detailing the WORK accomplished during the current billing period, as well as a summary of total costs billed to date. DPD will provide the STATE with itemized invoices that include a reference to the title of this AGREEMENT (Interlocal Agreement for MPPCV Application, SDPD), the AGREEMENT number (GCA 6624) and identification of the name of the PROJECT (SR 99 Bored Tunnel Alternative Design-Build Project). The invoices shall summarize all associated CONSULTANT(S) fees and expenses, as well as DPD staff time and expenses. Each progress and final billing shall include a transmittal letter that outlines WORK performed during the current billing period under this AGREEMENT, including the following coding and contact information.

Expenditure Coding:

BU	Description	Fund	Org	Activity
DPD	Noise Variance Application	15700	U2350	U190 - Noise Monitoring U192 - Noise Variance U218 - Noise Plan Review
	Land Use Services	15700	U2241	U371 - Correction Review (Discretionary)

Revenue Coding:

BU	Description	Fund	Organization	Account	Activity	Project
DPD	Noise Variance Application	15700	U2000	444590	UNOISEV	UNOISEV
	Land Use Correction Review	15700	U2000	422115	UMUPOTHR	UMUPOTHR

Contact Information:

DPD Project Manager		Washington Dept. of Transportation Project Manager	
Victor G. Keys	(206) 684-8449	Brian Nielsen, P.E.	(206) 805-5426
DPD Accounting Contact		Accounts Payable	
Ted Castro 700 Fifth Avenue; Ste 1800 Seattle, WA 98204	(206) 684-7716	Laurie Macey 999 Third Ave.; Ste 2424 Seattle, WA 98104	(206) 805-2849

DPD 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 STATE upon request.

3.5 To ensure payment, DPD will mail via United States Postal Service invoices and appropriate supporting materials to:

Alaskan Way Viaduct and Seawall Replacement Program
Accounts Payable
999 Third Avenue, Suite 2424
Seattle, WA 98104

3.6 The STATE agrees to make payment to DPD within thirty (30) calendar days after its receipt of an appropriate invoice and appropriate supporting materials from DPD.

3.7 If there is a scope change that results in a cost increase for the WORK of more than fifteen (15) percent from that estimated in Exhibit B – Cost Estimate, the PARTIES will consider an amendment to this AGREEMENT to document the change in scope and cover the increase in cost, and the STATE agrees to make payment for said increase in cost, provided that if such increase in cost results in exceeding the maximum amount reimbursable under this AGREEMENT as set forth in Section 3.1, if the STATE concurs with the increased cost(s) the Parties shall amend the AGREEMENT to increase the maximum amount reimbursable under the AGREEMENT. In the event that the STATE does not concur with the increased additional cost(s), the STATE retains the right to cancel the WORK and will only be responsible for appropriate costs incurred to date and appropriate non-cancellable items.

3.8 DPD agrees to submit a final invoice to the STATE within sixty (60) calendar days after DPD and its CONSULTANT(S) have completed the WORK. At the time of final billing, all required adjustments will be made and reflected in the final payment. In the event that such final review or audit reveals overpayment to DPD and its CONSULTANT(S) or under billings to the STATE, DPD and its CONSULTANT(S) agree to refund any overpayment to the STATE within thirty (30) calendar days after DPD and its CONSULTANT(S) receipt of an invoice and the STATE agrees to reimburse the under billed amount to DPD and its CONSULTANT(S) within thirty (30) calendar days after the STATE's receipt of an invoice.

4. AMENDMENT

4.1 This AGREEMENT sets forth the entire agreement between the PARTIES with respect to the subject matter hereof and understandings, agreements, representations not contained in this AGREEMENT shall not be binding on either PARTY. Either PARTY may request changes to the provisions contained in this AGREEMENT. Such changes that are mutually agreed upon shall be 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.

5. TERM/TERMINATION

5.1 The term of this AGREEMENT shall terminate December 31, 2011, or earlier if agreed to in writing by the PARTIES, except as set forth below in this section. The term of this AGREEMENT may be modified and continued by amendment for WORK beyond this date at the discretion of the PARTIES.

5.2 Either PARTY may terminate this AGREEMENT at any time in the event the other PARTY fails to perform a material obligation of this AGREEMENT or fails to perform any of the requirements of this AGREEMENT, including but not limited to if either PARTY fails to make reasonable progress on the WORK or other violation of this AGREEMENT that endangers substantial performance of the WORK. The PARTIES shall serve written notice of a PARTY's intention to terminate this AGREEMENT setting forth in detail the reasons for such termination. The PARTY receiving such notice of intent to terminate shall be given the opportunity to remedy the default within fifteen (15) calendar days of receipt of such notice. If the default is not cured within the designated time period, this AGREEMENT may be terminated immediately by written notice of the aggrieved PARTY to the other.

5.3 The STATE may terminate this AGREEMENT for convenience and without cause upon thirty (30) days notice to CITY if the requisite federal and/or state funds become unavailable through failure of appropriation or otherwise.

6. AGENCY CONTACTS

6.1 All contact between the PARTIES, including, but not limited to AGREEMENT administration, will be between the representatives of each Party or their designee as follows:

STATE	CITY
Brian Nielsen, P.E. Design-Build Project Engineer	Victor G. Keys Project Manager
999 Third Avenue, Suite 2424 Seattle, WA 98104	PO Box 34019 Seattle, WA 98124-4019
Phone: (206) 805-5426	Phone: (206) 684-8449
Email: NielseB@wsdot.wa.gov	Email: vic.keys@seattle.gov

7. NOTIFICATION

7.1 Any notice required pursuant to this AGREEMENT shall be in writing and shall be sent postage prepaid by U.S. Mail, return receipt requested, to the following addresses unless otherwise indicated in writing by the PARTIES to this AGREEMENT:

To the STATE: Project Engineer
Alaskan Way Viaduct & Seawall Replacement Program
Washington State Dept. of Transportation
999 Third Avenue, Suite 2424
Seattle, WA 98104

To the CITY: Project Manager
Seattle Department of Planning and Development
700 5th Avenue, Suite 2000
P.O. Box 34019
Seattle, WA 98124-4019

8. INDEMNIFICATION

8.1 Each PARTY to this AGREEMENT, shall protect, defend, indemnify, and save harmless the other PARTY, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs (including reasonable attorney's fees or costs), claims, judgments, and/or awards of damages (both to persons and/or property), arising out of, or in any way resulting from, each of the PARTY's own negligent acts or omissions with respect to the provisions of this AGREEMENT. No PARTY will be required to indemnify, defend, or save harmless the other PARTY if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the sole negligence of the other PARTY. Where such claims, suits, or actions result from the concurrent negligence of the PARTIES, or involves those actions covered by RCW 4.24.115, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the PARTY's own negligent acts or omissions. Each PARTY waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the other PARTY and its agencies, officials, agents or employees.

8.2 The indemnification obligation described in this section shall survive the termination of this AGREEMENT.

9. DISPUTES

9.1 The designated representatives herein under Section 6 of this AGREEMENT, AGENCY CONTACTS, shall use their best efforts to resolve disputes between the PARTIES. If these individuals are unable to resolve a dispute, the responsible project directors of each PARTY shall review the matter and attempt to resolve it. If they are unable to resolve the dispute, the matter shall be reviewed by the department directors of each PARTY or designee. The PARTIES agree to exhaust each of these procedural steps before seeking to resolve disputes in a court of law or any other forum.

10. VENUE

10.1 This AGREEMENT shall be deemed to be made in the County of King, State of Washington, and the legal rights and obligations of the STATE and CITY shall be determined in accordance with the laws of the State of Washington. All legal actions in connection with this AGREEMENT shall be brought in the superior court situated in the County of King, State of Washington, and each PARTY shall be liable for its own attorneys' fees and costs.

11. RECORDS RETENTION AND AUDIT

11.1 During the progress of the WORK and for a period not less than six (6) years from the date of the final payment to the CITY, the records and accounts pertaining to the Services under this AGREEMENT and accounting thereof are to be kept available for inspection and audit by the city, state and/or the Federal Government, and copies of all records, accounts, documents, or other data pertaining to this AGREEMENT will be furnished upon request. The STATE and CITY shall have full access to and right to examine and copy said records, during normal business hours and as often as it deems necessary. The Parties agree that the Services performed herein are subject to audit by either or both Parties.

12. AUTHORIZED SIGNATURES

12.1 The undersigned acknowledge that they are authorized to execute this Agreement and bind their respective agencies to the obligations set forth herein.

IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT as of the last date written below.

CITY OF SEATTLE
DEPARTMENT OF PLANNING AND
DEVELOPMENT

Robert P. O. Operations Director
By for
Diane M. Sugimura
Director
City of Seattle, Department of Planning
and Development

11-19-10
Date

STATE OF WASHINGTON
DEPARTMENT OF TRANSPORTATION

Ron Paananen
By
Ron Paananen
Program Administrator
Alaskan Way Viaduct and Seawall and
Replacement Program

11/23/2010
Date

APPROVED AS TO FORM

Susan Cruise
By
Susan Cruise
Assistant Attorney General

November 8, 2010
Date

GCA 6624
INTERLOCAL AGREEMENT
FOR
MAJOR PUBLIC PROJECT CONSTRUCTION VARIANCE
SEATTLE DEPARTMENT OF PLANNING AND DEVELOPMENT

ALASKAN WAY VIADUCT AND SEAWALL REPLACEMENT PROGRAM
SR 99 BORED TUNNEL ALTERNATIVE DESIGN-BUILD PROJECT

EXHIBIT A
Scope of Work

A. Purpose:

DPD and its CONSULTANT(S) and the STATE will perform the following WORK in support of the evaluation of the STATE's Major Public Project Construction Variance (MPPCV) Application.

B. Scope of Work:

DPD will ensure the following:

1. That the technical noise review and analysis CONSULTANT(S) retained by DPD to review the MPPCV Application for the PROJECT will evaluate submitted documents, verify their validity, and write an analysis on the content of the MPPCV Application for the STATE.
2. That its CONSULTANT(S) will act as an expert in meetings to represent the position that DPD and other CITY agencies hold in decisions regarding the MPPCV Application.
3. That its CONSULTANT(S) will review the MPPCV Application for a variance from nighttime noise limits as construction activities, in some areas, may not meet the minimum standards set forth in Seattle's Noise Control Code Chapter SMC 25.08.

C. MPPCV Application, Public Meeting Facilitation Scope of Work, Noise Variance Decision and Deliverables

DPD will perform tasks related to the PROJECT and provide deliverables for such tasks, and ensure that the CONSULTANT(S) perform tasks related to the PROJECT and provide deliverables for such tasks, as follows:

a. Task I: Review of the MPPCV Application

1. DPD will review the most recent draft of the MPPCV Application, including the Noise Management and Mitigation Plan, and will ensure that its CONSULTANT(S) reviews such Application and Plan. The review will cover the disclosure of potential noise impacts, methodologies for evaluating sound levels, selection criteria for identifying impacts, and noise mitigation plans.
2. DPD will require its CONSULTANT(S) to submit a written report to DPD analyzing the information contained in the MPPCV Application pursuant to SMC 25.08. The document will also contain verification or refutation of the noise measurements submitted by the STATE within the MPPCV Application.
3. DPD will require its CONSULTANT(S) to conduct site visits to the north and south portal locations to identify surrounding land uses that may be affected by project-related noise and confirm the selection of sound analysis locations in the STATE's MPPCV Application.

Deliverables:

1.1 DPD will require its CONSULTANT(S) to provide to DPD a list of available noise mitigation strategies or tools for input into the variance decision to be made by DPD based on the CONSULTANT(S) experience and expertise.

1.2 DPD will provide to the STATE one set of consolidated comments provided by DPD and its CONSULTANT(S) regarding the contents of the MPPCV Application and comments from DPD's public meeting.

b. Task II: Public Meeting Process

1. DPD will engage a public facilitation CONSULTANT(S) to facilitate one 2-hour DPD-led public meeting and to attend two STATE public outreach meetings for the MPPCV application.
2. For the DPD-led public meeting, DPD will ensure that its CONSULTANT(S) will review background materials, and provide input to DPD regarding the draft agenda and ground rules/discussion guidelines.
3. DPD will ensure that its CONSULTANT(S) will meet with DPD's project manager and the STATE's project engineer and other STATE designated staff in a 1 1/2 hour work session to review meeting goals and objectives of the DPD-led public meeting and to finalize the agenda and discussion guidelines/ground rules. The PARTIES assume that the session will be at the Seattle Municipal Tower and includes CONSULTANT(S) travel time.
4. Prior to the DPD-led public meeting, DPD will ensure that its CONSULTANT(S) participate in one half-hour pre-meeting and one, 1-hour debrief session with DPD and the STATE.

5. DPD will ensure that its CONSULTANT(S) review written comments received by DPD in response to public notice of the MPPCV Application.

Deliverable

1.1 DPD will require the CONSULTANT(S) to prepare a memorandum summarizing the content of public testimony and highlight concerns that may require additional analysis on the part of the STATE or DPD's CONSULTANT(S). DPD will deliver the memorandum referred to in this section to the STATE.

c. Task III: Preparation of Noise Variance Decision

1. DPD will ensure that the CONSULTANT(S) will participate in a meeting with DPD to coordinate the CONSULTANT(S) assistance in preparing DPD's decision on the MPPCV Application. Specifically, DPD will ensure that the CONSULTANT(S) will recapitulate considerations identified in the public meeting and comment process that are relevant to the decision, and discuss noise mitigation requirements.
2. DPD will ensure that its CONSULTANT(S) and the STATE review drafts of DPD's MPPCV Application decision. DPD will require the CONSULTANT(S) to provide technical assistance to DPD in the form of telephone conversations, e-mail messages, or written memoranda during the preparation of the final draft.

D. DPD will perform tasks related to the PROJECT and provide deliverables for such tasks as follows:

a. Task IV: DPD Staff Support

1. DPD staff will carry out various tasks associated with the STATE MPPCV Application for the PROJECT using material resources and incurring postage costs as necessary.
2. DPD staff will receive and review CONSULTANT(S) invoices; supervise CONSULTANT(S)' WORK and WORK products; and provide the CONSULTANT(S) with the necessary resources to complete the WORK and identified deliverables. These activities to be performed by DPD include reviewing the STATE's MPPCV Application, participating in three public meetings (one DPD-led and two STATE-led) regarding the MPPCV application, issuing the MPPCV decision, and coordinating the CONSULTANT(S)' WORK in these efforts.
3. DPD staff will comply with public-disclosure and the Open Public Meetings Act requirements, pursuant to RCW 42.30, by advertising, in various media, the time and location of the DPD-led public meeting and by posting in various media the results of decisions.

Deliverable

1.1 DPD will provide monthly progress reports to the STATE that include working drafts, milestones completed and other jointly agreed-upon deliverables. Progress reports will include invoices to the STATE for DPD staff and CONSULTANT(S) services performed.

Schedule:

The PARTIES agree to adhere to the schedule set forth below for the following tasks and deliverables:

Tasks and Deliverables	Anticipated Date
WSDOT submits MPPCV application package to DPD	August 2010
DPD provides initial comments on MPPCV application package	November 2010
WSDOT leads two public meetings (one north and one south)	January 2011
WSDOT revises MPPCV application package, if necessary, and submits to DPD	February 2011
DPD confirms complete application	March 2011
DPD publishes notice of application/DPD-led public meeting notice in DPD's Land Use Info Bulletin	March 2011
DPD mails notice of application/DPD-led public meeting to properties within at least 300 feet from noise source(s)	March 2011
DPD publishes public notice of the application in community newspaper	March 2011
14-day public comment period	Ends March or April 2011
DPD holds a DPD-led public meeting	April 2011
DPD Administrator issues MPPCV decision	June 2011
It is anticipated that the WSDOT Design-Builder may start work per MPPCV	July 2011

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**ALASKAN WAY VIADUCT AND SEAWALL REPLACEMENT PROGRAM
 SR 99 BORED TUNNEL ALTERNATIVE DESIGN-BUILD PROJECT**

**EXHIBIT B
 COST ESTIMATE
 WORK BY DPD and DPD's CONSULTANT(S)**

Task	Senior Consultant \$130.00/hr	Principle Consultant \$155.00/hr	DPD Staff Support \$150.00/hr¹	Total Costs
Consultant Services				
Task I: Review	34	2		\$4,730
Task II: Public Meetings	34			\$4,420
Task III: Variance Decision	20			\$2,600
DPD Services				
Task IV: DPD Staff Support			45	\$6,750
Material Resources: Translator Fee, Court Recorder Fee, Meeting Location Fee, Parking Fees, Misc. ²				\$1,500
SubTotal	88	2	45	\$20,000
15% Contingency				\$3,000
MPPCV AGREEMENT TOTAL				\$23,000

¹The DPD staff support hourly rate is based on DPD's Land Use Notice Chart/Rate Table. The rate of \$150 is based on an average of three DPD fees: \$177, \$166, and \$102 (rounding up to \$150/hr).

²The material resources estimate is based on DPD's experience with previous Noise Variance Applications issued to projects of similar magnitude and geography.