

EXHIBIT A

**GCB 1140
SR 99**

**ALASKAN WAY VIADUCT REPLACEMENT PROGRAM
Funding Agreement**

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10 **THIS AGREEMENT** (“Agreement”) for the Alaskan Way Viaduct Replacement
11 Program (“PROGRAM”) is made and entered into between the State of Washington,
12 hereinafter the “STATE,” and the Port of Seattle hereinafter the “PORT,” collectively the
13 “Parties” and individually the “Party.”

14
15 WHEREAS, in the 1950s, the City of Seattle (“City”) and the Washington State
16 Department of Transportation jointly designed and built the Alaskan Way Viaduct to
17 accommodate passenger and freight mobility into the foreseeable future; and

18
19 WHEREAS, the central waterfront section of the Alaskan Way Viaduct passes through
20 and is adjacent to downtown Seattle’s urban core and the Seattle waterfront; and

21
22 WHEREAS, the Duwamish and Ballard-Interbay industrial areas in Seattle are served
23 by the SR 99 corridor and constitute a significant portion of Seattle’s maritime and
24 industrial sector jobs and annual city-wide revenue; and

25
26 WHEREAS, in 2001 the Nisqually earthquake damaged the Alaskan Way Viaduct; and

27
28 WHEREAS, the Alaskan Way Viaduct is at risk of sudden and catastrophic failure in an
29 earthquake and is nearing the end of its useful life; and

30
31 WHEREAS, a failure to maintain the Alaskan Way Viaduct capacity would result in
32 unacceptable congestion for freight and other traffic within and between Seattle’s harbor
33 and industrial areas; and

34
35 WHEREAS, in March 2007, the Washington State Governor, the King County
36 Executive, and the Mayor of Seattle pledged to advance a series of key SR 99 projects
37 (Moving Forward Projects) that will facilitate the removal and/or repair of key portions
38 of SR 99, including the Yesler Way Vicinity Stabilization Project, the Electrical Line
39 Relocation project, Battery Street Tunnel Fire and Life Safety Upgrades, SR 99 Lenora to
40 Battery Street Tunnel Improvements, the SR 99 South Holgate Street to South King
41 Street Viaduct Replacement Project, Transit Enhancements and Other Improvements; and

42
43 WHEREAS, in January 2009, the Governor of Washington State, the Mayor of Seattle
44 and the King County Executive jointly recommended replacing the Alaskan Way Viaduct
45 with a bored tunnel beneath downtown Seattle in conjunction with improvements in

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1 surface streets and transit service, and Port of Seattle Chief Executive Officer, Tay
2 Yoshitani, endorsed the deep-bore tunnel concept; and

3
4 WHEREAS, the PROGRAM includes system-wide projects led by the Washington State
5 Department of Transportation (such as Holgate to King viaduct replacement, Atlantic
6 Street overcrossing, SR519 Phase 2, New Alaskan Way, Connection to Elliott
7 Avenue/Western Avenue, SR 99 Bored Tunnel, new connections at the north and south
8 portals), King County (such as South End Transit, North End Transit and other transit
9 investments), the City (such as Spokane Street Viaduct, Mercer Corridor, Central seawall
10 replacement and First Avenue Street car study) and the PORT (East Marginal Way Grade
11 Separation), anticipated to total \$4.2 billion; and

12
13 WHEREAS, the Washington State Legislature passed ESSB 5768 and the Governor
14 signed the bill into law designating and funding the SR 99 Bored Tunnel Project as the
15 replacement for the Viaduct; and

16
17 WHEREAS, the STATE executed a design-build contract with Seattle Tunnel Partners in
18 January 2011 for the design and construction of the SR 99 Bored Tunnel Project as a
19 replacement for the Alaskan Way Viaduct as part of the PROGRAM; and

20
21 WHEREAS, the STATE issued a Supplemental Draft Environmental Impact Statement
22 meeting the requirements of the National Environmental Policy Act and State
23 Environmental Policy Act in 2010, issued a Final Supplemental Environmental Impact
24 Statement and Section 4(f) Evaluation in July 2011 and issued a Record of Decision in
25 August 2011 for the SR 99 Bored Tunnel Project; and

26
27 WHEREAS, as outlined in the Parties' prior Memorandum of Agreement No. GCA 6444;
28 the STATE and the PORT are committed to a replacement for the Viaduct that will
29 improve transportation access to and along the Seattle waterfront, including access for
30 over eight million annual ferry riders; ensure connectivity and capacity between the
31 Ballard-Interbay and Duwamish industrial areas and Seattle-Tacoma International
32 Airport, including a corridor for oversized vehicles; provide access to port cargo, fishing
33 and cruise facilities; minimize construction disruption; and increase opportunities for the
34 public and freight to access the shoreline and waterfront; and

35
36 WHEREAS, the PORT's international trade, aviation, economic development, tourism
37 and passenger terminal activities are vital to the economic growth of the region and the
38 state, supporting nearly 194,000 jobs in the region, and the STATE and the PORT
39 support infrastructure improvements necessary to achieve growth in trade and jobs and
40 increase the region's competitiveness in global markets; and

41
42 WHEREAS, the Viaduct corridor is crucial to the region's freight mobility because it
43 provides for 1.5 million freight trips annually by grade-separation of through traffic, rail
44 lines and industrial corridors near the Port's marine terminals, which support the
45 movement of \$30 billion in international and domestic cargo through the Port each year;
46 and

1
2 WHEREAS, the STATE has designed and is constructing improvements, also known as
3 AWW S Holgate to S King St Stage 3 – Atlantic St Bypass Project, to the surface street
4 system in the vicinity of the corridor segment from S. Holgate Street to S. King Street
5 that are designed to increase access to Terminal 46 and other port waterfront facilities.
6 This project provides a new overcrossing at South Atlantic Street which will significantly
7 improve freight hauling efficiency between the Port and Interstate 5 and Interstate 90,
8 allowing trucks to bypass the frequent and lengthy railroad track blockages across South
9 Atlantic Street; and

10
11 WHEREAS, the STATE’s contractor is designing and will construct the SR 99 Tunnel
12 Alternative, Tunnel Design Build (also known as, the SR 99 Bored Tunnel Project), and
13 the PORT has reviewed its design scope and determined that, when completed, it will
14 offer a direct benefit to the PORT by maintaining throughput capacity in the SR 99
15 corridor; keeping additional traffic off I-5; and minimizing construction disruption to
16 regional traffic, industrial and maritime businesses, and PORT facilities; and

17 WHEREAS, the STATE and the City are designing and will construct other projects
18 included in the PROGRAM that will maintain and improve traffic flow along the Seattle
19 waterfront and between the Seattle waterfront and STATE highways; and,
20

21 WHEREAS the STATE has developed a plan for delivering the PROGRAM that
22 includes: (i) the SR 99/Tunnel Alternative, South Access Connection Project that will
23 facilitate freight movement to and from PORT container terminals along East Frontage
24 Road, South Atlantic Street, South Royal Brougham Way, Alaskan Way South, East
25 Marginal Way South, and South Dearborn Street; and (ii) the SR 99/Tunnel Alternative,
26 North Access Connection Project that will ensure access to PORT cargo, fishing and
27 cruise facilities via the tunnel or north end arterials, including Sixth Avenue North, North
28 Republican Street, Dexter Avenue North, Aurora Avenue, and two-way North Mercer
29 Street; and,
30

31 WHEREAS, the STATE has proposed that the PORT assist with the funding of the SR 99
32 Tunnel Alternative, Tunnel Design Build; the SR 99/Tunnel Alternative, South Access
33 Connection Project; and the SR 99/Tunnel Alternative, North Access Connection Project
34 hereinafter identified individually as the “PROJECT” and collectively as the
35 “PROJECTS” and the PORT deems the PROJECTS to provide a direct benefit to the
36 PORT; and
37

38 WHEREAS, the STATE will construct the PROJECTS using the design-build and
39 design-bid-build methods of project delivery; and
40

41 WHEREAS, the Parties executed Memorandum of Agreement No. GCA 6444, Alaskan
42 Way Viaduct and Seawall Replacement Program Bored Tunnel Alternative on April 12,
43 2010 in which the PORT agreed, to the extent feasible and authorized by the Port
44 Commission, to fund or procure funding within the life of the PROGRAM not to exceed
45 Three Hundred Million Dollars (\$300,000,000) toward the STATE's PROGRAM elements
46 with the majority of the PORT’s contribution occurring between 2016 and 2018; and

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1
2 WHEREAS, the PORT allocated Twenty-Five Million Dollars (\$25,000,000) of up to
3 Three Hundred Million Dollars (\$300,000,000) for funding of transportation projects
4 serving the SR 99 system; and
5

6 WHEREAS, the Parties agree that the PORT has contributed Nineteen Million Dollars
7 (\$19,000,000) of the Twenty-Five Million Dollars (\$25,000,000) towards funding of the
8 East Marginal Way Overpass, Spokane Street widening, Duwamish Intelligent
9 Transportation System and the SR 519 South Seattle Intermodal Access Project Phase 2
10 projects that complement the PROGRAM and provide capacity for future growth and
11 improved safety; and
12

13 WHEREAS, the STATE has requested that the PORT's contribution toward funding of
14 the PROJECTS begin on May 1, 2015; and
15

16 WHEREAS, the PORT would incur additional costs associated with issuing bonds prior
17 to 2016; and
18

19 WHEREAS, the PORT has incurred additional costs associated with staffing
20 requirements for assisting the STATE in developing the design, coordinating construction
21 and other activities required to successfully complete the PROGRAM, including the
22 PROJECTS; and
23

24 WHEREAS, the Parties wish to provide the terms and conditions of the PORT's future
25 contribution towards funding the PROJECTS;
26
27

28 **NOW, THEREFORE**, by virtue of RCW 53.08.330, RCW 53.08.340 and RCW
29 47.28.140 and in consideration of the terms, conditions, covenants and performances
30 contained herein, or attached and incorporated and made a part hereof, the Parties agree
31 as follows:
32

33 **1.0 STATE RESPONSIBILITIES**

34
35 1.1 The STATE will ensure that the PROGRAM will be designed and constructed to
36 facilitate efficient movement of freight and other traffic on the west corridors of the
37 Seattle transportation system between the Duwamish and Ballard-Interbay neighborhoods,
38 including maintaining access to fishing, cruise and other PORT facilities. The STATE
39 further agrees that, at a minimum, the reconstruction of the surface streets on the central
40 waterfront segment of the PROGRAM will include two lanes in each direction with left
41 turn lanes at intersections between Pine Street and the Colman Dock, and three lanes in
42 each direction south of Colman Dock with left turn lanes where needed.
43

44 1.2 The STATE will ensure that: (i) all environmental review and documentation has
45 been successfully completed and approved prior to construction of the tunnel, north portal,
46 south portal and central waterfront surface street projects; (ii) designs of PROJECTS are

1 consistent with the STATE's and PORT's needs and provide the PORT with the direct
2 benefit that has been committed to by the Parties; (iii) the PORT has the opportunity to
3 review and comment on channelization plans prior to construction of each project in the
4 PROGRAM; (iv) it coordinates with the PORT prior to making any changes to
5 channelization plans that have been reviewed and commented on by the PORT; (v) all
6 costs of the PROJECTS funded with proceeds from PORT issued bonds meet the
7 requirements of the Internal Revenue Service ("IRS") for the use of tax exempt bond
8 proceeds; and (vi) that the PORT continues as a member of Maintenance of Traffic Task
9 Forces associated with construction of the PROJECTS.

12 **2.0 PORT RESPONSIBILITIES**

14 2.1 The PORT agrees to contribute Two Hundred Seventy-five Million Dollars
15 (\$275,000,000) solely towards the costs of constructing the PROJECTS, *less* Seven
16 Million Three Hundred Thousand Dollars (\$7,300,000) representing PORT costs for work
17 performed by PORT staff that is related to the PROGRAM, including the PROJECTS,
18 plus additional PORT costs associated with issuing bonds earlier than 2016 to meet its
19 obligations under Section 3.0, for a total PORT contribution not to exceed Two Hundred
20 and Sixty-seven Million, Seven Hundred Thousand Dollars (\$267,700,000).

22 2.2 Subject to this Section 2, the PORT agrees to fund construction for the
23 PROJECTS, including mobilization, temporary erosion and sedimentation control,
24 earthwork, pavement, drainage, structures, and utilities in the amounts and according to
25 the schedule as described in Section 3.0 - Payment.

27 2.3 In addition to the total PORT contribution set forth in Section 2.1, the STATE
28 may, by no later than 2018, request an additional PORT contribution of up to Six Million
29 Dollars (\$6,000,000) to assist in funding transportation projects identified by the STATE
30 as serving the SR 99 system. The Parties acknowledge and agree that PORT shall
31 determine in its sole and absolute discretion whether and how much to contribute under
32 this Section and, if so, how it will allocate any such contribution among the projects
33 identified by the STATE. Any additional PORT contribution under this Section 2.3 shall
34 be documented by attaching the minutes of the Port Commission authorizing such
35 contribution as Supplement 1 to this Agreement, thereby incorporating it herein without
36 further amendment.

38 2.4 The Port shall follow all requirements, included but not limited to I.R.S.
39 regulations, associated with bond proceeds arbitrage.

42 **3.0 PAYMENT**

44 3.1 Subject to Section 2, the PORT agrees to make payments to the STATE in the
45 amounts and according to the schedule set forth below:

1 a. Upon receiving the STATE's request for payment no later than April 1, 2015,
2 the PORT shall make a lump sum payment of One Hundred Twenty Million Dollars
3 (\$120,000,000) no later than May 1, 2015.

4 b. Upon receiving the STATE's request for payment no later than
5 April 1, 2016, the PORT shall make a lump sum payment of One Hundred
6 and Forty-seven Million Dollars (\$147,700,000) no later than May 1,
7 2016.

8
9 3.2 All requests for payment by the STATE under Section 3.1 shall include copies
10 of contractor progress payments that support reimbursement to the STATE for actual
11 construction costs incurred for the PROJECTS.

12
13 3.3 In the event the PORT commits to an additional contribution under Section 2.3,
14 all requests for payment by the STATE therefor shall include copies of contractor
15 progress payments that support reimbursement to the STATE for actual construction
16 costs incurred for the project(s) identified in Supplement 1 to this Agreement.

17
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19 **4.0 MODIFICATIONS TO FUNDING OR SCOPE OF THE PROJECTS AND**
20 **AMENDMENT**

21
22 4.1 The Parties may adjust the PORT's contributions to the Projects under Section 2.0
23 by written amendment reflecting changes to the Port's timing and contribution, except as
24 otherwise set forth in Section 2.3. In fulfilling its obligations under this Agreement, the
25 Port will at all times retain its duty to act in the best interests of the Port.

26
27 4.2 Either Party may request changes to the provisions contained in this Agreement.
28 Such changes shall be mutually agreed upon and incorporated by written amendment to
29 this Agreement, except as otherwise set forth in Section 2.3. No variation or alteration of
30 the terms of this Agreement shall be valid unless made in writing and signed by
31 authorized representatives of the Parties hereto, except as otherwise set forth in Section
32 2.3.

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35 **5.0 NOTIFICATION**

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37 5.1 Any notice required or permitted to be given pursuant to this Agreement shall be
38 in writing, and shall be sent postage prepaid by U.S. Mail, return receipt requested, to the
39 following addresses unless otherwise indicated by the Parties to this Agreement:

40
41 To the STATE: Linea Laird, P.E.
42 Program Administrator
43 Washington State Dept. of Transportation
44 999 Third Avenue, Suite 2424
45 Seattle, WA 98104
46

July 30, 2013

1 To the PORT: Tay Yoshitani
2 Chief Executive Officer
3 Port of Seattle
4 P. O. Box 1209
5 Seattle, WA 98111
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8 **6.0 RECORDS RETENTION AND AUDIT**
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10 6.1 The PORT or its designee shall have the right to inspect, audit and/or copy
11 records supporting or pertaining to the PORT's funding assistance to the PROGRAM and
12 accounting thereof for the purpose of determining anything that is of consequence to this
13 Agreement.
14

15 6.2 The STATE shall retain the records pertaining to or supporting the PORT's
16 funding assistance to the PROGRAM for the periods required below. The STATE shall
17 also ensure that relevant wage, payroll and cost records of all contractors, subcontractors
18 and suppliers at all tiers shall be retained and open to similar inspection or audit for the
19 periods required below:

- 20 a. During the progress of work related to the PROJECTS funded by the PORT;
- 21 b. For a period of not less than six (6) years after the PORT's final payment to
22 the STATE under this Agreement; provided that if tax exempt bonds are used to
23 provide funding assistance to the PROGRAM, the STATE shall retain records
24 necessary to address an IRS audit for the period required under applicable IRS
25 regulations; and
- 26 c. If any claim, audit, or litigation arising out of, in connection with, or related to
27 this Agreement is initiated, all documents and records shall be retained until such
28 claim, audit or litigation involving the records is resolved or completed,
29 whichever occurs later.
30

31 6.4 The STATE, its contractors, subcontractors and suppliers shall make a good faith
32 effort to cooperate with the PORT and its designees when the PORT gives notice of its
33 need to inspect or audit records referenced in this Section 6. Cooperation shall include
34 assistance as may be reasonably required in the course of inspection or audit, including
35 reasonable access to personnel with knowledge of the contents of the records being
36 inspected or audited so that the information in the records is properly understood by the
37 persons performing the inspection or audit. Cooperation shall also include establishing a
38 specific mutually agreeable timetable for making the records available for inspection by
39 the PORT and its designee. Unless otherwise agreed, if the STATE, its contractor,
40 subcontractors and suppliers cannot make at least some of the relevant records available
41 for inspection within twenty-eight (28) calendar days of the PORT's written request,
42 cooperation will necessarily entail providing the PORT with a reasonable explanation for
43 the delay in production of records.
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1 **7.0 DISPUTE AVOIDANCE AND RESOLUTION**

2
3 7.1 Designated Representatives:

4
5 PORT: Anne Porter
6 Capital Project Manager V
7 Port of Seattle
8 Capital Development Division
9 P. O. Box 1209
10 Seattle, WA 98104
11 206-787-3133

12
13 STATE: Todd V. Trepanier
14 Deputy Administrator – Operation
15 Alaskan Way Viaduct Replacement Program
16 999 Third Avenue, Suite 2200
17 Seattle, WA 98104
18 206-805-2813
19

20 7.2 The designated representatives herein under section 7.1, shall use their best efforts
21 to resolve disputes between the Parties. If the designated representatives are unable to
22 resolve a dispute, then the responsible project managers or directors for each Party shall
23 review the matter and meet as soon as possible, but in no case later than ten (10) business
24 days after request by either Party, to attempt to resolve it. If the project managers or
25 directors are unable to resolve the dispute, the matter shall be reviewed by the department
26 director or Chief Executive Officer of each Party or his or her designee. The department
27 director or Chief Executive Officer of each Party shall meet within ten (10) business days
28 of request by either Party after exhaustion of the previous procedural steps. If after that
29 meeting, the Parties are still not able to resolve the dispute, the Parties shall submit the
30 dispute to mediation. Representatives of each party with authority to settle the claim, or
31 in the case of the PORT, if Commission approval is required, management authority to
32 recommend settlement of the claim directly to Commission, shall participate in the
33 mediation. The mediator's fee will be divided equally among the parties participating in
34 the mediation. The Parties agree to exhaust each of these procedural steps before seeking
35 to resolve disputes in a court of law or any other forum.
36
37

38 **8.0 EFFECTIVENESS AND DURATION**

39
40 8.1 This Agreement is effective upon execution by both Parties and will remain in
41 effect until final completion of all Parties' obligations contained or referenced in this
42 Agreement, unless otherwise amended or terminated.
43
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1 **9.0 INDEMNIFICATION AND HOLD HARMLESS**
2

3 9.1 Each of the Parties shall protect, defend, indemnify, and save harmless the other
4 Party, its officers, officials, employees, and agents, while acting within the scope of their
5 employment as such, from any and all costs, claims, judgment, and/or awards of
6 damages, arising out of, or in any way resulting from, each of the Party's own negligent
7 acts or omissions. The STATE shall also protect, defend, indemnify and save harmless
8 the PORT, its officers, officials, employees and agents ("PORT indemnified parties"),
9 from any and all costs, claims, judgment and/or awards of damages, arising out of, or in
10 any way resulting from the design, permitting, or construction of the PROJECTS or the
11 PROGRAM. In no event shall the PORT have any maintenance or repair obligation with
12 respect to Alaskan Way, or facilities lying in public right-of-way along Alaskan Way, or
13 arising out of or related to the PROGRAM or the PROJECTS. No Party will be required
14 to indemnify, defend, or save harmless the other Party, its officers, officials, employees
15 and agents if the claim, suit, or action for injuries, death, or damages is caused by the sole
16 negligence of the other Party. Where such claims, suits, or actions result from the
17 concurrent negligence of the Parties, the indemnity provisions provided herein shall be
18 valid and enforceable only to the extent of a Party's own negligence.

19 Each of the Parties agrees that its obligations under this Section extend to any
20 claim, demand and/or cause of action brought by, or on behalf of, any of its employees or
21 agents. For this purpose, each of the Parties, by mutual negotiation, hereby waives, with
22 respect to each of the other Party only, any immunity that would otherwise be available
23 against such claims under the Industrial Insurance provision of Title 51 RCW.

24 9.2. In the event of legal action challenging the PORT's legal authority to provide
25 funding assistance to the PROGRAM or the PROJECTS, the PORT, in its sole discretion,
26 may defend such legal action or may tender the defense to the STATE within ten (10)
27 business days after the service of such legal action. Failure to tender the legal action to
28 the STATE as provided herein shall constitute a waiver of PORT's right, if any, to seek
29 indemnity for the claims asserted therein. In the event that the PORT chooses to tender
30 to the STATE the defense of such legal action, and, *to the extent permitted by law*, the
31 STATE shall defend, pay the cost of such defense, save harmless, and indemnify the
32 PORT indemnified parties from any and all costs, claims, judgment and/or awards of
33 damages, arising out of, or in any way resulting from, such legal action.
34

35 9.3 The indemnification, hold harmless, and/or waiver obligations described in this
36 section shall survive the termination of this Agreement. In any action to enforce the
37 provisions of the Section, the prevailing Party shall be entitled to recover its reasonable
38 attorney's fees and costs incurred from the other Party.
39
40

41 **10.0 VENUE**
42

43 10.1 This Agreement shall be deemed to be made in the County of King, State of
44 Washington, and the legal rights and obligations of the STATE and PORT shall be
45 determined in accordance with the laws of the State of Washington. All legal actions in
46 connection with this Agreement shall be brought in the County of King, State of

July 30, 2013

1 Washington.

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4 **11.0 RELATIONSHIP OF PORT AND STATE**

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6 11.1 Nothing contained herein shall be deemed or construed as creating the
7 relationship of principal and agent, partnership, or joint venture partners between the
8 STATE and the PORT.
9

10
11 **12.0 AUTHORIZED SIGNATURES**

12
13 12.1 The undersigned acknowledge that they are authorized to execute this Agreement
14 and bind their respective agencies to the obligations set forth herein.
15

16 **IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement as of the
17 latest date written below.
18

19 PORT OF SEATTLE

STATE OF WASHINGTON
DEPARTMENT OF TRANSPORTATION

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22
23
24 _____
25 By: Tay Yoshitani
26 Chief Executive Officer

By: Linea Laird, P.E.
Program Administrator
Alaskan Way Viaduct and Seawall
Replacement Program

27
28
29
30 Date: _____

Date: _____

31
32
33 APPROVED AS TO FORM:

APPROVED AS TO FORM:

34
35
36
37 _____
38 By: Isabel R. Safora
39 Deputy General Counsel

By: _____
Assistant Attorney General

40
41
42 Date: _____

Date: _____