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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

WASHINGTON STATE DEPARTMENT OF
TRANSPORTATION,

Plaintiff,

v.

SEATTLE TUNNEL PARTNERS, a joint
venture.

Defendants.

No.

**COMPLAINT FOR DAMAGES
AND DECLARATORY RELIEF**

Plaintiff Washington State Department of Transportation (“WSDOT”), for its Complaint
in this matter, alleges as follows:

I. THE PARTIES AND VENUE

1.1 Plaintiff WSDOT is an agency of the State of Washington.

1.2 Defendant Seattle Tunnel Partners (“STP”) is a joint venture of Dragados USA,
Inc., and Tutor Perini Corporation.

1.3 This court has subject matter jurisdiction under RCW 2.08.010.

1.4 This court has personal jurisdiction over STP under RCW 4.28.185 because STP
does business and owns property in Washington.

1.5 Venue is proper in King County under RCW 4.12.025(1) because STP resides in
King County.

1 **II. THE CONTRACT**

2 2.1 In 2011, WSDOT and STP entered into a design-build contract (the “Contract”) in
3 which STP agreed to perform certain design, engineering, and construction services in
4 connection with the Alaskan Way Viaduct Replacement Project (the “Project”).

5 2.2 The Contract imposes numerous duties on STP, including the duty to provide a
6 tunnel boring machine (“TBM”) suitable for the expected tunneling conditions in Seattle and to
7 properly operate the TBM to build a highway tunnel approximately 9,270 feet long.

8 2.3 STP provided a TBM and commenced mining in July 2013. In December 2013
9 after mining approximately 1,000 feet, STP stopped the TBM because it was overheating. STP’s
10 investigation revealed that its TBM was damaged and required significant repairs. On
11 information and belief, the TBM damage was caused by factors for which STP is responsible,
12 including design and operation, and not by any unanticipated condition.

13 2.4 The TBM damages were extensive. STP began to repair the TBM in early 2014.
14 Its work to repair and substantially upgrade the TBM continues today.

15 2.5 The Design-Build Contract requires STP to achieve substantial completion of its
16 work within a certain number of days. Due to the TBM breakdown at the end of 2013, STP now
17 projects that it will achieve substantial completion at least two years late.

18 2.6 STP’s delays have increased WSDOT’s Project costs and threaten to increase
19 them further in the future because, among other things, its Project staff must remain on the job
20 until STP’s work is completed.

21 2.7 STP has asserted a right under the Contract to additional time and money,
22 claiming that the TBM breakdown was WSDOT’s responsibility. WSDOT has denied this claim.
23 The Contract provides for additional pre-litigation steps before STP may pursue a claim in court
24 regarding the TBM breakdown. No such steps are required before WSDOT may pursue the
25 claims stated herein.

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1 B. Second Cause of Action

2 3.5 Section 20.2.7 of the Contract provides in part, “Contractor shall maintain All
3 Risk Equipment Insurance covering all risk of physical damage to equipment provided for use at
4 the Project site by Design-Builder and/or Subcontractors of any tier, whether owned, leased,
5 rented, borrowed or used at the Project site. Design-Builder agrees to waive and does hereby
6 waive its rights of recovery against the Indemnified Parties and each of their officers, employees,
7 consultants, agencies and agents, as to any damage or loss which may occur to its equipment.”

8 3.6 WSDOT is one of the “Indemnified Parties” as defined in Section 18.1.1 of the
9 Contract.

10 3.7 WSDOT is entitled to a declaration to the following effect: Under the Contract,
11 STP has contractually waived, and therefore is not entitled to pursue, any claim for recovery
12 against WSDOT arising from any damage or loss which has occurred or which may occur to its
13 equipment at the Project site, including damage or loss to the TBM.

14 **PRAYER FOR RELIEF**

15 WSDOT prays for the following relief:

16 4.1 For damages in an amount to be proven at trial.

17 4.2 For a declaration of the parties’ rights under the Contract.

18 4.3 For such other and further relief as the Court may deem just and equitable.
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1 DATED this _____ day of October, 2015.

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