

October 13, 1997

Introduced By:

GREG NICKELS

clerk 10/11/97

Proposed No.:

97-608

MOTION NO. **10344**

1
2 A MOTION authorizing the King County executive to
3 execute interlocal agreements with the Cities of Auburn and
4 Tukwila and the Port of Seattle relating to the design of
5 grade separations in the Green River valley.

6 WHEREAS, increased international and domestic trade has resulted in longer and
7 more frequent train movements and the reopening of the Stampede Pass line, and

8 WHEREAS, the Regional Transit Authority plans to begin operating peak period
9 commuter rail passenger service in late 1999, and

10 WHEREAS, the State of Washington has purchased two passenger rail train sets to
11 increase the frequency of inner-city rail passenger service, and

12 WHEREAS, the Green River valley is home to designated manufacturing and
13 industrial centers, over 100,000 family wage jobs, and over 75,000 residents, and

14 WHEREAS, the movement of trucks, cars and pedestrians across rail lines is
15 important to the economic vitality and livability of all communities in the Green River
16 valley, whether in incorporated cities or unincorporated King County, and

17 WHEREAS, the state legislature has found (RCW 36.89.020) that the public roads
18 and streets in a county, whether inside or outside the limits of an incorporated city, provide
19 an interconnected system for the convenient and efficient movement of people and goods
20 within the county and are of general benefit to all of the residents of the county, and

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WHEREAS, the grade separation projects, while located on arterials within the corporate limits of the city, will benefit the residents of unincorporated King County as well as the residents of the city, and

WHEREAS, policy T-201 of the King County Comprehensive Plan states that the county transportation system should include facilities to accommodate freight and goods delivery, including railroads, and

WHEREAS, Policy T-539 of the King County Comprehensive Plan states that the county should participate with other jurisdictions to evaluate freight and goods movement to support economic development, and

WHEREAS, the cities of Auburn and Tukwila, the Port of Seattle and King County wish to accelerate the design of grade separation projects at 277th Street, C/3rd Street and South 180th Street to facilitate the movement of rail traffic and the movement of vehicles and pedestrians on the public highways that cross the rail lines;

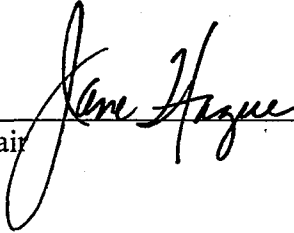
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NOW, THEREFORE, BE IT MOVED by the Council of King County:

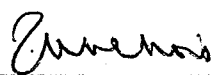
The King County executive is authorized to execute interlocal agreements, substantially in the form attached, with the cities of Auburn and Tukwila and the Port of Seattle relating to the design of grade separations in the Green River valley.

PASSED by a vote of 10 to 1 on this 27th day of October, 1997.

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON


Chair

ATTEST:


Clerk of the Council

Attachments: Interlocal Agreement

**AN INTERLOCAL AGREEMENT BETWEEN
KING COUNTY, PORT OF SEATTLE, AND CITY OF TUKWILA
FOR THE SOUTH 180TH
GRADE SEPARATION DESIGN PROJECT**

This agreement is made and entered into by and between the City of Tukwila, a municipal corporation of the State of Washington, hereinafter called the "City", the Port of Seattle, a municipal corporation of the State of Washington, hereinafter called the "Port" and King County, a governmental subdivision of the State of Washington, hereinafter called the "County", for the purpose of sharing costs to fund the design of a grade separation project known as the South 180th Project.

RECITALS

- A. Increased international and domestic trade has resulted in longer and more frequent train movements and the reopening of the Stampede Pass line;
- B. The Regional Transit Authority plans to begin operating peak period commuter rail passenger service in late 1999;
- C. The State of Washington has purchased two passenger rail train sets to increase the frequency of inter-city rail passenger service;
- D. The Green River Valley is home to designated manufacturing and industrial centers, over 100,000 family wage jobs, and over 75,000 residents;
- E. The movement of trucks, cars and pedestrians across rail lines is important to the economic vitality and livability of all communities in the Green River Valley, whether in incorporated cities or unincorporated King County;
- F. The State legislature has found (RCW 36.89.020) that the public roads and streets in a county, whether inside or outside the limits of an incorporated city, provide an interconnected system for the convenient and efficient movement of people and goods within the county and are of general benefit to all of the residents of the county;
- G. The grade separation project, while located on an arterial within the corporate limits of the City, will benefit the residents of unincorporated King County as well as the residents of the City;

- H. Policy T-201 of the King County Comprehensive Plan states that the County transportation system should include facilities to accommodate freight and goods delivery, including railroads;
- I. Policy T-539 of the King County Comprehensive Plan states that the County should participate with other jurisdictions to evaluate freight and goods movement to support economic development;
- J. The City, Port and County wish to accelerate the design of the grade separation project for the Burlington Northern Santa Fe and Union Pacific Southern Pacific along 180th South to facilitate the movement of rail traffic and the movement of vehicles and pedestrians on the public highways that cross the rail lines;
- K. The County has budgeted and available \$200,000 for the County's contribution to the cost of this project;
- L. The Port has budgeted and available \$250,000 for the Port's contribution to the cost of this project;
- M. The City has \$100,000 available; and
- N. The parties are authorized, pursuant to RCW Chapter 39.34, to enter into an interlocal governmental cooperative agreement of this nature.

NOW, THEREFORE, the parties agree as follows:

AGREEMENT

1. SCOPE OF WORK

Project Title: South 180th Project.

Description: Completion of environmental assessment, right-of-way plan and predesign of grade separation for the Burlington Northern Santa Fe and Union Pacific Southern Pacific along South 180th.

Schedule: Work supported by this funding will begin when funds become available and the City will make its best effort to complete the work by September 1998.

Technical Advisory Committee: The City will conduct public meetings and form a Technical Advisory Committee with representatives from Washington State Department of Transportation (WSDOT), City of Kent, City of Renton and King County. These activities shall continue throughout the life of the project.

Project Consultant: The City has advertised for consultant support on this project and will select a consultant with subconsultants.

2. TERMS AND CONDITIONS

Lead Agency: The City shall be lead agency for the project in regard to SEPA compliance and obtaining all necessary permits. As lead agency the City shall be responsible for accomplishing all aspects of the Project Scope.

Technical Review: Under the terms of this Agreement, it is mutually agreed the County will represent the Port on the Technical Advisory Committee and in all design reviews required under the terms of this Agreement.

Public Involvement: The City shall conduct a public involvement process. A Public Involvement Plan shall be jointly developed by the City, the Port, and the County. The County and the Port shall be given at least two weeks notice of all scheduled public meetings.

Consultants: The City will retain engineering consultants for work funded by this Agreement. Real estate appraisals conducted under this Agreement shall be performed by appraisers under contract with the City.

Contact Persons: The parties to this Agreement shall designate person(s) to act as liaison for the project. The contact persons shall meet on a scheduled basis at a frequency appropriate to the phase and status of the project.

Schedule: The schedule for the project shall be mutually agreed upon by the parties. All schedule changes shall be coordinated between the parties by the City. All parties shall attend to their respective responsibilities in a manner so as not to impede progress on the project.

Project Design Acceptance: The City shall submit the predesign and environmental assessment to the Technical Advisory Committee for review.

Progress Reports: The City shall forward progress reports to the County and the Port on a quarterly basis. Reports shall review and update the project status related to schedule and expenditures.

3. COST REIMBURSEMENT AND FUNDING

Reimbursement of Cost - The County shall reimburse the City a sum not to exceed \$200,000 for costs incurred for work authorized under this Agreement. The Port shall reimburse the City a sum not to exceed \$250,000 for costs incurred by the City for work authorized under this Agreement.

Rights-of-Way: Funds provided by the Port and the County pursuant to this Agreement shall not be used for the acquisition of right-of-way.

Billing: The City will bill the County and Port for the actual cost of the design work . Bills will be payable within 30 days of receipt.

4. DURATION

This Agreement is effective upon signature by all parties and shall remain in effect until the obligations hereunder have been completed. This agreement can be terminated by mutual written agreement of the signatories of this Agreement. All costs incurred up to the date of termination shall be payable.

5. INDEMNIFICATION

Each party shall protect, defend, indemnify and save harmless the other party, its officers, officials, employees and agents, from any and all claims, demands, suits, penalties, losses, damages, judgments or costs of any kind whatsoever, (hereinafter "claims"), arising out of or in any way resulting from each party's, its officers, employees agents and/or subcontractors of all tiers, acts or omissions, performance or failure to perform this Agreement, to the maximum extent permitted by law or as defined by RCW 4.24.115, now enacted or as hereinafter amended.

Each party agrees that it is fully responsible for the acts and omissions of its own subcontractors, their employees and agents, acting within the scope of their employment as such, as it is for the acts and omissions of its own employees and agents.

Each party's obligations under this section shall include, but not be limited to:

- A. the duty to promptly accept tender of defense and provide defense to the indemnified party at the indemnifying party's own expense.
- B. the duty to indemnify and defend the indemnified party from any claim, demand, and/or cause of action brought by or on behalf of any of the indemnifying party's employees, or agents. The foregoing duty is specifically and expressly intended to constitute a waiver of the indemnifying party's immunity under Washington's Industrial Insurance Act, RCW Title 51, as respects the indemnified party only, and only to the extent necessary to provide the indemnified party with a full and complete indemnity and defense of claims made by the indemnifying party's employees. The parties acknowledge that these provisions were mutually negotiated and agreed upon by them.

In the event the indemnified party incurs any judgment, award and/or costs arising therefrom including attorney's fees to enforce the provisions of this article, all such fees, expenses and costs shall be recoverable from the indemnifying party.

6. AUDITS AND INSPECTIONS

The records and documents with respect to all matters covered by this Agreement shall be subject to inspection, review or audit by the County, City or the Port during the term of this contract and three (3) years after termination.

7. MINORITY AND WOMEN'S BUSINESS ENTERPRISE REQUIREMENTS

In connection with the performance of work and services under this Agreement, the County will implement the Minority and Women's Business Enterprise (MWBE) Program requirements set forth in chapters 4.18 and 28.20 of the King County Code, which provisions are incorporated herein by this reference. The City shall implement and comply with the procedures and requirements set forth in Exhibit A attached to this Agreement. The King County M/WBE & Contract Compliance (CC) Division will assist the City in identifying opportunities for participation by MWBEs and means by which such participation may be achieved. Engineering consultants for the project are under contract with the City and the City does not expect to require additional consultant services. If additional consultant services are required during the term of this Agreement, the City shall include MWBE participation requirements acceptable to the MWBE & CC Division in procurement and contract documents for such work and services. The City shall be responsible for compliance by its third party contractors with MWBE requirements.

8. EQUAL EMPLOYMENT OPPORTUNITY (EEO) REQUIREMENTS

In accordance with the requirements set forth in Chapter 12.16 of the King County Code, which provisions are incorporated herein by this reference, the City shall comply with the following equal employment opportunity (EEO) provisions:

- A. The City will require that each of its third party contractors and subcontractors complete and submit affidavits and certificates of compliance regarding EEO as determined necessary and appropriate by the County. The City shall ensure that such contractors and subcontractors implement and carry out the obligations contained in their affidavits and certificates of compliance regarding EEO.
- B. The City will, prior to the commencement and during the term of this Agreement, furnish the County, upon request and on such forms as may be provided by the County, a report of the affirmative action taken by the third party contractors and subcontractors in implementing the terms of this provision.
- C. Failure to implement and carry out such obligations in good faith may be considered by the County as a material breach of this Agreement and grounds for withholding payment and/or termination of the Agreement.

D. The City will require that each of its third party contractors complete a Disability Self-Evaluation Questionnaire regarding its ability to provide programs and services to persons with disabilities mandated by Section 504 of the Rehabilitation Act of 1973 (504), as amended, and the Americans with Disabilities Act of 1990 (ADA). The Contractor will prepare a Corrective Action Plan for the structural and/or programmatic changes necessary at its premises for compliance with Section 504 and the ADA. The contractor shall return a notarized Disability Assurance of Compliance form and the Corrective Action Plan with the Contract. The Disability Assurance of Compliance form and the Corrective Action Plan must be reviewed by the city before the Contract will be signed.

9. NON DISCRIMINATION

In accordance with the requirements set forth in Chapter 12.16 of the King County Code, which provisions are incorporated herein by this reference, the City shall comply with the following equal employment opportunity (EEO) provisions:

During performance of this Agreement, the City agrees that it will not discriminate against any employee or applicant for employment because of religion, color, race, sex, sexual orientation, age, national origin, or the presence of any sensory, mental or physical disability, nor tolerate harassment based on any of these categories, unless based upon a bona fide occupational qualification. The City will take affirmative action to ensure that applicants and employees are treated, without regard to their creed, color, race, religion, sex, sexual orientation, age, national origin, or the presence of such disability. Such affirmative action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. The City agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this nondiscrimination clause.

The City will, prior to the commencement and during the term of this Agreement, furnish the County, upon request and on such forms as may be provided by the County, a report of the affirmative action taken by the City in implementing the terms of this provision, and will permit access by the County to the City's records of employment, employment advertisements, application forms, other pertinent data and records related to this Agreement for the purpose of monitoring and investigation to determine compliance with these EEO requirements.

If additional consultant services are required during the term of this Agreement, the City will require that each of its third party contractors and subcontractors complete and submit affidavits and certificates of compliance regarding EEO as determined necessary and appropriate by the County. The City shall ensure that such contractors and subcontractors implement and carry out the obligations contained in their affidavits and certificates of

compliance regarding EEO. Failure to implement and carry out such obligations in good faith may be considered by the County as a material breach of this Agreement and grounds for withholding payment and/or termination of the Agreement.

10. NOTICES

All notices pursuant to this Agreement shall be given in writing and delivered by US mail or delivered in person to the following:

For the Port: Steve Sewell
Port of Seattle
Marine Division
P. O. Box 1209
Seattle, WA 98111

For the County: Chuck Mize

For the City: Ross Ernst

11. NO THIRD PARTY RIGHTS

Nothing contained herein is intended to, nor shall be construed to, create any rights in any party not a signatory to this Agreement, or to form the basis for any liability on the part of the City, the County or the Port, or their officials, employees, agents or representatives, to any party not a signatory to this Agreement.

12. SEVERABILITY

If any provision of this Agreement shall be held invalid, the remainder of the Agreement shall not be affected thereby if such remainder would then continue to serve the purposes and objectives of the parties.

13. NON-WAIVER

Waiver of any breach of any provision of this Agreement shall not be deemed to be a waiver of any prior or subsequent breach, and shall not be construed to be a modification of this Agreement.

14. AMENDMENT

This Agreement may be amended only by an instrument in writing duly executed by all of the parties to this Agreement.

15. ENTIRE AGREEMENT

This Agreement contains the entire agreement of the parties and any representations or understandings, whether oral or written, not incorporated herein are excluded.

IN WITNESS WHEREOF, the City, the County and the Port have executed this Agreement effective as of the date last written below.

**AN INTERLOCAL AGREEMENT BETWEEN
KING COUNTY, PORT OF SEATTLE, AND CITY OF AUBURN
FOR THE GREEN RIVER VALLEY
GRADE SEPARATION DESIGN PROJECTS**

This agreement is made and entered into by and between the City of Auburn, a municipal corporation of the State of Washington, hereinafter called the "City", the Port of Seattle, a municipal corporation of the State of Washington, hereinafter called the "Port" and King County, a governmental subdivision of the State of Washington, hereinafter called the "County", for the purpose of sharing costs to fund the design of two grade separation projects known as South 277th Street Reconstruction Project/Phase 1 - Grade Separation Design (Project 1) and SR 18/"C" Street SW Ramp Modifications/3rd Street SW Grade Separation Design (Project 2).

RECITALS

- A. Increased international and domestic trade has resulted in longer and more frequent train movements and the reopening of the Stampede Pass line;
- B. The Regional Transit Authority plans to begin operating peak period commuter rail passenger service in late 1999;
- C. The State of Washington has purchased two passenger rail train sets to increase the frequency of inter-city rail passenger service;
- D. The Green River Valley is home to designated manufacturing and industrial centers, over 100,000 family wage jobs, and over 75,000 residents;
- E. The movement of trucks, cars and pedestrians across rail lines is important to the economic vitality and livability of all communities in the Green River Valley, whether in incorporated cities or unincorporated King County;
- F. The State legislature has found (RCW 36.89.020) that the public roads and streets in a county, whether inside or outside the limits of an incorporated city, provide an interconnected system for the convenient and efficient movement of people and goods within the county and are of general benefit to all of the residents of the county;
- G. The grade separation projects, while located on arterials within the corporate limits of the City, will benefit the residents of unincorporated King County as well as the residents of the City;
- H. Policy T-201 of the King County Comprehensive Plan states that the County transportation system should include facilities to accommodate freight and goods delivery, including railroads;

- I. Policy T-539 of the King County Comprehensive Plan states that the County should participate with other jurisdictions to evaluate freight and goods movement to support economic development;
- J. The City, Port and County wish to accelerate the design of grade separation projects at 277th Street and C/3rd Street to facilitate the movement of rail traffic and the movement of vehicles and pedestrians on the public highways that cross the rail lines;
- K. The County has budgeted and available \$1.25 million for the County's contribution to the cost of the projects;
- L. The Port has budgeted and available \$1.25 million for the Port's contribution to the cost of the projects;
- M. The City has completed the pre-design phases of the projects and is now ready to begin the design phases, and has \$600,000 available; and
- N. The parties are authorized, pursuant to RCW Chapter 39.34, to enter into an interlocal governmental cooperative agreement of this nature.

NOW, THEREFORE , the parties agree as follows:

AGREEMENT

1. SCOPE OF WORK

PROJECT 1

Project Title: South 277th Street Reconstruction Project/Phase I - Grade Separation Design.

Description: Phase I Design: Completion of design and construction bid documents of grade separation for the BNSF and UPSP along 277th Street from Auburn Way North to the vicinity of 72nd Avenue South.

The City has completed preliminary planning and engineering work. Work funded by this Agreement will complete the design work on Phase I so that it will be ready for construction.

Schedule: Design work supported by this funding will begin when funds become available and the City will make its best effort to complete design by September 1998.

Technical Advisory Committee: The City has conducted public meetings and has formed a technical advisory committee with representatives from Washington State Department of Transportation (WSDOT), City of Kent, and King County. These activities shall continue throughout the life of the project.

Project Consultant: Using standard City procedures, the City selected Sverdrup Corporation as Project Consultant, with subconsultants, on August 12, 1996. Sverdrup Corporation was selected for the duration of the preliminary phases and design phase of the project, with options to provide construction management services as required. Other required design and contract administration services will be provided by the City or through additional consultant contracts as required.

Follow-on Phases: Follow-on phases including construction of Phase I and design and construction of Phase II are not a part of this Agreement.

PROJECT 2

Project Title: SR 18/"C" Street SW Ramp Modifications/3rd Street SW Grade Separation Design.

Description: Phase I Design: Continue design of SR 18 ramp realignment and grade separation of BNSF tracks at 3rd Street SW. Reconfigure alignment of the SR 18 westbound ramps at C Street SW, correcting a long-standing problem that causes congestion due to limitations in turn movements caused by physical site constraints and construct a grade-separated crossing at the BNSF railroad line.

The City has completed preliminary planning and engineering work and partially completed right-of-way acquisition. Work funded by this Agreement will begin the design work. Completion of design work is subject to availability of additional funding from WSDOT, TIB, or other sources.

Technical Advisory Committee: The City has conducted public meetings and has formed a technical advisory committee with representatives from WSDOT. King County will be added to this committee. These activities shall continue throughout the life of the project.

Project Consultant: Using standard City procedures, the City selected Earth Tech, with subconsultants, on April 18, 1994. Earth Tech, then named Bell Walker Engineers, was selected for the duration of the preliminary phases, including the design phase, with options to provide construction management services as required. Other required design and contract administration services will be provided by the City or through additional consultant contracts as required.

Follow-on Phases: Follow-on phases including second phase right-of-way and construction phase are not a part of this Agreement.

2. TERMS AND CONDITIONS

Lead Agency: The City shall be lead agency for the project in regard to SEPA compliance and obtaining all necessary permits. As lead agency the City shall be responsible for accomplishing all aspects of the Project Scope.

Technical Review: Under the terms of this Agreement, it is mutually agreed the County will represent the Port on the technical advisory committees and in all design reviews required under the terms of this Agreement.

Public Involvement: The City shall continue a public involvement process. A Public Involvement Plan shall be jointly developed by the City, the Port, and the County. The County and the Port shall be given at least two weeks notice of all scheduled public meetings.

Consultants: The City has retained engineering consultants for work funded by this Agreement. Real estate appraisals conducted under this Agreement shall be performed by appraisers under contract with the City.

Value Engineering: The value engineering consultant (CVS) shall be determined by the Transportation Improvement Board.

Contact Persons: The parties to this Agreement shall designate person(s) to act as liaison for the project. The contact persons shall meet on a scheduled basis at a frequency appropriate to the phase and status of the project.

Schedule: The schedule for the projects shall be mutually agreed upon by the parties. All schedule changes shall be coordinated between the parties by the City. All parties shall attend to their respective responsibilities in a manner so as not to impede progress on the projects.

Project Design Acceptance: The City shall submit to the Technical Advisory Committee three design reviews: preliminary, intermediate, and final. The City shall also conduct value engineering studies as required by the Transportation Improvement Board. The City shall not order or approve any design changes that substantially alter the projects without approval of the County and the Port.

Progress Reports: The City shall forward progress reports to the County and the Port on a quarterly basis. Reports shall review and update the project status related to schedule and expenditures.

3. COST REIMBURSEMENT AND FUNDING

Reimbursement of Cost - The County and Port shall each reimburse the City a sum not to exceed \$1.25 million for costs incurred by the City in the design of the projects authorized under this Agreement.

Rights-of-Way: Funds provided by the Port and the County pursuant to this Agreement shall not be used for the acquisition of rights-of-way.

Billing: The City will bill the County and Port for the actual cost of the design work. Bills will be payable within 30 days of receipt.

4. DURATION

This Agreement is effective upon signature by all parties and shall remain in effect until the obligations hereunder have been completed. This agreement can be terminated by mutual written agreement of the signatories of this Agreement. All costs incurred up to the date of termination shall be payable.

5. INDEMNIFICATION

Each party shall protect, defend, indemnify and save harmless the other party, its officers, officials, employees and agents, from any and all claims, demands, suits, penalties, losses, damages, judgments or costs of any kind whatsoever, (hereinafter "claims"), arising out of or in any way resulting from each party's, its officers, employees agents and/or subcontractors of all tiers, acts or omissions, performance or failure to perform this Agreement, to the maximum extent permitted by law or as defined by RCW 4.24.115, now enacted or as hereinafter amended.

Each party agrees that it is fully responsible for the acts and omissions of its own subcontractors, their employees and agents, acting within the scope of their employment as such, as it is for the acts and omissions of its own employees and agents.

Each party's obligations under this section shall include, but not be limited to:

- A. the duty to promptly accept tender of defense and provide defense to the indemnified party at the indemnifying party's own expense.
- B. the duty to indemnify and defend the indemnified party from any claim, demand, and/or cause of action brought by or on behalf of any of the indemnifying party's employees, or agents. The foregoing duty is specifically and expressly intended to constitute a waiver of the indemnifying party's immunity under Washington's Industrial Insurance act, RCW Title 51, as

respects the indemnified party only, and only to the extent necessary to provide the indemnified party with a full and complete indemnity and defense of claims made by the indemnifying party's employees. The parties acknowledge that these provisions were mutually negotiated and agreed upon by them.

In the event the indemnified party incurs any judgment, award and/or costs arising therefrom including attorney's fees to enforce the provisions of this article, all such fees, expenses and costs shall be recoverable from the indemnifying party.

6. AUDITS AND INSPECTIONS

The records and documents with respect to all matters covered by this Agreement shall be subject to inspection, review or audit by the County, City or the Port during the term of this contract and three (3) years after termination.

7. EXISTING CONTRACTS: EEO AND NON-DISCRIMINATION COMPLIANCE

The City, prior to execution of this Agreement, has contracted with the below-listed consultants. All contracting procedures for these projects follow the federal contracting guidelines and are in compliance with federal procedures required to accommodate ISTEA funding. The consultant agreements use the *Standard Consultant Agreement* form as approved by WSDOT (LAG). The County accepts these contracts as being in full compliance without amendment for work under this Agreement. Non-discrimination provisions are contained in Section VIII of these agreements.

Sverdrup
EarthTech

The below-listed appraisers and negotiators have been selected and are contracted with the City for 1997 and duration of assignment:

Clendaniel, Lema, Watts, Inc.
Strickland, Heischman & Hoss, Inc.
Universal Field Services, Inc.

Should services other than those that are available from the existing contracts be required, the City agrees to include contract provisions as provided in sections 8, 9 and 10 of this Agreement.

8. MINORITY AND WOMEN'S BUSINESS ENTERPRISE REQUIREMENTS

In connection with the performance of work and services under this Agreement, the County will implement the Minority and Women's Business Enterprise (MWBE) Program requirements set forth in chapters 4.18 and 28.20 of the King County Code, which provisions are incorporated herein by this reference. The City shall implement and comply with the procedures and requirements set forth in Exhibit A attached to this Agreement. The King County M/WBE & Contract Compliance (CC) Division will assist the City in identifying opportunities for participation by MWBEs and means by which such participation may be achieved. Engineering consultants for the project are under contract with the City and the City does not expect to require additional consultant services. If additional consultant services are required during the term of this Agreement, the City shall include MWBE participation requirements acceptable to the MWBE & CC Division in procurement and contract documents for such work and services. The City shall be responsible for compliance by its third party contractors with MWBE requirements.

9. EQUAL EMPLOYMENT OPPORTUNITY (EEO) REQUIREMENTS

In accordance with the requirements set forth in chapter 12.16 of the King County Code, which provisions are incorporated herein by this reference, the City shall comply with the following equal employment opportunity (EEO) provisions:

- A. The City will require that each of its third party contractors and subcontractors complete and submit affidavits and certificates of compliance regarding EEO as determined necessary and appropriate by the County. The City shall ensure that such contractors and subcontractors implement and carry out the obligations contained in their affidavits and certificates of compliance regarding EEO.
- B. The City will, prior to the commencement and during the term of this Agreement, furnish the County, upon request and on such forms as may be provided by the County, a report of the affirmative action taken by the third party contractors and subcontractors in implementing the terms of this provision.
- C. Failure to implement and carry out such obligations in good faith may be considered by the County as a material breach of this Agreement and grounds for withholding payment and/or termination of the Agreement.

10. NON DISCRIMINATION

In accordance with the requirements set forth in chapter 12.16 of the King County Code, which provisions are incorporated herein by this reference, the City shall comply with the following equal employment opportunity (EEO) provisions:

During performance of this Agreement, the City agrees that it will not discriminate against any employee or applicant for employment because of religion, color, race, sex, sexual orientation, age, national origin, or the presence of any sensory, mental or physical disability, nor tolerate harassment based on any of these categories, unless based upon a bona fide occupational qualification. The City will take affirmative action to ensure that applicants and employees are treated, without regard to their creed, color, race, religion, sex, sexual orientation, age, national origin, or the presence of such disability. Such affirmative action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. The City agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this nondiscrimination clause.

The City will, prior to the commencement and during the term of this Agreement, furnish the County, upon request and on such forms as may be provided by the County, a report of the affirmative action taken by the City in implementing the terms of this provision, and will permit access by the County to the City's records of employment, employment advertisements, application forms, other pertinent data and records related to this Agreement for the purpose of monitoring and investigation to determine compliance with these EEO requirements.

If additional consultant services are required during the term of this Agreement, the City will require that each of its third party contractors and subcontractors complete and submit affidavits and certificates of compliance regarding EEO as determined necessary and appropriate by the County. The City shall ensure that such contractors and subcontractors implement and carry out the obligations contained in their affidavits and certificates of compliance regarding EEO. Failure to implement and carry out such obligations in good faith may be considered by the County as a material breach of this Agreement and grounds for withholding payment and/or termination of the Agreement.

11. NOTICES

All notices pursuant to this Agreement shall be given in writing and delivered by US mail or delivered in person to the following:

For the Port: Steve Sewell
 Port of Seattle
 Marine Division
 PO Box 1209
 Seattle WA 98111

For the County: Chuck Mize, Director
Community and Governmental Affairs
400 King County Courthouse
516 3rd Ave
Seattle WA 98104

For the City: Jack Locke, P.E.
Special Projects Engineer
Department of Public Works
25 W Main St
Auburn WA 98001

12. NO THIRD PARTY RIGHTS

Nothing contained herein is intended to, nor shall be construed to, create any rights in any party not a signatory to this Agreement, or to form the basis for any liability on the part of the City, the County or the Port, or their officials, employees, agents or representatives, to any party not a signatory to this Agreement.

If any provision of this Agreement shall be held invalid, the remainder of the Agreement shall not be affected thereby if such remainder would then continue to serve the purposes and objectives of the parties.

13. SEVERABILITY

If any provision of this Agreement shall be held invalid, the remainder of the Agreement shall not be affected thereby if such remainder would then continue to serve the purposes and objectives of the parties.

14. NON-WAIVER

Waiver of any breach of any provision of this Agreement shall not be deemed to be a waiver of any prior or subsequent breach, and shall not be construed to be a modification of this Agreement.

15. AMENDMENT

This Agreement may be amended only by an instrument in writing duly executed by all of the parties to this Agreement.

16. ENTIRE AGREEMENT

This Agreement contains the entire agreement of the parties and any representations or understandings, whether oral or written, not incorporated herein are excluded.

IN WITNESS WHEREOF, the City, the County and the Port have executed this Agreement effective as of the date last written below.

CITY OF AUBURN:

Charles A. Booth, Mayor

Date

KING COUNTY:

Ron Sims, King County Executive

Date

PORT OF SEATTLE:

M.R. Dinsmore, Executive Director

Date