

January 26, 1995
AT/mms

Introduced By: RON SIMS

Proposed No.: 95-031

ORDINANCE NO. **11676**

AN ORDINANCE authorizing the county executive to execute an interlocal agreement with the Port of Seattle for construction of the Port of Seattle for construction of the Waterfront Streetcar rebuild project.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. The county executive or his designee is hereby authorized to execute an interlocal agreement, substantially in the form of Exhibit A attached hereto, with the Port of Seattle for the purpose of constructing the Waterfront Streetcar track rebuild project. The authority given to the county executive by this ordinance is contingent upon all permits being issued for the project, all franchises issued by the City of Seattle for use of the Waterfront Streetcar tracks having been revoked and Federal Transportation Authority procurement approval having been obtained.

SECTION 2. In the event there are inconsistencies between this ordinance and any other King county ordinance previously adopted, this ordinance shall control.

INTRODUCED AND READ for the first time this 23rd day of January, 1995.

PASSED by a vote of 12 of 0 this 30th day of January, 1995.

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Kent Pullen
Chair

ATTEST:

Donald A. Peterson
Clerk of the Council

APPROVED this 12th day of February, 1995

Pam Lodge
King County Executive

Attachments: Interlocal Agreement with the Port of Seattle.

11676

AGREEMENT BETWEEN KING COUNTY
AND THE PORT OF SEATTLE
FOR CONSTRUCTION OF THE WATERFRONT
STREETCAR PROJECT

THIS AGREEMENT is made and entered into by and between King County by and through its Department of Metropolitan Services (hereinafter "County") and the Port of Seattle (hereinafter "Port").

RECITALS

A. The County through its Department of Metropolitan Services operates the Waterfront Streetcar System on tracks located on City of Seattle right-of-way along the Elliott Bay Waterfront.

B. The Port owns property adjacent to said tracks and is currently developing the property for a variety of uses. The Port's current project is entitled the "Central Waterfront Project." PCL is the Port's general contractor on the Central Waterfront Project. PCL was selected by the Port pursuant to applicable public bidding laws.

C. In 1993 the County's predecessor, the Municipality of Metropolitan Seattle (Metro), entered into an agreement with the Port. The 1993 agreement defined the parties' respective rights and responsibilities with regard to construction, operation, maintenance and use activities at or near the Waterfront Streetcar tracks.

D. The County through its Department of Metropolitan Services desires to complete a project entitled the Waterfront Streetcar Project. This Project involves replacement of track and modifying the platforms in compliance with the Americans with Disabilities Act (ADA).

E. It is in the public interest for economic reasons and because a joint undertaking will limit the period of time during which the Waterfront Streetcar will be closed, for the County and the Port to enter into an agreement through which the Port will contract with PCL for construction of the Waterfront Streetcar Project.

AGREEMENT

Now, therefore, in consideration of the mutual covenants herein contained, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS. As used in this Agreement, the following words or terms shall have the meaning stated herein.

a. Central Waterfront Project. The project scope defined in the Central Waterfront Project construction contract between PCL

and the Port, dated August 9, 1994, as may be amended from time to time by change order.

b. Waterfront Streetcar Project. Rebuilding of the streetcar track and modification of platforms to bring them into compliance with the ADA in accordance with the plans and specifications and contract terms prepared by the County, as set forth in Attachment A which is incorporated herein by reference.

c. Waterfront Streetcar System or Streetcar. The system as defined in the transit transfer agreement between the City of Seattle and Metro, and as expanded by Metro's streetcar expansion project.

d. County. King County, a political subdivision of the State of Washington.

e. Port. The Port of Seattle.

f. Department. King County Department of Metropolitan Services.

g. County Engineer. The individual assigned by the County to manage construction of the Waterfront Streetcar Project.

h. Port Resident Engineer. The individual assigned by the Port to carry out the responsibilities set forth in this Agreement, jointly administer this Agreement with the County Project Manager and to manage construction of the Central Waterfront Project.

i. County Project Manager. The individual assigned by the County to carry out the responsibilities set forth in this Agreement and jointly administer this Agreement with the Port's Resident Engineer.

j. Dispute. A dispute between the County and the Port arising out of or relating to either the Central Waterfront Project or the Waterfront Streetcar Project.

k. Plans and Specifications. All documents, including those referenced therein, developed by the County for construction of the Waterfront Streetcar Project including general contract provisions.

2. PURPOSE OF AGREEMENT. The purpose for this Agreement is the economic and efficient completion of the Waterfront Streetcar Project, the limited closure of the Waterfront Streetcar and the efficient coordination of two public projects. This Agreement reflects the understanding between the parties regarding the matters covered. This Agreement incorporates and modifies the 1993 Agreement between Metro and the Port. Absent express agreement to the contrary, if there exist inconsistencies between the 1993 Agreement and this Agreement, the 1993 Agreement shall control. The 1993 Agreement and this Agreement supersede all other negoti-

ations and agreements between the parties related to the Waterfront Streetcar Project and the Central Waterfront Project.

3. CONTRACT WITH PCL. Pursuant to the terms set forth in this Agreement, the Port agrees to amend its contract with PCL to include construction of the Waterfront Streetcar Project. The contract shall require PCL to complete construction of the Waterfront Streetcar Project in accordance with the plans and specifications prepared by the County. Otherwise, unless specifically set forth herein, the general terms and conditions set forth in the contract between the Port and PCL shall apply to construction of the Waterfront Streetcar Project. Unless otherwise provided in this Agreement, PCL shall be responsible for furnishing all supervision, labor, materials, supplies, equipment and services necessary for completion of the Waterfront Streetcar Project. Except as specifically addressed herein, nothing in this Agreement shall be construed as in any way divesting the County of any of its powers with respect to the supervision, management and control of the Waterfront Streetcar System or Project.

4. DESIGN AND CONSTRUCTION.

a. Plans and Specifications. The County shall provide the Port with all plans and specifications necessary for completion of the Waterfront Streetcar Project.

b. Construction Management. The County shall be responsible for managing construction of the Waterfront Streetcar Project. The Port shall be responsible for managing payments to the contractor, payment of taxes and other costs, and monitoring retainage.

- (1) The County shall advise the Port when it is ready to proceed with construction and the Port will issue a notice to proceed to PCL.
- (2) The work on the Waterfront Streetcar Project shall be done to the complete satisfaction of the County Engineer. Unless otherwise provided herein, or in the contract documents with PCL, the County Engineer's decision will be final and binding on the Port and PCL on all questions which arise regarding:
 - (a) Quality and acceptability of materials and work;
 - (b) Acceptable rate of progress of the work;
 - (c) Plans and specifications interpretation; and
 - (d) The fulfillment of the contract by PCL.

- (3) The County and the Port shall share reports relating to both projects and give each other notice of project meetings. The County and the Port will cooperate in the management of both projects.
- (4) The County Engineer shall review and approve any changes to the Waterfront Streetcar Project and approve such changes prior to the contractor asking for a decrease or increase in the cost of construction.
- (5) All changes affecting the schedule and cost of the Waterfront Streetcar Project which have the potential of affecting the scheduling or cost of the Central Waterfront Project shall be mutually approved in writing.

c. Safety. Unless otherwise provided in the contract documents with PCL, the Port shall be responsible for all safety requirements necessary during construction of the Central Waterfront Project and the Waterfront Streetcar Project, including posting any necessary flag person.

d. Permits. The County shall be responsible for furnishing the Port and PCL with all permits necessary to complete the Waterfront Streetcar Project.

e. Schedule. The parties agree that time is of the essence in the construction of the Port's Central Waterfront Project and the County's Waterfront Streetcar Project. The parties therefore mutually agree not to unnecessarily hinder or delay either Project. The parties further agree that it is imperative that the Streetcar be closed for the shortest period possible. The Port and PCL shall coordinate construction work on both Projects so the closure of the Streetcar will be limited. In no event shall the Streetcar be closed between June 15, 1995 and October 1995. The parties anticipate that employing PCL will result in time savings on both projects. To the extent there are any scheduling conflicts, the parties will confer with PCL and each other to determine a mutually agreeable resolution. To the extent such decisions are primarily operational in nature, the parties agree PCL should be allowed to proceed as it deems most appropriate under the circumstances with the understanding that PCL is contractually responsible for completing both projects on time and on budget.

f. Labor Stabilization Agreement. The Central Waterfront Agreement is subject to a Labor Stabilization Agreement. (Attachment B). The parties agree that the Labor Stabilization Agreement will apply to the Waterfront Streetcar Project in its entirety.

5. REIMBURSEMENT.

a. Payment. The County shall reimburse the Port for all documented invoices from PCL for work necessary for construction of the Waterfront Streetcar Project, provided such work is in accordance with the plans and specifications or an approved change order. Invoices shall be submitted in accordance with the format set forth on Attachment C.

b. Invoices. The Port shall provide the County monthly with invoices requesting payment. Back-up documentation shall accompany the request. The County shall review the invoices and either notify the Port of any disputed amounts, identifying said amounts with specificity, or process for payment any undisputed costs within ten (10) working days of receipt of invoice and pay the Port within thirty (30) days of receipt of invoice. County payments to the Port pursuant to any invoice or otherwise shall not constitute final approval of any specific item by either party. In the event of a disputed claim for compensation on the Waterfront Streetcar Project, the County shall defend, indemnify and hold the Port harmless from any payments, awards, judgments or costs associated with resolution of such a claim, including all overhead, expenses and attorney fees. Resolution of any claims for additional compensation on the Waterfront Streetcar Project are subject to review and approval by the County Engineer. The County has the right to defend against any claim and shall be represented by the King County Prosecuting Attorney's office.

c. Audit. During progress of the Waterfront Streetcar Project and for a period of not less than three (3) years from the date of final acceptance by County and the Port, records pertaining to the Waterfront Streetcar Project and accounting therefor will be kept available by the County and the Port for inspection and audit by either party. Copies of these records shall be furnished upon request and shall be maintained in accordance with a work order accounting procedure prescribed by the Division of Municipal Corporations of the State Auditor's office.

d. Payments by Port. The Port agrees to reimburse the County \$254,117.00 as its contribution for construction of the Waterfront Streetcar Project. The County agrees to deduct from said amount a management fee for construction management services provided by the Port, up to but not to exceed \$25,000.00. No additional management fee may be charged by the Port, irrespective of change orders, new RFP's or coordination that may become necessary, provided there are no material changes to the Waterfront Streetcar Project which substantially increases the project duration.

e. Retainage. The Port shall be responsible for complying with applicable retainage laws.

f. The parties agree that the two last sentences of paragraph 2.1.g of the 1993 Agreement between the Port and Metro shall not apply to work related to the Central Waterfront Project and the Waterfront Streetcar Project.

g. In the event that PCL shall be required to pay liquidated damages related to the Waterfront Streetcar Project, the Port shall pay to the County the \$3,000.00 per day which it collects from PCL.

6. INDEMNIFICATION. The provisions of this section shall survive the expiration or termination of this Agreement.

a. To the extent allowed by law, the Port shall defend, indemnify and hold harmless the County, its elected officials, employees and agents from and against any and all suits, claims, actions, losses, costs, expenses of litigation, attorney's fees, penalties and damages of whatsoever kind or nature arising out of, in connection with or incident to an act or omission of the Port, its employees, agents and its contractors, but only to the extent such act or omission by its contractor relates to the Central Waterfront Project, in the performance of the Port's obligations under this Agreement. In the event of litigation between the parties to enforce the rights under this section, reasonable attorney's fees shall be allowed to the prevailing party. This indemnification obligation shall include, but is not limited to, all claims against the County by an employee or former employee of the Port or its contractors and, as to such claims, the Port expressly waives all immunity and limitation on liability under Title 51 RCW.

b. To the extent allowed by law, the County shall defend, indemnify and hold harmless the Port, its elected officials, employees and agents from and against any and all suits, claims, actions, losses, costs, expenses of litigation, attorney's fees, penalties and damages of whatsoever kind or nature arising out of, in connection with or incident to an act or omission of the County, its employees, agents and its contractors, but only to the extent such act or omission by its contractor relates to the Waterfront Streetcar Project, in the performance of the County's obligations under this Agreement. In the event of litigation between the parties to enforce the rights under this section, reasonable attorney's fees shall be allowed to the prevailing party. This indemnification obligation shall include, but is not limited to, all claims against the Port by an employee or former employee of the County or its contractors and, as to such claims, the County expressly waives all immunity and limitation on liability under Title 51 RCW.

c. The parties agree that with respect to any toxic or hazardous materials associated with the Waterfront Streetcar Project, as those terms are defined by federal, state and local laws, regulations and ordinances, the County will defend, indemnify and hold the Port, its commissioners, employees, agents and

contractors, harmless from any claims, causes of action, damages, judgments, charges, fines, penalties or costs of any kind, including all expenses of investigation and litigation, including attorney fees. This provision extends but is not limited to the naming of the Port or its contractors by any regulating agency as potentially responsible parties, generators, transporters or producers of hazardous materials. In the event that the County indemnifies the Port or its contractors under this provision, the County shall have sole control of any litigation that may arise.

7. CHOICE OF LAW. This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington and the venue of any action brought hereunder shall be in the Superior Court for King County.

8. NOTICE. All Notices to the County required under the terms of this Agreement shall be given in writing, addressed as follows:

King County Department of Metropolitan Services
821 Second Avenue, MS 63
Seattle, Washington 98104
Attn: Yousif Farjo, Project Manager

All notices to the Port required to be given under the terms of this Agreement unless otherwise specified herein, or as may be amended, shall be given in writing, addressed as follows:

Port of Seattle
P.O. Box 1209
Seattle, Washington 98111
Attn: Karl Hedlund, Resident Engineer

All notices issued under this Agreement shall be deemed received on the next business day after being deposited in the United States mail in Seattle, or at the time they are actually hand-delivered to the addressee.

9. EMERGENCY NOTIFICATION. In case of emergency, the County Engineer shall be notified and the Control Center shall be notified at 684-1111.

10. PROJECT DISPUTE RESOLUTION. The County Project Manager and Port Resident Engineer shall use their best efforts to resolve disputes and other matters between the County and the Port. If the managers are unable to resolve the dispute, the Director of the Technical Services Department of the King County Department of Metropolitan Services and the Port's Director of Construction Services shall review the matter. If they are unable to resolve the dispute, it shall be reviewed by the County Executive and the Chief Engineer of the Port. The County and the Port agree to exhaust each of these procedural steps before seeking to resolve disputes in a court of law or other tribunal.

11. AMENDMENT AND WAIVER. This Agreement shall not be amended except in writing, executed by both the County and the Port. The provisions of this Agreement cannot be waived except by written agreement of the party against whom a waiver may be asserted.
12. CAPTIONS. Section titles or other headings contained in this Agreement are for convenience only and shall not be part of this Agreement, nor be considered in its interpretation.
13. BINDING UPON SUCCESSORS. This Agreement shall inure to the benefit of, and be binding upon the successors and assigns of both the County and the Port.
14. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall constitute one and the same instrument.
15. NON-WAIVER. By executing this Agreement, neither party shall be deemed to have waived, released or contracted away any powers, obligations or responsibilities granted or imposed by law. The County and the Port do not intend the terms of this Agreement to apply to any County facilities other than the Waterfront Streetcar Project.
16. NO THIRD-PARTY BENEFICIARIES. This Agreement is entered into solely for the mutual benefit of the County and the Port. This Agreement is not entered into with the intent that it shall benefit any other person and no other such person shall be entitled to be treated as a third-party beneficiary of this Agreement.
17. EFFECTIVE DATE. This Agreement shall take effect when both parties hereto have executed this document.
18. FTA GRANT. Federal grant funds are being used on the Waterfront Streetcar Project. The parties agree to abide by all applicable federal statutes and regulations.
19. FRANCHISE. This Agreement is contingent upon the City of Seattle passing an ordinance revoking all franchises relating to the subject track.
20. APPLICATION OF TERMS TO PCL. The Port agrees that the amendment to its contract with PCL shall include the terms of this Agreement.
21. TERMINATION OF PCL CONTRACT. Unless otherwise agreed to by the parties, the Port shall give the County sixty (60) days' written notice prior to termination of the Port's contract with PCL.
22. CONTINGENCY. This Agreement is contingent on revocation of all franchises awarded by the City of Seattle to any and all railroads for use of the right-of-way upon which the Streetcar tracks

are located. If such franchises are not revoked on or before January 20, 1995, this Agreement shall automatically terminate.

23. ISSUANCE OF PERMITS. This Agreement is contingent on the issuance of all applicable permits by the City of Seattle.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates indicated below.

THE PORT OF SEATTLE

KING COUNTY

By: _____

By: *Doug Locke, KING COUNTY EXECUTIVE*

Date: _____

Date: *FEB 1, 1995*