

**AGREEMENT  
BETWEEN THE  
CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY  
AND THE PORT OF SEATTLE  
REGARDING PRELIMINARY DESIGN FOR THE RELOCATION OF PORT UTILITIES  
FOR THE SOUTH LINK PROJECT**

THIS Agreement is made this 30<sup>th</sup> day of December, 2011 between the Central Puget Sound Regional Transit Authority (hereinafter referred to as "Sound Transit" or "ST") and the Port of Seattle, a municipal corporation (hereinafter referred to as the "Port").

**RECITALS**

WHEREAS, subject to the availability of funding consistent with the voter-approved plan called Sound Transit 2 (The Regional Transit System Plan for the Central Puget Sound), Sound Transit plans to accelerate the extension of the Central Link Light Rail System ("Link") from the SeaTac/Airport Station to a new station at South 200<sup>th</sup> Street, hereinafter referred to as the "South Link Project;" and

WHEREAS, as part of implementing the South Link Project, Sound Transit requires a timely relocation of Port utilities in the vicinity of the proposed light rail alignment across the Port's property in order to accommodate Sound Transit's Design-Build ("D-B") Contractor's final design and construction of the South Link project; and

WHEREAS, the Port agrees to prepare Preliminary (30%) design of the relocation of its existing utilities and further agrees to complete final design and relocate these utilities once final funding is authorized. The Port recognizes that it may be difficult for Sound Transit's D-B Contractor to incorporate this work as part of their project delivery approach for the South Link Project.

NOW, THEREFORE, the parties enter into this Agreement as provided herein.

**1. PURPOSE**

The purpose of this Agreement is to describe the terms and conditions under which the Port will prepare the preliminary design ("30% design") to relocate the utilities identified in Attachment "A" in advance of Sound Transit issuing Construction Notice -To-Proceed to their D-B Contractor for the South Link Project and under which Sound Transit will reimburse the Port for satisfactory performance of these services pursuant to the terms of this Agreement.

**2. COOPERATION AND GOOD FAITH EFFORTS**

2.1 Both parties acknowledge that the success of the regional transportation program requires their willingness to work collaboratively to achieve the goals and objectives articulated in

this Agreement. The Parties understand and agree that the process described in this Agreement depends upon timely and open communication and cooperation between the Parties. In this regard, communication of issues, changes, or problems that arise with regard to any aspect of the work should occur as early as possible in the process, and not wait for explicit due dates or deadlines. Each party agrees to work cooperatively and in good faith toward resolution of any such issues.

### **3. GENERAL FUNDING APPROACH**

#### **3.1 Costs.**

Sound Transit shall reimburse the Port for the all actual costs for staff to prepare the 30% design of relocating utilities, using the rates shown in Attachment D. The invoiced costs include allocated overheads of all services provided by the Port under this Agreement shall not exceed maximum amount of \$49,000.

**3.2 Funding Principles.** The Parties agree that the following principles apply to this Agreement: (a) Sound Transit shall not be obligated to reimburse the Port if the Port is unable to fulfill its obligations for providing the services described under this Agreement; and (b) Sound Transit shall not be obligated to reimburse the Port for any other types of costs that the Port performs for its own benefit in conjunction with the work described under this Agreement.

### **4. SCOPE AND SCHEDULE**

#### **4.1 Port of Seattle Responsibilities.**

Within the geographical limits defined and provided by Sound Transit and as shown in Attachment A, the Port shall prepare 30% design documents and estimate for the relocation of the underground utilities identified as being in conflict with the 15% conceptual South Link alignment provided to the Port previously by Sound Transit via a SharePoint link, its construction and operation such that they minimize conflicts with the D-B Contractor's design and construction approach for completing South Link.

**4.2 Sound Transit Responsibilities:** Sound Transit will provide the Port with CAD files showing the proposed track alignment for the South Link Project as well as Roadway, conduit, electric power, storm drainage, and sewer in the vicinity.

**4.3 Schedule for Completion.** The Port shall complete the 30% design in accordance with the schedule as shown in Attachment B and develop a reasonable schedule to complete the design and relocate the utilities based on Sound Transit's ability to obtain Board authorization and funding to construct South Link. The schedule shall attempt to, but not necessarily eliminate or minimize conflicts with the Sound Transit's D-B Contractor Sound Transit shall review all work products provided by the Port and provide comments to the Port within 10 days of the date of its receipt of the work product. The Port shall then make changes to the work product as needed and return the revised work product to Sound Transit

within 14 days after it received the comments from Sound Transit. Upon its receipt of the revised work product, Sound Transit shall acknowledge the work as complete to its satisfaction or provide any additional comments, in which case the Parties may agree to extend the time period for the Port to complete the work.

Sound Transit will notify the Port if its needs for the work to be completed sooner than scheduled. Sound Transit shall reimburse the Port at the rate of time and a half for actual non-exempt overtime work performed.

## 5. GENERAL TERMS

The following general terms are applicable to this Agreement.

5.1 **Indemnification.** To the extent permitted by law, the Parties to this Agreement shall protect, defend, indemnify, and save harmless the other Party, and its officers, officials, employees, and agents, while acting within the scope of their employment, from any and all costs, claims, demands, judgments, damages, or liability of any kind including injuries to persons or damages to property, which arise out of, or in any way result from, or are connected to, or are due to any acts or omissions of the indemnifying Party. No Party shall be required to indemnify, defend, or save harmless the other Party if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of the Party seeking indemnification. Where such claims, suits, or actions result from concurrent negligence of the Parties, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the Party's own negligence. Each Party agrees that its obligations under this indemnification section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each Party, by mutual negotiation, hereby waives, with respect to the other Party only, any immunity that would otherwise be available against such claims under the industrial insurance provisions of Title 51 RCW.

5.2 **Invoices and Payment.** Sound Transit shall pay the Port once the Port completes the work to Sound Transit's satisfaction as described in this Agreement. The Port shall provide Sound Transit with an invoice documenting its actual costs for providing the services described in Section 4.1, as provided in this Agreement. The Port shall submit all invoices and supporting documentation necessary to verify the actual costs it incurred in completing its responsibilities under this Agreement to: Sound Transit, Accounts Payable, 401 South Jackson, Seattle, Washington 98104-2826. Invoices shall bear the name and address of the party's Designated Representative, a purchase order number, reference this Agreement, and can be transmitted either electronically or by mail.

Sound Transit agrees to pay the properly supported invoice within 30 days from the date of receipt. If Sound Transit disputes any of charges, documentation or the completeness of the invoice, notice of such objection shall be provided to the Port in writing within 20 days after receipt of the submitted invoice. Sound Transit reserves the right to withhold payments pending timely delivery and proper completion of work products as may be required under this Agreement, but waives its right to withhold payment if it fails to provide the Port with

written notice of its objection within 20 days of its receipt of the submitted invoice. Any dispute shall be subject to the dispute resolution procedures as set forth in this Agreement.

- 5.3 **Reports and Documentation.** Sound Transit may require the Port to submit financial documents to satisfy requests from federal funding agencies for information to comply with Sound Transit's funding requirements, including, but not limited to: (a) work statements or payroll records, (b) invoices for materials and supplies, (c) statements from professionals for services rendered, and (d) an itemized listing of the charges supported by copies of original bills, invoices, expense accounts, and miscellaneous supporting data retained by the Port.
- 5.4 **Availability of Records.** All records in support of all costs incurred and actual expenditures kept by the Port and its contractor in performing services pursuant to the terms of this Agreement shall be open to inspection by Sound Transit or its federal funding agency during normal business hours, and shall be retained and made available for such inspection for a period of not less than six years from final payment of funds under this Agreement to the Port. Copies of these records shall be furnished to Sound Transit and/or its federal funding agency upon request. This requirement shall be included in all subcontracts related to the work entered into by the Port to fulfill the terms of this Agreement.
- 5.5 **Audit.** If an audit is requested by Sound Transit or its federal funding agency, the Port shall cooperate fully with the auditor chosen by Sound Transit or by the federal funding agency. If an audit is required, the Port will provide documentation of all costs incurred in performing services pursuant to the terms of this Agreement. In the event that an audit finds that Sound Transit has overpaid the Port for services performed under this Agreement, the excess amount will be repaid by the Port to Sound Transit within 30 days of the conclusion of the audit.
- 5.6 **Contract Administration.** To fulfill their respective responsibilities under this Agreement, each Party shall be solely responsible for the administration of and the completion and quality of work performed under any contracts executed by the Party. In no event shall any contract executed by a Party be construed as obligating the other Party or Parties to this Agreement. Any claims arising out of the separate contracts of each Party for work under this Agreement are the sole responsibility of the Party executing and administering such separate contracts. All contracts shall comply with all applicable public works and procurement laws and regulations, including, but not limited to, applicable bonding, prevailing wage, nondiscrimination, retainage, insurance, and workers compensation requirements.
- 5.7 **Dispute Resolution.** The Parties will work collaboratively in accordance with the following steps to resolve disagreements arising from activities performed under this Agreement. Disagreements will be resolved promptly and at the lowest level of authority. The Designated Representatives shall use their best efforts to resolve disputes and issues arising out of or related to this Agreement. Each Designated Representative shall notify the other in writing of any problem or dispute the Designated Representative believes needs formal resolution. This written notice shall include: (a) a description of the issue to be resolved; (b) a description of the difference between the Parties on the issue; and (c) a summary of

steps taken by Designated Representative to resolve the issue. In the event the Designated Representatives cannot resolve the dispute within 14 days of receipt of the notice, the Sound Transit Chief Executive Officer or his/her designee and the Port of Seattle Managing Director, Aviation Division or her/his designee shall engage in good faith negotiations to resolve the dispute.

The Parties agree that they shall have no right to seek relief under this Agreement in a court of law until they have followed the dispute resolution procedure described above. If any applicable statute of limitations will or may run during the time that may be required to exhaust the procedural steps set forth above, the Parties agree to seek an order to suspend any proceeding filed in a court of law while they satisfy the procedural steps set forth above.

## 6. TERMINATION FOR DEFAULT

- 6.1 Either Party may terminate this Agreement, in whole or in part, in writing, if the other Party substantially fails to fulfill any or all of its obligations under this Agreement through no fault of the other party, provided that insofar as practicable, the Party terminating the Agreement will provide: (a) Written notice of intent to terminate at least 30 days prior to the date of termination stating the manner in which the other Party has failed to perform the obligations under this Agreement; and (b) An opportunity for the other Party to cure the breach within at least 30 days of notice of the intent to terminate. In such case, the Notice of Termination will state the time period in which cure is permitted and any other appropriate conditions. In the event that the Parties agree to terminate this Agreement (not for default), Sound Transit shall pay the Port for all work performed by the Port under this Agreement until such time as the Port received notification of termination of this Agreement from Sound Transit. Notice of termination shall be communicated in writing to the Parties' respective Designated Representatives.
- 6.2 If the other party fails to remedy the default or the breach to the satisfaction of the other Party within the time period established in the Notice of Termination or any extension thereof, granted by the Party not at fault, this Agreement shall be deemed terminated.

## 7. GENERAL PROVISIONS

- 7.1 **No Employment Relationship Created.** The Parties agree that nothing in this Agreement shall be construed to create an employment relationship between the Port and any employee, agent, representative or contractor of Sound Transit.
- 7.2 **No Agency.** No separate entity is created by this Agreement. No joint venture or partnership is formed as a result of this Agreement. No employees, agents or subcontractors of one party shall be deemed, or represent themselves to be, employees of the other party.
- 7.3 **No Third Party Rights.** It is understood and agreed that this Agreement is solely for the benefit of the Parties hereto and gives no right to any other party. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties.

- 7.4 **Severability.** If any of the terms and conditions of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, the remaining terms and conditions unaffected thereby shall remain in full force and effect.
- 7.5 **Designated Representatives.** The Designated Representative for the Port shall be the Port's Project Manager, Mark Longridge. The Sound Transit Designated Representative shall be the Robert Bean, Senior Civil Engineer. The Parties may unilaterally change their Designated Representatives by sending written notice to the other party as provided in Section 7.6.
- 7.6 **Notices.** All notices to be provided under this Agreement shall be in writing and shall be hand-delivered or sent by US Mail, and shall be deemed received upon delivery or, in the case of notice sent by mail, five (5) days after deposit in the US Mail.

Notices to the Port shall be sent to the following address:

*Port of Seattle  
P.O. Box 1209  
Seattle, WA 98111*

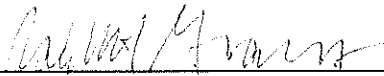
Notices to Sound Transit shall be sent to the following address:

*Sound Transit  
c/o Department of Design Engineering and Construction Management  
401 S. Jackson  
Seattle, WA 98104*

- 7.7 **Calculation of Time.** Time is of the essence in every provision of this Agreement. Unless otherwise set forth in this Agreement, the reference to "days" means calendar days. If any time for action occurs on a weekend or legal holiday, then the time period shall be extended automatically to the next business day.
- 7.8 **Entire Agreement.** This Agreement, including its Recitals and Exhibits, embodies the Parties entire Agreement on the matters covered by it, except as supplemented by subsequent amendments to this Agreement. All prior negotiations and draft written agreements are merged into and superseded by this Agreement.
- 7.9 **Execution of Agreement.** This Agreement may be executed in two counterparts, any one of which shall be regarded for all purposes as one original.

IN WITNESS WHEREOF, the Parties hereto hereby agree to the terms and conditions of this Agreement as of the date first written above.

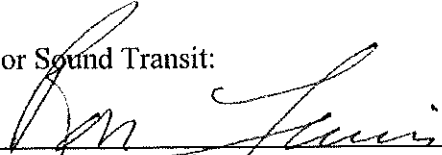
For the Port of Seattle:



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By: Ralph Graves, P.E.  
Title: Managing Director, Capital  
Development Division


For Sound Transit:



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By: Ron Lewis  
Title: Deputy Executive of Business  
Services

Approved as to Form:



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By: Traci M. Goodwin  
Title: Senior Port Counsel

Approved as to Form:



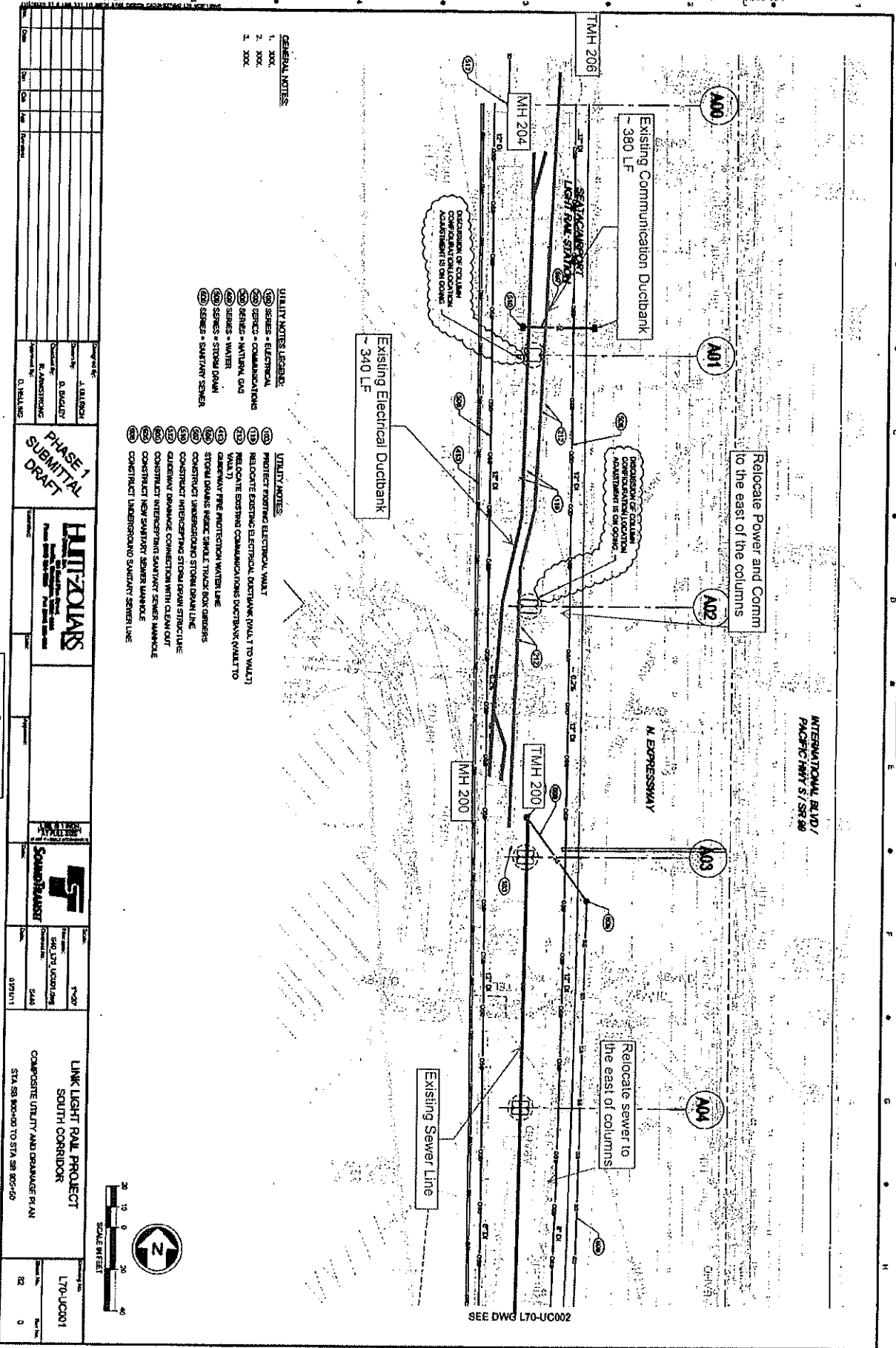
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By: Jordan Wagner  
Title: Sound Transit Legal Counsel

Attest:

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By:  
Title:



**GENERAL NOTES:**

1. XXX
2. XXX
3. XXX

**UTILITY NOTES/LEGEND:**

- (18) SERIES - ELECTRICAL
- (19) SERIES - COMMUNICATIONS
- (20) SERIES - WATER
- (21) SERIES - WATER, GAS
- (22) SERIES - WATER
- (23) SERIES - STORM DRAIN
- (24) SERIES - SANITARY SEWER

**UTILITY NOTES:**

- (18) PROTECT EXISTING ELECTRICAL WALT
- (19) RELOCATE EXISTING ELECTRICAL DUCTBANK (WALT TO WALT)
- (20) RELOCATE EXISTING COMMUNICATIONS DUCTBANK (WALT TO WALT)
- (21) PROTECT EXISTING WATER LINE
- (22) STORM DRAIN INSPECT (SMALL TRACK BOX GENDERS)
- (23) CONSTRUCT UNDERGROUND STORM DRAIN LINE
- (24) CONSTRUCT UNDERGROUND STORM DRAIN LINE
- (25) GROUNDWATER REMEDIATION CONNECTION WITH CLEAN OUT
- (26) CONSTRUCT INTERSTATION SANITARY SEWER MANHOLE
- (27) CONSTRUCT NEW SANITARY SEWER MANHOLE
- (28) CONSTRUCT UNDERGROUND SANITARY SEWER LINE



<b>PHASE 1 SUBMITTAL DRAFT</b>	<b>HUTZIGLARS</b> INCORPORATED 10000 W. 10th Ave., Suite 100 Denver, CO 80202 Tel: 303.751.1100 Fax: 303.751.1101		<b>SoundBuilder</b> 1500 13th Ave, Suite 100 Denver, CO 80202 Tel: 303.733.1100 Fax: 303.733.1101	<b>LINK LIGHT RAIL PROJECT SOUTH CORRIDOR COMPOSITE UTILITY AND DRAINAGE PLAN</b>	<b>L70-UC001</b>	Sheet No. <b>02</b>	Total No. <b>0</b>



# ATTACHMENT B SCHEDULE

ID	Task Name	Duration	Start	Finish
1	Authorization by ST	132 days	Tue 8/30/11	Wed 2/29/12
2	Develop estimate and schedule for ST review	14 days	Tue 8/30/11	Fri 9/16/11
3	ST change control board approval of cost/approach	15 days	Mon 9/19/11	Fri 10/7/11
4	Prepare ST/Port Agreement for utility relocation	30 days	Mon 10/10/11	Fri 11/18/11
5	Sign ST/Port Agreement by CEOs	1 day	Wed 2/29/12	Wed 2/29/12
6	Investment Committee Approval	41 days	Mon 11/21/11	Mon 1/16/12
7	Request project development funds	2 days	Mon 11/21/11	Tue 11/22/11
8	Obtain work project number	5 days	Wed 11/23/11	Tue 11/29/11
9	Acquisition plan	5 days	Wed 11/30/11	Tue 12/6/11
10	Acquisition plan meeting	1 day	Wed 12/7/11	Wed 12/7/11
11	Develop project notebook	20 days	Wed 11/30/11	Tue 12/27/11
12	PL review of notebook	4 days	Wed 12/28/11	Mon 1/2/12
13	Notify Michelle Brantley (get on IC calendar)	1 day	Wed 12/28/11	Wed 12/28/11
14	Advance briefing to Mike Ehl	4 days	Tue 1/3/12	Fri 1/6/12
15	Distribute electronic notebook to IC members	5 days	Mon 1/9/12	Fri 1/13/12
16	Investment committee for notebook approval	1 day	Mon 1/16/12	Mon 1/16/12
17	Commission Authorization	41 days	Tue 1/3/12	Tue 2/28/12
18	Prepare commission memo for agreement/DES/CN	10 days	Tue 1/3/12	Mon 1/16/12
19	Distribute commission memo for review	5 days	Tue 1/17/12	Mon 1/23/12
20	Commission memo to Dave Soike for approval	5 days	Tue 1/24/12	Mon 1/30/12
21	Memo to due commission	12 days	Tue 1/31/12	Wed 2/15/12
22	Commission meeting	1 day	Tue 2/28/12	Tue 2/28/12
23	Design by Port Staff	57 days	Wed 11/23/11	Thu 2/9/12
24	30% design	57 days	Wed 11/23/11	Thu 2/9/12
25	Develop 30% design	40 days	Wed 11/23/11	Tue 1/17/12
26	Plot 30% design review drawings	1 day	Wed 1/18/12	Wed 1/18/12
27	Print/deliver 30% design review drawings	3 days	Thu 1/19/12	Mon 1/23/12
28	Distribute 30% design review drawings	2 days	Tue 1/24/12	Wed 1/25/12
29	Go to WISE	1 day	Thu 1/26/12	Thu 1/26/12
30	Go to PEEST	1 day	Thu 1/26/12	Thu 1/26/12
31	Go to START	1 day	Thu 1/26/12	Thu 1/26/12
32	30% full review	10 days	Thu 1/26/12	Wed 2/8/12
33	30% review team meeting- answer questions	1 day	Thu 2/9/12	Thu 2/9/12

Project: Schedules 6.20.2011  
Date: Tue 12/13/11

Task: Split

Milestone: Summary

Project Summary

External Milestone

Inactive Task

Inactive Milestone

Inactive Summary

Manual Task

Duration-only

Manual Summary Rollup

Manual Summary

Start-only

Finish-only

Deadline

Progress

10

ATTACHMENT "C"  
PRELIMINARY (30%) DESIGN FEE ESTIMATE

Work element	Total Cost
1. Project Management and Approval	\$10,000
2. Project Coordination	\$ 2,830
3. Base Mapping	\$ 5,120
4. Design Development	\$ 6,300
5. Construction Drawings	\$ 4,160
6. QA/QC and drawing distribution	\$ 1,340
7. Maintenance & CPO Support	\$ 7,500
 POS Total	 \$37,750
 Management Reserve (20%)	 \$ 7,450
 <b>Total Agreement Budget</b>	 <b>\$44,700</b>
 ST Controlled Contingency	 \$ 5,300
 Total Sound Transit Authorization	 \$50,000

Attachment "D"  
Schedule of Port Staff Rates

<u>Role</u>	<u>Full Billing Rate *</u>	<u>Included Allocated Overhead Rate</u>
Project Manager	\$125/hr	70%
Engineering Manager	\$125/hr	19%
Senior Engineer	\$105/hr	19%
Drafter	\$80/hr	19%
Administration	\$65/hr	70%
CPO Contract Manager	\$125/hr	165%

\* All rates shown are estimated rates for representative sample of employee roles. All billing will be based on actual costs and personnel performing work.

