

RESOLUTION NO. 3434

A RESOLUTION of the Port Commission of the Port of Seattle to authorize the Executive Director to execute an Interlocal Agreement between the Port of Seattle and Seattle Public Utilities (SPU) regarding the relocation of the existing 36 inch water system pipeline from its current east-west alignment paralleling 160th street to within the limits of the proposed relocated 154th/156th Street alignment.

WHEREAS, the Port, as part of the Third Runway Project, is planning to raise the existing grade of the Third Runway Area to an elevation compatible with the two existing runways, and

WHEREAS, this embankment will bury a portion of the existing SPU 36 inch **watermain** by as much as 160 feet, and

WHEREAS, the existing pipeline is an integral part of the water system used to provide a reliable supply of water to Water District 49 and **Highline** Water District, and

WHEREAS, the parties wish to relocate the existing pipeline out **from** under all the runways at the Airport, and

WHEREAS, the parties have determined that the most practical way to relocate the existing pipeline is for the Port to construct a new transmission line as part of the relocation of the 154th/156th roadway, and for SPU to terminate its use of the existing pipeline, and

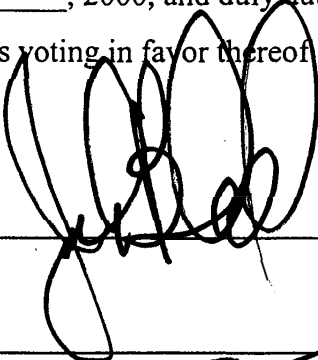
WHEREAS, the parties wish to enter into an **AGREEMENT** defining responsibility for the design, construction, and relocation of the **36** inch watermain,

NOW, THEREFORE, BE IT RESOLVED, by the Port Commission of the Port of Seattle that


Section 1. The Executive Director is hereby authorized to execute an Interlocal Agreement between the Port of Seattle and Seattle Public Utilities (SPU) regarding the relocation of the SPU watermain, in substantially the form attached hereto as Attachment "A" by this reference incorporated herein.

Section 2. A copy of the final executed AGREEMENT shall be attached to this Resolution as Attachment "B".

ADOPTED by the Port Commission of the Port of Seattle at a regular meeting held this 11th day of July, 2000, and duly authenticated in open session by the signatures of the Commissioners voting in favor thereof and the seal of the Commission.



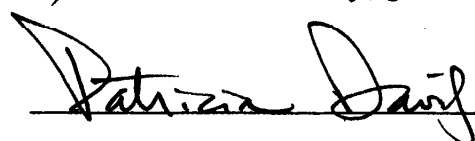
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CLARE NORDQUIST



BOB EDWARDS



PATRICIA DAVIS

Port Commission

EXHIBIT A

AGREEMENT TO RELOCATE WATER PIPELINE

This Agreement to Relocate Water Pipeline (the "Agreement") is made and entered into as of the ___ day of _____, 2000, by and between the Port of Seattle, a municipal corporation of the State of Washington ("Port") and The City of Seattle, a city of the first class of the State of Washington, acting by and through Seattle Public Utilities ("SPU"). The Port and SPU are sometimes referred to herein as the "Parties" and either as the "Party."

Recitals

- A. The Port owns and operates Seattle-Tacoma International Airport (the "Airport"), and is engaged in a project to add a third runway to the Airport ("Third Runway Project"). As part of the Third Runway Project, the Port needs to bring the area under the planned third runway, approximately as shown in Exhibit A, ("Third Runway Area") up to a grade compatible with the first and second runways. In so doing, the Port will raise the existing grade of the Third Runway Area by up to 160 feet. Also as part of the Third Runway Project, the Port previously has planned to build a new road north and west of the Airport, to be known as South 154th Street, as shown in Exhibit B ("New Roadway"), and to install electricity, gas, sanitary sewer and storm sewer lines therein. The New Roadway shall be dedicated to the City of SeaTac ("SeaTac") in return for SeaTac's vacation of a portion of the existing South 154th Street and South 156th Street.
- B. SPU owns and operates a water system (the "Water System") that serves customers inside and outside Seattle, including the Airport. As part of the Water System, SPU owns and operates a 36 inch water transmission pipeline that runs east-west under the first and second runways at the Airport, as well as under the planned Third Runway Area, at approximately 4 to 13 feet below existing grade, as shown in Exhibit A ("Existing Pipeline"). The Existing Pipeline is a complete operating integral section of the Water System, used to provide a reliable supply of water to Water District 49 and Highline Water District (collectively, the "Water Districts").
- C. The Port's plan to fill the Third Runway Area would bury a portion of the Existing Pipeline in the Third Runway Area by up to 160 feet.
- D. The Parties wish to relocate the Existing Pipeline out from under all runways at the Airport and have agreed that such relocation shall occur before a third runway is put in service.
- E. The Parties have determined that the most practical way to relocate the Existing Pipeline is for the Port to construct and install a water transmission pipeline in the New Roadway, as shown in Exhibit B (as hereinafter defined, the "New Pipeline"), and for SPU to terminate its use of the Existing Pipeline.

F. The Parties desire to set forth the terms and conditions, including payment provisions, for construction and installation of the New Pipeline, deactivation of the Existing Pipeline, and, if required hereunder, construction and installation of the Pipeline Improvement (as hereinafter defined).

G. The New Pipeline and the Pipeline Improvement each will constitute a complete operating integral section of the Water System, and will substitute for and serve the same functions as the Existing Pipeline.

Now, therefore, in consideration of the mutual promises contained herein, the Parties agree as follows:

Agreement

1. Agreement

This Agreement reflects the understanding between the Parties regarding the matters covered herein and incorporates all prior negotiations and agreements between the Parties. It shall be in full force and effect **from** the date first written above until the date on which the New Pipeline is transferred from the Port to SPU, pursuant to this Agreement. This Agreement includes all Recitals and the following exhibits:

Exhibit A – Airport, with Third Runway Area and Existing Pipeline

Exhibit B – New Roadway

Exhibit C – Design Guidelines

2. New Pipeline

The Port shall design, construct, and install a new water transmission pipeline (including necessary appurtenances) that (i) has a **36** inch inside diameter, (ii) is constructed of Class 52 ductile iron or **36** ksi steel pipe, (iii) is aligned materially in accordance with the alignment depicted on Exhibit B, (iv) is constructed materially in accordance with the Design Guidelines set forth in Exhibit C and (v) otherwise conforms to the terms of this Agreement (the "New Pipeline"). The Parties agree that installation of the New Pipeline shall include inspection, filling, pressure testing, disinfection, flushing, dewatering, rewatering, bacteriological testing (by SPU), and connection of the New Pipeline to the Water System, in accordance with the final plans and specifications for the New Pipeline. However, the New Pipeline Contractor (as hereinafter defined) shall not operate Water System valves in any manner without the prior written consent of SPU.

2.1 Design. To the extent not already completed as of the date hereof, the Parties shall observe the following process for the design of the New Pipeline:

(a) In the event that at any point in the design/review process the Port determines it is impossible or impracticable to adhere to the Design Guidelines set forth in Exhibit C or the alignment set forth in Exhibit B, the Port shall include with each design submittal required under this section 2.1 a written notation of any deviation from the Design Guidelines or alignment not previously disclosed in a prior submittal and an explanation for the deviation.

(b) The Parties recognize that time is of the essence, and agree that the design process shall be completed by August 1, 2000 (the "Deadline"), provided that SPU receives a 60% design Complete Submittal (as hereinafter defined) no later than April 26, 2000. If the 60% Complete Submittal is delayed, the Deadline will be extended by the amount of the delay. Accordingly, the Parties shall work expeditiously and cooperatively during the design/review process. The Parties shall endeavor to provide submittals/feedback to the other as early as possible through the design process. Within three (3) working days after receipt of a design submittal, SPU shall notify the Port by e-mail or fax whether the submittal is complete (a "Complete Submittal") or incomplete (an "Incomplete Submittal") in accordance with the criteria set forth below for the applicable submittal.

(c) If SPU identifies an Incomplete Submittal, the Port shall (unless a disagreement exists) deliver to SPU for review and approval or disapproval a revised submittal as soon as possible and in any event within seven (7) working days. Within three (3) working days after receipt of such revised submittal, SPU shall **notify** the Port by e-mail or fax whether the submittal is a Complete Submittal or an Incomplete Submittal. This process shall be repeated until SPU determines that the submittal is complete.

(d) If SPU approves a Complete Submittal required under this section 2.1 with comments, the Port shall incorporate such comments into the next submittal or any disagreement regarding those comments shall be resolved before the Port delivers the next design submittal. If SPU fails to comment on a Complete Submittal within the time set forth below, that submittal shall be deemed to be approved. If SPU disapproves a Complete Submittal required under this section 2.1, the Port shall (unless a disagreement exists) **deliver** to SPU for review and approval or disapproval a revised submittal addressing the **reason(s)** for disapproval within seven (7) working days after delivery of the disapproval. No later than seven (7) working days **after** receipt of such revised submittal, SPU shall deliver its written comments and approval or disapproval to the Port. Any disagreement based on SPU disapproval of a design submittal shall be resolved before the Port delivers the next design submittal.

(e) The Parties shall meet as necessary to resolve disagreements that may arise in connection with each design submittal. Disputes shall be resolved pursuant to section 9 hereof and the timeframes set forth in this section 2.1 shall be tolled during the pendency of any such dispute.

(f) In the event that the unexpired periods of time for review, revision and completion of the design of the New Pipeline will extend, when aggregated, beyond the Deadline, all of the remaining periods for review, revision and completion shall be shortened proportionately to ensure completion of the design of the New Pipeline by the Deadline; provided, that there shall be no reduction of the time for SPU's review for delays caused by the Port's delivery of Incomplete Submittals. To the extent of such delays, the Port may extend the Deadline by the number of working days of such delay or reduce the periods for the Port's remaining design and revision by the amount of such delay; provided, that the Port shall not revise the design schedule in a manner that would adversely impact completion and transfer of the New Pipeline to SPU by May 1, 2004. The Port immediately shall inform SPU in writing of revisions to the design schedule.

(g) Within three weeks following the date hereof, the Port shall deliver to SPU, for its review and approval or disapproval, plans and specifications representing the 30% design submittal for the New Pipeline. The 30% submittal shall include: horizontal and vertical alignment; stationing; location of air valves, line valves, blowoffs, and critical cross sections; and an outline of the specifications. No later than twelve (12) working days after receipt of such Complete Submittal, SPU shall deliver its written comments and approval or disapproval to the Port.

(h) Within three weeks following SPU's approval of the 30% design submittal, the Port shall deliver to SPU, for its review and approval or disapproval, plans and specifications representing the 60% design submittal for the New Pipeline. The 60% submittal shall include: all details of valves, chambers and connections; cross sections of critical crossings; and completed specifications with sufficient detail to determine the method of thrust restraint. No later than seventeen (17) working days after receipt of such Complete Submittal, SPU shall deliver its written comments and approval or disapproval to the Port.

(i) Within three weeks following SPU's approval of the 60% design submittal, the Port shall deliver plans and specifications representing the 90% design submittal for the New Pipeline. The 90% submittal shall be a completed design and completed specifications. No later than seven (7) working days after receipt of such Complete Submittal, SPU shall deliver its written comments and approval or disapproval to the Port.

(j) Within one (1) week following SPU's approval of the 90% design submittal, the Port shall deliver the resulting final plans and specifications as the 100% submittal. Within one week after receipt, SPU shall approve the final plans and specifications for the New Pipeline in writing. Said final plans and specifications, including mutually agreed-upon final revisions and addenda, shall be used in the Port's bid and contract documents for the New Pipeline work.

(k) The Port shall cause the contract between the Port's consultant, HNTB Corporation, and the designer of the New Pipeline, SVR Design Company, dated _____, to be amended to state explicitly that (i) The City of Seattle is a third party

beneficiary of the entire contract, including without limitation the indemnification provisions thereof, (ii) all representations, warranties and guarantees of SVR Design Company relating to the design-of the New Pipeline run to The City of Seattle, and (iii) The City of Seattle shall be named as an additional insured as if it had been so named on the date the design contract was first executed on all policies of insurance the Port requires such designer to carry. Within ten (10) days after execution of this Agreement, the Port shall deliver to SPU a copy of such amended design contract and evidence reasonably acceptable to the Risk Manager of The City of Seattle that The City of Seattle has been named an additional insured in accordance with this subsection (k).

2.2 Property Acquisition. The Port represents that it now owns or will own all property necessary for the construction of the New Roadway and the New Pipeline therein, with the exception of the existing S. 154th Street right of way belonging to SeaTac, all as shown in Exhibit B.

2.3 Governmental Approvals. The Port has obtained or shall obtain, at its sole cost and expense, all permits and governmental approvals (including without limitation those required by SeaTac) that may be necessary to construct and install the New Pipeline and New Roadway and to fill the Third Runway Area.

2.4 Construction and Installation

(a) Construction Contract. The Port shall cause the New Pipeline to be constructed and installed in conformance with all public works laws of the State of Washington applicable to it, and shall select its contractor for construction and installation of the New Roadway and the New Pipeline therein ("New Pipeline Contractor") in accordance with such laws. The Port shall cause the contract between the Port and the New Pipeline Contractor ("New Pipeline Contract") to state explicitly that (i) The City of Seattle is a third party beneficiary of the entire contract, including without limitation the indemnification provisions thereof, and (ii) all representations, warranties and guarantees of the New Pipeline Contractor relating to the construction and installation of the New Pipeline are fully assignable to The City of Seattle. Within ten (10) days after execution of the New Pipeline Contract, the Port shall deliver a copy of it to SPU.

(b) Schedule. The Port represents that it expects to begin construction of the New Pipeline no later than February 1, 2003 and that the New Pipeline will be fully operational and will be transferred to SPU in accordance with section 7.2 no later than May 1, 2004. If for any reason the Port fails to meet this schedule, the provisions of sections 4 and 5 shall apply. The Port shall provide SPU with the New Pipeline Contractor's initial construction schedule and with schedule updates on a timely basis, so that any necessary coordination between the New Pipeline Contractor and SPU can be accomplished. The New Pipeline Contractor shall schedule all testing and connection with SPU at least two months prior to the proposed work; provided, no connection shall be made from June 1 through September 15.

(c) Change Orders. Either Party may initiate changes to the final plans and specifications for the New Pipeline by submitting the proposed change to the other Party for its review and approval or disapproval. Approval of a proposed change shall not unreasonably be denied. Any proposed change shall be deemed to be approved if written comments are not delivered to the initiating Party within ten (10) working days. The initiating Party shall respond in writing to the reviewing Party's comments. If the reviewing Party disapproves the proposed change or approves it with comments, the proposed change shall not be implemented until the comments are included in the change order or the dispute is resolved in accordance with section 9. All changes necessitated by errors or omissions or unforeseen but necessary revisions to accommodate actual field conditions will be considered a normal construction-related expense and shall be implemented at the Port's sole cost and expense. Any other changes requested by SPU shall be paid for in accordance with section 8.1.

(d) Insurance. Prior to the commencement of construction of the New Pipeline, the Port shall (i) cause the New Pipeline Contractor to name The City of Seattle as an additional insured on all policies of liability insurance that the Port requires the New Pipeline Contractor to carry and (ii) provide SPU with evidence reasonably acceptable to the Risk Manager of The City of Seattle that The City of Seattle has been so named.

(e) Inspection, _____ t and _____ ministrati The F shall provide all project management and inspection necessary to ensure timely construction and installation of the New Pipeline in accordance with the final plans and specifications for the New Pipeline, including the following:

(1) The New Pipeline Contractor shall construct, install and connect the New Pipeline strictly in accordance with the final plans and specifications and construction contract addenda approved by the Parties and issued as part of the bidding process, subject to the provisions regarding change orders contained in section 2.4(c). The New Pipeline Contractor shall not operate Water System valves in any manner without the prior written permission of SPU.

(2) The Port shall administer the New Pipeline Contract and take the lead role in inspecting and accept the New Pipeline Contractor's work. SPU may, but is not obligated to, observe the work for quality assurance and to aid the Port's inspection staff in coordinating water system activities with regard to the New Pipeline. Field problems found by SPU shall be resolved through the Port's construction administration staff.

(3) The Port and the New Pipeline Contractor shall develop and execute any traffic control plans that are required for work on the New Pipeline.

(4) If requested, the Port's inspection staff shall **forward** weekly to SPU any written reports, including without limitation daily inspection reports (inspectors' field notes), relating to construction progress as well as any schedules prepared by the

New Pipeline Contractor regarding work to be performed. SPU shall be invited to project progress/scheduling meetings for the New Pipeline.

(5) Within one year following SPU's acceptance of the New Pipeline, the Port shall prepare or have prepared "as built" drawings for SPU's permanent records, and provide SPU with a digitized file and Mylar sheets. The digitized file shall be in AutoCAD Release 14 with the water design on its own layer, and the Mylar sheets shall be 24" x 36".

(6) The Port shall reasonably consult with SPU during the construction process to effectuate the purposes of this Agreement and represent in good faith SPU's interests to the New Pipeline Contractor.

(7) As part of the installation of the New Pipeline and prior to the New Pipeline Contractor beginning the process of filling, pressure testing, disinfection, flushing, dewatering, rewatering, bacteriological testing (to be conducted by SPU) and connection, SPU may inspect the New Pipeline (by "crawl through" if it deems necessary) and shall inform the Port of deficient work. SPU also may inspect the materials to be used in connection and the connection itself, and SPU shall inform the Port of deficient materials or work. These processes shall be repeated until the deficient work has been corrected.

(f) Final Approval and Acceptance. Upon completion of the construction and installation of the New Pipeline, the Port shall provide SPU with at least ten (10) working days prior written notice of the Pre Final Inspection, following the receipt of a request from the New Pipeline Contractor for such inspection under the contract documents for the construction of the New Pipeline. SPU shall attend the Pre Final Inspection with the Port and prepare and transmit to the Port a written punchlist of deficient work within ten (10) working days **after** the Pre Final Inspection. The Port shall provide SPU with written notice of the Final Inspection immediately following the receipt of a request **from** the New Pipeline Contractor for such inspection under the contract documents for the construction of the New Pipeline. The Final Inspection shall be held at least five (5) working days following the Port's notice to SPU. SPU shall attend the Final Inspection with the Port. The process for Final Inspection shall be repeated until all items of deficient work on the punchlist have been corrected, at which time SPU shall promptly prepare and transmit to the Port a written Notice of Acceptance of the New Pipeline.

2.5 Indemnification.

(a) Prior to Transfer. With respect to occurrences up to and until the Port transfers the New Pipeline to SPU in accordance with Section 7.2, the Port agrees to release, defend and indemnify SPU, The City of Seattle and its employees and agents from and against each and every risk and liability and all losses, damages, claims, demands, suits, judgments, costs, penalties and consultants' and attorneys' fees (each, a "Claim" and collectively, "Claims") (including without limitation designers' and

contractors' Claims and Claims involving Hazardous Substances, as hereinafter defined) that relate to injury or death to any person or damage to any property and that arise out of or are connected in any manner with any work performed to design, construct or install the New Pipeline under this Agreement, provided that in accordance with RCW 4.24.115 (i) the Port's duties under this section 2.5(a) shall not apply to Claims resulting from the sole negligence of SPU or its employees, consultants, contractors or agents and (ii) to the extent that a Claim arises out of the concurrent negligence of SPU or its employees, consultants, contractors or agents, and the Port or its employees, consultants, contractors or agents, the Port's obligations hereunder shall be to the extent of its negligence and that of its employees, consultants, contractor or agents. Solely for the purpose of effectuating the foregoing indemnity and not for the benefit of the Port's employees or any third parties, the Port expressly waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. The aforesaid indemnification has been explicitly and mutually negotiated by the Parties and shall survive the termination or expiration of this Agreement.

Port SPU

(b) After Transfer. With respect to occurrences after the Port transfers the New Pipeline to SPU in accordance with Section 7.2, the Port agrees to release, defend and indemnify SPU, The City of Seattle and its employees and agents from and against each and every Claim (including without limitation designers' and contractors' Claims and Claims involving Hazardous Substances) that relates to injury or death to any person or damage to any property and that arises out of or is connected in any manner with the negligence of the Port or its employees or consultant, HNTB Corporation, but only to the extent of their negligence, in connection with any work **performed** to design, construct or install the Pipeline Improvement under this Agreement. Solely for the purpose of effectuating the foregoing indemnity and not for the benefit of the Port's employees or any third parties, the Port expressly waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. The aforesaid indemnification has been explicitly and mutually negotiated by the Parties and shall survive the termination or expiration of this Agreement.

Port SPU

2.6 SPU Review. SPU's review or approval of design submittals, plans or specifications for the New Pipeline or acceptance of the New Pipeline pursuant to section 2 shall not create any obligation or liability of SPU in the event that said plans or specifications or the construction or installation s found to be defective in any manner.

2.7 Hazardous Substance. "Hazardous Substance" shall mean any waste, substance or material designated or regulated as "toxic," "hazardous" or "extremely hazardous" under federal, state or local laws.

3. Existing Pipeline

3.1 Deactivation

(a) Within thirty (30) days after the date of this Agreement, SPU shall acquire the necessary governmental permits and shall complete dewatering the Existing Pipeline. Within sixty (60) days thereafter, SPU shall complete cutting, capping, and any other work necessary to deactivate the Existing Pipeline. The Port shall provide access to the Existing Pipeline at the points reflected on Exhibit A and otherwise cooperate with SPU as necessary to complete this work. If SPU encounters Hazardous Substances when deactivating the Existing Pipeline, SPU shall cease work until such Hazardous Substances are removed and the schedule for deactivation shall be extended by the amount of time necessary to accomplish such removal. The Port shall expeditiously remove Hazardous Substances (if any) from Port property and SPU shall expeditiously remove Hazardous Substances (if any) from other property. Other than the removal of Hazardous Substances (if any) from Port property, the costs of which shall be borne by the Port, all deactivation work shall be at SPU's sole cost and expense.

(b) With respect to occurrences up to and until the transfer of the Existing Pipeline in accordance with Section 7.4(a) or May 1, 2004, whichever is earlier, SPU agrees to release, defend and indemnify the Port and its employees and agents from and against each and every Claim that relates to injury or death to any person or damage to any property and that arises out of or is connected in any manner with any work performed pursuant to section 3.1(a) hereof except removal of Hazardous Substances (if any) by the Port; provided, that in accordance with RCW 4.24.115 (i) SPU's duties under this section 3.1(b) shall not apply to Claims resulting from the sole negligence of the Port or its employees, consultants, contractors or agents and (ii) to the extent that a Claim arises out of the concurrent negligence of SPU or its employees, consultants, contractors or agents and the Port or its employees, consultants, contractors or agents, SPU's obligations hereunder shall be to the extent of its negligence and that of its employees, consultants, contractors or agents. Solely for the purpose of effectuating the foregoing indemnity and not for the benefit of SPU's employees or any third parties, SPU expressly waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. The aforesaid indemnification has been explicitly and mutually negotiated by the Parties and shall survive the termination or expiration of this Agreement.

Port SPU

(c) With respect to occurrences after transfer of the Existing Pipeline in accordance with Section 7.4(a) or May 1, 2004, whichever is earlier, SPU agrees to release, defend and indemnify the Port and its employees and agents from and against each and every Claim that relates to injury or death to any person or damage to any property and that arises out of or is connected in any manner with SPU or its employees' negligence, but only to the extent of their negligence, in connection with any work performed by SPU pursuant to section 3.1(a) hereof except removal of Hazardous Substances (if any) by the Port. Solely for the purpose of effectuating the foregoing indemnity and not for the benefit of the Port's employees or any third parties, the Port

expressly waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. The aforesaid indemnification has been explicitly and mutually negotiated by the Parties and shall survive the termination or expiration of this Agreement.

Port

SPU

3.2 Filling Over Existing Pipeline

(a) Upon the completion of the dewatering work described in section 3.1, the Port may place fill over the Existing Pipeline in the Third Runway Area, as shown in Exhibit A.

(b) The Port agrees to release, defend and indemnify SPU, The City of Seattle and its employees and agents from and against each and every Claim (including without limitation Claims related to Hazardous Substances, contractors Claims, or Claims related to damage to the portions of the Existing Pipeline east and west of the connections of the Pipeline Improvement to the remainder of the Existing Pipeline) related to injury or death to any person or damage to any property (except damage to the portion of the Existing Pipeline replaced by the Pipeline Improvement pursuant to section 4 hereof) arising out of or in any manner connected with any work performed pursuant to the Port's removal of Hazardous Substances pursuant to section 3.1 (a) or any work performed pursuant to section 3.2(a) hereof; provided that in accordance with RCW 4.24.115 (i) the Port's duties under this section 3.2(b) shall not apply to Claims resulting from the sole negligence of SPU and (ii) to the extent that a Claim arises out of the concurrent negligence of SPU and the Port, the Port's obligations hereunder shall be to the extent of its negligence. Solely for the purpose of effectuating the foregoing indemnity and not for the benefit of the Port's employees or any third parties, the Port expressly waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. The aforesaid indemnification has been explicitly and mutually negotiated by the Parties and shall survive any termination or expiration of this Agreement.

Port

SPU

4. **Improvements to the Existing Pipeline**

If construction of the New Pipeline has not begun before February 1, 2003, or if construction of the New Pipeline thereafter ceases or is delayed such that it is unlikely that the New Pipeline could be completed and transferred to SPU by May 1, 2004, the Port shall begin work on designing, constructing and installing an improvement (including necessary appurtenances) to the Existing Pipeline that (i) brings the portion of the Existing Pipeline within the Third Runway Area to a depth of five (5) feet below the grade shown in the final plans and specifications for the Third Runway Project, (ii) extends as far east and west of the Third Runway Area as SPU determines is necessary, but no further east than the point that is 100 feet east of the center line of Perimeter Road

and no further west than the point that is 100 feet east of the center line of 9th Avenue South (each point determined to the nearest pipe joint as located in the field), (iii) follows the alignment of the Existing Pipeline, (iv) is constructed of Class 52 ductile iron or 36 ksi steel pipe, (v) has a 36 inch inside diameter, (vi) is constructed materially in accordance with the Design Guidelines contained in Exhibit D, and (vii) otherwise conforms to the terms of this Agreement (the "Pipeline Improvement"). The Parties agree that installation of the Pipeline Improvement shall include inspection, filling, pressure testing, disinfection, flushing dewatering, rewatering, bacteriological testing (by SPU) and connection (all in accordance with the final plans and specifications for the Pipeline Improvement) with respect to both the connection of the Pipeline Improvement to the Existing Pipeline at the points identified in clause (ii) above (the resulting pipeline is referred to herein as the "Entire Pipeline") and the reconnection of the Entire Pipeline to the Water System. However, the Improvement Contractor (as hereinafter defined) shall not operate Water System valves in any manner without the prior written consent of SPU. The Port's construction, installation, and transfer of the Pipeline Improvement to SPU is not intended, nor shall it be deemed, to relieve the Port of its obligation to construct, install and transfer to SPU the New Pipeline pursuant to this Agreement.

The Port shall, in a timely manner so that completion of the Pipeline Improvement is not delayed, obtain all property and governmental approvals that may be necessary to construct and install the Pipeline Improvement. The Port shall continue to work expeditiously on construction and installation of the Pipeline Improvement, and shall on or before May 1, 2004 transfer to SPU a **fully** operational Pipeline Improvement; provided, that if the New Pipeline is completed and transferred to SPU prior to May 1, 2004, the Port's obligations with regard to the Pipeline Improvement shall cease. All costs of design, permitting, construction and installation of the Pipeline Improvement shall be borne solely by the Port, except those costs incurred by SPU in **connection** with the activation of the Entire Pipeline, which costs shall be reimbursed by the Port strictly in accordance with section 8.2.

4.1 **Design.** The Parties shall observe the following process for the design of the Pipeline Improvement:

(a) In the event that at any point in the **design/review** process the Port determines it is impossible or impracticable to adhere to the Design Guidelines set forth in Exhibit C or the required alignment, the Port shall include with each design submittal required under this section 4.1 a written notation of any deviation from the Design Guidelines or alignment not previously disclosed in a prior submittal and an explanation for the deviation.

(b) The Parties recognize that time is of the essence. Accordingly, the Parties shall work expeditiously and cooperatively during the **design/review** process. The Parties shall endeavor to provide **submittals/feedback** to the other as early possible through the design process. Within three (**3**) working days **after** receipt of a design submittal, SPU shall notify the Port by e-mail or fax whether the submittal is complete (a

"Complete Submittal") or incomplete (an "Incomplete Submittal") in accordance with the criteria set forth below for the applicable submittal.

(c) If SPU identifies an Incomplete Submittal, the Port shall (unless a disagreement exists) deliver to SPU for review and approval or disapproval a revised submittal as soon as possible and in any event within seven (7) working days. Within three (3) working days after receipt of such revised submittal, SPU shall notify the Port by e-mail or fax whether the submittal is a Complete Submittal or an Incomplete Submittal. This process shall be repeated until SPU **determines** that the submittal is complete.

(d) If SPU approves a Complete Submittal required under this section 4.1 with comments, the Port shall incorporate such comments into the next submittal or any disagreement regarding those comments shall be resolved before the Port delivers the next design submittal. If SPU fails to comment on a Complete Submittal within the time set forth below, that submittal shall be deemed to be approved. If SPU disapproves a Complete Submittal required under this section 4.1, the Port shall (unless a disagreement exists) deliver to SPU for review and approval or disapproval a revised submittal addressing the **reason(s)** for disapproval within seven (7) working days after delivery of the disapproval. No later than seven (7) working days after receipt of such revised submittal, SPU shall deliver its written comments and approval or disapproval to the Port. Any disagreement based on SPU disapproval of a design submittal shall be resolved before the Port delivers the next design submittal.

(e) The Parties shall meet as necessary to resolve disagreements that may arise in connection with each design submittal. Disputes shall be resolved pursuant to section 9 hereof and the timeframes set forth in this Paragraph 4.1 shall be tolled during the pendency of any such dispute.

(f) Unless construction of the New Pipeline has begun by February 1, 2003, the Port shall commence design of the Pipeline Improvement and shall, no later than May 1, 2003, deliver to SPU, for its review and approval or disapproval, plans and specifications representing the 30% design submittal for the Pipeline Improvement. If work on the New Pipeline begins by February 1, 2003 but at any time ceases or is so delayed that it is not reasonable to expect that the New Pipeline will be **fully** operational and transferred to SPU by May 1, 2004, the Port shall deliver such 30% design submittal by the later of May 1, 2003 or within six (6) weeks **after** work on the New Pipeline ceases or is so delayed. The 30% submittal shall include: horizontal and vertical alignment; stationing; location of air valves, line valves, blowoffs, and critical cross sections; and an outline of the specifications. No later than twelve (12) working days after receipt of such Complete Submittal, SPU shall deliver its written comments and approval or disapproval to the Port.

(g) Within three weeks following SPU's approval of the 30% design submittal, the Port shall deliver to SPU, for its review and approval or disapproval, plans and specifications representing the 60% design submittal for the Pipeline Improvement.

The 60% submittal shall include: all details of valves, chambers and connections; cross sections of critical crossings; and completed specifications with sufficient detail to determine the method of thrust restraint. No later than seventeen (17) working days after receipt of such Complete Submittal, SPU shall deliver its written comments and approval or disapproval to the Port.

(h) Within three weeks following SPU's approval of the 60% design submittal, the Port shall deliver plans and specifications representing the 90% design submittal for the Pipeline Improvement. The 90% submittal shall be a completed design and completed specifications. No later than seven (7) working days after receipt of such Complete Submittal, SPU shall deliver its written comments and approval or disapproval to the Port.

(i) Within one (1) week following SPU's approval of the 90% design submittal, the Port shall deliver the resulting final plans and specifications as the 100% submittal. Within one week after receipt, SPU shall approve the final plans and specifications for the Pipeline Improvement in writing. Said final plans and specifications for the Pipeline Improvement, including mutually agreed upon final revisions and addenda, shall be used in the Port's bid and contract documents for the Pipeline Improvement work.

(j) The Port shall cause the contract for design of the Pipeline Improvement (the "Pipeline Improvement Design Contractor") to state explicitly that (i) The City of Seattle is a third party beneficiary of the entire contract for design of the Pipeline Improvement, including without limitation the indemnification provisions thereof, (ii) all representations, warranties and guarantees of the Pipeline Improvement Design Contractor relating to the Pipeline Improvement run to The City of Seattle, and (iii) The City of Seattle shall be named as an additional insured on all policies of insurance the Port requires such designer to carry. Within ten (10) days after execution of said design contract, the Port shall deliver to SPU a copy of such contract and evidence reasonably acceptable to the Risk Manager of The City of Seattle that The City of Seattle has been named an additional insured in accordance with this section 4.1.

4.2 Governmental Approvals. The Port has obtained or shall obtain, at its sole cost and expense, all permits and governmental approvals (including without limitation those required by SeaTac) that may be necessary to construct and install the Pipeline Improvement and to fill the Third Runway Area.

4.3 Construction and Installation

(a) Construction Contract. The Port shall cause the Pipeline Improvement to be constructed and installed in conformance with all public works laws of the State of Washington applicable to it, and shall select its contractor for construction and installation of the Pipeline Improvement ("Pipeline Improvement Contractor") in accordance with such laws. The Port shall cause the contract between the Port and the Pipeline Improvement Contractor ("Pipeline Improvement Contract") to state explicitly

that (i) The City of Seattle is a third party beneficiary of the entire Pipeline Improvement Contract, including without limitation the indemnification provisions thereof, and (ii) all representations, warranties and guarantees of the Pipeline Improvement Contractor relating to the construction and installation of the Pipeline Improvement run to The City of Seattle. Within ten (10) days after execution of the Pipeline Improvement Contract, the Port shall deliver a copy of it to SPU.

(b) Schedule. The Port shall provide SPU with the Pipeline Improvement Contractor's initial construction schedule and with schedule updates on a timely basis, so that any necessary coordination between the Pipeline Improvement Contractor and SPU can be accomplished. The Pipeline Improvement Contractor shall schedule all testing and connection with SPU at least two months prior to the proposed work; provided, no connection shall be made from June 1 through September 15.

(c) Change Orders. Either Party may initiate changes to the final plans and specifications for the Pipeline Improvement by submitting the proposed change to the other Party for its review and approval or disapproval. Approval of a proposed change shall not unreasonably be denied. Any proposed change shall be deemed to be approved if written comments are not delivered to the initiating Party within ten (10) working days. The initiating Party shall respond in writing to the reviewing Party's comments. If the reviewing Party disapproves the proposed change or approves it with comments, the proposed change shall not be implemented until the comments are included in the change order or the dispute is resolved in accordance with section 9. All changes necessitated by errors or omissions or unforeseen but necessary revisions to accommodate actual field conditions will be considered a normal construction-related expense and shall be implemented at the Port's sole cost and expense. Any other changes requested by SPU shall be paid for in accordance with section 8.1.

(d) Insurance. Prior to the commencement of construction of the Pipeline Improvement, the Port shall (i) cause the Pipeline Improvement Contractor to name The City of Seattle as an additional insured on all policies of liability insurance that the Port requires the Pipeline Improvement Contractor to carry and (ii) provide SPU with evidence reasonably acceptable to the Risk Manager of The City of Seattle that The City of Seattle has been so named.

(e) Inspection, Management and Administration. The Port shall provide all project management and inspection necessary to ensure timely construction and installation of the Pipeline Improvement in accordance with the final plans and specifications for the Pipeline Improvement, including the following:

(1) The Pipeline Improvement Contractor shall construct, install and connect the Pipeline Improvement strictly in accordance with the final plans and specifications and construction contract addenda approved by the Parties and issued as part of the bidding process, subject to the provisions regarding change orders contained in section 4.3(c). The Pipeline Improvement Contractor shall not operate Water System valves in any manner without the prior written permission of SPU.

(2) The Port shall administer the Pipeline Improvement Contract and take the lead role in inspecting and accept the Pipeline Improvement Contractor's work. SPU may, but is not obligated to, observe the work for quality assurance and to aid the Port's inspection staff in coordinating water system activities with regard to the Pipeline Improvement. Field problems found by SPU shall be resolved through the Port's construction administration staff.

(3) The Port and the Pipeline Improvement Contractor shall develop and execute any traffic control plans that are required for work on the Pipeline Improvement.

(4) If requested, the Port's inspection staff shall forward weekly to SPU any written reports, including without limitation daily inspection reports (inspectors' field notes), relating to construction progress as well as any schedules prepared by the Pipeline Improvement Contractor regarding work to be performed. SPU shall be invited to project **progress/scheduling** meetings for the Pipeline Improvement.

(5) Within one year following SPU's acceptance of the Pipeline Improvement, the Port shall prepare or have prepared "as built" drawings for SPU's permanent records, and provide SPU with a digitized file and Mylar sheets. The digitized file shall be in AutoCAD Release 14 with the water design on its own layer, and the Mylar sheets shall be 24" x 36".

(6) The Port shall reasonably consult with SPU during the construction process to effectuate the purposes of this Agreement and represent in good faith SPU's interests to the Pipeline Improvement Contractor.

(7) As part of the installation of the Pipeline Improvement and prior to the Pipeline Improvement Contractor beginning the process of filling, pressure testing, disinfection, flushing, dewatering, rewatering, bacteriological testing (to be conducted by SPU) and connection, SPU may inspect the Pipeline Improvement (by "crawl through" if it deems necessary) and shall inform the Port of deficient work. SPU also may inspect the materials to be used in connection and the connection itself, and SPU shall inform the Port of deficient materials or work. These processes shall be repeated until the deficient work has been corrected.

(f) Final Approval and Acceptance. Upon completion of the construction and installation of the Pipeline Improvement, the Port shall provide SPU with at least ten (10) working days prior written notice of the Pre Final Inspection, following the receipt of a request **from** the Pipeline Improvement Contractor for such inspection under the contract documents for the construction of the Pipeline Improvement. SPU shall attend the Pre Final Inspection with the Port and prepare and transmit to the Port a written punchlist of deficient work within ten (10) working days **after** the Pre Final Inspection. The Port shall provide SPU with written notice of the Final Inspection immediately following the receipt of a request **from** the Pipeline Improvement Contractor for such inspection under

the contract documents for the construction of the Pipeline Improvement. The Final Inspection shall be held at least five (5) working days following the Port's notice to SPU. SPU shall attend the Final Inspection with the Port. The process for Final Inspection shall be repeated until all items of deficient work on the punchlist have been corrected, at which time SPU shall promptly prepare and transmit to the Port a written Notice of Acceptance of the Pipeline Improvement.

4.4 Indemnification

(a) Prior to Transfer. With respect to occurrences up to and until the Port transfers the Pipeline Improvement to SPU in accordance with section 7.1, the Port agrees to release, defend and indemnify SPU, The City of Seattle and its employees and agents from and against each and every Claim (including without limitation designers' and contractors' Claims and Claims involving Hazardous Substances) that relate to injury or death to any person or damage to any property and that arise out of or are connected in any manner with any work performed to design, construct or install the Pipeline Improvement under this Agreement, provided that in accordance with RCW 4.24.1 15 (i) the Port's duties under this section 4.4(a) shall not apply to Claims resulting from the sole negligence of SPU or its employees, consultants, contractors or agents and (ii) to the extent that a Claim arises out of the concurrent negligence of SPU or its employees, contractors or agents, and the Port or its employees, consultants, contractors or agents, the Port's obligations hereunder shall be to the extent of its negligence and that of its employees, consultants, contractors or agents. Solely for the purpose of effectuating the foregoing indemnity and not for the benefit of the Port's employees or any third parties, the Port expressly waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. The aforesaid indemnification has been explicitly and mutually negotiated by the Parties and shall survive the termination or expiration of this Agreement.

Port

SPU

(b) After Transfer. With respect to occurrences after the Port transfers the Pipeline Improvement to SPU in accordance with section 7.1, the Port agrees to release, defend and indemnify SPU, The City of Seattle and its employees and agents from and against each and every Claim (including without limitation designers' and contractors' Claims and Claims involving Hazardous Substances) that relates to injury or death to any person or damage to any property and that arises out of or is connected in any manner with the negligence of the Port or its employees or its consultant, HNTB Corporation, but only to the extent of their negligence, in connection with any work performed to design, construct or install the Pipeline Improvement under this Agreement. Solely for the purpose of effectuating the foregoing indemnity and not for the benefit of the Port's employees or any third parties, the Port expressly waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. The aforesaid indemnification has been explicitly and mutually negotiated by the Parties and shall survive the termination or expiration of this Agreement.

4.5 SPU Review. SPU's review or approval of plans or specifications for the Pipeline Improvement or acceptance of the Pipeline Improvement pursuant to section 4 shall not create any obligation or liability of SPU in the event that said plans or specifications or the construction or installation of the Pipeline Improvement is found to be defective in any manner.

5. Allocation of Risk

5.1 Intent of Parties. The Parties specifically acknowledge and agree that the Existing Pipeline is an integral part of the Water System and is necessary for SPU's reliable provision of water to the Water Districts. The Parties also acknowledge and agree that the New Pipeline will serve the same function as the Existing Pipeline. The Parties further acknowledge and agree that SPU would not have been willing to enter into this Agreement without the Port's representation that the New Pipeline is expected to be fully operational and transferred to SPU prior to May 1, 2004, and the Port's obligation to provide SPU with the Pipeline Improvement on such date in the event that the New Pipeline cannot be delivered on schedule. Consequently, if **both**: (i) the New Pipeline or the Pipeline Improvement has not been transferred to SPU prior to May 1, 2004 in conformance with this Agreement **and** (ii) for any reason whatsoever (other than SPU's willful refusal to transmit water to the Water Districts when such transmission is practicable and prudent), SPU's ability to transmit water to the Water Districts on and **after** May 1, 2004 is reduced or eliminated, then the Port shall assume risk as set forth in section 5.2.

5.2 Risk Allocation. Commencing May 1, 2004 and continuing until the earlier of the transfer of the New Pipeline or the Pipeline Improvement to SPU, the Port shall release, defend and indemnify SPU, The City of Seattle and its employees and agents from and against any and every Claim (including without limitation Claims of the Water Districts and extraordinary costs incurred for rapid repair of damaged water transmission lines that had been used to serve the Water Districts) arising out of or in any manner connected with SPU's failure or reduced ability to transmit water to the Water Districts, which failure or reduced ability is related in any manner to the deactivation of the Existing Pipeline (other than SPU's willful refusal to so transmit water when such transmission is practicable and prudent). Solely for the purpose of effectuating the foregoing indemnity and not for the benefit of the Port's employees or any third parties, the Port expressly waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. The Parties agree that the indemnification provided in this section 5.2 has been explicitly and mutually negotiated by the Parties and shall survive termination or expiration of this Agreement.

Port

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If a court of competent jurisdiction, all appeals having been exhausted or all appeal periods having run, determines that the Port's indemnification obligations under this

section 5 are governed by RCW 4.24.115, then the limitations on indemnification contained therein shall apply.

The Port's obligations under this section 5.2 shall not be deemed to diminish or eliminate the Port's obligations under section 6. Notwithstanding any provision of this Agreement to the contrary, until and through April 30, 2004, SPU shall be responsible for all liability and risk that it may incur in connection with its obligations to supply water to the Districts; provided, that this sentence is not intended nor shall it be interpreted, to relieve the Port from liability for damaging any operational portion of the New Pipeline or the Entire Pipeline.

6. Completion of Third Runway

Notwithstanding any provision of this Agreement to the contrary (including the completion of the Pipeline Improvement), (i) the Port shall construct and install the New Pipeline pursuant to section 2 and transfer the New Pipeline to SPU pursuant to section 7 prior to putting into use a third runway in the Third Runway Area, and (ii) SPU shall pay for the New Pipeline in accordance with section 8.1.

7. Transfer of Property Interests

7.1 Pipeline Improvement. As soon as practicable following acceptance by SPU pursuant to section 4.3(f) but not later than May 1, 2004, the Port shall transfer the Pipeline Improvement to SPU, at no cost, pursuant to the terms of this Agreement; provided, that the Port shall have no obligations under this section 7.1 if the Port transfers the New Pipeline to SPU on or before May 1, 2004. As part of the transfer of the Pipeline Improvement, the Port shall execute a bill of sale or other mutually agreeable transfer document for the Pipeline Improvement and, unless already enjoyed by SPU, an assignment of the designer's and contractor's representations, warranties and guarantees. There shall be no liens on the Pipeline Improvement at the time of transfer, and the Port shall so represent and warrant. In addition, the Port shall grant a nonexclusive easement with respect to the property ten (10) feet on each side of the centerline of the Pipeline Improvement, for the length of the Pipeline Improvement, with such additional width at specific locations as may be necessary to accommodate appurtenances shown in the final plans and specifications. Said easement shall contain such limitations on the Port's grant of other easements as are reasonably necessary to protect the integrity of the Pipeline Improvement and otherwise shall be in form and substance mutually agreeable to the Parties. The Parties agree to execute such additional documents as shall be reasonably necessary to effectuate the aforesaid transfer of the Pipeline Improvement and grant of easement.

7.2 New Pipeline. The Port shall transfer the New Pipeline to SPU pursuant to the terms of this Agreement not later than May 1, 2004, unless the Port has transferred the Pipeline Improvement to SPU by that date. Notwithstanding the previous sentence, on or before the date on which the Port transfers the New Roadway to **SeaTac**, the Port shall transfer the New Pipeline to SPU pursuant to the terms of this Agreement. As part

of the transfer of the New Pipeline to SPU, the Port shall execute a bill of sale or other mutually acceptable transfer document for the New Pipeline and, unless already enjoyed by SPU, an assignment of the designer's and contractor's representations, warranties and guarantees. There shall be no liens on the New Pipeline at the time of transfer, and the Port shall so represent and warrant. In addition, to the extent that the New Pipeline is located in property owned by the Port following the transfer of the New Pipeline to SPU, the Port shall grant a nonexclusive easement with respect to such portion(s) of the New Pipeline. Upon transfer of any portion of the easement area to SeaTac, SPU's rights under the easement shall terminate with respect to the applicable portion of the New Pipeline. To the extent feasible, said easement shall be ten (10) feet on each side of the centerline of the New Pipeline, for the length of the New Pipeline, with such additional width at specific locations as may be necessary to accommodate appurtenances shown in the final plans and specifications. Said easement shall contain such limitations on the Port's grant of other easements as are reasonably necessary to protect the integrity of the New Pipeline, and otherwise shall be in form and substance mutually agreeable to the Parties. The Parties agree to execute such additional documents as shall be reasonably necessary to effectuate the aforesaid transfer of the New Pipeline and grant of easement. The aforesaid transfer of the New Pipeline shall be at no cost to SPU, except as provided in section 8.1.

7.3 Interim Transmission of Water. Following SPU's delivery of a Notice of Acceptance of the New Pipeline or the Pipeline Improvement and prior to its transfer to SPU pursuant to section 7.2 or 7.1, as applicable, the Port, at its convenience and absolute discretion, may extend to SPU, at no charge, a license to transmit water through either the Pipeline Improvement or New Pipeline, as applicable. Said license shall be subject to revocation at the Port's convenience and absolute discretion and shall provide that if the Port revokes the license, the Port (i) shall be responsible and pay for all additional watering, dewatering, pressure testing, disinfecting and flushing that SPU may determine is necessary to reactivate the New Pipeline or the Pipeline Improvement, as applicable, and (ii) shall reimburse SPU for costs it incurs in performing additional bacteriological testing and assisting the Port's contractor in accomplishing the activities set forth in clause (i) of this sentence. Notwithstanding any other provision of this Agreement, however, the Port shall grant SPU, upon its written request and at no charge, an irrevocable license to transmit water through the New Pipeline or the Pipeline Improvement, as applicable, for thirty (30) days prior to transfer of such pipeline to SPU.

Any license issued pursuant to this section 7.3 shall provide that SPU shall release, defend and indemnify the Port and its employees and agents from and against each and every Claim arising out of or connected with the operation of, and transmission of water through, the New Pipeline or Pipeline Improvement (as applicable) during the period of the license, except to the extent that such Claim arises out of or is connected with any work performed to design, construct or install the New Pipeline or any other act or omission of the Port or its employees, contractors or agents.

7.4 Existing Pipeline

(a) Simultaneously with the transfer of the New Pipeline to SPU pursuant to section 7.2, SPU shall transfer the Existing Pipeline (including the Pipeline Improvement, if applicable) to the Port, at no cost, in accordance with this Agreement. As part of said transfer, SPU shall execute a bill of sale for Existing Pipeline. There shall be no liens on the Existing Pipeline at the time of transfer, and SPU shall so represent and warrant. The Parties agree to execute such additional documents as shall be reasonably necessary to effectuate the aforesaid transfer of the Existing Pipeline.

(b) Simultaneously with the transfer of the Existing Pipeline to the Port pursuant to section 7.4(a), SPU shall relinquish or the Parties shall negotiate in good faith to amend, as applicable, SPU's existing easements with regard to the Existing Pipeline (including the Pipeline Improvement, if applicable), so that SPU's easements accurately reflect Water System installations within the Airport.

(c) If the Pipeline Improvement is constructed, the Entire Pipeline put into service, and the Pipeline Improvement transferred to SPU pursuant to section 7.1, the Parties shall negotiate in good faith to amend SPU's easements with regard to the Existing Pipeline so that they conform to the actual location of the Existing Pipeline.

8. Payment

8.1 SPU shall reimburse the Port for a portion of the costs incurred by the Port in the construction and installation of the New Pipeline in accordance with this Agreement. Except as otherwise provided in this section, such reimbursement shall be in the total amount of Three Hundred Sixty Five Thousand Dollars and No Cents (**\$365,000.00**), regardless of the actual cost or date of completion of the New Pipeline. Said reimbursement amount includes retail sales tax and any other tax that may be owing on the property transferred or on the transaction. Reimbursement shall be made upon the later of the date of transfer of the New Pipeline to SPU or September 1, 2002. In addition, SPU shall, on the date that reimbursement occurs pursuant to the previous sentence, reimburse the Port for the actual out-of-pocket costs of all change orders initiated by SPU that are not normal construction-related expenses, as described in section 2.4(c).

8.2 The Port shall reimburse SPU for a portion of the costs incurred by SPU in inspecting and bacteriologically testing the Entire Pipeline, and assisting the Improvement Contractor in accomplishing installation of the Pipeline Improvement in accordance with this Agreement. Such reimbursement shall be in the total amount of Forty Two Thousand Dollars and No Cents (**\$42,000.00**), regardless of the actual cost or date of completion of said inspection. Reimbursement shall be made within thirty (30) days of the Port's receipt of notice from SPU that the necessary inspections have been completed. Should said inspections indicate that deactivated portions of the Entire Pipeline were been damaged by the Port during construction of the Third Runway Project or other Airport operations, the Port shall reimburse SPU for the actual cost of repair of such damage.

9. Dispute Resolution

The Parties shall negotiate in good faith and use their best efforts to resolve any disputes that may develop under this Agreement. If the persons identified in section 10.6 cannot resolve a dispute, it shall be referred to the Third Runway Program Manager of the Port and the Engineering Services Branch Executive of SPU. If such persons cannot resolve that dispute, it shall be referred to the Director of Aviation Project Management Group of the Port and the Managing Director of SPU for resolution. Only upon failure to resolve the dispute through the foregoing process may either Party pursue legal action. The prevailing Party to any action shall be entitled to its reasonable costs and expenses, including fees and costs of in-house attorneys and paralegals.

10. General Provisions

10.1 Applicable Law. This Agreement shall be governed by the laws of the State of Washington. Each Party shall cause all work for which it is responsible under this Agreement to be carried out in accordance with all applicable laws and regulations, including without limitation public works laws and laws prohibiting discrimination based on sex, sexual orientation, race, color, national origin, ancestry, creed, religion, political ideology, age, marital status, or the presence of any sensory, mental or physical handicap. Failure to comply with the foregoing shall be a material breach of this Agreement.

10.2 Entire Agreement; Modification. This Agreement (including recitals and attached Exhibits) constitutes the entire agreement between the Parties. No representations, whether written or otherwise, between the Parties not contained or incorporated herein by reference shall be of any force or effect. This Agreement may be modified or amended only by the written agreement of the Parties.

10.3 Severability If any provision hereof is held by a court of competent jurisdiction, all appeals having been exhausted or all appeal periods having run, to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

10.4 No Waiver. No delay or failure to exercise any right, power or remedy accruing to one Party on any breach or default by the other Party shall impair any such right, power or remedy, nor be construed as a waiver of any such breach or default.

10.5 No Third Party Beneficiaries. No term or provision of this Agreement is intended to be, or shall be, for the benefit of any person, firm, organization or corporation not a Party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

10.6 Notices. All notices, approvals, proposed change orders, design submittals and invoices required in connection with this Agreement shall be in writing and deemed to have been duly given if personally delivered or sent by fax, United States mail or overnight delivery service, or as otherwise specified in this Agreement, each with proof

of receipt, to the respective representatives of the Parties, as shown below, or as otherwise indicated in written notice from one Party to the other.

Seattle Public Utilities
Water Engineering
6th Floor, Dexter Horton Building
710 Second Avenue
Seattle, Washington 98104
Fax: 206-684-8535
Attn: Karen York

Port of Seattle
Seattle-Tacoma International Airport
Project Management Group
17900 International Blvd. Suite, 301
Seattle, Washington 98188
Fax: 206-248-6876
Attn: Third Runway Embankment Proj. Mgr

10.7 Interpretation. The provisions of this Agreement shall be construed as a whole according to their common meaning and consistent with the provisions contained herein in order to achieve the objectives and purposes of this Agreement. Each Party and its counsel has reviewed and revised this Agreement and agrees that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

10.8 Jurisdiction and Venue. In the event any action is brought under this Agreement, jurisdiction shall be had in the King County Superior Court for the State of Washington or the United States District Court for the Western District of Washington, and venue shall lie exclusively in Seattle, Washington.

10.9 Time is of the Essence. For the purposes of this Agreement and obligations hereunder, time is of the essence.

10.10 Counterparts. This Agreement may be executed in counterparts, and each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

10.11 Authority. Each person signing below represents that he or she has the requisite authority to bind the Party on whose behalf he or she is signing.

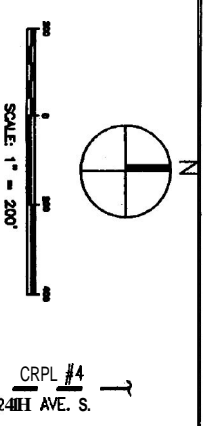
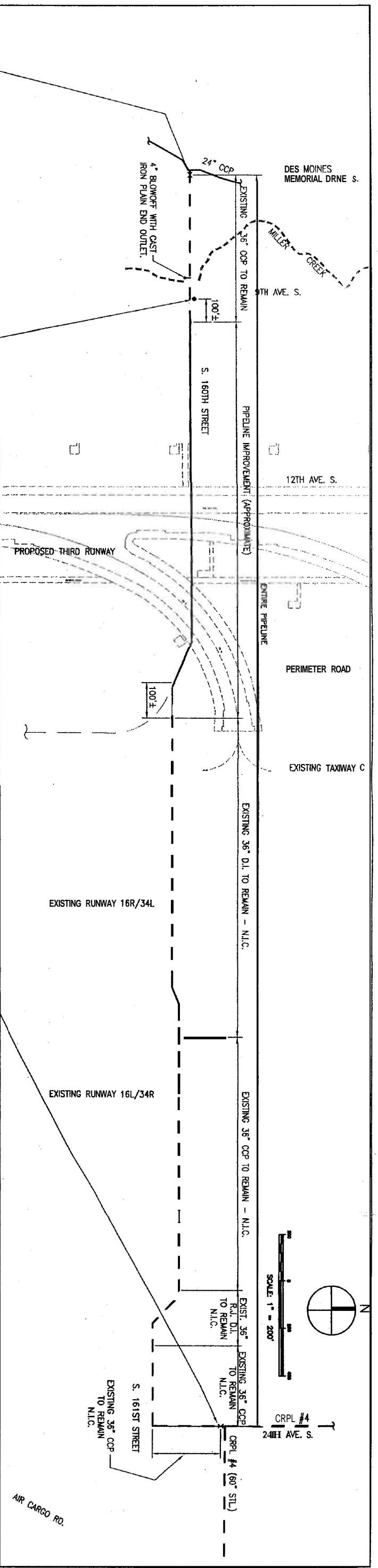
In witness whereof, the Parties have executed this Agreement as of the date first written above.

PORT OF SEATTLE

By: _____
Name: _____
Title: _____

THE CITY OF SEATTLE

By: _____
Diana Gale
Managing Director, Seattle Public Utilities



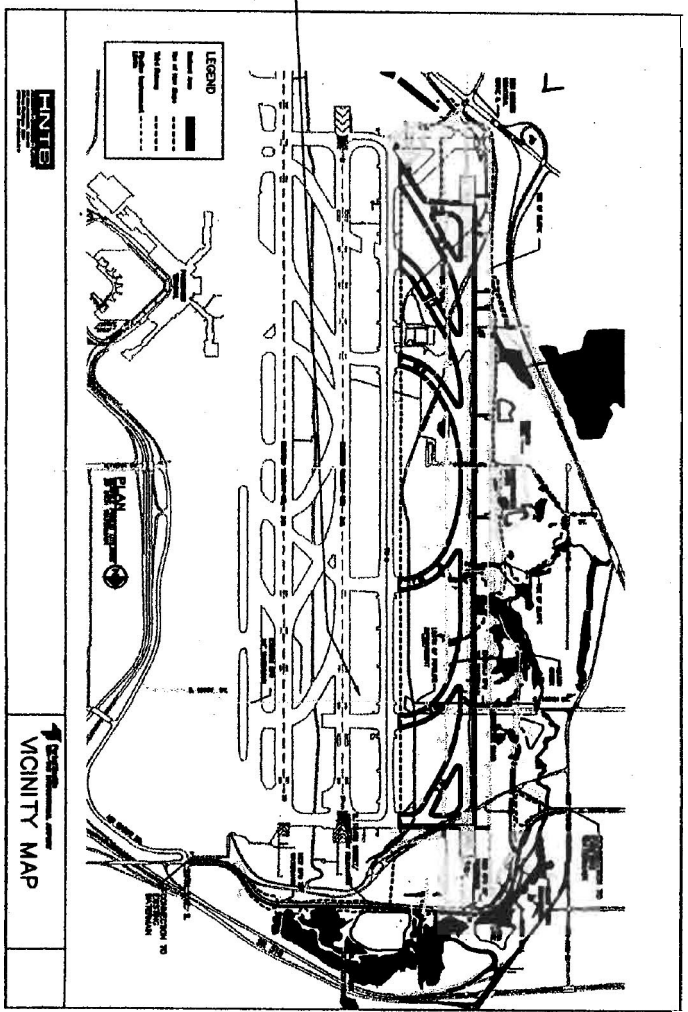
LOCATION OF WEST CUT/CAP
 EXISTING VALVE TO BE OPERATED BY SPU
 ONLY. COORDINATE WITH KAREN YORK AT SPU
 FOR ISOLATING AND RECHARGING WATER LINE.
 TEL. (206)884-5994
 STA 386+99± (REFERENCE PLAN# 858-35)

EXISTING SS MANHOLE
 COORDINATE ALL
 DISCHARGES TO THIS
 SYSTEM WITH TIM YORKERS
 AT SOUTHWEST SUBURBAN
 SEWER DISTRICT, TEL.
 (206)242-7907

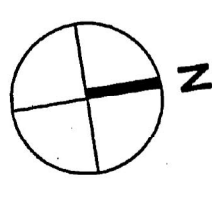
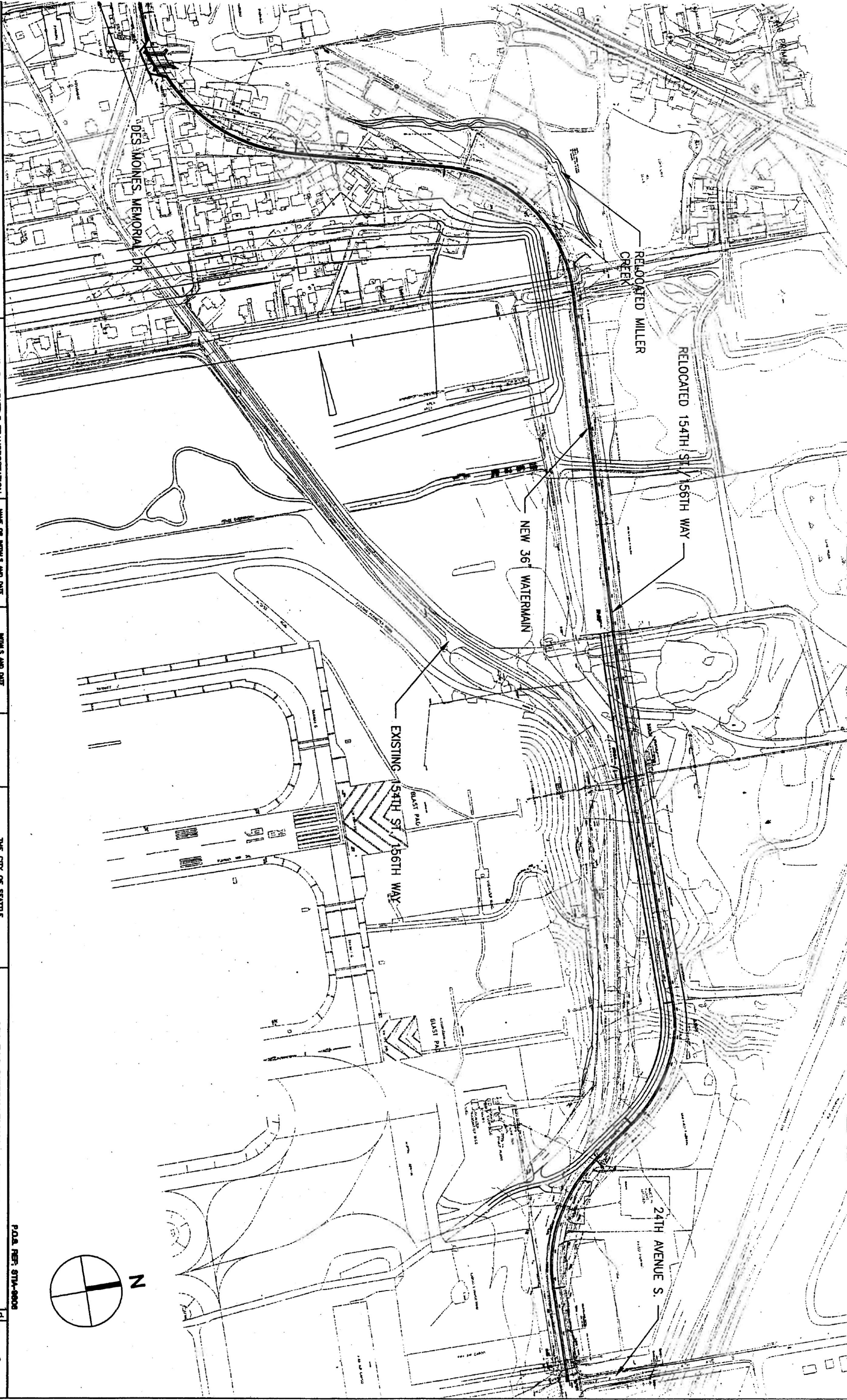
LOCATION OF EAST CUT/CAP
 EXISTING VALVE TO BE OPERATED BY SPU
 ONLY. COORDINATE WITH KAREN YORK AT SPU
 FOR ISOLATING AND RECHARGING WATER LINE.
 TEL. (206)884-5994
 STA 355-79± (REFERENCE PLAN# 120-12)

REFER TO :
 CITY OF SEATTLE VAULT PLAN 776-101 "S. 160TH ST., ET AL PIPELINE RELOCATION"
 PORT OF SEATTLE NO. STA. 8672 "SEATAC INTERNATIONAL AIRPORT UAL HANGER SITE
 ALSO AS SMD DRAWING NUMBER 120-12 PREPARATION 36\"/>

SEE ABOVE FOR DETAIL



SEATAC THIRD RUNWAY PROJECT
 EXHIBIT A



P.O.B. REF: 8714-8808

<p>DESIGNER COMPANY</p> <p>1000 Western Ave. Suite 201 Seattle, WA 98101 Phone: 206-222-1000 FAX: 206-222-1000</p>	<p>APPROVED BY SEATTLE TRANSPORTATION</p>	<p>NAME OR INITIALS AND DATE</p> <table border="1"> <tr> <td>Checked by:</td> <td>DATE:</td> </tr> <tr> <td>Drawn by:</td> <td>DATE:</td> </tr> <tr> <td>Reviewed by:</td> <td>DATE:</td> </tr> </table>	Checked by:	DATE:	Drawn by:	DATE:	Reviewed by:	DATE:	<p>THE CITY OF SEATTLE</p> <p>SEATTLE TRANSPORTATION PRIVATE CONTRACT</p>	<p>SEA-TAC INTERNATIONAL AIRPORT</p> <p>RUNWAYS 18L/18R SAFETY AREA IMPROVEMENT PROJECT SOUTH 184TH STREET/186TH WAY RELOCATION EXHIBIT B</p>
Checked by:	DATE:									
Drawn by:	DATE:									
Reviewed by:	DATE:									
		<p>DATE</p> <p>11/13/08</p> <p>SCALE</p> <p>AS SHOWN</p> <p>SHEET</p> <p>OF 13</p>								

EXHIBIT C

Design Guidelines

Hydraulic Design Criteria

- A. Static Head: **499** ft. NAVD-88 datum
- B. Minimum Surge Pressure: 50 psi
- C. Minimum Design Head: 614 ft. NAVD-88 datum

Pipeline Specifications

- A. Pipe Material: 36 ksi Steel or Class 52 Ductile Iron
 - 1. Joints: Welded **lap** joint with air test holes for steel pipe. Restrained Joint (boltless and flexible) for Ductile Iron
- B. Allowable Stresses: 50% of Yield for internal pressure. Maximum out-of-round tolerance of 2% under H-20 loading for external loading.
- C. Pipe Diameter: 36" finished internal diameter.
- D. Lining: Cement mortar
- E. Coating: 80 mil multi-layer polyethylene tape coating for steel pipe. Ductile iron pipe shall have polyethylene encasement. In soils having resistivity values lower than 10,000 **ohm-cm**, ductile iron pipe shall have thermoplastic bonded coating system.
- F. Pipe installed above ground must be supported to withstand 1.5 g vertical and horizontal acceleration. Steel pipe installed above ground shall be coated with a durable UV resistant coating.

Horizontal and Vertical Alignment

- A. 5 ft. cover minimum. 12" clear of any crossing utilities. 3 ft. clear of any adjacent utilities.
- B. Alignment tied to street & county monuments. Pipe stationing tied to a control line.
- C. Plans shall show stationing, bearings, and curve data. Horizontal and vertical curves generally avoided unless following an existing alignment.
- D. Place vertical bends to the nearest 10 ft. station and nearest 1 ft. elevation where possible.
- E. Minimum slope: 1%

Appurtenances

- A. Chambers shall be precast where possible. Provide 18" clearance below and 3' clearance around pipe. Support pipe with adjustable pipe stands. Wall penetrations shall be sealed with plastic foam and grout. Provide entry manholes and ladders. Provide square hatches when chamber is not located in a road. Provide chamber drains when possible.
- B. Combination Air Valves
 - 1. Locate at high points to prevent internal vacuum.
 - 2. Size valves for normal filling and draining and normal transient conditions. 2 inch minimum size.
 - 3. Valve air supply must be tight piped above ground to prevent cross connection.
- C. Blowoff Valves
 - 1. Locate at low points to drain the pipeline.
 - 2. 6" minimum size, sufficient size to drain the pipe in 24 hours.
 - 3. Air gap on discharge pipe to prevent cross connection. 1" corporation stop at bottom of pipe in vault to allow drainage of **blowoff** piping.
 - 4. Permit rights for discharge to drainage course.
- D. Line Valve: 36" butterfly valve, welded steel pipe and fittings at connections to main line.
- E. Manholes: every 1000'. 24"ID top flange. Try to locate in combination with other appurtenances.
- F. Outlets: For known connections and future use. Valved.
- G. Cathodic Protection: continuous joint bonding for the entire length. Electrically isolated at connections to main line. 17 lb. magnesium anodes bonded at 100 ft. intervals for tape and thermoplastic coated pipe.

Pipe Installation

- A. Conform to City of Seattle Standard Specifications

AGREEMENT TO RELOCATE WATER PIPELINE

This Agreement to Relocate Water Pipeline (the "Agreement") is made and entered into as of the 11th day of July, 2000, by and between the Port of Seattle, a municipal corporation of the State of Washington ("Port") and The City of Seattle, a city of the first class of the State of Washington, acting by and through Seattle Public Utilities ("SPU"). The Port and SPU are sometimes referred to herein as the "Parties" and either as the "Party."

Recitals

- A. The Port owns and operates Seattle-Tacoma International Airport (the "Airport"), and is engaged in a project to add a third runway to the Airport ("Third Runway Project"). As part of the Third Runway Project, the Port needs to bring the area under the planned third runway, approximately as shown in Exhibit A, ("Third Runway Area") up to a grade compatible with the first and second runways. In so doing, the Port will raise the existing grade of the Third Runway Area by up to 160 feet. Also as part of the Third Runway Project, the Port previously has planned to build a new road north and west of the Airport, to be known as South 154th Street, as shown in Exhibit B ("New Roadway"), and to install electricity, gas, sanitary sewer and storm sewer lines therein. The New Roadway shall be dedicated to the City of SeaTac ("SeaTac") in return for SeaTac's vacation of a portion of the existing South 154th Street and South 156th Street.
- B. SPU owns and operates a water system (the "Water System") that serves customers inside and outside Seattle, including the Airport. As part of the Water System, SPU owns and operates a 36 inch water transmission pipeline that runs east-west under the first and second runways at the Airport, as well as under the **planned** Third Runway Area, at approximately 4 to 13 feet below existing grade, as shown in Exhibit A ("Existing Pipeline"). The Existing Pipeline is a complete operating integral section of the Water System, used to provide a reliable supply of water to Water District 49 and Highline Water District (collectively, the "Water Districts").
- C. The Port's plan to fill the Third Runway Area would **bury** a portion of the Existing Pipeline in the Third Runway Area by up to 160 feet.
- D. The Parties wish to relocate the Existing Pipeline out **from** under all runways at the Airport and have agreed that such relocation shall occur before a third runway is put in service.
- E. The Parties have determined that the most practical way to relocate the Existing Pipeline is for the Port to construct and install a water transmission pipeline in the New Roadway, as shown in Exhibit B (as hereinafter defined, the "New Pipeline"), and for SPU to **terminate** its use of the Existing Pipeline.

F. The Parties desire to set forth the terms and conditions, including payment provisions, for construction and installation of the New Pipeline, deactivation of the Existing Pipeline, and, if required hereunder, construction and installation of the Pipeline Improvement (as hereinafter defined).

G. The New Pipeline and the Pipeline Improvement each will constitute a complete operating integral section of the Water System, and will substitute for and serve the same functions as the Existing Pipeline.

Now, therefore, in consideration of the mutual promises contained herein, the Parties agree as follows:

Agreement

1. Agreement

This Agreement reflects the understanding between the Parties regarding the matters covered herein and incorporates all prior negotiations and agreements between the Parties. It shall be in full force and effect from the date first written above until the date on which the New Pipeline is transferred from the Port to SPU, pursuant to this Agreement. This Agreement includes all Recitals and the following exhibits:

Exhibit A – Airport, with Third Runway Area and Existing Pipeline

Exhibit B – New Roadway

Exhibit C – Design Guidelines

2. New Pipeline

The Port shall design, construct, and install a new water transmission pipeline (including necessary appurtenances) that (i) has a **36** inch inside diameter, (ii) is constructed of Class 52 ductile iron or **36** ksi steel pipe, (iii) is aligned materially in accordance with the alignment depicted on Exhibit B, (iv) is constructed materially in accordance with the Design Guidelines set forth in Exhibit C and (v) otherwise conforms to the terms of this Agreement (the "New Pipeline"). The Parties agree that installation of the New Pipeline shall include inspection, filling, pressure testing, disinfection, flushing, dewatering, rewatering, bacteriological testing (by SPU), and connection of the New Pipeline to the Water System, in accordance with the final plans and specifications for the New Pipeline. However, the New Pipeline Contractor (as hereinafter defined) shall not operate Water System valves in any manner without the prior written consent of SPU.

2.1 Design. To the extent not already completed as of the date hereof, the Parties shall observe the following process for the design of the New Pipeline:

(a) In the event that at any point in the **design/review** process the Port determines it is impossible or impracticable to adhere to the Design Guidelines set forth in Exhibit C or the alignment set forth in Exhibit B, the Port shall include with each design submittal required under this section 2.1 a written notation of any deviation **from** the Design Guidelines or alignment not previously disclosed in a prior submittal and an explanation for the deviation.

(b) The Parties recognize that time is of the essence, and agree that the design process shall be completed by August 1, 2000 (the "Deadline"), provided that SPU receives a 60% design Complete Submittal (as hereinafter defined) no later than April 26, 2000. If the 60% Complete Submittal is delayed, the Deadline will be extended by the amount of the delay. Accordingly, the Parties shall work expeditiously and cooperatively during the **design/review** process. The Parties shall endeavor to provide **submittals/feedback** to the other as early as possible through the design process. Within three (3) working days **after** receipt of a design submittal, SPU shall notify the Port by e-mail or fax whether the submittal is complete (a "Complete Submittal") or incomplete (an "Incomplete Submittal") in accordance with the criteria set forth below for the applicable submittal.

(c) If SPU identifies an Incomplete Submittal, the Port shall (unless a disagreement exists) deliver to SPU for review and approval or disapproval a revised submittal as soon as possible and in any event within seven (7) working days. Within three (3) working days after receipt of such revised submittal, SPU shall notify the Port by e-mail or fax whether the submittal is a Complete Submittal or an Incomplete Submittal. This process shall be repeated until SPU determines that the submittal is complete.

(d) If SPU approves a Complete Submittal required under this section 2.1 with comments, the Port shall incorporate such comments into the next submittal or any disagreement regarding those comments shall be resolved before the Port delivers the next design submittal. If SPU fails to comment on a Complete Submittal within the time set forth below, that submittal shall be deemed to be approved. If SPU disapproves a Complete Submittal required under this section 2.1, the Port shall (unless a disagreement exists) deliver to SPU for review and approval or disapproval a revised submittal addressing the **reason(s)** for disapproval within seven (7) working days after delivery of the disapproval. No later than seven (7) working days after receipt of such revised submittal, SPU shall deliver its written comments and approval or disapproval to the Port. Any disagreement based on SPU disapproval of a design submittal shall be resolved before the Port delivers the next design submittal.

(e) The Parties shall meet as necessary to resolve disagreements that may arise in connection with each design submittal. Disputes shall be resolved pursuant to section 9 hereof and the **timeframes** set forth in this section 2.1 shall be tolled during the pendency of any such dispute.

(f) In the event that the unexpired periods of time for review, revision and completion of the design of the New Pipeline will extend, when aggregated, beyond the Deadline, all of the remaining periods for review, revision and completion shall be shortened proportionately to ensure completion of the design of the New Pipeline by the Deadline; provided, that there shall be no reduction of the time for SPU's review for delays caused by the Port's delivery of Incomplete Submittals. To the extent of such delays, the Port may extend the Deadline by the number of working days of such delay or reduce the periods for the Port's remaining design and revision by the amount of such delay; provided, that the Port shall not revise the design schedule in a manner that would adversely impact completion and transfer of the New Pipeline to SPU by May 1, 2004. The Port immediately shall inform SPU in writing of revisions to the design schedule.

(g) Within three weeks following the date hereof, the Port shall deliver to SPU, for its review and approval or disapproval, plans and specifications representing the 30% design submittal for the New Pipeline. The 30% submittal shall include: horizontal and vertical alignment; stationing; location of air valves, line valves, blowoffs, and critical cross sections; and an outline of the specifications. No later than twelve (12) working days after receipt of such Complete Submittal, SPU shall deliver its written comments and approval or disapproval to the Port.

(h) Within three weeks following SPU's approval of the 30% design submittal, the Port shall deliver to SPU, for its review and approval or disapproval, plans and specifications representing the 60% design submittal for the New Pipeline. The 60% submittal shall include: all details of valves, chambers and connections; cross sections of critical crossings; and completed specifications with sufficient detail to determine the method of thrust restraint. No later than seventeen (17) working days after receipt of such Complete Submittal, SPU shall deliver its written comments and approval or disapproval to the Port.

(i) Within three weeks following SPU's approval of the 60% design submittal, the Port shall deliver plans and specifications representing the 90% design submittal for the New Pipeline. The 90% submittal shall be a completed design and completed specifications. No later than seven (7) working days after receipt of such Complete Submittal, SPU shall deliver its written comments and approval or disapproval to the Port.

(j) Within one (1) week following SPU's approval of the 90% design submittal, the Port shall deliver the resulting final plans and specifications as the 100% submittal. Within one week after receipt, SPU shall approve the final plans and specifications for the New Pipeline in writing. Said final plans and specifications, including mutually agreed-upon final revisions and addenda, shall be used in the Port's bid and contract documents for the New Pipeline work.

(k) The Port shall cause the contract between the Port's consultant, HNTB Corporation, and the designer of the New Pipeline, SVR Design Company, dated February 3, 1999, to be amended to state explicitly that (i) The City of Seattle is a third

party beneficiary of the entire contract, including without limitation the indemnification provisions thereof, (ii) all representations, warranties and guarantees of SVR Design Company relating to the design of the New Pipeline run to The City of Seattle, and (iii) The City of Seattle shall be named as an additional insured as if it had been so named on the date the design contract was first executed on all policies of insurance the Port requires such designer to carry. Within ten (10) days after execution of this Agreement, the Port shall deliver to SPU a copy of such amended design contract and evidence reasonably acceptable to the Risk Manager of The City of Seattle that The City of Seattle has been named an additional insured in accordance with this subsection (k).

2.2 Property Acquisition. The Port represents that it now owns or will own all property necessary for the construction of the New Roadway and the New Pipeline therein, with the exception of the existing S. 154th Street right of way belonging to SeaTac, all as shown in Exhibit B.

2.3 Governmental Approvals. The Port has obtained or shall obtain, at its sole cost and expense, all permits and governmental approvals (including without limitation those required by SeaTac) that may be necessary to construct and install the New Pipeline and New Roadway and to fill the Third Runway Area.

2.4 Construction and Installation

(a) Construction Contract. The Port shall cause the New Pipeline to be constructed and installed in conformance with all public works laws of the State of Washington applicable to it, and shall select its contractor for construction and installation of the New Roadway and the New Pipeline therein ("New Pipeline Contractor") in accordance with such laws. The Port shall cause the contract between the Port and the New Pipeline Contractor ("New Pipeline Contract") to state explicitly that (i) The City of Seattle is a third party beneficiary of the entire contract, including without limitation the indemnification provisions thereof, and (ii) all representations, warranties and guarantees of the New Pipeline Contractor relating to the construction and installation of the New Pipeline are fully assignable to The City of Seattle. Within ten (10) days after execution of the New Pipeline Contract, the Port shall deliver a copy of it to SPU.

(b) Schedule. The Port represents that it expects to begin construction of the New Pipeline no later than February 1, 2003 and that the New Pipeline will be fully operational and will be transferred to SPU in accordance with section 7.2 no later than May 1, 2004. If for any reason the Port fails to meet this schedule, the provisions of sections 4 and 5 shall apply. The Port shall provide SPU with the New Pipeline Contractor's initial construction schedule and with schedule updates on a timely basis, so that any necessary coordination between the New Pipeline Contractor and SPU can be accomplished. The New Pipeline Contractor shall schedule all testing and connection with SPU at least two months prior to the proposed work; provided, no connection shall be made from June 1 through September 15.

(c) Change Orders. Either Party may initiate changes to the final plans and specifications for the New Pipeline by submitting the proposed change to the other Party for its review and approval or disapproval. Approval of a proposed change shall not unreasonably be denied. Any proposed change shall be deemed to be approved if written comments are not delivered to the initiating Party within ten (10) working days. The initiating Party shall respond in writing to the reviewing Party's comments. If the reviewing Party disapproves the proposed change or approves it with comments, the proposed change shall not be implemented until the comments are included in the change order or the dispute is resolved in accordance with section 9. All changes necessitated by errors or omissions or unforeseen but necessary revisions to accommodate actual field conditions will be considered a normal construction-related expense and shall be implemented at the Port's sole cost and expense. Any other changes requested by SPU shall be paid for in accordance with section 8.1.

(d) Insurance. Prior to the commencement of construction of the New Pipeline, the Port shall (i) cause the New Pipeline Contractor to name The City of Seattle as an additional insured on all policies of liability insurance that the Port requires the New Pipeline Contractor to carry and (ii) provide SPU with evidence reasonably acceptable to the Risk Manager of The City of Seattle that The City of Seattle has been so named.

(e) Inspection, Management and Administration. Port provide all project management and inspection necessary to ensure timely construction and installation of the New Pipeline in accordance with the final plans and specifications for the New Pipeline, including the following:

(1) The New Pipeline Contractor shall construct, install and connect the New Pipeline strictly in accordance with the final plans and specifications and construction contract addenda approved by the Parties and issued as part of the bidding process, subject to the provisions regarding change orders contained in section 2.4(c). The New Pipeline Contractor shall not operate Water System valves in any manner without the prior written permission of SPU.

(2) The Port shall administer the New Pipeline Contract and take the lead role in inspecting and accept the New Pipeline Contractor's work. SPU may, but is not obligated to, observe the work for quality assurance and to aid the Port's inspection staff in coordinating water system activities with regard to the New Pipeline. Field problems found by SPU shall be resolved through the Port's construction administration staff.

(3) The Port and the New Pipeline Contractor shall develop and execute any traffic control plans that are required for work on the New Pipeline.

(4) If requested, the Port's inspection staff shall forward weekly to SPU any written reports, including without limitation daily inspection reports (inspectors' field notes), relating to construction progress as well as any schedules prepared by the

New Pipeline Contractor regarding work to be performed. SPU shall be invited to project progress/scheduling meetings for the New Pipeline.

(5) Within one year following SPU's acceptance of the New Pipeline, the Port shall prepare or have prepared "as built" drawings for SPU's permanent records, and provide SPU with a digitized file and Mylar sheets. The digitized file shall be in AutoCAD Release 14 with the water design on its own layer, and the Mylar sheets shall be 24" x 36".

(6) The Port shall reasonably consult with SPU during the construction process to effectuate the purposes of this Agreement and represent in good faith SPU's interests to the New Pipeline Contractor.

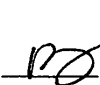

(7) As part of the installation of the New Pipeline and prior to the New Pipeline Contractor beginning the process of filling, pressure testing, disinfection, flushing, dewatering, rewatering, bacteriological testing (to be conducted by SPU) and connection, SPU may inspect the New Pipeline (by "crawl through" if it deems necessary) and shall inform the Port of deficient work. SPU also may inspect the materials to be used in connection and the connection itself, and SPU shall inform the Port of deficient materials or work. These processes shall be repeated until the deficient work has been corrected.

(f) Final Approval and Acceptance. Upon completion of the construction and installation of the New Pipeline, the Port shall provide SPU with at least ten (10) working days prior written notice of the Pre Final Inspection, following the receipt of a request from the New Pipeline Contractor for such inspection under the contract documents for the construction of the New Pipeline. SPU shall attend the Pre Final Inspection with the Port and prepare and transmit to the Port a written punchlist of deficient work within ten (10) working days after the Pre Final Inspection. The Port shall provide SPU with written notice of the Final Inspection immediately following the receipt of a request from the New Pipeline Contractor for such inspection under the contract documents for the construction of the New Pipeline. The Final Inspection shall be held at least five (5) working days following the Port's notice to SPU. SPU shall attend the Final Inspection with the Port. The process for Final Inspection shall be repeated until all items of deficient work on the punchlist have been corrected, at which time SPU shall promptly prepare and transmit to the Port a written Notice of Acceptance of the New Pipeline.

2.5 Indemnification

(a) Prior to Transfer. With respect to occurrences up to and until the Port transfers the New Pipeline to SPU in accordance with Section 7.2, the Port agrees to release, defend and indemnify SPU, The City of Seattle and its employees and agents from and against each and every risk and liability and all losses, damages, claims, demands, suits, judgments, costs, penalties and consultants' and attorneys' fees (each, a "Claim" and collectively, "Claims") (including without limitation designers' and

contractors' Claims and Claims involving Hazardous Substances, as hereinafter defined) that relate to injury or death to any person or damage to any property and that arise out of or are connected in any manner with any work performed to design, construct or install the New Pipeline under this Agreement, provided that in accordance with RCW 4.24.115 (i) the Port's duties under this section 2.5(a) shall not apply to Claims resulting from the sole negligence of SPU or its employees, consultants, contractors or agents and (ii) to the extent that a Claim arises out of the concurrent negligence of SPU or its employees, consultants, contractors or agents, and the Port or its employees, consultants, contractors or agents, the Port's obligations hereunder shall be to the extent of its negligence and that of its employees, consultants, contractor or agents. Solely for the purpose of effectuating the foregoing indemnity and not for the benefit of the Port's employees or any third parties, the Port expressly waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. The aforesaid indemnification has been explicitly and mutually negotiated by the Parties and shall survive the termination or expiration of this Agreement.


Port 
SPU

(b) After Transfer. With respect to occurrences **after** the Port transfers the New Pipeline to SPU in accordance with Section 7.2, the Port agrees to release, defend and indemnify SPU, The City of Seattle and its employees and agents from and against each and every Claim (including without limitation designers' and contractors' Claims and Claims involving Hazardous Substances) that relates to injury or death to any person or damage to any property and that arises out of or is connected in any manner with the negligence of the Port or its employees or consultant, HNTB Corporation, but only to the extent of their negligence, in connection with any work performed to design, construct or install the Pipeline Improvement under this Agreement. Solely for the purpose of effectuating the foregoing indemnity and not for the benefit of the Port's employees or any third parties, the Port expressly waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. The aforesaid indemnification has been explicitly and mutually negotiated by the Parties and shall survive the termination or expiration of this Agreement.


Port 
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2.6 SPU Review. SPU's review or approval of design submittals, plans or specifications for the New Pipeline or acceptance of the New Pipeline pursuant to section 2 shall not create any obligation or liability of SPU in the event that said plans or specifications or the construction or installation is found to be defective in any manner.

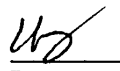
2.7 Hazardous Substance. "Hazardous Substance" shall mean any waste, substance or material designated or regulated as "toxic," "hazardous" or "extremely hazardous" under federal, state or local laws.

3. Existing Pipeline

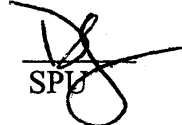
3.1 Deactivation

(a) Within thirty (30) days after the date of this Agreement, SPU shall acquire the necessary governmental permits and shall complete dewatering the Existing Pipeline. Within sixty (60) days thereafter, SPU shall complete cutting, capping, and any other work necessary to deactivate the Existing Pipeline. The Port shall provide access to the Existing Pipeline at the points reflected on Exhibit A and otherwise cooperate with SPU as necessary to complete this work. If SPU encounters Hazardous Substances when deactivating the Existing Pipeline, SPU shall cease work until such Hazardous Substances are removed and the schedule for deactivation shall be extended by the amount of time necessary to accomplish such removal. The Port shall expeditiously remove Hazardous Substances (if any) from Port property and SPU shall expeditiously remove Hazardous Substances (if any) from other property. Other than the removal of Hazardous Substances (if any) from Port property, the costs of which shall be borne by the Port, all deactivation work shall be at SPU's sole cost and expense.

(b) With respect to occurrences up to and until the transfer of the Existing Pipeline in accordance with Section 7.4(a) or May 1, 2004, whichever is earlier, SPU agrees to release, defend and indemnify the Port and its employees and agents from and against each and every Claim that relates to injury or death to any person or damage to any property and that arises out of or is connected in any manner with any work performed pursuant to section 3.1(a) hereof except removal of Hazardous Substances (if any) by the Port; provided, that in accordance with RCW 4.24.115 (i) SPU's duties under this section 3.1(b) shall not apply to Claims resulting from the sole negligence of the Port or its employees, consultants, contractors or agents and (ii) to the extent that a Claim arises out of the concurrent negligence of SPU or its employees, consultants, contractors or agents and the Port or its employees, consultants, contractors or agents, SPU's obligations hereunder shall be to the extent of its negligence and that of its employees, consultants, contractors or agents. Solely for the purpose of effectuating the foregoing indemnity and not for the benefit of SPU's employees or any third parties, SPU expressly waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. The aforesaid indemnification has been explicitly and mutually negotiated by the Parties and shall survive the **termination** or expiration of this Agreement.



Port



SPU

(c) With respect to occurrences after transfer of the Existing Pipeline in accordance with Section 7.4(a) or May 1, 2004, whichever is earlier, SPU agrees to release, defend and indemnify the Port and its employees and agents from and against each and every Claim that relates to **injury** or death to any person or damage to any property and that arises out of or is connected in any manner with SPU or its employees' negligence, but only to the extent of their negligence, in connection with any work

performed by SPU pursuant to section 3.1(a) hereof except removal of Hazardous Substances (if any) by the Port. Solely for the purpose of effectuating the foregoing indemnity and not for the benefit of the Port's employees or any third parties, the Port expressly waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. The aforesaid indemnification has been explicitly and mutually negotiated by the Parties and shall survive the termination or expiration of this Agreement.


Port



SPU

3.2 Filling Over Existing Pipeline

(a) Upon the completion of the dewatering work described in section 3.1, the Port may place fill over the Existing Pipeline in the Third Runway Area, as shown in Exhibit A.

(b) The Port agrees to release, defend and indemnify SPU, The City of Seattle and its employees and agents from and against each and every Claim (including without limitation Claims related to Hazardous Substances, contractors Claims, or Claims related to damage to the portions of the Existing Pipeline east and west of the connections of the Pipeline Improvement to the remainder of the Existing Pipeline) related to injury or death to any person or damage to any property (except damage to the portion of the Existing Pipeline replaced by the Pipeline Improvement pursuant to section 4 hereof) arising out of or in any manner connected with any work performed pursuant to the Port's removal of Hazardous Substances pursuant to section 3.1(a) or any work performed pursuant to section 3.2(a) hereof; provided that in accordance with RCW 4.24.115 (i) the Port's duties under this section 3.2(b) shall not apply to Claims resulting from the sole negligence of SPU and (ii) to the extent that a Claim arises out of the concurrent negligence of SPU and the Port, the Port's obligations hereunder shall be to the extent of its negligence. Solely for the purpose of effectuating the foregoing indemnity and not for the benefit of the Port's employees or any third parties, the Port expressly waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. The aforesaid indemnification has been explicitly and mutually negotiated by the Parties and shall survive any termination or expiration of this Agreement.


Port


SPU

4. **Improvements to the Existing Pipeline**

If construction of the New Pipeline has not begun before February 1, 2003, or if construction of the New Pipeline thereafter ceases or is delayed such that it is unlikely that the New Pipeline could be completed and transferred to SPU by May 1, 2004, the Port shall begin work on designing, constructing and installing an improvement

(including necessary appurtenances) to the Existing Pipeline that (i) brings the portion of the Existing Pipeline within the Third Runway Area to a depth of five (5) feet below the grade shown in the final plans and specifications for the Third Runway Project, (ii) extends as far east and west of the Third Runway Area as SPU determines is necessary, but no **further** east than the point that is 100 feet east of the center line of Perimeter Road and no **further** west than the point that is 100 feet east of the center line of 9th Avenue South (each point determined to the nearest pipe joint as located in the field), (iii) follows the alignment of the Existing Pipeline, (iv) is constructed of Class 52 ductile iron or 36 ksi steel pipe, (v) has a 36 inch inside diameter, (vi) is constructed materially in accordance with the Design Guidelines contained in Exhibit D, and (vii) otherwise conforms to the terms of this Agreement (the "Pipeline Improvement"). The Parties agree that installation of the Pipeline Improvement shall include inspection, filling, pressure testing, disinfection, flushing dewatering, rewatering, bacteriological testing (by SPU) and connection (all in accordance with the final plans and specifications for the Pipeline Improvement) with respect to both the connection of the Pipeline Improvement to the Existing Pipeline at the points identified in clause (ii) above (the resulting pipeline is referred to herein as the "Entire Pipeline") and the reconnection of the Entire Pipeline to the Water System. However, the Improvement Contractor (as hereinafter defined) shall not operate Water System valves in any manner without the prior written consent of SPU. The Port's construction, installation, and transfer of the Pipeline Improvement to SPU is not intended, nor shall it be deemed, to relieve the Port of its obligation to construct, install and transfer to SPU the New Pipeline pursuant to this Agreement.

The Port shall, in a timely manner so that completion of the Pipeline Improvement is not delayed, obtain all property and governmental approvals that may be necessary to construct and install the Pipeline Improvement. The Port shall continue to work expeditiously on construction and installation of the Pipeline Improvement, and shall on or before May 1, 2004 transfer to SPU a fully operational Pipeline Improvement; provided, that if the New Pipeline is completed and transferred to SPU prior to May 1, 2004, the Port's obligations with regard to the Pipeline Improvement shall cease. All costs of design, permitting, construction and installation of the Pipeline Improvement shall be borne solely by the Port, except those costs incurred by SPU in connection with the activation of the Entire Pipeline, which costs shall be reimbursed by the Port strictly in accordance with section 8.2.

4.1 **Design.** The Parties shall observe the following process for the design of the Pipeline Improvement:

(a) In the event that at any point in the **design/review** process the Port determines it is impossible or impracticable to adhere to the Design Guidelines set forth in Exhibit C or the required alignment, the Port shall include with each design submittal required under this section 4.1 a written notation of any deviation **from** the Design Guidelines or alignment not previously disclosed in a prior submittal and an explanation for the deviation.

(b) The Parties recognize that time is of the essence. Accordingly, the Parties shall work expeditiously and cooperatively during the **design/review** process. The Parties shall endeavor to provide **submittals/feedback** to the other as early as possible through the design process. Within three (3) working days after receipt of a design submittal, SPU shall notify the Port by e-mail or fax whether the submittal is complete (a "Complete Submittal") or incomplete (an "Incomplete **Submittal**") in accordance with the criteria set forth below for the applicable submittal.

(c) If SPU identifies an Incomplete Submittal, the Port shall (unless a disagreement exists) deliver to SPU for review and approval or disapproval a revised submittal as soon as possible and in any event within seven (7) working days. Within three (3) working days after receipt of such revised submittal, SPU shall notify the Port by e-mail or fax whether the submittal is a Complete Submittal or an Incomplete Submittal. This process shall be repeated until SPU determines that the submittal is complete.

(d) If SPU approves a Complete Submittal required under this section 4.1 with comments, the Port shall incorporate such comments into the next submittal or any disagreement regarding those comments shall be resolved before the Port delivers the next design submittal. If SPU fails to comment on a Complete Submittal within the time set forth below, that submittal shall be deemed to be approved. If SPU disapproves a Complete Submittal required under this section 4.1, the Port shall (unless a disagreement exists) deliver to SPU for review and approval or disapproval a revised submittal addressing the **reason(s)** for disapproval within seven (7) working days after delivery of the disapproval. No later than seven (7) working days after receipt of such revised submittal, SPU shall deliver its written comments and approval or disapproval to the Port. Any disagreement based on SPU disapproval of a design submittal shall be resolved before the Port delivers the next design submittal.

(e) The Parties shall meet as necessary to resolve disagreements that may arise in connection with each design submittal. Disputes shall be resolved pursuant to section 9 hereof and the timeframes set forth in this section 4.1 shall be tolled during the pendency of any such dispute.

(f) Unless construction of the New Pipeline has begun by February 1, 2003, the Port shall commence design of the Pipeline Improvement and shall, no later than May 1, 2003, deliver to SPU, for its review and approval or disapproval, plans and specifications representing the 30% design submittal for the Pipeline Improvement. If work on the New Pipeline begins by February 1, 2003 but at any time ceases or is so delayed that it is not reasonable to expect that the New Pipeline will be fully operational and transferred to SPU by May 1, 2004, the Port shall deliver such 30% design submittal by the later of May 1, 2003 or within six (6) weeks after work on the New Pipeline ceases or is so delayed. The 30% submittal shall include: horizontal and vertical alignment; stationing; location of air valves, line valves, blowoffs, and critical cross sections; and an outline of the specifications. No later than twelve (12) working days

after receipt of such Complete Submittal, SPU shall deliver its written comments and approval or disapproval to the Port.

(g) Within three weeks following SPU's approval of the 30% design submittal, the Port shall deliver to SPU, for its review and approval or disapproval, plans and specifications representing the 60% design submittal for the Pipeline Improvement. The 60% submittal shall include: all details of valves, chambers and connections; cross sections of critical crossings; and completed specifications with sufficient detail to determine the method of thrust restraint. No later than seventeen (17) working days after receipt of such Complete Submittal, SPU shall deliver its written comments and approval or disapproval to the Port.

(h) Within three weeks following SPU's approval of the 60% design submittal, the Port shall deliver plans and specifications representing the 90% design submittal for the Pipeline Improvement. The 90% submittal shall be a completed design and completed specifications. No later than seven (7) working days after receipt of such Complete Submittal, SPU shall deliver its written comments and approval or disapproval to the Port.

(i) Within one (1) week following SPU's approval of the 90% design submittal, the Port shall deliver the resulting final plans and specifications as the 100% submittal. Within one week after receipt, SPU shall approve the final plans and specifications for the Pipeline Improvement in writing. Said final plans and specifications for the Pipeline Improvement, including mutually agreed upon final revisions and addenda, shall be used in the Port's bid and contract documents for the Pipeline Improvement work.

(j) The Port shall cause the contract with the designer of the Pipeline Improvement (the "Pipeline Improvement Design Contractor") to state explicitly that (i) The City of Seattle is a third party beneficiary of the entire contract for design of the Pipeline Improvement, including without limitation the indemnification provisions thereof, (ii) all representations, warranties and guarantees of the Pipeline Improvement Design Contractor relating to the Pipeline Improvement run to The City of Seattle, and (iii) The City of Seattle shall be named as an additional insured on all policies of insurance the Port requires such designer to carry. Within ten (10) days after execution of said design contract, the Port shall deliver to SPU a copy of such contract and evidence reasonably acceptable to the Risk Manager of The City of Seattle that The City of Seattle has been named an additional insured in accordance with this section 4.1.

4.2 Governmental Approvals. The Port has obtained or shall obtain, at its sole cost and expense, all permits and governmental approvals (including without limitation those required by SeaTac) that may be necessary to construct and install the Pipeline Improvement and to fill the Third Runway Area.

4.3 Construction and Installation

(a) Construction Contract. The Port shall cause the Pipeline Improvement to be constructed and installed in conformance with all public works laws of the State of Washington applicable to it, and shall select its contractor for construction and installation of the Pipeline Improvement ("Pipeline Improvement Contractor") in accordance with such laws. **The Port shall cause the contract between the Port and the Pipeline Improvement Contractor ("Pipeline Improvement Contract") to state explicitly that (i) The City of Seattle is a third party beneficiary of the entire Pipeline Improvement Contract, including without limitation the indemnification provisions thereof, and (ii) all representations, warranties and guarantees of the Pipeline Improvement Contractor relating to the construction and installation of the Pipeline Improvement run to The City of Seattle. Within ten (10) days after execution of the Pipeline Improvement Contract, the Port shall deliver a copy of it to SPU.**

(b) Schedule. The Port shall provide SPU with the Pipeline Improvement Contractor's initial construction schedule and with schedule updates on a timely basis, so that any necessary coordination between the Pipeline Improvement Contractor and SPU can be accomplished. The Pipeline Improvement Contractor shall schedule all testing and connection with SPU at least two months prior to the proposed work; provided, no connection shall be made from June 1 through September 15.

(c) Change Orders. Either Party may initiate changes to the final plans and specifications for the Pipeline Improvement by submitting the proposed change to the other Party for its review and approval or disapproval. Approval of a proposed change shall not unreasonably be denied. Any proposed change shall be deemed to be approved if written comments are not delivered to the initiating Party within ten (10) working days. The initiating Party shall respond in writing to the reviewing Party's comments. If the reviewing Party disapproves the proposed change or approves it with comments, the proposed change shall not be implemented until the comments are included in the change order or the dispute is resolved in accordance with section 9. All changes necessitated by errors or omissions or unforeseen but necessary revisions to accommodate actual field conditions will be considered a normal construction-related expense and shall be implemented at the Port's sole cost and expense. Any other changes requested by SPU shall be paid for in accordance with section 8.1.

(d) Insurance. Prior to the commencement of construction of the Pipeline Improvement, the Port shall (i) cause the Pipeline Improvement Contractor to name The City of Seattle as an additional insured on all policies of liability insurance that the Port requires the Pipeline Improvement Contractor to carry and (ii) provide SPU with evidence reasonably acceptable to the Risk Manager of The City of Seattle that The City of Seattle has been so named.

e) Inspection, Maintenance and Administration. The Port shall provide for all project management and inspection necessary to ensure timely construction and

installation of the Pipeline Improvement in accordance with the final plans and specifications for the Pipeline Improvement, including the following:

(1) The Pipeline Improvement Contractor shall construct, install and connect the Pipeline Improvement strictly in accordance with the final plans and specifications and construction contract addenda approved by the Parties and issued as part of the bidding process, subject to the provisions regarding change orders contained in section 4.3(c). The Pipeline Improvement Contractor shall not operate Water System valves in any manner without the prior written permission of SPU.

(2) The Port shall administer the Pipeline Improvement Contract and take the lead role in inspecting and accept the Pipeline Improvement Contractor's work. SPU may, but is not obligated to, observe the work for quality assurance and to aid the Port's inspection staff in coordinating water system activities with regard to the Pipeline Improvement. Field problems found by SPU shall be resolved through the Port's construction administration staff

(3) The Port and the Pipeline Improvement Contractor shall develop and execute any traffic control plans that are required for work on the Pipeline Improvement.

(4) If requested, the Port's inspection staff shall forward weekly to SPU any written reports, including without limitation daily inspection reports (inspectors' field notes), relating to construction progress as well as any schedules prepared by the Pipeline Improvement Contractor regarding work to be performed. SPU shall be invited to project progress/scheduling meetings for the Pipeline Improvement.

(5) Within one year following SPU's acceptance of the Pipeline Improvement, the Port shall prepare or have prepared "as built" drawings for SPU's permanent records, and provide SPU with a digitized file and Mylar sheets. The digitized file shall be in AutoCAD Release 14 with the water design on its own layer, and the Mylar sheets shall be 24" x 36".


(6) The Port shall reasonably consult with SPU during the construction process to effectuate the purposes of this Agreement and represent in good faith SPU's interests to the Pipeline Improvement Contractor.


(7) As part of the installation of the Pipeline Improvement and prior to the Pipeline Improvement Contractor beginning the process of filling, pressure testing, disinfection, flushing, dewatering, rewatering, bacteriological testing (to be conducted by SPU) and connection, SPU may inspect the Pipeline Improvement (by "crawl through" if it deems necessary) and shall inform the Port of deficient work. SPU also may inspect the materials to be used in connection and the connection itself, and SPU shall inform the Port of deficient materials or work. These processes shall be repeated until the deficient work has been corrected.

(f) Final Approval and Acceptance. Upon completion of the construction and installation of the Pipeline Improvement, the Port shall provide SPU with at least ten (10) working days prior written notice of the Pre Final Inspection, following the receipt of a request from the Pipeline Improvement Contractor for such inspection under the contract documents for the construction of the Pipeline Improvement. SPU shall attend the Pre Final Inspection with the Port and prepare and transmit to the Port a written punchlist of deficient work within ten (10) working days after the Pre Final Inspection. The Port shall provide SPU with written notice of the Final Inspection immediately following the receipt of a request from the Pipeline Improvement Contractor for such inspection under the contract documents for the construction of the Pipeline Improvement. The Final Inspection shall be held at least five (5) working days following the Port's notice to SPU. SPU shall attend the Final Inspection with the Port. The process for Final Inspection shall be repeated until all items of deficient work on the punchlist have been corrected, at which time SPU shall promptly prepare and transmit to the Port a written Notice of Acceptance of the Pipeline Improvement.

4.4 Indemnification

(a) Prior to Transfer. With respect to occurrences up to and until the Port transfers the Pipeline Improvement to SPU in accordance with section 7.1, the Port agrees to release, defend and indemnify SPU, The City of Seattle and its employees and agents from and against each and every Claim (including without limitation designers' and contractors' Claims and Claims involving Hazardous Substances) that relate to injury or death to any person or damage to any property and that arise out of or are connected in any manner with any work performed to design, construct or install the Pipeline Improvement under this Agreement, provided that in accordance with RCW 4.24.115 (i) the Port's duties under this section 4.4(a) shall not apply to Claims resulting from the sole negligence of SPU or its employees, consultants, contractors or agents and (ii) to the extent that a Claim arises out of the concurrent negligence of SPU or its employees, contractors or agents, and the Port or its employees, consultants, contractors or agents, the Port's obligations hereunder shall be to the extent of its negligence and that of its employees, consultants, contractors or agents. Solely for the purpose of effectuating the foregoing indemnity and not for the benefit of the Port's employees or any third parties, the Port expressly waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. The aforesaid indemnification has been explicitly and mutually negotiated by the Parties and shall survive the termination or expiration of this Agreement.


Port


SPU

(b) After Transfer. With respect to occurrences after the Port transfers the Pipeline Improvement to SPU in accordance with section 7.1, the Port agrees to release, defend and indemnify SPU, The City of Seattle and its employees and agents from and against each and every Claim (including without limitation designers' and contractors' Claims and Claims involving Hazardous Substances) that relates to injury or death to any person or damage to any property and that arises out of or is connected in

any manner with the negligence of the Port or its employees or its consultant, HNTB Corporation, but only to the extent of their negligence, in connection with any work performed to design, construct or install the Pipeline Improvement under this Agreement. Solely for the purpose of effectuating the foregoing indemnity and not for the benefit of the Port's employees or any third parties, the Port expressly waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. The aforesaid indemnification has been explicitly and mutually negotiated by the Parties and shall survive the termination or expiration of this Agreement.


Port


SPU

4.5 SPU Review. SPU's review or approval of plans or specifications for the Pipeline Improvement or acceptance of the Pipeline Improvement pursuant to section 4 shall not create any obligation or liability of SPU in the event that said plans or specifications or the construction or installation of the Pipeline Improvement is found to be defective in any manner.

5. Allocation of Risk

5.1 Intent of Parties. The Parties specifically acknowledge and agree that the Existing Pipeline is an integral part of the Water System and is necessary for SPU's reliable provision of water to the Water Districts. The Parties also acknowledge and agree that the New Pipeline will serve the same function as the Existing Pipeline. The Parties further acknowledge and agree that SPU would not have been willing to enter into this Agreement without the Port's representation that the New Pipeline is expected to be fully operational and transferred to SPU prior to May 1, 2004, and the Port's obligation to provide SPU with the Pipeline Improvement on such date in the event that the New Pipeline cannot be delivered on schedule. Consequently, if **both**: (i) the New Pipeline or the Pipeline Improvement has not been transferred to SPU prior to May 1, 2004 in conformance with this Agreement **and** (ii) for any reason whatsoever (other than SPU's willful refusal to transmit water to the Water Districts when such transmission is practicable and prudent), SPU's ability to transmit water to the Water Districts on and after May 1, 2004 is reduced or eliminated, then the Port shall assume risk as set forth in section 5.2.

5.2 Risk Allocation. Commencing May 1, 2004 and continuing until the earlier of the transfer of the New Pipeline or the Pipeline Improvement to SPU, the Port shall release, defend and indemnify SPU, The City of Seattle and its employees and agents from and against any and every Claim (including without limitation Claims of the Water Districts and extraordinary costs incurred for rapid repair of damaged water transmission lines that had been used to serve the Water Districts) arising out of or in any manner connected with SPU's failure or reduced ability to transmit water to the Water Districts, which failure or reduced ability is related in any manner to the deactivation of the Existing Pipeline (other than SPU's willful refusal to so transmit water when such transmission is practicable and prudent). Solely for the purpose of effectuating the foregoing indemnity and not for the benefit of the Port's employees or any third parties,

the Port expressly waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. The Parties agree that the indemnification provided in this section 5.2 has been explicitly and mutually negotiated by the Parties and shall survive termination or expiration of this Agreement.


Port


SPU

If a court of competent jurisdiction, all appeals having been exhausted or all appeal periods having run, determines that the Port's indemnification obligations under this section 5 are governed by RCW 4.24.115, then the limitations on indemnification contained therein shall apply.

The Port's obligations under this section 5.2 shall not be deemed to diminish or eliminate the Port's obligations under section 6. Notwithstanding any provision of this Agreement to the contrary, until and through April 30, 2004, SPU shall be responsible for all liability and risk that it may incur in connection with its obligations to supply water to the Districts; provided, that this sentence is not intended nor shall it be interpreted, to relieve the Port from liability for damaging any operational portion of the New Pipeline or the Entire Pipeline.

6. Completion of Third Runway

Notwithstanding any provision of this Agreement to the contrary (including the completion of the Pipeline Improvement), (i) the Port shall construct and install the New Pipeline pursuant to section 2 and transfer the New Pipeline to SPU pursuant to section 7 prior to putting into use a third runway in the Third Runway Area, and (ii) SPU shall pay for the New Pipeline in accordance with section 8.1.

7. Transfer of Property Interests

7.1 Pipeline Improvement. As soon as practicable following acceptance by SPU pursuant to section 4.3(f) but not later than May 1, 2004, the Port shall transfer the Pipeline Improvement to SPU, at no cost, pursuant to the terms of this Agreement; provided, that the Port shall have no obligations under this section 7.1 if the Port transfers the New Pipeline to SPU on or before May 1, 2004. As part of the transfer of the Pipeline Improvement, the Port shall execute a bill of sale or other mutually agreeable transfer document for the Pipeline Improvement and, unless already enjoyed by SPU, an assignment of the designer's and contractor's representations, warranties and guarantees. There shall be no liens on the Pipeline Improvement at the time of transfer, and the Port shall so represent and warrant. In addition, the Port shall grant a nonexclusive easement with respect to the property ten (10) feet on each side of the centerline of the Pipeline Improvement, for the length of the Pipeline Improvement, with such additional width at specific locations as may be necessary to accommodate appurtenances shown in the final plans and specifications. Said easement shall contain such limitations on the Port's grant of other easements as are reasonably necessary to protect the integrity of the Pipeline Improvement and otherwise shall be in form and substance mutually agreeable to the

Parties. The Parties agree to execute such additional documents as shall be reasonably necessary to effectuate the aforesaid transfer of the Pipeline Improvement and grant of easement.

7.2 New Pipeline. The Port shall transfer the New Pipeline to SPU pursuant to the terms of this Agreement not later than May 1, 2004, unless the Port has transferred the Pipeline Improvement to SPU by that date. Notwithstanding the previous sentence, on or before the date on which the Port transfers the New Roadway to SeaTac, the Port shall transfer the New Pipeline to SPU pursuant to the terms of this Agreement. As part of the transfer of the New Pipeline to SPU, the Port shall execute a bill of sale or other mutually acceptable transfer document for the New Pipeline and, unless already enjoyed by SPU, an assignment of the designer's and contractor's representations, warranties and guarantees. There shall be no liens on the New Pipeline at the time of transfer, and the Port shall so represent and warrant. In addition, to the extent that the New Pipeline is located in property owned by the Port following the transfer of the New Pipeline to SPU, the Port shall grant a nonexclusive easement with respect to such portion(s) of the New Pipeline. Upon transfer of any portion of the easement area to SeaTac, SPU's rights under the easement shall terminate with respect to the applicable portion of the New Pipeline. To the extent feasible, said easement shall be ten (10) feet on each side of the centerline of the New Pipeline, for the length of the New Pipeline, with such additional width at specific locations as may be necessary to accommodate appurtenances shown in the final plans and specifications. Said easement shall contain such limitations on the Port's grant of other easements as are reasonably necessary to protect the integrity of the New Pipeline, and otherwise shall be in form and substance mutually agreeable to the Parties. The Parties agree to execute such additional documents as shall be reasonably necessary to effectuate the aforesaid transfer of the New Pipeline and grant of easement. The aforesaid transfer of the New Pipeline shall be at no cost to SPU, except as provided in section 8.1.

7.3 Interim Transmission of Water. Following SPU's delivery of a Notice of Acceptance of the New Pipeline or the Pipeline Improvement and prior to its transfer to SPU pursuant to section 7.2 or 7.1, as applicable, the Port, at its convenience and absolute discretion, may extend to SPU, at no charge, a license to transmit water through either the Pipeline Improvement or New Pipeline, as applicable. Said license shall be subject to revocation at the Port's convenience and absolute discretion and shall provide that if the Port revokes the license, the Port (i) shall be responsible and pay for all additional watering, dewatering, pressure testing, disinfecting and flushing that SPU may determine is necessary to reactivate the New Pipeline or the Pipeline Improvement, as applicable, and (ii) shall reimburse SPU for costs it incurs in performing additional bacteriological testing and assisting the Port's contractor in accomplishing the activities set forth in clause (i) of this sentence. Notwithstanding any other provision of this Agreement, however, the Port shall grant SPU, upon its written request and at no charge, an irrevocable license to transmit water through the New Pipeline or the Pipeline Improvement, as applicable, for thirty (30) days prior to transfer of such pipeline to SPU.

Any license issued pursuant to this section 7.3 shall provide that SPU shall release, defend and indemnify the Port and its employees and agents from and against each and every Claim arising out of or connected with the operation of, and transmission of water through, the New Pipeline or Pipeline Improvement (as applicable) during the period of the license, except to the extent that such Claim arises out of or is connected with any work performed to design, construct or install the New Pipeline or any other act or omission of the Port or its employees, contractors or agents.

7.4 Existing Pipeline

(a) Simultaneously with the transfer of the New Pipeline to SPU pursuant to section 7.2, SPU shall transfer the Existing Pipeline (including the Pipeline Improvement, if applicable) to the Port, at no cost, in accordance with this Agreement. As part of said transfer, SPU shall execute a bill of sale for Existing Pipeline. There shall be no liens on the Existing Pipeline at the time of transfer, and SPU shall so represent and warrant. The Parties agree to execute such additional documents as shall be reasonably necessary to effectuate the aforesaid transfer of the Existing Pipeline.

(b) Simultaneously with the transfer of the Existing Pipeline to the Port pursuant to section 7.4(a), SPU shall relinquish or the Parties shall negotiate in good faith to amend, as applicable, SPU's existing easements with regard to the Existing Pipeline (including the Pipeline Improvement, if applicable), so that SPU's easements accurately reflect Water System installations within the Airport.

(c) If the Pipeline Improvement is constructed, the Entire Pipeline put into service, and the Pipeline Improvement transferred to SPU pursuant to section 7.1, the Parties shall negotiate in good faith to amend SPU's easements with regard to the Existing Pipeline so that they conform to the actual location of the Existing Pipeline.

8. **Payment**

8.1 SPU shall reimburse the Port for a portion of the costs incurred by the Port in the construction and installation of the New Pipeline in accordance with this Agreement. Except as otherwise provided in this section, such reimbursement shall be in the total amount of Three Hundred Sixty Five Thousand Dollars and No Cents (\$365,000.00), regardless of the actual cost or date of completion of the New Pipeline. Said reimbursement amount includes retail sales tax and any other tax that may be owing on the property transferred or on the transaction. Reimbursement shall be made upon the later of the date of transfer of the New Pipeline to SPU or September 1, 2002. In addition, SPU shall, on the date that reimbursement occurs pursuant to the previous sentence, reimburse the Port for the actual out-of-pocket costs of all change orders initiated by SPU that are not normal construction-related expenses, as described in section 2.4(c).

8.2 The Port shall reimburse SPU for a portion of the costs incurred by SPU in inspecting and bacteriologically testing the Entire Pipeline, and assisting the

Improvement Contractor in accomplishing installation of the Pipeline Improvement in accordance with this Agreement. Such reimbursement shall be in the total amount of Forty Two Thousand Dollars and No Cents (\$42,000.00), regardless of the actual cost or date of completion of said inspection. Reimbursement shall be made within thirty (30) days of the Port's receipt of notice from SPU that the necessary inspections have been completed. Should said inspections indicate that deactivated portions of the Entire Pipeline were been damaged by the Port during construction of the Third Runway Project or other Airport operations, the Port shall reimburse SPU for the actual cost of repair of such damage.

9. Dispute Resolution

The Parties shall negotiate in good faith and use their best efforts to resolve any disputes that may develop under this Agreement. If the persons identified in section 10.6 cannot resolve a dispute, it shall be referred to the Third Runway Program Manager of the Port and the Engineering Services Branch Executive of SPU. If such persons cannot resolve that dispute, it shall be referred to the Director of Aviation Project Management Group of the Port and the Managing Director of SPU for resolution. Only upon failure to resolve the dispute through the foregoing process may either Party pursue legal action. The prevailing Party to any action shall be entitled to its reasonable costs and expenses, including fees and costs of in-house attorneys and paralegals.

10. General Provisions

10.1 Applicable Law. This Agreement shall be governed by the laws of the State of Washington. Each Party shall cause all work for which it is responsible under this Agreement to be carried out in accordance with all applicable laws and regulations, including without limitation public works laws and laws prohibiting discrimination based on sex, sexual orientation, race, color, national origin, ancestry, creed, religion, political ideology, age, marital status, or the presence of any sensory, mental or physical handicap. Failure to comply with the foregoing shall be a material breach of this Agreement.

10.2 Entire Ameenent: Modification. This Agreement (including recitals and attached Exhibits) constitutes the entire agreement between the Parties. No representations, whether written or otherwise, between the Parties not contained or incorporated herein by reference shall be of any force or effect. This Agreement may be modified or amended only by the written agreement of the Parties.

10.3 Severability. If any provision hereof is held by a court of competent jurisdiction, all appeals having been exhausted or all appeal periods having run, to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

10.4 No Waiver. No delay or failure to exercise any right, power or remedy accruing to one Party on any breach or default by the other Party shall impair any such right, power or remedy, nor be construed as a waiver of any such breach or default.

10.5 No Third Party Beneficiaries. No term or provision of this Agreement is intended to be, or shall be, for the benefit of any person, firm, organization or corporation not a Party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

10.6 Notices. All notices, approvals, proposed change orders, design submittals and invoices required in connection with this Agreement shall be in writing and deemed to have been duly given if personally delivered or sent by fax, United States mail or overnight delivery service, or as otherwise specified in this Agreement, each with proof of receipt, to the respective representatives of the Parties, as shown below, or as otherwise indicated in written notice from one Party to the other.

Seattle Public Utilities
Water Engineering
6th Floor, Dexter Horton Building
710 Second Avenue
Seattle, Washington 98104
F a : 206-684-8535
Attn: Karen York

Port of Seattle
Seattle-Tacoma International Airport
Project Management Group
17900 International Blvd. Suite, 301
Seattle, Washington 98188
F a : 206-248-6876
Attn: Third Runway Embankment Proj. Mgr

10.7 Interpretation. The provisions of this Agreement shall be construed as a whole according to their common meaning and consistent with the provisions contained herein in order to achieve the objectives and purposes of this Agreement. Each Party and its counsel has reviewed and revised this Agreement and agrees that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

10.8 Jurisdiction and Venue. In the event any action is brought under this Agreement, jurisdiction shall be had in the King County Superior Court for the State of Washington or the United States District Court for the Western District of Washington, and venue shall lie exclusively in Seattle, Washington.

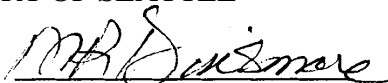
10.9 Time is of the Essence. For the purposes of this Agreement and obligations hereunder, time is of the essence.

10.10 Counterparts. This Agreement may be executed in counterparts, and each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

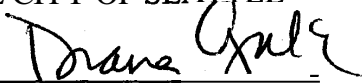
10.11 Authority. Each person signing below represents that he or she has the requisite authority to bind the Party on whose behalf he or she is signing.

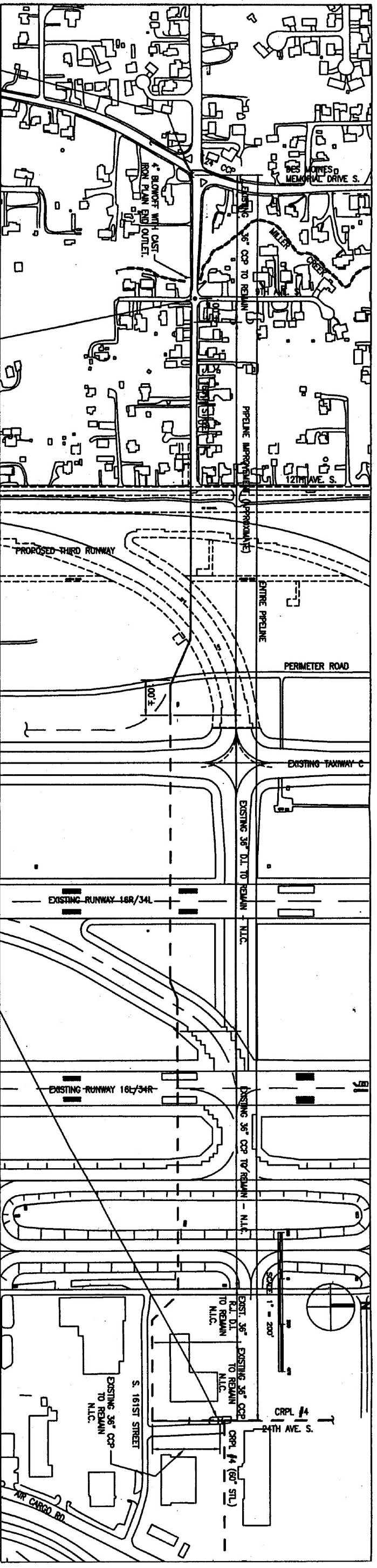
In witness whereof, the Parties have executed this Agreement as of the date first written above.

PORT OF SEATTLE

By: 
Name: M. R. Dinsmore
Title: Executive Director

THE CITY OF SEATTLE

By: 
Diana Gale
Managing Director, Seattle Public Utilities



LOCATION OF WEST CUT/CAP
 EXISTING VALVE TO BE OPERATED BY SPU
 ONLY. COORDINATE WITH KAREN YORK AT SPU
 FOR ISOLATING AND RECHARGING WATER LINE.
 TEL. (206)884-5994
 STA. 398+99.2 (REFERENCE PLAN# 858-35)

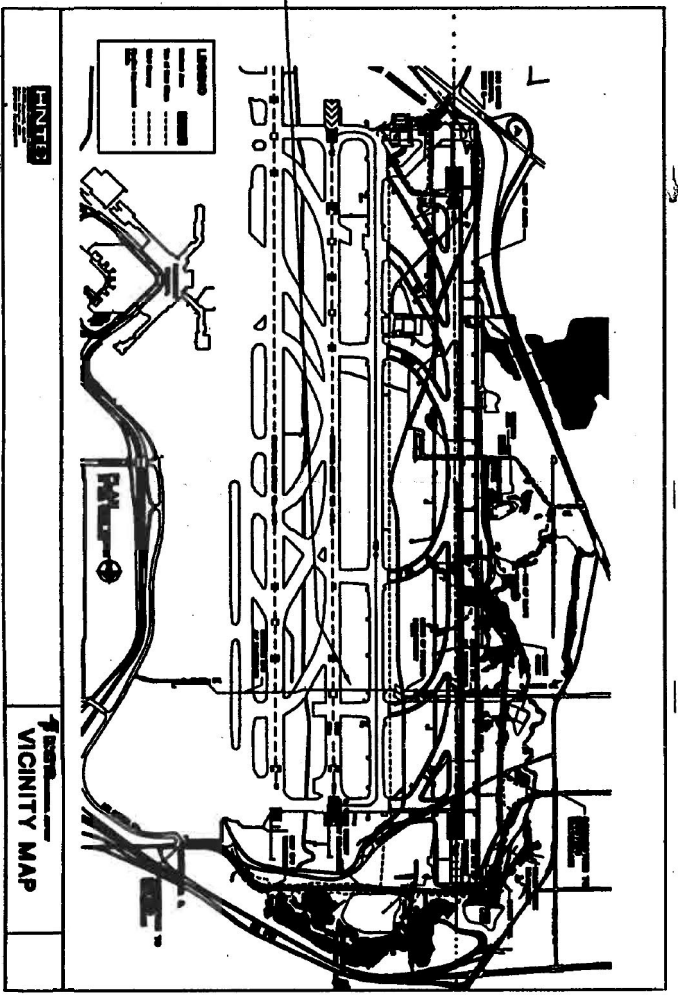
EXISTING SS MANHOLE
 COORDINATE ALL
 DISCHARGES TO THIS
 SYSTEM WITH TIM YOKERS
 AT SOUTHWEST SUBURBAN
 SEWER DISTRICT. TEL.
 (206)242-7907

LOCATION OF EAST CUT/CAP
 EXISTING VALVE TO BE OPERATED BY SPU
 ONLY. COORDINATE WITH KAREN YORK AT SPU
 FOR ISOLATING AND RECHARGING WATER LINE.
 TEL. (206)884-5994
 STA. 355-79.2 (REFERENCE PLAN# 120-12)

REFER TO :
 CITY OF SEATTLE VAULT PLAN 776-101
 PORT OF SEATTLE NO. STA. 8672
 ALSO AS SMD DRAWING NUMBER 120-12
 CITY OF SEATTLE VAULT PLAN 858-35
 CITY OF SEATTLE VAULT PLAN 776-57

"S. 160TH ST., ET AL. PIPELINE RELOCATION"
 "SEATAC INTERNATIONAL AIRPORT LVL HANGER SITE
 PREPARATION 36\"/>

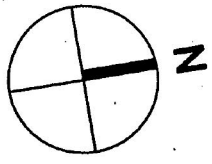
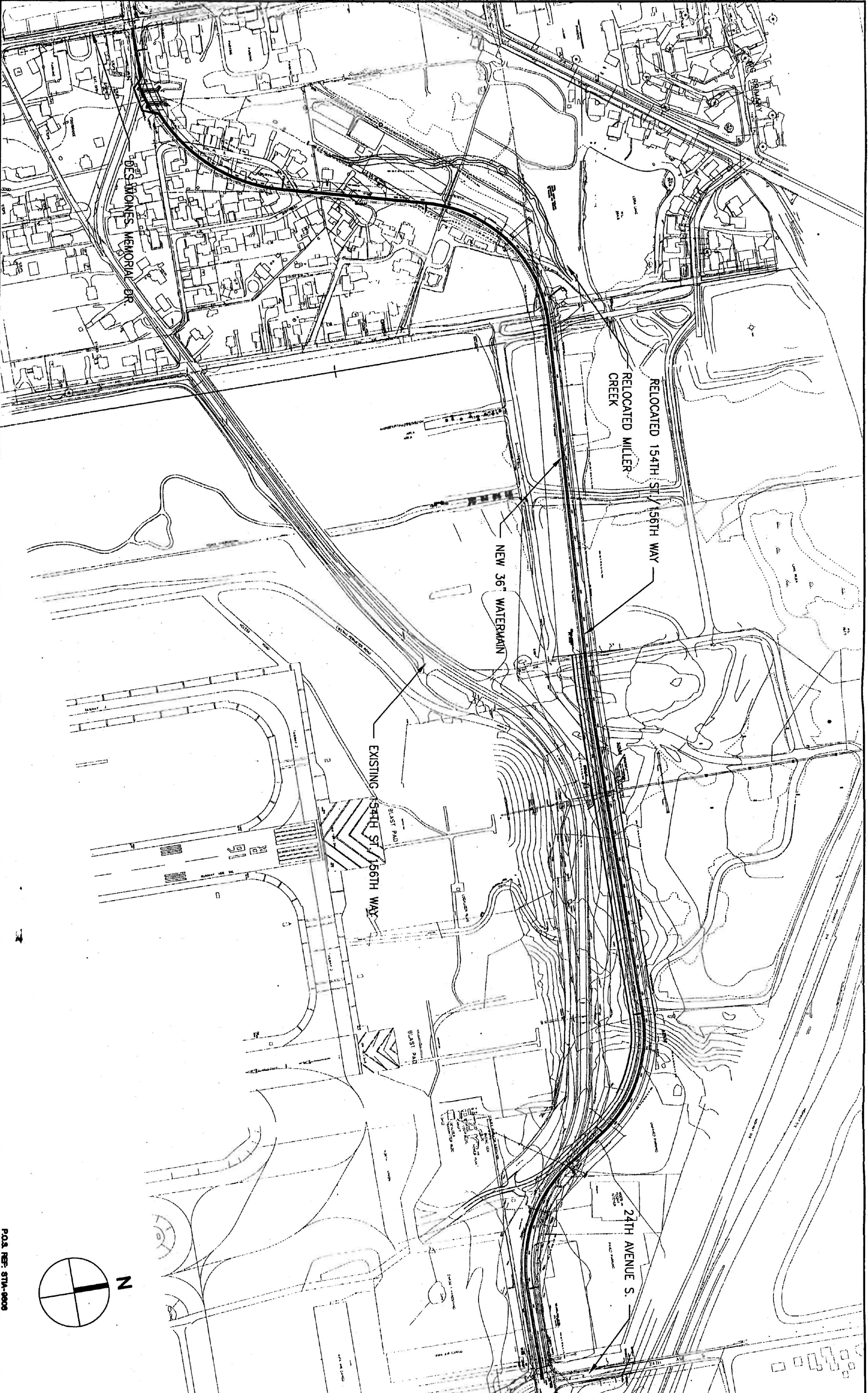
SEE ABOVE FOR DETAIL



INDEX

VICINITY MAP

SEATAC THIRD RUNWAY PROJECT
 EXHIBIT A



P.O.S. REF: 871A-8008

DESIGN COMPANY 1000 University Ave., Suite 201 Seattle, WA 98101 Phone: 206-221-1100 Fax: 206-221-1100	APPROVED BY SEATTLE TRANSPORTATION _____ _____	
	DATE OR REVISED AND DATE ORIGINAL: _____ REVISION: _____	INITIALS AND DATE _____ _____
THE CITY OF SEATTLE SEATTLE TRANSPORTATION PRIVATE CONTRACT SCALE: 1" = 300', 1" = 300' SHEET _____ OF _____		
SEA-TAC INTERNATIONAL AIRPORT RUNWAYS 8L/7R SAFETY AREA IMPROVEMENT PROJECT SOUTH 154TH STREET/156TH WAY RELOCATION EXHIBIT B		
SHEET _____ OF _____ _____ _____	_____ _____	_____ _____

EXHIBIT C

Design Guidelines

Hydraulic Design Criteria

- A. Static Head: 499 ft. NAVD-88 datum
- B. Minimum Surge Pressure: 50 psi
- C. Minimum Design Head: 614 ft. NAVD-88 datum

Pipeline Specifications

- A. Pipe Material: 36 ksi Steel or Class 52 Ductile Iron
 - 1. Joints: Welded lap joint with air test holes for steel pipe. Restrained Joint (boltless and flexible) for Ductile Iron
- B. Allowable Stresses: 50% of Yield for internal pressure. Maximum out-of-round tolerance of 2% under H-20 loading for external loading.
- C. Pipe Diameter: 36" finished internal diameter.
- D. Lining: Cement mortar
- E. Coating: 80 mil multi-layer polyethylene tape coating for steel pipe. Ductile iron pipe shall have polyethylene encasement. In soils having resistivity values lower than 10,000 ohm-cm, ductile iron pipe shall have thermoplastic bonded coating system.
- F. Pipe installed above ground must be supported to withstand 1.5 g vertical and horizontal acceleration. Steel pipe installed above ground shall be coated with a durable W resistant coating.

Horizontal and Vertical Alignment

- A. 5 ft. cover minimum. 12" clear of any crossing utilities. 3 ft. clear of any adjacent utilities.
- B. Alignment tied to street & county monuments. Pipe stationing tied to a control line.
- C. Plans shall show stationing, bearings, and curve data. **Horizontal** and vertical curves generally avoided unless following an existing alignment.
- D. Place vertical bends to the nearest 10 ft. station and nearest 1 ft. elevation where possible.
- E. Minimum slope: 1%

Appurtenances

- A. Chambers shall be precast where possible. Provide 18" clearance below and 3' clearance around pipe. Support pipe with adjustable pipe stands. Wall penetrations shall be sealed with plastic foam and grout. Provide entry manholes and ladders. Provide square hatches when chamber is not located in a road. Provide chamber drains when possible.
- B. Combination Air Valves
 - 1. Locate at high points to prevent internal vacuum.
 - 2. Size valves for normal filling and draining and normal transient conditions. 2 inch minimum size.
 - 3. Valve air supply must be tight piped above ground to prevent cross connection.
- C. Blowoff Valves
 - 1. Locate at low points to drain the pipeline.
 - 2. 6" minimum size, sufficient size to drain the pipe in 24 hours.
 - 3. Air gap on discharge pipe to prevent cross connection. 1" corporation stop at bottom of pipe in vault to allow drainage of **blowoff** piping.
 - 4. Permit rights for discharge to drainage course.
- D. Line Valve: 36" butterfly valve, welded steel pipe and fittings at connections to main line.
- E. Manholes: every 1000'. 24"ID top flange. Try to locate in combination with other appurtenances.
- F. Outlets: For known connections and future use. Valved.
- G. Cathodic Protection: continuous joint bonding for the entire length. Electrically isolated at connections to main line. 17 lb. magnesium anodes bonded at 100 ft. intervals for tape and thermoplastic coated pipe.

Pipe Installation

- A. Conform to City of Seattle Standard Specifications