

## REGIONAL TRANSIT AUTHORITY

### RESOLUTION NO. 35

A RESOLUTION of the Board of the Regional Transit Authority for the Pierce, King and Snohomish Counties region authorizing the Executive Director to execute consultant agreements for engineering and operational planning required to implement the Commuter Rail Demonstration Project.

WHEREAS, a Regional Transit Authority ("RTA") has been created for the Pierce, King and Snohomish Counties region by action of their respective county councils pursuant to RCW 81.112.030; and

WHEREAS, by Resolution No. 2, adopted September 24, 1993, the RTA Board authorized the filing of an application for state Central Puget Sound Public Transportation Account grant funds for the purpose of conducting project level planning for commuter rail service between Seattle and Everett and between Tacoma and Lakewood, contingent upon a determination by the RTA to proceed with such project level planning; and

WHEREAS, the RTA received notice from the Washington State Department of Transportation that there were insufficient funds available to fund such grant request from the RTA; and

WHEREAS, by Resolution No. 3, adopted October 8, 1993, the RTA Board authorized the performance of feasibility studies for commuter rail services between Seattle and Everett and between Tacoma and Lakewood in support of the Regional Transit Project; and

WHEREAS, by Resolution No. 4, adopted October 8, 1993, the RTA Board authorized project level planning and preparation of an environmental assessment for the South Corridor Commuter Rail Project, including service between Tacoma, Renton and Seattle ; and

WHEREAS, by Resolution No. 12, adopted January 28, 1994, the RTA Board adopted a Preliminary Budget for the Calendar Year 1994, and which further provided that the adopted budget would be subject to further review and amendment as the Authority's financial resources and obligations become clearer in 1994; and

WHEREAS, by Resolution No. 16, adopted February 25, 1994, the RTA Board authorized the filing of an application for and the acceptance of Washington State High Capacity Transportation (HCT) Account grant funds for state fiscal year 1995, and further authorized the commencement of negotiations to secure the assignment to the RTA of existing interlocal agreements as may be necessary to appropriately allocate any unexpended and available state fiscal year 1994 HCT grant funds; and

WHEREAS, by Resolution No. 24, adopted April 22, 1994, the RTA Board recognized the feasibility of commuter rail service between Seattle and Everett and between Tacoma and Lakewood and expressed its intent to include these services in the Regional Transit System Long Range Master Plan and directed the Executive Director to prepare a comprehensive work program and schedule for the expanded commuter rail system consistent with the Board's overall work program and to recommend any required budget amendment or consultant support contract; and

WHEREAS, by Resolution No. 30, adopted July 8, 1994, the RTA Board approved a budget amendment to include additional expenditures and pass through grant revenues for interlocal agreements; and

WHEREAS, at the Board's direction, staff analyzed the technical feasibility of a limited service commuter rail demonstration project which analysis determined that such commuter rail service was feasible and identified a variety of events which could safely demonstrate the characteristics of passenger rail service using existing freight rail trackage; and

WHEREAS, by motion, adopted August 12, 1994, the RTA Board authorized the allocation of \$200,000 for completion of engineering and operational planning to implement a Commuter Rail Demonstration Project; and

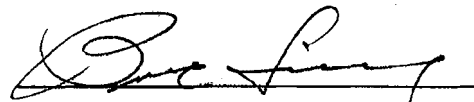
WHEREAS, on September 1, 1994, the Executive Director recommended that the adopted budget for calendar year 1994 be awarded amended to reflect the above actions of the Board, that staff be authorized to proceed with the project level planning and environmental assessment analyses for commuter rail service between Seattle and Everett and between Tacoma and Lakewood, that staff be authorized to initiate development of station standards and technical

analyses for the development of the commuter rail vehicle specifications, that additional expenditures and pass through grant revenues be allocated for interlocal agreements, and that a preliminary six-month budget be approved for 1995 to fund the Board's anticipated activities and work program; and

WHEREAS, negotiations with the Commuter Rail Demonstration Project, and management, rail operations and engineering consultants Henry M. Aronson, DeLeuw Cather & Company and Huitt-Zollars, Inc. (in association with STV Group) have been completed to assist in implementing the Board's directions and the Executive Director's recommendations and approval of the proposed agreements for such services is recommended by the Executive Director;

NOW, THEREFORE, BE IT RESOLVED by the Board of the Regional Transit Authority that the Executive Director is hereby authorized to execute and administer the agreements for consulting services with Henry M. Aronson, DeLeuw Cather & Company, and Huitt-Zollars Inc. (in association with STV Group) substantially in the form of the agreements in Appendix A, B and C attached hereto provided, that the total costs of said consultant agreements and contingency will not exceed the amount authorized under Resolution No. 33.

ADOPTED by the Board of the Regional Transit Authority for the Pierce, King and Snohomish Counties region at a regular meeting thereof held on the 9th day of September, 1994.



Bruce Laing  
Chair of the Board

ATTEST:



Board Administrator



**CONSULTING AGREEMENT  
FOR SERVICES TO THE REGIONAL TRANSIT AUTHORITY**

THIS AGREEMENT is entered into by and between the Regional Transit Authority for the Pierce, King and Snohomish Counties region, a municipal corporation of the State of Washington (hereinafter referred to as the "RTA"), and DeLeuw Cather & Company, a corporation qualified to do business under the laws of the State of California (hereinafter referred to as the "Consultant").

In consideration of the mutual covenants hereinafter contained, the parties mutually agree as follows:

1. Consultant's Services and Responsibilities. The Consultant will serve as a technical advisor on engineering and equipment support to the RTA's project development team for the RTA's Commuter Rail Demonstration Project (hereinafter referred to as the "Project"). The Consultant will be responsible for identifying and implementing those actions required in the planning and start-up period, in cooperation with other RTA staff and consultants engaged in the Project, to ensure the Project's feasibility and success.

The general scope of services to be provided by the Consultant is set forth in Exhibit A attached hereto.

2. Term of Agreement. The term of this Agreement shall commence September 15, 1994 and expire no later than November 30, 1994 unless earlier terminated pursuant to the provisions hereof or extended by the mutual agreement of both parties; provided, that the RTA

can also request up to fifteen (15) days of service at the RTA's election in 1995. The RTA reserves the right to assign responsibilities to the Consultant after the Project start-up to assist the RTA in monitoring and structuring specific demonstration services which shall constitute a second phase to this Agreement. Such second phase shall be formalized in an amendment to this Agreement.

3. RTA's Services and Responsibilities. The RTA's Manager of Commuter Rail Services will be responsible for administering the Project and will assist the Consultant in making arrangements related to the scope of services.

4. Compensation.

A. The maximum aggregate amount paid to the Consultant as compensation for services performed in a satisfactory manner and for all related costs and expenses incurred by Consultant shall not exceed the sum of Sixty-seven Thousand Five Hundred Dollars (\$67,500). The Consultant shall assign Mr. Charles C. DeWeese to the Project on a full time basis and Mr. DeWeese shall be available to RTA staff and consultants on a daily basis in the RTA's central offices during the term of this Agreement.

B. The RTA shall compensate the Consultant at the rate of Nine Hundred Dollars (\$900) per day for services performed in a satisfactory manner under this Agreement, subject to the maximum amount specified in the preceding paragraph A. Said rate shall include all of the Consultant's costs and expenses for providing Mr. DeWeese's services in the State of Washington including travel, lodging and per diem expenses.

C. The Consultant's request for payment for completed work and services shall be submitted to the RTA's project representative at least every month, and shall explain the services provided during the billing period. The RTA will use its best efforts to arrange for payment within forty-five (45) days.

D. Payment will be sent to the address designated by the Consultant and the Consultant shall be responsible for any and all payments of taxes, fees and charges which may be appropriate under applicable federal state and local laws, including any applicable premiums for Workmen's Compensation insurance. The Consultant agrees to be solely responsible for paying any workers or subcontractors whom the Consultant may hire to work on the Project, and shall indemnify, defend and hold the RTA, its agents, employees and officers harmless from any claims or suits by Consultant's personnel or subcontractors arising out of the performance of this Agreement.

5. Confidentiality. The Consultant shall hold and maintain as confidential, and instruct persons or subcontractors hired by the Consultant to work on the project to hold and maintain as confidential, all information developed as a consequence of performance under this Agreement unless specifically released in writing by the RTA from being maintained in confidence, or unless it is already in the public domain by virtue of having been printed and published and made available to the public. In the same manner, the RTA shall hold and maintain all information which the Consultant regards as confidential to the extent such information is not disclosable pursuant to Chapter 42.17 RCW.

6. Non-Discrimination. During the time period and performance of this Agreement, the Consultant agrees not to discriminate against any person employed by the Consultant, or against people applying for employment by the Consultant, because of race, color, creed, national

origin, physical handicaps, physical characteristics, sex, age, place of residence, marital or family status, excluding those cases where a bona fide occupational qualification is involved. The Consultant will ensure that applicants are employed, and that people employed by the Consultant are treated during employment, without regard to their race, color, creed, national origin, physical handicaps, physical characteristics, sex, age, place of residence, marital or family status, again excluding those cases where a bona fide occupational qualification is involved.

7. Audit. The Consultant shall allow the RTA, or any federal or state agency funding the Project, to audit, inspect and copy the Consultant's books, files and records with respect to all costs and revenues related to the services to be provided and to ensure compliance with any of the other provisions of this Agreement. The Consultant agrees to maintain originals or copies of all such books, files and records for a period of three years following the formal termination of this Agreement by the RTA.

8. Termination. This Agreement may be terminated by the RTA effective immediately upon written notice should the Consultant fail substantially to perform in accordance with the terms of this Agreement through no fault of the RTA or should the RTA choose to abandon the Project or to obtain the above services by other means. The Consultant shall be reimbursed for all work done in a satisfactory manner prior to the termination date. The products of such reimbursed work or time shall become the property of the RTA.

9. Notices. All notices and other material to be delivered hereunder shall be in writing and shall be delivered or mailed to the following addresses:



If to RTA: Mr. Bob White  
Manager of Commuter Rail Services  
Regional Transit Authority  
821 Second Avenue, MS-151  
Seattle, Washington 98104-1598

If to Consultant: Mr. Charles C. DeWeese  
DeLeuw Cather & Company  
199 South Los Robles Avenue, Suite 740  
Pasadena, California

or such other respective addresses as may be specified herein or as either party may, from time to time, designate in writing.

10. Insurance.

A. The Consultant hereby agrees to maintain an errors and omissions policy of insurance containing standard Professional Liability Insurance for Architects and Engineers, covering the Consultant and Consultant's employees in the amount of at least One Million Dollars (\$3,000,000). Said policy shall be obtained from a reputable insurance company with a Best rating of not less than "AIX," and shall cover claims arising out of the negligent act, error, or omission of the Consultant. Said policy and/or equivalent insurance coverage shall be kept in place for three (3) years following the completion of services under this Agreement. Certificates of insurance from the Consultant shall be delivered to the RTA when requested. The RTA shall have the right to increase the insurance amount at the RTA's expense if available.

B. Upon signing this Agreement, the Consultant shall file with the RTA certificates of errors and omissions insurance consistent with the coverage requirements in the preceding paragraph. Such policies shall bear the endorsement: "Not to be cancelled or allowed to expire without sixty (60) days prior written notice to the RTA." Such policy shall provide coverage for the activities undertaken by Consultant in its professional capacities and as a

professional service corporation. In the event that such insurance coverage is cancelled on the Consultant during the term of this Agreement, the Consultant understands that it remains obligated to secure replacement insurance coverage meeting the requirements of this Agreement to the extent that it remains available for purchase by the Consultant at a cost and under such terms as are commercially practicable.

C. The Consultant shall also provide other insurance of the kind, coverage and limits typical for similar engagements and projects, including comprehensive general liability and comprehensive automobile liability of at least \$1,000,000, which insure against property damage and liability for property damage or personal injury (including death) which may occur in connection with the Consultant's performance of services under this Agreement. Such policies shall name the RTA as an additional insured if requested by the RTA.

D. The Consultant shall provide to the RTA upon reasonable request any other insurance certificates applicable to the Consultant's services under this Agreement, including automobile and commercial general liabilities policies. Upon request, the Consultants shall also deliver complete copies of errors and omissions policies of insurance for RTA review. If the terms of coverage of such policies are not acceptable to the RTA, the Consultant shall revise its coverage or obtain additional coverage as necessary and if available to meet the requirements of this Agreement. The additional cost of such revisions or any charge for including the RTA as an additional insured, if possible, will be paid by the RTA.

11. Entire Agreement. This Agreement represents the entire and integrated agreement between the RTA and the Consultant and supersedes all prior negotiations, representations or agreements, either written or oral, and may be changed, waived, modified or amended only by further written agreement between the RTA and the Consultant. This Agreement may be

canceled by the RTA if Consultant transfers any interest in this Agreement without written consent of the RTA. If any provision of this Agreement is deemed in conflict with any applicable statute, regulation or rule, such provision shall be considered modified to be in conformance with said statute, regulation or rule. Nothing in this Agreement shall be construed so as to void, invalidate or limit any insurance coverage held by either party to this Agreement.

12. Nonwaiver. The failure of either party to insist upon or enforce strict performance by the other party of any of the provision of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon any such provisions or rights in that or any other instance.

13. Third Parties. Nothing contained herein shall be deemed to create any contractual relationship between the Consultant or any of the contractors, subcontractors or material suppliers on the Project, nor shall anything contained in this Agreement be deemed to give any third party any claim or right of action against the RTA or the Consultant which does not otherwise exist without regard to this Agreement.

14. Indemnity. To the maximum extent permitted by law, the Consultant shall indemnify, defend and hold harmless the RTA, its officers, employees and agents, from and against any and all claims, demands, suits and liabilities of any kind, including injuries to persons, damages to property and claims under other contracts, which arise out of or are due to the negligent acts, errors or omissions of the Consultant in performing work and services under this Agreement; provided that said obligations shall not apply to the extent that the RTA is negligent with regard to the alleged acts, errors or omissions giving rise to said claims. In the event that any claims, demands, suits, actions and lawsuits involving the RTA arise out of any of the aforesaid acts, errors or omissions of the Consultant, the Consultant shall be given reasonable

notice of the claims and an opportunity to defend and shall indemnify and hold harmless the RTA for its costs of defending such claims, demands, suits, actions or lawsuits, including legal and expert fees incurred by the RTA, and if any judgment or award is obtained against the RTA or any of its officers, agents or employees in such suits as a result of any such acts, errors or omission of the Consultant, the Consultant shall at once cause same to be dissolved and discharged by giving bond, payment or otherwise. This Agreement shall not constitute any waiver of the Consultant's immunity, if any, under the Industrial Insurance Act for actions brought by the Consultant's employees.

The Consultant and the RTA acknowledge that a right of contribution shall exist between them if they are found to be jointly and severally liable upon the same individual claim for the same damage, injury, death or harm, whether or not judgment has been recovered against both of them. The right of contribution shall be governed by RCW 4.22.040 current as of the date of execution of this Agreement.

The RTA's rights and remedies in this Agreement are in addition to any other rights and remedies as may be provided by law.

15. Cooperation in Dispute Resolution. If requested by the RTA, the Consultant agrees to fully support and participate in cooperative procedures with other Project contractors and consultants and the RTA to avoid or minimize problems on the Project, including nonbinding dispute resolution efforts to resolve claims filed or asserted by such contractors. The Consultant shall incorporate similar provisions in contracts with its subcontractors.

16. Execution. This Agreement shall be executed in two (2) counterpart copies and each copy shall be considered an original. This Agreement, including the exhibits and addenda

attached hereto and forming a part hereof, are included within the covenants, promises, agreements, and conditions between the parties.

IN WITNESS WHEREOF the parties have executed this Agreement by having their representatives affix their signatures below on this \_\_\_\_\_ day of September, 1994.

CONSULTANT

REGIONAL TRANSIT AUTHORITY

By \_\_\_\_\_

By \_\_\_\_\_

Thomas G. Matoff  
Executive Director

**CONSULTING AGREEMENT  
FOR SERVICES TO THE REGIONAL TRANSIT AUTHORITY**

THIS AGREEMENT is entered into by and between the Regional Transit Authority for the Pierce, King and Snohomish Counties region, a municipal corporation of the State of Washington (hereinafter referred to as the "RTA"), and Henry M. Aronson, an individual qualified to do business under the laws of the State of Washington (hereinafter referred to as the "Consultant").

In consideration of the mutual covenants hereinafter contained, the parties mutually agree as follows:

1. Term of Agreement. The term of this Agreement shall begin on September 15, 1994 and expire no later than December 31, 1994, unless terminated earlier pursuant to the provisions hereof or extended by the mutual agreement of both parties. The RTA may authorize extensions only upon the approval of both the RTA's Executive Director and Rules Committee and such extensions shall not exceed a period ending July 1, 1995.

2. Consultant's Services and Responsibilities. The Consultant will serve as the Project Manager for the RTA's Commuter Rail Demonstration Project ("CRDP"). As such, the Consultant will be responsible for identifying and implementing those actions required to ensure the CDRP's feasibility and success, including services planning, agency coordination, fundraising, and consultant coordination.

The scope of services to be provided by the Consultant is set forth in Exhibit A attached hereto.

3. RTA's Services and Responsibilities. The RTA's Manager of Commuter Rail Services will be responsible for overall administration of the CRDP and will assist the Consultant in making arrangements related to the scope of services.

4. Terms and Conditions.

A. The maximum aggregate amount paid to the Consultant as compensation for services performed in a satisfactory manner during the initial term of this Agreement shall not exceed the sum of Forty Four Thousand Six Hundred Twenty Five Dollars (\$44,625) unless the Agreement is extended as provided in paragraph 1 above.

B. The RTA shall compensate the Consultant Twelve Thousand Seven Hundred Fifty Dollars (\$12,750) per month for the services performed in a satisfactory manner under this Agreement, up to a maximum amount specified in the preceding paragraph A. In addition, the RTA shall reimburse Consultant for expenses and costs directly incurred and necessary to provide such services up to a maximum of Ten Thousand Dollars (\$10,000),

provided such costs and expenses are approved in advance by the RTA's Manager of Commuter Rail Services.

C. The Consultant's request for payment for completed work and services shall be submitted to the RTA's project representative at least every month, and shall explain the services provided during the billing period. The RTA will use its best efforts to arrange for payment within forty-five (45) days.

D. Payment will be sent to the address designated by the Consultant. The Consultant shall be responsible for all payments of quarterly withholding taxes and F.I.C.A. taxes which may be appropriate under applicable federal law and for any other state or local taxes, charges, license fees or assessments related to its services for the RTA. Additionally, the Consultant shall pay any applicable premiums for Workmen's Compensation insurance and will provide proof of such coverage at the commencement of this Agreement.

E. The Consultant agrees to provide at the commencement of this Agreement a copy of any licenses, certifications or approvals required by law for the proper performance of services and to comply with all applicable laws, regulations and rules in the performance of services under this Agreement.

F. The Consultant stipulates that there is no apparent or legal conflict of interest concerning employment of Consultant, any member of the Consultant's immediate family or of a person employed by the Consultant by any member of the RTA Board or their respective agencies and governments.

G. The Consultant agrees to be solely responsible for paying any workers or subcontractors whom the Consultant may hire to work on the CRDP, and shall indemnify, defend and hold the RTA, its agents, employees and officers harmless from any claims or suits by Consultant's personnel or subcontractors arising out of the performance of this Agreement. The Consultant also agrees to indemnify, defend and hold the RTA, its agents, employees and officers harmless from any liability for personal injury or property damage which arises from the actions or omissions of the Consultant or from the actions or omissions of personnel or subcontractors hired by the Consultant to work on the CRDP.

H. The Consultant shall hold and maintain as confidential, and instruct persons or subcontractors hired by the Consultant to work on the CRDP to hold and maintain as confidential, all information developed as a consequence of performance under this Agreement unless specifically released in writing by the RTA from being maintained in confidence, or which is already in the public domain by virtue of having been printed and published and made available to the public. In the same manner, the RTA shall hold and maintain all information which the Consultant regards as confidential to the extent such information is not disclosable pursuant to Chapter 42.17 RCW.

I. During the time period and performance of this Agreement, the Consultant agrees not to discriminate against any person employed by the Consultant, or against people

applying for employment by the Consultant, because of race, color, creed, national origin, physical handicaps, physical characteristics, sex, age, place of residence, marital or family status; excluding those cases where a bona fide occupational qualification is involved. The Consultant will ensure that applicants are employed, and that people employed by the Consultant are treated during employment without regard to their race, color, creed, national origin, physical handicaps, physical characteristics, sex, age, place of residence, marital or family status; again excluding those cases where a bona fide occupational qualification is involved.

J. The Consultant shall allow the RTA to audit the Consultant's books, files and records with respect to all costs and revenues related to the services to be provided and to ensure compliance with any of the other provisions of this Agreement. The Consultant agrees to maintain originals or copies of all such books, files and records for a period of three years following the formal termination of this Agreement by the RTA.

K. This Agreement may be terminated by the RTA effective immediately upon written notice should the Consultant fail substantially to perform in accordance with the terms of this agreement through no fault of the RTA or should the RTA choose to abandon the project or to obtain the above services by other means. The Consultant shall be reimbursed for all work done in a satisfactory manner prior to the termination date. The products of such reimbursed work or time shall become the property of the RTA.

L. All notices and other material to be delivered hereunder shall be in writing and shall be delivered or mailed to the following addresses:

If to RTA:                    Mr. Bob White  
                                      Manager of Commuter Rail Services  
                                      Regional Transit Authority  
                                      821 Second Avenue, MS- 1 51  
                                      Seattle, Washington 98104-1598

If to Consultant:            Mr. Henry M. Aronson  
                                      1415 First Avenue #2108  
                                      Seattle, Washington 98101

or such other respective addresses as may be specified herein or as either party may, from time to time, designate in writing.

M. This Agreement supersedes any previous agreement or understanding that may have existed between the RTA and the Consultant, and may be changed, waived, modified or amended only by written agreement between the RTA and the Consultant. This Agreement may be canceled by the RTA if Consultant transfers any interest in this Agreement without written consent of the RTA. If any provision of this Agreement is deemed in conflict with any applicable statute, regulation or rule, such provision shall be considered modified to be in conformance with said statute, regulation or rule.



5. Execution. This Agreement shall be executed in two (2) counterpart copies and each copy shall be considered an original. This Agreement, including the exhibits and addenda attached hereto and forming a part hereof are included within the covenants, promises, agreements, and conditions between the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement by having their representatives affix their signatures below on this \_\_\_\_ day of September, 1994.

CONSULTANT

REGIONAL TRANSIT AUTHORITY

By \_\_\_\_\_  
Henry M. Aronson

By \_\_\_\_\_  
Thomas G. Matoff  
Executive Director

**CONSULTING AGREEMENT  
FOR SERVICES TO THE REGIONAL TRANSIT AUTHORITY**

THIS AGREEMENT is entered into by and between the Regional Transit Authority for the Pierce, King and Snohomish Counties region, a municipal corporation of the State of Washington (hereinafter referred to as the "RTA"), and a joint venture of Huitt-Zollars, Inc., a corporation qualified to do business under the laws of the State of Texas and the STV Group (hereinafter together referred to as the "Consultant").

In consideration of the mutual covenants hereinafter contained, the parties mutually agree as follows:

1. Consultant's Services and Responsibilities. The Consultant will serve as a technical advisor on operations and technical planning to the RTA's project development team for the RTA's Commuter Rail Demonstration Project (hereinafter referred to as the "Project"). The Consultant will be responsible for identifying and implementing those actions required in the planning and start-up period, in cooperation with other RTA staff and consultants engaged in the Project, to ensure the Project's feasibility and success.

The general scope of services to be provided by the Consultant is set forth in Exhibit A attached hereto.

2. Term and Scope of Agreement.

A. The term of this Agreement shall commence September 15, 1994 and expire no later than June 30, 1995 unless earlier terminated pursuant to the provisions hereof or extended by the mutual agreement of both parties. During said term, the Consultant will provide the service of Mr. James Stoetzel, a rail operations and management expert, on a part-time basis up to a maximum of forty-five (45) days, twenty-five (25) of which can be at the location of the RTA's offices in the State of Washington at the RTA's election. The Consultant's compensation rate set forth below includes a maximum of six (6) roundtrips to the Seattle area.

B. In addition to Mr. Stoetzel's services, Consultant will make available to the RTA the services of Mr. Robert Zollars, Mr. Robert Shipley and Mr. Beaverton Clarke on an as-needed basis to serve as resources for community issues, engineering support and operations planning. Such services shall not be compensated by the RTA.

C. The RTA reserves the right to assign responsibilities to the Consultant after the Project start-up to assist the RTA in monitoring and structuring specific demonstration services which shall constitute a second phase to this Agreement. Such second phase shall be formalized in an amendment to this Agreement which will address revisions in the scope of services and compensation.

3. RTA's Services and Responsibilities. The RTA's Manager of Commuter Rail Services will be responsible for administering the Project and will assist the Consultant in making arrangements related to the scope of services.

4. Compensation.

A. The maximum aggregate amount paid to the Consultant as compensation for services performed in a satisfactory manner and for all related costs and expenses incurred by Consultant shall not exceed the sum of Twenty-five Thousand Dollars (\$25,000).

B. The RTA shall compensate the Consultant at the rate of Seventy Dollars (\$70) per hour for services performed by Mr. Stoetzel in a satisfactory manner under this Agreement, subject to the maximum amount specified in the preceding paragraph A. Said rate shall include all of the Consultant's costs and expenses for providing Mr. Stoetzel's services in the State of Washington including travel, lodging and per diem expenses.

C. The Consultant's request for payment for completed work and services shall be submitted to the RTA's project representative at least every month, and shall explain the services provided during the billing period. The RTA will use its best efforts to arrange for payment within forty-five (45) days.

D. Payment will be sent to the address designated by the Consultant and the Consultant shall be responsible for any and all payments of taxes, fees and charges which may be appropriate under applicable federal state and local laws, including any applicable premiums for Workmen's Compensation insurance. The Consultant agrees to be solely responsible for paying any workers or subcontractors whom the Consultant may hire to work on the Project, and shall indemnify, defend and hold the RTA, its agents, employees and officers harmless from any claims or suits by Consultant's personnel or subcontractors arising out of the performance of this Agreement.

5. Confidentiality. The Consultant shall hold and maintain as confidential, and instruct persons or subcontractors hired by the Consultant to work on the project to hold and maintain as confidential, all information developed as a consequence of performance under this Agreement unless specifically released in writing by the RTA from being maintained in confidence, or unless it is already in the public domain by virtue of having been printed and published and made available to the public. In the same manner, the RTA shall hold and maintain all information which the Consultant regards as confidential to the extent such information is not disclosable pursuant to Chapter 42.17 RCW.

6. Non-Discrimination. During the time period and performance of this Agreement, the Consultant agrees not to discriminate against any person employed by the Consultant, or against people applying for employment by the Consultant, because of race, color, creed, national origin, physical handicaps, physical characteristics, sex, age, place of residence, marital or family status, excluding those cases where a bona fide occupational qualification is involved. The Consultant will ensure that applicants are employed, and that people employed by the Consultant are treated during employment, without regard to their race, color, creed, national origin, physical handicaps, physical characteristics, sex, age, place of residence, marital or family status, again excluding those cases where a bona fide occupational qualification is involved.

7. Audit. The Consultant shall allow the RTA, or any federal or state agency funding the Project, to audit, inspect and copy the Consultant's books, files and records with respect to all costs and revenues related to the services to be provided and to ensure compliance with any of the other provisions of this Agreement. The Consultant agrees to maintain originals or copies of all such books, files and records for a period of three years following the formal termination of this Agreement by the RTA.

8. Termination. This Agreement may be terminated by the RTA effective immediately upon written notice should the Consultant fail substantially to perform in accordance with the terms of this Agreement through no fault of the RTA or should the RTA choose to abandon the Project or to obtain the above services by other means. The Consultant shall be reimbursed for all work done in a satisfactory manner prior to the termination date. The products of such reimbursed work or time shall become the property of the RTA.

9. Notices. All notices and other material to be delivered hereunder shall be in writing and shall be delivered or mailed to the following addresses:

If to RTA:                    Mr. Bob White  
                                      Manager of Commuter Rail Services  
                                      Regional Transit Authority  
                                      821 Second Avenue, MS-151  
                                      Seattle, Washington 98104-1598

If to Consultant:         Mr. Robert L. Zollars  
                                      Huitt-Zollars, Inc./STV Group  
                                      3131 McKinney Avenue  
                                      Suite 600/LB 105  
                                      Dallas, Texas 75204-2416

or such other respective addresses as may be specified herein or as either party may, from time to time, designate in writing.

10. Insurance.

A. The Consultant hereby agrees to maintain an errors and omissions policy of insurance containing standard Professional Liability Insurance for Architects and Engineers, covering the Consultant and Consultant's employees in the amount of at least One Million Dollars (\$3,000,000). Said policy shall be obtained from a reputable insurance company with a Best rating of not less than "AIX," and shall cover claims arising out of the negligent act, error, or

omission of the Consultant. Said policy and/or equivalent insurance coverage shall be kept in place for three (3) years following the completion of services under this Agreement. Certificates of insurance from the Consultant shall be delivered to the RTA when requested. The RTA shall have the right to increase the insurance amount at the RTA's expense if available.

B. Upon signing this Agreement, the Consultant shall file with the RTA certificates of errors and omissions insurance consistent with the coverage requirements in the preceding paragraph. Such policies shall bear the endorsement: "Not to be cancelled or allowed to expire without sixty (60) days prior written notice to the RTA." Such policy shall provide coverage for the activities undertaken by Consultant in its professional capacities and as a professional service corporation. In the event that such insurance coverage is cancelled on the Consultant during the term of this Agreement, the Consultant understands that it remains obligated to secure replacement insurance coverage meeting the requirements of this Agreement to the extent that it remains available for purchase by the Consultant at a cost and under such terms as are commercially practicable.

C. The Consultant shall also provide other insurance of the kind, coverage and limits typical for similar engagements and projects, including comprehensive general liability and comprehensive automobile liability of at least \$1,000,000, which insure against property damage and liability for property damage or personal injury (including death) which may occur in connection with the Consultant's performance of services under this Agreement. Such policies shall name the RTA as an additional insured if requested by the RTA.

D. The Consultant shall provide to the RTA upon reasonable request any other insurance certificates applicable to the Consultant's services under this Agreement, including automobile and commercial general liabilities policies. Upon request, the Consultants shall also

deliver complete copies of errors and omissions policies of insurance for RTA review. If the terms of coverage of such policies are not acceptable to the RTA, the Consultant shall revise its coverage or obtain additional coverage as necessary and if available to meet the requirements of this Agreement. The additional cost of such revisions or any charge for including the RTA as an additional insured, if possible, will be paid by the RTA.

11. Entire Agreement. This Agreement represents the entire and integrated agreement between the RTA and the Consultant and supersedes all prior negotiations, representations or agreements, either written or oral, and may be changed, waived, modified or amended only by further written agreement between the RTA and the Consultant. This Agreement may be canceled by the RTA if Consultant transfers any interest in this Agreement without written consent of the RTA. If any provision of this Agreement is deemed in conflict with any applicable statute, regulation or rule, such provision shall be considered modified to be in conformance with said statute, regulation or rule. Nothing in this Agreement shall be construed so as to void, invalidate or limit any insurance coverage held by either party to this Agreement.

12. Nonwaiver. The failure of either party to insist upon or enforce strict performance by the other party of any of the provision of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon any such provisions or rights in that or any other instance.

13. Third Parties. Nothing contained herein shall be deemed to create any contractual relationship between the Consultant or any of the contractors, subcontractors or material suppliers on the Project, nor shall anything contained in this Agreement be deemed to give any third party any claim or right of action against the RTA or the Consultant which does not otherwise exist without regard to this Agreement.



14. Indemnity. To the maximum extent permitted by law, the Consultant shall indemnify, defend and hold harmless the RTA, its officers, employees and agents, from and against any and all claims, demands, suits and liabilities of any kind, including injuries to persons, damages to property and claims under other contracts, which arise out of or are due to the negligent acts, errors or omissions of the Consultant in performing work and services under this Agreement; provided that said obligations shall not apply to the extent that the RTA is negligent with regard to the alleged acts, errors or omissions giving rise to said claims. In the event that any claims, demands, suits, actions and lawsuits involving the RTA arise out of any of the aforesaid acts, errors or omissions of the Consultant, the Consultant shall be given reasonable notice of the claims and an opportunity to defend and shall indemnify and hold harmless the RTA for its costs of defending such claims, demands, suits, actions or lawsuits, including legal and expert fees incurred by the RTA, and if any judgment or award is obtained against the RTA or any of its officers, agents or employees in such suits as a result of any such acts, errors or omission of the Consultant, the Consultant shall at once cause same to be dissolved and discharged by giving bond, payment or otherwise. This Agreement shall not constitute any waiver of the Consultant's immunity, if any, under the Industrial Insurance Act for actions brought by the Consultant's employees.

The Consultant and the RTA acknowledge that a right of contribution shall exist between them if they are found to be jointly and severally liable upon the same individual claim for the same damage, injury, death or harm, whether or not judgment has been recovered against both of them. The right of contribution shall be governed by RCW 4.22.040 current as of the date of execution of this Agreement.

The RTA's rights and remedies in this Agreement are in addition to any other rights and remedies as may be provided by law.

15. Cooperation in Dispute Resolution. If requested by the RTA, the Consultant agrees to fully support and participate in cooperative procedures with other Project contractors and consultants and the RTA to avoid or minimize problems on the Project, including nonbinding dispute resolution efforts to resolve claims filed or asserted by such contractors. The Consultant shall incorporate similar provisions in contracts with its subcontractors.

16. Execution. This Agreement shall be executed in two (2) counterpart copies and each copy shall be considered an original. This Agreement, including the exhibits and addenda attached hereto and forming a part hereof, are included within the covenants, promises, agreements, and conditions between the parties.

IN WITNESS WHEREOF the parties have executed this Agreement by having their representatives affix their signatures below on this \_\_\_\_ day of September, 1994.

CONSULTANT

REGIONAL TRANSIT AUTHORITY

By \_\_\_\_\_

By \_\_\_\_\_

Thomas G. Matoff  
Executive Director