

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING) RESOLUTION NO. 97-2486
A PERSONAL SERVICES CONTRACT TO)
PROVIDE INDEPENDENT STAFF SUPPORT) Introduced by Mike Burton,
SERVICES TO THE SOUTH/NORTH) Executive Officer
EXPERT REVIEW PANEL)

WHEREAS, Metro is the lead agency in studying alternatives for high capacity transit in the South/North corridor; and

WHEREAS, Since its inception in 1992, the South/North Expert Review Panel has provided a volunteer, independent review of the technical analysis created by South/North planning staff; and

WHEREAS, An Expert Review Panel was originally required by the State of Washington and is now recommended by the Federal Transit Administration (FTA) to be a part of the local planning process for federally-funded transportation projects; and

WHEREAS, The South/North project will complete an Environmental Impact Study for the entire corridor from Clackamas County, Oregon to Clark County, Washington to ensure federal approval and funding of the corridor as one project; and

WHEREAS, The Underhill Company has provided support staff services to the Expert Review Panel since its inception in 1992 and is uniquely qualified to continue to provide these services; and

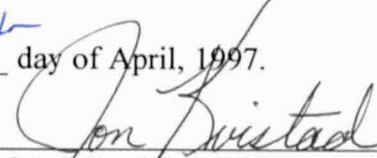
WHEREAS, The Underhill Company was awarded the contract to provide support staff services through a competitive bid process with participation by Metro; and

WHEREAS, Through Resolution 95-2214 the Metro Council approved and authorized Metro to bear all Panel-related expenses; and

WHEREAS, The Washington State Legislative Transportation Committee has now determined that it will not continue providing contractual administration of Panel support staff; now, therefore,

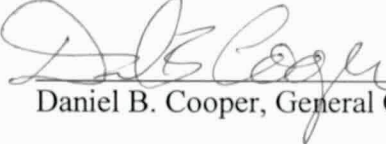
BE IT RESOLVED, That an Agreement with the Underhill Company for the continued provision of support staff services to the South/North Expert Review Panel, in a form substantially similar to that set forth in the attached Exhibit A, is hereby authorized and approved.

ADOPTED by the Metro Council this 17th day of April, 1997.



Jon Kvistad, Presiding Officer

Approved as to Form:



Daniel B. Cooper, General Counsel

PERSONAL SERVICES AGREEMENT

THIS AGREEMENT is between Metro, a metropolitan service district organized under the laws of the State of Oregon and the 1992 Metro Charter, located at 600 N.E. Grand Avenue, Portland, OR 97232-2736, and The Underhill Company, referred to herein as "Contractor," located at 1631 16th Avenue #404, Seattle, Washington, 98122.

In exchange for the promises and other consideration set forth below, the parties agree as follows:

1. Duration. This personal services agreement shall be effective January 1, 1997, and shall remain in effect until and including December 31, 1997, unless terminated or extended as provided in this Agreement.
2. Scope of Work. Contractor shall provide all services and materials specified in the attached "Exhibit A -- Scope of Work," which is incorporated into this Agreement by reference. All services and materials shall be provided by Contractor in accordance with the Scope of Work, in a competent and professional manner. To the extent that the Scope of Work contains additional contract provisions or waives any provision in the body of this Agreement, the Scope of Work shall control.
3. Payment. Metro shall pay Contractor for services performed and materials delivered in the amount(s), manner and at the time(s) specified in the Scope of Work for a maximum sum not to exceed FORTY NINE THOUSAND SEVEN HUNDRED NINETY FOUR AND 00/100THS DOLLARS (\$49,794.00).

Contractor shall invoice Metro for reimbursement of expenditures for authorized work performed under the Scope of Work on a monthly basis. The invoice(s) shall include a brief description of the work performed during the invoice period and shall include an itemization of costs.

The budget for this contract is included in "Exhibit C". Budgeted amounts for each line item may be modified, keeping the total not to exceed budget constant, upon written agreement between the Metro Project Manager and the Contractor.

4. Insurance.
 - a. Contractor shall purchase and maintain at the Contractor's expense, the following types of insurance, covering the Contractor, its employees, and agents:
 - (1) Broad form comprehensive general liability insurance covering bodily injury and property damage, with automatic coverage for premises, operations, and product liability. The policy must be endorsed with contractual liability coverage; and

(2) Automobile bodily injury and property damage liability insurance.

b. Insurance coverage shall be a minimum of \$500,000 per occurrence. If coverage is written with an annual aggregate limit, the aggregate limit shall not be less than \$1,000,000.

c. Metro, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSUREDS. Notice of any material change or policy cancellation shall be provided to Metro 30 days prior to the change or cancellation.

d. Contractor, its subcontractors, if any, and all employers working under this Agreement that are subject employers under the Oregon Workers' Compensation Law shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. Contractor shall provide Metro with certification of Workers' Compensation insurance including employer's liability. If Contractor has no employees and will perform the work without the assistance of others, a certificate to that effect may be attached, as Exhibit D, in lieu of the certificate showing current Workers' Compensation.

e. If required by the Scope of Work, Contractor shall maintain for the duration of this Agreement professional liability insurance covering personal injury and property damage arising from errors, omissions, or malpractice. Coverage shall be in the minimum amount of \$500,000. Contractor shall provide to Metro a certificate of this insurance, and 30 days' advance notice of material change or cancellation.

5. Indemnification. Contractor shall indemnify and hold Metro, its agents, employees and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Agreement, or with any patent infringement or copyright claims arising out of the use of Contractor's designs or other materials by Metro and for any claims or disputes involving subcontractors.

6. Project Records. The Contractor shall establish and maintain books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this Agreement. To facilitate the administration of the Project, separate accounts shall be established and maintained within the Contractor's existing accounting system or set up independently. Such accounts are referred to herein collectively as the "Project Account." The Contractor shall charge to the Project Account all eligible costs of the Project. Costs in excess of the latest approved budget or attributable to actions which have not received the required approval of Metro, shall not be considered eligible costs. All costs, charged to the Project, including any approved services contributed by the Contractor or others, shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in proper detail the nature and propriety of the charges.

7. Maintenance of Records. Contractor shall maintain all of its records relating to the Scope of Work on a generally recognized accounting basis and allow Metro the opportunity to inspect and/or copy such records at a convenient place during normal business hours. All required records shall be maintained by Contractor for three years after Metro makes final payment and all other pending matters are closed.

8. Ownership of Documents. All documents of any nature including, but not limited to, reports, drawings, works of art and photographs, produced by Contractor pursuant to this Agreement are the property of Metro, and it is agreed by the parties that such documents are works made for hire. Except for any programming computer code for which Contractor may already possess copyright protection, Contractor hereby conveys, transfers, and grants to Metro all rights of reproduction and the copyright to all such produced documents.

9. Project Information. Contractor shall share all project information and fully cooperate with Metro, informing Metro of all aspects of the project including actual or potential problems or defects. Contractor shall abstain from releasing any information or project news without the prior and specific written approval of Metro.

10. Audits, Inspections and Retention of Records. Metro, the Oregon Department of Transportation, the State Auditors, and any of their representatives shall have full access to and the right to examine, during normal business hours and as often as they deem necessary, all of the Contractor's records with respect to all matters covered by this Agreement. Such representatives shall be permitted to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls and other matters covered by this Agreement. All documents, papers, accounting records and other materials pertaining to costs incurred in connection with the project shall be retained by the Contractor for three years from the date of completion of the project to facilitate any audits or inspections. If any litigation, claim, or audit is commenced, the records along with supporting documentation shall be retained until any litigation, claim, or audit finding has been resolved even though such litigation, claim, or audit continues past the three-year retention period.

11. Independent Contractor Status. Contractor shall be an independent contractor for all purposes and shall be entitled only to the compensation provided for in this Agreement. Under no circumstances shall Contractor be considered an employee of Metro. Contractor shall provide all tools or equipment necessary to carry out this Agreement, and shall exercise complete control in achieving the results specified in the Scope of Work. Contractor is solely responsible for its performance under this Agreement and the quality of its work; for obtaining and maintaining all licenses and certifications necessary to carry out this Agreement; for payment of any fees, taxes, royalties, or other expenses necessary to complete the work except as otherwise specified in the Scope of Work; and for meeting all other requirements of law in carrying out this Agreement. Contractor shall identify and certify tax status and identification number through execution of IRS form W-9 prior to submitting any request for payment to Metro.

12. Right to Withhold Payments. Metro shall have the right to withhold from payments due to Contractor such sums as necessary, in Metro's sole opinion, to protect Metro against any loss, damage, or claim which may result from Contractor's performance or failure to perform under this Agreement or the failure of Contractor to make proper payment to any suppliers or subcontractors.

13. State and Federal Law Constraints. Both parties shall comply with the public contracting provisions of ORS chapter 279, and the recycling provisions of ORS 279.545 - 279.650, to the extent those provisions apply to this Agreement. All such provisions required to be included in this Agreement are incorporated herein by reference. Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations including those of the Americans with Disabilities Act.

14. Equal Employment Opportunity. The Contractor agrees to abide by all state and federal laws and regulations with respect to employment. This includes, but is not limited to, equal opportunity employment, nondiscrimination assurances, project record keeping, audits, inspection, and retention of records.

15. Federal Funds Provision

a. If this payment is to be charged against federal funds, the Contractor certified that it is not currently employed by the federal government. Contractor further certifies that it is not currently employed by the State of Oregon.

b. If federal funds are involved in this Agreement, Exhibit "B" Federal Requirements are incorporated into this Agreement by reference.

c. Contractor shall not be compensated for work performed under this Agreement by any other federal, state or local agency.

d. This agreement may be terminated by Metro upon 30 days notice, in writing and delivered by certified mail or in person, if funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services. The Agreement may be modified to accommodate a reduction in funds.

16. Situs. The situs of this Agreement is Portland, Oregon. Any litigation over this agreement shall be governed by the laws of the State of Oregon and shall be conducted in the Circuit Court of the state of Oregon for Multnomah County, or, if jurisdiction is proper, in the U.S. District Court for the District of Oregon.

17. Assignment. This Agreement is binding on each party, its successors, assigns, and legal representatives and may not, under any circumstance, be assigned or transferred by either party.

18. Termination. This Agreement may be terminated by mutual consent of the parties. In addition, Metro may terminate this Agreement by giving Contractor five days prior written notice of intent to terminate, without waiving any claims or remedies it may have against Contractor. Termination shall not excuse payment for expenses properly incurred prior to notice of termination, but neither party shall be liable for indirect or consequential damages arising from termination under this section.

19. No Waiver of Claims. The failure to enforce any provision of this Agreement shall not constitute a waiver by Metro of that or any other provision.

20. Severability. The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

21. Modification. Notwithstanding and succeeding any and all prior agreement(s) or practice(s), this Agreement constitutes the entire Agreement between the parties, and may only be expressly modified in writing(s), signed by both parties.

The Underhill Company

METRO

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibits: A. Scope of Work
 B. Federal Requirements
 C. Budget

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EXHIBIT A

SCOPE OF WORK

**Administrative Consultant to:
South/North Expert Review Panel**

Scope of Work

I. Meeting Support

The Expert Review Panel (ERP) will have two to three meetings in 1997. Subcommittees may meet as needed.

The consultant will work with Metro staff and the ERP Chair to develop agendas for each of the panel meetings and will work with the staffs of the involved agencies and others as appropriate to coordinate presentations. The consultant will assure that meetings are productive and thorough:

- Distribution of pertinent background materials, including summaries of key points, prior to the meetings;
- Coordination of presentations so they are clear, to the point, and relevant;
- Facilitation of question-and-answer and discussion periods, and recording of comments to assist in issues identification, to focus debate and to reach agreement on action items;
- Assistance with forming issues-related subcommittees and ad-hoc working groups on an as-needed basis and providing technical support to these groups;
- Timely distribution of meeting minutes;
- Coordination of technical issues analysis, follow-up research, responses to information requests, and requests of Metro or others for additional materials; and
- Handling of all meeting arrangements, including facilities, equipment, travel, etc.

II. HCT Planning Updates

In the time between formal meetings, the consultant team will insure that all Panel members are kept informed of the progress of HCT planning in the Portland region. Regular update reports will summarize key elements of the process:

- Consultant activities, reports, presentations, project milestones and findings;
- Other planning activities in the region as they relate to HCT, including development of transportation demand management, growth management and land use plans;
- Media coverage of HCT, land use planning and regional growth issues, including news articles, opinions and editorials; and

III. Liaison Activities

Among the consultants on-going activities will be establishing a link between the Panel, Metro, and other key players involved in HCT planning and in regional planning and growth management. As part of this task the consultant will:

- Maintain and distribute a list of key agencies, staff, elected officials, firms and individuals involved in HCT planning, or active in related issues;
- Track Metro and other consulting contracts and report on schedule adherence, progress, and products;
- Meet with individuals throughout the region as appropriate to keep apprised of their activities as it affects the HCT planning process and the Panel's work.

IV. Panel Staff Support

Each of the Panel members has significant obligations outside the work of the Panel and so will rely heavily on the consultant to assist them in fulfilling their obligations on the Panel. To this end, the consultant will:

- Work with individual Panel members to develop reports or letters presenting the Panel's findings at key review points.
- Provide administrative support through compiling, summarizing, and placing in context, products and issues for Panel consideration.
- Provide individual staff support to Panel members as required including assistance with travel and lodging.
- Keep all Panel files and records and at the end of the project deliver them to the South/North study director.

V. Technical Support

The Panel members have been selected because of their particular areas of knowledge, experience and interests. to aid Panel members in the discussions of issues which may fall outside their specific disciplines, the consulting team will review all project-related technical documentation and prepare summary comments which focus on the key assumptions, findings and conclusions of each document.

- Critically review key methodology and results reports and develop written summaries as required.

- **Review and summarize as necessary other related technical documentation produced which is germane to the Panel's work.**
- **Develop regular written status reports of the work-in-progress of technical committees of the Panel, summarize findings and circulate to the full Panel for review and comment.**

EXHIBIT B

FEDERAL REQUIREMENTS

1. Disadvantaged Business Enterprises (DBE)

The DBE goal for the personal services contract under this Agreement shall be 12%.

Pursuant to 49 CFR 23.43(a), the following provisions are made a part of this contract:

- A. Policy. It is policy of the U.S. Department of Transportation (DOT) and Metro that DBEs as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this contract. Consequently, the DBE requirements of 49 CFR Part 23 apply to this contract.
- B. DBE Obligation. Contractor agrees to ensure that DBEs as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this contract. In this regard, Contractor shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that DBEs have the maximum opportunity to compete for and perform contracts. Contractor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of DOT-assisted contracts.
- C. Contractor's failure to carry out the requirements set forth herein shall constitute a breach of contract, and may result in termination of the contract by Metro or such other remedy as Metro deems appropriate.

2. Equal Employment Opportunity

In connection with the execution of this contract, Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, age or national origin. Such action shall include, but not be limited to, the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor further agrees to insert a similar provision in all subcontracts, except subcontract for standard commercial supplies or raw materials.

3. Title VI Compliance

During the performance of this contract, Contractor, for itself, its assignees, and its successors in interest (hereinafter referred to as "Contractor"), agrees as follows:

- A. Compliance with Regulations: Contractor shall comply with Regulations relative to nondiscrimination

in federally-assisted programs of the Department of Transportation (hereinafter referred to as "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

- B. **Nondiscrimination:** Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, religion, color, sex, age or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- C. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age or national origin.
- D. **Information and Reports:** Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by Metro or the Federal Transit Administration (FTA) to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish this information, Contractor shall so certify to Metro, or the FTA, as appropriate, and shall set forth what effort it has made to obtain the information.
- E. **Sanctions for Noncompliance:** In the event of Contractor's noncompliance with the nondiscrimination provisions of this contract, Metro shall impose such contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to:
- (1) Withholding of payments to Contractor under the contract until Contractor complies, and/or,
 - (2) Cancellation, termination or suspension of the contract, in whole or in part.
- F. **Incorporation of Provisions:** Contractor shall include the provisions of subparagraphs a through e of this Paragraph in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directive issued pursuant thereto. Contractor shall take such action with respect to any subcontract or procurement as Metro or the FTA may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Contractor may request Metro to enter into such litigation to protect the interests of Metro, and, in addition, Contractor may request the United States to enter into such litigation to protect the interests of the United States.

4. Cargo Preference

Contractor agrees:

- A. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners and tankers) involved, whenever shipping any equipment, materials or commodities pursuant to this section, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- B. To furnish within 30 days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipment originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in subparagraph A of this Paragraph to Metro (through Contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, 400 Seventh Street, S.W., Washington, D.C. 20550, marked with appropriate identification of the Project.
- C. To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

5. Conservation

Contractor shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC Section 6321, et seq.).

6. Buy America

This procurement is subject to the Federal Transit Buy America Requirements in 49 CFR Part 661.

Section 165a of the Surface Transportation Assistance Act of 1982, as amended, permits FTA participation in this contract only if steel and manufactured products used in the contract are produced in the United States. By signing this contract, Contractor certifies that it will comply with requirements of section 165a of the Surface Transportation Assistance Act of 1982, as amended, and the regulations in 49 CFR Part 661.

7. Interest of Members of, or Delegates to Congress

No member of, or delegate to, the Congress of the United States shall be admitted to a share or part of this contract or to any benefit arising therefrom.

8. Prohibited Interest

Metro's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of

monetary value from contractors, potential contractors or parties to subagreements.

9. Debarred Bidders

Neither Contractor, nor any officer or controlling interest holders of Contractor, is currently, or has been previously, on any debarred bidders list maintained by the United States Government or by the State of Oregon.

10. Maintenance and Inspection of Records

A. Contractor shall maintain comprehensive records and documentation relating to this contract, and shall permit the authorized representatives of Metro, the U.S. Comptroller General, or the U.S. Department of Transportation to inspect and audit all records and documentation for a period of three (3) years after Metro has made final payment to Contractor.

B. Contractor shall include in all of its subcontracts hereunder a provision to the effect that the subcontractor agrees that Metro, the U.S. Comptroller General or the U.S. Department of Transportation shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers and records of such subcontractor involving transactions related to the subcontract. The term "subcontract" as used in this clause excludes (1) purchase orders not exceeding \$10,000.00, and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

C. The period of access and examination for records that relate to (1) litigation of the settlement of claims arising out of the performance of this Contract, or (2) costs and expenses of this contract as to which exception has been taken by the Comptroller General or any of his or her duly authorized representatives, shall continue until such litigation, claims or expectations have been disposed of.

11. Lobbying Prohibition/Certifications/Disclosures

This contract is subject to Section 319, Public Law 101-121 (31 U.S.C. 1352) and regulations promulgated thereto by the Office of Management and Budget, pursuant to which Metro may not expend funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement. By signing this contract, Contractor agrees to comply with these laws and regulations.

A. Definitions. As used in this clause,

"Agency," as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

"Covered Federal action" means any of the following Federal actions:

- (1) The awarding of any Federal contract;
- (2) The making of any Federal grant;
- (3) The making of any Federal loan;
- (4) The entering into of any cooperative agreement; and,
- (5) The extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan.

"Indian tribe" and "tribal organization" have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C.450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

"Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government" means a unit of government in a State and, if chartered, established or otherwise recognized by a State for the performance of a government duty including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization and any other instrumentality of a local government.

"Officer or employee of an agency" includes the following individuals who are employed by an agency:

- (1) An individual who is appointed to a position in the Government under title 5, U.S. Code, including a position under a temporary appointment;
- (2) A member of the uniformed services as defined in section 101(3), title 37, U.S. Code;
- (3) A special Government employee as defined in section 202, title 18, U.S. Code; and,
- (4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, U.S. Code appendix 2.

"Person" means an individual, corporation, company association, authority, firm, partnership, society, State and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organizations or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation" means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment" means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient" includes all contractors and subcontractors at any tier in connection with a Federal contract. The term excludes an Indian tribe, tribal organization or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed" means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional or interstate entity having governmental duties and powers.

B. Prohibition.

(1) Section 1352 of title 31, U.S. Code provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

(2) The prohibition does not apply as follows:

(i) Agency and legislative liaison by Own Employees.

(a) The prohibition on the use of appropriated funds, in paragraph B(1) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(b) For purposes of paragraph B(2)(i)(a) of this section, providing any information specifically requested by an agency or Congress is allowable at any time.

- (c) For purpose of paragraph B(2)(i)(a) of this section the following agency and legislative liaison activities are allowable at any time only where they are not related to a specific solicitation for any covered Federal action:
 - (1.) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale and service capabilities; and,
 - (2.) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
 - (d) For purposes of paragraph B(2)(i)(a) of this section, the following agency and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:
 - (1.) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
 - (2.) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and,
 - (3.) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.
 - (e) Only those activities expressly authorized by paragraph B(2)(i) of this section are allowable under paragraph B(2)(i).
- (ii) Professional and technical services by Own Employees.
- (a) The prohibition on the use of appropriated funds, in paragraph B(1) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract or an extension, continuation, renewal, amendment or modification of a Federal contract if payment is for professional or technical services rendered directly in the preparation, submission or negotiation of any bid, proposal or application for that Federal contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract.
 - (b) For purposes of paragraph B(2)(ii)(a) of this section, "professional and technical services" shall be limited advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer

on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspect of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

- (c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award document.
- (d) Only those services expressly authorized by paragraph B(2)(ii) of this section are allowable under paragraph B(2)(ii).

(iii) Reporting for Own Employees.

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(iv) Professional and technical services by Other than Own Employees.

- (a) The prohibition on the use of appropriated funds, in paragraph B(1) of this section, does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission or negotiation of any bid, proposal or application for that Federal contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract.
- (b) For purposes of paragraph B(2)(iv)(a) of this section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to

influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not all allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

- (c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.
- (d) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.
- (e) Only those services expressly authorized by paragraph B(2)(iv) of this section are allowable under paragraph B(2)(iv).

C. Disclosure.

- (1) Each person who requests or receives from an agency a Federal contract shall file with that agency a certification, set forth in this document, that the person has not made, and will not make, any payment prohibited by paragraph (b) of this clause.
- (2) Each person who requests or receives from an agency a Federal Contract shall file with that agency disclosure form, Standard Form-LLL, "Disclosure of Lobbying Activities", if such a person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (b) of this clause if paid for with appropriated funds.
- (3) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraph c(2) of this section. An event that materially affects the accuracy of the information reported includes:
 - (a) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or,

- (b) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,
 - (c) A change in the officer(s), employee(s) or member(s) contacted to influence or attempt to influence a covered Federal action.
- (4) Any person who requests or receives from a person referred to in paragraph (C)(1) of this section a subcontract exceeding \$100,000 at any tier under a Federal contract shall file a certification, and a disclosure form, if required, to the next tier above.
 - (5) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraph C(1) of this section. That person shall forward all disclosure forms to the agency.

D. Agreement.

In accepting any contract resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this clause.

E. Penalties.

- (1) Any person who makes an expenditure prohibited under paragraph B of this clause shall be subjected to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.
- (2) Any person who fails to file or amend the disclosure form to be filed or amended if required by this clause, shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- (3) Contractors may rely without liability on the representations made by their subcontractors in the certification and disclosure form.

F. Cost Allowability.

Nothing in this clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any of the provisions of Part 31 of the Federal Acquisition Regulation.

regs.
08/30/93

EXHIBIT C

**THE UNDERHILL COMPANY
CONSULTANT EXPENSES**

Work Element	Hours	Rate	Total
Direct Labor			
Mary Jo Porter	540	85.00	\$45,900.00
Office/Administrative Support	30	30.00	\$900.00
Direct Costs			
Telephone/Fax			\$144.00
Photocopying			\$120.00
Postage			\$90.00
Meeting Expenses & Travel			\$2,640.00
Total			\$49,794.00

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 97-2486 FOR THE PURPOSE OF APPROVING A PERSONAL SERVICES CONTRACT TO PROVIDE INDEPENDENT STAFF SUPPORT SERVICES TO THE SOUTH/NORTH EXPERT REVIEW PANEL

Date: March 27, 1997

Presented by: Andy Cotugno

FACTUAL BACKGROUND AND ANALYSIS

The South/North Expert Review Panel (ERP) has been providing an independent review of technical data for the South/North High Capacity Transit (HCT) plan since its inception in 1992. The purpose of the ERP is to ensure accurate and adequate technical is provided to decision-makers on which to base their decisions.

Originally, the ERP was a requirement of State of Washington law in order for a project to use high capacity transit funds enabled by the Washington State Legislature. In response to the Intermodal Surface Transportation and Efficiency Act of 1992, the Federal Transit Administration now encourages an Expert Review Panel or Peer Review Panel in federally-funded HCT/Light Rail studies.

The South/North ERP is scheduled to continue its review role of the South/North Study until the South/North Draft Environmental Impact Statement (DEIS) is published which is currently scheduled for Fall 1997. In general, the ERP reviews draft technical reports individually and then meetS as a group in the Portland area over a two-day period to discuss the technical reports. At the conclusion of the meeting, panel staff will prepare a list of recommendations on how the reports should be changed or improved. Panel members are not paid for their participation at meetings or time reviewing data. There are expenses, however, in providing staff support to the committee and reimbursing the expenses of holding committee meetings.

In 1992, Metro contracted with the Washington State Department of Transportation to provide funding for ERP expenses, including the contract for staff support of the ERP. Through a competitive bid process, the Underhill Company was selected from several proposals to provide staff support to the ERP. The proposal was selected by members of Metro, the Washington State Department of Transportation, and the Washington State Legislative Transportation Committee.

The contract to provide for ERP support staff was administered by the Legislative Transportation Committee to the Underhill Company. The Underhill Company is a certified WBE in the State of Oregon (Certification #3601).

Prior to 1995, the State of Washington supported a portion of funding ERP expenses. In 1995, Metro Council approved and authorized Metro to bear all ERP-related expenses when the Washington State Legislature did not continue to appropriate funding to support the ERP. In the fall of 1996, the State of Washington expressed its interest in terminating its contract with Underhill Company for the ERP staff support.

Because the ERP provides valuable input into the South/North light rail analysis and because of the need to accommodate new federal recommendations and continue to meet State of Washington requirements, an agreement with the Underhill Company to continue to staff the ERP is needed.

By entering into the contract with the Underhill Company, Metro will assume the role originally served by the Washington State Legislative Transportation Committee when it contracted for the services of staff support to the Expert Review Panel.

The personal services contract (Exhibit A) would allow for the Underhill Company to provide these services through the scheduled completion of the Draft Environmental Impact Statement. The personal services contract would provide staff support for two to three ERP meetings and various services with a budget not to exceed \$49,794.

BUDGET IMPACT

Funding for this contract is within the overall South/North Transit Corridor Study EIS/PE revenue budget. This contract is included in the Transportation Department's proposed Fiscal Year 1997/98 Budget.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 97-2486.