

## RESOLUTION NO. 3268

**A RESOLUTION** of the Port Commission of the Port of Seattle authorizing the Executive Director to Execute a Transportation Access Improvement Interlocal Cooperation Agreement between the City of Seattle, King County and the Port of Seattle for funding by the three governments for grade separation improvements at West Galer Street in the vicinity of Terminal 88.

**WHEREAS**, The City has adopted resolution 29031, which expresses the intent of the City of Seattle ("City") to develop a multi-jurisdictional funding mechanism for transportation access improvements to certain marine terminals and piers for economic development purposes and to retain and expand the operations of the Immunex Corporation ("Immunex") within Seattle and King County; and

**WHEREAS**, Immunex has signed an agreement with the Port, dated July 18, 1994, as amended, to purchase land to construct its corporate headquarters and research and development facility at Terminal 88. The purchase and construction is contingent upon Immunex's satisfaction with commitments by local governments to make certain public improvements to transportation access facilities serving the site and surrounding area; and

**WHEREAS**, the Metropolitan King County Council passed motion 9827, authorizing the King County Executive to work to develop, in cooperation with the City and the Port, a multi-jurisdictional funding mechanism for transportation access improvements to Terminal 88 and the surrounding area; and

**WHEREAS**, Motion 9827 also expressed the County Council's intent to evaluate economic benefits that Immunex's Terminal 88 Project would have on the City, the County, the Port, and the State of Washington; and

**WHEREAS**, the parties to this Agreement have developed a multi-jurisdictional funding mechanism to finance transportation access improvements to Terminal 88 and the surrounding area. The improvements consist of construction of a grade-separated access ramp crossing four main line Burlington Northern railroad tracks at West Galer Street serving marine terminals 88, 89, 90, and 91 (the "Project"); and

**WHEREAS**, the City and Port have secured a One Million dollar (\$1,000,000) ISTEA Grant and the City has secured a Three Million dollar (\$3,000,000) Economic Development Administration ("EDA") Grant. In addition to the above amounts, the City has agreed to contribute Four Million Eight Hundred Nineteen Thousand Five Hundred dollars (\$4,819,500) to the Project and has adopted Ordinance 118801 authorizing execution of the Interlocal; the County has agreed to contribute Three Million Two Hundred Thousand dollars (\$3,200,000) to the Project; and the Port has agreed to

contribute Six Hundred Thousand dollars (\$600,000) to the Project and to allow, pursuant to a future agreement between the Port and the City, the use of rights-of-way or other property rights required for construction, operation and maintenance of the Project.

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

Section 1. The Executive Director is hereby authorized to execute a Transportation Access Improvement Interlocal Cooperation Agreement with the County and the City for the sharing of costs to fund the construction of grade separation improvements at West Galer Street in the vicinity of Terminal 88, in substantially the form attached hereto as Exhibit A and by this reference incorporated herein.

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

Section 3. The Executive Director may execute such administrative amendments to the final executed Interlocal Agreement as may be agreed upon by the parties from time to time, so long as the effect of the amendment is not to increase the financial responsibility of the Port. The Executive Director shall advise the Commission of all such amendments within thirty (30) days of the date of execution.

**ADOPTED** by the Port Commission of the Port of Seattle at a regular meeting thereof, held this 9th day of December, 1997, and duly authenticated in open session by the signatures of the Commissioners voting in favor thereof and the seal of the Commission.

Paige R Miller  
Gary Grant  
Paul Selgeff  
J. Blum  
Patricia Davis

Port Commission

**TRANSPORTATION ACCESS IMPROVEMENT INTERLOCAL COOPERATION  
AGREEMENT**

THIS AGREEMENT ("Agreement") is entered into effective this \_\_\_\_\_ day of \_\_\_\_\_, 1997, by and among King County (the "County"), the City of Seattle (the "City") and the Port of Seattle (the "Port").

Pursuant to Chapter 39.34 RCW and in consideration of the mutual promises, benefits, and covenants contained herein, and with the approval of their respective legislative authorities, the parties agree as follows:

**ARTICLE 1. - RECITALS**

1.1 The City has adopted resolution 29031, which expresses the intent of the City to develop a multi-jurisdictional funding mechanism for transportation access improvements to certain marine terminals and piers for economic development purposes and to retain and expand the operations of the Immunex Corporation ("Immunex") within Seattle and King County.

1.2 Immunex has signed an agreement with the Port, dated July 18, 1994, as amended, to purchase land to construct its corporate headquarters and research and development facility at Terminal 88. The purchase and construction is contingent upon Immunex's satisfaction with commitments by local governments to make certain public improvements to transportation access facilities serving the site and surrounding area.

1.3 The Metropolitan King County Council passed motion 9827, authorizing the King County Executive to work to develop, in cooperation with the City and the Port, a multi-jurisdictional funding mechanism for transportation access improvements to Terminal 88 and the surrounding area.

1.4 Motion 9827 also expressed the County Council's intent to evaluate economic benefits that Immunex's Terminal 88 Project would have on the City, the County, the Port, and the State of Washington. A study has been prepared assessing the fiscal impacts of Immunex at Terminal 88. The study projects incremental direct tax revenues associated with development of Terminal 88 by Immunex having present values of \$16.9 million to the City, \$14.6 million to the County, \$2.0 million to the Port, and \$5.2 million to the State of Washington between the years 2000 and 2015.

1.5 The parties to this Agreement have developed a multi-jurisdictional funding mechanism to finance transportation access improvements to Terminal 88 and the surrounding area. The improvements consist of construction of a grade-separated access ramp crossing four main line Burlington Northern railroad tracks at West Galer Street serving marine terminals 88, 89, 90, and 91 (the "Project"). The total estimated cost of the Project is Twelve Million Five Hundred Thousand dollars (\$12,500,000). The City has appropriated approximately One Million Three Hundred Thousand dollars (\$1,300,000) to start Project design and commence the environmental review process. The City, in

Ordinance 118528, has authorized the sale of general obligation bonds and has appropriated Four Million dollars (\$4,000,000) to carry out the Project on the condition that the City will not proceed with the construction phase of the Project until the Director of Seattle Transportation certifies, by letter to the President of the City Council, that Immunex has completed construction of utilities and site work for its Terminal 88 project. Design and engineering for the Project are scheduled to be completed by the third quarter of 1998 and construction is scheduled to begin promptly after Immunex has completed construction of utilities and site work for its Terminal 88 project. Construction by the City is presently anticipated to begin in the fourth quarter of 1998, and if it begins at that time, construction is scheduled to be completed in the first quarter of the year 2000.

1.6 The City and Port have secured a One Million dollar (\$1,000,000) ISTEA Grant. The City is actively pursuing a Three Million dollar (\$3,000,000) Economic Development Administration ("EDA") Grant. In addition to the above amounts, the City has agreed to contribute Four Million Eight Hundred Nineteen Thousand Five Hundred dollars (\$4,819,500) to the Project; the County has agreed to contribute Three Million Two Hundred Thousand dollars (\$3,200,000) to the Project; and the Port has agreed to contribute Six Hundred Thousand dollars (\$600,000) to the Project and to allow, pursuant to a future agreement between the Port and the City, the use of rights-of-way or other property rights required for construction, operation and maintenance of the Project.

1.7 As part of the EDA Grant, the City and Immunex are required to negotiate an Employment Plan. Such a Plan has been negotiated and the County's financial support for the Project is provided in consideration of the City undertaking its obligations pursuant to Section 6.1 below.

1.8 Based on the above described funding commitments and employment plan, the parties agree to jointly fund, coordinate, and implement the Project in accordance with the terms and conditions set forth in this Agreement.

## **ARTICLE 2. - THE PROJECT**

2.1 The Project is to construct a grade-separated access ramp over the main-line Burlington Northern railroad tracks at approximately West Galer Street onto an access road leading to marine terminals 88, 89, 90, and 91. The ramp is intended to improve access and allow for the reduction of vehicle/train conflicts and delays caused by train movements at West Galer Street. The ramp is intended to improve emergency vehicle access and facilitate expansion of existing businesses and the development of an additional 29 acres that are currently vacant. The total cost of design and construction of the Project is estimated to be Twelve Million Five Hundred Thousand dollars (\$12,500,000), including One Million One Hundred Thousand dollars (\$1,100,000) of preconstruction costs and Eleven Million Four Hundred Thousand (\$11,400,000) for right-of-way acquisition and construction. Included within the Project are all authorized costs related to the planning, oversight, administration, design, engineering, acquisition, financing and construction of the Project, including overhead.

2.2 The City shall cause the certification referenced in Section 1.5 above to be delivered to the City Council President within forty-five (45) days after Immunex has completed construction of utilities

and site work for its Terminal 88 project. "Construction of utilities and site work" means, for purposes of this Agreement, completion of all the tasks listed in Exhibit 1 hereto. Unless the City has been unable, despite diligent efforts, to obtain all required permits and approvals for the Project, the City shall commence construction of the Project within sixty (60) days after such certification is delivered, but such commencement may be delayed until sixty (60) days after the earlier to occur of (a) the date the County agrees with the correctness of the certification if the County has disputed it, as described in Section 3.3 below or (b) the date the arbitrators finally determine the correctness of the certification if the County has disputed it and the City and County have not resolved the dispute, as described in Section 7.2(b) below.. Once construction of the Project commences, the City shall diligently pursue construction and shall cause the Project to be completed within sixteen (16) months from the date when construction is required to commence under this Section 2.2, unless work is terminated pursuant to Section 2.3 below.

2.3 After construction of the Project commences, the City may, in its sole discretion, discontinue work on the Project under Section 3.3, or if and only if any of the following occur: Immunex, as distinguished from an assignee of Immunex, fails to submit a building permit application for Phase 1 of the Immunex headquarters and research and development project, as described in the City's Analysis and Decision of the Director of the Department of Construction and Land Use ("Phase 1"), that is sufficiently complete to meet the requirements of Section 106 of the Seattle Building Code before the expiration of the Master Use Permit for the Immunex project; or Immunex's building permit application for Phase 1 is canceled pursuant to Section 106 of the Seattle Building Code; or Immunex's building permit for Phase 1 expires pursuant to Subsection 106.9 of the Seattle Building Code.

2.4 All real and personal property acquired under this Agreement in the course of carrying out the Project shall be owned by City. Upon the expiration of this Agreement, ownership of real and personal property shall remain with the City.

### **ARTICLE 3. - TERM/TERMINATION**

3.1 This Agreement shall commence on the date first set forth above. It shall terminate on the date that the Project is accepted and receives final approval by the City and all required payments and accountings herein have been made, unless terminated sooner according to the provisions of this Agreement.

3.2 This Agreement shall terminate if construction on the Project has not commenced by June 1, 2003.

3.3 The County will be obligated to contribute funds to the Project as set forth in this Agreement if and only if the Director of Seattle Transportation transmits to the City Council President the certification referenced above in Section 1.5. The City agrees to provide the County written notice at least thirty (30) days prior to the day such certification is expected to be signed. The County will have 14 days following the day the certification is signed and prior to its being forwarded to the President of the City Council to dispute with particularity the correctness of the statements made in the certification. If the County does so dispute, the certification may be forwarded to the President of the City Council,

but the correctness of the statements made in the certification will be subject to the dispute resolution process described in Section 7.2(b) below. If, pursuant to Section 7.2(b), the arbitrators determine that the City's certification was, or is at the time of the arbitration, materially correct, the County shall comply with its obligations under Section 4.2. If, pursuant to Section 7.2(b) and after taking into account activities during the cure period provided therein, the arbitrators finally rule in favor of the County and determine that the City's certification was and remains incorrect in one or more material respects, the County's financial obligations to contribute to the Project may be canceled by action of the County Council. In that event the City may proceed with the Project or may discontinue or choose not to commence work on the Project, at the City's option.

#### **ARTICLE 4. - PARTIES' FINANCIAL RESPONSIBILITY**

4.1 The Port agrees to contribute Six Hundred Thousand dollars (\$600,000) to pay a portion of local Project costs, said funds to be made available to the City within thirty (30) days after the City commences construction of the Project. "Local Project costs" are those currently anticipated costs of the Project not expected to be paid by the Four Million dollars (\$4,000,000) of currently available grants. Total "local Project costs" are Eight Million Five Hundred Thousand dollars (\$8,500,000).

4.2 The County agrees to contribute Three Million Two Hundred Thousand dollars (\$3,200,000) to pay a portion of local Project costs. Said funds shall be made available to the City as follows:

- a. Not more than thirty (30) days after receiving the City's first invoice, which shall be sent not sooner than March 1, 1998, the County shall pay the City thirty-eight (38) percent of local Project costs which the City has incurred to the date on which the invoice is sent.
- b. Thereafter, the City shall invoice the County no more often than monthly and no less often than quarterly an amount equal to thirty-eight (38) percent of local Project costs incurred to the date of the invoice, until the County's maximum contribution of Three Million Two Hundred Thousand dollars (\$3,200,000) has been paid.
- c. Each invoice shall be accompanied by a copy of the City's pertinent monthly cost account report(s). The City will in good faith apportion actual Project costs between grant sources and "local Project costs." The County shall review the invoices and shall notify the City of any disputed amounts within ten (10) days of invoice receipt. The County shall pay the City the invoiced amount or any portion of the stated amount due that is not disputed not more than thirty (30) days after receiving the invoice.

4.3 The City agrees to contribute Four Million Eight Hundred Nineteen Thousand Five Hundred dollars (\$4,819,500) of its own funds to pay a portion of local Project costs, plus any additional funds beyond the amounts agreed to be contributed by the County and the Port, which are necessary to complete the Project.

4.4 In the event the City determines in its sole discretion to discontinue work on the Project as

provided in Section 2.3 above, the County and the Port shall each be responsible for its share of costs incurred through the date the Project is discontinued.

4.5 If the Project is completed and any Project funds contributed by the parties hereto remain unexpended, treating such funds as the first spent, such funds shall be refunded to the parties as follows: the City shall receive fifty-six (56) percent of such funds, the County shall receive thirty-eight (38) percent of such funds, and the Port shall receive six (6) percent of such funds.

4.6 If this Agreement is terminated prior to Project completion, money in the Project Fund will become the exclusive property of the City, after payment to the County or Port of any refunds owing under section 4.5.

4.7 The obligations of the Port and the County to contribute to the funding of this Project are strictly limited to the respective amounts set forth in subsections 4.1 and 4.2 of this Agreement and when such funds are paid in accordance with the provisions of Sections 4.1 and 4.2 above, all funding obligations of the Port and the County will have been fulfilled and neither the Port nor the County will be obligated to pay for or be otherwise responsible for any additional Project costs whatsoever (other than the Port's agreement to allow the use of the rights-of-way or other property rights as described in Section 1.6). The City agrees to assume responsibility for all additional Project costs and further agrees to provide such additional funding as is necessary to complete the Project within the time frame set forth in Section 2.2, unless the City terminates construction pursuant to the terms of this Agreement and all unexpended County and Port Project contributions are refunded. Such additional Project costs shall include, but are not limited to, costs associated with delay, Project changes, increased cost of labor or material, costs necessary to resolve any claims, legal challenges, permit requirements, compliance with any law, rule or regulation, or the availability, withdrawal, reduction, or demand for repayment by any granting entity from which the City receives, plans or anticipates contributions to Project funding, other than the County and the Port.

## **ARTICLE 5. - PROJECT MANAGEMENT/INDEMNIFICATION**

5.1 Project management shall be vested in the City. The City shall be responsible for the procurement of all goods and services necessary for the Project in accordance with all applicable law, rules, regulations, policies, and procedures. The responsibilities of the Port and the County are strictly limited to the payment of money to the City, the use of the Port's right-of-way or other property rights as described in Section 1.6, and indemnity and record retention in accordance with the terms of this Agreement.

5.2 In providing services pursuant to this Agreement, the City is an independent contractor and neither it nor its officers, agents, employees, or contractors are employees of the County or the Port for any purpose. Neither the County nor the Port assumes any responsibility for the payment of any compensation, wages, benefits, or taxes by or on behalf of the City, its officers, agents, employees, or contractors by reason of this Agreement. The City shall protect, indemnify, and save harmless the County and the Port, their officers, agents, and employees from and against any and all claims, costs, and or losses whatsoever occurring or resulting from: (1) the City's failure to pay such compensation,

wages, benefits or taxes; and/or (2) the supplying to the City of work, services, materials, or supplies by anyone in connection with or in support of the Project.

5.3 Neither the Port nor the County shall be financially responsible for any indicated amounts following an audit exception which occurs as result of any negligent or intentional act by the City, and/or the City's failure for any reason to comply with the terms of this Agreement; any law, rule or regulation; or any contract or grant obtained by the City in furtherance of the Project. This Section survives termination of the Agreement.

5.4 Each party shall protect, defend, indemnify, and save harmless the other parties, their officers, employees, and agents from any and all costs, claims, judgments, and/or awards of damages, arising out of or in any way resulting from the negligent acts or omissions of said indemnifying party, its officers, employees, and/or agents. Each party agrees that its obligations under this subsection extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees or agents. Each party, by mutual negotiation, hereby waives, as respects the other parties only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event the indemnified parties incur any judgment, award, and/or cost arising therefrom, including attorney's fees to enforce the provisions of this provision, all such judgments, awards and costs shall be recoverable from the indemnifying party.

5.5 In connection with this Agreement, neither the City nor any party contracting or subcontracting in connection with the Project shall discriminate on the basis of race, color, sex, religion, nationality, creed, marital status, sexual orientation, age or the presence of any sensory, mental or physical handicap in employment or application for employment or in the administration or the delivery of services or any other benefits under this Agreement. The City shall comply fully with all applicable Federal, State, and local laws, ordinances, executive orders and regulations which prohibit such discrimination. These laws include, but are not limited to RCW Chapter 49.60 and titles VI and VII of the Civil Rights Acts of 1964.

## **ARTICLE 6. - EMPLOYMENT PLAN**

6.1 The City shall execute the Employment Plan with Immunex, which is attached hereto as Exhibit 2. The City shall comply with its monitoring and reporting obligations pursuant to the EDA Grant and will use its best efforts to assure that Immunex fulfills its obligations under the Employment Plan. The City will provide the County with the results of evaluations of the progress of the Employment Plan, at least annually, whether such evaluations are performed by the City, the City and Immunex together or Immunex alone, if the results are transmitted to the City.

## **ARTICLE 7. - MISCELLANEOUS PROVISIONS**

7.1 Any notice required or permitted to be given pursuant to this Agreement shall be in writing, shall be sent postage prepaid by United States Certified Mail, return receipt requested, to the following addresses unless otherwise indicated by the parties to the Agreement:



To the City: Richard Miller  
Senior Bridge Engineer  
Seattle Transportation  
600 Fourth Avenue  
Seattle, Washington 98104

To the Port: Stephen Sewell  
Managing Director, Marine Division  
PO Box 1209  
Seattle, Washington 98111

To the County: Ray Moser  
Office of Budget and Strategic Planning  
Rm. 420 King County Courthouse  
516 Third Ave.  
Seattle, Washington 98104

7.2 (a) The designated representatives shall use their best efforts to resolve disputes between the parties. If these individuals are unable to resolve a dispute, the responsible department directors shall review the matter and attempt to resolve it. If they are unable to resolve the dispute, the matter shall be reviewed by the chief executive officer of each party or his or her designee. The parties agree to exhaust each of these procedural steps before seeking to resolve disputes in a court of law or any other forum.

(b) Any claim or dispute between the City and the County relating to the certification referred to in Section 1.5 which is not resolved within thirty (30) days after the County's objection shall be submitted in writing by the parties to a formal dispute resolution process as described below, and throughout the process the City and the County shall proceed in a timely manner and in good faith to resolve such claims or disputes based on accurate and shared information:

**1. Arbitration**

Within ten (10) days after the last conference meeting or final exchange of written positions, the City and the County shall initiate binding arbitration in accordance with the following provisions and RCW 7.04 (or any successor provision thereto) or any other method of arbitration mutually agreed to by the City and the County.

**2. Generally**

All such arbitration shall be conducted before a panel designated in the manner hereinafter provided (the "Panel"). Except as specifically provided for herein, all such arbitration shall be conducted in the City in accordance with the rules of the American Arbitration Association, and the decision of the Panel shall be final and binding upon the Parties. The issues before the Panel shall be limited to those particular items to which the County timely objected under Section 3.3. The costs of the arbitration shall be shared by the City and the County in equal shares.

### **3. Panel**

The Panel shall consist of three (3) persons selected by the City and the County from a list of fifteen (15) construction experts or professionals, which list shall be furnished by the Seattle Chapter of the American Arbitration Association, unless the number of persons on the Panel, or the qualifications of the individuals on the list, are otherwise mutually agreed to by the City and the County. The Panel shall consist of persons who are acceptable to the City and the County. In the event that within fifteen (15) days after the submission of a dispute to arbitration, the City and the County have been unable to agree on a Panel, then representatives of the City and the County shall meet within ten (10) days and the following procedures shall be applicable: The City shall strike the name of a person on the list. Within fifteen (15) minutes thereafter, the County shall strike a name from the list. At no more than fifteen (15) minute intervals thereafter, each party shall strike a name from the list. If any party fails to strike a name within the allotted time period, it shall forgo its turn to strike a name. The last three names on the list shall constitute the Panel.

### **4. Hearing Date**

On appointment of the Panel as provided above, the Panel shall hold a hearing within twenty (20) days after the appointment of the Panel.

### **5. Pre-Hearing and Hearing**

At least ten (10) days prior to the hearing, the Parties shall meet and exchange exhibits and pre-hearing statements and stipulate and agree on non-disputed facts. No exhibit shall be admitted unless listed on the pre-hearing statement and exchanged between the Parties. No witness may be presented unless indicated on the pre-hearing statement or unless produced for rebuttal purposes. Prior to or at the hearing, the Parties shall submit memoranda not to exceed twenty-five (25) pages outlining the relevant issues for the Panel. At the hearing, the laws of evidence of the State shall apply, and the Panel shall allow each party to present that party's case, evidence and witnesses. It shall be the County's responsibility in the first instance to provide the Panel with evidence in support of the particulars of the County's objections.

### **6. Decision**

The Panel shall render its decision in writing within thirty (30) days of the conclusion of the hearings. In rendering its decision the Panel shall have full authority to construe and apply the terms of this Agreement, but shall have no authority to add to, or subtract from or otherwise modify or amend the terms of this Agreement. The Panel shall decide that either (a) Immunex has completed construction of those parts of the utilities and site work for its Terminal 88 project that the County in its objection said were not complete, or (b) it has not. If the Panel determines that Immunex has not completed construction of utilities and site work for its Terminal 88 project, the Panel shall further state in what respects that work is incomplete, and, a cure period of ninety (90) days shall follow the Panel's decision. If at the end of that cure period the County does not agree that Immunex has completed the items the Panel found to have been incomplete, the question shall again be submitted to the Panel (with a replacement chosen as set forth in paragraph 3 above for any member of the original Panel who is not able to participate in a hearing within thirty (30) days after the end of the cure period) for the Panel's final decision, which decision shall be rendered within forty-five (45) days of the end of the cure period.

**7. Finality of Decision**

The decision of the majority of the arbitrators after any cure period shall be final and binding on the City and the County.

7.3 In any action by a party hereto required to enforce this Agreement, the prevailing party shall be entitled to recover, as part of any judgment, its reasonable attorney's fees based on the prevailing rate for attorneys of similar skills, training, and experience in the private sector, and all reasonable costs and expenses incurred as a result of a breach of this Agreement, and of bringing or defending the suit.

7.4. Neither the City, the County, nor the Port shall be obligated or liable hereunder to any party other than each other. No provision herein shall be deemed to create any right or obligation enforceable by a third party nor shall it be deemed to accrue to the benefit of any third party, except, however, that the parties acknowledge that, as described in Sections 1.1 and 1.2 above, Immunex is and will be relying on the parties' undertakings in this Agreement in consummating the purchase of the Terminal 88 land from the Port and commencing construction of its headquarters and research and development facility thereon.

7.5 Each party shall retain for at least six years after Project completion or the earlier termination of this Agreement all records pertaining to the Project, and shall continue to keep those records longer during the pendency of any litigation or audit pertaining to the Project. This Section survives termination of this Agreement.

7.6 This Agreement contains the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior oral or written understandings, agreements, promises, or other undertakings between or among the parties relating to the subject matter hereof.

7.7 The section and paragraph captions used in this Agreement are for convenience only and shall not control or affect the meaning or construction of any other provisions of this Agreement.

7.8 This Agreement may not be modified or amended, except by written instrument approved by the respective legislative authorities of the parties as may be required. All parties recognize that time is of the essence in the performance of the provisions of this Agreement. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of the Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement, unless stated to be such through written instrument approved by the respective legislative authorities of the parties as may be required, which shall be attached to the original Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the day and year first written above.

Approved as to form:  
Mark Sidran, Seattle City Attorney

City of Seattle,  
NORMAN B. RICE, Mayor

By: \_\_\_\_\_  
Assistant City Attorney

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_  
By authority of Ordinance \_\_\_\_\_

Approved as to form:  
Norm Maleng,  
King County Prosecuting Attorney

County of King,  
RON SIMS, King County Executive

By: \_\_\_\_\_  
Deputy Prosecuting Attorney

By: \_\_\_\_\_  
By authority of Motion \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form:  
Port of Seattle Legal Department

Port of Seattle  
M.R. DINSMORE, Executive Director

By: \_\_\_\_\_  
Senior Port Counsel

By: \_\_\_\_\_  
By authority of Resolution \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## **EXHIBIT 1**

### **Utilities and Site Work:**

1. Clear site
2. Installation of curb, gutter and sidewalk at W. Galer Street
3. Design and install sanitary sewer, force main, wet well and lift station at W. Galer Street
4. Design and install main water service to site (domestic and fire)
5. Design and install main electrical service to site
6. Design and install underground on-site utility distribution
  - Sanitary sewer
  - Water service (domestic & fire)
  - Electrical service
  - Natural gas
  - Telecommunications
7. Design and permit private on-site roads and fire access
8. Install private on-site roads with temporary road surfaces

**For items 2, 3, 4, and 5, "completion" means the applicable City of Seattle department has formally accepted the work. For all other items, "completion" means the property owner has given the contractor a notice of substantial completion.**

ORDINANCE \_\_\_\_\_

AN ORDINANCE related to the West Galer Street grade-separated access ramp; authorizing the execution of an interlocal agreement with King County and the Port of Seattle that will provide funding by the three governments for a grade-separated crossing of the railroad tracks at approximately West Galer Street to improve access to the vicinity of Marine Terminal 88 and will commit the City to construct the crossing under certain conditions, and authorizing amendments to that interlocal agreement.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1 . The Mayor or his designee is authorized to execute, for and on behalf of the City of Seattle, an interlocal cooperation agreement (the "Agreement") with King County and the Port of Seattle in substantially the form attached as Exhibit 1 hereto. The Mayor or his designee is further authorized to execute any amendments related to the Agreement that the Mayor determines become appropriate during the course of carrying out the Agreement, so long as the effect of the amendment is not to increase the financial or legal responsibility of the City.

Section 2 . This ordinance shall take effect and be in force thirty (30) days from and after its

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approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the \_\_\_\_\_ day of \_\_\_\_\_, 1997, and signed by me in open session in authentication of its passage this \_\_\_\_\_ day of \_\_\_\_\_, 1997.

\_\_\_\_\_  
President \_\_\_\_\_ of the City Council

Approved by me this \_\_\_\_\_ day of \_\_\_\_\_, 1997.

\_\_\_\_\_  
Mayor

Filed by me this \_\_\_\_\_ day of \_\_\_\_\_, 1997.

\_\_\_\_\_  
City Clerk

(Seal)

RECEIVED  
APR 09 1998  
ENGINEERING DEPARTMENT

**TRANSPORTATION ACCESS IMPROVEMENT INTERLOCAL COOPERATION AGREEMENT**

THIS AGREEMENT ("Agreement") is entered into effective this 15<sup>th</sup> day of MARCH, 1998, by and among King County (the "County"), the City of Seattle (the "City") and the Port of Seattle (the "Port").

Pursuant to Chapter 39.34 RCW and in consideration of the mutual promises, benefits, and covenants contained herein, and with the approval of their respective legislative authorities, the parties agree as follows:

**ARTICLE 1. - RECITALS**

1.1 The City has adopted resolution 29031, which expresses the intent of the City to develop a multi-jurisdictional funding mechanism for transportation access improvements to certain marine terminals and piers for economic development purposes and to retain and expand the operations of the Immunex Corporation ("Immunex") within Seattle and King County.

1.2 Immunex has signed an agreement with the Port, dated July 18, 1994, as amended, to purchase land to construct its corporate headquarters and research and development facility at Terminal 88. The purchase and construction is contingent upon Immunex's satisfaction with commitments by local governments to make certain public improvements to transportation access facilities serving the site and surrounding area.

1.3 The Metropolitan King County Council passed motion 9827, authorizing the King County Executive to work to develop, in cooperation with the City and the Port, a multi-jurisdictional funding mechanism for transportation access improvements to Terminal 88 and the surrounding area.

1.4 Motion 9827 also expressed the County Council's intent to evaluate economic benefits that Immunex's Terminal 88 Project would have on the City, the County, the Port, and the State of Washington. A study has been prepared assessing the fiscal impacts of Immunex at Terminal 88. The study projects incremental direct tax revenues associated with development of Terminal 88 by Immunex having present values of \$16.9 million to the City, \$14.6 million to the County, \$2.0 million to the Port, and \$5.2 million to the State of Washington between the years 2000 and 2015.

1.5 The parties to this Agreement have developed a multi-jurisdictional funding mechanism to finance transportation access improvements to Terminal 88 and the surrounding area. The improvements consist of construction of a grade-separated access ramp crossing four main line Burlington Northern railroad tracks at West Galer Street serving marine terminals 88, 89, 90, and 91 (the "Project"). The total estimated cost of the Project is Twelve Million Five Hundred Thousand dollars (\$12,500,000). The City has appropriated approximately One Million Three Hundred Thousand dollars (\$1,300,000) to start Project design and commence the environmental review process. The City, in

Exhibit "B"  
Resolution No. 3268



Ordinance 118528, has authorized the sale of general obligation bonds and has appropriated Four Million dollars (\$4,000,000) to carry out the Project on the condition that the City will not proceed with the construction phase of the Project until the Director of Seattle Transportation certifies, by letter to the President of the City Council, that Immunex has completed construction of utilities and site work for its Terminal 88 project. Design and engineering for the Project are scheduled to be completed by the third quarter of 1998 and construction is scheduled to begin promptly after Immunex has completed construction of utilities and site work for its Terminal 88 project. Construction by the City is presently anticipated to begin in the fourth quarter of 1998, and if it begins at that time, construction is scheduled to be completed in the first quarter of the year 2000.

1.6 The City and Port have secured a One Million dollar (\$1,000,000) ISTEA Grant. The City is actively pursuing a Three Million dollar (\$3,000,000) Economic Development Administration ("EDA") Grant. In addition to the above amounts, the City has agreed to contribute Four Million Eight Hundred Nineteen Thousand Five Hundred dollars (\$4,819,500) to the Project; the County has agreed to contribute Three Million Two Hundred Thousand dollars (\$3,200,000) to the Project; and the Port has agreed to contribute Six Hundred Thousand dollars (\$600,000) to the Project and to allow, pursuant to a future agreement between the Port and the City, the use of rights-of-way or other property rights required for construction, operation and maintenance of the Project.

1.7 As part of the EDA Grant, the City and Immunex are required to negotiate an Employment Plan. Such a Plan has been negotiated and the County's financial support for the Project is provided in consideration of the City undertaking its obligations pursuant to Section 6.1 below.

1.8 Based on the above described funding commitments and employment plan, the parties agree to jointly fund, coordinate, and implement the Project in accordance with the terms and conditions set forth in this Agreement.

## ARTICLE 2. - THE PROJECT

2.1 The Project is to construct a grade-separated access ramp over the main-line Burlington Northern railroad tracks at approximately West Galer Street onto an access road leading to marine terminals 88, 89, 90, and 91. The ramp is intended to improve access and allow for the reduction of vehicle/train conflicts and delays caused by train movements at West Galer Street. The ramp is intended to improve emergency vehicle access and facilitate expansion of existing businesses and the development of an additional 29 acres that are currently vacant. The total cost of design and construction of the Project is estimated to be Twelve Million Five Hundred Thousand dollars (\$12,500,000), including One Million One Hundred Thousand dollars (\$1,100,000) of preconstruction costs and Eleven Million Four Hundred Thousand (\$11,400,000) for right-of-way acquisition and construction. Included within the Project are all authorized costs related to the planning, oversight, administration, design, engineering, acquisition, financing and construction of the Project, including overhead.

2.2 The City shall cause the certification referenced in Section 1.5 above to be delivered to the City Council President within forty-five (45) days after Immunex has completed construction of utilities

and site work for its Terminal 88 project. "Construction of utilities and site work" means, for purposes of this Agreement, completion of all the tasks listed in Exhibit 1 hereto. Unless the City has been unable, despite diligent efforts, to obtain all required permits and approvals for the Project, the City shall commence construction of the Project within sixty (60) days after such certification is delivered, but such commencement may be delayed until sixty (60) days after the earlier to occur of (a) the date the County agrees with the correctness of the certification if the County has disputed it, as described in Section 3.3 below or (b) the date the arbitrators finally determine the correctness of the certification if the County has disputed it and the City and County have not resolved the dispute, as described in Section 7.2(b) below. Once construction of the Project commences, the City shall diligently pursue construction and shall cause the Project to be completed within sixteen (16) months from the date when construction is required to commence under this Section 2.2, unless work is terminated pursuant to Section 2.3 below.

2.3 After construction of the Project commences, the City may, in its sole discretion, discontinue work on the Project under Section 3.3, or if and only if any of the following occur: Immunex, as distinguished from an assignee of Immunex, fails to submit a building permit application for Phase 1 of the Immunex headquarters and research and development project, as described in the City's Analysis and Decision of the Director of the Department of Construction and Land Use ("Phase 1"), that is sufficiently complete to meet the requirements of Section 106 of the Seattle Building Code before the expiration of the Master Use Permit for the Immunex project; or Immunex's building permit application for Phase 1 is canceled pursuant to Section 106 of the Seattle Building Code; or Immunex's building permit for Phase 1 expires pursuant to Subsection 106.9 of the Seattle Building Code.

2.4 All real and personal property acquired under this Agreement in the course of carrying out the Project shall be owned by City. Upon the expiration of this Agreement, ownership of real and personal property shall remain with the City.

### ARTICLE 3. - TERM/TERMINATION

3.1 This Agreement shall commence on the date first set forth above. It shall terminate on the date that the Project is accepted and receives final approval by the City and all required payments and accountings herein have been made, unless terminated sooner according to the provisions of this Agreement.

3.2 This Agreement shall terminate if construction on the Project has not commenced by June 1, 2003.

3.3 The County will be obligated to contribute funds to the Project as set forth in this Agreement if and only if the Director of Seattle Transportation transmits to the City Council President the certification referenced above in Section 1.5. The City agrees to provide the County written notice at least thirty (30) days prior to the day such certification is expected to be signed. The County will have 14 days following the day the certification is signed and prior to its being forwarded to the President of the City Council to dispute with particularity the correctness of the statements made in the certification. If the County does so dispute, the certification may be forwarded to the President of the City Council,

but the correctness of the statements made in the certification will be subject to the dispute resolution process described in Section 7.2(b) below. If, pursuant to Section 7.2(b), the arbitrators determine that the City's certification was, or is at the time of the arbitration, materially correct, the County shall comply with its obligations under Section 4.2. If, pursuant to Section 7.2(b) and after taking into account activities during the cure period provided therein, the arbitrators finally rule in favor of the County and determine that the City's certification was and remains incorrect in one or more material respects, the County's financial obligations to contribute to the Project may be canceled by action of the County Council. In that event the City may proceed with the Project or may discontinue or choose not to commence work on the Project, at the City's option.

#### **ARTICLE 4. - PARTIES' FINANCIAL RESPONSIBILITY**

4.1 The Port agrees to contribute Six Hundred Thousand dollars (\$600,000) to pay a portion of local Project costs, said funds to be made available to the City within thirty (30) days after the City commences construction of the Project. "Local Project costs" are those currently anticipated costs of the Project not expected to be paid by the Four Million dollars (\$4,000,000) of currently available grants. Total "local Project costs" are Eight Million Five Hundred Thousand dollars (\$8,500,000).

4.2 The County agrees to contribute Three Million Two Hundred Thousand dollars (\$3,200,000) to pay a portion of local Project costs. Said funds shall be made available to the City as follows:

- a. Not more than thirty (30) days after receiving the City's first invoice, which shall be sent not sooner than March 1, 1998, the County shall pay the City thirty-eight (38) percent of local Project costs which the City has incurred to the date on which the invoice is sent.
- b. Thereafter, the City shall invoice the County no more often than monthly and no less often than quarterly an amount equal to thirty-eight (38) percent of local Project costs incurred to the date of the invoice, until the County's maximum contribution of Three Million Two Hundred Thousand dollars (\$3,200,000) has been paid.
- c. Each invoice shall be accompanied by a copy of the City's pertinent monthly cost account report(s). The City will in good faith apportion actual Project costs between grant sources and "local Project costs." The County shall review the invoices and shall notify the City of any disputed amounts within ten (10) days of invoice receipt. The County shall pay the City the invoiced amount or any portion of the stated amount due that is not disputed not more than thirty (30) days after receiving the invoice.

4.3 The City agrees to contribute Four Million Eight Hundred Nineteen Thousand Five Hundred dollars (\$4,819,500) of its own funds to pay a portion of local Project costs, plus any additional funds beyond the amounts agreed to be contributed by the County and the Port, which are necessary to complete the Project.

4.4 In the event the City determines in its sole discretion to discontinue work on the Project as

provided in Section 2.3 above, the County and the Port shall each be responsible for its share of costs incurred through the date the Project is discontinued.

4.5 If the Project is completed and any Project funds contributed by the parties hereto remain unexpended, treating such funds as the first spent, such funds shall be refunded to the parties as follows: the City shall receive fifty-six (56) percent of such funds, the County shall receive thirty-eight (38) percent of such funds, and the Port shall receive six (6) percent of such funds.

4.6 If this Agreement is terminated prior to Project completion, money in the Project Fund will become the exclusive property of the City, after payment to the County or Port of any refunds owing under section 4.5.

4.7 The obligations of the Port and the County to contribute to the funding of this Project are strictly limited to the respective amounts set forth in subsections 4.1 and 4.2 of this Agreement and when such funds are paid in accordance with the provisions of Sections 4.1 and 4.2 above, all funding obligations of the Port and the County will have been fulfilled and neither the Port nor the County will be obligated to pay for or be otherwise responsible for any additional Project costs whatsoever (other than the Port's agreement to allow the use of the rights-of-way or other property rights as described in Section 1.6). The City agrees to assume responsibility for all additional Project costs and further agrees to provide such additional funding as is necessary to complete the Project within the time frame set forth in Section 2.2, unless the City terminates construction pursuant to the terms of this Agreement and all unexpended County and Port Project contributions are refunded. Such additional Project costs shall include, but are not limited to, costs associated with delay, Project changes, increased cost of labor or material, costs necessary to resolve any claims, legal challenges, permit requirements, compliance with any law, rule or regulation, or the availability, withdrawal, reduction, or demand for repayment by any granting entity from which the City receives, plans or anticipates contributions to Project funding, other than the County and the Port.

## **ARTICLE 5. - PROJECT MANAGEMENT/INDEMNIFICATION**

5.1 Project management shall be vested in the City. The City shall be responsible for the procurement of all goods and services necessary for the Project in accordance with all applicable law, rules, regulations, policies, and procedures. The responsibilities of the Port and the County are strictly limited to the payment of money to the City, the use of the Port's right-of-way or other property rights as described in Section 1.6, and indemnity and record retention in accordance with the terms of this Agreement.

5.2 In providing services pursuant to this Agreement, the City is an independent contractor and neither it nor its officers, agents, employees, or contractors are employees of the County or the Port for any purpose. Neither the County nor the Port assumes any responsibility for the payment of any compensation, wages, benefits, or taxes by or on behalf of the City, its officers, agents, employees, or contractors by reason of this Agreement. The City shall protect, indemnify, and save harmless the County and the Port, their officers, agents, and employees from and against any and all claims, costs, and or losses whatsoever occurring or resulting from: (1) the City's failure to pay such compensation,

wages, benefits or taxes; and/or (2) the supplying to the City of work, services, materials, or supplies by anyone in connection with or in support of the Project.

5.3 Neither the Port nor the County shall be financially responsible for any indicated amounts following an audit exception which occurs as result of any negligent or intentional act by the City, and/or the City's failure for any reason to comply with the terms of this Agreement; any law, rule or regulation; or any contract or grant obtained by the City in furtherance of the Project. This Section survives termination of the Agreement.

5.4 Each party shall protect, defend, indemnify, and save harmless the other parties, their officers, employees, and agents from any and all costs, claims, judgments, and/or awards of damages, arising out of or in any way resulting from the negligent acts or omissions of said indemnifying party, its officers, employees, and/or agents. Each party agrees that its obligations under this subsection extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees or agents. Each party, by mutual negotiation, hereby waives, as respects the other parties only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event the indemnified parties incur any judgment, award, and/or cost arising therefrom, including attorney's fees to enforce the provisions of this provision, all such judgments, awards and costs shall be recoverable from the indemnifying party.

5.5 In connection with this Agreement, neither the City nor any party contracting or subcontracting in connection with the Project shall discriminate on the basis of race, color, sex, religion, nationality, creed, marital status, sexual orientation, age or the presence of any sensory, mental or physical handicap in employment or application for employment or in the administration or the delivery of services or any other benefits under this Agreement. The City shall comply fully with all applicable Federal, State, and local laws, ordinances, executive orders and regulations which prohibit such discrimination. These laws include, but are not limited to RCW Chapter 49.60 and titles VI and VII of the Civil Rights Acts of 1964.

## **ARTICLE 6. - EMPLOYMENT PLAN**

6.1 The City shall execute the Employment Plan with Immunex, which is attached hereto as Exhibit 2. The City shall comply with its monitoring and reporting obligations pursuant to the EDA Grant and will use its best efforts to assure that Immunex fulfills its obligations under the Employment Plan. The City will provide the County with the results of evaluations of the progress of the Employment Plan, at least annually, whether such evaluations are performed by the City, the City and Immunex together or Immunex alone, if the results are transmitted to the City.

## **ARTICLE 7. - MISCELLANEOUS PROVISIONS**

7.1 Any notice required or permitted to be given pursuant to this Agreement shall be in writing, shall be sent postage prepaid by United States Certified Mail, return receipt requested, to the following addresses unless otherwise indicated by the parties to the Agreement:

To the City: Richard Miller  
Senior Bridge Engineer  
Seattle Transportation  
600 Fourth Avenue  
Seattle, Washington 98104

To the Port: Stephen Sewell  
Managing Director, Marine Division  
PO Box 1209  
Seattle, Washington 98111

To the County: Ray Moser  
Office of Budget and Strategic Planning  
Rm. 420 King County Courthouse  
516 Third Ave.  
Seattle, Washington 98104

7.2 (a) The designated representatives shall use their best efforts to resolve disputes between the parties. If these individuals are unable to resolve a dispute, the responsible department directors shall review the matter and attempt to resolve it. If they are unable to resolve the dispute, the matter shall be reviewed by the chief executive officer of each party or his or her designee. The parties agree to exhaust each of these procedural steps before seeking to resolve disputes in a court of law or any other forum.

(b) Any claim or dispute between the City and the County relating to the certification referred to in Section 1.5 which is not resolved within thirty (30) days after the County's objection shall be submitted in writing by the parties to a formal dispute resolution process as described below, and throughout the process the City and the County shall proceed in a timely manner and in good faith to resolve such claims or disputes based on accurate and shared information:

**1. Arbitration**

Within ten (10) days after the last conference meeting or final exchange of written positions, the City and the County shall initiate binding arbitration in accordance with the following provisions and RCW 7.04 (or any successor provision thereto) or any other method of arbitration mutually agreed to by the City and the County.

**2. Generally**

All such arbitration shall be conducted before a panel designated in the manner hereinafter provided (the "Panel"). Except as specifically provided for herein, all such arbitration shall be conducted in the City in accordance with the rules of the American Arbitration Association, and the decision of the Panel shall be final and binding upon the Parties. The issues before the Panel shall be limited to those particular items to which the County timely objected under Section 3.3. The costs of the arbitration shall be shared by the City and the County in equal shares.

**3. Panel**

The Panel shall consist of three (3) persons selected by the City and the County from a list of fifteen (15) construction experts or professionals, which list shall be furnished by the Seattle Chapter of the American Arbitration Association, unless the number of persons on the Panel, or the qualifications of the individuals on the list, are otherwise mutually agreed to by the City and the County. The Panel shall consist of persons who are acceptable to the City and the County. In the event that within fifteen (15) days after the submission of a dispute to arbitration, the City and the County have been unable to agree on a Panel, then representatives of the City and the County shall meet within ten (10) days and the following procedures shall be applicable: The City shall strike the name of a person on the list. Within fifteen (15) minutes thereafter, the County shall strike a name from the list. At no more than fifteen (15) minute intervals thereafter, each party shall strike a name from the list. If any party fails to strike a name within the allotted time period, it shall forgo its turn to strike a name. The last three names on the list shall constitute the Panel.

**4. Hearing Date**

On appointment of the Panel as provided above, the Panel shall hold a hearing within twenty (20) days after the appointment of the Panel.

**5. Pre-Hearing and Hearing**

At least ten (10) days prior to the hearing, the Parties shall meet and exchange exhibits and pre-hearing statements and stipulate and agree on non-disputed facts. No exhibit shall be admitted unless listed on the pre-hearing statement and exchanged between the Parties. No witness may be presented unless indicated on the pre-hearing statement or unless produced for rebuttal purposes. Prior to or at the hearing, the Parties shall submit memoranda not to exceed twenty-five (25) pages outlining the relevant issues for the Panel. At the hearing, the laws of evidence of the State shall apply, and the Panel shall allow each party to present that party's case, evidence and witnesses. It shall be the County's responsibility in the first instance to provide the Panel with evidence in support of the particulars of the County's objections.

**6. Decision**

The Panel shall render its decision in writing within thirty (30) days of the conclusion of the hearings. In rendering its decision the Panel shall have full authority to construe and apply the terms of this Agreement, but shall have no authority to add to, or subtract from or otherwise modify or amend the terms of this Agreement. The Panel shall decide that either (a) Immunex has completed construction of those parts of the utilities and site work for its Terminal 88 project that the County in its objection said were not complete, or (b) it has not. If the Panel determines that Immunex has not completed construction of utilities and site work for its Terminal 88 project, the Panel shall further state in what respects that work is incomplete, and, a cure period of ninety (90) days shall follow the Panel's decision. If at the end of that cure period the County does not agree that Immunex has completed the items the Panel found to have been incomplete, the question shall again be submitted to the Panel (with a replacement chosen as set forth in paragraph 3 above for any member of the original Panel who is not able to participate in a hearing within thirty (30) days after the end of the cure period) for the Panel's final decision, which decision shall be rendered within forty-five (45) days of the end of the cure period.

**7. Finality of Decision**

The decision of the majority of the arbitrators after any cure period shall be final and binding on the City and the County.

7.3 In any action by a party hereto required to enforce this Agreement, the prevailing party shall be entitled to recover, as part of any judgment, its reasonable attorney's fees based on the prevailing rate for attorneys of similar skills, training, and experience in the private sector, and all reasonable costs and expenses incurred as a result of a breach of this Agreement, and of bringing or defending the suit.

7.4. Neither the City, the County, nor the Port shall be obligated or liable hereunder to any party other than each other. No provision herein shall be deemed to create any right or obligation enforceable by a third party nor shall it be deemed to accrue to the benefit of any third party, except, however, that the parties acknowledge that, as described in Sections 1.1 and 1.2 above, Immunex is and will be relying on the parties' undertakings in this Agreement in consummating the purchase of the Terminal 88 land from the Port and commencing construction of its headquarters and research and development facility thereon.

7.5 Each party shall retain for at least six years after Project completion or the earlier termination of this Agreement all records pertaining to the Project, and shall continue to keep those records longer during the pendency of any litigation or audit pertaining to the Project. This Section survives termination of this Agreement.

7.6 This Agreement contains the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior oral or written understandings, agreements, promises, or other undertakings between or among the parties relating to the subject matter hereof.

7.7 The section and paragraph captions used in this Agreement are for convenience only and shall not control or affect the meaning or construction of any other provisions of this Agreement.

7.8 This Agreement may not be modified or amended, except by written instrument approved by the respective legislative authorities of the parties as may be required. All parties recognize that time is of the essence in the performance of the provisions of this Agreement. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of the Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement, unless stated to be such through written instrument approved by the respective legislative authorities of the parties as may be required, which shall be attached to the original Agreement.



IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the day and year first written above.

Approved as to form:  
Mark Sidran, Seattle City Attorney

By:   
Assistant City Attorney

Date: 3/10/98

City of Seattle,  
PAUL SCHELL, Mayor

By: 


Date: March 12, 1998  
By authority of Ordinance 118801

Approved as to form:  
Norm Maleng,  
King County Prosecuting Attorney

By:   
Deputy Prosecuting Attorney

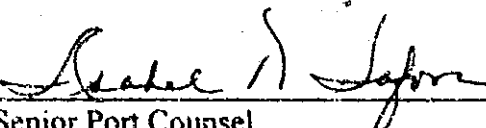
Date: 3/18/98

County of King,  
RON SIMS, King County Executive

By:   
By authority of Motion 10390

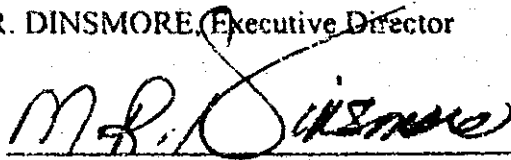
Date: 3-18-98

Approved as to form:  
Port of Seattle Legal Department:

By:   
Senior Port Counsel

Date: 3/12/98

Port of Seattle  
M.R. DINSMORE, Executive Director

By:   
By authority of Resolution \_\_\_\_\_

Date: 3/12/98

## EXHIBIT 1

### Utilities and Site Work:

1. Clear site
2. Installation of curb, gutter and sidewalk at W. Galer Street
3. Design and install sanitary sewer, force main, wet well and lift station at W. Galer Street
4. Design and install main water service to site (domestic and fire)
5. Design and install main electrical service to site
6. Design and install underground on-site utility distribution
  - Sanitary sewer
  - Water service (domestic & fire)
  - Electrical service
  - Natural gas
  - Telecommunications
7. Design and permit private on-site roads and fire access
8. Install private on-site roads with temporary road surfaces

**For items 2, 3, 4, and 5, "completion" means the applicable City of Seattle department has formally accepted the work. For all other items, "completion" means the property owner has given the contractor a notice of substantial completion.**

**TERMINALS 86-91 RAMP ACCESS IMPROVEMENT PROJECT**

**EMPLOYMENT AGREEMENT**

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**CITY OF SEATTLE  
NORMAN B. RICE, MAYOR**

**OFFICE OF ECONOMIC DEVELOPMENT  
MARY JEAN RYAN, DIRECTOR**

**NOVEMBER 1997**

## I: INTRODUCTION

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This Employment Plan (the "Plan" hereinafter) was prepared by the City of Seattle's Office of Economic Development to support its grant application to the Economic Development Administration (EDA) for three million dollars for the Terminals 86-91 Ramp Access Improvement Project.

One condition of EDA's approval of the grant is a willingness on the part of the major beneficiaries of the improvement project, in this case the Immunex Corporation, to offer hiring opportunities to qualified job applicants from Seattle's low- and moderate-income neighborhoods for selected positions. These positions include entry-level and semi-skilled jobs that pay a livable wage, defined as paying at least \$8.00 per hour plus benefits, and require three years or less of post-secondary education or training. The two sources for jobs that are covered as part of this agreement are:

1. Apprenticeship opportunities created through construction-related expansion of Immunex's ~~headquarters and Research & Development operations (Seattle-based) located at the Terminals 86-91 facility.~~ Immunex agrees to implement an Apprentice Utilization Requirement, as part of the Port Jobs Apprentice Opportunities Project, for the general contractors selected to construct its facility.
2. Existing and new entry-level and semi-skilled employment opportunities available within Immunex corporate headquarters, and research and development center over a ten year period (1998-2008).

In addition, Immunex has engaged the Port of Seattle in encouraging similar hiring efforts for jobs created by other tenants located within Terminals 86-91. OED will work directly with the Port of Seattle and its tenants as well as other private businesses in the area.

This agreement defines "Employer" as the Immunex Corporation.

This agreement commits the employer to use the referral mechanism organized by the Office of Economic Development as a source for recruitment of personnel for the selected positions described above. Immunex agrees to use its best efforts to post job openings for covered positions with the Plan Coordinator two (2) weeks before using its normal hiring process.

A yearly evaluation meeting will be held between the Office of Economic Development and Immunex to appraise the existing employment agreement and to modify it as needed. This meeting will be held during the month of December.

## II: BACKGROUND

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The Terminals 86-91 Ramp Access Improvement Project is a capital improvement project intended to improve access to the industrial area of Terminals 86-91. The Immunex Corporation plans to construct additional buildings as part of its operations in the industrial area Pier 88 which require improved transportation access consisting of a two-way, grade-separated access ramp extending from the Garfield Street Bridge (a.k.a. Magnolia Bridge) to a crossing of four mainline Burlington Northern Railroad tracks. Additional surface roadway construction will connect the new ramp to the existing roadway system.

The biotechnology and biomedical industry has the potential to create numerous jobs within the Puget Sound region. In separate labor market studies, the Puget Sound Regional Council and the Northwest Policy Center identified biotechnology and biomedical as a growth sector. Thus, there is a great deal of interest on behalf of economic development organizations, employment and training providers and biotechnology firms to work together to ensure that a well-trained workforce is available to meet the demands of this growth industry.

### III: OBJECTIVE

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This Plan is designed to satisfy EDA requirements as part of the funding application. The Plan does not intend to supplant any recruitment or hiring practices which Immunex may utilize. Instead, the activities outlined in this Plan seek to complement those efforts.

Immunex Corporation has estimated that its expansion may create 620 new full-time employment opportunities during the ten-year project period of the EDA grant. Of these positions, approximately, 20%, or an estimated 124 positions, are the focus of this Agreement, which seeks to provide consideration (defined as giving priority to applicants from the impact community) for low- and moderate-income residents of the Target Area and Target Populations, and to provide Immunex with an effective means to link with qualified candidates (see definition of Target Area and Target Population in Section IV). (As an example, when Immunex is considering two candidates for employment who are equal in both qualifications and experience, the candidate referred through the Employment Plan will receive first priority.) Further, individuals from the Target Area and Target Population, as well as other low- and moderate-income residents of the region, will have access to information on all jobs available at Immunex through use of resources at the Seattle public libraries. These libraries offer access to the Internet; Immunex posts all available jobs on its web site at [www.immunex.com](http://www.immunex.com).

The type of jobs that are covered as part of this agreement are entry-level and semi-skilled positions that pay a livable wage, defined as paying at least \$8.00 per hour plus benefits, and require three years or less of post-secondary education or training.

The sources for jobs that are covered as part of this agreement include the following:

1. Apprenticeship opportunities created through construction-related expansion of Immunex's headquarters located at the Terminals 86-91 facility. Immunex agrees to implement an Apprentice Utilization Requirement, as part of the Port Jobs Apprentice Opportunities Project, for the general contractors selected to construct its facility; and
2. "Covered" job categories include existing and new entry-level and semi-skilled employment opportunities available within Immunex corporate headquarters and research & development center over a ten year period (1998-2008). These include:

Accounting Assistant	Facilities Maintenance Technician	Records Clerk
Custodian	Human Resources Assistant	Secretary
Data Entry Operator	Mail Clerk	Security Guard
Documentation Specialist	Office Assistant	Switchboard Operator
Driver	Receptionist	Warehouse Assistant
Facilities Assistant		Word Processor

## IV: COMPONENTS OF THE PLAN

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### Target Area & Target Populations

This employment agreement is designed to provide access to covered job opportunities for low- and moderate-income residents living in the Target Area which is defined as Southeast Seattle, the Central Area, the Duwamish, International District, Downtown/Pioneer Square and Delridge neighborhoods. (For a map of the area, please see Attachment A.) The unemployment rate of the Target Area twice the rate for the entire city of Seattle. In addition to high unemployment, many residents lack connections with individuals in positions of hiring. In a survey of more than 2,500 Target Area residents, almost 60 percent reported their top barrier to finding employment is "not knowing what jobs are available." In addition, 45 percent of survey respondents indicated they had been looking for work for more than four months, and 38 percent of African American males reported they had been looking for work for over seven months.

~~In addition to the Target Area, the employment plan gives priority to Target Populations who have~~ experienced high levels of poverty and unemployment. They include: ethnic minorities, dislocated workers, Vietnam veterans, persons with disabilities and low-income women.

### The Project Site

The project site for the ramp is Terminals 86-91. The proposed Immunex center is at Pier 88. (For a map of the site, please see Attachment B.)

### Signatories of the Plan

#### Sponsor: Office of Economic Development

This is the entity that is directly responsible to the EDA and will oversee and monitor the status of the Plan. The City of Seattle's Office of Economic Development is the sponsor of the Plan.

#### The Beneficiaries: Immunex Corporation and tenants of Terminals 86-91

The Immunex Corporation is a beneficiary which will benefit from the Terminals 86-91 Ramp Access Improvement Project. (Details of Immunex's responsibilities are outlined in the next section -- V: Description of the Employment Plan.) Employment Plans for other businesses in the area will be added as they are identified through OED's cooperative outreach program with Immunex and the Port of Seattle.

## Other Participants

### The Agencies: Members of the Community Network

The employment and training organizations which make up the Community Network are: the Center for Career Alternatives, Central Area Motivational Program, Downtown Human Services Council, Employment Opportunities Center, Employment Security Department - Homeless Project, Jewish Family Services/TRAC, Pacific Associates, Asian Counseling and Referral Services, Center for Career Alternatives, YWCA and Washington Coalition of Citizens with Disabilities. The Community Network is managed by a facilitator. (Details regarding the Community Network's responsibilities are outlined in the next section -- V: Description of the Employment Plan.)

### The Applicants: Residents of the Target Area and/or Target Populations

"Applicants" are residents of the Target Area and/or members of the Target Populations. (See section IV.) All applicants will be job ready and pre-screened by the Community Network in order to be referred as part of this Plan.

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### Plan Coordinator: Staff Representative of the Office of Economic Development

The Staff Representative will be responsible for coordinating the dissemination of job openings and candidate referrals between Immunex and the Community Network. (More details about the Plan Coordinator's responsibilities are outlined in the next section -- V: Description of the Employment Plan.)

### Immunex Plan Representative: Staff Representative of Immunex

The Staff Representative will be responsible for coordinating Immunex's responsibilities and participation in the employment agreement.

### Port Jobs Plan Representative: Executive Director of Port Jobs

The Executive Director will work with both the Plan Coordinator and Immunex Plan Representative to implement the Apprenticeship Utilization Requirement.

## **V: DESCRIPTION OF THE EMPLOYMENT PLAN**

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The Immunex Corporation will receive referrals of qualified job candidates via the Plan Coordinator. Immunex will notify the Plan Coordinator each December during the plan period regarding additional FTEs in covered job categories anticipated for the coming year. In addition, Immunex and the Plan Coordinator will meet each December to assess the progress of the Plan. Immunex will be the sole judge of the qualifications and competency of all job candidates.

As part of the hiring commitment, Immunex agrees to post job openings for covered positions with the Community Network through the Plan Coordinator in conjunction with other elements of its hiring process. Upon receiving the job listings, the Plan Coordinator will transmit them immediately to the Community Network facilitator to ensure timely communication to potential job candidates. The facilitator will work with Community Network member agencies to recruit and pre-screen candidates for covered positions. The facilitator will collect the names and applications and/or resumes of the potentially qualified job applicants and forward them to the Plan Coordinator who will immediately provide these to Immunex.

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When a candidate is hired, Immunex must notify the Plan Coordinator.

*Under the Plan, Immunex agrees to:*

- Provide the Plan Coordinator with projections for openings for covered positions as described in Section III.
- Designate a representative to work with the Plan Coordinator to transmit all covered job projections, job orders, hiring verification, and, as needed, information required for problem-solving.
- Translate Immunex's employment needs into a job order to be sent to the Plan Coordinator listing job title, job duties, skills required, qualifications, salary range and number of openings. Job requirements will be those appropriate to the biotechnology sector and to Immunex Corporation's unique business needs. (The job order will be developed during implementation by the Plan Coordinator and Immunex representative.)
- Implement an Apprentice Utilization Requirement, as part of the Port Jobs Apprentice Opportunities Project, for the general contractors selected to construct the expansion of the Immunex facility.
- Prior to the interview and/or hiring process provide the Plan Coordinator with the names and zip codes of persons referred by the Community Network.
- Give priority to low- and moderate-income residents from the Target Area and Target Populations. For example, when Immunex is considering two candidates for employment who are equal in both qualifications and experience, the candidate referred through the Employment Plan will receive first priority.



*Under the Plan, the Plan Coordinator agrees to:*

- Work with Immunex to process job openings. The Plan Coordinator will provide job orders to Community Network agencies within forty-eight (48) hours of receipt and will provide Immunex with confirmation that job orders have been filed with the Community Network agencies.
- Coordinate the recruitment, screening and referrals of residents in conjunction with the Community Network facilitator. This includes disseminating job descriptions, skill requirements, and wage and benefit information to Community Network members.
- Work with the Community Network facilitator to establish a process to screen applicants according to the specific employment qualifications requested by employers. Only pre-screened candidates possessing the specified qualifications and skills will be referred to the employer.
- Set up a tracking system that will identify population demographics, in accordance with the information specified under "Record Keeping" in this Plan of all referrals and hires processed through this Plan.
- Work with Immunex and the Office of Port Jobs to carry out the apprenticeship opportunities created through construction of Immunex's headquarters and research & development center.

*Under the Plan, the Community Network agrees to:*

- Provide qualified job-ready applicants for covered positions whenever possible.
- Provide employment-related services to applicants to increase their successful placement and retention on the job. These services will include, at a minimum, pre-employment training, case management and job retention support. In addition, agencies will connect clients, as needed, to other support services such as: child care, transportation and on-going counseling.
- Additional services that agencies may provide include: 1) basic skills instruction, and English as a Second Language training; 2) job specific skills training; or 3) upgrade training in the area of workplace literacy and language training to improve their job performance.
- Screen applicants according to the specific employment qualifications as requested by employers.
- Provide ongoing assistance to employers to address any potential problems or issues that may arise with employees' performance.
- Collect and report demographic information on all referrals and hires through this Plan to the Project Coordinator. Agencies must complete an Employee Summary Form for each person referred. (Please see Attachment C.)

## VI: RECORD KEEPING AND REPORTING REQUIREMENTS

In order to document whether residents of the Target Area and Target Populations are able to successfully access job opportunities, the Plan Coordinator will gather specific data information on persons referred and hired from two sources: the Community Network facilitator and the Immunex representative.

The Community Network facilitator will collect from each agency the required demographic information on all persons referred to and hired by Immunex. The information is included on the Employee Summary Form. The summary information includes the following:

- Family Income/Low-Moderate Income
- Gender
- Ethnic Background:
  - Native Indian
  - Black
  - Asian/Pacific Islander
  - Hispanic/Latino
  - White
  - Other
- Persons with Disabilities
- Dislocated Worker
- Primary Residence Zip Code (or Census Tract Number)

Twice a year, the Plan Coordinator will compile the cumulative list of all persons referred, interviewed and hired along with the corresponding demographic data. These reports will be completed by April 15 and November 15 for the corresponding ten-year period.

Immunex is responsible for forwarding to the Plan Coordinator the names and zip codes of all persons referred, interviewed and hired through the Community Network upon completion of each hiring process for covered positions. Twice a year, Immunex will file a report with the Plan Coordinator containing the cumulative totals of persons referred, interviewed and hired. The reports are due by April 15 and November 15 for a ten year period. Additionally, as appropriate, the Immunex Representative and the Plan Coordinator will meet to assess the progress of the program and share information regarding qualifications and suitability of candidates.

The Plan report shall be reviewed by the Plan Coordinator and forwarded to the EDA.

## VII: SCHOOL-TO-WORK

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Also as part of this agreement, Immunex agrees to target a portion of its school-to-work effort on public schools located within the Targeted Area. (For a list of schools, please see Attachment D.) Immunex expressed its interest in introducing and preparing children for careers in biotechnology and other science-related occupations.

A meeting was held on January 16, 1997, between Janis Wignall of Immunex and Christine Stickler representing OED, to outline the specific activities Immunex will undertake as part of its school-to-work commitment for 1997. Immunex agrees to the following:

Immunex commits to expanding their activities to include the following school-to-work activities to take place between 2/1/97 and 12/30/97 in schools within the Target Area. This will be carried out through:

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### School-to-Work opportunities:

- Immunex will host 4 - 6 students (from 3 different high schools) for a 1/2 day job-shadowing experience;
- Immunex will continue to provide mentoring opportunities specifically through Immunex's commitment to the Urban Scholars Program. Efforts will be made to have students represent high schools within the Target Area;
- Immunex will offer groups of 30 students from three different schools the opportunity to take part in a tour at Immunex research facilities;
- Immunex will participate in 3 career days;
- Immunex will continue to provide relevant activities for classroom use as available.

### Promoting educational opportunities for students and teachers in the workplace:

- Immunex will continue its collaboration with Fred Hutchinson on the Science Education Partnership program.
- Immunex will continue its involvement with Quality Education for Science and Technology (QUEST), a networking group formed by the Washington Biotechnology Foundation. QUEST links local scientists, teachers and students interested in science education.

### Being a model for other businesses

- Immunex will continue its involvement with the Washington Biotechnology Foundation to be a model for how other companies can be involved in outreach education.

### Immunex commits to the above yearly agreement of school-to-work efforts through the year of 2001 with the understanding that:

- the recruitment of schools and students within the Target Area is the responsibility of the City of Seattle and Seattle Public School District's School-to-Work office; and
- that yearly evaluation meetings will be held between the Office of Economic Development and Immunex to appraise the existing school-to-work agreement.

## VIII: EMPLOYMENT PLAN AGREEMENT

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The individuals acknowledge that they and their organizations are participants in this Plan and agree to carry out their respective responsibilities as described herein.

The Signatories To This Plan Are:

*Plan Sponsor:*

*Employer:*

\_\_\_\_\_  
Mayor Norman B. Rice  
City of Seattle

\_\_\_\_\_  
Edward Fritsky, Chairman and CEO  
Immunex Corporation

Date: \_\_\_\_\_

Date: \_\_\_\_\_

### Attachments

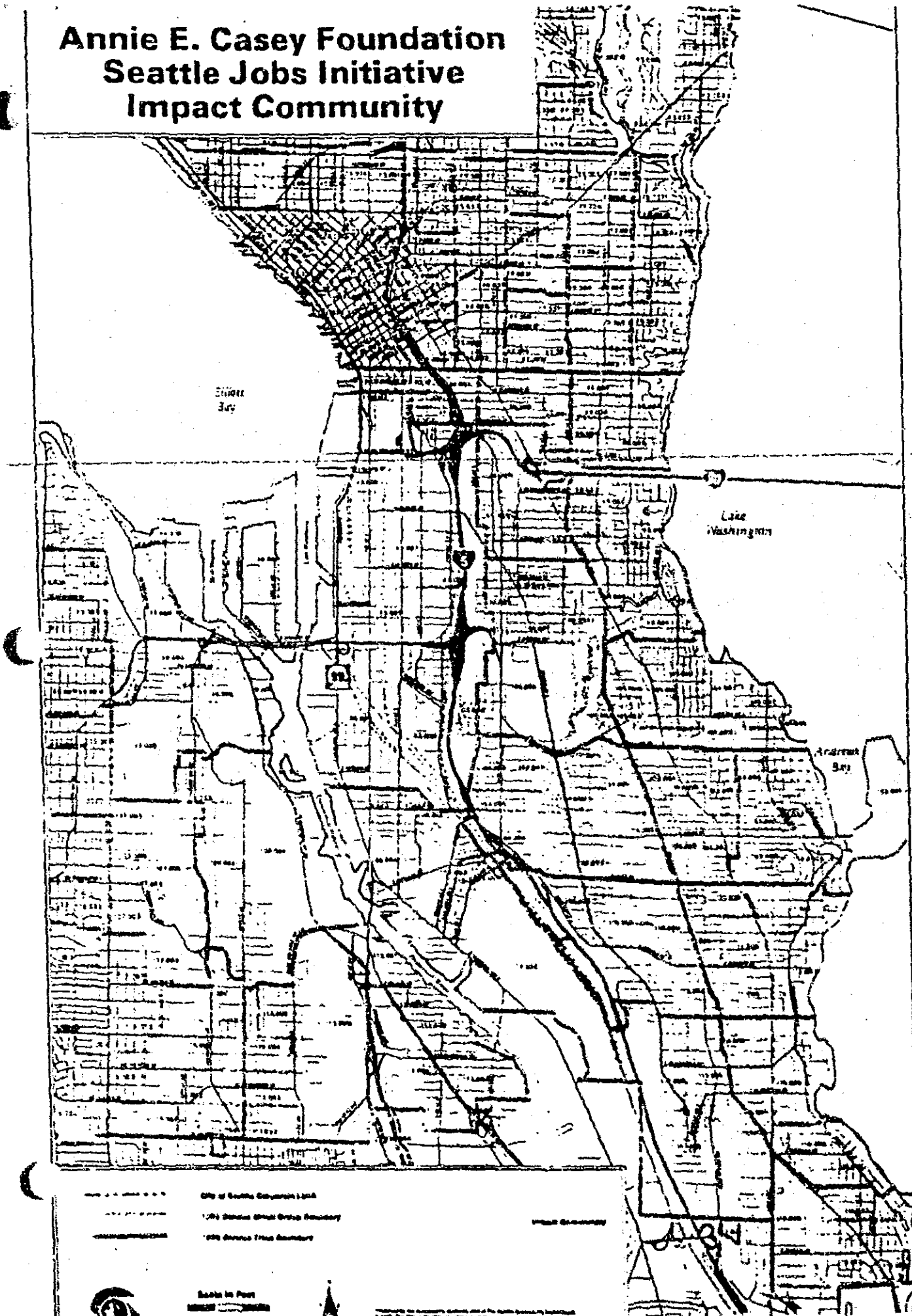
- Attachment A: Map of Impact Community
- Attachment B: Map of Project Site
- Attachment C: Employee Summary Data
- Attachment D: List of Public Schools in Target Area

**ATTACHMENT A**

**Map of Impact Community**

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# Annie E. Casey Foundation Seattle Jobs Initiative Impact Community



**ATTACHMENT B**

**Map of Project Site**

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# CITY OF SEATTLE



## Terminal 88 Study Area

Produced by the  
Seattle Engineering Department,  
Geographic Systems

### Legend

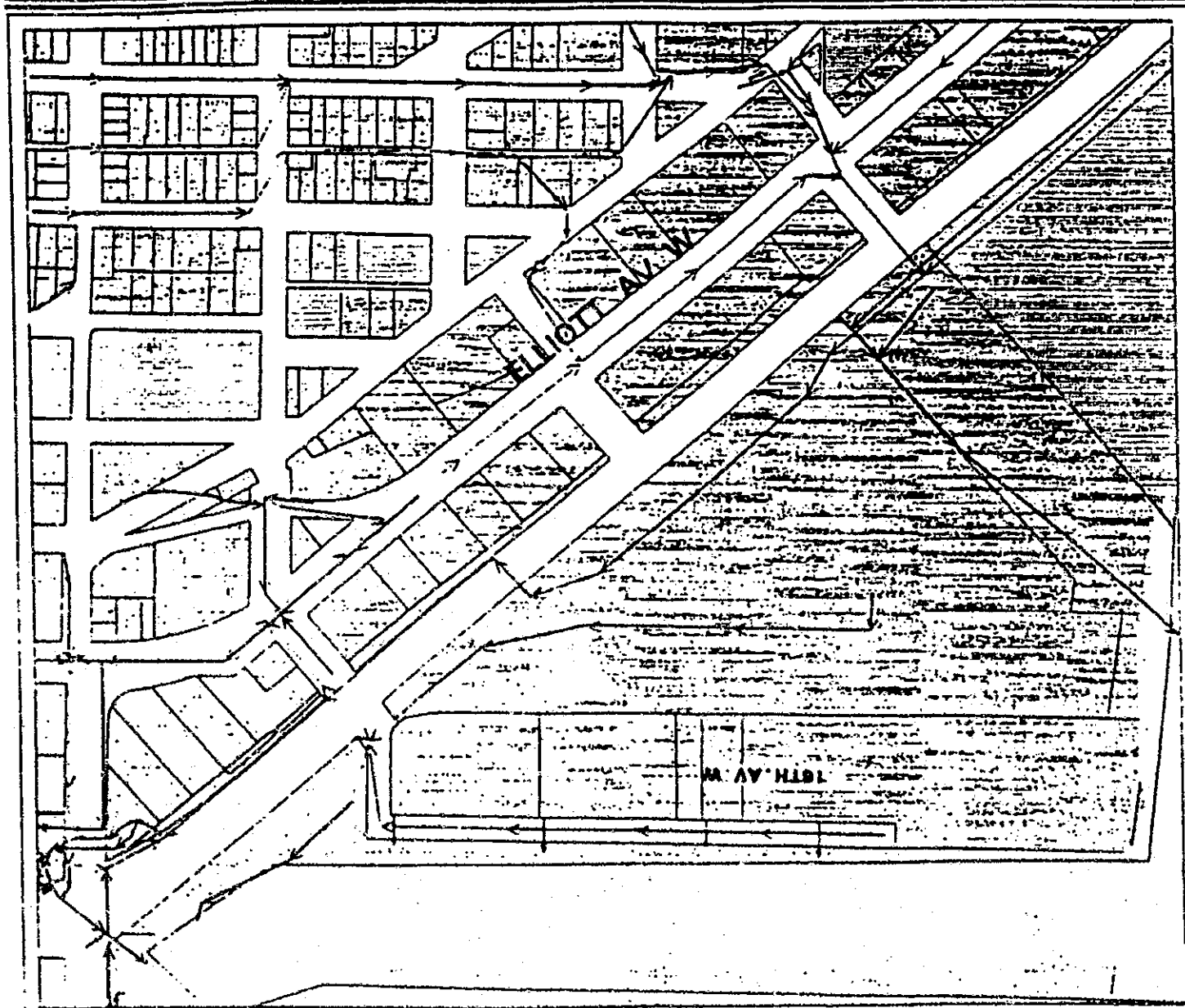
- Drainage Mainlines
- Sewer Mainlines
- Combined Mainlines
- Metro Mainlines

May 26, 1994

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Scale 1" = 4413'



# ATTACHMENT C

## Employee Summary Data

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## Employee Summary Data

Date:      /      /           Social Security No:                           Birth Date      /      /     

NAME: \_\_\_\_\_  
Last Name                      First Name                      M.I.

ADDRESS: \_\_\_\_\_  
Street
  
\_\_\_\_\_
  
City                                  Zip Code                                  Phone Number

Male:                      Female:

*It is the policy of this employer and agencies requesting this information to provide equal opportunity to all applicants for employment and to ensure that there be no discrimination against any persons on the grounds of race, creed, color, national origin, religion, ancestry, political ideology, sexual preference, disability, or sex. The following questions are for statistical purposes only. Answers are optional. This information will not be made a part of your personnel records.*

**RACE/ETHNIC GROUP (Check)**

African American                      Am Indian/Native American                      Asian/Pacific islander  
 Caucasian                      Hispanic/Latino                      Other

**ANNUAL HOUSEHOLD INCOME: PLEASE CIRCLE THE BOX THAT APPLIES TO YOU:**

FAMILY SIZE							
1	2	3	4	5	6	7	8
0- \$16,800	0- \$19,200	0- \$21,600	0- \$24,000	0- \$25,900	0- \$27,850	0- \$29,750	0- \$31,700
\$16,801- \$26,900	\$19,201- \$30,700	\$21,601- \$34,550	\$24,001- \$38,400	\$25,901- \$41,450	\$27,851- \$44,550	\$29,751- \$47,600	\$31,701- \$50,700
\$26,901 and above	\$30,701 and above	\$34,551 and above	\$38,401 and above	\$41,451 and above	\$44,551 and above	\$47,601 and above	\$50,701 and above

To be completed by the employer:

New Hire                      Retained  
 if hired, hours per week \_\_\_\_\_      Hourly Wage \_\_\_\_\_

**APPLICANT SUMMARY FORM**

## ATTACHMENT D

### List of Public Schools Located Within The Target Area

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**A LIST OF PUBLIC SCHOOLS  
LOCATED WITHIN THE TARGET AREA**

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**Elementary:**

Beacon Hill  
Brighton  
Cooper  
Concord  
Dearborn Park  
Dunlap  
Emerson  
Fairmount Park  
Gatewood  
Gatzert  
Graham Hill

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**High Point**

Kimball  
Leschi  
Lowell  
Mann  
Maple  
Minor  
Muir  
Orca  
Koxhill  
Sanislo  
Stevens  
Van Asselt  
Whitworth  
Wing Luke

**Middle Schools:**

Denny  
Washington Middle School  
Madison  
Middle College  
South Shore

**High Schools:**

Cleveland  
Garfield  
Franklin  
Rainier  
Sealth  
West Seattle  
Immunex/EMPLOY2