



RESOLUTION NO. U-11094

1
2 A RESOLUTION related to the purchase of materials, supplies, equipment
3 and the furnishing of services; authorizing the City officials to enter into
4 contracts and, where specified, waive competitive bidding requirements,
5 authorize sale of surplus property, or increase or extend existing
6 agreements.

7
8 WHEREAS the City of Tacoma, Department of Public Utilities, requested
9 bids/proposals for the purchase of certain materials, supplies, equipment and/or
10 the furnishing of certain services, or proposes to purchase off an agreement
11 previously competitively bid and entered into by another governmental entity, or
12 for the sales of surplus, or desires to increase and/or extend an existing
13 agreement, all as explained by the attached Exhibit "A," which by this reference
14 is incorporated herein, and

15
16 WHEREAS in response thereto, bids/proposals (or prices from another
17 governmental agreement) were received, all as evidenced by Exhibit "A," and

18
19 WHEREAS the Board of Contracts and Awards and/or the requesting
20 division have heretofore made their recommendations, which may include
21 waiver of the formal competitive bid process because it was not practicable to
22 follow said process, or because the purchase is from a single source, or there is
23 an emergency that requires such waiver, and/or waiver of minor deviations, and
24 in the case of sale of surplus, a declaration of surplus has been made certifying
25 that said items are no longer essential for continued effective utility service, as
26 explained in Exhibit "A," and



1 WHEREAS the Director requests authorization, pursuant to
2 TMC 1.06.269 A, to amend contract amounts up to \$200,000 and to approve
3 term extensions and renewals for all items contained in Exhibit "A;" Now,
4 therefore,

5 BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:

6 That the Public Utility Board of the City of Tacoma hereby concurs and
7 approves the recommendations of the Board of Contracts and Awards and/or
8 the requesting division, and approves, as appropriate: (1) the purchase and/or
9 furnishing of those materials, supplies, equipment or services recommended for
10 acceptance; (2) the sale of surplus materials, supplies or equipment
11 recommended for acceptance; (3) the Interlocal agreement that authorizes
12 purchase off another governmental entity's contract; (4) the increase and/or
13 extension of an existing agreement, and said matters may include waiver of the
14 formal competitive bid process and/or waiver of minor deviations, all as set forth
15 on Exhibit "A," and authorizes the execution, delivery and implementation of
16 appropriate notices, contracts and documents by the proper officers of the City
17 for said transactions, and (5) the administrative authority of the Director, per
18 TMC 1.06.269 A., to amend contract amounts up to \$200,000 and to approve
19 term extensions and contract renewals for all items in Exhibit "A."
20
21

22 Approved as to form:

23 
24 _____
Chief Deputy City Attorney

Chair

Secretary

25 _____
26 Clerk

Adopted _____



TO: Board of Contracts and Awards
FROM: Andrew Cherullo, Director, Finance Department
 Patsy Best, Procurement and Payables Division Manager
 Samol Hefley, Senior Buyer, Finance/Purchasing
COPY: Public Utility Board, Director of Utilities, Board Clerk, City Council, City Manager,
 City Clerk, SBE Coordinator, LEAP Coordinator, and Samol Hefley,
 Finance/Purchasing.
SUBJECT: Debris and Sediment Hauling Services
 Request for Bids Specification No. CT18-0363F, Contract No. CW2230467 –
 Utility Board August 14, 2019 and City Council August 20, 2019
DATE: July 23, 2019

RECOMMENDATION SUMMARY:

The Finance Department, Procurement and Payables Division recommends a contract be awarded to Maroni Construction Inc., Enumclaw, WA for citywide debris and sediment hauling service, in the amount of \$146,250.00 plus applicable taxes, for an initial contract term of one year with the option to renew for (4) four additional (1) one year renewals for a projected contract amount of \$585,000.00.

STRATEGIC POLICY PRIORITY:

- Strengthen and support a safe city with healthy residents.
- Foster a vibrant and diverse economy with good jobs for all Tacoma residents.

BACKGROUND:

This citywide contract provides for as-needed debris and sediment hauling services for multiple City Departments including Environmental Services Wastewater and Science & Engineering Division, and Public Works Street Operations. Debris hauling consists of Stormwater BMP sediments, Sanitary/ Storm vector and street sweeping debris, and debris from various locations throughout the City. It is estimated that 5,000-9,000 tons of material is generated per year (150-200 tons of material per week). Material varies in the weight to volume ratio because of leaves, especially during the fall season, but is mainly comprised of dirt, rock, sand, leaves, and small quantities of trash.

ISSUE: City of Tacoma does not have the capability to provide the required hauling services from various project locations with the City of Tacoma service areas to the contracted disposal delivery locations.

ALTERNATIVES: The alternative course of action would be to not award the contract and approach each debris hauling as separate projects and competitively bid each project separately. This would result in a significant cost and decreased level of service for departments and the community due the time involved in soliciting each project individually.

**COMPETITIVE SOLICITATION:**

Request for Bids Specification No. CT18-0363F was opened February 26, 2019. Five companies were invited to bid in addition to normal advertising of the project. Five submittals were received. Maroni Construction Inc. submitted a bid that resulted in the lowest evaluated submittal after consideration of SBE participation goals. The table below reflects the amount of the initial contract term.

<u>Respondent</u>	<u>Location</u> <i>(city and state)</i>	<u>Submittal</u> <u>Amount</u>	<u>Evaluated</u> <u>Submittal</u>
Maroni Construction, Inc.	Enumclaw, WA	\$146,250.00	\$146,250.00
Newell Brothers, Inc.	Tacoma, WA	\$148,050.00	\$148,050.00
Janke Trucking Inc.	Tacoma, WA	\$161,820.00	\$161,820.00
Rivers Edge	Black Diamond, WA	\$162,000.00	\$162,000.00
Nordvind Company	Enumclaw, WA	\$180,990.00	\$180,990.00

Pre-bid Estimate: \$200,000

The recommended award is 27 percent below the pre-bid estimate.

CONTRACT HISTORY: New Contract

SUSTAINABILITY: Debris hauling services will provide the removal of the debris, sediment and trash from city streets reducing the risk of contaminants entering the City's surface water collection systems.

SBE/LEAP COMPLIANCE: The recommended contractor is in compliance with the Small Business Enterprise (SBE) Regulation requirements. Maroni Construction, Inc. submitted the lowest evaluated bid per the SBE Regulation requirements. The Local Employment and Apprenticeship Training Program (LEAP) goal is not applicable.

FISCAL IMPACT:**EXPENDITURES:**

FUND NUMBER & FUND NAME *	COST OBJECT (CC/WBS/ORDER)	COST ELEMENT	TOTAL AMOUNT
Various City Department	Various		
TOTAL			

* General Fund: Include Department



REVENUES: N/A

FUNDING SOURCE	COST OBJECT (CC/WBS/ORDER)	COST ELEMENT	TOTAL AMOUNT
Various City Department	Various		
TOTAL			

FISCAL IMPACT TO CURRENT BIENNIAL BUDGET: Various City Department

ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? Various - funds for the contract are provided by the individual departments using the contract. Funding beyond the current biennium is subject to future availability of funds. The user department are billed directly for their purchases.

IF EXPENSE IS NOT BUDGETED, PLEASE EXPLAIN HOW THEY ARE TO BE COVERED. N/A



City of Tacoma

Contract and Award Letter
Purchase Resolution – Exhibit “A”

TO: Board of Contracts and Awards

FROM: Andrew Cherullo, Director, Finance Department
Patsy Best, Procurement and Payables Division Manager
Samol Hefley, Senior Buyer, Finance/Purchasing

COPY: Public Utility Board, Director of Utilities, Board Clerk, City Council, City Manager, City Clerk, SBE Coordinator, LEAP Coordinator, Judd Johnson, Security Supervisor, Tacoma Power Shared Services, Jeff Paradee, P.E., Public Works Facilities Management, James Nuun, Transfer & Recovery Center Supervisor, Solid Waste Management and Samol Hefley, Finance/Purchasing.

SUBJECT: Citywide Uniformed Security Officer Services
Request for Bids Specification No. CT18-0304F, Contract No. CW2230681 –
Utility Board August 14, 2019 and City Council August 20, 2019

DATE: July 23, 2019

RECOMMENDATION SUMMARY:

The Finance Department, Procurement and Payables Division recommends a contract be awarded to PPC Solutions, Inc. Spokane Valley, WA for citywide unarmed, uniformed security officer services, in the amount of \$5,854,192.00, plus applicable taxes, for an initial contract term of three years with the option to renew for (1) one additional (2) two year renewal for a projected contract amount of \$10,261,097.00. The cumulative total includes 5 percent market-based price escalation/de-escalation provision that affects overall contract value.

STRATEGIC POLICY PRIORITY:

- Strengthen and support a safe city with healthy residents.
- Foster a vibrant and diverse economy with good jobs for all Tacoma residents.

This contract provides a full-time presence on the TPU Administration Building complex, Tacoma Municipal Complex and Environmental Services Solid Waste locations enhancing customer services for staff and visitors.

BACKGROUND:

This Citywide contract provides an as needed contract for unarmed uniformed security services for use by various City departments. Additionally, this contract will continue to provide unarmed, uniformed security guard services for the TPU Administration Complex, Tacoma Power South Services Center, Cowlitz River Project, Cushman Hydroelectric Project, Nisqually River Project, and the Tacoma Water Green River Operation Center, along with the Tacoma Municipal Building and the Environmental Services Solid Waste location. Security services at TPU is required to protect critical utility infrastructure per federal security requirements.

ISSUE: Security services are provided at the TPU Administration Complex, Tacoma Municipal Complex and Solid Waste Management to ensure that staff and visitors have a safe, secure, and inviting atmosphere in which to conduct business with the City and Tacoma Public Utilities. Security will also provide general surveillance services at multiple facilities including the TPU Administration Complex.



ALTERNATIVES: The alternative to this recommendation course of action is to allow the current contract to expire, not implement a replacement contract, and have no guard services at the City and Tacoma Public Utilities properties. This course of action is not recommended because there will be no means to regulate and issue visitor and temporary badges to walk-in customers seeking City and Utility services. There will also be no means of providing general surveillance and patrol services of City owned properties. Federal security requirements will not be met and critical utility infrastructure will not be protected.

COMPETITIVE SOLICITATION:

Request for Bids Specification No. CT18-0304F was advertised on April 5, 2019 and opened May 7, 2017. Nine companies were invited to bid in addition to normal advertising of the project. Twelve submittals were received. A 7-member Selection Advisory Committee (SAC) evaluated the proposals and conducted in-person interviews with representatives of the selected finalist: PPC Solutions, Inc. and G4S. Based on review of the proposals and results of interviews, the SAC recommends that a contract be awarded to PPC Solutions, Inc.

<u>Respondent (RFP)</u>	<u>Location</u> <i>(city and state)</i>	<u>Rank</u>
PPC Solutions Inc.	Spokane Valley, WA	1
G4S Secure solutions (USA) Inc.	Tukwila, WA	2
Inter-Con security Systems, Inc.	Pasadena, CA	3
Oatridge Security Group, Inc.	Tacoma, WA	4
Pierce County Security, Inc.	Tacoma, WA	5
Securitas Security Services USA, Inc.	Bellevue, WA	6
Kingdom Security, Inc.	Bellevue, WA	7
Allied Universal Security Services	Seattle, WA	8
American Guard Services	Los Angeles, CA	9
Cascade Security Corporation	Bellevue, WA	10
Cypress Private Security, LP	San Francisco, CA	11
Chandler Solutions	Seattle, WA	12

CONTRACT HISTORY: New Contract

SUSTAINABILITY: PPC Solutions, Inc. utilizes fuel efficient vehicles, and keeps up to date with maintenance. GPS is utilized to monitor speed and vehicle usage. This maintains a safe efficient fleet.

SBE/LEAP COMPLIANCE: The recommended contractor is in compliance with the Small Business Enterprise (SBE) Regulation requirements. The Local Employment and Apprenticeship Training Program (LEAP) goal is not applicable.

**FISCAL IMPACT:****EXPENDITURES:**

FUND NUMBER & FUND NAME *	COST OBJECT (CC/WBS/ORDER)	COST ELEMENT	TOTAL AMOUNT
Various Department	Various		
TOTAL			

* General Fund: Include Department

REVENUES:

FUNDING SOURCE	COST OBJECT (CC/WBS/ORDER)	COST ELEMENT	TOTAL AMOUNT
Various Department	Various		
TOTAL			

FISCAL IMPACT TO CURRENT BIENNIAL BUDGET: Various department budget

ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? Various - funds for the contract are provided by the individual departments using the contract. Funding beyond the current biennium is subject to future availability of funds. The user department are billed directly for their purchases.

IF EXPENSE IS NOT BUDGETED, PLEASE EXPLAIN HOW THEY ARE TO BE COVERED. N/A

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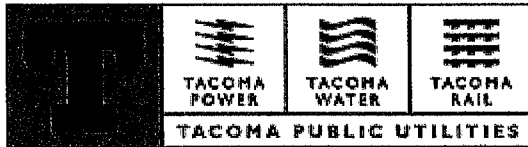


EXHIBIT "A"

RESOLUTION NO.: U-11094

ITEM NO.: 3

MEETING DATE: AUGUST 14, 2019

TO: Board of Contracts and Awards
FROM: Steve Hatcher, TPU Customer Service Manager, Mike Hill, Customer Service Asst Manager, Sue Daulton, Management Analyst III, TPU Customer Service
COPY: Public Utility Board Clerk, and Alex Clark, Finance/Purchasing
SUBJECT: CiC Replacement Assessment and Requirement Gathering
Request for Proposals Specification No. CS19-0024F - CW2229701
Requested PUB Date August 14, 2019
DATE: August 07, 2019

RECOMMENDATION SUMMARY:

TPU Customer Services recommends a contract be awarded to **AAC Utility Partners, LLC**, Columbia, South Carolina for Evaluating alternatives for the replacement of the SAP Customer Interaction Center (CIC) included in the Industry Specific Customer Care and Services (IS/U-CCS) system, developing an RFI and/or RFP and selecting one or more software vendors/system integrators to implement the selected solution(s). In the amount of \$349,000, plus applicable taxes, for an initial contract term of 1 year.

BACKGROUND:

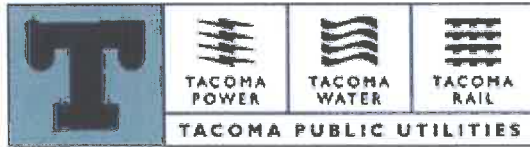
AAC was selected through an open and competitive RFP process (RFP CS19-0024F). Customer Services chose AAC based on their RFP response and interviews with other utilities AAC has worked with. Additionally, AAC is solution neutral and does not sell or implement software solutions. AAC has no financial interest in any of the potential CIC0 replacement solutions and has earned a strong reputation as an objective, knowledgeable advisor within the utilities industry.

ISSUE: There is a need for tools that support the changes and future needs of Customer Services and other business units looking for more traditional CRM functionality. Additionally, SAP support and maintenance for the aging CIC will end in 2024 and is another reason that TPU is interested in this replacement initiative.

ALTERNATIVES: The number of internal departments impacted by a potential CIC replacement, the complexity of our IT environment, and resourcing allocated to larger strategic initiatives prohibits this effort receiving the proper support to be handled internally. Customer Services could publish a new solicitation, however, it is unlikely the City would receive additional responses as any firm awarded this contract becomes ineligible to bid on the system replacement and implementation RFP. This limited the pool of applicants willing to respond to this exploratory RFP.

COMPETITIVE SOLICITATION:

Request for Proposal No. CS19-0024F was opened on February 19, 2019. Nineteen firms were specifically invited to submit proposals and the work was advertised in the normal outlets. There was only one submittal received. AAC Utilities Partners, LLC was the only responder.



Respondent	Location	Submittal Amount	Evaluated Amount
AAC Utilities Partners	Columbia, SC	\$349,000	\$349,000

CONTRACT HISTORY: New Contract

SBE/LEAP COMPLIANCE: Not applicable

FISCAL IMPACT:

EXPENDITURES:

FUND NUMBER & FUND NAME *	COST OBJECT (CC/WBS/ORDER)	COST ELEMENT	TOTAL AMOUNT
4700 Customer Services	578800	5310100	349,000
TOTAL			

REVENUES:

FUNDING SOURCE	COST OBJECT (CC/WBS/ORDER)	COST ELEMENT	TOTAL AMOUNT
4700 Customer Services	578800	5310100	349,000
TOTAL			

FISCAL IMPACT TO CURRENT BIENNIAL BUDGET: 349,000

ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED: YES

IF EXPENSE IS NOT BUDGETED, PLEASE EXPLAIN HOW THEY ARE TO BE COVERED. N/A

APPROVED:

Jackie Flowers, Director of Utilities

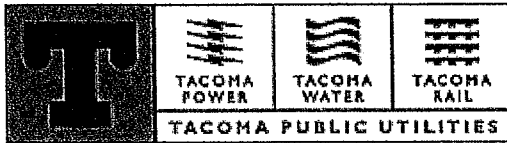


EXHIBIT "A"

RESOLUTION NO.: U-11094

ITEM NO.: 4

MEETING DATE: AUGUST 14, 2019

TO: Board of Contracts and Awards
FROM: Chris Robinson, Power Superintendent, Tacoma Power
Rachel Allen, Power Shared Services Manager, Tacoma Power
Judd Johnson, Power Supervisor II, Tacoma Power, Power Shared Services
COPY: Public Utility Board, Director of Utilities, Board Clerk, SBE Coordinator, LEAP
Coordinator, and Samol Hefley, Finance/Purchasing.
SUBJECT: Contract for Security Video Management System Replacement, Cameras &
Related Equipment Purchases
Interlocal Cooperative Purchasing Agreement #2996 between City of Seattle and
Last Mile Inc.
DATE: July 19th, 2019

RECOMMENDATION SUMMARY:

Tacoma Power / Power Shared Services recommends a contract be awarded to Last Mile Inc., Longview Washington, for the purchase of Tacoma Public Utilities replacement Video Management System and for ongoing purchases of cameras and related security system equipment, in the total amount of \$569,192 plus any applicable taxes, for an initial contract term ending 05/20/2020, with options to renew as Interlocal Agreement 2996 is renewed annually between the City of Seattle and Last Mile, Inc.

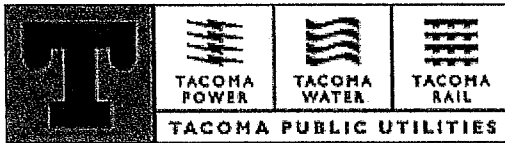
BACKGROUND:

Tacoma Public Utilities' Security Monitoring Center (SMC) is staffed 24/7 by officers responsible for monitoring the Video Management System (VMS), Card Access System, Fence Alarm System, Fire Alarm System, and numerous smaller systems. Operation of the VMS is the most time intensive of the SMC officers' duties. The initial implementation of the current VMS, Pelco's Digital Sentry, was in 2008, and the system has grown over time to almost 400 cameras with significant additional growth planned.

ISSUE: The current VMS needs to be replaced soon due to numerous reasons:

- The current system, Digital Sentry, has been declared "end-of-life", but the manufacturer Pelco has not provided an adequate product replacement path.
- The current system has grown to the point where there are too many video feeds for monitoring staff to effectively monitor in real time.
- The replacement product, Milestone XProtect, provides a capability to 'unify software operations' by providing integration opportunities with other softwares, making security staff more efficient and capable of operating a larger system without adding staff.
- Milestone XProtect is feature rich in ways that will make security staff more efficient so they have time to be more proactive than reactive.
- Milestone XProtect integrates with analytics platforms that use machine learning and artificial intelligence to identify and present activity that is anomalous, helping operators to focus attention on critical activity, while ignoring activity that is insignificant.

ALTERNATIVES: The first alternative is business as usual - to continue working with Pelco Digital Sentry. However, there is significant risk associated with the continued use of an end-of-life technology solution. Vendor supported products mitigate the risk of new security vulnerability



exploits and are able to support new business and functional requirements as organizations change, while unsupported products cannot. Also there is an ever increasing amount of maintenance needed to keep this system operational. Also the current level of monitoring is at its limit. Adding additional cameras, under the business as usual plan, is unsustainable. So there are really no benefits to this alternative.

The second and third alternatives considered were solutions from Avigilon and Genetec. Among the evaluation criteria were ease of integration with existing security technology, ease of integration with the plans for updating security technology, the reputations of the firms based upon comments from on-line review forums and peer utility reviews, and on-site demonstrations. Genetec was the second preference among the manufacturers considered. Genetec presents itself as being capable of integrating with the widest variety/ largest number of other manufacturers' security. While this may be the case, the flexibility has its downside in that the platform has become, in the opinion of many Genetec users, overly complex and difficult to operate. The other chief complaints had to do with the need to provide ongoing "tuning" of the system because of very frequent software revisions and updates. The cost-benefit analysis of the Genetec solution is similar to the Milestone VMS Solution, but carries the burden of additional ongoing maintenance from Network & Communications Voice and Security Systems staff.

COMPETITIVE SOLICITATION: Last Mile, Inc., formerly Cascade Networks, Inc., was awarded contract 2996 with the City of Seattle through competitive solicitation RFP-DIT-2996 "Port Security Video Surveillance System with Wireless Mesh Network". The current contract term is valid through May 20, 2020 with a provision for ongoing one year extensions thereafter for licensing, maintenance, and support. Through an interlocal cooperative purchasing agreement, the City will purchase the needed equipment at the prices, term, and conditions of the contract. The ability to participate in cooperative purchasing through state contracts provides the City increase savings by pooling resources to leverage the market through volume discounts.

CONTRACT HISTORY: New contract

SBE/LEAP COMPLIANCE: Not applicable

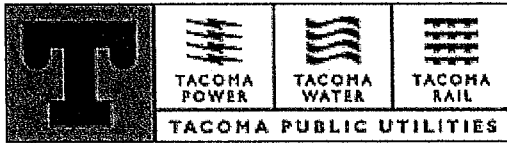
FISCAL IMPACT:

EXPENDITURES:

FUND NUMBER & FUND NAME *	COST OBJECT (CC/WBS/ORDER)	COST ELEMENT	TOTAL AMOUNT
4700 – Power Fund 2019/2020	PWR-00972-04-01		\$569,192
TOTAL			\$569,192

REVENUES:

FUNDING SOURCE	COST OBJECT (CC/WBS/ORDER)	COST ELEMENT	TOTAL AMOUNT
N/A			
TOTAL			



FISCAL IMPACT TO CURRENT BIENNIAL BUDGET: \$ 569,192

ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? Enter Yes

IF EXPENSE IS NOT BUDGETED, PLEASE EXPLAIN HOW THEY ARE TO BE COVERED. N/A

Choose an item.

APPROVED:

Jackie Flowers, Director of Utilities

Glover, John

From: Pelco <pelconews@pelco.com>
Sent: Wednesday, July 31, 2019 12:16 PM
To: Glover, John
Subject: Endura and Digital Sentry End-of-Life Notice Announcement



Hello John,

Pelco's Endura and Digital Sentry video management systems (VMS) have been serving a wide range of industries and environments from airports to universities for more than 15 years. Since their day of release, we've worked hard to make these VMS reliable and versatile surveillance solutions.

On March 31, 2020 Pelco and authorized partners will no longer take orders for software, hardware and related accessories for Endura and Digital Sentry. To address any questions, you may have about the end-of-life of Endura and Digital Sentry, we have the following available:

- Table outlining end-of-life events, definitions and dates for the affected products.
- Table outlining product part numbers affected
- Migration Path
- FAQs

We also have our Professional Services and sales teams available to walk-you through migrating from Endura and Digital Sentry to Pelco's award-winning VideoXpert Professional or Enterprise. To address any questions that you may about the announcement and migrating, have we have created a webpage with all relevant information and resources. Additionally, Our Professional Services and sales teams are available to walk you through migrating from Endura and Digital Sentry to Pelco's award-winning VideoXpert Professional or VideoXpert Enterprise.

[Learn more about Migrating to VideoXpert!](#)

Pelco, 625 W. Alluvial, Fresno, California 93711

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RESOLUTION NO. U-11095

A RESOLUTION related to Tacoma Water; authorizing participation in the City of Tacoma, Department of Public Works' Streets Initiative Package #13 Project.

WHEREAS the City of Tacoma, Department of Public Utilities, Water Distribution Engineering Division ("Tacoma Water"), is requesting authorization to participate in the City of Tacoma, Department of Public Works Engineering Division's ("Department of Public Works") Streets Initiative #13 Project ("Project"), and

WHEREAS Tacoma Water and the Department of Public Works are developing plans and specifications for the replacement of approximately 1,700 feet of 6-inch cast iron water main in conjunction with street improvements being done through the Project that will begin in September 2019 and are estimated to be completed by February 2020, and

WHEREAS a coordinated effort to replace the water infrastructure in conjunction with street improvements along East Fairbanks Street, between First Creek and East Roosevelt Avenue, under a single City of Tacoma contract will result in efficiency and cost savings to all parties as well as minimize construction disturbance to adjacent businesses and the general public, and

WHEREAS the citizens of Tacoma approved the Street Initiatives (Proposition A and Proposition No. 3) in November 2015, approving funding to repair and improve arterial and residential streets including curb ramps and sidewalks, and



1 WHEREAS the Project will rehabilitate approximately 13 blocks of
2 residential streets along East Fairbanks Street between East "K" Street and
3 East Roosevelt Avenue including the construction of ADA curb ramps,
4 sidewalks, storm, sanitary, and water system improvements along the corridor,
5 and
6

7 WHEREAS, construction is anticipated to commence in September 2019
8 and Tacoma Water's estimated portion of the Project cost is \$358,473.40,
9 including a 15% contingency (plus applicable taxes), and the total Project cost
10 is estimated to be \$2,718,519.79, excluding applicable taxes, and
11

12 WHEREAS Tacoma Water requests authority to participate in the Public
13 Works' Streets Initiative Package #13 Project for the above purpose and
14 reasons; Now, Therefore,
15

16 BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:

17 That Tacoma Water is authorized to participate with the Department of
18 Public Works in the Streets Initiative #13 Project, under a single City of Tacoma
19 contract, with the estimated project cost for Tacoma Water of \$358,473.40,
20 including a 15% contingency (plus applicable taxes), and the proper officers of
21 the City are authorized to execute an agreement in a form as approved by the
22 City Attorney.

23 Approved as to form and legality:

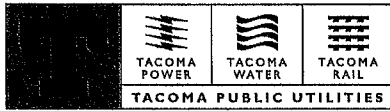
24 
25 Chief Deputy City Attorney

26 Clerk

Chair

Secretary

Adopted



Board Action Memorandum

TO: Jackie Flowers, Director of Utilities
COPY: Charleen Jacobs, Director and Board Offices
FROM: Troy Saghafi, Professional Engineer, Tacoma Water
MEETING DATE: August 14, 2019
DATE: July 24, 2019

SUMMARY:

Authorize Tacoma Water to participate in the City of Tacoma, Department of Public Works Streets Initiative #13 Project. The total project cost is \$2,718,519.79, plus applicable taxes; Tacoma Water's project cost is \$358,473.40 plus applicable taxes.

As part of the Public Works project Tacoma Water will replace approximately 1,700 linear feet of 6-inch cast iron water main, portions of which were constructed in 1958. Construction is anticipated to commence in September 2019 and be completed by February 2020. Tacoma Water believes it is in the best interest of the utility and its customers to include the water main replacement work in the Public Works project. Project partnership will improve project delivery, reduce project costs, mitigate future risks, and consolidate construction disturbance to residents and businesses.

BACKGROUND:

The citizens of Tacoma approved the Street Initiatives (Proposition A and Proposition No. 3) in November 2015, approving funding to repair and improve arterial and residential streets including curb ramps and sidewalks. This project will rehabilitate approximately 13 blocks of residential streets along E. Fairbanks St between E. K St. and E. Roosevelt Ave. The project will also construct ADA curb ramps, sidewalks, storm, sanitary, and water system improvements along the corridor. Water system improvements will be along E. Fairbanks St. between First Creek and E. Roosevelt Ave.

ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? Yes

IF THE ACTION REQUESTED IS APPROVAL OF A CONTRACT, INCLUDE LANGUAGE IN RESOLUTION AUTHORIZING \$200,000 INCREASE IN ADMINISTRATIVE AUTHORITY TO DIRECTOR? Yes (Authorization to Participate)

ATTACHMENTS: Project Map
Agreement for Joint Project Tacoma Water – Public Works
Contract and Award Letter

CONTACT: Troy Saghafi, P.E., Professional Engineer, Tacoma Water
Ali Poldo, P.E., Principal Engineer, Tacoma Water



DATE: July 22, 2019

TO: Ryan Flynn, P.E., Interim Distribution Engineering Manager, Tacoma Water
Chris Larson, P.E., Division Manager, Public Works Engineering Division

FROM: Ali Polda, P.E., Tacoma Water, Distribution Engineering
Nick Correll, P.E., Public Works Engineering Division

SUBJECT: Agreement for MRP2019-22/PW19-0140F
Streets Initiative Package No. 13

The Department of Public Works, Engineering Division, and Tacoma Water Distribution Engineering have been working to develop plans and specifications for the replacement of water main in conjunction with street improvements for the Street Initiative #13 project. The project is anticipated to start construction in the summer of 2019.

Our respective organizations believe a coordinated effort to replace the water infrastructure in conjunction with street improvements along East Fairbanks Street, between First Creek and East Roosevelt Avenue, under a single City of Tacoma contract will result in efficiency and cost savings to all parties. Additionally, a joint project will minimize construction disturbance to adjacent businesses and the general public. The following summarizes the arrangements, assumptions, and action items necessary to move forward with this project:

- The project will be combined into a single Public Works construction contract. Public Works has the responsibility to lead and coordinate compilation of contract plans & specifications and advertise & award the construction contract.
- The Department of Public Works will administer the construction contract. Tacoma Water will compensate the Department of Public Works in the amount of 3% Tacoma Water project cost, less force accounts and contingency, for the additional incremental contract administration costs associated with Tacoma Water work. This amount will be transferred to the Department of Public Works via journal entry at the completion of the project.
- Tacoma Water will provide the WBSE for charging water main construction costs to the Water Division fund. The Water Division WBSE for this project is as follows:

WTR-00604-01-04-03, 2019-22 Construction Payments to PW

- Tacoma Water will be responsible for the cost of water distribution main work, valves, hydrants, trench excavation, trench backfill and compaction to subgrade elevation, mobilization, traffic control, and other appurtenant items directly related to the installation of new water main. These costs have been segregated within "Schedule C" of the contract bid proposal.
- Tacoma Water will request authorization from the Public Utility Board to participate in the Public Works' contract as soon as possible following determination of the lowest responsible bidder.


- Tacoma Water will be included and fully involved in the initiation, discussion, and review of any addendums, revisions, change orders, or change of scope pertaining to the water main work. Any addendums, revisions, change orders, or change of scope pertaining to the water main scope of work or shared bid items shall be subject to the approval of Tacoma Water.
- Tacoma Water will perform all water main construction staking.
- The Department of Public Works will act as the overall contract construction inspection lead. Tacoma Water will be responsible for the daily inspection of the water main construction. Tacoma Water and Public Works inspections will be a cooperative and coordinated effort.

We look forward to continuing our spirit of coordination and cooperation to accomplish this and future projects of mutual benefit to the citizens of Tacoma, the Department of Public Works, and Tacoma Water. By signature, please indicate your approval to proceed with this joint project.



Ryan Flynn, P.E.
Interim Distribution Engineering Manager, Tacoma Water

7.22.2019
Date



Chris Larson, P.E.
Division Manager, Public Works Engineering Division

7/18/19
Date

Attachment

cc: Greg Armstrong, Tacoma Water

File MRP 2019-22



TO: Board of Contracts and Awards
FROM: Kurtis D. Kingsolver, P.E., Public Works Director/City Engineer
Michael P. Slevin III, P.E., Environmental Services Director
Nick Correll, Engineer, Public Works Engineering
COPY: City Council, City Manager, City Clerk, SBE Coordinator, LEAP Coordinator, and
Doreen Klaaskate, Senior Buyer, Finance/Purchasing
SUBJECT: Streets Initiative Package #13
Request for Bids Specification No. PW19-0140F – August 13, 2019
DATE: July 25, 2019

RECOMMENDATION SUMMARY:

The Public Works Department recommends a contract be awarded to Tucci & Sons Inc, Tacoma, WA, in the amount of \$2,425,930.25, plus a 15 percent contingency, for a cumulative total of \$2,789,819.79, plus applicable taxes, budgeted from various departmental funds for the restoration of approximately 13 blocks of residential streets, construction of ADA curb ramps, and storm, sanitary, and water system improvements.

STRATEGIC POLICY PRIORITY:

- Strengthen and support a safe city with healthy residents.
- Ensure all Tacoma residents are valued and have access to resources to meet their needs.
- Assure outstanding stewardship of the natural and built environment.
- Encourage and promote an efficient and effective government, which is fiscally sustainable and guided by engaged residents.

The project will improve the roadway infrastructure by providing a safe driving surface for vehicles and bicycles, and will replace curb ramps to meet ADA standards and encourage active transportation.

BACKGROUND:

The citizens of Tacoma approved the Street Initiatives (Proposition A and Proposition No. 3) in November 2015, approving funding to repair and improve City streets. The 2015 Voted Street Initiative Fund 1085 was created and approved by the City Council under Ordinance No. 28344 on February 9, 2016. This fund provides for arterial street improvements, non-motorized improvements, and residential street repairs.

ISSUE: The project will rehabilitate approximately 13 blocks of residential streets along East Fairbanks Street between East K Street and East Roosevelt Avenue. The project will also construct ADA curb ramps and storm, sanitary, and water system improvements along the corridor.

ALTERNATIVES: The alternative to performing full street restoration is to complete only minor repairs, which would not meet the intent of the voter-approved initiative.

**COMPETITIVE SOLICITATION:**

Request for Bids Specification No. PW19-0140F was opened July 2, 2019. No companies were invited to bid in addition to normal advertising of the project. Seven submittals were received.

Tucci & Sons Inc submitted a bid that resulted in the lowest evaluated submittal after consideration of SBE participation goals. The table below reflects the amount of the base award.

<u>Respondent</u>	<u>Location</u>	<u>Submittal Amount</u>	<u>Evaluated Submittal</u>
Tucci & Sons Inc	Tacoma, WA	\$2,425,930.25	\$2,425,930.25
Pivetta Brothers Construction Inc	Sumner, WA	\$2,674,643.42	\$2,674,643.42
Active Construction Inc	Puyallup, WA	\$2,683,683.00	\$2,683,683.00
Miles Resources LLC	Puyallup, WA	\$2,811,757.70	\$2,811,757.70
Northwest Cascade Inc	Puyallup, WA	\$2,895,149.00	\$2,895,149.00
Olson Brothers Excavating Inc	Puyallup, WA	\$2,896,273.40	\$2,896,273.40
KC Equipment LLC	Seattle, WA	\$3,270,399.00	\$3,270,399.00

Pre-bid Estimate: \$3,126,901.48

The recommended award is 22 percent below the pre-bid estimate.

Based on the estimated working days, staff believes this project will result in 9,792 labor hours.

CONTRACT HISTORY: New contract.

SUSTAINABILITY: The project will improve the City's infrastructure and safety of residents by providing a new driving surface for motorized and non-motorized travel. ADA curb ramps will be installed as part of the contract addressing social equity factors including ergonomic and human health impacts.

SBE/LEAP COMPLIANCE: Tucci & Sons Inc submitted the lowest evaluated bid per the SBE Regulation requirements, and the next lowest bidder was not within 5 percent of the low bidder. Therefore, the SBE office recommends award to Tucci & Sons Inc. The project has a Local Employment and Apprenticeship Training Program (LEAP) utilization requirement of 15 percent.

**FISCAL IMPACT:****EXPENDITURES:**

FUND NUMBER & FUND NAME *	COST OBJECT (CC/WBS/ORDER)	COST ELEMENT	TOTAL AMOUNT
1085 PW Streets Initiative Fund	PWK-00434-13-03	5330100	\$1,954,103.29
4300 ES Wastewater Fund	ENV-04023-07-04	5330100	\$228,492.35
4301 ES Surface Water Fund	ENV-03031-05-04	5330100	\$248,750.75
4600 13-WC 2013 Bond Fund	WTR-00604-01-04-03	5330100	\$358,473.40
TOTAL			\$2,789,819.79

* General Fund: Include Department

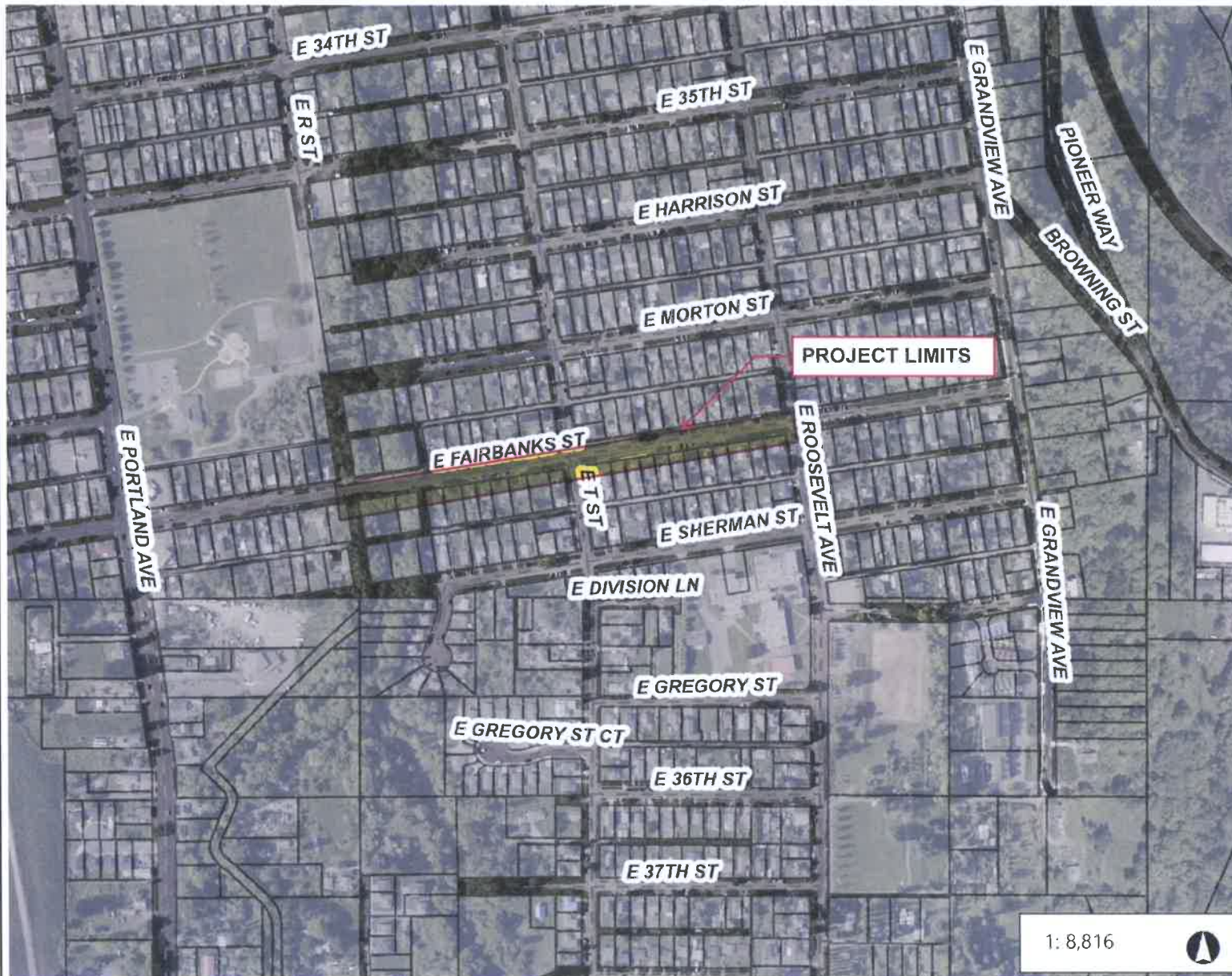
REVENUES:

FUNDING SOURCE	COST OBJECT (CC/WBS/ORDER)	COST ELEMENT	TOTAL AMOUNT
Streets Initiative Revenues	663020	Various	\$1,954,103.29
4300 ES Wastewater Fund	523900	Rate Revenues	\$228,492.35
4301 ES Surface Water Fund	521900	Rate Revenues	\$248,750.75
4600 13-WC 2013 Bond Fund	586313	6311163	\$358,473.40
TOTAL			\$2,789,819.79

FISCAL IMPACT TO CURRENT BIENNIAL BUDGET: \$2,789,819.79**ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? Yes****IF EXPENSE IS NOT BUDGETED, PLEASE EXPLAIN HOW THEY ARE TO BE COVERED. N/A**



Legend



1: 8,816



1,469.4 0 734.70 1,469.4 Feet

WGS_1984_Web_Mercator_Auxiliary_Sphere
Tacoma Water Maps

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

THIS MAP IS NOT TO BE USED FOR NAVIGATION

Notes



RESOLUTION NO. U-11096

1 A RESOLUTION authorizing Tacoma Rail to enter into a Grant Agreement with
2 the Washington State Department of Transportation, to upgrade an
3 existing railroad track along Marine View Drive, in Tacoma.

4 WHEREAS the City of Tacoma, Department of Public Utilities, Beltline
5 Division (d.b.a. "Tacoma Rail"), requests approval to enter into a Grant
6 Agreement ("Agreement") with the Washington State Department of
7 Transportation ("WSDOT"), to partially fund the replacement of approximately
8 5,100 feet of old and worn 112-pound rail with new 115-pound rail, select
9 crossties and other upgrades associated with railroad track components, in
10 addition to the rehabilitation of 19 private driveway crossings, and
11

12 WHEREAS Tacoma Rail's track infrastructure in the Tideland's area is
13 heavily used and in need of periodic upgrades in order to safely enable the
14 switching of railcars destined for, or originating from, the Port of Tacoma and
15 other industrial customers, and
16

17 WHEREAS Tacoma Rail requests the approval to accept grant funds
18 from WSDOT, in the amount of \$1,100,000.00, for railroad track upgrades along
19 Marine View Drive, and
20

21 WHEREAS Grant Agreement No. RRB-1227 – Marine View Drive Track
22 Upgrades, requires Tacoma Rail to contribute \$475,691.00 in matching funds,
23 with a project completion date of June 30, 2021, and
24

25 WHEREAS it is in the best public interest to approve said Agreement;
26 Now, therefore,



BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:

That the Grant Agreement from the Washington State Department of Transportation (#RRB-1227), that provides for the acceptance of funds in the amount of \$1,100,000.00, and Tacoma Rail's contribution in matching funds in the amount of \$475,691.00, to upgrade an existing railroad track along Marine View Drive, in Tacoma, is hereby approved and the City Council is requested to approve and authorize said Agreement, and the proper officers are authorized to execute said Agreement substantially in a form as on file with the Clerk and as approved by the City Attorney.

Approved as to form and legality:



Chief Deputy City Attorney

Chair

Secretary

Clerk

Adopted _____



Board Action Memorandum

TO: Jackie Flowers, Director of Utilities
COPY: Charleen Jacobs, Director and Board Offices
FROM: Alan Matheson, Assistant Superintendent, Tacoma Rail *A Matheson*
MEETING DATE: August 14, 2019
DATE: August 1, 2019

SUMMARY: Tacoma Rail requests authorization to enter into a Grant Agreement with the Washington State Department of Transportation to upgrade an existing railroad track along Marine View Drive, in Tacoma.

BACKGROUND: Tacoma Rail was awarded a Grant through a competitive call for projects initiated by the Washington State Department of Transportation, with the funds having been appropriated by the State Legislature. The Grant, Agreement numbered RRB-1227, is in the amount of \$1,100,000.00 and requires Tacoma Rail to contribute \$475,691.00 in matching funds. The grant will partially fund the replacement of approximately 5,100 feet of old and worn 112-pound rail with new 115-pound rail, select crossties and other upgrades to associated railroad track components, in addition to the rehabilitation of nineteen (19) private driveway crossings.

ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? Yes.

IF THE EXPENSE IS NOT BUDGETED, PLEASE EXPLAIN HOW THEY ARE TO BE COVERED.
N/A.

IF THE ACTION REQUESTED IS APPROVAL OF A CONTRACT, INCLUDE LANGUAGE IN RESOLUTION AUTHORIZING \$200,000 INCREASE IN ADMINISTRATIVE AUTHORITY TO DIRECTOR? No.

ATTACHMENTS: Washington State Department of Transportation Grant Agreement RRB-1227 Marine View Drive Track Upgrades.

CONTACT: Alan Matheson, Tacoma Rail, Assistant Superintendent, 253-502-8934

PRESENTER: Kyle Kellem, Roadmaster, 253-377-3554



TO: Elizabeth Pauli, City Manager
FROM: Jackie Flowers, Director of Utilities
COPY: City Council and City Clerk
SUBJECT: Resolution – WSDOT Grant Agreement RRB-1227 Marine View Drive Track Upgrades
August 27, 2019
DATE: August 1, 2019

SUMMARY:

Tacoma Rail requests City Council approval to enter into a Grant Agreement with the Washington State Department of Transportation to upgrade approximately 5,100 feet of existing railroad track.

STRATEGIC POLICY PRIORITY:

- Strengthen and support a safe city with healthy residents.

BACKGROUND:

As required by City Charter Section 4.11, RCW Chapter 39, and having been approved by the Tacoma Public Utility Board, Tacoma Rail requests Council approval to accept grant funds from the Washington State Department of Transportation in the amount of \$1,100,000.00 for railroad track upgrades along Marine View Drive.

The Grant Agreement numbered RRB-1227 - Marine View Drive Track Upgrades, requires Tacoma Rail to contribute \$475,691.00 in matching funds, and to complete the project by June 30, 2021.

ISSUE:

Tacoma Rail's track infrastructure in the Tideland's area is heavily used and in need of periodic upgrades in order to safely enable the switching of railcars destined for, or originating from, the Port of Tacoma and other industrial customers.

ALTERNATIVES:

There are no practical alternatives.

RECOMMENDATION:

With the Grant Agreement having been approved by the Tacoma Public Utility Board at their August 14, 2019 meeting, Tacoma Rail recommends City Council authorize execution of the Grant Agreement with the Washington State Department of Transportation. This project will enhance safety, and help ensure operational continuity.

**FISCAL IMPACT:**

There is no fiscal impact to the General Fund.

EXPENDITURES:

FUND NUMBER & FUND NAME *	COST OBJECT (CC/WBS/ORDER)	COST ELEMENT	TOTAL AMOUNT
4500 – Tacoma Rail (TPU)			\$1,575,691.00
TOTAL			\$1,575,691.00

* General Fund: Include Department

REVENUES:

FUNDING SOURCE	COST OBJECT (CC/WBS/ORDER)	COST ELEMENT	TOTAL AMOUNT
WSDOT Grant RRB 1227			\$1,100,000.00
4500 – Tacoma Rail (TPU)	592302		\$475,691.00
TOTAL			\$1,575,691.00

POTENTIAL POSITION IMPACT:

POSITION TITLE	PERMANENT/ PROJECT TEMPORARY POSITION	FTE IMPACT	POSITION END DATE
N/A			
TOTAL			

This section should only be completed if a subsequent request will be made to increase or decrease the current position count.

FISCAL IMPACT TO CURRENT BIENNIAL BUDGET: \$1,575,691.00

ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? Yes.

IF EXPENSE IS NOT BUDGETED, PLEASE EXPLAIN HOW THEY ARE TO BE COVERED.

N/A.



**Washington State
Department of Transportation**

GRANT AGREEMENT Not to exceed One Million One Hundred Thousand Dollars (\$1,100,000)	ORGANIZATION City of Tacoma dba Tacoma Public Utilities – Tacoma Rail
AGREEMENT NUMBER RRB 1227	DESCRIPTION This project improves approximately 5,100 feet of existing track and replaces worn 112# rail with new 115# rail and repairs 19 private crossings.

This AGREEMENT is between the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION hereinafter referred to as the “STATE”, and City of Tacoma, Department of Public Utilities – Beltline Division, dba Tacoma Rail, hereinafter referred to as the “GRANTEE,” collectively referred to as the “PARTIES” and individually the “PARTY.”

WHEREAS, the Legislature recognizes that rail abandonment can increase the burden on STATE highways and county roads by increasing highway maintenance and repair costs; and

WHEREAS, the Legislature recognizes that rail abandonment can increase highway-related air pollution and dependence on imported petroleum; and

WHEREAS, the Legislature, pursuant to chapter 47.06A RCW, determined that freight rail systems are important elements of the STATE’S multimodal transportation system and that Washington’s economy benefits from the freight rail system by helping to ensure movement of the STATE’S agricultural, chemical, and natural resource products to local, national, and international markets; and

WHEREAS, the Legislature recognizes that the STATE, counties, local communities, railroads, labor and shippers all benefit from continuation of essential rail service for economic development purposes; and that abandonment of rail lines and rail freight service and the resultant motor vehicle freight traffic increases the burden on state highways and roads; and

WHEREAS, the Legislature finds that in many cases, the cost of upgrading the roads exceeds the cost of maintaining rail freight service. Thus, the economy of the State of Washington will be best served by a policy of maintaining and encouraging a healthy rail freight system by creating a mechanism which keeps rail freight lines operating if the benefits of the service outweigh the cost; and

WHEREAS, chapter 47.76 RCW permits the STATE to provide financial assistance to cities, counties, ports, and railroads for the purposes of acquiring, rebuilding, rehabilitating, or improving rail lines necessary to maintain use of the essential rail service; and

WHEREAS, the GRANTEE shall follow all the federal, state and local laws, regulations and ordinances which are applicable; and

WHEREAS, the Scope of Work defined in this AGREEMENT is hereinafter referred to as “PROJECT”; and

WHEREAS, the GRANTEE is the local entity for administering the PROJECT funds; and

WHEREAS, the GRANTEE has requested, and the STATE has authorized and appropriated STATE funds for the expenditure of up to One Million One Hundred Thousand Dollars (\$1,100,000) in recognition of the PROJECT’s contribution to the public good; and

NOW THEREFORE, pursuant to the above recitals that are incorporated herein as if fully set forth below and in consideration of the terms, conditions, covenants and performances contained in this AGREEMENT, or attached hereto and by this reference made a part of this AGREEMENT, IT IS MUTUALLY AGREED AS FOLLOWS:

SECTION 1 SCOPE OF WORK

The general Scope of Work is defined in the Description of Work, above which the STATE has determined to be a PROJECT that will improve the STATE's multimodal transportation system, and benefit the STATE and local economy. Complete details are included in EXHIBIT A SCOPE OF WORK, which is attached hereto and by this reference made a part of this AGREEMENT.

SECTION 2 PAYMENTS TO THE GRANTEE

The STATE agrees to grant to the GRANTEE monies to accomplish the PROJECT detailed in EXHIBIT A.

Prior to initiating any work for performance hereunder, the GRANTEE shall provide the STATE with the proposed schedule for each item of work to be performed. The schedule shall be arranged in such a manner as to form a basis for comparison with progress billings for work performed. In the event of a change in the method or time for performance of any work, the GRANTEE shall update the schedule, subject to the STATE's approval, to reflect the changed circumstances.

Subject to the stipulations set forth in Section 1 SCOPE OF WORK, the STATE agrees to reimburse the GRANTEE up to a maximum amount of One Million One Hundred Thousand Dollars (\$1,100,000) for the actual direct and related indirect costs expensed by the GRANTEE in the course of completing the PROJECT required under this AGREEMENT.

It is understood that the actual PROJECT costs under this AGREEMENT are based on preliminary estimates and that if unforeseen circumstances cause the PROJECT costs to exceed the PROJECT estimate, the GRANTEE shall complete the PROJECT and assume the entire cost overrun without any increase of the STATE's maximum GRANT commitment made herein.

Any costs expensed by the GRANTEE prior to the execution of this AGREEMENT will be borne by the GRANTEE and will not be eligible for reimbursement from the STATE.

The GRANTEE shall comply with all provisions of the most recent version of 48 CFR § 31 or as subsequently amended, regarding accounting conventions.

The GRANTEE shall provide the STATE with documentation confirming local matching share amounts have been secured and used for the PROJECT.

The GRANTEE shall submit monthly invoices detailing work completed and a PROJECT status report. The STATE shall make periodic payments to the GRANTEE for costs expensed under this AGREEMENT. Supporting documentation for all costs being invoiced shall be submitted with the invoice each month. Failure to provide supporting documentation will render the cost ineligible for reimbursement. Payment by the STATE shall not relieve the GRANTEE of any obligation to make good any defective work or material upon PROJECT completion. At the time the final PROJECT invoice is submitted, the GRANTEE shall provide the STATE with a written statement confirming City of Tacoma dba Tacoma Public Utilities – Tacoma Rail is in compliance with the terms of the AGREEMENT. The STATE will provide an example of this written statement upon request.

The GRANTEE shall receive reimbursement for the actual cost of items identified in EXHIBIT A, less net salvage value of any material being replaced in carrying out the PROJECT construction. Labor, materials, and/or other PROJECT costs supplied by the GRANTEE will only be reimbursed at actual cost without markup to the STATE or profit.

Any materials salvaged under this PROJECT will be stockpiled, inventoried, and sold with the proceeds credited to the PROJECT. Documentation shall include the amount of materials salvaged, the amount actually sold, and amount received which will be credited back to the PROJECT on the final submitted invoice.

Reimbursement for GRANTEE rented or leased equipment, if any, will be based on actual cost as supported by original receipts. Reimbursement for GRANTEE owned equipment shall be based on rates per 23 CFR 140.910(a) and approved FRA reference sources.

Reimbursement for overhead costs will not be allowed unless specified in this AGREEMENT.

Reimbursement for travel, subsistence, and lodging expenses will not be eligible under this AGREEMENT unless specifically preapproved in writing by the STATE. If preapproved, the GRANTEE shall comply with the rules and regulations regarding travel costs in accordance with the Washington State Department of Transportation Accounting Manual M 13-82 Chapter 10 "Travel Rules and Procedures" and revisions thereto, and by this reference incorporated herein as if it were attached hereto. Online access to Accounting Manual (M 13-82) Chapter 10 "Travel Rules and Procedures" and subsequent revisions are available at the Washington State Department of Transportation's Internet Site. The online access address for the current Travel Reimbursement Rates is contained in EXHIBIT B, WSDOT ACCOUNTING MANUAL CHAPTER 10, TRAVEL RULES AND PROCEDURES, attached hereto and by this reference made a part of this AGREEMENT. If online access is not available, contact the Washington State Department of Transportation headquarters office in Olympia to obtain copies of the "Travel Rules and Procedures" and any updates. Billing for non-salary cost, directly identifiable with the PROJECT, if any, shall be an itemized listing of the charges supported by copies of the original bills, invoices, expense accounts and miscellaneous supporting data submitted by the GRANTEE with each invoice. All above charges must be essential to the work conducted under this AGREEMENT. Crew travel time between normal workstation and jobsites will not be considered travel under this restriction.

If the STATE, at its sole discretion, determines that the PROJECT is not progressing in a satisfactory manner, the STATE may refuse monies for reimbursement to the GRANTEE for parts or all of the work performed to date.

If the PROJECT is not completed by June 30, 2021, the GRANTEE and STATE agree that the entire expense for the completion of the PROJECT will be borne solely by the GRANTEE. The GRANTEE shall then also be automatically in default and will be obligated to reimburse the STATE for the full amount of GRANT funds already paid to the GRANTEE. Any required repayment shall be due within thirty (30) calendar days after receipt of an invoice from the STATE.

SECTION 3 PROGRESS PAYMENT

The GRANTEE may forward monthly progress billings to the STATE for reimbursement by the STATE for PROJECT related work performed pursuant to EXHIBIT A. The STATE agrees to make payments for eligible PROJECT related work from the previous month. The GRANTEE may submit progress billings at any time, but not more frequently than once per month. The STATE agrees to reimburse the GRANTEE for properly billed and supported PROJECT costs within thirty (30) calendar days of receipt of a progress billing.

Per chapter 43.88 RCW, any invoices for work performed between July 1 and June 30 of any given year must be submitted to the STATE no later than July 6th (or the first business day after the July 4th holiday) of the same calendar year. If the GRANTEE is unable to provide an invoice for such work by this date, an estimate of all remaining payable costs owed by the State for work performed by the GRANTEE prior to July 1 must be submitted to the State no later than July 19th of the same year in order for the State to accrue the amount necessary for payment. The GRANTEE will thereafter submit any remaining invoices to the State for such work as soon as possible. Failure to comply with these

requirements may result in delayed payment. The State shall not be required to pay to the GRANTEE late payment fees, interest, or incidental costs expensed by the GRANTEE or any other costs related to a delayed payment if the GRANTEE fails to comply with the invoice requirements of this Section.

The payment by the STATE for any work completed shall not relieve the GRANTEE of any obligation to make good any defective work or material.

It is agreed that any STATE payment, pursuant to any GRANTEE payment request, will not constitute agreement as to the appropriateness of any item, and that required adjustments, if any, will be made at the time of STATE's final payment. In the event that the STATE and/or their representatives conducts an audit, and that audit indicates an overpayment of moneys granted to the GRANTEE, the GRANTEE agrees to refund the overpayment to the STATE within thirty (30) calendar days after being billed therefore.

SECTION 4 OWNERSHIP OF PROJECT EQUIPMENT

The STATE shall hold legal title to all vehicles and other equipment the GRANTEE acquires or modifies and have legal ownership of any non-vehicle PROJECT using funds provided under this AGREEMENT. The GRANTEE accepts the STATE's legal ownership of such PROJECT equipment throughout the period of the PROJECT and agrees to turn the same over to the STATE upon completion of the PROJECT. Definition of equipment is based upon CFR §200.33.

SECTION 5 EMPLOYMENT AND INSPECTION OF WORK

The GRANTEE shall employ all persons or contractors necessary to perform the PROJECT work and agrees to be responsible for the management, control, operation, construction, maintenance, and repairs that are essential to this PROJECT. The STATE may place an Engineer, Project Manager, and/or other inspection personnel on the work site during the term of this AGREEMENT to monitor progress of the PROJECT and/or to monitor adherence to the required provisions of this AGREEMENT. The GRANTEE shall make the site accessible to STATE inspection personnel. This may include providing transportation to remote, inaccessible work sites, at the expense of the GRANTEE.

The STATE will inspect progress at the work site, as it deems appropriate. In the event that the GRANTEE subcontracts to obtain material, equipment, and/or any work necessary to complete any PROJECT related track work, the GRANTEE will be responsible for certifying that all track work is in compliance with Federal Railroad Administration Track Standards.

Upon completion of the PROJECT, a joint inspection shall be made by the authorized representatives of each of the PARTIES to determine that the work has been completed within the terms of this AGREEMENT.

SECTION 6 TERM

This AGREEMENT shall become effective upon the date the last party signs the AGREEMENT. The AGREEMENT shall continue in full force for the useful life of the equipment and materials installed with STATE funds. It is the expectation of the parties that the useful life of the materials is ten (10) years. Accordingly, this AGREEMENT shall continue in full force and effect for ten (10) years after the physical completion of the work to be performed for this PROJECT.

SECTION 7 USE AND MAINTENANCE OF PROJECT CAPITAL IMPROVEMENTS AND OTHER EQUIPMENT PURCHASED WITH FUNDS FROM THIS AGREEMENT

The GRANTEE agrees that PROJECT property, equipment, and supplies shall be used solely for the PROJECT activity for the duration of its useful life. Should the GRANTEE unreasonably delay or fail to use PROJECT property, equipment, or supplies during its useful life, the GRANTEE understands that the

STATE may require the return of the entire amount of STATE assistance expended on that property, equipment, or supplies.

The GRANTEE will give timely notice and receive prior written approval from the STATE for any proposal to use PROJECT property, equipment or supplies in a manner substantially different than set forth in this AGREEMENT.

The GRANTEE shall make all necessary repairs and reasonably maintain the capital improvements and equipment purchased with the funds from this AGREEMENT so long as the STATE retains rights as specified in Section 8, CONTINGENT INTERESTS. The costs of service, materials, and repairs in connection with the use and operation of the PROJECT shall be at the GRANTEE's expense.

SECTION 8 CONTINGENT INTERESTS

The GRANTEE agrees that the STATE shall retain a Contingent Interest in a form consistent with RCW 47.76.250(10) in the PROJECT's capital improvements and the equipment purchased with the funds from this AGREEMENT as described in EXHIBIT A, which binds the GRANTEE, and its successor(s), to continue and maintain the PROJECT in an operating condition that is viable for use in rail line.

The STATE shall maintain its contingent interest for ten (10) years following the PROJECT's completion. During this time the GRANTEE may not (a) use the rail line, property or equipment purchased with funds from this AGREEMENT as collateral, (b) remove track, or associated elements for salvage, or (c) use the PROJECT capital improvements or equipment in any manner subordinating the STATE's Contingent Interests without obtaining prior written permission from the STATE.

The requirement that the PROJECT capital improvements and equipment be maintained for rail service shall also be required of all subsequent purchasers, persons, or entities acquiring all, or a material portion of, the line upon which the PROJECT is constructed. The GRANTEE shall be obligated to include in any contract of sale or other dispositional agreement for all, or any portion of, the PROJECT provisions sufficient to perpetuate the STATE's Contingent Interest to the PROJECT capital improvements and equipment upon the consummation of any such conveyance.

The GRANTEE shall make appropriate entries upon its financial statements and its books and records disclosing the STATE's contingent interests under this Section.

SECTION 9 LOSS OR DAMAGE TO PROJECT EQUIPMENT

The GRANTEE, at its own expense, shall cover any loss, theft, damage, or destruction of the PROJECT equipment. The GRANTEE agrees that any loss, theft, damage, or destruction of the PROJECT equipment does not relieve the GRANTEE of any obligations to repay STATE's grant monies. If the GRANTEE does not replace or repair any PROJECT equipment that has been lost, stolen, damaged, or destroyed within sixty (60) calendar days of such, the GRANTEE shall then be automatically in default and will be obligated to reimburse the STATE for the full amount of GRANT funds already paid to the GRANTEE.

SECTION 10 MAINTENANCE OF RECORDS AND AUDIT REQUIREMENTS

During the progress of the work, and for a period of not less than six (6) years from the date of final payment by the STATE to the GRANTEE, records and accounts of the GRANTEE are to be kept available for inspection and audit by representatives of the STATE.

Copies of the records shall be furnished to the STATE upon request and shall be maintained in accordance with accepted job cost accounting procedures as established in 48 CFR § 31. All costs must be supported by actual invoices and canceled checks. The GRANTEE agrees to comply with the audit requirements contained herein, and to impose the same requirement on any consultant, contractor, or subcontractor who may perform work funded by this AGREEMENT.

The records to be maintained by the GRANTEE shall include, but are not limited to, the following:

- (a) Records that identify the sources and applications of funds for this AGREEMENT and contain information pertaining to outlays;
- (b) Supporting source documents;
- (c) All documentation underlying the preparation of the financial reports;
- (d) Any other records which are required following notification of an amendment to State of Washington or federal regulations which takes effect during the period in which costs are allowable; and
- (e) Any other records necessary to disclose fully the amount and disposition of the funds provided to the GRANTEE under this AGREEMENT and charged to the PROJECT, supported by documents evidencing in detail the nature and propriety of the charges, the total cost of each undertaking for which the assistance was given or used, the amount of the costs of the undertaking supplied by other sources, and other books, records, and documents needed for a full and complete verification of the GRANTEE's responsibilities and all payments and charges under this AGREEMENT.

In the event that any litigation, claim or audit is initiated prior to the expiration of said six-year period, the records shall be retained until such litigation, claim, or audit involving the records is complete.

SECTION 11 REPRESENTATIONS, WARRANTIES, AND COVENANTS

The following representations and warranties by the PARTIES hereto shall be considered conditions precedent to the effectiveness of this AGREEMENT.

The GRANTEE represents and warrants the following:

- (a) That it is a corporation duly organized, validly existing and in good standing under the laws of the State of Washington;
- (b) That the monies the GRANTEE will derive through this AGREEMENT will be used solely for the PROJECT as defined in this AGREEMENT;
- (c) That it has the full power and authority to enter into this AGREEMENT, and to carry out the obligations, which it has hereby undertaken;
- (d) That all corporate and other proceedings required to be taken by or on the part of the GRANTEE to authorize its entrance into this AGREEMENT, have been or will be duly taken;
- (e) That execution of this AGREEMENT and the performance of the improvement hereunder will not violate any statute, rule, regulation, order, writ, injunction or decree of any Court, administrative agency or government body;
- (f) That the GRANTEE has not employed or retained any company or person to solicit or secure this AGREEMENT, and that it has not paid or agreed to pay any company or person, any fee, commission percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this AGREEMENT. For breach or violation of this warranty, the STATE shall have the right to terminate this AGREEMENT without liability;
- (g) That the GRANTEE shall not engage on a full, part-time, or other basis, during the period of the AGREEMENT, any professional or technical personnel, to work on this AGREEMENT, who are, or have been, at any time during the period of the AGREEMENT in the employ of the STATE without written consent of the employer of such person; and
- (h) That the GRANTEE shall not extend any loan, gratuity, or gift of money in any form whatsoever to any employee, agent, or officer of the STATE nor will the GRANTEE rent or purchase any equipment or materials from any employee or officer of the STATE.

SECTION 12 TERMINATION FOR FAULT

Should either the STATE or the GRANTEE substantially fail to perform their obligations under this AGREEMENT, and continue in such default for a period of sixty (60) calendar days, the PARTY not in default shall have the right at its option, after first giving thirty (30) calendar days written notice thereof by certified mail to the PARTY in default, and notwithstanding any waiver by the PARTY giving notice of any breach thereof, to terminate this AGREEMENT. The termination of this AGREEMENT shall not impair any other rights of the terminating PARTY under this AGREEMENT or any rights of action against the defaulting PARTY for the recovery of damages. For purposes of this provision, a substantial failure to perform on the part of the GRANTEE shall be deemed to include, but shall not be limited to, any action of the GRANTEE that jeopardizes its ability to perform pursuant to this AGREEMENT.

SECTION 13 TERMINATION FOR CONVENIENCE

The STATE may terminate this AGREEMENT in whole, or in part, upon thirty (30) calendar days written notice whenever:

- (a) The requisite grant funding becomes unavailable through failure of appropriation or otherwise; and/or
- (b) The STATE determines that such termination is in the best interests of the STATE.
- (c) If the STATE exercises its rights under this Section, then the STATE shall reimburse GRANTEE for any expenses and costs eligible hereunder prior to receipt of such notice of termination.

SECTION 14 ASSIGNMENT AND SUCCESSION

Neither the STATE nor the GRANTEE may assign or in any manner transfer either in whole or in part this AGREEMENT or any right or privilege granted to it hereunder, nor permit any person or persons, company or companies to share in any such rights or privileges without the prior written consent of the other PARTY hereto, except as otherwise herein provided. Nothing in this AGREEMENT shall be construed to permit any other railway company or any other person, corporation, or association, directly or indirectly, to possess any right or privilege herein.

SECTION 15 FORCE MAJEURE

It is further understood and agreed that neither the GRANTEE nor the STATE, as the applicable case may be, shall be required to keep this AGREEMENT in effect during any period(s) it is prevented from doing so by governmental action, war, strikes, riots, terrorism, or civil commotion, or if the rail facilities or any portion thereof is made unserviceable by Acts of God including, but not limited to, floods, high water, or other damage by the elements.

SECTION 16 NOTICES

Any notice, request, consent, demand, report, statement or submission which is required or permitted to be given pursuant to this AGREEMENT shall be in writing and shall be delivered personally to the respective PARTY set forth below, or if mailed, sent by certified United States mail, postage prepaid and return receipt required, to the respective PARTIES at the addresses set forth below, or to such other addresses as the PARTIES may from time to time advise by written notice to the other PARTY. The date of personal delivery or of execution of the return receipt in the case of delivery by certified U.S. mail, of any such notice, demand, request, or submission shall be presumed to be the date of delivery.

NOTICES IN THE CASE OF THE GRANTEE:

City of Tacoma dba Tacoma Public Utilities – Tacoma Rail
Tacoma Rail Assistant Superintendent

Attn: Alan Matheson
2601 SR 509 North Frontage Road
Tacoma, WA 98421-3134

Should the above Registered Agent become unavailable, the GRANTEE consents to allowing the legal notices to be sent to the Secretary of State of the State of Washington.

NOTICES IN THE CASE OF THE STATE:

Ron Pate, Director
WSDOT Rail, Freight, and Ports Division
310 Maple Park Avenue SE Olympia, WA 98504-7407

SECTION 17 INTERPRETATION

This AGREEMENT shall be construed liberally so as to secure to each PARTY hereto all of the rights, privileges, and benefits herein provided or manifestly intended. This AGREEMENT, and each and every provision hereof, is for the exclusive benefit of the PARTIES hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right of a third party to recover by way of damages or otherwise against the PARTIES hereto.

If any covenant or provision, or part thereof, of this AGREEMENT shall be adjudged void, such adjudication shall not affect the validity or obligation of performance of any other covenant or provision, or part thereof, which in itself is valid, if such remainder conforms to the terms and requirements of applicable law and the intent of this AGREEMENT. No controversy concerning any covenant or provision shall delay the performance of any other provisions except as herein allowed.

All remedies provided in the AGREEMENT are distinct and cumulative to any other right or remedy under this document or afforded by law or equity, and may be exercised independently, concurrently, or successively therewith.

Any forbearance of the PARTIES in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of, or preclude the exercise of that or any other right or remedy hereunder.

Each PARTY hereby agrees to immediately notify the other PARTY of any change in conditions or any other event, which may significantly affect the TERM of this AGREEMENT or the PARTY's ability to perform the PROJECT in accordance with the provisions of this AGREEMENT.

SECTION 18 SUBCONTRACTING

It is understood that the GRANTEE may choose to subcontract all or portions of the work. The GRANTEE must obtain the STATE's advanced written approval of all subcontractors it shall employ on the PROJECT.

No contract between the GRANTEE and its contractors and/or their subcontractors, and/or material suppliers shall create any obligation or liability of the STATE with regard to this AGREEMENT without the STATE's specific written consent to such obligation or liability notwithstanding any concurrence with, or approval of, the award, solicitation, execution, or performance of any contract or subcontract. The GRANTEE hereby agrees to include the provisions of this AGREEMENT in all contracts entered into by the GRANTEE for the employment of any individuals, procurement of any materials, or the performance of any work to be accomplished under this AGREEMENT.

SECTION 19 LAWS TO BE OBSERVED

1. **General Compliance.** The GRANTEE shall comply with all applicable federal, State, and local laws, rules, regulations, and orders pertaining to the PROJECT, including but not limited to 48 CFR

Part 31 and 49 CFR Part 18. If any action or inaction by the GRANTEE results in a fine, penalty, cost, or charge being imposed or assessed on or against the GRANTEE and/or the STATE, the GRANTEE shall assume and bear any such fine, penalty, cost, or charges. In the event the STATE, for any reason, is required to pay the same, the GRANTEE, upon demand, shall promptly reimburse, indemnify, and hold harmless the STATE for or on account of such fine, penalty, cost or charge and shall also pay all expenses and attorney's fees expensed in defending any action that may be brought against the STATE on account thereof. The GRANTEE shall, in the event of any such action and upon notice thereof from the STATE, defend any such action(s) free of cost, charge and expense to the STATE.

2. **Permits and Compliance with land use and environmental laws.** The GRANTEE shall be responsible for obtaining all necessary permits from federal, state, and local agencies of government and compliance with land use and environmental regulations pertaining to the performance of work under this AGREEMENT.

3. **Compliance with Social Laws.** During the term of the AGREEMENT, the GRANTEE and its contractors, subcontractors, and lessees shall comply with all applicable STATE and FEDERAL workmen's compensation, employer's liability and safety and other similar laws applicable to the GRANTEE.

4. **Equal Employment Opportunity.** In connection with the execution of this AGREEMENT, the GRANTEE or its Contractor shall not discriminate against any employee or applicant for employment because of race, creed, marital status, age, color, sex or national origin, or disability, except for a bona fide occupational qualification.

SECTION 20 INDEPENDENT CONTRACTOR

The GRANTEE shall be deemed an independent contractor for all purposes and the employees of the GRANTEE or any of its contractors, subcontractors, lessees and the employees thereof, shall not in any manner be deemed the employees or agents of the STATE.

SECTION 21 SAFETY AND LIABILITIES

1. **Safety.** The GRANTEE shall do all things necessary and proper for the safe operation of the PROJECT and shall comply with all regulations prescribed by law or any public authority with respect thereto for the safety of the public or otherwise.

2. **Personal Liability of Public Officers.** No officer or employee of the STATE or GRANTEE shall be personally liable for any act, or failure to act, in connection with this AGREEMENT, it being understood that in such matters they are acting solely as agents of the STATE or GRANTEE.

3. **Responsibility for Damage.** The STATE, Transportation Commission, Secretary of Transportation, and all officers and employees of the STATE including, but not limited to, those of the Department of Transportation shall not be responsible in any manner for: any loss or damage to the work or any part thereof; for any loss of material or damage to any of the materials or other things used or employed in the performance of the work; for any injury to or death of any persons, either workers or the public, or for damage to the public for any cause due to the intentional acts or negligence of the GRANTEE or its workers, or anyone employed by it.

4. **Indemnification.** The GRANTEE shall indemnify and hold the STATE and all its officers and employees harmless from, and shall process and defend at its own expense all claims, demands, or suits at law or equity arising out of this AGREEMENT caused by the performance or failure to perform by the GRANTEE, its agents, employees and/ or its subcontractors of any and all duties prescribed by, or incidental to its performance under, this AGREEMENT; provided that nothing herein shall require the GRANTEE to indemnify or hold the STATE harmless against claims, demands, or suits based solely upon the negligent conduct of the STATE, its officers or employees; and provided further that if the

claims, demands or suit is caused by or results from the concurrent negligence of (a) the GRANTEE's agents or employees and (b) the STATE's agents or employees, and involves those actions covered by RCW 4.24.115, this indemnity provision with respect to claims or suits based upon such negligence shall be valid and enforceable only to the extent of the GRANTEE's negligence or the negligence of the GRANTEE's agents or employees.

The GRANTEE agrees that its obligations under this Section extend to any claim, demand and/or cause of action brought by, or on behalf of, any of its employees or agents while performing construction and/or maintenance for the PROJECT. For this purpose, the GRANTEE, by mutual negotiation, hereby waives with respect to the STATE only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provisions chapter 51.12 RCW.

This indemnification and waiver shall survive the termination of this AGREEMENT for all claims, demands, or suits at law or equity arising out of this Agreement during its term.

SECTION 22 NO WAIVER OF STATE'S RIGHTS

The STATE shall not be precluded or estopped by any measurement, estimate, or certificate made either before or after the completion and acceptance of the work and payment therefore from showing the true amount and character of the work performed and materials furnished, or from showing that any such measurement, estimate, or certificate is untrue or incorrectly made, or that the work or materials do not conform in fact to the AGREEMENT. Neither the granting of an extension of time, nor acceptance of and/or payment for, the whole or any part of the work by the STATE shall bar the STATE from seeking recovery of damages or any money wrongfully or erroneously paid to the GRANTEE. A waiver of any breach of contract shall not be held to be a waiver of any other or subsequent breach.

SECTION 23 VENUE

In the event that either PARTY deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the PARTIES hereto agree that any such action shall be initiated in the Superior Court of the State of Washington, situated in Thurston County. The PARTIES also agree that each PARTY shall be responsible for its own attorney's fees and other legal costs.

SECTION 24 DISPUTES RESOLUTION

In the event that a dispute arises under this AGREEMENT which cannot be resolved between the PARTIES, the dispute shall be settled in the following manner: Each PARTY to this AGREEMENT shall appoint a member to a dispute board. The members so appointed shall jointly appoint a third member who is not employed by or affiliated in any way with the two PARTIES to this AGREEMENT. The dispute board shall evaluate the facts, contract terms, and applicable statutes and rules and make a determination of the dispute. The determination of the dispute board shall be final and binding on the PARTIES hereto. The PARTIES agree to each be responsible for its own costs and further agree to equally share the cost of the third member of the dispute board.

SECTION 25 COMPLETE AGREEMENT

This document and referenced attachments contain all of the covenants, stipulations and provisions agreed upon by the PARTIES. No agents, or representative of either PARTY has authority to make, and the PARTIES shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the PARTIES as an amendment to this AGREEMENT prior to beginning or continuing any work to be covered by the amendment.

SECTION 26 EXECUTION OF ACCEPTANCE

The PARTIES adopt all statements, representations, warranties, covenants, and EXHIBITS to this AGREEMENT.

SECTION 27 AMENDMENT

Either PARTY may request changes in these provisions. Such changes that are mutually agreed upon shall be incorporated as written amendments to this AGREEMENT. No variation or alteration of the terms of this AGREEMENT shall be valid unless made in writing and signed by authorized representatives of the PARTIES hereto prior to beginning or continuing any work to be covered by the amendment.

SECTION 28 COUNTERPARTS

This AGREEMENT may be executed in two counterparts, each of which shall be deemed to be an original having identical legal effect.

IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT as of the date signed last by the PARTIES below.

WASHINGTON STATE Department of Transportation

By: _____
Ron Pate, Director
Rail, Freight, and Ports Division

Date: _____

Approved as to Form on behalf of WSDOT

By: _____
L. Scott Lockwood
Assistant Attorney General

Date: _____

City of Tacoma dba Tacoma Public Utilities – Tacoma Rail

By: _____
Jackie Flowers
Director of Utilities

Date: _____

By: _____
Andrew Cherullo
Finance Director

Date: _____

By: _____
Dale King
Superintendent

Date: _____

Approved as to form

By: _____
Paul Goulding
Deputy City Attorney

Date: _____

Any modification, change or revision to this AGREEMENT requires the further approval as to form by the Office of the Attorney General.

**EXHIBIT A
SCOPE OF WORK
Containing
PROJECT DESCRIPTION
SCHEDULE
COST ESTIMATE**

PROJECT DESCRIPTION

The project proposes to replace worn and deteriorated 112# rail along Marine View Drive, starting west of Taylor Way in the Port of Tacoma area. The project will replace the existing 5,100 feet of rail with new 115# rail and associated rail components including select crosstie replacement. Also included is the rehabilitation of nineteen private crossing leading into and out of the industries along Marine View Drive.

SCHEDULE

Begin Preliminary Engineering	January 2020
Start Construction	July 2020
Construction Complete	December 2020

COST ESTIMATE

\$1,575,691

Cost estimate includes:

- \$475,691 match
- \$1,100,000 funding from WSDOT

EXHIBIT B

WSDOT ACCOUNTING MANUAL CHAPTER 10 TRAVEL RULES AND PROCEDURES

Online access available at:

http://www.wsdot.wa.gov/publications/fulltext/design/ConsultantSrvs/Accounting_Chapter10.pdf

CURRENT TRAVEL REIMBURSEMENT INFORMATION

Per Diem Rates as of October 2018 are available online at:

<http://www.ofm.wa.gov/>

Please review this website for periodic updates to these rates



RESOLUTION NO. U-11097

1 A RESOLUTION authorizing Tacoma Rail to enter into two Loan Agreements
2 with Washington State Department of Transportation to upgrade railroad
3 tracks.

4 WHEREAS the City of Tacoma, Department of Public Utilities, Beltline
5 Division (d.b.a. "Tacoma Rail"), requests approval to enter into two Loan
6 Agreements ("Agreements") with Washington State Department of
7 Transportation ("WSDOT") to partially fund railroad track rehabilitation projects,
8 for the purpose of upgrading 1,550 feet of railroad track for the Mazda Siding
9 project and 1,900 feet of railroad track for the TOTE Yard, and
10

11 WHEREAS Tacoma Rail's track infrastructure in the Tideland's area is
12 heavily used and in need of periodic upgrades in order to safely enable the
13 switching of railcars destined for, or originating from, the Port of Tacoma and
14 other industrial customers, and
15

16 WHEREAS Tacoma Rail was awarded two loans from WSDOT: (1) Loan
17 Agreement No. RRB-1225 – Mazda Siding (in the principal amount of
18 \$240,000.00, less a one percent administrative fee), and (2) Loan Agreement
19 No. RRB-1226 – TOTE Yard (in the principal amount of \$400,000.00, less a
20 one percent administrative fee), and
21

22 WHEREAS Loan Agreement No. RRB-1225, for Mazda Siding project (in
23 the principal amount of \$240,000.00), requires Tacoma Rail to contribute
24 \$109,572.00 in matching funds, with a project completion date of June 30,
25 2021. Repayment terms require ten annual payments of \$24,000.00 each,
26 beginning October 1, 2021. The loan will partially finance the upgrade of



1 approximately 1,550 feet of old worn 90-pound rail with new 115-pound rail, to
2 include select crosstie replacement and other associated railroad track
3 components, and

4 WHEREAS Loan Agreement No. RRB-1226, for the TOTE Yard project
5 (in the principal amount of \$400,000.00), requires Tacoma Rail to contribute
6 \$604,547.00 in matching funds, with a project completion date of June 30,
7 2021. Repayment terms require ten annual payments of \$40,000.00 each,
8 beginning October 1, 2021. The loan will partially finance the upgrade of
9 approximately 1,900 feet of old and worn 90-pound rail with new 115-pound rail,
10 to include crosstie replacement and other associated railroad track
11 components, and
12

13 WHEREAS it is in the best public interest to approve said Agreements;

14 Now, therefore,

15 BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:

16 That the two Loan Agreements from the Washington State Department
17 of Transportation (#RRB-1225 in the principal amount of \$240,000.00 and
18 #RRB-1226 in the principal amount of \$400,000.00), are hereby approved,
19 providing for reimbursement of Tacoma Rail's costs related to the upgrading of
20 1,550 feet of railroad track for the Mazda Siding project and 1,900 feet of
21 railroad track for the TOTE Yard, and Tacoma Rail's contributions in matching
22 funds in the amounts of \$109,572.00 and \$604,547.00 are hereby approved,
23 and the City Council is requested to approve and authorize said Agreements
24
25
26



and the proper officers are authorized to execute said Agreements substantially
in a form as approved by the City Attorney.

Approved as to form and legality:

Paul C. Merrill
Chief Deputy City Attorney

Chair

Secretary

Clerk

Adopted _____



Board Action Memorandum

TO: Jackie Flowers, Director of Utilities
COPY: Charleen Jacobs, Director and Board Offices
FROM: Alan Matheson, Assistant Superintendent, Tacoma Rail *Alan Matheson*
MEETING DATE: August 14, 2019
DATE: August 1, 2019

SUMMARY: Tacoma Rail requests Public Utility Board approval to enter into two (2) Loan Agreements with the Washington State Department of Transportation for the purpose of upgrading 1,550 feet of railroad track for Mazda Siding and 1,900 feet of railroad track for TOTE Yard.

BACKGROUND: The two (2) interest free loans were awarded through a competitive call for projects initiated by the Washington State Department of Transportation, with funds having been appropriated by the Washington State Legislature. The loans are in the principal amounts of \$240,000.00 for Mazda Siding - Agreement No. RRB-1225, and \$400,000.00 for TOTE Yard - Agreement No. RRB-1226, less a 1% administrative fee.

The Loan Agreement numbered RRB-1225, for the Mazda Siding project, requires Tacoma Rail to contribute \$109,572.00 in matching funds and complete the project by June 30, 2021. Repayment terms require ten (10) annual payments of \$24,000.00 each beginning October 1, 2021. The loan will partially finance the upgrade of approximately 1,550 feet of old and worn 90-pound rail with new 115-pound rail, to include select crosstie replacement and other associated railroad track components.

Loan Agreement numbered RRB-1226, for the TOTE Yard project, requires Tacoma Rail to contribute \$604,547.00 in matching funds and complete the project by June 30, 2021. Repayment terms require ten (10) annual payments of \$40,000.00 each beginning October 1, 2021. The loan will partially finance the upgrade of approximately 1,900 feet of old and worn 90-pound rail with new 115-pound rail, to include select crosstie replacement and other associated railroad track components.

ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? Yes.

IF THE EXPENSE IS NOT BUDGETED, PLEASE EXPLAIN HOW THEY ARE TO BE COVERED. N/A

IF THE ACTION REQUESTED IS APPROVAL OF A CONTRACT, INCLUDE LANGUAGE IN RESOLUTION AUTHORIZING \$200,000 INCREASE IN ADMINISTRATIVE AUTHORITY TO DIRECTOR?
N/A

ATTACHMENTS: Washington State Department of Transportation Loan Agreement RRB-1225 Mazda Siding and Loan Agreement RRB-1226 TOTE Yard.

CONTACT: Alan Matheson, Tacoma Rail Assistant Superintendent, 253-502-8934.

PRESENTER: Kyle Kellem, Roadmaster, 253-377-3554.



TO: Elizabeth Pauli, City
FROM: Jackie Flowers, Director of Utilities
COPY: City Council and City Clerk
SUBJECT: Resolution – WSDOT Freight Rail Bank Loan RRB-1225 Mazda Siding Track Upgrade and WSDOT Freight Rail Bank Loan RRB-1226 TOTE Yard Track Upgrade
August 27, 2019
DATE: August 1, 2019

SUMMARY:

Tacoma Rail requests City Council approval to enter into two (2) Loan Agreements with the Washington State Department of Transportation to partially fund railroad track rehabilitation projects.

STRATEGIC POLICY PRIORITY:

- Strengthen and support a safe city with healthy residents.

BACKGROUND:

The two (2) interest free loans were awarded through a competitive call for projects initiated by the Washington State Department of Transportation, with funds having been appropriated by the Washington State Legislature. The loans are in the principal amounts of \$240,000.00 for Agreement No. RRB-1225 – Mazda Siding, and \$400,000.00 for Agreement No. RRB-1226 – TOTE Yard, less a 1% administrative fee.

The Loan Agreement numbered RRB-1225, for the Mazda Siding project, requires Tacoma Rail to contribute \$109,572.00 in matching funds with project completion by June 30, 2021. Repayment terms require ten (10) annual payments of \$24,000.00 each beginning October 1, 2021. The loan will partially finance the upgrade of approximately 1,550 feet of old and worn 90-pound rail with new 115-pound rail, to include select crosstie replacement and other associated railroad track components.

Loan Agreement numbered RRB-1226, for the TOTE Yard project, requires Tacoma Rail to contribute \$604,547.00 in matching funds, and have the project completed by June 30, 2021. Repayment terms require 10 annual payments of \$40,000.00 each beginning October 1, 2021. The loan will partially finance the upgrade of approximately 1,900 feet of old and worn 90-pound rail with new 115-pound rail, to include select crosstie replacement and other associated railroad track components.

ISSUE:

Tacoma Rail's track infrastructure in the Tideland's area is heavily used and in need of periodic upgrades in order to safely enable the switching of railcars destined for, or originating from, the Port of Tacoma and other industrial customers.

ALTERNATIVES:

There are no practical alternatives.

RECOMMENDATION:

With the Loan Agreements having been approved by the Tacoma Public Utility Board at their August 14, 2019 meeting, Tacoma Rail recommends City Council authorize execution of the Loan Agreements with the Washington State Department of Transportation. These projects will enhance safety, and help ensure operational continuity.

**FISCAL IMPACT:**

There is no fiscal impact to the General Fund.

EXPENDITURES:

FUND NUMBER & FUND NAME *	COST OBJECT (CC/WBS/ORDER)	COST ELEMENT	TOTAL AMOUNT
4500 - Tacoma Rail (TPU) Mazda Siding RRB 1225			\$349,572.00
4500 - Tacoma Rail (TPU) TOTE Yard RRB 1226			\$1,004,547.00
TOTAL			\$1,354,119.00

* General Fund: Include Department

REVENUES:

FUNDING SOURCE	COST OBJECT (CC/WBS/ORDER)	COST ELEMENT	TOTAL AMOUNT
WSDOT Loan RRB-1225			\$240,000.00
4500 - Tacoma Rail (TPU)	592302		\$109,572.00
WSDOT Loan RRB-1226			\$400,000.00
4500 - Tacoma Rail (TPU)	592302		\$604,547.00
TOTAL			\$1,354,119.00

POTENTIAL POSITION IMPACT:

POSITION TITLE	PERMANENT/ PROJECT TEMPORARY POSITION	FTE IMPACT	POSITION END DATE
N/A			
TOTAL			

This section should only be completed if a subsequent request will be made to increase or decrease the current position count.

FISCAL IMPACT TO CURRENT BIENNIAL BUDGET: \$1,354,119.00

ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? Yes

IF EXPENSE IS NOT BUDGETED, PLEASE EXPLAIN HOW THEY ARE TO BE COVERED.

N/A.



**Washington State
Department of Transportation**

LOAN AGREEMENT Not to exceed Two Hundred Forty Thousand Dollars (\$240,000)	ORGANIZATION City of Tacoma dba Tacoma Public Utilities – Tacoma Rail
AGREEMENT NUMBER RRB 1225	Description of Work Improve approximately 1,550 feet of existing track on Blair Peninsula, by replacing worn 90# rail with 115# rail, ineffective cross ties, and other associated track components to accommodate existing rail volumes.

This AGREEMENT is between the STATE OF WASHINGTON's DEPARTMENT OF TRANSPORTATION hereinafter referred to as the "STATE", and City of Tacoma, Department of Public Utilities, Beltline Division dba Tacoma Rail, hereinafter referred to as the "RECIPIENT," collectively referred to as the "PARTIES" and individually the "PARTY."

WHEREAS, the Legislature recognizes that rail abandonment can increase the burden on STATE highways and county roads by increasing highway maintenance and repair costs; and

WHEREAS, the Legislature recognizes that rail abandonment can increase highway-related air pollution and dependence on imported petroleum; and

WHEREAS, the Legislature, pursuant to chapter 47.06A RCW, determined that freight rail systems are important elements of the STATE'S multimodal transportation system and that Washington's economy benefits from the freight rail system by helping to ensure movement of the STATE'S agricultural, chemical, and natural resource products to local, national, and international markets; and

WHEREAS, the Legislature recognizes that the STATE, counties, local communities, railroads, labor and shippers all benefit from continuation of essential rail service for economic development purposes; and that abandonment of rail lines and rail freight service and the resultant motor vehicle freight traffic increases the burden on state highways and roads; and

WHEREAS, the Legislature finds that in many cases, the cost of upgrading the roads exceeds the cost of maintaining rail freight service. Thus, the economy of the State of Washington will be best served by a policy of maintaining and encouraging a healthy rail freight system by creating a mechanism which keeps rail freight lines operating if the benefits of the service outweigh the cost; and

WHEREAS, chapter 47.76 RCW permits the STATE to provide financial assistance to cities, counties, ports, and railroads for the purposes of acquiring, rebuilding, rehabilitating, or improving rail lines necessary to maintain use of the essential rail service; and

WHEREAS, RCW 47.76.250(9) provides that repayment of loans made under this section shall occur within a period not longer than fifteen years, as set by the STATE, and that the repayment schedule and rate of interest, if any, shall be determined before the distribution of the moneys; and

WHEREAS, the RECIPIENT shall follow all the federal, state and local laws, regulations and ordinances which are applicable; and

WHEREAS, the Scope of Work defined in this AGREEMENT is hereinafter referred to as "PROJECT"; and

WHEREAS, the RECIPIENT is the local entity for administering the PROJECT funds; and

WHEREAS, the RECIPIENT has requested, and the STATE has authorized and appropriated STATE funds to loan up to Two Hundred Thirty Seven Thousand Six Hundred Dollars (\$237,600) in recognition of the PROJECT's contribution to the public good; and

WHEREAS, the STATE is authorized to charge an amount necessary to recoup the STATE's costs to administer the loans; and

NOW, THEREFORE, pursuant to the above recitals that are incorporated herein as if fully set forth below and in consideration of the terms, conditions, covenants and performances contained in this AGREEMENT, or attached hereto and by this reference made a part of this AGREEMENT, IT IS MUTUALLY AGREED AS FOLLOWS:

SECTION 1 SCOPE OF WORK

The general Scope of Work is defined in the Description of Work, above which the STATE has determined to be a PROJECT that will improve the STATE's multimodal transportation system, and benefit the STATE and local economy. Complete details are included in EXHIBIT A SCOPE OF WORK, which is attached hereto and by this reference made a part of this AGREEMENT.

SECTION 2 PAYMENTS TO THE RECIPIENT

The STATE has estimated that the cost to recover its actual direct and related indirect costs is approximately One Percent (1%) of the loan value, or Two Thousand Four Hundred Dollars (\$2,400). Therefore the amount of loan moneys available shall be the initial loan amount less this fee amount, or Two Hundred Thirty Seven Thousand Six Hundred Dollars (\$237,600). Should the STATE not require the entire fee amount, then the remaining balance shall become available for PROJECT work, if needed.

Subject to the stipulations set forth in SECTION I SCOPE OF WORK, the STATE agrees to loan the RECIPIENT up to a maximum amount of Two Hundred Forty Thousand Dollars (\$240,000) for the actual direct and related indirect costs expended by the RECIPIENT in the course of completing the PROJECT required under this AGREEMENT.

The STATE agrees to loan the Recipient monies to accomplish the PROJECT detailed in EXHIBIT A.

Prior to initiating any work for performance hereunder, the RECIPIENT shall provide the STATE with the proposed schedule for each item of work to be performed. The schedule shall be arranged in such a manner as to form a basis for comparison with progress billings for work performed. In the event of a change in the method or time for performance of any work, the RECIPIENT shall update the schedule, subject to the STATE's approval, to reflect the changed circumstances.

It is understood that the actual PROJECT costs under this AGREEMENT are based on preliminary estimates and that if unforeseen circumstances cause the PROJECT costs to exceed the PROJECT estimate, the RECIPIENT shall complete the PROJECT and assume the entire cost overrun without any increase of the STATE's maximum loan commitment made herein.

Any costs expended by the RECIPIENT prior to the execution of this AGREEMENT will be borne by the RECIPIENT and will not be eligible for reimbursement from the STATE.

The RECIPIENT shall comply with all provisions of the most recent version of 48 CFR § 31 or as subsequently amended, regarding accounting conventions.

The RECIPIENT shall provide the STATE with documentation confirming local matching share amounts have been secured and used for the PROJECT.

If the STATE, at the sole discretion, determines that the PROJECT is not progressing in a satisfactory

manner, the STATE may refuse to loan STATE monies for reimbursement to the RECIPIENT for parts or all of the work performed to date.

If the PROJECT is not completed by June 30, 2021, the RECIPIENT and STATE agree that the entire expense for the completion of the PROJECT will be borne solely by the RECIPIENT. The RECIPIENT shall then also be automatically in default and will be obligated to reimburse the STATE for the full amount of LOAN funds paid to the RECIPIENT to date, per the terms of SECTION 8 - OBLIGATIONS TO REPAY LOANED MONIES. Any required repayment shall be due within thirty (30) calendar days after receipt of an invoice from the STATE.

SECTION 3 PROGRESS PAYMENTS

The RECIPIENT may forward progress billings to the STATE for reimbursement by STATE loaned monies for PROJECT related work performed pursuant to EXHIBIT A.

The STATE shall loan monies for eligible PROJECT costs expensed and paid related to work performed during the invoice period. The RECIPIENT may submit invoices at any time, but not more frequently than once per month. The STATE will reimburse the RECIPIENT for properly billed and supported amounts within thirty (30) calendar days of receipt of a progress billing.

The RECIPIENT shall submit these invoices detailing work completed and a PROJECT status report. The STATE shall make periodic payments to the RECIPIENT for costs expensed under this AGREEMENT. Supporting documentation for all costs being invoiced shall be submitted with the invoice. Payment by the STATE shall not relieve the RECIPIENT of any obligation to make good any defective work or material upon PROJECT completion.

At the time the final PROJECT invoice is submitted, the RECIPIENT shall provide the STATE with a written statement confirming the RECIPIENT is in compliance with the terms of the AGREEMENT. The STATE will provide an example of this written statement upon request.

Per chapter 43.88 RCW, any invoices for work performed between July 1 and June 30 of any given year must be submitted to the STATE no later than July 6th (or the first business day after the July 4th holiday) of the same calendar year. If the RECIPIENT is unable to provide an invoice for such work by this date, an estimate of all remaining payable costs owed by the State for work performed by the RECIPIENT prior to July 1 must be submitted to the State no later than July 19th of the same year in order for the State to accrue the amount necessary for payment. The RECIPIENT will thereafter submit any remaining invoices to the State for such work as soon as possible. Failure to comply with these requirements may result in delayed payment. The State shall not be required to pay to the RECIPIENT late payment fees, interest, or incidental costs expensed by the RECIPIENT or any other costs related to a delayed payment if the RECIPIENT fails to comply with the invoice requirements of this Section.

The RECIPIENT shall receive reimbursement for the actual cost of items identified in EXHIBIT A, less net salvage value of any material being replaced in carrying out the PROJECT construction. Labor, materials, and/or other PROJECT costs supplied by the RECIPIENT will only be reimbursed at actual cost without markup to the STATE or profit.

Any materials salvaged under this PROJECT will be stockpiled, inventoried, and sold with the proceeds credited to the PROJECT. Documentation shall include the amount of materials salvaged, the amount actually sold, and amount received which will be credited back to the PROJECT on the final submitted invoice.

Reimbursement for RECIPIENT rented or leased equipment, if any, will be based on actual cost as supported by original receipts. Reimbursement for RECIPIENT owned equipment shall be based on rates per 23 CFR 140.910(a) and approved FRA reference sources.

Reimbursement for overhead costs will not be allowed unless specified in this AGREEMENT.

Reimbursement for travel, subsistence, and lodging expenses will not be eligible under this AGREEMENT unless specifically preapproved in writing by the STATE. If preapproved, the RECIPIENT shall comply with the rules and regulations regarding travel costs in accordance with

the Washington State Department of Transportation Accounting Manual M 13-82 Chapter 10 "Travel Rules and Procedures" and revisions thereto, and by this reference incorporated herein as if it were attached hereto. Online access to Accounting Manual (M 13-82) Chapter 10 "Travel Rules and Procedures" and subsequent revisions are available at the Washington State Department of Transportation's Internet Site. The online access address for the current Travel Reimbursement Rates is contained in EXHIBIT B, WSDOT ACCOUNTING MANUAL CHAPTER 10, TRAVEL RULES AND PROCEDURES, attached hereto and by this reference made a part of this AGREEMENT. If online access is not available, contact the Washington State Department of Transportation headquarters office in Olympia to obtain copies of the "Travel Rules and Procedures" and any updates.

Billing for non-salary cost, directly identifiable with the PROJECT, if any, shall be an itemized listing of the charges supported by copies of the original bills, invoices, expense accounts and miscellaneous supporting data submitted by the RECIPIENT with each invoice. All above charges must be essential to the work conducted under this AGREEMENT. Crew travel time between normal workstation and jobsites will not be considered travel under this restriction.

Lending monies by the STATE for any work completed shall not relieve the RECIPIENT of any obligation to make good any defective work or material.

It is agreed that any money loaned by the STATE, pursuant to any RECIPIENT payment request, will not constitute agreement as to the appropriateness of any item, and that required adjustments, if any, will be made at the time of STATE's final payment. In the event that the STATE and/or their representatives conducts an audit, and that audit indicates an overpayment of moneys loaned against costs expensed by the RECIPIENT, the RECIPIENT agrees to pay the overpayment to the STATE within thirty (30) calendar days after being billed therefore. Amounts paid for any overpayment pursuant to this section will be in addition to the RECIPIENT's repayment obligation under Section 8 of this AGREEMENT.

SECTION 4 LOAN REPAYMENTS BY THE RECIPIENT

The STATE agrees to loan the RECIPIENT up to a maximum principal amount of Two Hundred Forty Thousand Dollars (\$240,000) for the purpose of completing the PROJECT. The RECIPIENT shall repay the STATE in accordance with the EXHIBIT C, LOAN REPAYMENT SCHEDULE, attached hereto, and by this reference is made part of this AGREEMENT.

The annual loan repayment to be made by the RECIPIENT shall commence on the first day of the following month: October, 2021.

SECTION 5 OWNERSHIP OF PROJECT EQUIPMENT

The STATE shall hold legal title to all vehicles and other equipment the RECIPIENT acquires or modifies and have legal ownership of any non-vehicle PROJECT equipment the RECIPIENT acquires or modifies using STATE LOAN funds provided under this AGREEMENT. The RECIPIENT accepts the STATE's legal ownership of such PROJECT equipment throughout the period of the PROJECT and until the LOAN has been fully repaid by the RECIPIENT to the STATE upon completion of the PROJECT. Definition of equipment is based upon CFR §200.33.

SECTION 6 EMPLOYMENT AND INSPECTION OF WORK

The RECIPIENT shall employ all persons or contractors necessary to perform the PROJECT work and agrees to be responsible for the management, control, operation, construction, maintenance, and repairs that are essential to this PROJECT. The STATE may place an Engineer, Project Manager, and/or other inspection personnel on the work site during the term of this AGREEMENT to monitor progress of the PROJECT and/or to monitor adherence to the required provisions of this AGREEMENT. The RECIPIENT shall make the site accessible to STATE inspection personnel. This may include providing transportation to remote, inaccessible work sites, at the expense of the RECIPIENT.

The STATE will inspect progress at the work site, as it deems appropriate. In the event that the RECIPIENT subcontracts to obtain material, equipment, and/or any work necessary to complete any PROJECT related track work, the RECIPIENT will be responsible for certifying that all track work is in compliance with Federal Railroad Administration Track Standards.

Upon completion of the PROJECT, a joint inspection shall be made by the authorized representatives of each of the PARTIES to determine that the work has been completed within the terms of this AGREEMENT.

SECTION 7 TERM

This AGREEMENT shall become effective upon the date the last PARTY signs the AGREEMENT. The AGREEMENT shall continue in full force for the useful life of the equipment and materials installed with STATE funds or until the loan and interest have been completely repaid to the STATE, whichever is longer. It is the expectation of the PARTIES that the useful life of the materials is ten (10) years, and the loan shall be repaid over these ten (10) years. Accordingly, this AGREEMENT shall continue in full force and effect until June 30, 2031.

SECTION 8 OBLIGATIONS TO REPAY LOANED MONIES

At the STATE's sole option, the RECIPIENT shall immediately repay the full amount of any loans paid to the RECIPIENT up to that date, if any of the following events occur:

1. If the RECIPIENT does not complete the PROJECT tasks specified in EXHIBIT A by June 30, 2021;
2. Sale, conveyance or transfer of the RECIPIENT property underlying the PROJECT rail improvements within the loan re-payment period;
3. Any sale, conveyance, transfer, or removal of all or any of the PROJECT capital improvements or equipment purchased with the funds from this AGREEMENT within the loan re-payment period;
4. Any transfer, conveyance, or sale of all or any of the PROJECT capital improvements or equipment purchased with monies loaned under this AGREEMENT to any person or entity, public or private, that at any time subsequent to that transfer, conveyance, or sale removes the PROJECT rail improvements or equipment purchased with loaned monies from this AGREEMENT, or significant portions thereof, from operation within the loan re-payment period; and
5. Any abandonment or other liquidation by the RECIPIENT or its successor of the PROJECT capital improvements or equipment purchased with monies loaned under this AGREEMENT for any reason whatsoever within the loan re-payment period.

Any payment by the RECIPIENT to the STATE pursuant to this Section shall be payable in U.S. Funds and sent via certified mail to the STATE contact person identified in the NOTICES Section of this AGREEMENT not more than thirty (30) calendar days from receipt of written notice from the STATE that repayment is required.

SECTION 9 USE AND MAINTENANCE OF PROJECT CAPITAL IMPROVEMENTS AND OTHER EQUIPMENT PURCHASED WITH FUNDS FROM THIS AGREEMENT

The RECIPIENT agrees that PROJECT property, equipment, and supplies shall be used solely for the PROJECT activity for the duration of its useful life. Should the RECIPIENT unreasonably delay or fail to use PROJECT property, equipment, or supplies during its useful life, the RECIPIENT understands that the STATE may require the return of the entire amount of STATE assistance expended on that property, equipment, or supplies.

The RECIPIENT will give timely notice and receive prior written approval from the STATE for any proposal to use PROJECT property, equipment or supplies in a manner substantially different than set forth in this AGREEMENT.

The RECIPIENT shall make all necessary repairs and reasonably maintain the capital improvements and equipment purchased with the funds from this AGREEMENT so long as the STATE retains rights as specified in the SECTION 10, CONTINGENT INTERESTS. The costs of service, materials, and repairs in

connection with the use and operation of the PROJECT shall be at the RECIPIENT's expense.

SECTION 10 CONTINGENT INTERESTS

The RECIPIENT agrees that the STATE shall retain a Contingent Interest in a form consistent with RCW 47.76.250(10) in the PROJECT's capital improvements and the equipment purchased with the funds from this AGREEMENT as described in EXHIBIT A, which binds the RECIPIENT, and its successor(s), to continue and maintain the PROJECT in an operating condition that is viable for use in rail line.

The STATE shall maintain its contingent interest until the RECIPIENT fully repays the loan. During this time the RECIPIENT may not (a) use the rail line, property or equipment purchased with funds from this AGREEMENT as collateral, (b) remove track, or associated elements for salvage, (c) perform any of the activities listed in Section 8, or (d) use the PROJECT capital improvements or equipment in any manner subordinating the STATE's Contingent Interests without obtaining prior written permission from the STATE.

The requirement that the PROJECT capital improvements and equipment be maintained for rail service shall also be required of all subsequent purchasers, persons, or entities acquiring all, or a material portion of, the line upon which the PROJECT is constructed. The RECIPIENT shall be obligated to include in any contract of sale or other dispositional agreement for all, or any portion of, the PROJECT provisions sufficient to perpetuate the STATE's Contingent Interest to the PROJECT capital improvements and equipment upon the consummation of any such conveyance. The RECIPIENT further agrees that, as a precondition to the RECIPIENT's execution of any agreement to transfer ownership of all, or a material or equipment portion of, the line upon which the PROJECT is constructed to a subsequent purchaser, assignee, or recipient, the entire outstanding balance of the loaned monies will become immediately due and payable by the RECIPIENT.

The RECIPIENT shall execute and deliver to the STATE all agreements, instruments and documents that the STATE requests as necessary to perfect and maintain the STATE's contingent interests as set forth in this section, in a form and substance acceptable to the STATE, as a condition precedent to the RECIPIENT's right to seek loan monies under this AGREEMENT. The RECIPIENT shall make appropriate entries upon its financial statements and its books and records disclosing the STATE's contingent interests under this section.

SECTION 11 LOSS OR DAMAGE TO PROJECT EQUIPMENT

The RECIPIENT, at its own expense, shall cover any loss, theft, damage, or destruction of the PROJECT equipment. The RECIPIENT agrees that any loss, theft, damage, or destruction of the PROJECT equipment does not relieve the RECIPIENT of any obligations to repay STATE loan monies. If the RECIPIENT does not replace or repair any PROJECT equipment that has been lost, stolen, damaged, or destroyed within sixty (60) calendar days of such, the RECIPIENT shall then be automatically in default and will be obligated to reimburse the STATE for the full amount of loan funds already paid to the RECIPIENT.

SECTION 12 MAINTENANCE OF RECORDS AND AUDIT REQUIREMENTS

During the progress of the work, and for a period of not less than six (6) years from the date of final payment to the STATE by the RECIPIENT, records and accounts of the RECIPIENT are to be kept available for inspection and audit by representatives of the STATE.

Copies of the records shall be furnished to the STATE upon request and shall be maintained in accordance with accepted job cost accounting procedures as established in 48 CFR § 31. All costs must be supported by actual invoices and canceled checks. The RECIPIENT agrees to comply with the audit requirements contained herein, and to impose the same requirement on any consultant, contractor, or subcontractor who may perform work funded by this AGREEMENT.

The records to be maintained by the RECIPIENT shall include, but are not limited to, the following:

- a) Records that identify the sources and applications of funds for this AGREEMENT and contain information pertaining to outlays;
- b) Supporting source documents;

- c) All documentation underlying the preparation of the financial reports;
- d) Any other records which are required following notification of an amendment to State of Washington or federal regulations which takes effect during the period in which costs are allowable; and
- e) Any other records necessary to disclose fully the amount and disposition of the funds provided to the RECIPIENT under this AGREEMENT and charged to the PROJECT, supported by documents evidencing in detail the nature and propriety of the charges, the total cost of each undertaking for which the assistance was given or used, the amount of the costs of the undertaking supplied by other sources, and other books, records, and documents needed for a full and complete verification of the RECIPIENT's responsibilities and all payments and charges under this AGREEMENT.

In the event that any litigation, claim or audit is initiated prior to the expiration of said six-year period, the records shall be retained until such litigation, claim, or audit involving the records is complete.

SECTION 13 REPRESENTATIONS, WARRANTIES, AND COVENANTS

The following representations and warranties by the PARTIES hereto shall be considered conditions precedent to the effectiveness of this AGREEMENT.

The RECIPIENT represents and warrants the following:

- a) That it is a corporation duly organized, validly existing and in good standing under the laws of the State of Washington;
- b) That the monies the RECIPIENT will derive through this AGREEMENT will be used solely for the PROJECT as defined in this AGREEMENT;
- c) That it has the full power and authority to enter into this AGREEMENT, and to carry out the obligations, which it has hereby undertaken;
- d) That all corporate and other proceedings required to be taken by or on the part of the RECIPIENT to authorize its entrance into this AGREEMENT, have been or will be duly taken;
- e) That execution of this AGREEMENT and the performance of the improvement hereunder will not violate any statute, rule, regulation, order, writ, injunction or decree of any Court, administrative agency or government body;
- f) It is the intent of the STATE to partially reimburse the RECIPIENT for its actual PROJECT costs. It is understood that if unforeseen circumstances cause the PROJECT cost to exceed the PROJECT estimate, the RECIPIENT shall complete the PROJECT and assume the entire cost overrun;
- g) That the RECIPIENT has not employed or retained any company or person to solicit or secure this AGREEMENT, and that it has not paid or agreed to pay any company or person, any fee, commission percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this AGREEMENT. For breach or violation of this warranty, the STATE shall have the right to terminate this AGREEMENT without liability;
- h) That the RECIPIENT shall not engage on a full, part-time, or other basis, during the period of the AGREEMENT, any professional or technical personnel, to work on this AGREEMENT, who are, or have been, at any time during the period of the AGREEMENT in the employ of the STATE without written consent of the employer of such person; and
- i) That the RECIPIENT shall not extend any loan, gratuity, or gift of money in any form whatsoever to any employee, agent, or officer of the STATE nor will the RECIPIENT rent or purchase any equipment or materials from any employee or officer of the STATE.

SECTION 14 TERMINATION FOR FAULT

Should either the STATE or the RECIPIENT substantially fail to perform their obligations under this AGREEMENT, and continue in such default for a period of sixty (60) calendar days, the PARTY not in default shall have the right at its option, after first giving thirty (30) calendar days written notice thereof by certified mail to the PARTY in default, and notwithstanding any waiver by the PARTY giving notice of any breach thereof, to terminate this AGREEMENT. The termination of

this AGREEMENT shall not impair any other rights of the terminating PARTY under this AGREEMENT or any rights of action against the defaulting PARTY for the recovery of damages. For purposes of this provision, a substantial failure to perform on the part of the RECIPIENT shall be deemed to include, but shall not be limited to, any action of the RECIPIENT that jeopardizes its ability to perform pursuant to this AGREEMENT.

SECTION 15 TERMINATION FOR CONVENIENCE

The STATE may terminate this AGREEMENT in whole, or in part, upon thirty (30) calendar days written notice whenever: (a) The requisite loan funding becomes unavailable through failure of appropriation or otherwise; and/or (b) The STATE determines that such termination is in the best interests of the STATE. (c) If the STATE exercises its rights under this Section, then the STATE shall reimburse the RECIPIENT for any expenses and costs eligible hereunder prior to receipt of such notice of termination.

SECTION 16 ASSIGNMENT AND SUCCESSION

Neither the STATE nor the RECIPIENT may assign or in any manner transfer either in whole or in part this AGREEMENT or any right or privilege granted to it hereunder, nor permit any person or persons, company or companies to share in any such rights or privileges without the prior written consent of the other PARTY hereto, except as otherwise herein provided. Nothing in this AGREEMENT shall be construed to permit any other railway company or any other person, corporation, or association, directly or indirectly, to possess any right or privilege herein.

SECTION 17 FORCE MAJEURE

It is further understood and agreed that neither the RECIPIENT nor the STATE, as the applicable case may be, shall be required to keep this AGREEMENT in effect during any period(s) it is prevented from doing so by governmental action, war, strikes, riots, terrorism, or civil commotion, or if the rail facilities or any portion thereof is made unserviceable by Acts of God including, but not limited to, floods, high water, or other damage by the elements.

SECTION 18 NOTICES

Any notice, request, consent, demand, report, statement or submission which is required or permitted to be given pursuant to this AGREEMENT shall be in writing and shall be delivered personally to the respective PARTY set forth below, or if mailed, sent by certified United States mail, postage prepaid and return receipt required, to the respective PARTIES at the addresses set forth below, or to such other addresses as the PARTIES may from time to time advise by written notice to the other PARTY. The date of personal delivery or of execution of the return receipt in the case of delivery by certified U.S. mail, of any such notice, demand, request, or submission shall be presumed to be the date of delivery.

NOTICES IN THE CASE OF THE RECIPIENT:

City of Tacoma dba Tacoma Public Utilities – Tacoma Rail
Tacoma Rail Assistant Superintendent
Attn: Alan Matheson
2601 SR 509 North Frontage Road
Tacoma, WA 98421-3134

Should the above Registered Agent become unavailable, the RECIPIENT consents to allowing the legal notices to be sent to the Secretary of State of the State of Washington.

NOTICES IN THE CASE OF THE STATE:

Ron Pate, Director
WSDOT Rail Division
310 Maple Park Avenue SE
Olympia, WA 98504-7407

SECTION 19 INTERPRETATION

This AGREEMENT shall be construed liberally so as to secure to each PARTY hereto all of the rights, privileges, and benefits herein provided or manifestly intended. This AGREEMENT, and each and every provision hereof, is for the exclusive benefit of the PARTIES hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right of a third party to recover by way of damages or otherwise against the PARTIES hereto.

If any covenant or provision, or part thereof, of this AGREEMENT shall be adjudged void, such adjudication shall not affect the validity or obligation of performance of any other covenant or provision, or part thereof, which in itself is valid, if such remainder conforms to the terms and requirements of applicable law and the intent of this AGREEMENT. No controversy concerning any covenant or provision shall delay the performance of any other provisions except as herein allowed.

All remedies provided in the AGREEMENT are distinct and cumulative to any other right or remedy under this document or afforded by law or equity, and may be exercised independently, concurrently, or successively therewith.

Any forbearance of the PARTIES in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of, or preclude the exercise of that or any other right or remedy hereunder.

Each PARTY hereby agrees to immediately notify the other PARTY of any change in conditions or any other event, which may significantly affect the TERM of this AGREEMENT or the PARTY's ability to perform the PROJECT in accordance with the provisions of this AGREEMENT.

SECTION 20 SUBCONTRACTING

It is understood that the RECIPIENT may choose to subcontract all or portions of the work. The RECIPIENT must obtain the STATE's advanced written approval of all subcontractors it shall employ on the PROJECT.

No contract between the RECIPIENT and its contractors and/or their subcontractors, and/or material suppliers shall create any obligation or liability of the STATE with regard to this AGREEMENT without the STATE's specific written consent to such obligation or liability notwithstanding any concurrence with, or approval of, the award, solicitation, execution, or performance of any contract or subcontract. The RECIPIENT hereby agrees to include the provisions of this AGREEMENT in all contracts entered into by the RECIPIENT for the employment of any individuals, procurement of any materials, or the performance of any work to be accomplished under this AGREEMENT.

SECTION 21 LAWS TO BE OBSERVED

1. **General Compliance.** The RECIPIENT shall comply with all applicable federal, State, and local laws, rules, regulations, and orders pertaining to the PROJECT, including but not limited to 48 CFR Part 31 and 49 CFR Part 18. If any action or inaction by the RECIPIENT results in a fine, penalty, cost, or charge being imposed or assessed on or against the RECIPIENT and/or the STATE, the RECIPIENT shall assume and bear any such fine, penalty, cost, or charges. In the event the STATE, for any reason, is required to pay the same, the RECIPIENT, upon demand, shall promptly reimburse, indemnify, and hold harmless the STATE for or on account of such fine, penalty, cost or charge and shall also pay all expenses and attorney's fees expensed in defending any action that may be brought against the STATE on account thereof. The RECIPIENT shall, in the event of any such action and upon notice thereof from the STATE, defend any such action(s) free of cost, charge and expense to the STATE.
2. **Permits and Compliance with land use and environmental laws.** The RECIPIENT shall be responsible for obtaining all necessary permits from federal, state, and local agencies of government and compliance with land use and environmental regulations pertaining to the performance of work under this AGREEMENT.
3. **Compliance with Social Laws.** During the term of the AGREEMENT, the RECIPIENT and its

contractors, subcontractors, and lessees shall comply with all applicable STATE and FEDERAL workmen's compensation, employer's liability and safety and other similar laws applicable to the RECIPIENT.

4. **Equal Employment Opportunity.** In connection with the execution of this AGREEMENT, the RECIPIENT or its Contractor shall not discriminate against any employee or applicant for employment because of race, creed, marital status, age, color, sex or national origin, or disability, except for a bona fide occupational qualification.

SECTION 22 INDEPENDENT CONTRACTOR

The RECIPIENT shall be deemed an independent contractor for all purposes and the employees of the RECIPIENT or any of its contractors, subcontractors, lessees and the employees thereof, shall not in any manner be deemed the employees or agents of the STATE.

SECTION 23 SAFETY AND LIABILITIES

1. **Safety.** The RECIPIENT shall do all things necessary and proper for the safe operation of the PROJECT and shall comply with all regulations prescribed by law or any public authority with respect thereto for the safety of the public or otherwise.
2. **Personal Liability of Public Officers.** No officer or employee of the STATE or RECIPIENT shall be personally liable for any act, or failure to act, in connection with this AGREEMENT, it being understood that in such matters they are acting solely as agents of the STATE or RECIPIENT.
3. **Responsibility for Damage.** The STATE, Transportation Commission, Secretary of Transportation, and all officers and employees of the STATE including, but not limited to, those of the Department of Transportation shall not be responsible in any manner for: any loss or damage to the work or any part thereof; for any loss of material or damage to any of the materials or other things used or employed in the performance of the work; for any injury to or death of any persons, either workers or the public, or for damage to the public for any cause due to the intentional acts or negligence of the RECIPIENT or its workers, or anyone employed by it.
4. **Indemnification.** The RECIPIENT shall indemnify and hold the STATE and all its officers and employees harmless from, and shall process and defend at its own expense all claims, demands, or suits at law or equity arising out of this AGREEMENT caused by the performance or failure to perform by the RECIPIENT, its agents, employees and/ or its subcontractors of any and all duties prescribed by, or incidental to its performance under, this AGREEMENT; provided that nothing herein shall require the RECIPIENT to indemnify or hold the STATE harmless against claims, demands, or suits based solely upon the negligent conduct of the STATE, its officers or employees; and provided further that if the claims, demands or suit is caused by or results from the concurrent negligence of (a) the RECIPIENT's agents or employees and (b) the STATE's agents or employees, and involves those actions covered by RCW 4.24.115, this indemnity provision with respect to claims or suits based upon such negligence shall be valid and enforceable only to the extent of the RECIPIENT's negligence or the negligence of the RECIPIENT's agents or employees.

The RECIPIENT agrees that its obligations under this Section extend to any claim, demand and/or cause of action brought by, or on behalf of, any of its employees or agents while performing construction and/or maintenance for the PROJECT. For this purpose, the RECIPIENT, by mutual negotiation, hereby waives with respect to the STATE only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provisions chapter 51.12 RCW.

This indemnification and waiver shall survive the termination of this AGREEMENT for all claims, demands, or suits at law or equity arising out of this Agreement during its term.

SECTION 24 NO WAIVER OF STATE'S RIGHTS

The STATE shall not be precluded or stopped by any measurement, estimate, or certificate made either before or after the completion and acceptance of the work and payment therefore from showing the true amount and character of the work performed and materials furnished, or from showing that any such measurement, estimate, or certificate is untrue or incorrectly made, or that the work or materials do not

conform in fact to the AGREEMENT. Neither the granting of an extension of time, nor acceptance of and/or payment for, the whole or any part of the work by the STATE shall bar the STATE from seeking recovery of damages or any money wrongfully or erroneously paid to the RECIPIENT. A waiver of any breach of contract shall not be held to be a waiver of any other or subsequent breach.

SECTION 25 VENUE

In the event that either PARTY deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the PARTIES hereto agree that any such action shall be initiated in the Superior Court of the State of Washington, situated in Thurston County. The PARTIES also agree that each PARTY shall be responsible for its own attorney's fees and other legal costs.

SECTION 26 DISPUTES RESOLUTION

In the event that a dispute arises under this AGREEMENT which cannot be resolved between the PARTIES, the dispute shall be settled in the following manner: Each PARTY to this AGREEMENT shall appoint a member to a dispute board. The members so appointed shall jointly appoint a third member who is not employed by or affiliated in any way with the two PARTIES to this AGREEMENT. The dispute board shall evaluate the facts, contract terms, and applicable statutes and rules and make a determination of the dispute. The determination of the dispute board shall be final and binding on the PARTIES hereto. The PARTIES agree to each be responsible for its own costs and further agree to equally share the cost of the third member of the dispute board.

SECTION 27 COMPLETE AGREEMENT

This document and referenced attachments contain all of the covenants, stipulations and provisions agreed upon by the PARTIES. No agents, or representative of either PARTY has authority to make, and the PARTIES shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the PARTIES as an amendment to this AGREEMENT prior to beginning or continuing any work to be covered by the amendment.

SECTION 28 EXECUTION OF ACCEPTANCE

The PARTIES adopt all statements, representations, warranties, covenants, and EXHIBITS to this AGREEMENT.

SECTION 29 AMENDMENT

Either PARTY may request changes in these provisions. Such changes that are mutually agreed upon shall be incorporated as written amendments to this AGREEMENT. No variation or alteration of the terms of this AGREEMENT shall be valid unless made in writing and signed by authorized representatives of the PARTIES hereto prior to beginning or continuing any work to be covered by the amendment.

SECTION 30 COUNTERPARTS

This AGREEMENT may be executed in two counterparts, each of which shall be deemed to be an original having identical legal effect.

IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT as of the date signed last by the PARTIES below.

STATE OF WASHINGTON Department of Transportation

By: _____
Ron Pate, Director
Rail, Freight, and Ports Division

Date: _____

Approved as to Form on behalf of WSDOT

By: _____
L. Scott Lockwood
Assistant Attorney General

Date: _____

City of Tacoma dba Tacoma Public Utilities – Tacoma Rail

By: _____
Jackie Flowers
Director of Utilities

Date: _____

By: _____
Andrew Cherullo
Finance Director

Date: _____

By: _____
Dale King
Superintendent

Date: _____

Approved as to Form

By: _____
Paul Goulding
Deputy City Attorney

Date: _____

Any modification, change or revision to this AGREEMENT requires the further approval as to form by the Office of the Attorney General.

EXHIBIT A
SCOPE OF WORK
Containing
PROJECT DESCRIPTION
SCHEDULE
COST ESTIMATE

PROJECT Description

The Mazda Siding Upgrade project proposes to replace heavily worn and deteriorated 90lb rail along Alexander Avenue just north of SR 509 in the Port of Tacoma area. The project will replace approximately 1,550 feet of the existing siding with new 115lb rail including ineffective cross ties and other associated rail components.

Schedule

Begin Preliminary Engineering	October 2019
Start Construction	November 2019
Construction Complete	January 2020

Cost Estimate

\$349,572

Cost estimate includes:

- \$109,572 Tacoma Rail match
- \$240,000 funding from WSDOT
 - \$2,400 for administration
 - \$237,600 for Construction

EXHIBIT B

WSDOT ACCOUNTING MANUAL CHAPTER 10 TRAVEL RULES AND PROCEDURES

Online access available at:

<http://www.wsdot.wa.gov/NR/rdonlyres/95D3F802-2333-46C2-A656-8287CC05F5F6/37951/QuickReferenceGuide.pdf>

CURRENT TRAVEL REIMBURSEMENT INFORMATION

Per Diem Rates as of October 2018 are available online at:

<http://www.ofm.wa.gov/>

Please review this website for periodic updates to these rates

EXHIBIT C
REPAYMENT SCHEDULE

Payments are based on a LOAN amount of \$240,000 for 10 years

Principle = \$240,000.00 No. of Payments = 10
First Payment Due = October 1, 2021

No	Payment Date	Beginning Balance	Yearly Payment	Ending Balance
1	October 1, 2021	\$240,000.00	\$24,000.00	\$216,000.00
2	October 1, 2022	\$216,000.00	\$24,000.00	\$192,000.00
3	October 1, 2023	\$192,000.00	\$24,000.00	\$168,000.00
4	October 1, 2024	\$168,000.00	\$24,000.00	\$144,000.00
5	October 1, 2025	\$144,000.00	\$24,000.00	\$120,000.00
6	October 1, 2026	\$120,000.00	\$24,000.00	\$96,000.00
7	October 1, 2027	\$96,000.00	\$24,000.00	\$72,000.00
8	October 1, 2028	\$72,000.00	\$24,000.00	\$48,000.00
9	October 1, 2029	\$48,000.00	\$24,000.00	\$24,000.00
10	October 1, 2030	\$24,000.00	\$24,000.00	\$0.00



**Washington State
Department of Transportation**

LOAN AGREEMENT Not to exceed Four Hundred Thousand Dollars (\$400,000)	ORGANIZATION City of Tacoma dba Tacoma Public Utilities – Tacoma Rail
AGREEMENT NUMBER RRB 1226	Description of Work Improve approximately 1,900 feet of existing track and replace worn 90# rail with 115# rail to accommodate existing rail volumes.

This AGREEMENT is between the STATE OF WASHINGTON's DEPARTMENT OF TRANSPORTATION hereinafter referred to as the "STATE", and City of Tacoma, Department of Public Utilities – Beltline Division, dba Tacoma Rail, hereinafter referred to as the "RECIPIENT," collectively referred to as the "PARTIES" and individually the "PARTY."

WHEREAS, the Legislature recognizes that rail abandonment can increase the burden on STATE highways and county roads by increasing highway maintenance and repair costs; and

WHEREAS, the Legislature recognizes that rail abandonment can increase highway-related air pollution and dependence on imported petroleum; and

WHEREAS, the Legislature, pursuant to chapter 47.06A RCW, determined that freight rail systems are important elements of the STATE'S multimodal transportation system and that Washington's economy benefits from the freight rail system by helping to ensure movement of the STATE'S agricultural, chemical, and natural resource products to local, national, and international markets; and

WHEREAS, the Legislature recognizes that the STATE, counties, local communities, railroads, labor and shippers all benefit from continuation of essential rail service for economic development purposes; and that abandonment of rail lines and rail freight service and the resultant motor vehicle freight traffic increases the burden on state highways and roads; and

WHEREAS, the Legislature finds that in many cases, the cost of upgrading the roads exceeds the cost of maintaining rail freight service. Thus, the economy of the State of Washington will be best served by a policy of maintaining and encouraging a healthy rail freight system by creating a mechanism which keeps rail freight lines operating if the benefits of the service outweigh the cost; and

WHEREAS, chapter 47.76 RCW permits the STATE to provide financial assistance to cities, counties, ports, and railroads for the purposes of acquiring, rebuilding, rehabilitating, or improving rail lines necessary to maintain use of the essential rail service; and

WHEREAS, RCW 47.76.250(9) provides that repayment of loans made under this section shall occur within a period not longer than fifteen years, as set by the STATE, and that the repayment schedule and rate of interest, if any, shall be determined before the distribution of the moneys; and

WHEREAS, the RECIPIENT shall follow all the federal, state and local laws, regulations and ordinances which are applicable; and

WHEREAS, the Scope of Work defined in this AGREEMENT is hereinafter referred to as "PROJECT"; and

WHEREAS, the RECIPIENT is the local entity for administering the PROJECT funds; and

WHEREAS, the RECIPIENT has requested, and the STATE has authorized and appropriated STATE funds to loan up to Three Hundred Ninety Six Thousand Dollars (\$396,000) in recognition of the PROJECT's contribution to the public good; and

WHEREAS, the STATE is authorized to charge an amount necessary to recoup the STATE's costs to administer the loans; and

NOW, THEREFORE, pursuant to the above recitals that are incorporated herein as if fully set forth below and in consideration of the terms, conditions, covenants and performances contained in this AGREEMENT, or attached hereto and by this reference made a part of this AGREEMENT, IT IS MUTUALLY AGREED AS FOLLOWS:

SECTION 1 SCOPE OF WORK

The general Scope of Work is defined in the Description of Work, above which the STATE has determined to be a PROJECT that will improve the STATE's multimodal transportation system, and benefit the STATE and local economy. Complete details are included in EXHIBIT A SCOPE OF WORK, which is attached hereto and by this reference made a part of this AGREEMENT.

SECTION 2 PAYMENTS TO THE RECIPIENT

The STATE has estimated that the cost to recover its actual direct and related indirect costs is approximately One Percent (1%) of the loan value, or Four Thousand Dollars (\$4,000). Therefore the amount of loan moneys available shall be the initial loan amount less this fee amount, or Three Hundred Ninety Six Thousand Dollars (\$396,000). Should the STATE not require the entire fee amount, then the remaining balance shall become available for PROJECT work, if needed.

Subject to the stipulations set forth in SECTION I SCOPE OF WORK, the STATE agrees to loan the RECIPIENT up to a maximum amount of Four Hundred Thousand Dollars (\$400,000) for the actual direct and related indirect costs expended by the RECIPIENT in the course of completing the PROJECT required under this AGREEMENT.

The STATE agrees to loan the Recipient monies to accomplish the PROJECT detailed in EXHIBIT A.

Prior to initiating any work for performance hereunder, the RECIPIENT shall provide the STATE with the proposed schedule for each item of work to be performed. The schedule shall be arranged in such a manner as to form a basis for comparison with progress billings for work performed. In the event of a change in the method or time for performance of any work, the RECIPIENT shall update the schedule, subject to the STATE's approval, to reflect the changed circumstances.

It is understood that the actual PROJECT costs under this AGREEMENT are based on preliminary estimates and that if unforeseen circumstances cause the PROJECT costs to exceed the PROJECT estimate, the RECIPIENT shall complete the PROJECT and assume the entire cost overrun without any increase of the STATE's maximum loan commitment made herein.

Any costs expended by the RECIPIENT prior to the execution of this AGREEMENT will be borne by the RECIPIENT and will not be eligible for reimbursement from the STATE.

The RECIPIENT shall comply with all provisions of the most recent version of 48 CFR § 31 or as subsequently amended, regarding accounting conventions.

The RECIPIENT shall provide the STATE with documentation confirming local matching share amounts have been secured and used for the PROJECT.

If the STATE, at the sole discretion, determines that the PROJECT is not progressing in a satisfactory manner, the STATE may refuse to loan STATE monies for reimbursement to the RECIPIENT for parts or all of the work performed to date.

If the PROJECT is not completed by June 30, 2021, the RECIPIENT and STATE agree that the entire expense for the completion of the PROJECT will be borne solely by the RECIPIENT. The RECIPIENT shall then also be automatically in default and will be obligated to reimburse the STATE for the full amount of LOAN funds paid to the RECIPIENT to date, per the terms of SECTION 8 - OBLIGATIONS TO REPAY LOANED MONIES. Any required repayment shall be due within thirty (30) calendar days after receipt of an invoice from the STATE.

SECTION 3 PROGRESS PAYMENTS

The RECIPIENT may forward progress billings to the STATE for reimbursement by STATE loaned monies for PROJECT related work performed pursuant to EXHIBIT A.

The STATE shall loan monies for eligible PROJECT costs expensed and paid related to work performed during the invoice period. The RECIPIENT may submit invoices at any time, but not more frequently than once per month. The STATE will reimburse the RECIPIENT for properly billed and supported amounts within thirty (30) calendar days of receipt of a progress billing.

The RECIPIENT shall submit these invoices detailing work completed and a PROJECT status report. The STATE shall make periodic payments to the RECIPIENT for costs expensed under this AGREEMENT. Supporting documentation for all costs being invoiced shall be submitted with the invoice. Payment by the STATE shall not relieve the RECIPIENT of any obligation to make good any defective work or material upon PROJECT completion.

At the time the final PROJECT invoice is submitted, the RECIPIENT shall provide the STATE with a written statement confirming the RECIPIENT is in compliance with the terms of the AGREEMENT. The STATE will provide an example of this written statement upon request.

Per chapter 43.88 RCW, any invoices for work performed between July 1 and June 30 of any given year must be submitted to the STATE no later than July 6th (or the first business day after the July 4th holiday) of the same calendar year. If the RECIPIENT is unable to provide an invoice for such work by this date, an estimate of all remaining payable costs owed by the State for work performed by the RECIPIENT prior to July 1 must be submitted to the State no later than July 19th of the same year in order for the State to accrue the amount necessary for payment. The RECIPIENT will thereafter submit any remaining invoices to the State for such work as soon as possible. Failure to comply with these requirements may result in delayed payment. The State shall not be required to pay to the RECIPIENT late payment fees, interest, or incidental costs expensed by the RECIPIENT or any other costs related to a delayed payment if the RECIPIENT fails to comply with the invoice requirements of this Section.

The RECIPIENT shall receive reimbursement for the actual cost of items identified in EXHIBIT A, less net salvage value of any material being replaced in carrying out the PROJECT construction. Labor, materials, and/or other PROJECT costs supplied by the RECIPIENT will only be reimbursed at actual cost without markup to the STATE or profit.

Any materials salvaged under this PROJECT will be stockpiled, inventoried, and sold with the proceeds credited to the PROJECT. Documentation shall include the amount of materials salvaged, the amount actually sold, and amount received which will be credited back to the PROJECT on the final submitted invoice.

Reimbursement for RECIPIENT rented or leased equipment, if any, will be based on actual cost as supported by original receipts. Reimbursement for RECIPIENT owned equipment shall be based on rates per 23 CFR 140.910(a) and approved FRA reference sources.

Reimbursement for overhead costs will not be allowed unless specified in this AGREEMENT.

Reimbursement for travel, subsistence, and lodging expenses will not be eligible under this AGREEMENT unless specifically preapproved in writing by the STATE. If preapproved, the RECIPIENT shall comply with the rules and regulations regarding travel costs in accordance with the Washington State Department of Transportation Accounting Manual M 13-82 Chapter 10 "Travel Rules and Procedures" and revisions thereto, and by this reference incorporated herein as if it were attached hereto. Online access to Accounting Manual (M 13-82) Chapter 10 "Travel Rules and Procedures" and subsequent revisions are available at the Washington State Department of Transportation's Internet Site. The online access address for the current Travel Reimbursement Rates is contained in EXHIBIT B, WSDOT ACCOUNTING MANUAL CHAPTER 10, TRAVEL RULES AND PROCEDURES, attached hereto and by this reference made a part of this AGREEMENT. If online access is not available, contact the Washington State Department of Transportation headquarters office in Olympia to obtain copies of the "Travel Rules and Procedures" and any updates.

Billing for non-salary cost, directly identifiable with the PROJECT, if any, shall be an itemized listing of the charges supported by copies of the original bills, invoices, expense accounts and miscellaneous supporting data submitted by the RECIPIENT with each invoice. All above charges must be essential to the work conducted under this AGREEMENT. Crew travel time between normal workstation and jobsites will not be considered travel under this restriction.

Lending monies by the STATE for any work completed shall not relieve the RECIPIENT of any obligation to make good any defective work or material.

It is agreed that any money loaned by the STATE, pursuant to any RECIPIENT payment request, will not constitute agreement as to the appropriateness of any item, and that required adjustments, if any, will be made at the time of STATE's final payment. In the event that the STATE and/or their representatives conducts an audit, and that audit indicates an overpayment of moneys loaned against costs expensed by the RECIPIENT, the RECIPIENT agrees to pay the overpayment to the STATE within thirty (30) calendar days after being billed therefore. Amounts paid for any overpayment pursuant to this section will be in addition to the RECIPIENT's repayment obligation under Section 8 of this AGREEMENT.

SECTION 4 LOAN REPAYMENTS BY THE RECIPIENT

The STATE agrees to loan the RECIPIENT up to a maximum principal amount of Four Hundred Thousand Dollars (\$400,000) for the purpose of completing the PROJECT. The RECIPIENT shall repay the STATE in accordance with the EXHIBIT C, LOAN REPAYMENT SCHEDULE, attached hereto, and by this reference is made part of this AGREEMENT.

The annual loan repayment to be made by the RECIPIENT shall commence on the first day of the following month: October, 2021.

SECTION 5 OWNERSHIP OF PROJECT EQUIPMENT

The STATE shall hold legal title to all vehicles and other equipment the RECIPIENT acquires or modifies and have legal ownership of any non-vehicle PROJECT equipment the RECIPIENT acquires or modifies using STATE LOAN funds provided under this AGREEMENT. The RECIPIENT accepts the STATE's legal ownership of such PROJECT equipment throughout the period of the PROJECT and until

the LOAN has been fully repaid by the RECIPIENT to the STATE upon completion of the PROJECT. Definition of equipment is based upon CFR §200.33.

SECTION 6 EMPLOYMENT AND INSPECTION OF WORK

The RECIPIENT shall employ all persons or contractors necessary to perform the PROJECT work and agrees to be responsible for the management, control, operation, construction, maintenance, and repairs that are essential to this PROJECT. The STATE may place an Engineer, Project Manager, and/or other inspection personnel on the work site during the term of this AGREEMENT to monitor progress of the PROJECT and/or to monitor adherence to the required provisions of this AGREEMENT. The RECIPIENT shall make the site accessible to STATE inspection personnel. This may include providing transportation to remote, inaccessible work sites, at the expense of the RECIPIENT.

The STATE will inspect progress at the work site, as it deems appropriate. In the event that the RECIPIENT subcontracts to obtain material, equipment, and/or any work necessary to complete any PROJECT related track work, the RECIPIENT will be responsible for certifying that all track work is in compliance with Federal Railroad Administration Track Standards.

Upon completion of the PROJECT, a joint inspection shall be made by the authorized representatives of each of the PARTIES to determine that the work has been completed within the terms of this AGREEMENT.

SECTION 7 TERM

This AGREEMENT shall become effective upon the date the last PARTY signs the AGREEMENT. The AGREEMENT shall continue in full force for the useful life of the equipment and materials installed with STATE funds or until the loan and interest have been completely repaid to the STATE, whichever is longer. It is the expectation of the PARTIES that the useful life of the materials is ten (10) years, and the loan shall be repaid over these ten (10) years. Accordingly, this AGREEMENT shall continue in full force and effect until June 30, 2031.

SECTION 8 OBLIGATIONS TO REPAY LOANED MONIES

At the STATE's sole option, the RECIPIENT shall immediately repay the full amount of any loans paid to the RECIPIENT up to that date, if any of the following events occur:

1. If the RECIPIENT does not complete the PROJECT tasks specified in EXHIBIT A by June 30, 2021;
2. Sale, conveyance or transfer of the RECIPIENT property underlying the PROJECT rail improvements within the loan re-payment period;
3. Any sale, conveyance, transfer, or removal of all or any of the PROJECT capital improvements or equipment purchased with the funds from this AGREEMENT within the loan re-payment period;
4. Any transfer, conveyance, or sale of all or any of the PROJECT capital improvements or equipment purchased with monies loaned under this AGREEMENT to any person or entity, public or private, that at any time subsequent to that transfer, conveyance, or sale removes the PROJECT rail improvements or equipment purchased with loaned monies from this AGREEMENT, or significant portions thereof, from operation within the loan re-payment period; and
5. Any abandonment or other liquidation by the RECIPIENT or its successor of the PROJECT capital improvements or equipment purchased with monies loaned under this AGREEMENT for any reason whatsoever within the loan re-payment period.

Any payment by the RECIPIENT to the STATE pursuant to this Section shall be payable in U.S. Funds and sent via certified mail to the STATE contact person identified in the NOTICES Section of this AGREEMENT not more than thirty (30) calendar days from receipt of written notice from the

STATE that repayment is required.

SECTION 9 USE AND MAINTENANCE OF PROJECT CAPITAL IMPROVEMENTS AND OTHER EQUIPMENT PURCHASED WITH FUNDS FROM THIS AGREEMENT

The RECIPIENT agrees that PROJECT property, equipment, and supplies shall be used solely for the PROJECT activity for the duration of its useful life. Should the RECIPIENT unreasonably delay or fail to use PROJECT property, equipment, or supplies during its useful life, the RECIPIENT understands that the STATE may require the return of the entire amount of STATE assistance expended on that property, equipment, or supplies.

The RECIPIENT will give timely notice and receive prior written approval from the STATE for any proposal to use PROJECT property, equipment or supplies in a manner substantially different than set forth in this AGREEMENT.

The RECIPIENT shall make all necessary repairs and reasonably maintain the capital improvements and equipment purchased with the funds from this AGREEMENT so long as the STATE retains rights as specified in the SECTION 10, CONTINGENT INTERESTS. The costs of service, materials, and repairs in connection with the use and operation of the PROJECT shall be at the RECIPIENT's expense.

SECTION 10 CONTINGENT INTERESTS

The RECIPIENT agrees that the STATE shall retain a Contingent Interest in a form consistent with RCW 47.76.250(10) in the PROJECT's capital improvements and the equipment purchased with the funds from this AGREEMENT as described in EXHIBIT A, which binds the RECIPIENT, and its successor(s), to continue and maintain the PROJECT in an operating condition that is viable for use in rail line.

The STATE shall maintain its contingent interest until the RECIPIENT fully repays the loan. During this time the RECIPIENT may not (a) use the rail line, property or equipment purchased with funds from this AGREEMENT as collateral, (b) remove track, or associated elements for salvage, (c) perform any of the activities listed in Section 8, or (d) use the PROJECT capital improvements or equipment in any manner subordinating the STATE's Contingent Interests without obtaining prior written permission from the STATE.

The requirement that the PROJECT capital improvements and equipment be maintained for rail service shall also be required of all subsequent purchasers, persons, or entities acquiring all, or a material portion of, the line upon which the PROJECT is constructed. The RECIPIENT shall be obligated to include in any contract of sale or other dispositional agreement for all, or any portion of, the PROJECT provisions sufficient to perpetuate the STATE's Contingent Interest to the PROJECT capital improvements and equipment upon the consummation of any such conveyance. The RECIPIENT further agrees that, as a precondition to the RECIPIENT's execution of any agreement to transfer ownership of all, or a material or equipment portion of, the line upon which the PROJECT is constructed to a subsequent purchaser, assignee, or recipient, the entire outstanding balance of the loaned monies will become immediately due and payable by the RECIPIENT.

The RECIPIENT shall execute and deliver to the STATE all agreements, instruments and documents that the STATE requests as necessary to perfect and maintain the STATE's contingent interests as set forth in this section, in a form and substance acceptable to the STATE, as a condition precedent to the RECIPIENT's right to seek loan monies under this AGREEMENT. The RECIPIENT shall make appropriate entries upon its financial statements and its books and records disclosing the STATE's contingent interests under this section.

SECTION 11 LOSS OR DAMAGE TO PROJECT EQUIPMENT

The RECIPIENT, at its own expense, shall cover any loss, theft, damage, or destruction of the PROJECT

equipment. The RECIPIENT agrees that any loss, theft, damage, or destruction of the PROJECT equipment does not relieve the RECIPIENT of any obligations to repay STATE loan monies. If the RECIPIENT does not replace or repair any PROJECT equipment that has been lost, stolen, damaged, or destroyed within sixty (60) calendar days of such, the RECIPIENT shall then be automatically in default and will be obligated to reimburse the STATE for the full amount of loan funds already paid to the RECIPIENT.

SECTION 12 MAINTENANCE OF RECORDS AND AUDIT REQUIREMENTS

During the progress of the work, and for a period of not less than six (6) years from the date of final payment to the STATE by the RECIPIENT, records and accounts of the RECIPIENT are to be kept available for inspection and audit by representatives of the STATE.

Copies of the records shall be furnished to the STATE upon request and shall be maintained in accordance with accepted job cost accounting procedures as established in 48 CFR § 31. All costs must be supported by actual invoices and canceled checks. The RECIPIENT agrees to comply with the audit requirements contained herein, and to impose the same requirement on any consultant, contractor, or subcontractor who may perform work funded by this AGREEMENT.

The records to be maintained by the RECIPIENT shall include, but are not limited to, the following:

- a) Records that identify the sources and applications of funds for this AGREEMENT and contain information pertaining to outlays;
- b) Supporting source documents;
- c) All documentation underlying the preparation of the financial reports;
- d) Any other records which are required following notification of an amendment to State of Washington or federal regulations which takes effect during the period in which costs are allowable; and
- e) Any other records necessary to disclose fully the amount and disposition of the funds provided to the RECIPIENT under this AGREEMENT and charged to the PROJECT, supported by documents evidencing in detail the nature and propriety of the charges, the total cost of each undertaking for which the assistance was given or used, the amount of the costs of the undertaking supplied by other sources, and other books, records, and documents needed for a full and complete verification of the RECIPIENT's responsibilities and all payments and charges under this AGREEMENT.

In the event that any litigation, claim or audit is initiated prior to the expiration of said six-year period, the records shall be retained until such litigation, claim, or audit involving the records is complete.

SECTION 13 REPRESENTATIONS, WARRANTIES, AND COVENANTS

The following representations and warranties by the PARTIES hereto shall be considered conditions precedent to the effectiveness of this AGREEMENT.

The RECIPIENT represents and warrants the following:

- a) That it is a corporation duly organized, validly existing and in good standing under the laws of the State of Washington;
- b) That the monies the RECIPIENT will derive through this AGREEMENT will be used solely for the PROJECT as defined in this AGREEMENT;
- c) That it has the full power and authority to enter into this AGREEMENT, and to carry out the obligations, which it has hereby undertaken;
- d) That all corporate and other proceedings required to be taken by or on the part of the RECIPIENT to authorize its entrance into this AGREEMENT, have been or will be duly taken;

- e) That execution of this AGREEMENT and the performance of the improvement hereunder will not violate any statute, rule, regulation, order, writ, injunction or decree of any Court, administrative agency or government body;
- f) It is the intent of the STATE to partially reimburse the RECIPIENT for its actual PROJECT costs. It is understood that if unforeseen circumstances cause the PROJECT cost to exceed the PROJECT estimate, the RECIPIENT shall complete the PROJECT and assume the entire cost overrun;
- g) That the RECIPIENT has not employed or retained any company or person to solicit or secure this AGREEMENT, and that it has not paid or agreed to pay any company or person, any fee, commission percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this AGREEMENT. For breach or violation of this warranty, the STATE shall have the right to terminate this AGREEMENT without liability;
- h) That the RECIPIENT shall not engage on a full, part-time, or other basis, during the period of the AGREEMENT, any professional or technical personnel, to work on this AGREEMENT, who are, or have been, at any time during the period of the AGREEMENT in the employ of the STATE without written consent of the employer of such person; and
- i) That the RECIPIENT shall not extend any loan, gratuity, or gift of money in any form whatsoever to any employee, agent, or officer of the STATE nor will the RECIPIENT rent or purchase any equipment or materials from any employee or officer of the STATE.

SECTION 14 TERMINATION FOR FAULT

Should either the STATE or the RECIPIENT substantially fail to perform their obligations under this AGREEMENT, and continue in such default for a period of sixty (60) calendar days, the PARTY not in default shall have the right at its option, after first giving thirty (30) calendar days written notice thereof by certified mail to the PARTY in default, and notwithstanding any waiver by the PARTY giving notice of any breach thereof, to terminate this AGREEMENT. The termination of this AGREEMENT shall not impair any other rights of the terminating PARTY under this AGREEMENT or any rights of action against the defaulting PARTY for the recovery of damages. For purposes of this provision, a substantial failure to perform on the part of the RECIPIENT shall be deemed to include, but shall not be limited to, any action of the RECIPIENT that jeopardizes its ability to perform pursuant to this AGREEMENT.

SECTION 15 TERMINATION FOR CONVENIENCE

The STATE may terminate this AGREEMENT in whole, or in part, upon thirty (30) calendar days written notice whenever: (a) The requisite loan funding becomes unavailable through failure of appropriation or otherwise; and/or (b) The STATE determines that such termination is in the best interests of the STATE. (c) If the STATE exercises its rights under this Section, then the STATE shall reimburse the RECIPIENT for any expenses and costs eligible hereunder prior to receipt of such notice of termination.

SECTION 16 ASSIGNMENT AND SUCCESSION

Neither the STATE nor the RECIPIENT may assign or in any manner transfer either in whole or in part this AGREEMENT or any right or privilege granted to it hereunder, nor permit any person or persons, company or companies to share in any such rights or privileges without the prior written consent of the other PARTY hereto, except as otherwise herein provided. Nothing in this AGREEMENT shall be construed to permit any other railway company or any other person, corporation, or association, directly or indirectly, to possess any right or privilege herein.

SECTION 17 FORCE MAJEURE

It is further understood and agreed that neither the RECIPIENT nor the STATE, as the applicable case may be, shall be required to keep this AGREEMENT in effect during any period(s) it is prevented from doing so by governmental action, war, strikes, riots, terrorism, or civil commotion, or if the rail facilities or any portion thereof is made unserviceable by Acts of God including, but not limited to, floods, high water, or other damage by the elements.

SECTION 18 NOTICES

Any notice, request, consent, demand, report, statement or submission which is required or permitted to be given pursuant to this AGREEMENT shall be in writing and shall be delivered personally to the respective PARTY set forth below, or if mailed, sent by certified United States mail, postage prepaid and return receipt required, to the respective PARTIES at the addresses set forth below, or to such other addresses as the PARTIES may from time to time advise by written notice to the other PARTY. The date of personal delivery or of execution of the return receipt in the case of delivery by certified U.S. mail, of any such notice, demand, request, or submission shall be presumed to be the date of delivery.

NOTICES IN THE CASE OF THE RECIPIENT:

City of Tacoma dba Tacoma Public Utilities – Tacoma Rail
Tacoma Rail Assistant Superintendent
Attn: Alan Matheson
2601 SR 509 North Frontage Road
Tacoma, WA 98421-3134

Should the above Registered Agent become unavailable, the RECIPIENT consents to allowing the legal notices to be sent to the Secretary of State of the State of Washington.

NOTICES IN THE CASE OF THE STATE:

Ron Pate, Director
WSDOT Rail Division
310 Maple Park Avenue SE
Olympia, WA 98504-7407

SECTION 19 INTERPRETATION

This AGREEMENT shall be construed liberally so as to secure to each PARTY hereto all of the rights, privileges, and benefits herein provided or manifestly intended. This AGREEMENT, and each and every provision hereof, is for the exclusive benefit of the PARTIES hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right of a third party to recover by way of damages or otherwise against the PARTIES hereto.

If any covenant or provision, or part thereof, of this AGREEMENT shall be adjudged void, such adjudication shall not affect the validity or obligation of performance of any other covenant or provision, or part thereof, which in itself is valid, if such remainder conforms to the terms and requirements of applicable law and the intent of this AGREEMENT. No controversy concerning any covenant or provision shall delay the performance of any other provisions except as herein allowed.

All remedies provided in the AGREEMENT are distinct and cumulative to any other right or remedy under this document or afforded by law or equity, and may be exercised independently, concurrently, or successively therewith.

Any forbearance of the PARTIES in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of, or preclude the exercise of that or any other right or remedy hereunder.

Each PARTY hereby agrees to immediately notify the other PARTY of any change in conditions or any other event, which may significantly affect the TERM of this AGREEMENT or the PARTY's ability to perform the PROJECT in accordance with the provisions of this AGREEMENT.

SECTION 20 SUBCONTRACTING

It is understood that the RECIPIENT may choose to subcontract all or portions of the work. The RECIPIENT must obtain the STATE's advanced written approval of all subcontractors it shall employ on the PROJECT.

No contract between the RECIPIENT and its contractors and/or their subcontractors, and/or material suppliers shall create any obligation or liability of the STATE with regard to this AGREEMENT without the STATE's specific written consent to such obligation or liability notwithstanding any concurrence with, or approval of, the award, solicitation, execution, or performance of any contract or subcontract. The RECIPIENT hereby agrees to include the provisions of this AGREEMENT in all contracts entered into by the RECIPIENT for the employment of any individuals, procurement of any materials, or the performance of any work to be accomplished under this AGREEMENT.

SECTION 21 LAWS TO BE OBSERVED

1. **General Compliance.** The RECIPIENT shall comply with all applicable federal, State, and local laws, rules, regulations, and orders pertaining to the PROJECT, including but not limited to 48 CFR Part 31 and 49 CFR Part 18. If any action or inaction by the RECIPIENT results in a fine, penalty, cost, or charge being imposed or assessed on or against the RECIPIENT and/or the STATE, the RECIPIENT shall assume and bear any such fine, penalty, cost, or charges. In the event the STATE, for any reason, is required to pay the same, the RECIPIENT, upon demand, shall promptly reimburse, indemnify, and hold harmless the STATE for or on account of such fine, penalty, cost or charge and shall also pay all expenses and attorney's fees expensed in defending any action that may be brought against the STATE on account thereof. The RECIPIENT shall, in the event of any such action and upon notice thereof from the STATE, defend any such action(s) free of cost, charge and expense to the STATE.
2. **Permits and Compliance with land use and environmental laws.** The RECIPIENT shall be responsible for obtaining all necessary permits from federal, state, and local agencies of government and compliance with land use and environmental regulations pertaining to the performance of work under this AGREEMENT.
3. **Compliance with Social Laws.** During the term of the AGREEMENT, the RECIPIENT and its contractors, subcontractors, and lessees shall comply with all applicable STATE and FEDERAL workmen's compensation, employer's liability and safety and other similar laws applicable to the RECIPIENT.
4. **Equal Employment Opportunity.** In connection with the execution of this AGREEMENT, the RECIPIENT or its Contractor shall not discriminate against any employee or applicant for employment because of race, creed, marital status, age, color, sex or national origin, or disability, except for a bona fide occupational qualification.

SECTION 22 INDEPENDENT CONTRACTOR

The RECIPIENT shall be deemed an independent contractor for all purposes and the employees of the RECIPIENT or any of its contractors, subcontractors, lessees and the employees thereof, shall not in any manner be deemed the employees or agents of the STATE.

SECTION 23 SAFETY AND LIABILITIES

1. **Safety.** The RECIPIENT shall do all things necessary and proper for the safe operation of the PROJECT and shall comply with all regulations prescribed by law or any public authority with

respect thereto for the safety of the public or otherwise.

2. **Personal Liability of Public Officers.** No officer or employee of the STATE or RECIPIENT shall be personally liable for any act, or failure to act, in connection with this AGREEMENT, it being understood that in such matters they are acting solely as agents of the STATE or RECIPIENT.
3. **Responsibility for Damage.** The STATE, Transportation Commission, Secretary of Transportation, and all officers and employees of the STATE including, but not limited to, those of the Department of Transportation shall not be responsible in any manner for: any loss or damage to the work or any part thereof; for any loss of material or damage to any of the materials or other things used or employed in the performance of the work; for any injury to or death of any persons, either workers or the public, or for damage to the public for any cause due to the intentional acts or negligence of the RECIPIENT or its workers, or anyone employed by it.
4. **Indemnification.** The RECIPIENT shall indemnify and hold the STATE and all its officers and employees harmless from, and shall process and defend at its own expense all claims, demands, or suits at law or equity arising out of this AGREEMENT caused by the performance or failure to perform by the RECIPIENT, its agents, employees and/ or its subcontractors of any and all duties prescribed by, or incidental to its performance under, this AGREEMENT; provided that nothing herein shall require the RECIPIENT to indemnify or hold the STATE harmless against claims, demands, or suits based solely upon the negligent conduct of the STATE, its officers or employees; and provided further that if the claims, demands or suit is caused by or results from the concurrent negligence of (a) the RECIPIENT 's agents or employees and (b) the STATE's agents or employees, and involves those actions covered by RCW 4.24.115, this indemnity provision with respect to claims or suits based upon such negligence shall be valid and enforceable only to the extent of the RECIPIENT's negligence or the negligence of the RECIPIENT's agents or employees.

The RECIPIENT agrees that its obligations under this Section extend to any claim, demand and/or cause of action brought by, or on behalf of, any of its employees or agents while performing construction and/or maintenance for the PROJECT. For this purpose, the RECIPIENT, by mutual negotiation, hereby waives with respect to the STATE only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provisions chapter 51.12 RCW.

This indemnification and waiver shall survive the termination of this AGREEMENT for all claims, demands, or suits at law or equity arising out of this Agreement during its term.

SECTION 24 NO WAIVER OF STATE'S RIGHTS

The STATE shall not be precluded or stopped by any measurement, estimate, or certificate made either before or after the completion and acceptance of the work and payment therefore from showing the true amount and character of the work performed and materials furnished, or from showing that any such measurement, estimate, or certificate is untrue or incorrectly made, or that the work or materials do not conform in fact to the AGREEMENT. Neither the granting of an extension of time, nor acceptance of and/or payment for, the whole or any part of the work by the STATE shall bar the STATE from seeking recovery of damages or any money wrongfully or erroneously paid to the RECIPIENT. A waiver of any breach of contract shall not be held to be a waiver of any other or subsequent breach.

SECTION 25 VENUE

In the event that either PARTY deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the PARTIES hereto agree that any such action shall be initiated in the Superior Court of the State of Washington, situated in Thurston County. The PARTIES also agree that each PARTY shall be responsible for its own attorney's fees and other legal costs.

SECTION 26 DISPUTES RESOLUTION

In the event that a dispute arises under this AGREEMENT which cannot be resolved between the

PARTIES, the dispute shall be settled in the following manner: Each PARTY to this AGREEMENT shall appoint a member to a dispute board. The members so appointed shall jointly appoint a third member who is not employed by or affiliated in any way with the two PARTIES to this AGREEMENT. The dispute board shall evaluate the facts, contract terms, and applicable statutes and rules and make a determination of the dispute. The determination of the dispute board shall be final and binding on the PARTIES hereto. The PARTIES agree to each be responsible for its own costs and further agree to equally share the cost of the third member of the dispute board.

SECTION 27 COMPLETE AGREEMENT

This document and referenced attachments contain all of the covenants, stipulations and provisions agreed upon by the PARTIES. No agents, or representative of either PARTY has authority to make, and the PARTIES shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the PARTIES as an amendment to this AGREEMENT prior to beginning or continuing any work to be covered by the amendment.

SECTION 28 EXECUTION OF ACCEPTANCE

The PARTIES adopt all statements, representations, warranties, covenants, and EXHIBITS to this AGREEMENT.

SECTION 29 AMENDMENT

Either PARTY may request changes in these provisions. Such changes that are mutually agreed upon shall be incorporated as written amendments to this AGREEMENT. No variation or alteration of the terms of this AGREEMENT shall be valid unless made in writing and signed by authorized representatives of the PARTIES hereto prior to beginning or continuing any work to be covered by the amendment.

SECTION 30 COUNTERPARTS

This AGREEMENT may be executed in two counterparts, each of which shall be deemed to be an original having identical legal effect.

IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT as of the date signed last by the PARTIES below.

STATE OF WASHINGTON Department of Transportation

By: _____ Date: _____
Ron Pate, Director
Rail, Freight, and Ports Division

Approved as to Form on behalf of WSDOT

By: _____ Date: _____
L. Scott Lockwood
Assistant Attorney General

CITY OF TACOMA dba Tacoma Public Utilities – Tacoma Rail

By: _____ Date: _____
Jackie Flowers
Director of Utilities

By: _____ Date: _____
Andrew Cherullo
Finance Director

By: _____ Date: _____
Dale King
Superintendent

Approved as to Form

By: _____ Date: _____
Paul Goulding
Deputy City Attorney

Any modification, change or revision to this AGREEMENT requires the further approval as to form by the Office of the Attorney General.

EXHIBIT B

WSDOT ACCOUNTING MANUAL CHAPTER 10 TRAVEL RULES AND PROCEDURES

Online access available at:

<http://www.wsdot.wa.gov/NR/rdonlyres/95D3F802-2333-46C2-A656-8287CC05F5F6/37951/QuickReferenceGuide.pdf>

CURRENT TRAVEL REIMBURSEMENT INFORMATION

Per Diem Rates as of October 2018 are available online at:

<http://www.ofm.wa.gov/>

Please review this website for periodic updates to these rates

EXHIBIT C
REPAYMENT SCHEDULE

Payments are based on a LOAN amount of \$400,000 for 10 years

Principle = \$400,000.00 No. of Payments = 10
First Payment Due = October 1, 2021

No	Payment Date	Beginning Balance	Yearly Payment	Ending Balance
1	October1, 2021	\$400,000.00	\$40,000.00	\$360,000.00
2	October1, 2022	\$360,000.00	\$40,000.00	\$320,000.00
3	October1, 2023	\$320,000.00	\$40,000.00	\$280,000.00
4	October1, 2024	\$280,000.00	\$40,000.00	\$240,000.00
5	October1, 2025	\$240,000.00	\$40,000.00	\$200,000.00
6	October1, 2026	\$200,000.00	\$40,000.00	\$160,000.00
7	October1, 2027	\$160,000.00	\$40,000.00	\$120,000.00
8	October1, 2028	\$120,000.00	\$40,000.00	\$80,000.00
9	October1, 2029	\$80,000.00	\$40,000.00	\$40,000.00
10	October1, 2030	\$40,000.00	\$40,000.00	\$0.00

EXHIBIT A
SCOPE OF WORK
Containing
PROJECT DESCRIPTION
SCHEDULE
COST ESTIMATE

PROJECT Description

The Tote Yard Upgrade project proposes to replace heavily worn and deteriorated 90lb rail along Alexander Avenue just north of East 11th St in the Port of Tacoma area. The project will replace approximately 1,900 feet of the existing rail with new 115# rail and associated rail components including select ineffective crosstie replacement. Of the 1,900 feet of rail proposed, 230 feet is in a curve ahead of Tote Yard which provides multiple access points to the yard and a more direct connection to the largest customers in the area.

Schedule

Begin Preliminary Engineering	October 2019
Start Construction	March 2020
Construction Complete	June 2020

Cost Estimate

\$1,004,547

Cost estimate includes:

- \$604,547 Tacoma Rail match
- \$400,000 funding from WSDOT
 - \$4,000 for administration
 - \$396,000 for Construction