



## RESOLUTION NO. U-11451

1 A RESOLUTION relating to the City of Tacoma, Department of Public Utilities,  
2 Rail Division approving Grant Agreement No. RRB-1311 from the  
3 Washington State Department of Transportation (“WSDOT”) to assist  
4 with the acquisition of two zero emission locomotives and the installation  
5 of the associated on-site charging infrastructure.

6 WHEREAS the Public Utility Board and the Tacoma City Council  
7 previously approved a version of Grant Agreement No. RRB-1311 via  
8 Resolution No. U-11433 and City Council Resolution No. 41345, respectively, to  
9 assist with the acquisition of two zero emission locomotives and with the  
10 installation of the associated on-site charging infrastructure, and

11 WHEREAS prior to the final execution of Grant Agreement No. RRB-  
12 1311, WSDOT staff changed certain language in Section 14.5  
13 nondiscrimination not previously approved by the Public Utility Board and the  
14 Tacoma City Council in order to be consistent with changes made to RCW  
15 49.60.530, in the 2023 State Legislative Cycle, and

16 WHEREAS additionally, WSDOT staff has refined the language in  
17 Section 36 related to Climate Commitment Act branding requirements, and

18 WHEREAS Tacoma Rail staff were notified of these changes to Grant  
19 Agreement No. RRB-1311 after City Council’s approval was obtained on  
20 January 23, 2024, and

21 WHEREAS the funding level and other provisions of Grant Agreement  
22 No. RRB-1311 remain unchanged, and

23 WHEREAS in light of the changes made to Grant Agreement No. RRB-  
24 1311 by WSDOT, Tacoma Rail believes it is prudent to seek reauthorization of  
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Grant Agreement No. RRB-1311 recognizing the document has changed from the version on file in the office of the City Clerk at the time of the Council's approval on January 23, 2024; Now, therefore,

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

That Grant Agreement No. RRB-1311 with the Washington State Department of Transportation which provides for grant funding in the amount of a \$4,950,000 to assist with the acquisition of two zero emission locomotives and the installation of associated on-site charging infrastructure, is hereby approved, and the City Council is requested to approve Grant Agreement No. RRB-1311, and authorize the proper officers of the City execute Grant Agreement No. RRB-1311 substantially in the form on file with the Clerk of the Board, and as approved by the City Attorney's Office.

Approved as to form:

/s/	Chair
Chief Deputy City Attorney	Secretary
Clerk	Adopted



**Board Action Memorandum**

**TO:** Jackie Flowers, Director of Utilities  
**COPY:** Charleen Jacobs, Director and Board Offices  
**FROM:** Dale King, Superintendent Tacoma Rail  
**MEETING DATE:** April 10, 2024  
**DATE:** March 28, 2024

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**GUIDING PRINCIPLE ALIGNMENT (select as many that apply):**

Please indicate which of the Public Utility Board's Guiding Principle(s) is supported by this action.

- GP1 – Diversity, Equity, Inclusion, Belonging
- GP2 – Financial Sustainability
- GP3 – Rates
- GP4 – Stakeholder Engagement
- GP5 – Environmental Sustainability
- GP6 – Innovation
- GP7 – Reliability & Resiliency
- GP8 – Telecom
- GP9 – Economic Development
- GP10 – Government Relations
- GP12 – Employee Relations
- GP13 – Customer Service
- GP14 – Resource Planning

**SUMMARY:** Tacoma Rail requests re-authorization of Grant Agreement RRB-1311 from the Washington State Department of Transportation for \$4,950,000 associated with the acquisition of two, zero-emission locomotives and installation of the associated on-site charging infrastructure.

**BACKGROUND:** Originally approved with Resolutions U-11433 and 41345 in January 2024, TPU-Rail requests reapproval of Grant Agreement RRB-1311 on account WSDOT staff updated the language in Section 14.5 Nondiscrimination, to be consistent with changes made to RCW 49.60.530 in the 2023 State Legislative Cycle. Additionally, WSDOT staff has refined the language in Section 36 related to Climate Commitment Act branding requirements. TPU-Rail staff were notified of these required changes to the Agreement after City Council approval was obtained on January 23, 2024.

Funding level and other provisions of the Agreement remain unchanged. Staff believe it's prudent to seek reauthorization based on the language in Section 2 of Resolution 41345, recognizing the document has changed from the version on file in the office of the City Clerk at the time of Council's approval on January 23, 2024.

**ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? Yes**

**IF THE EXPENSE IS NOT BUDGETED, PLEASE EXPLAIN HOW IT IS 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:** Grant Agreement RRB-1311.

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



**TO:** Elizabeth Pauli, City Manager  
**FROM:** Jackie Flowers, Director of Utilities  
 Dale W. King, Tacoma Rail Superintendent  
**COPY:** City Council and City Clerk  
**SUBJECT:** Resolution – Reapproval of Washington State Grant Agreement RRB-1311, Zero-Emission Locomotive Project  
**DATE:** April 23, 2024

**SUMMARY AND PURPOSE:**

Tacoma Rail requests re-authorization of Grant Agreement RRB-1311 from the Washington State Department of Transportation for \$4,950,000 associated with the acquisition of two, zero-emission locomotives and installation of the associated on-site charging infrastructure.

**BACKGROUND:** Originally approved with Resolutions U-11433 and 41345 in January 2024, TPU-Rail requests Council reapprove Grant Agreement RRB-1311 on account WSDOT staff updated the language in Section 14.5 Nondiscrimination, to be consistent with changes made to RCW 49.60.530 in the 2023 State Legislative cycle. Additionally, WSDOT staff refined the language in Section 36 related to Climate Commitment Act branding requirements. TPU-Rail staff were notified of these required changes to the Agreement after Council approval was obtained on January 23, 2024.

Funding level and other provisions of the Agreement remain unchanged. Staff believe it’s prudent to seek reauthorization based on the language in Section 2 of Resolution 41345, recognizing the document has changed from the version on file in the office of the City Clerk at the time of Council’s approval on January 23, 2024.

**COMMUNITY ENGAGEMENT/ CUSTOMER RESEARCH:**

The project will improve air quality by reducing diesel exhaust emissions in the Port area as well as for residents in identified environmental health disparities areas.

**ALTERNATIVES:**

Alternative(s)	Positive Impact(s)	Negative Impact(s)
1. Reject the request for reapproval.		Potential inconsistency with the document on file.
2.		



**EVALUATION AND FOLLOW UP:**

Timely progression of project milestones is anticipated given that there are multiple funding agreements associated with the project. TPU-Rail staff will compile and submit progress reports as required by State Climate Commitment Act funds reporting protocols.

**STAFF/SPONSOR RECOMMENDATION:**

Tacoma Rail recommends that City Council reauthorize Washington State funding Agreement RRB-1311.

**FISCAL IMPACT:**

Fund Number & Name	COST OBJECT (CC/WBS/ORDER)	Cost Element	Total Amount
1. Fund 4500, TPU Rail	WBS-00126		\$4,950,000
<b>TOTAL</b>			

**What Funding is being used to support the expense?**

PROJECT IS BUDGETED IN TPU-RAIL'S 2023/24 CAPITAL OUTLAY PROJECTS.

**Are the expenditures and revenues planned and budgeted in this biennium's current budget?**

YES

**Are there financial costs or other impacts of not implementing the legislation?**

YES

**Will the legislation have an ongoing/recurring fiscal impact?**

YES

TPU-RAIL WILL BE RESPONSIBLE FOR INSPECTING AND MAINTAINING THE LOCOMOTIVES ONCE THEY ARE RECEIVED.

**Will the legislation change the City's FTE/personnel counts?**

No

**ATTACHMENTS:**



**Washington State  
Department of Transportation**

<p><b>GRANT AGREEMENT</b></p> <p><b>MAXIMUM AMOUNT AUTHORIZED</b> \$4,950,000</p>	<p><b>ORGANIZATION</b></p> <p>City of Tacoma dba Tacoma Public Utilities – Tacoma Rail 2601 SR 509 North Frontage Road Tacoma, WA 98421-3134</p>
<p><b>AGREEMENT NUMBER</b> RRB 1311</p>	<p><b>DESCRIPTION OF WORK</b></p> <p>The replacement of two Tacoma Rail diesel-electric switcher locomotives with zero emission battery-electric switcher locomotives and the installation of on-site charging equipment at a Tacoma Rail facility.</p>

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**, in Engrossed Substitute House Bill 1125, Chapter 472, Laws of 2023 (pv), Section 309 (11) the Washington State Legislature appropriated \$5,000,000 (Five Million Dollars) from the carbon emissions reduction account created in RCW 70A.65.240 for a project listed in the LEAP Transportation Document 2023-2, as developed April 21, 2023;

**WHEREAS**, the “Zero-Emission Locomotives and Charging” (the “PROJECT”) is included in the LEAP transportation document and is authorized STATE funds for the expenditure of up to \$5,000,000 (Five Million Dollars);

**WHEREAS**, in chapters 47.06A, and 47.66 and 47.76 RCW the Washington State Legislature has determined that multimodal transportation programs and projects and freight mobility projects are of significant interest to the STATE, and permits the STATE to provide funding for multimodal transportation programs and projects and freight mobility projects;

**WHEREAS**, in chapter 70A.02 RCW (Environmental Justice) the Washington State Legislature has declared it a matter of public interest that environmental health disparities for overburdened communities and vulnerable populations be prevented and addressed in the funding and administration of ongoing and new environmental programs;

**WHEREAS**, in chapter 70A.65 RCW (Greenhouse Gas Emissions – Capital and Investment Program, also known as the Washington Climate Commitment Act), the Washington State Legislature has expressed the serious challenges inherent to climate change and the importance of acting to reduce its impacts upon people and the environment, including acting to advance environmental equity and to cap greenhouse gas emissions; 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**

1.1 EXHIBIT A, which is attached hereto and by this reference made a part of this AGREEMENT, defines the Scope of Work for the PROJECT.

1.2 The GRANTEE shall furnish all personnel, facilities, equipment, and other materials and services (except as otherwise specified herein) necessary to perform the PROJECT as set forth in EXHIBIT A.

1.3 All work performed under this AGREEMENT shall comply with applicable provisions of federal, state and local laws and regulations.

## **SECTION 2 PAYMENTS TO GRANTEE**

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

2.2 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.

2.3 The STATE agrees to reimburse the GRANTEE up to a maximum amount of \$4,950,000 (Four Million Nine Hundred Fifty Thousand Dollars) for the actual direct and related indirect costs expended by the GRANTEE in the course of completing the PROJECT required under this AGREEMENT. The MAXIMUM AMOUNT AUTHORIZED excludes the STATE's costs of \$50,000 (Fifty Thousand Dollars) to administer this AGREEMENT.

2.4 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 funding commitment made herein.

2.5 Any costs expended 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.

2.6 The GRANTEE shall comply with all provisions of the most recent version of 48 CFR § 31 (Contract Cost Principles and Procedures) or as subsequently amended, regarding accounting conventions.

2.7 The GRANTEE shall submit quarterly invoices detailing work completed and a PROJECT status report. PROJECT status reports shall include: an account of significant progress made during the reporting period; a description of any technical and/or cost problem(s) encountered or anticipated that will affect completion of the PROJECT within the time and fiscal constraints as set forth in this AGREEMENT, together with recommended solutions or corrective action plans; an outline of work and activities planned for the next reporting period; updated milestone schedule dates; and the state of completion of items in the Scope of Work relative to expenditures of the relevant budget elements. The STATE shall make periodic payments to the GRANTEE for costs expended under this AGREEMENT. When requesting payment, the GRANTEE shall identify: (1) the total amount of costs to date; and (2) the remaining balance of dollars from the MAXIMUM AMOUNT AUTHORIZED. Supporting documentation for all costs being invoiced, including timecard records, itemized invoices, and itemized receipts, shall be submitted with the invoice each quarter. 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.

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

2.9 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.

2.10 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.

2.11 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) (Equipment).

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

2.13 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 that are contained in EXHIBIT B, attached hereto and by this reference made a part of this AGREEMENT. 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.

2.14 Per chapter 39.12 RCW, no payment can be made without the approved Intent to Pay Prevailing Wage being submitted to the STATE prior to payment. The online access address for the Prevailing Wage for Public Works Contracts is contained in EXHIBIT C, attached hereto and by this reference made a part of this AGREEMENT.

2.15 Most of Washington state is covered under the Industrial Fire Precautions Levels (IFPL) system which, by law, is managed by the Department of Natural Resources (DNR). In some cases, jurisdiction is transferred to the United States Forest Service or to the local fire authority. It is the GRANTEE's responsibility to be familiar with the IFPL requirements and to verify whether or not IFPL applies. The online access address for IFPL is contained in EXHIBIT C, attached hereto and by this reference made a part of this AGREEMENT.

2.16 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.

2.17 If the PROJECT is not completed by June 30, 2025, 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 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.

2.18 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.

2.19 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.

2.20 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 the STATE's final payment. In the event that the STATE and/or their representatives conducts an audit, and that audit indicates an overpayment of monies granted to the GRANTEE, the GRANTEE agrees to refund the overpayment to the STATE within thirty (30) calendar days after being billed therefore. Termination of this AGREEMENT will not alter the GRANTEE's obligation to return any funds due to the STATE as a result of later refunds, corrections, or other transactions. Nor will termination of this AGREEMENT alter the STATE's right to disallow costs and recover funds on the basis of a later audit or other review.

### **SECTION 3 TERM**

3.1 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. The PARTIES expect the useful life for the Scope of Work to be 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 unless terminated sooner in accordance with SECTION 18 of this AGREEMENT.

3.2 Notwithstanding SECTION 33, the STATE, at its sole discretion, reserves the right to unilaterally amend the term of this AGREEMENT with respect to the duration of the reporting requirements described in SECTION 10 of this Agreement only, based on guidance from the Washington State Department of Ecology.

### **SECTION 4 CONTINGENT INTEREST**

4.1 The GRANTEE agrees that the STATE shall retain a Contingent Interest 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 port infrastructure.

4.2 The STATE shall maintain its Contingent Interest for ten (10) years following the PROJECT's completion. During this time the GRANTEE shall not (a) use the port infrastructure, property or equipment purchased with funds from this AGREEMENT as collateral, (b) remove elements of the port infrastructure or equipment purchased with funds from this AGREEMENT for salvage, or (c) use the PROJECT capital improvements or equipment in any manner subordinating the STATE's Contingent Interest without obtaining prior written approval from the STATE. The STATE's Contingent Interest specified under this provision shall apply to any person or persons, company or companies, to include but not be limited to any parent or subsidiary company or corporation of GRANTEE, that may have an interest in the PROJECT.

4.3 The requirement that the PROJECT capital improvements and equipment be maintained for freight rail operations shall also be required of all subsequent purchasers, persons, or entities acquiring all, or a material portion of, the port facility for 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 in the PROJECT's capital improvements and equipment upon the consummation of any such conveyance. The GRANTEE further agrees that, as a precondition to the GRANTEE's execution of any agreement to transfer ownership of all, or a material or equipment portion of, the PROJECT to a subsequent purchaser, assignee, or grantee, the

STATE shall retain the right to review and, if necessary, reject, any such agreement that does not contain guarantees sufficient to protect the STATE's Contingent Interest.

4.4 The GRANTEE shall make appropriate entries upon its financial statements and its books and records disclosing the STATE's Contingent Interest under this SECTION 4.

4.5 Should the GRANTEE or its successor(s) fail to continue and maintain the PROJECT for the Contingent Interest term as provided in this SECTION 4, the STATE may pursue compensation, including, but not limited to, the following methods: (a) issuing a lien against the assets that were improved under the PROJECT; and (b) requiring the GRANTEE to pay back funds for the remaining benefits period. The STATE may conduct periodic PROJECT reviews to ensure that maintenance is occurring in accordance with its Contingent Interest.

#### **SECTION 5 EMPLOYMENT AND INSPECTION OF WORK**

5.1 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.

5.2 The STATE will inspect progress at the work site, as it deems appropriate.

5.3 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 USE AND MAINTENANCE OF PROJECT CAPITAL IMPROVEMENTS AND OTHER EQUIPMENT PURCHASED WITH FUNDS FROM THIS AGREEMENT**

6.1 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.

6.2 The GRANTEE shall 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.

6.3 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 4 - CONTINGENT INTEREST. The costs of service, materials, and repairs in connection with the use and operation of the PROJECT shall be at the GRANTEE's expense.

6.4 Reserved..

#### **SECTION 7 LOSS OR DAMAGE TO THE PROJECT EQUIPMENT**

7.1 Reserved.

#### **SECTION 8 MAINTENANCE OF RECORDS AND AUDIT REQUIREMENTS**

8.1 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 intact

and available for inspection and audit by representatives of the STATE. Termination of this AGREEMENT does not alter the GRANTEE's requirements under this SECTION 8.

8.2 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 (Contract Cost Principles and Procedures). 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.

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

8.3.1 Records that identify the sources and applications of funds for this AGREEMENT and contain information pertaining to outlays;

8.3.2 Supporting source documents;

8.3.3 All documentation underlying the preparation of the financial reports;

8.3.4 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

8.3.5 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.

8.4 In the event that any litigation, claim or audit is initiated prior to the expiration of said six (6) year period, the records shall be retained until such litigation, claim, or audit involving the records is complete.

## **SECTION 9 QUALITY ASSESSMENTS**

9.1 The GRANTEE's project management of the PROJECT may be subject to periodic assessments by the STATE for quality assurance purposes. If requested, the GRANTEE shall provide the necessary staffing to attend assessment interviews, accommodate STATE personnel during field visits, and make available for the STATE to review, requested documentation (or representative examples thereof) that supports its quality management activities.

## **SECTION 10 REPORTING REQUIREMENTS AND DATA COLLECTION**

10.1 GRANTEE shall submit data and reports to the STATE as set forth in EXHIBIT D.

## **SECTION 11 FINAL REPORT AND FINAL INSPECTION**

11.1 Within ninety (90) days following the completion of the PROJECT and submission of the final billing for the PROJECT, a final report and/or final inspection shall be submitted to the STATE's Director of Rail, Freight and Ports containing the following information:

### 11.1.1 Non-Capital Projects

11.1.1.1 A description of the PROJECT or program.

11.1.1.2 A summary of actual costs of the PROJECT or program.

11.1.1.3 An evaluation of the PROJECT or program. This should address aspects such as transportation, environmental, and/or other benefits to the public.

11.1.2 Capital Projects

11.1.2.1 A final inspection is required by the STATE for acceptance.

**SECTION 12 LEGAL RELATIONS**

12.1 No liability shall attach to the GRANTEE or the STATE by reason of entering into this AGREEMENT except as expressly provided herein.

**SECTION 13 INSURANCE**

13.1 The GRANTEE shall obtain and keep in force during the terms of this AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to Title 48 RCW.

13.1.1 Worker's compensation and employer's liability insurance as required by the STATE.

13.1.2 Commercial general liability insurance with minimum limits of three million dollars (\$3,000,000.00) per occurrence and five million dollars (\$5,000,000.00) in the aggregate for each policy period.

13.1.3 Business auto liability insurance providing coverage for any "Auto" (Symbol 1) used in an amount not less than a three million dollar (\$3,000,000.00) combined single limit for each occurrence.

13.1.4 Reserved.

13.1.5 Reserved.

13.1.6 Reserved.

13.2 Excepting the Worker's Compensation Insurance, the STATE, its officers, employees, and agents will be named on all policies of GRANTEE and any consultant and/or contractor as an additional insured (the "AIs"), with no restrictions or limitations concerning products and completed operations coverage. This coverage shall be primary coverage and non-contributory and any coverage maintained by the AIs shall be excess over, and shall not contribute with, the additional insured coverage required hereunder. The GRANTEE's and the consultant's and/or contractor's insurer shall waive any and all rights of subrogation against the AIs. The GRANTEE shall furnish the STATE with verification of insurance and endorsements required by this AGREEMENT. The STATE reserves the right to require complete, certified copies of all required insurance policies at any time.

13.3 If the GRANTEE maintains broader coverage and/or higher limits than the minimums shown above, the STATE requires and shall be entitled to the broader coverage and/or the higher limits maintained by the GRANTEE. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the STATE.

13.4 All insurance shall be obtained from an insurance company authorized to do business in the state of Washington. The GRANTEE shall submit a verification of insurance as outlined above within fourteen (14) days of the execution of this AGREEMENT to:

Document Control  
WSDOT Rail, Freight, and Ports Division  
310 Maple Park Avenue SE, Room 3D3  
Olympia, WA 98501-2348  
[srmdoc@wsdot.wa.gov](mailto:srmdoc@wsdot.wa.gov)  
(360) 705-7900

13.5 No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the STATE.

13.6 The GRANTEE is allowed to self-insure with the prior written consent of the STATE. If granted by the STATE, any self-insured retention or other financial responsibility for claims shall be covered directly by GRANTEE in lieu of insurance. Any and all liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by GRANTEE's insurance will be covered as if GRANTEE elected not to include a deductible, self-insured retention or other financial responsibility for claims. Prior to commencing services, GRANTEE shall furnish to the STATE an acceptable certificate(s) of insurance from an authorized company representative evidencing the required coverage(s), endorsements, and amendments.

13.7 The GRANTEE shall require each Subcontractor to provide and maintain insurance that complies with the requirements for the GRANTEE-provided insurance set forth in SECTION 13.1 in circumstances where the Subcontractor is not covered by the GRANTEE-provided insurance; provided that the GRANTEE shall have sole responsibility for determining the limits of coverage required to be obtained by the Subcontractors (if any), which determination shall be made in accordance with reasonable and prudent business practices. The GRANTEE shall cause each such Subcontractor to include each of the Indemnified Parties as additional insureds under such Subcontractors' insurance policies. The GRANTEE shall require each such Subcontractor to require that its insurers agree to waive any subrogation rights the insurers may have against the Indemnified Parties. If requested by the STATE, the GRANTEE shall promptly provide certificates of insurance evidencing coverage for each Subcontractor. The STATE shall have the right to contact the Subcontractors directly in order to verify the above coverage.

#### **SECTION 14 LAWS TO BE OBSERVED**

14.1 General Compliance – The GRANTEE shall comply with all applicable federal, state, and local laws, rules, regulations, and orders pertaining to the PROJECT, and to the extent applicable, 48 CFR § 31 (Contract Cost Principles and Procedures) and 2 CFR § 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards). 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.

14.2 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.

14.3 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.

14.4 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.

14.5 Nondiscrimination –

14.5.1 Nondiscrimination Requirement. During the term of this AGREEMENT, GRANTEE, including any subcontractor, shall not discriminate on the bases enumerated at RCW 49.60.530(3). In addition, GRANTEE, including any subcontractor, shall give written notice of the

nondiscrimination requirement to any labor organizations with which the GRANTEE, or subcontractor, has a collective bargaining or other agreement.

14.5.2 Obligation to Cooperate. GRANTEE, including any subcontractor, shall cooperate and comply with a Washington state agency investigation regarding any allegation that GRANTEE, including any subcontractor, has engaged in discrimination prohibited by the AGREEMENT pursuant to RCW 49.60.530(3).

14.5.3 Default. Notwithstanding any provision to the contrary, the STATE may suspend GRANTEE, including any subcontractor, upon notice of a failure to participate and cooperate with any state agency investigation into alleged discrimination prohibited by the AGREEMENT, pursuant to RCW 49.60.530(3). Any such suspension will remain in place until the STATE receives notification that GRANTEE, including any subcontractor, is cooperating with the investigating state agency. In the event GRANTEE, or subcontractor, is determined to have engaged in discrimination identified at RCW 49.60.530(3), the STATE may terminate this AGREEMENT in whole or in part, and GRANTEE, subcontractor, or both, may be referred for debarment as provided in RCW 39.26.200. GRANTEE or subcontractor may be given a reasonable time in which to cure this noncompliance, including implementing conditions consistent with any court-ordered injunctive relief or settlement agreement.

14.5.4 Remedies for Breach. Notwithstanding any provision to the contrary, in the event of AGREEMENT termination or suspension for engaging in discrimination, GRANTEE, subcontractor, or both, shall be liable for contract damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, which damages are distinct from any penalties imposed under chapter 49.60 RCW. WSDOT shall have the right to deduct from any monies due to GRANTEE or subcontractor, or that thereafter become due, an amount for damages GRANTEE or subcontractor will owe the STATE for default under this provision.

14.6 Reserved.

## **SECTION 15 REINVESTMENT OF ENVIRONMENTAL CREDITS EARNINGS**

15.1 To the extent GRANTEE receives any monies from the sale or disposition of energy credits, decarbonization credits, environmental credits, or any other monies through its participation in a like program, GRANTEE agrees to reinvest those monies into services and projects consistent with the state of Washington's carbon emissions reduction account (chapter 70A.65.240 RCW). GRANTEE's obligation to reinvest these monies under this SECTION 15 shall be in an amount no less than the proportion of the STATE's funding of this AGREEMENT.

## **SECTION 16 REPRESENTATIONS, WARRANTIES, AND COVENANTS**

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

16.2 The GRANTEE represents and warrants the following:

16.2.1 That it is a municipal corporation duly organized, validly existing and in good standing under the laws of the state of Washington;

16.2.2 That the monies the GRANTEE will derive through this AGREEMENT will be used solely for the PROJECT as defined in this AGREEMENT;

16.2.3 That it has the full power and authority to enter into this AGREEMENT, and to carry out the obligations, which it has hereby undertaken;

16.2.4 That all municipal 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;

16.2.5 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;

16.2.6 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;

16.2.7 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

16.2.8 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 17 FORCE MAJEURE**

17.1 It is 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, pandemic, or civil commotion, or if the port 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 TERMINATION**

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

18.1.1 The requisite funding becomes unavailable through failure of appropriation or otherwise; and/or

18.1.2 The STATE determines that such termination is in the best interests of the STATE.

18.2 If the STATE exercises its rights under SECTION 18.1, the STATE shall reimburse GRANTEE for any expenses and costs eligible hereunder prior to receipt of such notice of termination.

18.3 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, to terminate this AGREEMENT. Should either the STATE or GRANTEE fail to exercise any right or remedy during the sixty (60) calendar days in which the other PARTY is in default, such failure shall not subsequently be deemed a waiver of, or preclude the exercise of that or any other right or remedy hereunder. 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.

18.4 Default – In the event that either PARTY commits a material breach of its obligations under this AGREEMENT and fails to cure that breach within sixty (60) days after receiving written notice thereof, the other PARTY may terminate this AGREEMENT immediately upon written notice to the PARTY in breach.

18.5 After receipt of a notice of termination, and except as otherwise directed by the STATE, the GRANTEE shall:

18.5.1 Stop work under the AGREEMENT on the date, and to the extent specified, in the notice;

18.5.2 Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the AGREEMENT that is not terminated;

18.5.3 Assign to the STATE, in the manner, at the times, and to the extent directed by the STATE, all of the rights, title, and interest of the GRANTEE under the orders and subcontracts so terminated, in which case the STATE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

18.5.4 Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the STATE to the extent the STATE may require, which approval or ratification shall be final for all the purposes of this clause;

18.5.5 Complete performance of such part of the work as shall not have been terminated by the STATE; and, if applicable:

18.5.6 Transfer title to the STATE and deliver in the manner, at the times, and to the extent directed by the STATE any property which, if the contract had been completed, would have been required to be furnished to the STATE; and

18.5.7 Take such action as may be necessary, or as the STATE may direct, for the protection and preservation of the property related to this AGREEMENT, which is in the possession of the GRANTEE and in which the STATE has or may acquire an interest.

## **SECTION 19 INDEMNIFICATION**

19.1 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.

19.2 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.



19.3 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 20 ASSIGNMENT AND SUCCESSION**

20.1 The GRANTEE shall not 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 include but not be limited to any parent or subsidiary company or corporation of GRANTEE, to share in any such rights or privileges without the prior written consent of the STATE except as otherwise herein provided. Nothing in this AGREEMENT shall be construed to permit any other port authority or any other person, corporation, or association, directly or indirectly, to possess any right or privilege herein.

## **SECTION 21 INDEPENDENT CAPACITY**

21.1 The employees or agents of each PARTY who are engaged in the performance of this AGREEMENT shall continue to be employees or agents of that PARTY and shall not be considered for any purpose to be employees or agents of the other PARTY.

## **SECTION 22 NOTICES**

22.1 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:**

Alan Matheson  
Assistant Superintendent  
Tacoma Rail  
2601 SR 509 North Frontage Road  
Tacoma, WA 98421-3134

22.2 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:**

Director  
WSDOT Rail, Freight, and Ports Division  
310 Maple Park Avenue SE, Room 3D3  
Olympia, WA 98501-2348

## **SECTION 23 INTERPRETATION**

23.1 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.

23.2 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.

23.3 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.

23.4 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.

23.5 Each PARTY hereby agrees to immediately notify the other PARTY of any change in law, 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 24 SUBCONTRACTING**

24.1 It is understood that the GRANTEE may choose to subcontract all or portions of the work. The GRANTEE shall award all contracts for construction, purchase of goods, equipment, services, and professional architectural and engineering services through a competitive process, if required by state law. The GRANTEE is required to follow procurement procedures that ensure legal, fair, and open competition.

24.2 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. There shall be provisions for a further flow down of such requirements to each sub-tier contractor as required.

24.3 The GRANTEE is encouraged to solicit and recruit, to the extent possible, certified minority-owned (MBE) and women-owned (WBE) businesses in purchases and contracts initiated under this Agreement. Contract awards or rejections cannot be made based on MWBE participation; however, the GRANTEE is encouraged to take the following actions, when possible, in any procurement under this Agreement:

24.3.1 Include qualified minority and women's businesses on solicitation lists whenever they are potential sources of goods or services.

24.3.2 Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.

24.3.3 Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.

24.3.4 Use the services and assistance of the Washington State Office of Minority and Women's Business Enterprises (OMWBE) (866-208-1064) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

## **SECTION 25 SAFETY AND LIABILITIES**

25.1 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.

25.2 Personal Liability of Public Officers – No officer or employee of the STATE 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.

25.3 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; and any loss of material or damage to any of the materials or other things used or employed in the performance of the work; any injury to or death of any persons, either workers or the public, or 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.

## **SECTION 26 AMERICANS WITH DISABILITIES ACT**

26.1 The GRANTEE agrees to utilize funds provided under this AGREEMENT in a manner consistent with the requirements of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. § 12101 et seq.).

## **SECTION 27 NO WAIVER OF STATE’S RIGHTS**

27.1 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 28 VENUE**

28.1 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 29 DISPUTES RESOLUTION**

29.1 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:

29.1.1 Designated representatives from each PARTY agree to meet in good faith to resolve the dispute to the mutual satisfaction of both PARTIES. If after thirty (30) days a resolution is not reached, then;

29.1.2 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 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.

29.1.3 The GRANTEE and STATE agree that they shall have no right to seek relief in a court of law until and unless the Dispute Resolution process has been exhausted.

29.2 The following individuals are the Designated Representatives for the purpose of resolving disputes that arise under this AGREEMENT:

Tacoma Rail  
Alan Matheson  
Assistant Superintendent  
2601 SR 509 N. Frontage Road  
Tacoma, WA 98421-3134  
[alan.matheson@cityoftacoma.org](mailto:alan.matheson@cityoftacoma.org)  
253-502-8934

WSDOT Rail, Freight, and Ports Division  
Capital Program Manager  
310 Maple Park Ave. SE, Room 3D3  
Olympia, Wash. 98501-2348  
[srmdoc@wsdot.wa.gov](mailto:srmdoc@wsdot.wa.gov)  
360-705-7900

29.3 In the event the Designated Representatives are unable to resolve the dispute within ten (10) business days, the following individuals, or their designee, shall confer and resolve the dispute:

Tacoma Rail  
Dale King  
Superintendent  
2601 SR 509 N. Frontage Road  
Tacoma, WA 98421-3134  
[dwking@cityoftacoma.org](mailto:dwking@cityoftacoma.org)  
253-502-8894

WSDOT Rail, Freight, and Ports Division  
Director  
310 Maple Park Ave. SE, Room 3D3  
Olympia, Wash. 98501-2348  
[srmdoc@wsdot.wa.gov](mailto:srmdoc@wsdot.wa.gov)  
360-705-7900

### **SECTION 30 NOTIFICATION OF THIRD-PARTY CONTRACT DISPUTES OR BREACHES**

30.1 The GRANTEE agrees to notify the STATE of any current or prospective major dispute, breach, or litigation pertaining to any third-party contract. If the GRANTEE seeks to name the STATE as a party to litigation for any reason, the GRANTEE agrees first to inform the STATE before doing so. This proviso applies to any type of litigation whatsoever, in any forum.

### **SECTION 31 COMPLETE AGREEMENT**

31.1 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.

### **SECTION 32 EXECUTION OF ACCEPTANCE**

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

### **SECTION 33 AMENDMENT**

33.1 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 34 SEVERABILITY**

34.1 If any provision of this AGREEMENT is held invalid, all remaining provisions of this AGREEMENT shall continue in full force and effect to the extent not inconsistent with such holding.

## **SECTION 35 ORDER OF PRECEDENCE**

35.1 In the event of inconsistency in this AGREEMENT, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable federal and state statutes and regulations; (b) the AGREEMENT; (c) Scope of Work; and (d) Any provisions or terms incorporated herein by reference.

## **SECTION 36 COORDINATED CLIMATE COMMITMENT ACT BRANDING**

36.1 The PROJECT received funding from Washington's Climate Commitment Act (CCA). To strengthen public awareness of how CCA funding is used, the Office of the Governor is directing state agencies that administer funding or manage a CCA-supported program to ensure consistent branding and funding acknowledgments are used in all communications and included in funding agreements and contracts. The "Climate Commitment Act" logo and funding acknowledgment make it easy for consumers and the public to see how the state is using CCA funds to reduce climate pollution, create jobs, and improve public health and the environment, particularly for low-income and overburdened populations.

The following provisions apply to all contractors, subcontractors, service providers and others who assist GRANTEE in implementing the PROJECT.

36.2 Logo requirements. The CCA logo will be used in the following circumstances, consistent with the branding guidelines posted at [climate.wa.gov/brandtoolkit](http://climate.wa.gov/brandtoolkit).

36.2.1 Any PROJECT website or webpage that includes logos from other funding partners.

36.2.2 Any PROJECT media or public information materials that include logos from other funding partners.

36.2.3 On-site signage at any construction locations.

36.3 Funding source acknowledgement. This standard funding language must be used on websites and included in announcements, press releases and publications used for media-related activities, publicity and public outreach.

"The Zero-Emission Locomotives and Charging Project is supported with funding from Washington's Climate Commitment Act. The CCA supports Washington's climate action efforts by putting cap-and-invest dollars to work reducing climate pollution, creating jobs, and improving public health. Information about the CCA is available at [www.climate.wa.gov](http://www.climate.wa.gov)."

Recognition of CCA funding extends to publications, websites, invitations, and other media-related and public-outreach products.

**SECTION 37 COUNTERPARTS**

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

37.2 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: \_\_\_\_\_  
Jason Biggs, PE  
Director  
WSDOT Rail, Freight, and Ports Division

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, Tacoma Rail

Approved as to form:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
James Nelson, Assistant Attorney General  
State of Washington

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Erik Furer, Deputy City Attorney  
City of Tacoma – Tacoma Public Utilities

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**

Background:

The Project will remove two circa 1965 unregulated diesel-electric locomotives from active service and replace them with two zero-emissions battery-electric locomotives, along with the corresponding onsite charging infrastructure.

Tasks

Project Management

- Assumptions
  - Likely multiple contracts associated with the project to include:
    - Locomotive & Charger(s) manufacturer
    - Industrial Electrification Consultant
    - Civil Engineer for on-site installations
- Deliverables
  - Project Specification for bids solicitations:
    - Locomotive manufacturer
    - On-site electrical and associated construction work
  - Contract with locomotive manufacturer
  - Contracts with Civil and Electrical Engineers

Reporting

- Assumptions
  - Adherence to reporting and compliance requirements.
- Deliverables
  - Quarterly progress report to WSDOT.
  - Quarterly invoice to WSDOT.

NEPA/SEPA

- Assumptions
  - Conduct NEPA/SEPA review for on-site improvements.
- Deliverables
  - Given federal funds are associated with the project, a NEPA review will be completed.

Final Design

- Assumptions
  - Relevant information developed in the PE phase will be incorporated into the Project Specification used in the bid solicitation process.
- Deliverables
  - Final Project Plans and Specifications to be used in the contracting phase.

Material Acquisition

- Assumptions
  - Materials/components required to complete the project will be identified in the Project Specification document.

- Deliverables
  - Materials/components required to complete the project will be supplied by contractors identified during contracting phase.

Construction

- Assumptions
    - New electrical service specific to the charging infrastructure will be required.
    - Manufacture of the locomotives will likely not occur in Washington State.
  - Deliverables
    - Application for new electrical service will be filed upon execution of the Grant Agreement with the State. This will allow the transformer to be ordered well in advance of the on-site construction, as a mitigation strategy to the long lead-time of that component.
-



**SCHEDULE**

Contract Execution: July 2024  
Design Start: March 2024  
SEPA Start: March 2024  
SEPA Completion: April 2024  
Design Completion: May 2024  
Locomotive Acquisition Completion: July 2026  
Contract Closed: August 2026

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**EXHIBIT B**  
**TRAVEL RULES AND PROCEDURES**

## Appendix 23.74 Local Programs Quick Reference Travel Guide

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### Meals

Must be in travel status during the entire department determined meal period

#### Same Day Travel

- Traveler must be in travel status for 11 hours
- Meals will be reimbursed at the rate in effect for the location of the traveler's last temporary duty station of the day
- Meals will be reported as taxable income to the traveler

#### Overnight Travel

- Meals will be reimbursed at the rate in effect for the area where the traveler stops for sleep. The rate for the last day of travel (return day) is the rate for the location where the traveler last stopped for sleep.
- Meals are not reported as taxable income

#### Meal Periods

- Breakfast: the hour and a half immediately prior to the start of the regularly scheduled shift
- Lunch: the time the employee normally eats or, if eating times vary, halfway through the regularly scheduled shift
- Dinner: the hour and a half immediately following the end of the regularly scheduled shift

**Note:** Meal periods on scheduled day off and flex day is the same as the predominant work schedule for the week or pay period. For example, an employee works 4-9's and 1-4 hour schedule. Meal periods on day off and the 4 hour day are based on the 9 hour shift.

### Per Diem Rates

Washington State Per Diem Map<sup>1</sup>

Continental USA Per Diem Rates<sup>2</sup>

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<sup>1</sup> [www.ofm.wa.gov/resources/travel.asp](http://www.ofm.wa.gov/resources/travel.asp)

<sup>2</sup> [www.gsa.gov/portal/content/104877](http://www.gsa.gov/portal/content/104877)

## Lodging

- Eligible when the temporary duty station is more than fifty miles (most direct route) from the traveler's official residence and official station (50 mile rule)
- Limited to the basic government room rate plus any applicable sales taxes and/or hotel taxes
- Lodging tips or gratuities will not be reimbursed
- Travelers are reimbursed actual cost, as evidenced by receipt, for a single basic room up to the maximum lodging rate (state government room rate. See per Diem rate links pg. 1).

### Exceptions-50 Mile Rule

- Approvers may approve exception to the fifty mile rule in the following situations:
- When the amount of time between the close of business on the first day and the start of business on the second is 11 hours or less (based on 3 hours personal time and 8 hours of sleep)
- When health and safety of the traveler is of concern. This requires written approval attached to the Travel Expense Voucher

### Exceptions-150% Rule

- Requires written pre-approval
- Approvers may approve exception to the 150% rule in the following situations:
- The costs in the area have escalated for a brief period of time during special events or disasters
- Accommodations are not available at or below the maximum lodging amount, and the savings achieved from occupying less expensive lodging at a more distant site are consumed by an increase in transportation and other costs. Note a cost analysis must accompany this condition
- The traveler attends a meeting, conference, convention, or training session where the traveler is expected to have business interaction with other participants in addition to scheduled events. Further, it is anticipated that maximum benefit will be achieved by authorizing the traveler to stay at the lodging facility where the meeting, conference, convention, or training session is held

150% Rule Calculation for Lodging Meals + Lodging= Total Per Diem x 1.5= 150% Amount for lodging

## Transportation

### Privately Owned Vehicle (POV)

- Use of POV for personal reasons is reimbursable at the elective POV rate.
- The traveler's private insurance policy provides primary liability coverage when using POV for business travel -- Proof of insurance must be maintained for POVs used for state business
- Transporting unauthorized passengers in a POV is considered a personal decision. The State of Washington assumes NO responsibility for such unauthorized passengers under any circumstances

### Common Non-Reimbursable Travel Costs

- Alcoholic Beverages
- Cost of the daily commute between the traveler's regular place of work, permanent duty station (or telework site) and home. This includes travel to work on day off.
- Tolls associated with the use of high occupancy toll (HOT) lanes
- Parking tickets or moving violations
- Meal costs incurred at the traveler's official duty station or official residence
- Meal costs when the traveler does not incur expenses for meals because they are furnished. This excludes continental breakfasts and airline meals.
- Lodging expenses incurred at a lodging facility located at either the traveler's official duty station or official residence.
- Lodging incurred at a lodging facility or temporary duty station located within 50 miles of either the official residence or official station.
- Lodging expenses when a traveler stays at a non-commercial lodging facility such as a private/family residence or state provided facility.
- Lodging expenses for family members accompanying the traveler
- Valet Services
- Entertainment expenses
- Out of pocket charges for vehicle service calls due to the negligence of the traveler
- Personal trip insurance
- Personal telephone calls
- Taxi fares, motor vehicle rental, and other transportation costs to or from places of entertainment and other non-state business.
- Any tips or gratuities associated with personal expenses.

## **EXHIBIT C**

### **PREVAILING WAGE FOR PUBLIC WORKS CONTRACTS**

Please review the Washington State Department of Labor and Industries Website for periodic updates to these rates.

<https://lni.wa.gov/licensing-permits/public-works-projects/prevailing-wage-rates>

## **EXHIBIT D**

### **REPORTING REQUIREMENTS AND DATA COLLECTION**

GRANTEE shall submit data and reports, in a form and format to be provided by the STATE and at intervals determined by the STATE, regarding the following:

#### Emissions Reductions

1. Whether the PROJECT produced any verifiable reduction in greenhouse gas emissions or other long-term impact to emissions; and if so:
2. The quantity of reduced greenhouse gas emissions; and
3. The cost per carbon dioxide equivalent metric ton of reduced greenhouse gas emissions.

#### Benefits to Overburdened Communities and Vulnerable Populations

1. Whether the PROJECT provided direct and meaningful benefits to vulnerable populations within the boundaries of overburdened communities, as defined in RCW 70A.65.030(1), RCW 70A.65.230(3), RCW 70A.02.010(14), and RCW 70A.65.010(54); and if so:
2. The actual or estimated amount of PROJECT expenditures to date that have provided such benefits; and
3. An explanation of how PROJECT expenditures have provided such benefits.

#### Programs, Activities, or Projects Formally Supported by a Resolution of an Indian Tribe

1. The actual or estimated amount of PROJECT expenditures to date that have been used for programs, activities, or projects formally supported by a resolution of a federally recognized Indian tribe.

The STATE shall provide the methodologies and tools for quantifying information in the data and reports under this EXHIBIT D. The GRANTEE shall use only those methodologies and tools provided by the STATE to quantify information, except as otherwise permitted in writing by the STATE. The STATE may require the GRANTEE to provide raw data in lieu of, or in addition to, calculated quantities or estimates.

The PARTIES agree to amend this EXHIBIT D with respect to the duration or nature of the reporting requirements as a result of any statutory or other changes governing the STATE's data collection obligations.