



RESOLUTION NO. U-11561

1 A RESOLUTION relating to the Department of Public Utilities, Belt Line
2 Division, authorizing the Belt Line Division to accept Loan Agreement
3 RRC-1011, from the Washington State Department of Transportation for
4 the purpose of upgrading three frequently used railroad tracks in Tacoma
5 Tideflats area.

6 WHEREAS the Department of Public Utilities, Belt Line Division
7 ("Tacoma Rail"), was awarded a loan in the amount of \$1,122,000, from the
8 Washington State Department of Transportation, and

9 WHEREAS the proposed loan application is to upgrade three frequently
10 used railroad tracks in the Tacoma Tideflats area, and

11 WHEREAS loan agreement RRC-1011 requires Tacoma Rail to
12 contribute \$469,250 in matching funds, and

13 WHEREAS the loan has a 10-year term, requiring annual payments of
14 \$112,200, beginning January 1, 2028, and includes a \$22,000 administrative
15 fee, and

16 WHEREAS the Public Utility Board believes it is in the best public
17 interest to approve such Agreement; Now, therefore,

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

19 That Loan Agreement RRC-1011 between Tacoma Rail and the
20 Washington State Department of Transportation for the upgrade of three
21 frequently used railroad tracks in the Tacoma Tideflats area is hereby
22 approved, in the amount of \$1,100,000, plus a \$22,000 administrative fee, for a
23 ten-year term, with annual payments of \$112,200, and with a \$469,250
24
25
26



1 contribution from Tacoma Rail. The City Council is requested to also approve
2 Loan Agreement RRC-1011 and authorize the proper officers of the City of
3 Tacoma to execute said Agreement in substantially such form as on file with
4 the Clerk and/or as approved by the City Attorney's Office.
5

6 Approved as to form:

Chair

7 /s/

8 Chief Deputy City Attorney

Secretary

9
10 Clerk

Adopted



Board Action Memorandum

TO: Jackie Flowers, Director of Utilities
COPY: Charleen Jacobs, Director and Board Offices
FROM: Alan Matheson, Rail Superintendent
MEETING DATE: October 8, 2025
DATE: September 8, 2025

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 | ☒ GP7 – Reliability & Resiliency |
| ☐ GP2 – Financial Sustainability | ☐ GP9 – Economic Development |
| ☐ GP3 – Rates | ☐ GP10 – Government Relations |
| ☐ GP4 – Stakeholder Engagement | ☐ GP12 – Employee Relations |
| ☐ GP5 – Environmental Sustainability | ☐ GP13 – Customer Service |
| ☐ GP6 – Innovation | ☒ GP14 – Resource Planning |

SUMMARY: Tacoma Rail requests authorization to enter into a Loan Agreement with the Washington State Department of Transportation, for \$1,122,000, for the purpose of upgrading three frequently used railroad tracks in the Tacoma Tideflats area.

BACKGROUND: Tacoma Rail was awarded a loan in the amount of \$1,100,000.00, plus a \$22,000 administrative fee, subsequent to a WSDOT competitive call for projects. Loan agreement numbered RRC 1011 is for a ten-year term, requiring annual payments of \$112,200 starting on January 1, 2028, and requires Tacoma Rail to contribute \$469,250 in matchings funds toward completion of the project.

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: Washington State Department of Transportation loan agreement letter.

CONTACT:

Primary Contact: Kyle Kellem, Roadmaster, 253-377-3554



City of Tacoma

City Council Action Memorandum

TO: Hyun Kim, City Manager
FROM: Jackie Flowers, Director of Utilities
Alan Matheson, Tacoma Rail Superintendent
COPY: City Council and City Clerk
SUBJECT: Resolution – Approve WSDOT Loan RRC 1011 for McPip Track Upgrades
DATE: October 21, 2025

SUMMARY AND PURPOSE:

Tacoma Rail requests City Council authorization to accept an interest-free loan from the Washington State Department of Transportation (WSDOT), in the amount of \$1,122,000 budgeted from Tacoma Rail Fund 4500, to assist with a railroad track rehabilitation project.

BACKGROUND:

This Department's Recommendation is Based On: This interest-free loan was 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. Loan Agreement No. RRC 1011 is in the principal amount of \$1,100,000, requires ten annual payments of \$112,200 beginning January 1, 2028, and includes a \$22,000 administrative fee. Additionally, Tacoma Rail is required to contribute \$469,250 in matching funds toward the completion of the project.

COMMUNITY ENGAGEMENT/ CUSTOMER RESEARCH:

The project to improve railroad tracks will enhance safety for Tacoma Rail staff, while mitigating potential customer service resulting from deteriorated railroad track conditions.

2025 STRATEGIC PRIORITIES:

Equity and Accessibility: *(Mandatory)*

This request does not correlate with efforts to reduce racial and other inequities, disparities, or discrimination to under-represented communities.

Identify which Tacoma 2025 strategic goals your legislation most relates to, and then identify the [Equity Index Score](#) for those goals in the geography your proposal will affect. Select the indicator(s) this legislation is most related to, then briefly explain how this legislation will impact the selected indicator(s) and/or improve the Equity Index Score. ***Use the dropdowns below and refer to guide for more information.***

Economy/Workforce: *Equity Index Score:* Select Index Score.

Increase the number of infrastructure projects and improvements that support existing and new business developments.

Increase positive public perception related to the Tacoma economy.



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Explain how your legislation will affect the selected indicator(s).

Refurbished railroad tracks, switches, and crossings will help increase safety for Tacoma Rail train staff and public.

ALTERNATIVES:

Presumably, your recommendation is not the only potential course of action; please discuss other alternatives or actions that City Council or staff could take. Please use table below.

Alternative(s)	Positive Impact(s)	Negative Impact(s)
1. Reject the project funding opportunity and postpone the project.	None associated with this alternative.	This would delay the completion of the track upgrade project.
2. Proceed with project without benefit of Loan funding assistance.	None associated with this alternative.	Potentially delays other Capital Outlay projects which are currently planned.
3.		

EVALUATION AND FOLLOW UP:

Timely progression of project milestones is anticipated given that TPU-Rail staff has partnered with Public Works engineering staff to complete these projects.

STAFF/SPONSOR RECOMMENDATION:

Tacoma Rail recommends that City Council authorize execution of Loan Agreement RRC-1011 associated with the planned railroad track upgrade project.

FISCAL IMPACT:

Please provide a short summary of the fiscal impacts associated with the grant, agreement, policy action, or other action.

Fund Number & Name	COST OBJECT (CC/WBS/ORDER)	Cost Element	Total Amount
1. Tacoma Rail Fund 4500	RAL-00137		\$1,122,000.00
2.			
TOTAL			

What Funding is being used to support the expense?

PROJECT IS BUDGETED IN TPU-RAIL'S 2025/26 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



City of Tacoma

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TPU-RAIL WILL BE RESPONSIBLE FOR INSPECTING AND MAINTAINING THE TRACK IMPROVEMENTS AFTER INSTALLATION.

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

No

ATTACHMENTS:

TPU Board Resolution U-XXXXX



AGREEMENT MAXIMUM AMOUNT AUTHORIZED \$1,100,000	ORGANIZATION City of Tacoma dba Tacoma Public Utilities – Tacoma Rail 2601 SR509 North Frontage Road Tacoma, WA 98421-3134
AGREEMENT NUMBER RRC 1011	DESCRIPTION OF WORK Removing and replacing old worn rail, deteriorated track switches, select crossties, and rebuilding two existing private passive railroad crossings in the Port of Tacoma area.

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

WHEREAS, in Engrossed Substitute Senate Bill 5161, Chapter 416, Laws of 2025, Section 310 (2) the Washington State Legislature appropriated \$1,500,000 for low-interest loans approved by the department through the Freight Rail Investment Bank (FRIB) program identified in the LEAP Transportation Document as developed April 26, 2025;

WHEREAS, the “McPip Yard Upgrades (2025 FRIB)” (the “PROJECT”) is included in the LEAP transportation document and is authorized STATE funds for the expenditure of up to \$1,100,000 (One Million One Hundred Thousand Dollars);

WHEREAS, in chapters 47.66 and 47.76 RCW the Washington State Legislature has determined that freight rail systems are important elements of the STATE’s multimodal transportation system and 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 47.76.460(2) provides that repayment of loans made under this section shall occur within a period not longer than ten (10) years, and that the interest shall be only so much as is necessary to recoup the department’s cost to administer the loans;

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 to this AGREEMENT, defines the Scope of Work for the PROJECT.

SECTION 2 PAYMENTS TO THE RECIPIENT

2.1 Subject to the stipulations set forth in SECTION 1 of this AGREEMENT, the STATE agrees to loan the RECIPIENT up to a maximum amount of \$1,100,000 (One Million One Hundred Thousand Dollars) for the actual direct and related indirect costs expensed by the RECIPIENT in the course of

completing the PROJECT required under this AGREEMENT.

2.2 Prior to initiating any work for performance hereunder, the RECIPIENT shall provide the STATE with the proposed PROJECT schedule for each item of work to be performed. The PROJECT 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 PROJECT schedule, subject to the STATE's approval, to reflect the changed circumstances.

2.3 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.

2.4 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 disbursement from the STATE.

2.5 The RECIPIENT 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.

2.6 If the STATE, at its sole discretion, determines that the PROJECT is not progressing in a satisfactory manner, the STATE may refuse to loan STATE monies for disbursement to the RECIPIENT for part(s) or all of the work performed to date.

2.7 If the PROJECT is not completed by December 31, 2027, 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 already paid to the RECIPIENT. Any required repayment shall be due within thirty (30) calendar days after receipt of an invoice from the STATE. Extensions may be authorized by the STATE provided the RECIPIENT requests an amendment no later than thirty (30) calendar days prior to the date shown in this section.

SECTION 3 PROGRESS PAYMENTS

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

3.2 The STATE shall loan monies for eligible PROJECT costs expended 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 disburse funds to the RECIPIENT for properly billed and supported amounts within thirty (30) calendar days of receipt of a progress billing.

3.3 The RECIPIENT shall submit these monthly invoices detailing work completed and the total costs incurred. When requesting disbursement for cost share, the RECIPIENT shall submit supporting cost detail to document clearly the total costs incurred, including timecard records, itemized invoices, itemized receipts, and proofs of payment for all such expenses. As supporting cost detail, the RECIPIENT shall include a detailed breakout of the total costs incurred and classify total costs (1) by task and (2) by either AGREEMENT STATE loan funds, RECIPIENT's own matching funds (as applicable), or non-AGREEMENT external matching funds (as applicable), as specified in the Cost Estimate of EXHIBIT A. The RECIPIENT shall ensure that by the time the PROJECT is completed, the proportion of expenditure of AGREEMENT STATE loan funds to non-AGREEMENT matching funds is not more than the STATE funding percentage in the Cost Estimate of EXHIBIT A. The RECIPIENT's invoices shall also include: (1) the total amount of requested STATE disbursements to date; and (2) the remaining balance of dollars from the MAXIMUM AMOUNT AUTHORIZED. Failure to provide supporting documentation will render the cost ineligible for disbursement.

3.4 The STATE shall make monthly disbursements to the RECIPIENT for its share of costs expensed under this AGREEMENT. Payment by the STATE shall not relieve the RECIPIENT of any obligation to make good any defective work or material upon PROJECT completion.

3.5 The RECIPIENT will notify the STATE in writing if the total PROJECT budget, including any non-AGREEMENT matching funds, increases or decreases, which may result in an amendment to this AGREEMENT.

3.6 The RECIPIENT shall submit a monthly 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; an updated monthly spending plan for the duration of the PROJECT; and the state of completion of items in the Scope of Work relative to expenditures of the relevant budget elements.

3.7 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.

3.8 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 6 (or the first business day after the July 4 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 19 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 3.8.

3.9 The RECIPIENT shall receive disbursement from the STATE 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 repaid at actual cost without markup to the STATE or profit.

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

3.11 Reserved.

3.12 Disbursement of funds for overhead costs not included in indirect labor costs will not be allowed unless specified in this AGREEMENT.

3.13 Disbursement of funds 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 that are contained in EXHIBIT B. 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.

3.14 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.

3.15 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 RECIPIENT's responsibility to be familiar with the IFPL requirements and to verify whether or not IFPL applies. The online access for IFPL is contained in EXHIBIT C.

3.16 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.

3.17 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.

3.18 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 3.18 will be in addition to the RECIPIENT's repayment obligation under SECTION 4 of this AGREEMENT. Termination of this AGREEMENT will not alter the RECIPIENT'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 4 LOAN REPAYMENTS BY THE RECIPIENT

4.1 The STATE agrees to loan the RECIPIENT up to a maximum principal amount of \$1,100,000 (One Million One Hundred Thousand Dollars) for the purpose of completing the PROJECT. The RECIPIENT shall repay the STATE in accordance with EXHIBIT D. The STATE has estimated its actual direct and indirect administrative costs to be two (2) percent of the principal amount, or \$22,000 (Twenty-Two Thousand Dollars). Therefore, the total maximum amount repaid by the RECIPIENT shall be \$1,122,000 (One Million One Hundred Twenty-Two Thousand Dollars).

SECTION 5 OBLIGATIONS TO REPAY LOANED MONIES

5.1 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, in addition to two (2) percent of the loan amount paid to date, if any of the following events occur:

5.1.1 The RECIPIENT does not complete the PROJECT tasks specified in EXHIBIT A by the date identified in SECTION 2.7;

5.1.2 Sale, conveyance or transfer of the RECIPIENT's property underlying the PROJECT rail improvements within the loan re-payment period;

5.1.3 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;

5.1.4 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

5.1.5 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.

5.2 Any payment by the RECIPIENT to the STATE pursuant to this SECTION 5 shall be payable in U.S. Funds and sent via certified mail to the STATE contact person identified in SECTION 23 of this AGREEMENT not more than thirty (30) calendar days from receipt of written notice from the STATE that repayment is required.

SECTION 6 TERM

6.1 This AGREEMENT shall become effective upon the date the last PARTY signs the AGREEMENT. The AGREEMENT shall continue in full force until the loan and interest have been completely repaid to the STATE. RECIPIENT, at its discretion, may repay the loan and any associated interest in its entirety prior to the last scheduled payment in EXHIBIT D; however, any such payment made by RECIPIENT that exceeds a regularly scheduled payment in EXHIBIT D, but does not satisfy the entire outstanding balance, shall not relieve RECIPIENT of its obligation to repay in full the next and any future scheduled payments in EXHIBIT D.

SECTION 7 CONTINGENT INTEREST

7.1 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.

7.2 The STATE shall maintain its Contingent Interest until the RECIPIENT fully repays the loan. During this time, the RECIPIENT shall 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 5.1 of this AGREEMENT, or (d) 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 limited to any parent or subsidiary company or corporation of RECIPIENT, that may have an interest in the PROJECT.

7.3 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 and interest will become immediately due and payable by the RECIPIENT.

7.4 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 Interest as set forth in this SECTION 7, 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.

7.5 The RECIPIENT shall make appropriate entries upon its financial statements and its books and records disclosing the STATE's Contingent Interest under this SECTION 7.

SECTION 8 EMPLOYMENT AND INSPECTION OF WORK

8.1 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.

8.2 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.

SECTION 9 RESERVED

SECTION 10 RESERVED

SECTION 11 USE AND MAINTENANCE OF PROJECT CAPITAL IMPROVEMENTS

11.1 The RECIPIENT agrees that PROJECT property, equipment, and materials 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 materials during its useful life, the RECIPIENT understands that the STATE may require the reimbursement of the STATE funds expended on that property, equipment, or supplies.

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

11.3 The RECIPIENT shall make all necessary repairs and reasonably maintain the capital improvements purchased with the funds from this AGREEMENT so long as the STATE retains rights as specified in SECTION 7 of this AGREEMENT. The costs of service, materials, and repairs in connection with the use and operation of the PROJECT shall be at the RECIPIENT's expense.

11.4 Reserved.

SECTION 12 MAINTENANCE OF RECORDS AND AUDIT REQUIREMENTS

12.1 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. Termination of this AGREEMENT does not alter the RECIPIENT's requirements under this SECTION 12.

12.2 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. 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.

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

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

12.3.2 Supporting source documents;

12.3.3 All documentation underlying the preparation of the financial reports;

12.3.4 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

12.3.5 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.

12.4 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 13 QUALITY ASSESSMENTS

13.1 The RECIPIENT's project management of the PROJECT may be subject to periodic assessments by the STATE for quality assurance purposes. If requested, the RECIPIENT 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 that supports its quality management activities.

SECTION 14 FINAL REPORT AND FINAL INSPECTION

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

14.1.1 Non-Capital Projects (Report)

14.1.1.1 A description of the PROJECT or program.

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

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

14.1.2 Capital Projects (Inspection)

14.1.2.1 A joint final 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 15 LEGAL RELATIONS

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

SECTION 16 LAWS TO BE OBSERVED

16.1 General Compliance. The RECIPIENT shall comply with all applicable federal, state, and local

laws, rules, regulations, and judicial 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 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.

16.2 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.

16.3 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.

16.4 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.

16.5 Nondiscrimination.

16.5.1 Nondiscrimination Requirement. During the term of this AGREEMENT, RECIPIENT, including any subcontractor, shall not discriminate on the bases enumerated at RCW 49.60.530(3). In addition, RECIPIENT, including any subcontractor, shall give written notice of the nondiscrimination requirement to any labor organizations with which the RECIPIENT, or subcontractor, has a collective bargaining or other agreement.

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

16.5.3 Default. Notwithstanding any provision to the contrary, the STATE may suspend RECIPIENT, 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 RECIPIENT, including any subcontractor, is cooperating with the investigating state agency. In the event RECIPIENT, 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 RECIPIENT, subcontractor, or both, may be referred for debarment as provided in RCW 39.26.200. RECIPIENT 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.

16.5.4 Remedies for Breach. Notwithstanding any provision to the contrary, in the event of AGREEMENT termination or suspension for engaging in discrimination, RECIPIENT, 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. The STATE shall have the right to deduct from any monies due to RECIPIENT or subcontractor, or that thereafter become due, an amount for damages RECIPIENT or subcontractor will owe the STATE for default under this provision.

16.6 Reserved.

SECTION 17 REPRESENTATIONS, WARRANTIES, AND COVENANTS

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

17.2 The RECIPIENT represents and warrants the following:

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

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

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

17.2.4 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;

17.2.5 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;

17.2.6 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;

17.2.7 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;

17.2.8 That the RECIPIENT shall adhere to all provisions identified under RCW 42.52.080; and

17.2.9 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 18 FORCE MAJEURE

18.1 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, pandemic, 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 19 TERMINATION

19.1 Convenience – The STATE may terminate this AGREEMENT in whole, or in part, effective immediately upon written notification unless otherwise stated in the STATE's notification, whenever:

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

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

19.2 If the STATE exercises its rights under SECTION 19.1 of this AGREEMENT, the STATE shall reimburse the RECIPIENT for any expenses and costs eligible hereunder prior to receipt of such notice of termination.

19.3 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, to terminate this AGREEMENT. Should either the STATE or RECIPIENT 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 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.

19.4 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.

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

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

19.5.2 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;

19.5.3 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 RECIPIENT 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;

19.5.4 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;

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

19.5.6 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

19.5.7 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 RECIPIENT and in which the STATE has or may acquire an interest.

SECTION 20 INDEMNIFICATION

20.1 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.

20.2 The RECIPIENT agrees that its obligations under this SECTION 20 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 of chapter 51.12 RCW.

20.3 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 21 ASSIGNMENT AND SUCCESSION

21.1 The RECIPIENT 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 limited to any parent or subsidiary company or corporation of RECIPIENT, 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 railway company or any other person, corporation, or association, directly or indirectly, to possess any right or privilege herein.

SECTION 22 INDEPENDENT CAPACITY

22.1 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 23 NOTICES

23.1 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 emailed, 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:

Alan Matheson
Tacoma Rail Superintendent
City of Tacoma dba Tacoma Public Utilities – Tacoma Rail
2601 SR509 N Frontage Road

Tacoma, WA 98431-3134
Amatheson@tacoma.gov

23.2 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:

Director
WSDOT Rail, Freight, and Ports Division
310 Maple Park Avenue SE, Box 47407
Olympia, WA 98501-2348
srmdoc@wsdot.wa.gov

SECTION 24 INTERPRETATION

24.1 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.

24.2 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.

24.3 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.

24.4 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.

24.5 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 25 SUBCONTRACTING

25.1 It is understood that the RECIPIENT may choose to subcontract all or portions of the work.

25.2 For any work on state-owned property, the RECIPIENT's subcontractors must be approved by the STATE, as follows:

25.2.1 For subcontractors on the STATE's public listing of Prequalified Contractors ("Prequal List"), the RECIPIENT shall submit the business name(s) to the STATE for written concurrence, subject to the STATE's verification that the subcontractor's Class of work is in agreement with the scope of the work to be performed. The online access address for the Prequal List is contained in EXHIBIT C.

25.2.2 Prior to selecting any subcontractor(s) that are not on the STATE's Prequal List, the RECIPIENT shall submit the following for each subcontractor to the STATE for written approval:

25.2.2.1 Washington state business license;

- 25.2.2.2 Bonding;
- 25.2.2.3 Insurance;
- 25.2.2.4 No license violations within the past six (6) years, liens, or tax debt;
- 25.2.2.5 Work history for similar projects;
- 25.2.2.6 Management resumes for the work to be performed;
- 25.2.2.7 Minimum of two (2) references from past projects of a similar nature;
- 25.2.2.8 Any other documentation that may be requested by the STATE.

25.3 For any work performed that is not on state-owned property, the RECIPIENT shall provide written verification that it has evaluated the subcontractor(s) regarding the items listed in SECTIONS 25.2.2.1 through 25.2.2.6 for appropriateness to the PROJECT prior to selection.

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

SECTION 26 SAFETY AND LIABILITIES

26.1 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.

26.2 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.

26.3 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; 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 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.

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 RECIPIENT. 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 DISPUTE 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 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.

29.1.3 The RECIPIENT 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:

City of Tacoma dba Tacoma Rail
Kyle Kellem
Roadmaster
2601 SR509 N Frontage Road
Tacoma, WA 98421-3134

WSDOT Rail, Freight and Ports Division
Capital & PCC Rail System Programs Mgr.
310 Maple Park Ave. SE, Box 47407
Olympia, Wash. 98501-2348

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:

City of Tacoma dba Tacoma Rail
Alan Matheson
Superintendent
2601 SR509 N Frontage Road
Tacoma, WA 98421-3134

WSDOT Rail, Freight and Ports Division
Director
310 Maple Park Ave. SE, Box 47407
Olympia, Wash. 98501-2348

SECTION 30 INSURANCE

30.1 The RECIPIENT represents and warrants that it shall obtain the insurance required in this SECTION 30, and/or also require its Consultants, and Contractors to 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.

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

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

30.1.3 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) combined single limit for each occurrence.

30.1.4 Professional Liability, with limits no less than two million dollars (\$2,000,000) per

occurrence or claim, and a two million dollar (\$2,000,000) policy aggregate , to be required of the RECIPIENT's consultants or contractors performing design/engineering services.

30.1.5 Contractors' Pollution Legal Liability with limits no less than three million dollars (\$3,000,000) per occurrence or claim, and a three million dollar (\$3,000,000) policy aggregate.

30.1.6 Builder's Risk insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.

30.2 Excepting the Worker's Compensation Insurance in SECTION 30.1.1, the STATE, its officers, employees, and agents will be named on all policies of RECIPIENT 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 RECIPIENT's and the consultant's and/or contractor's insurer shall waive any and all rights of subrogation against the AIs. The RECIPIENT 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.

30.3 If the RECIPIENT 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 RECIPIENT. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the STATE.

30.4 All insurance shall be obtained from an insurance company authorized to do business in the state of Washington. The RECIPIENT 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, Box 47407
Olympia, WA 98501-2348
srmdoc@wsdot.wa.gov
(360) 705-7900

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

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

30.7 The RECIPIENT shall ensure that any contractor(s) provide Railroad Protective Liability insurance covering work within fifty (50) feet of the RECIPIENT's property with limits no less than three million dollars (\$3,000,000) per occurrence or claim, and a six million dollar (\$6,000,000) policy aggregate.

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 agent 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 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 to 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 NOTIFICATION OF THIRD-PARTY CONTRACT DISPUTES OR BREACHES

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

SECTION 36 ORDER OF PRECEDENCE

36.1 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 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

Approved as to form:

By: _____ Date: _____

James Nelson, Assistant Attorney General
State of Washington

CITY OF TACOMA dba Tacoma Public Utilities – Tacoma Rail

By: _____ Date: _____

Jackie Flowers
Director of Utilities

By: _____ Date: _____

Andrew Cherullo
Finance Director

By: _____ Date: _____

Alan Matheson
Superintendent

By: _____ Date: _____

Engel Lee
Chief 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 A

SCOPE OF WORK Containing PROJECT DESCRIPTION SCHEDULE COST ESTIMATE

PROJECT DESCRIPTION

Removing and replacing old worn rail, deteriorated track switches, select crossties, and rebuilding two existing private passive railroad crossings in the Port of Tacoma area. The project covers approximately 3,200 feet of track and includes replacement of three switches, two private crossings, relays approximately 2,000 track feet of new rail, and replaces 470 crossties. The project will improve freight rail reliability to industries located in the Port of Tacoma area.



SCHEDULE

Milestone	Approximate Date
Contract Execution	October 2025
Design Start	October 2025
Design Finish	February 2026
SEPA Start	October 2025
SEPA Completion	February 2026

Construction Start	May 2026
Construction Completion	December 2026
Contract Closed	December 2027

COST ESTIMATE

Task	STATE Contribution	RECIPIENT Matching Funds	External Matching Funds	Total Estimate
Construction Support		8,000	\$0	
Design		\$17,000	\$0	
Construction	\$1,100,000	\$444,250	\$0	\$1,569,250
TOTAL	\$1,100,000	\$469,250	\$0	\$1,569,250

Cost estimate includes:

- 70% RECIPIENT's matching funds
- 30% funding from STATE

EXHIBIT B
TRAVEL RULES AND PROCEDURES

Appendix 23.84 Local Programs Quick Reference Travel Guide

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 Map⁸

Continental USA Per Diem Rates⁹

⁸ www.ofm.wa.gov/resources/travel.asp

⁹ 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 Department of Labor and Industries Website for periodic updates to these rates.

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

INDUSTRIAL FIRE PRECAUTION LEVELS

Fire suppression equipment shall be required at each work location, and the RECIPIENT shall monitor the Industrial Fire Precaution Level at the following link.

<https://www.dnr.wa.gov/ifpl>

LIST OF PREQUALIFIED CONTRACTORS

<https://wsdot.wa.gov/business-wsdot/contracts/about-public-works-contracts/how-bid-contract/step-1-prequalify>

EXHIBIT D

REPAYMENT SCHEDULE

Payments are based on a LOAN amount of \$1,122,000 for 10 years beginning January 1, 2028.

No	Payment Date	Beginning Balance	Yearly Payment	Ending Balance
1	January 1, 2028	\$1,122,000.00	\$112,200.00	\$1,009,800.00
2	January 1, 2029	\$1,009,800.00	\$112,200.00	\$897,600.00
3	January 1, 2030	\$897,600.00	\$112,200.00	\$785,400.00
4	January 1, 2031	\$785,400.00	\$112,200.00	\$673,200.00
5	January 1, 2032	\$673,200.00	\$112,200.00	\$561,000.00
6	January 1, 2033	\$561,000.00	\$112,200.00	\$448,800.00
7	January 1, 2034	\$448,800.00	\$112,200.00	\$336,600.00
8	January 1, 2035	\$336,600.00	\$112,200.00	\$224,400.00
9	January 1, 2036	\$224,400.00	\$112,200.00	\$112,200.00
10	January 1, 2037	\$112,200.00	\$112,200.00	\$0.00