

AGREEMENT Number RRB 1185

**RAILROAD GRADE CROSSING AGREEMENT
USDOT 917-955P and 852-620R
State Route 509 (Marine View Drive) Mile Post 5.12 and 4.61
Railroad Line Segment Tidelands Mile Post 3.10N and 3.66N**

This Agreement ("**Agreement**"), is executed to be effective as of this _____ day of _____, 2017 ("**Effective Date**"), by and between the City of Tacoma, Department of Public Utilities, Beltline Division dba Tacoma Public Utilities – Tacoma Rail, herein referred to as the "**RAILWAY**", and the Washington State Department of Transportation ("**WSDOT**" or "**STATE**").

Description of Improvements and Division of Work

A. Work to be performed by the RAILWAY, or its contractor, at STATE expense (included in the Estimate of Cost):

SR 509 (Marine View Drive) DOT #917-955P: Upgrade existing passive public grade crossing to a signalized crossing with either shoulder mounted signal masts or a cantilevered style system. Both options would include LED flashers. Project scope will include design, engineering, installation of components, and peripherally related work intended to provide advance warning to motorists traversing the crossing.

SR 509 (Marine View Drive) DOT #852-620R: Upgrade existing passive public grade crossing to a signalized crossing with either shoulder mounted signal masts or a cantilevered style system. Both options would include LED flashers. Project scope will include design, engineering, installation of components, and peripherally related work intended to provide advance warning to motorists traversing the crossing.

B. Related work to be performed by the STATE, or its contractor, at STATE expense as needed and not included in the Estimate of Cost.

WHEREAS, the STATE desires that the above described improvements be constructed at the referenced locations, and

WHEREAS, it is deemed to be in the best public interest for the RAILWAY, as owners of the track or tracks, to perform specific work as herein described (Railroad Work"), and

WHEREAS, reimbursement by the STATE to the RAILWAY for costs incurred by the RAILWAY in undertaking the Railroad Work is pursuant to 23 USC, Section 130.

NOW THEREFORE, in consideration of the terms, conditions, covenants and performances contained herein, the above recitals that are incorporated herein as if set forth below, Exhibit A, attached hereto and made a part hereof, IT IS MUTUALLY AGREED AS FOLLOWS:

ARTICLE 1 GENERAL

All Railroad Work to be reimbursed by the STATE under this AGREEMENT, including work performed by the RAILWAY's consultants or contractors, will be subject to compliance with the applicable sections of 23 CFR Parts 646 (Subpart B) and 140 (Subpart I), which sections are incorporated hereby and made a part of this AGREEMENT.

ARTICLE 2 SCOPE OF WORK

The STATE and the RAILWAY will perform the work as set forth in the above "Description of Improvements and Division of Work." A plan labeled Exhibit A further describes the proposed improvements.

The RAILWAY will provide all work, labor, materials and services to perform the Railroad Work. For all applicable materials necessary to perform the Railroad Work, the RAILWAY shall comply with the Buy America requirements under 23 U.S.C. 313. The RAILWAY shall provide materials certifications with each invoice for which payment is requested that affirms said materials comply with 23 U.S.C. 313.

For any work later designated to be performed by the STATE or its contractor, associated with the work described in this AGREEMENT, the RAILWAY hereby grants the STATE or its contractor permission to enter upon the RAILWAY's property for the purpose of performing said work.

ARTICLE 3 AUTHORITY TO BEGIN WORK

The RAILWAY agrees not to commence Railroad Work until receipt of notice to begin Work in writing by the STATE, and that reimbursement will be limited to those costs incurred subsequent to the date of such notification. The RAILWAY agrees to notify the STATE at least 14 calendar days prior to beginning Railroad Work.

ARTICLE 4 PROTECTION OF RAILROAD PROPERTY DURING CONSTRUCTION

All work herein provided for to be done by the STATE or its contractors on the RAILWAY's right of way shall be performed by the STATE or its contractors in a manner as not to interfere with the movement of trains or traffic upon the tracks of the RAILWAY. The STATE or its contractors, shall use all care and take precautionary measures necessary to avoid accidents, damage, or interference with the RAILWAY's right of way, tracks, trains, traffic using its tracks or the RAILWAY'S Operations and shall notify the RAILWAY at least 30 calendar days prior to performing work adjacent to any track to enable the RAILWAY to furnish flagging. The STATE shall reimburse the RAILWAY for the flagging and related cost thereof PURSUANT TO Section VII, below.

ARTICLE 5 PROJECT COMPLETION

Within 30 calendar days of completion of the Railroad Work, the RAILWAY will, by letter, notify the STATE that construction is substantially complete.

ARTICLE 6 PAYMENT

The STATE, in consideration of the faithful performance of the Railroad Work to be done by the RAILWAY, agrees to pay the RAILWAY actual direct and related indirect costs incurred in accordance with a work order accounting procedure as prescribed and approved by the ICC Uniform System of Accounts, or its equivalent.

An itemized estimate of cost for the Railroad Work to be performed by the RAILWAY at the STATE's expense is shown on Exhibit A.

Following execution of this AGREEMENT, progress invoices may be submitted to the STATE to cover costs incurred and the STATE shall pay such progress invoices within thirty (30) calendar days of receipt from the RAILWAY. If the invoices are disputed for any reason, the STATE will promptly notify the RAILWAY and will pay any undisputed amount. Progress invoices are not to be submitted more frequently than one (1) invoice per month.

Final and detailed invoices reflecting all incurred costs shall be prepared by the RAILWAY and submitted to the STATE within ninety (90) calendar days of completion of the RAILWAY's Work, and the STATE shall pay all eligible amounts of such invoices, less any progress payments previously made.

It is agreed that payment of any billing will not constitute agreement as to the appropriateness of any item and that at the time of any final audit, if required, all adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the RAILWAY, the RAILWAY agrees to refund such overpayment to the STATE.

During the progress of construction and for a period not less than three years from the date of final payment to the RAILWAY, the records and accounts pertaining to the construction of the project and accounting therefor are to be kept available for inspection and audit by the STATE and/or Federal Government and copies of all records, accounts, documents or other data pertaining to the project will be furnished upon request. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claim or audit finding has been resolved even though such litigation, claim, or audit continues past the three-year retention period.

ARTICLE 7 SALVAGE

All material removed by the RAILWAY, which has been replaced at STATE expense, shall be reclaimed or disposed of by the RAILWAY and shall be credited to the STATE in accordance with 23 CFR Part 140.908.

ARTICLE 8 MAINTENANCE OF FACILITY

Upon completion of the Work, the RAILWAY, at its sole cost and expense, shall operate and maintain any railroad warning devices, crossings surfaces, or other elements of railroad infrastructure as required by federal and state regulatory requirements.

ARTICLE 9 RELOCATION OF FACILITY

In the event that either highway or railway changes will necessitate revisions of the signals by rearrangement, replacement or additions at the said location, the party whose changes cause said revisions will bear the entire cost of the same without obligation to the other.

ARTICLE 10 DISPOSITION OF SIGNALS NO LONGER REQUIRED

If for any reason the signals shall no longer be required at said grade crossing, the RAILWAY, on the approval of the STATE, may remove said signals. If in the opinion of the RAILWAY said signals are not obsolete, the Parties will determine if they can be used at some other state highway - railroad grade crossing. If the signals are either obsolete or may not be used at any state highway grade crossing, the RAILWAY will pay the STATE the salvage value for material not previously replaced by the RAILWAY during maintenance, less cost of removal.

ARTICLE 11 INDEMNIFICATION

The Parties shall protect, defend, indemnify, and hold harmless each other and their employees and authorized agents, from claims for damages arising from their respective acts of negligence while acting within the scope of their employment as such, including any and all costs, claims, judgments, and/or awards of damages (both to persons and/or property), arising out of, or in any way resulting from, the Work to be performed or performed pursuant to the provisions of this AGREEMENT. The Parties shall not be required to indemnify, defend, or save harmless the other Party if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) if caused by the sole negligence of the other Party; provided that if such claims, suits, or actions result from the concurrent negligence of (a) the RAILWAY, its employees and authorized agents, and (b) the STATE, its employees or authorized agents, or involves those actions covered by RCW 4.24.115, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the negligence of each Party's, its employees, and/or authorized agents.

The Parties mutually and reciprocally waive any immunity they might have under the state industrial insurance laws, Title 51 RCW. This provision has been mutually negotiated by the Parties. This indemnification and waiver shall survive the termination of this Agreement.

ARTICLE 12 PREVIOUS AGREEMENTS

This AGREEMENT (including exhibits incorporated herein) is the full and complete agreement between the RAILWAY and STATE with respect to the subject matter herein and supersedes any and all other prior agreements between the Parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto.

ARTICLE 13 MISCELLANEOUS PROVISIONS

All the covenants and provisions of this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, except that no party may assign any of its rights or obligations hereunder without the prior written consent of the other party.

No modification or amendment to this Agreement shall be valid until the same is reduced to writing and executed with the same formalities as were attendant to this Agreement.

In the event any 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 or proceedings shall be brought in a state court of competent jurisdiction situated in Thurston County, Washington or in the regionally appropriate United States District Court. This Agreement shall be interpreted in accordance with the laws of the State of Washington, unless such laws, rules, and regulations are preempted by applicable federal laws, rules, and regulations.

To the maximum extent possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Agreement is prohibited by, or held to be invalid under applicable law, such provision will be ineffective solely to the extent of such prohibition or invalidity, and the remainder of the provision will be enforceable.

This AGREEMENT shall inure to the benefit of and be binding on the parties hereto, their successors and assigns.

WSDOT Highway-Railroad Grade Crossing Agreement

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the day and year first above written.

RAILWAY

By _____

Title Director, Public Utilities/CEO

Date _____

STATE

By *Thomas Rujan*

Title Technical Services Mgr.

Date October 27, 2017

RAILWAY (Cont.)

By _____

Title Tacoma Rail Superintendent/COO

Date _____

By _____

Title Finance Director, City of Tacoma

Date _____

Approved as to form:

By _____

Title Deputy City Attorney

Date _____

Tacoma Rail Marine View Drive Crossings
Exhibit A
Cost Estimate (Per Crossing)

Tacoma Rail
Marine View Drive
USDOT 917955P/Manke Lumber and 852620R/Jones Chemical

- City of Tacoma and Tacoma Rail Engineering and Project Management: \$ 20,000
 - Invoices will have time charges per employee working on project
- Design Consultant: \$ 60,000
 - Supported by invoices from consultant
- Right of Way Acquisition: \$ 30,000
 - Charges for possible easement rights for the installation of signal equipment
- Construction: \$ 940,000
 - Installation will conform to MUTCD and FRA standards
 - Cantilevers, foundations
 - All power and control systems
 - Buried wire and conduits
 - Utility relocation
 - Restriping of roadway, raised median with curb and gutter
 - Property restoration, roadway restoration, lighting adjustments
 - Construction survey, traffic control
- 20% Contingency: \$ 200,000

Total Estimate (Per Crossing): \$1,250,000

Agreement Total Estimate \$2,500,000

WSDOT RAILROAD GRADE CROSSING DIAGNOSTIC TEAM REVIEW WORKSHEET*

Reviewers: WSDOT (Connie Raezer, Joe Perez, Wayne Nash, David Biering) FHWA (Don Peterson) Railroad (Kyle Kellem, Lori Duval) UTC (Paul Curl, Betty Young)

Date: August 18, 2016

Location: SR 509 Mile Post 4.61 WSDOT Region Olympic Region

Railroad Tacoma Rail USDOT No. 852620R/Jones Chemical WSDOT PIN 350916B

Highway Data

No. of lanes in each direction: 2 in each direction (4), center turn lane

Are Sidewalks or bike paths present? Yes No

ADT: 21,785 at mp 5.12 B - 2015 count Roadway Speed Limit: 40 mph posted

School bus route? Yes No Unknown Count _____

Truck route? Yes No Unknown Percent 7%

Hazmat transporters? Yes No Unknown

Crossing angle: 45 degrees

Approach curvature: none

Approach grades: level

- Evidence of scrape marks at the crossing from low vehicle clearance? Yes No

Comments on highway data:

Railway Data

No. of Tracks: 1 Trains Per Day: 2 crossings (night) Stop and Protect

Train Speed Limit: 10 MPH

Approach curvature: _____

* This report of survey is undertaken in order to comply with 23 United States Code Section 130. The use of this data is governed by 23 United States Code Section 409 and shall not be subject to discovery or admitted into evidence in a federal or state court proceeding or considered for other purposes in any action for damages arising from any occurrence at a location mentioned or addressed in such reports, surveys, schedules, lists, or data.

Passenger Trains? No

Comments on railway data

Warning Devices (check all that apply)

- Gates Overhead flashing lights Shoulder-mounted flashing lights
 Crossbucks # Tracks sign Stop Bars

Are advance warning signs and pavement markings (including stop line) properly placed and in good condition?
Yes No

If "no" explain _____

Note the presence of other warning or regulatory signs associated with the crossing. For example:

- Stop or Yield Exempt Do Not Stop on Tracks Skewed Crossing
 Low Clearance Other(s) W10-1 Advance
Warning _____

Is the USDOT number posted? Yes No

Is an emergency notification phone number posted? Yes No

Crossing Surface

- Concrete Asphalt Timber Rubber Other _____

Sight Distance

Approach Sight Distance

Distance from the crossing along the opposing highway approach where the crossing becomes clearly visible: _____

Clearing Sight Distance

If the crossing has no gates, does the clearing sight distance meet the guidance criteria in Design Manual Figure 1350-1 (Case 1)?

Sight Triangle

If the crossing is passive, does the sign triangle meet the guidance criteria in Design Manual Figure 1350-1 (Case 2)?

Is the crossing illuminated? Yes No

Other Roadways

Are there any roadway intersections in the vicinity of the crossing that may cause traffic to queue back over the tracks? Yes No

If yes:

- What is the available storage space? _____

Are traffic signals located within 200 feet of the crossing or otherwise contributing to vehicle queues approaching the tracks? Yes No

If "yes", is Railroad Preemption provided? Yes No

Comments/Observations

Accident Data

No. vehicle-train collisions in the last 5 years

Fatal 0

Injury 3 (2013, 2012, 2011)

Property Damage 3

No. non-train-related vehicle collisions at crossing in the last 5 years

Fatal 0

Injury 0

Property Damage 2 (2013, 2014)

No. pedestrian-related incidents in the last 5 years

Fatal no known

Injury no known

Information on reported near misses between vehicles and trains at the crossing

Other Notes

Crossing Diagram



Recommendations/Action Items

Preferred Option:

Install Cantilever RR Crossing signals that are activated by train crew upon approach.

Alternatives:

Install Span Wire mounted crossing signal activated by train crew

Install Traffic Signal for vehicle traffic on SR 509 that will be activated by train crew

Install active advanced warning devices

Estimated Cost: \$682,880 (8/30/2016)

PE - \$134,550

RW - \$31,830

Cont - \$516,500

Milestone Dates: Project Defined 10/17/2016 – internal WSDOT process after Diagnostic Team recommendation

Ad Date (Agreement Signed) 12/18/2017 * note – agreement between TRL and WSDOT earlier to accommodate PE phase

PE Phase 11/3/2016 – 2/26/2018

RW Phase 3/6/2017 – 1/22/2018

Const Phase 1/22/2018 – 8/27/2018

WSDOT RAILROAD GRADE CROSSING DIAGNOSTIC TEAM REVIEW WORKSHEET*

Reviewers: WSDOT (Connie Raezer, Joe Perez, Wayne Nash, David Biering) FHWA (Don Peterson) Railroad (Kyle Kellem, Lori Duval) UTC (Paul Curl, Betty Young)

Date: August 18, 2016

Location: SR 509 Mile Post 5.1 WSDOT Region Olympic

Railroad Tacoma Rail USDOT No. 917955P/Manke WSDOT PIN 350916C

Highway Data

No. of lanes in each direction: 2 lanes each direction with center turn lane

Are Sidewalks or bike paths present? Yes No

ADT: 21,785 at mp 4.58 - 2015 count Roadway Speed Limit: 40 mph posted

School bus route? Yes No Unknown Count _____

Truck route? Yes No Unknown Percent 7%

Hazmat transporters? Yes No Unknown

Crossing angle: 30 degrees

Approach curvature: none

Approach grades: level

- Evidence of scrape marks at the crossing from low vehicle clearance? Yes No

Comments on highway data:

Railway Data

No. of Tracks: 1 Trains Per Day: 2 crossings - night moves Stop and Protect

Train Speed Limit: less than 10 MPH

Approach curvature: _____

* This report of survey is undertaken in order to comply with 23 United States Code Section 130. The use of this data is governed by 23 United States Code Section 409 and shall not be subject to discovery or admitted into evidence in a federal or state court proceeding or considered for other purposes in any action for damages arising from any occurrence at a location mentioned or addressed in such reports, surveys, schedules, lists, or data.

Passenger Trains? No

Comments on railway data

Warning Devices (check all that apply)

- Gates Overhead flashing lights Shoulder-mounted flashing lights
 Crossbucks # Tracks sign Stop Bars

Are advance warning signs and pavement markings (including stop line) properly placed and in good condition?

Yes No

If "no" explain Stop bar appears to be within 15 feet of rail when observed from center of roadway, no field measurements taken. Road authority (Tacoma) should check and adjust during maintenance activities.

Note the presence of other warning or regulatory signs associated with the crossing. For example:

- Stop or Yield Exempt Do Not Stop on Tracks Skewed Crossing
 Low Clearance Other(s) _____

Is the USDOT number posted? Yes No

Is an emergency notification phone number posted? Yes No

Crossing Surface

- Concrete Asphalt Timber Rubber Other _____

Sight Distance

Approach Sight Distance

800 feet from S/B, 700 feet N/B

Distance from the crossing along the opposing highway approach where the crossing becomes clearly visible: _____

Clearing Sight Distance

If the crossing has no gates, does the clearing sight distance meet the guidance criteria in Design Manual Figure 1350-1 (Case 1)?

Sight Triangle

If the crossing is passive, does the sign triangle meet the guidance criteria in Design Manual Figure 1350-1 (Case 2)?

Is the crossing illuminated? Yes No

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If "yes", is Railroad Preemption provided? Yes No

Comments/Observations

Accident Data

No. vehicle-train collisions in the last 5 years

Fatal _____

Injury _____

Property Damage _____

No. non-train-related vehicle collisions at crossing in the last 5 years

Fatal 0

Injury 1 (2012)

Property Damage 3

No. pedestrian-related incidents in the last 5 years

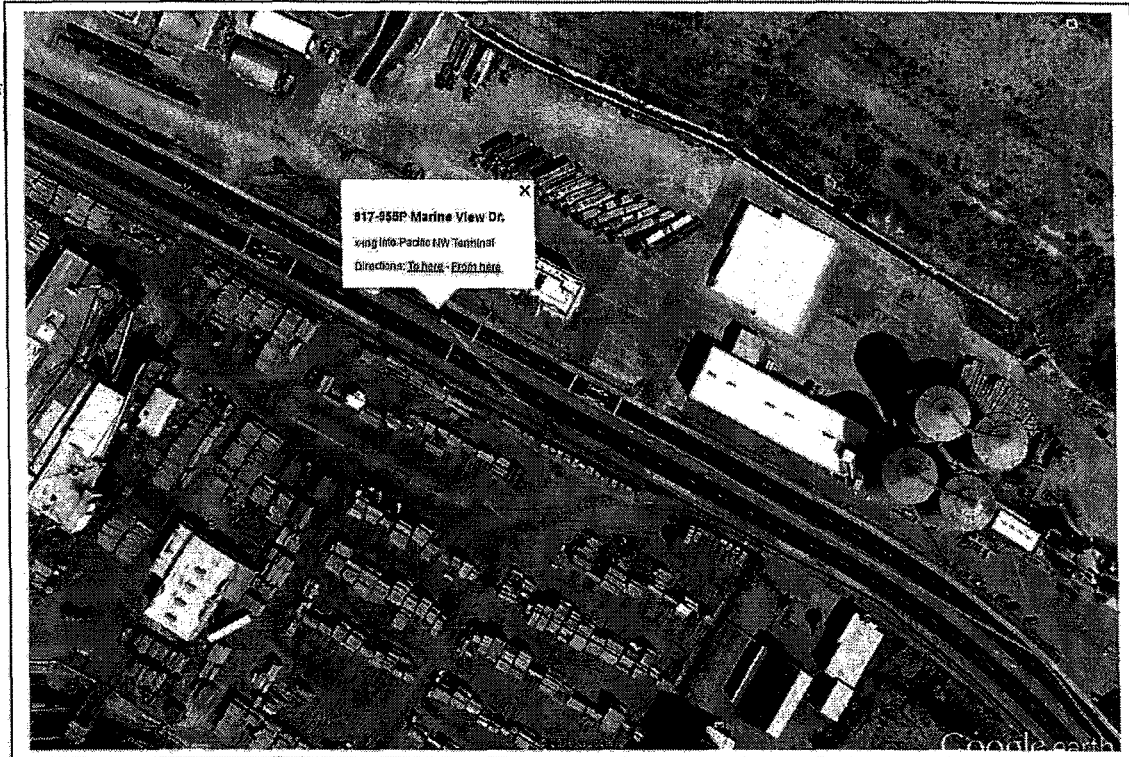
Fatal no known

Injury no known

Information on reported near misses between vehicles and trains at the crossing

Other Notes

Crossing Diagram



Recommendations/Action Items

Preferred Option:

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