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| AGREEMENT | ORGANIZATION City of Tacoma dba Tacoma Public Utilities - Tacoma Rail |
| Not to exceed Four Hundred Sixty Nine Thousand Two Hundred Seventy Dollars and No Cents (\$469,270.00) | Description of Work East Lead Low Side Rebuild - Remove and replace seven turnouts and 1,200 feet of rail in Tacoma Rail's main classification yard's along the east end low side switching ladder in Tacoma, WA. |
| AGREEMENT NUMBER RRB 1110 | |

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

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

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

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

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

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

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

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

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

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

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

WHEREAS, the RECIPIENT has requested, and the STATE has authorized and appropriated STATE funds to loan up to Four Hundred Sixty Nine Thousand Two Hundred Seventy Dollars and No Cents (\$469,270.00) in recognition of the PROJECT's contribution to the public good; and

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

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

SECTION I SCOPE OF WORK

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

SECTION II LOAN TO THE RECIPIENT

The STATE has estimated that the cost to recover its actual direct and related indirect costs is approximately One Percent (1%) of the loan value. Therefore the amount of loan moneys available shall be the initial loan amount less this fee amount, which is Four Hundred Sixty Four Thousand Five Hundred Seventy Seven Dollars and No Cents (\$464,577.00).

Should the STATE not require the entire fee amount, then the remaining balance shall become available for PROJECT work, if needed.

Subject to the stipulations set forth in SECTION I SCOPE OF WORK, the STATE agrees to loan the RECIPIENT up to a maximum amount of Four Hundred Sixty Nine Thousand Two Hundred Seventy Dollars and No Cents (\$469,270.00) for the actual direct and related indirect costs incurred by the RECIPIENT in the course of completing the PROJECT required under this AGREEMENT.

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

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

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

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

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

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

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

If the PROJECT is not completed by June 30, 2017, the RECIPIENT and STATE agree that the entire expense for the completion of the PROJECT will be borne solely by the RECIPIENT. The RECIPIENT shall then also be automatically in default and will be obligated to reimburse the STATE for the full amount of LOAN funds paid to the RECIPIENT to date, per the terms of SECTION VIII - OBLIGATIONS TO REPAY LOANED MONIES. Any required repayment shall be due within thirty (30) calendar days after receipt of an invoice from the STATE.

SECTION III PROGRESS PAYMENT

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

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

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

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

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

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

Reimbursement for RECIPIENT rented or leased equipment, if any, will be based on actual cost as supported by original receipts. Reimbursement for RECIPIENT owned equipment shall be based on rates per 23 CFR 104.910(a) and approved FRA reference sources.

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

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

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

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

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

SECTION IV LOAN REPAYMENTS BY THE RECIPIENT

The STATE agrees to loan the RECIPIENT up to a maximum principal amount of Four Hundred Sixty Nine Thousand Two Hundred Seventy Dollars and No Cents (\$469,270.00) for the purpose of completing the PROJECT. The RECIPIENT shall repay the STATE in accordance with the EXHIBIT C, LOAN REPAYMENT SCHEDULE, attached hereto, and by this reference is made part of this AGREEMENT. The annual loan repayment to be made by the RECIPIENT shall commence on the first day of the following month: February, 2017.

**SECTION V
OWNERSHIP OF PROJECT EQUIPMENT**

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

**SECTION VI
EMPLOYMENT AND INSPECTION OF WORK**

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

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

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

**SECTION VII
TERM**

This AGREEMENT shall become effective upon the date the last party signs the AGREEMENT. The AGREEMENT shall continue in full force for the useful life of the equipment and materials installed with STATE funds or until the loan and interest have been completely repaid to the STATE, whichever is longer. It is the expectation of the parties that the useful life of the materials is ten (10) years, and the loan shall be repaid over these ten (10) years. Accordingly, this AGREEMENT shall continue in full force and effect until June 30, 2027.

**SECTION VIII
OBLIGATIONS TO REPAY LOANED MONIES**

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

1. If the RECIPIENT does not complete the PROJECT tasks specified in EXHIBIT A by June 30, 2017;
2. Sale, conveyance or transfer of the RECIPIENT property underlying the PROJECT rail improvements within the loan re-payment period;
3. Any sale, conveyance, transfer, or removal of all or any of the PROJECT capital improvements or equipment purchased with the funds from this AGREEMENT within the loan re-payment period;
4. Any transfer, conveyance, or sale of all or any of the PROJECT capital improvements or equipment purchased with monies loaned under this AGREEMENT to any person or entity, public or private, that at any time subsequent to that transfer, conveyance, or sale removes the PROJECT rail improvements or equipment purchased with loaned monies from this AGREEMENT, or significant portions thereof, from operation within the loan re-payment period; and
5. Any abandonment or other liquidation by the RECIPIENT or its successor of the PROJECT capital improvements or equipment purchased with monies loaned under this AGREEMENT for any reason whatsoever within the loan re-payment period.

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

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

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

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

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

**SECTION X
CONTINGENT INTERESTS**

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

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

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

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

**SECTION XI
LOSS OR DAMAGE TO PROJECT EQUIPMENT**

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

SECTION XII MAINTENANCE OF RECORDS AND AUDIT REQUIREMENTS

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

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

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

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

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

SECTION XIII REPRESENTATIONS AND WARRANTIES

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

The RECIPIENT represents and warrants the following:

- (a) That it is a public corporation duly organized, validly existing and in good standing under the laws of the State of Washington;
- (b) That the monies the RECIPIENT will derive through this AGREEMENT will be used solely for the PROJECT as defined in this AGREEMENT;
- (c) That it has the full power and authority to enter into this AGREEMENT, and to carry out the obligations, which it has hereby undertaken;
- (d) That all corporate and other proceedings required to be taken by or on the part of the RECIPIENT to authorize its entrance into this AGREEMENT, have been or will be duly taken;
- (e) That execution of this AGREEMENT and the performance of the improvement hereunder will not violate any statute, rule, regulation, order, writ, injunction or decree of any Court, administrative agency or government body;
- (f) It is the intent of the STATE to partially reimburse the RECIPIENT for its actual PROJECT costs. It is understood that if unforeseen circumstances cause the PROJECT cost to exceed the PROJECT estimate, the RECIPIENT shall complete the PROJECT and assume the entire cost overrun;
- (g) That the RECIPIENT has not employed or retained any company or person to solicit or secure this AGREEMENT, and that it has not paid or agreed to pay any company or person, any fee, commission percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this AGREEMENT. For breach or violation of this warranty, the STATE shall have the right to terminate this AGREEMENT without liability;
- (h) That the RECIPIENT shall not engage on a full, part-time, or other basis, during the period of the AGREEMENT, any professional or technical personnel, to work on this AGREEMENT, who are, or have been, at any time during the period of the AGREEMENT in the employ of the STATE without written consent of the employer of such person; and

- (i) That the RECIPIENT shall not extend any loan, gratuity, or gift of money in any form whatsoever to any employee, agent, or officer of the STATE nor will the RECIPIENT rent or purchase any equipment or materials from any employee or officer of the STATE.

SECTION XIV TERMINATION FOR FAULT

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

SECTION XV ASSIGNMENT AND SUCCESSION

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

SECTION XVI FORCE MAJEURE

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

SECTION XVII NOTICES

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

NOTICES IN THE CASE OF THE RECIPIENT:

City of Tacoma dba Tacoma Public Utilities - Tacoma Rail
Tacoma Rail Superintendent
Attn: Dale King
2601 SR-509 North Frontage Road
Tacoma, WA 98421-3134

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

NOTICES IN THE CASE OF THE STATE:

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

SECTION XVIII INTERPRETATION

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

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

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

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

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

SECTION XIX SUBCONTRACTING

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

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

SECTION XX LAWS TO BE OBSERVED

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

**SECTION XXI
INDEPENDENT CONTRACTOR**

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

**SECTION XXII
SAFETY AND LIABILITIES**

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.

1. **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.
2. **Responsibility for Damage.** The STATE, Transportation Commission, Secretary of Transportation, and all officers and employees of the STATE including, but not limited to, those of the Department of Transportation shall not be responsible in any manner for: any loss or damage to the work or any part thereof; for any loss of material or damage to any of the materials or other things used or employed in the performance of the work; for any injury to or death of any persons, either workers or the public, or for damage to the public for any cause due to the intentional acts or negligence of the RECIPIENT or its workers, or anyone employed by it.
3. **Indemnification.** The RECIPIENT shall indemnify and hold the STATE and all its officers and employees harmless from, and shall process and defend at its own expense all claims, demands, or suits at law or equity arising out of this AGREEMENT caused by the performance or failure to perform by the RECIPIENT, its agents, employees and/ or its subcontractors of any and all duties prescribed by, or incidental to its performance under, this AGREEMENT; provided that nothing herein shall require the RECIPIENT to indemnify or hold the STATE harmless against claims, demands, or suits based solely upon the negligent conduct of the STATE, its officers or employees; and provided further that if the claims, demands or suit is caused by or results from the concurrent negligence of (a) the RECIPIENT 's agents or employees and (b) the STATE's agents or employees, and involves those actions covered by RCW 4.24.115, this indemnity provision with respect to claims or suits based upon such negligence shall be valid and enforceable only to the extent of the RECIPIENT's negligence or the negligence of the RECIPIENT's agents or employees.

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

This indemnification and waiver shall survive the termination of this AGREEMENT.

**SECTION XXIII
NO WAIVER OF STATE'S RIGHTS**

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

**SECTION XXIV
VENUE**

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

**SECTION XXV
DISPUTES RESOLUTION**

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

**SECTION XXVI
COMPLETE AGREEMENT**

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

**SECTION XXVII
EXECUTION OF ACCEPTANCE**

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

**SECTION XXVIII
AMENDMENT**

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

**SECTION XXIX
COUNTERPARTS**

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

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

**STATE OF WASHINGTON
Department of Transportation**

By: _____ Date: _____

Ron Pate
Director
WSDOT Rail Division

City of Tacoma dba Tacoma Public Utilities - Tacoma Rail

By: _____ Date: _____

Printed Name: William A. Gaines
Director of Public Utilities/CEO

By: _____

Date: _____

Printed Name: Andrew Cherullo
Finance Director

By: _____

Date: _____

Printed Name: Dale W. King
Superintendent, Tacoma Rail

Approved as to form:

By: _____

Date: _____

William C. Fosbre
Chief Deputy City Attorney
City of Tacoma, Washington

Approved as to form:

By: /s/ Scott Lockwood
Assistant Attorney General
State of Washington

Date: July 24, 2015

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

Remove and replace seven turnouts and 1,200 feet of rail in Tacoma Rail's main classification yard's along the east end low side switching ladder in Tacoma, WA.

Schedule

| | |
|--------------------------------------|--------------|
| Begin Preliminary Engineering | January 2016 |
| Complete Environmental Documentation | January 2016 |
| Complete Right-of-Way Certification | N/A |
| Complete PS&E | January 2016 |
| Start Construction | May 2016 |
| Construction Complete | August 2016 |

Cost Estimate

\$670,386.38

Cost estimate includes:

- \$201,116.38 Tacoma Rail match
- \$469,270 funding from WSDOT
 - \$4,693 for WSDOT Administration
 - \$5,000 for PE/Environmental Clearances
 - \$459,577 for Construction

EXHIBIT B

WSDOT ACCOUNTING MANUAL CHAPTER 10 TRAVEL RULES AND PROCEDURES

Online access available at:

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

CURRENT TRAVEL REIMBURSEMENT INFORMATION

Per Diem Rates as of October 2014, effective January 1, 2015, online access available at:

<http://www.ofm.wa.gov/resources/travel/colormap1214.pdf>

Please review the Office of Financial Management Website for periodic updates to these rates

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

EXHIBIT C
REPAYMENT SCHEDULE

Payments are based on a LOAN amount of \$469,270.00 for 10 years

Principle = \$469,270.00 No. of Payments = 10
First Payment Due = February 1, 2017

| No | Payment Date | Beginning Balance | Yearly Payment | Ending Balance |
|----|------------------|-------------------|----------------|----------------|
| 1 | February 1, 2017 | \$469,270.00 | \$46,927.00 | \$422,343.00 |
| 2 | February 1, 2018 | \$422,343.00 | \$46,927.00 | \$375,416.00 |
| 3 | February 1, 2019 | \$375,416.00 | \$46,927.00 | \$328,489.00 |
| 4 | February 1, 2020 | \$328,489.00 | \$46,927.00 | \$281,562.00 |
| 5 | February 1, 2021 | \$281,562.00 | \$46,927.00 | \$234,635.00 |
| 6 | February 1, 2022 | \$234,635.00 | \$46,927.00 | \$187,708.00 |
| 7 | February 1, 2023 | \$187,708.00 | \$46,927.00 | \$140,781.00 |
| 8 | February 1, 2024 | \$140,781.00 | \$46,927.00 | \$93,854.00 |
| 9 | February 1, 2025 | \$93,854.00 | \$46,927.00 | \$46,927.00 |
| 10 | February 1, 2026 | \$46,927.00 | \$46,927.00 | \$0.00 |