

<p>AGREEMENT</p> <p>MAXIMUM AMOUNT AUTHORIZED \$1,590,000</p>	<p>ORGANIZATION</p> <p>City of Tacoma dba Tacoma Public Utilities – Tacoma Rail 2601 SR509 North Frontage Road Tacoma, WA 98421-3134</p>
<p>AGREEMENT NUMBER RRB 1297</p>	<p>DESCRIPTION OF WORK</p> <p>Annie Tracks Switch and Curve Upgrade: Replace nine turnouts, replace, and relocate one crossover, relay existing rail in all curves on new tie plates, and replace 1,200 crossties</p>

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

WHEREAS, in Engrossed Substitute House Bill 1125, Chapter 472, Laws of 2023 (pv), Section 309 (2a) the Washington State Legislature appropriated \$2,030,000 for low-interest loans approved by the department through the freight rail investment bank (FRIB) program;

WHEREAS, the “Annie Tracks Switch and Curve Upgrade” (the “PROJECT”) is included in the LEAP transportation document and is authorized STATE funds for the expenditure of up to \$1,622,000 (One Million Six Hundred Twenty Two Thousand Dollars);

WHEREAS, in chapters 47.06A 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;

WHEREAS, in chapter 47.76.250(9) RCW 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

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

SECTION 1 SCOPE OF WORK

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

SECTION 2 PAYMENTS TO THE RECIPIENT

2.1 The STATE has estimated the cost to recover its actual direct and indirect costs is \$32,000 (Thirty-Two Thousand Dollars). Therefore, the amount of loan monies available shall be the initial loan amount reduced by this fee amount, or \$1,590,000 (One Million Five Hundred Ninety Thousand Dollars).

2.2 Subject to the stipulations set forth in SECTION 1 SCOPE OF WORK, the STATE agrees to loan the RECIPIENT up to a maximum amount of \$1,590,000 (One Million Five Hundred Ninety Thousand Dollars) for the actual direct and related indirect costs expended by the RECIPIENT in the course of completing the PROJECT required under this AGREEMENT.

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

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

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

2.6 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.

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

2.8 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.

2.9 If the PROJECT is not completed by June 30, 2025, 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 5 - OBLIGATIONS TO REPAY LOANED MONIES. Any required repayment shall be due within thirty (30) calendar days after receipt of an invoice from the STATE.

SECTION 3 PROGRESS PAYMENTS

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 a PROJECT status report. The STATE shall make periodic payments to the RECIPIENT for costs expended 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.

3.4 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.

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

3.6 The RECIPIENT shall receive payment 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.

3.7 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.

3.8 Reserved.

3.9 Disbursement of funds for overhead costs will not be allowed unless specified in this AGREEMENT.

3.10 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, attached hereto and by this reference made a part of this AGREEMENT. Billing for non-salary cost, directly identifiable with the PROJECT, if any, shall be an itemized listing of the charges supported by copies of the original bills, invoices, expense accounts and miscellaneous supporting data submitted by the 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.

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

3.12 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 the IFPL is contained in EXHIBIT C, attached hereto and by this reference made a part of this AGREEMENT.

3.13 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 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.

3.15 It is agreed that any money loaned by the STATE, pursuant to any RECIPIENT payment request, will not constitute agreement as to the appropriateness of any item, and that required adjustments, if any, will be made at the time of STATE's final payment. In the event that the STATE and/or their representatives conducts an audit, and that audit indicates an overpayment of moneys loaned against costs expensed by the RECIPIENT, the RECIPIENT agrees to pay the overpayment to the STATE within thirty (30) calendar days after being billed therefore. Amounts paid for any overpayment pursuant to this section will be in addition to the RECIPIENT's repayment obligation under SECTION 5 - OBLIGATIONS TO REPAY LOANED MONIES of this AGREEMENT.

SECTION 4 LOAN REPAYMENTS BY THE RECIPIENT

4.1 The STATE agrees to loan the RECIPIENT up to a maximum principal amount of \$1,622,000 (One Million Six Hundred Twenty-Two Thousand Dollars) for the purpose of completing the PROJECT. The RECIPIENT shall repay the STATE in accordance with the EXHIBIT D, LOAN REPAYMENT SCHEDULE, attached hereto, and by this reference is made part of this AGREEMENT.

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, if any of the following events occur:

5.1.1 If the RECIPIENT does not complete the PROJECT tasks specified in EXHIBIT A by June 30, 2025;

5.1.2 Sale, conveyance or transfer of the RECIPIENT 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 shall be payable in U.S. Funds and sent via certified mail to the STATE contact person identified in SECTION 23 - NOTICES 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 loan, shall not relieve RECIPIENT of its obligation to repay in full the next and any future scheduled payments in

EXHIBIT D.

SECTION 7 CONTINGENT INTERESTS

7.1 Reserved

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, or (d) use the PROJECT capital improvements or equipment in any manner subordinating the STATE's Contingent Interests 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 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 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.

7.5 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 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.

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

SECTION 9 RESERVED

SECTION 10 RESERVED

SECTION 11 USE AND MAINTENANCE OF PROJECT CAPITAL IMPROVEMENTS PURCHASED WITH FUNDS FROM THIS AGREEMENT

11.1 The RECIPIENT agrees that PROJECT 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 materials during its useful life, the RECIPIENT understands that the STATE may require the return of the entire amount of STATE assistance expended on the materials.

11.2 The RECIPIENT will give timely notice and receive prior written approval from the STATE for any proposal to use PROJECT 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 and equipment purchased with the funds from this AGREEMENT so long as the STATE retains rights as specified in the SECTION 7, 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 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.

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 examples of 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 final inspection shall be submitted to the Director, Rail, Freight and Ports containing the following information:

14.1.1 Non-Capital Projects

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

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

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 orders pertaining to the PROJECT, and to the extent applicable, 48 CFR Part 31 (Contract Cost Principles and Procedures) and 2 CFR Part 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 The RECIPIENT agrees to comply with all applicable state and federal laws, rules, and regulations pertaining to nondiscrimination and agrees to require the same of all subcontractors providing services or performing any work using funds provided under this AGREEMENT.

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 municipal 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 municipal 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 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

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, 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, upon thirty (30) calendar days written notice 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, 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 GRANTEE fail to exercise any right or remedy during the sixty (60) calendar days in which the other PARTY is in default, such failure shall not subsequently be deemed a waiver of, or preclude the exercise of that or any other right or remedy hereunder. The termination of this AGREEMENT shall not impair any other rights of the terminating PARTY under this AGREEMENT or any rights of action against the defaulting PARTY for the recovery of damages. For purposes of this provision, a substantial failure to perform on the part of the 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.

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 chapter 4.24.115 RCW, 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 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.

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 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 Assistant Superintendent
City of Tacoma dba Tacoma Public Utilities – Tacoma Rail
2601 SR 509 N Frontage Road
Tacoma, WA 98421-3134

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:

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

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. The RECIPIENT must obtain the STATE's advanced written approval of all subcontractors it shall employ on the PROJECT.

25.2 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 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; 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.

SECTION 27 NO WAIVER OF STATE'S RIGHTS

27.1 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 28 VENUE

28.1 In the event that either PARTY deems it necessary to institute legal action or proceedings to enforce

any right or obligation under this AGREEMENT, the PARTIES hereto agree that any such action shall be initiated in the Superior Court of the state of Washington, situated in Thurston County. The PARTIES also agree that each PARTY shall be responsible for its own attorney's fees and other legal costs.

SECTION 29 DISPUTES RESOLUTION

29.1 In the event that a dispute arises under this AGREEMENT, which cannot be resolved between the PARTIES, the dispute shall be settled in the following manner:

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

29.1.2 Each PARTY to this AGREEMENT shall appoint a member to a dispute board. The members so appointed shall jointly appoint a third member who is not employed by or affiliated in any way with the two PARTIES to this AGREEMENT. The dispute board shall evaluate the facts, contract terms, and applicable statutes and rules and make a determination of the dispute. The 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
Alan Matheson
Asst. Superintendent
2601 SR509 N. Frontage Road
Tacoma, WA 98421-3134

WSDOT Rail, Freight and Ports Division
Assistant Capital Programs Manager
PO Box 47407
310 Maple Park Ave. SE, Room 3D3
Olympia, Wash. 98501-2348

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

City of Tacoma dba Tacoma Rail
Dale King
Superintendent
2601 SR 509 N. Frontage Road
Tacoma, WA 98421-3134

WSDOT Rail, Freight and Ports Division
Operations and Capital Program Manager
PO Box 47407
310 Maple Park Ave. SE, Room 3D3
Olympia, Wash. 98501-2348

SECTION 30 COMPLETE AGREEMENT

30.1 This document and referenced attachments contain all of the covenants, stipulations and provisions agreed upon by the PARTIES. No agents, or representative of either PARTY has authority to make, and the PARTIES shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. 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 31 EXECUTION OF ACCEPTANCE

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

SECTION 32 AMENDMENT

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

SECTION 33 COUNTERPARTS

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

33.2 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: _____
Dale King
Superintendent

Approved as to form:

By: _____ Date: _____
Erik Furer
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

Replace nine turnouts, replace and relocate one crossover, relay existing rail in all curves on new tie plates, and replace 1,200 cross ties.



SCHEDULE

Complete project definition:	October 2023
Preliminary engineering:	January 2024
Start construction:	May 2024
Construction complete:	June 2025

COST ESTIMATE

\$2,740,625

Cost estimate includes:

- \$1,118,625 match
- \$1,622,000 funding from WSDOT
 - \$32,000 for administration
 - \$1,590,000 for Construction

EXHIBIT B
TRAVEL RULES AND PROCEDURES

Appendix 23.77 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 Map www.ofm.wa.gov/resources/travel.asp

Continental USA Per Diem Rates 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>

EXHIBIT D

REPAYMENT SCHEDULE

Payments are based on a LOAN amount of \$1,622,000 for 10 years beginning December 1, 2025.

No	Payment Date	Beginning Balance	Yearly Payment	Ending Balance
1	December 1, 2025	\$1,622,000.00	\$162,200.00	\$1,459,800.00
2	December 1, 2026	\$1,459,800.00	\$162,200.00	\$1,297,600.00
3	December 1, 2027	\$1,297,600.00	\$162,200.00	\$1,135,400.00
4	December 1, 2028	\$1,135,400.00	\$162,200.00	\$973,200.00
5	December 1, 2029	\$973,200.00	\$162,200.00	\$811,000.00
6	December 1, 2030	\$811,000.00	\$162,200.00	\$648,800.00
7	December 1, 2031	\$648,800.00	\$162,200.00	\$486,600.00
8	December 1, 2032	\$486,600.00	\$162,200.00	\$324,400.00
9	December 1, 2033	\$324,400.00	\$162,200.00	\$162,200.00
10	December 1, 2034	\$162,200.00	\$162,200.00	\$0