

**INTERAGENCY AGREEMENT
BETWEEN
STATE OF WASHINGTON
DEPARTMENT OF GENERAL ADMINISTRATION
AND
TACOMA PUBLIC UTILITIES,
TACOMA RAIL**

THIS AGREEMENT is made and entered into by and between the Department of General Administration, Facilities Division, Policy and Planning, hereinafter referred to as "GA" and the Tacoma Public Utilities, Tacoma Rail, hereinafter referred to as "TR" pursuant to the authority granted by Chapter 39.34 RCW.

IT IS THE PURPOSE OF THIS AGREEMENT to provide for installation of a pedestrian crossing at railroad milepost 9.81 on the Olympia Gate branch of the Burlington Northern Santa Fe Railway's Seattle Subdivision, also identified by TR as the Bellmore Line.

NOW, THEREFORE, in consideration of the terms and conditions contained herein, or attached and incorporated by reference and made a part hereof, the above named parties mutually agree as follows:

1. STATEMENT OF WORK

TR will install a pedestrian crossing at railroad milepost 9.81 on the Olympia Gate branch of the Burlington Northern Santa Fe Railway's Seattle Subdivision, located at Capitol Lake. The crossing will be approximately 8' in width and will meet requirements of the Americans with Disabilities Act. See Attachment "A", attached hereto and incorporated herein, for drawing of Omega Industries crossing assembly for approximate design guidance only. In addition, TR will install pedestrian crossing warning signs on either side of the crossing, as deemed appropriate by TR to meet approval by Washington Utilities and Transportation Commission (WUTC).

GA will be solely responsible for final construction to connect the crossing installation with GA's trail system on either side of the pedestrian crossing, including installation of safety fencing. Upon completion of this work by GA, TR will remove the asphalt pedestrian crossing at the existing crossing location. GA will then install permanent fencing to ensure no access from the Powerhouse Road to the old pedestrian crossing.

Upon completion of the crossing construction, GA will notify WUTC to initiate final inspection and assignment of a United States Department of Transportation (USDOT) number at the crossing.

GA will be responsible for ongoing maintenance of the pedestrian crossing. TR may perform maintenance as it deems necessary to maintain the integrity of its tracks.

In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- a. Applicable state and federal statutes and rules;
- b. Statement of work, and
- c. Any other provisions of the agreement, including materials incorporated by reference.

13. INDEPENDENT CAPACITY

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.

14. RECORDS MAINTENANCE

The parties to this Agreement shall each maintain books, records, documents and other evidence which sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the services described herein. These records shall be subject to inspection, review or audit by personnel of both parties, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this Agreement will be retained for six years after expiration and the Office of the State Auditor, federal auditors, and any persons duly authorized by the parties shall have full access and the right to examine any of these materials during this period.

Records and other documents, in any medium, furnished by one party to this agreement to the other party, will remain the property of the furnishing party, unless otherwise agreed. The receiving party will not disclose or make available this material to any third parties without first giving notice to the furnishing party and giving it a reasonable opportunity to respond. Each party will utilize reasonable security procedures and protections to assure that records and documents provided by the other party are not erroneously disclosed to third parties.

15. RIGHTS IN DATA

Unless otherwise provided, data which originates from this Agreement shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the GA. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books magazines, surveys, studies, computer programs, films, tapes and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

16. SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement, which can be given effect without the invalid provision if such remainder conforms to the requirements of applicable law and the fundamental purpose of this agreement, and to this end the provisions of this Agreement are declared to be severable.

17. TERMINATION

ORIGINAL

Either party may terminate this Agreement upon 30-days' prior written notification to the other party. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

18. TERMINATION FOR CAUSE

If for any cause, either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within 15-working days. If failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.

19. WAIVER

A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Agreement.

20. ALL WRITINGS CONTAINED HEREIN

This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement.

Department of General Administration
Facilities Division

Howard Cox
SIGNATURE

HOWARD COX
NAME

ACTING ASSISTANT DIRECTOR-FACILITIES DIVISION
TITLE

9-8-09
DATE

Tacoma Public Utilities
Tacoma Rail

Dale W. King
SIGNATURE

DALE W KING
NAME

SUPERINTENDENT-TACOMA RAIL
TITLE

DATE

REVIEWED BY GA CFO 4/16/09