

THIS AGREEMENT, made and entered into this _____ day of _____, _____, between the STATE OF WASHINGTON, Department of Transportation, acting by and through the Secretary of Transportation, hereinafter called the "STATE", and the above named Railroad Company, hereinafter called the "RAILWAY".

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

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

WHEREAS, the STATE is obligated to reimburse the RAILWAY for all or part of the cost incurred by the RAILWAY in undertaking specific work as herein described.

NOW THEREFORE, in consideration of the terms, conditions, covenants and performances contained herein, or attached and incorporated and made a part hereof, IT IS MUTUALLY AGREED AS FOLLOWS:

I DIVISION OF WORK

The STATE and the RAILWAY will perform the work as set forth in the above "Description of Improvements and Division of Work."

The RAILWAY will provide all the work, labor, materials and services to install warning devices and/or perform other work as described and set forth in the "Description of Improvements and Division of Work." A site plan labeled Exhibit "B", attached hereto and by this reference made a part of this AGREEMENT, further described the proposed improvements.

The RAILWAY agrees that it will follow the provisions of Article 1 when selecting the services of a consultant or contractor or both. The RAILWAY's contract with the consultant or contractor or both is subject to approval by the STATE.

If work is to be performed by the STATE as described in this AGREEMENT, the RAILWAY hereby grants the STATE permission to enter upon the RAILWAY's property for the purpose of performing said work.

II AUTHORITY TO BEGIN WORK

The RAILWAY agrees not to commence work until receipt of notice to begin work in writing by the STATE, and that reimbursement will be limited to those costs incurred subsequent to the date of such notification. The RAILWAY agrees to notify the STATE approximately one week prior to beginning work on the site.

III PAYMENT

The STATE, in consideration of the faithful performance of the work to be done by the RAILWAY, agrees to pay the RAILWAY actual direct and related indirect costs accumulated

in accordance with a work order accounting procedure as prescribed and approved by the ICC Uniform System of Accounts, or its equivalent.

An itemized estimate of cost for work to be performed by the RAILWAY at the STATE's expense is shown on Exhibit "A," attached hereto and by this reference made a part of this agreement.

Following execution of this AGREEMENT, progress bills may be submitted to the STATE to cover costs incurred and the STATE shall pay such progress billings within 60 days of receipt from the RAILWAY. If the billing is disputed for any reason, the STATE will promptly notify the RAILWAY and will pay any undisputed amount. Progress bills are not to be submitted more frequently than one (1) per month.

Final and detailed billing on all incurred costs shall be made by the RAILWAY and furnished to the STATE within one hundred twenty (120) days of project completion, and the STATE shall pay all eligible amounts of such bill, less progress payments previously made.

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

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

IV FLAGGING

All work herein provided for to be done by the STATE or its contractors, if any, on the RAILWAY's right of way, shall be performed by the STATE or its contractors in a manner as not to interfere with the movement of trains or traffic upon the tracks of the RAILWAY. The STATE or its contractors, shall use all care and precaution necessary to avoid accident, damage, or interference to the RAILWAY's tracks or to the trains or traffic using its tracks and notify the RAILWAY at least 30 calendars days prior to performing work adjacent to any track to enable the RAILWAY to furnish flagging and the STATE shall reimburse the RAILWAY for the cost thereof. Whenever safeguarding of trains or traffic of the RAILWAY is mentioned in this AGREEMENT, it is intended to cover and include all users of the RAILWAY's tracks having permission for such use.

The RAILWAY will submit bills for such flagging used during progress of the work contemplated by this AGREEMENT. The RAILWAY will submit a final billing for flagging within one hundred twenty (120) days after notification by the STATE of completion of project, said one hundred twenty (120) days to commence upon receipt, by the RAILWAY, of the said notification of completion of the project.

V INSURANCE

The contract between the STATE and its contractor for construction work herein provided, if any, shall require the contractor to protect and hold harmless the RAILWAY and any other railroad company occupying or using the RAILWAY's right of way or line of railroad against all loss, liability and damage arising from activities of the contractor, its forces or any of its subcontractors or agents. Such indemnity provision shall be in accordance with RCW 4.24.115 as amended by ch. 305, Laws of 1986. The contract shall further provide that the contractor shall:

1. Furnish to the RAILWAY a Railroad Protective Insurance Policy in the form provided by FHPM 6-6-2-2. The combined single limit of said policy shall not be less than Two Million Dollars (\$2,000,000) for all damages arising out of bodily injuries to or death of any person or persons and for all damages arising out of the loss or destruction of or injury or damage to property in any one occurrence during the policy period, and subject to that limit a total (or aggregate) limit of not less than Six Million Dollars (\$6,000,000) for all damages during the policy period. Said insurance policy is to be executed by a corporation qualified to write the same in the state in which the work is to be performed, shall be in the form and substance satisfactory to the RAILWAY and shall be delivered to an approved by the RAILWAY prior to the entry upon or use of its property by the contractor.

2. Carry regular Contractor's Public Liability and Property Damage Insurance providing for a limit of not less than One Million Dollars (\$1,000,000) for all damages arising out of bodily injuries to or death of one person, and, subject to the limit for each person, a total limit of not less than Two Million Dollars (\$2,000,000) for all damages arising out of bodily injuries to or death of two or more persons in any one occurrence; and providing for a limit of not less than One Million Dollars (\$1,000,000) for all damages to or destruction of property in any one occurrence and subject to that limit a total (or aggregate) limit of not less than Two Million Dollars (\$2,000,000) for all damages to or destruction of property during the policy period. A certificate of insurance providing proof of Contractor's Public Liability and Property Damage Insurance, executed by a corporation qualified to write the same in the State of Washington and in form and substance satisfactory to the RAILWAY, shall be delivered to and approved by the RAILWAY prior to the entry upon or use of the RAILWAY's property by the contractor.

If the STATE, its contractor, subcontractor or agents, in the performance of the work herein provided for or by the failure to do or perform anything for which it is responsible under the provisions hereof, shall damage or destroy any property of the RAILWAY, such damage or destruction shall be corrected by the STATE in the event its contractor or the insurance carriers fail to repair or restore the same.

For any work performed in the State of Washington, nothing in this agreement is intended to be construed as a requirement for an indemnification against the sole negligence of the RAILWAY, its officers, employees or agents. Moreover, for any work performed in the State of Washington, the contractor shall specifically and expressly agree to indemnify the RAILWAY and any other railroad company occupying or using the RAILWAY's right-of-way or line of railroad against all loss, liability and damages, including environmental damage, hazardous materials damage, or penalties or fines that may be assessed, caused by or resulting from the contractor's negligence, provided, however, if such loss, liability, damage, penalties or fines are caused by or result from the concurrent negligence of (a) the RAILWAY or the RAILWAY's officers, employees or agents, and (b) the contractor or the contractor's employees, agents of subcontractors, such indemnity shall be valid and enforceable only to the extent of the negligence of the contractor or the contractor's employees, agents or subcontractors.

The contractor shall further agree that it has a duty to defend at its own expense, in the name and on behalf of the RAILWAY, all claims or suits for injuries or death of persons or damage to property arising or growing out of the work carried on under this agreement, for which the RAILWAY is liable or is alleged to be liable. However, upon a final determination in court of law in which a percentage of negligence is attributed to the RAILWAY, the RAILWAY agrees to reimburse the contractor in the same percentage for the costs involved in defending the suit.

**VI
SALVAGE**

All material removed by the RAILWAY, which has been replaced at STATE expense, shall be reclaimed or disposed of by the RAILWAY and shall be credited to the STATE in accordance with Federal-Aid Highway Program Manual, Volume 1, Chapter 4, Section 3. The RAILWAY shall furnish written notice to the STATE for the time and place the materials will be available for inspection. If salvage credit is anticipated on this project, an estimate of the salvage credit will be included in the estimate of cost.

**VII
MAINTENANCE OF FACILITY**

Upon completion of the project, the STATE, at its sole cost and expense, shall maintain all improvements, other appurtenances, advance warning signs, standard pavement markings and guardrails with the exception of the crossing which will be maintained by the RAILWAY and STATE as provided by law.

Upon completion of the installation of said signals, the RAILWAY, at its sole cost and expense, shall operate and maintain said signals, provided however that the RAILWAY shall be entitled to receive reimbursement for any or all of the cost of such maintenance as may be made available by reason of any law, order, regulation or otherwise providing for the reimbursement of said costs.

**VIII
REPAIR OR REPLACEMENT
OF DAMAGED FACILITY**

In the event the signal system installed under this AGREEMENT is partially or wholly destroyed and the cost of repair or replacement cannot be recovered from the person or

persons responsible for such destruction, then, in that event the cost of repair or replacement shall be borne by the STATE and the RAILWAY at the same ratio under which the signals were installed.

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

**IX
DISPOSITION OF SIGNALS
NO LONGER REQUIRED**

If for any reason signals shall no longer be required at said grade crossing, the RAILWAY, on the approval of the STATE, may remove said signals. If in the opinion of the RAILWAY said signals are not obsolete, they may, as agreed to by the STATE and RAILWAY under a separate agreement, be reinstalled at some other State Highway - railroad grade crossing. If no other crossing is agreed upon by the STATE and the RAILWAY, and prescribed by public authority, the STATE will be credited with the salvage value for material not previously replaced by the RAILWAY during maintenance, less cost of removal.

Ownership of the signals vests in the RAILWAY or STATE, whichever one paid for the signals as shown on the face of this agreement.

**X
PROJECT COMPLETION**

Within 30 days of project completion the RAILWAY will by letter notify the STATE that construction is completed.

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

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

Railway

**State of Washington
Department of Transportation**

By _____

By _____

Title _____

Title _____

Date _____

ANY MODIFICATION, CHANGE OR REFORMATION of this Boilerplate Agreement shall require approval as to form by the Office of the Attorney General.