March 6, 2017

TO: Commissioners, Director and Deputy Directors

FROM: Tom Ferch, Transportation Funding Coordinator

SUBJECT: State/Local Agreement with the Idaho Transportation Department (ITD) for S. Black Cat Road RRX – (Key Number 20014)

March 15, 2017 Commission Meeting – Consent Agenda

Executive Summary
This State/Local Agreement (SLA) sets out the responsibilities of the Ada County Highway District (ACHD) and Idaho Transportation Department (ITD) in the development and construction of the South Black Cat Road Railroad Crossing Improvement project, which includes signalization of the Union Pacific’s two track rail crossing on South Black Cat Road, in Ada County. The project is funded with $425,000 of Federal Railway-Highway Crossings Program funds for the elimination of hazards at railway-highway crossings. The project will be managed by ITD. Staff recommends approving the SLA.

Facts & Findings
The South Black Cat Road Railroad Crossing project consists of the installation of crossing signals, gate arms and insulated concrete surface panels. A fatal vehicle versus train crash occurred at this location in December of 2015. After the crash the following organizations participated in a diagnostic review: ITD, Union Pacific Railroad, Ada County Sheriff, Idaho Operation Lifesaver and ACHD. Based on the review, ACHD made the request to ITD for a Rail Safety Grant. This crossing has the fourth highest predicted crash risk in Ada County.

The project is located on the local road system. As a result, ACHD is listed as the project sponsor. Project development and construction, however, will be managed by ITD District 3 staff. Project sponsors in this funding program must agree to repay federal funds expended if the project does not carry through to completion.

Since ACHD will not have direct control over the project, the agreement includes certain protections to ACHD which include:
- ACHD has the opportunity to approve the project design, including a no go alternative if the project does not appear viable.
- ITD will indemnify ACHD from legal action arising from negligence on the part of ITD during the carrying out of this project.
- In the event the project requires more funding, both parties will work with COMPASS to assure all funding options have been exhausted prior to cancelling the project.
**Fiscal Implications**
Federal Railway-Highway Crossings Program funding does not require a local match contribution. The $425,000 project will be run through ITD’s budget with reimbursement directly to ITD. The only financial impact to ACHD is if the project does not carry through to completion. In this situation, ACHD would be responsible for reimbursing ITD any State or Federal funds expended on the project.

**Policy Implications**
By signing this agreement ACHD is accepting responsibility for a safety project that ITD directly controls. Staff believes that with this agreement in place, it is in the District’s interest to proceed with the project as it will improve safety for users of the roadway, and the cost of the project is 100% funded with Federal Railway-Highway Crossings Program funds. This project was approved by the Commission with the adoption of the 2017-2021 IFYWP on October 26, 2016. By signing this agreement, ACHD continues its policy of seeking outside funding sources to supplement general funds. ACHD’s Legal Department has reviewed and approved this agreement.

**Alternatives**
1. Approve the State/Local Agreement between ACHD and ITD. Authorize Commission President to sign.
2. Direct staff to renegotiate the terms of this agreement with ITD.

**Recommendation**
Approve the State/Local Agreement. Authorize Commission President to sign the Agreement.

Attachments: State/Local Agreement (KN 20014) for South Black Cat Road Railroad Crossing Project.

CC: Project File, Planning and Projects Files, Central File
STATE/LOCAL AGREEMENT  
(RAILROAD CROSSING)  
PROJECT NO. A020(014)  
S BLACK CAT RD RRX  
ADA COUNTY HIGHWAY DISTRICT  
KEY NO. 20014

PARTIES

THIS AGREEMENT is made and entered into this ______ day of  
____________________, ______, by and between the IDAHO TRANSPORTATION  
BOARD, by and through the IDAHO TRANSPORTATION DEPARTMENT, hereafter collectively called the State, and the ADA COUNTY HIGHWAY DISTRICT, acting by and through its Board of Commissioners, hereafter called the Sponsor.

PURPOSE

The Sponsor has requested that the State program Project No. A020(014) for Federal-aid, and be the Sponsor’s representative in developing and constructing S Black Cat Rd RRX at crossing number 819338C in Ada County. The work is to consist of installation of insulated concrete surface panels, railroad signals and gates.

Authority for this Agreement is established by Section 40-317 of the Idaho Code.

The Parties agree as follows:

SECTION I. That the State will:

1. Provide the design effort, including the required environmental document, and acquire any additional rights-of-way needed for the project.

2. Administer construction of the project and pay all construction costs and upon completion of the work, notify the Sponsor thereof.

3. Bill the Sponsor for any federal funds expended on the project which are to be repaid by the Sponsor if the project is terminated prior to completion.

4. Indemnify, save harmless and defend regardless of outcome the Sponsor from the expenses of and against suits, actions, claims or losses of every kind, nature and description, including costs, expenses and attorney fees that may be incurred by reason of any act or omission, neglect or misconduct of the State in the design or
construction of the work which is the subject of this Agreement. As applicable, the State’s indemnification hereunder is subject to the limitations of the Idaho Tort Claims Act (currently codified at chapter 9, title 6, Idaho Code). The State’s indemnification hereunder shall in no event cause the State liability for any loss, damages, expenses or attorney fees attributable to the negligence of the Sponsor.

SECTION II. That the Sponsor will:

1. Authorize the State to administer the project.

2. Approve the project design.

3. Reimburse any federal funds expended on the project if the project is terminated prior to completion.

4. Upon notification of project completion, maintain the project to the satisfaction of the State. Such maintenance includes, but is not limited to, preservation of the entire roadway surface, shoulders, roadside cut and fill slopes, drainage structures, and such traffic control devices as are necessary for its safe and efficient utilization. Failure to maintain the project in a satisfactory manner will jeopardize the future allotment of federal-aid highway funds for projects within the Sponsor’s jurisdiction.

5. Indemnify, save harmless and defend regardless of outcome the State from the expenses of and against suits, actions, claims or losses of every kind, nature and description, including costs, expenses and attorney fees that may be incurred by reason of any act or omission, neglect or misconduct of the Sponsor in the design or construction of the work which is the subject of this Agreement. As applicable, the State’s indemnification hereunder is subject to the limitations of the Idaho Tort Claims Act (currently codified at chapter 9, title 6, Idaho Code). The Sponsor’s indemnification hereunder shall in no event cause the Sponsor liability for any loss, damages, expenses or attorney fees attributable to the negligence of the State.

6. Comply with Appendix A, Title 49 CFR, Part 21, attached hereto and made a part hereof. By this agreement Sponsor agrees to comply with and be bound to the Civil Rights provisions of Title VI of the Federal Code and to generally insert those provisions in all contracts that it enters into that are federally funded on this project. If property acquired for this project with Federal financial assistance is transferred, the recipient of the property will be subject to Appendix A if the property is used for the same purpose it was originally acquired or for another purpose involving similar services or benefits to the general public. Sponsor should contact the State prior to disposing of any property acquired under this agreement.
SECTION III.

1. In the event that either party wishes to delay or advance the project, or the project becomes unviable for any reason, the parties will coordinate with the Metropolitan Planning Organization prior to removal of the project from the Idaho Transportation Investment Program.

2. The location, form and character of all signs, markings and signals installed on the project, initially or in the future, shall be in conformity with the Manual of Uniform Traffic Control Devices as adopted by the State.

3. During construction, the latest edition of the State’s Guide for Utility Management will be followed in all matters relating to utilities.

4. Sufficient Appropriation. It is understood and agreed that the State is a governmental agency, and this Agreement shall in no way be construed so as to bind or obligate the State beyond the term of any particular appropriation of funds by the Federal Government or the State Legislature as may exist from time to time. The State reserves the right to terminate this Agreement if, in its sole judgment, the Federal Government or the legislature of the State of Idaho fails, neglects or refuses to appropriate sufficient funds as may be required for the State to continue payments. Any such termination shall take effect immediately upon notice and be otherwise effective as provided in this Agreement.
EXECUTION

This Agreement is executed for the State by its Engineering Services Division Administrator; and executed for the Sponsor by the President, attested to by the Director, with the imprinted corporate seal of Ada County Highway District.

IDAHO TRANSPORTATION DEPARTMENT

APPROVED BY:

________________________________________
Engineering Services Division Administrator

RECOMMENDED BY:

________________________________________
District Engineer

ATTEST:

ADA COUNTY HIGHWAY DISTRICT
BOARD OF COMMISSIONERS

________________________________________
Director

(SEAL)

By regular/special meeting
on ____________________
Appendix A
Non-Discrimination Agreement for Local Public Agencies

Title VI Program
Organization and Staffing

Pursuant to 23 CFR 200, the Sponsor has designated a Title VI Coordinator who is responsible for monitoring practices, procedures, policies, and documents for compliance with Title VI. This individual is the designated liaison for Title VI program activities and for coordinating compliance monitoring with the Idaho Transportation Department Equal Employment Opportunity Office.

Assurances of Non-Discrimination

49 CFR Part 21.7

The Sponsor hereby gives assurances:

1. That no person shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity conducted by the Sponsor regardless of whether those programs and activities are Federally funded or not. The Federal-aid Highway Transportation Act of 1973 added sex to the list of prohibitive factors. Disability was added through Section 504 of the Rehabilitation Act of 1973. Age was subsequently added in 1975 under the Age Discrimination Act. Minority populations and low-income populations were added by Presidential Executive Order 12898. Limited English proficient persons was added by Presidential Executive Order 13166.

2. That it will promptly take any measures necessary to effectuate this agreement.

3. That each program, activity, and facility (i.e., lands change to roadways, park and ride lots etc.) as defined at 49 CFR 21.23(b) and (e), and the Civil Rights Restoration Act of 1987 will be (with regard to a program or activity) conducted, or will be (with regard to a facility) operated in compliance with the nondiscriminatory requirements imposed by, or pursuant to, this agreement.

Further assurance is given that the Sponsor will comply with all requirements of Title II of the Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Vocational Rehabilitation Act of 1973. Public agencies are required to have completed a self-evaluation of all their programs and services (including pedestrian facilities) by 1992. In addition, public agencies with 50 or more employees were required to develop an ADA Transition Plan describing in detail how corrections would be made. If corrections could not be made within one year (or 1993), the Plan was to include a detailed schedule of how corrections would be made (CFR 28 35.105 & 35.150).

4. That these assurances are given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Sponsor by the Idaho Transportation Department (ITD) under the Federally-Funded Program and is binding on it, other recipients, sub-grantees, contractors, sub-contractors, transferees, successors in interest and other participants.

5. That the Sponsor shall insert the following notification in all solicitations for bids for work or material subject to the Regulations and made in connection with all Federally-Funded programs and, in adapted form all proposals for negotiated agreements: The (Sponsor), in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this
advertisement, disadvantaged business enterprises as defined at 49 CFR Part 23 will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, sex, or disability in consideration for an award.

6. That the Sponsor shall insert the clauses of Attachment 1 of this Agreement in every contract subject to the Act and the Regulations.

7. That the Sponsor shall insert the clauses of Attachment 2 of this Agreement, as a covenant running with the land, in any deed from the United States effecting a transfer of real property, structures, or improvements thereon, or interest therein.

8. The Sponsor agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Act, the Regulations, and this agreement.

Implementation Procedures
This agreement shall serve as the Sponsor’s Title VI plan pursuant to 23 CFR 200 and 49 CFR 21.

For the purpose of this agreement, “Federal Assistance” shall include:
1. grants and loans of Federal funds,
2. the grant or donation of Federal property and interest in property,
3. the detail of Federal personnel,
4. the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the Sponsor, or in recognition of the public interest to be served by such sale or lease to the Sponsor; and
5. any Federal agreement, arrangement, or other contract which has as one of its purposes, the provision of assistance.

The Sponsor shall:
1. Issue a policy statement, signed by the Sponsor’s authorized representative, which expresses its commitment to the nondiscrimination provisions of Title VI. The policy statement shall be circulated throughout the Sponsor’s organization and to the general public. Such information shall be published where appropriate in languages other than English.

2. Take affirmative action to correct any deficiencies found by ITD or the United States Department of Transportation (USDOT) within a reasonable time period, not to exceed 90 days, in order to implement Title VI compliance in accordance with this agreement. The Sponsor’s authorized representative shall be held responsible for implementing Title VI requirements.

3. Designate a Title VI Coordinator who has a responsible position in the organization and easy access to the Sponsor’s authorized representative. The Title VI Coordinator shall be responsible for initiating and monitoring Title VI activities and preparing required reports.

4. Adequately implement the civil rights requirements.

5. Process complaints of discrimination consistent with the provisions contained in this agreement. Investigations shall be conducted by civil rights personnel trained in discrimination complaint investigation. Identify each complainant by race, color, national origin, sex, or disability; the nature of the complaint; the date the complaint was filed; the date the investigation was completed; the disposition; the date of the disposition; and other pertinent information. A copy of the complaint, together with a copy of State/Local Agreement
S Black Cat Rd RRX
Key No. 20014
Page 2
the Sponsor’s report of investigation, will be forwarded to ITD’s EEO Office – External Programs within 10 days of the date the complaint was received by the Sponsor.

6. Collect statistical data (race and sex) of participants in, and beneficiaries of the Transportation programs and activities conducted by the Sponsor.

7. Conduct Title VI reviews of the Sponsor and sub-recipient contractor/consultant program areas and activities. Revise where applicable, policies, procedures and directives to include Title VI requirements.

8. Attend training programs on Title VI and related statutes conducted by ITD’s EEO Office.

9. Participate in an annual review of the Sponsor’s Title VI Program, the purpose of which is to determine to what extent the Sponsor has complied with Title VI requirements including the ADA. This review is conducted one year from the date of approval of the Non-Discrimination Agreement and then annually on the same date. The format for the Title VI review will be provided each year to the Sponsor for completion. A determination of compliance will be made by ITD’s EEO Office based on the information supplied in the review. This review of the Sponsor’s Title VI Program may also include an on-site review in order to determine compliance.

Discrimination Complaint Procedure

Any person who believes that he or she, individually, as a member of any specific class, or in connection with any disadvantaged business enterprise, has been subjected to discrimination prohibited by Title VI of the Civil Rights Act of 1964, the American with Disabilities Act of 1990, Section 504 of the Vocational Rehabilitation Act of 1973 and the Civil Rights Restoration Act of 1987, as amended, may file a complaint with the Sponsor. A complaint may also be filed by a representative on behalf of such a person. All complaints will be referred to the Sponsor’s Title VI Coordinator for review and action.

In order to have the complaint consideration under this procedure, the complainant must file the complaint no later than 180 days after:

a) The date of alleged act of discrimination; or
b) Where there has been a continuing course of conduct, the date on which that conduct was discontinued.

In either case, the Sponsor or his/her designee may extend the time for filing or waive the time limit in the interest of justice, specifying in writing the reason for so doing.

Complaints shall be in writing and shall be signed by the complainant and/or the complainant’s representative. Complaints shall set forth as fully as possible the facts and circumstances surrounding the claimed discrimination. In the event that a person makes a verbal complaint of discrimination to an officer or employee of the Sponsor, the person shall be interviewed by the Title VI Coordinator. If necessary, the Title VI Coordinator will assist the person in reducing the complaint to writing and submit the written version of the complaint to the person for signature. The complaint shall then be handled according to the Sponsor’s investigative procedures.

Within 10 days, the Title VI Coordinator will acknowledge receipt of the allegation, inform the complainant of action taken or proposed action to process the allegation, and advise the complainant of other avenues of redress available, such as ITD and USDOT.

The Sponsor will advise ITD within 10 days of receipt of the allegations. Generally, the following information will be included in every notification to ITD:

State/Local Agreement
S Black Cat Rd RRX
Key No. 20014
Within 60 days, the Title VI Coordinator will conduct an investigation of the allegation and based on the information obtained, will render a recommendation for action in a report of findings to the Sponsor’s authorized representative. The complaint should be resolved by informal means whenever possible. Such informal attempts and their results will be summarized in the report of findings.

Within 90 days of receipt of the complaint, the Sponsor’s authorized representative will notify the complainant in writing of the final decision reached, including the proposed disposition of the matter. The notification will advise the complainant of his/her appeal rights with ITD, or USDOT, if they are dissatisfied with the final decision rendered by the Sponsor. The Title VI Coordinator will also provide ITD with a copy of this decision and summary of findings upon completion of the investigation.

Contacts for the different Title VI administrative jurisdictions are as follows:

Idaho Transportation Department
Equal Employment Opportunity Office – External Programs
EEO Manager
PO Box 7129
Boise, ID 83707-1129
208-334-8884

Federal Highway Administration
Idaho Division Office
3050 Lakeharbor Lane, Suite 126
Boise, ID 83703
208-334-9180

Sanctions
In the event the Sponsor fails or refuses to comply with the terms of this agreement, the ITD may take any or all of the following actions:

1. Cancel, terminate, or suspend this agreement in whole or in part;
2. Refrain from extending any further assistance to the Sponsor under the program from which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the Sponsor;
3. Take such other action that may be deemed appropriate under the circumstances, until compliance or remedial action has been accomplished by the Sponsor;
4. Refer the case to the Department of Justice for appropriate legal proceedings.

Distribution: EEO Office
Appendix A revised: 03-09, 08-10
Attachment 1

This Attachment is to be inserted in every contract subject to Title VI of the Civil Rights Act of 1964 and associated Regulations.

During the performance of this contract, the contractor/consultant, for itself, its assignees and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

1. Compliance with Regulations
   The contractor shall comply with the Regulations relative to non-discrimination in federally assisted programs of United States Department of Transportation (USDOT), Title 49, Code of Federal Regulations, part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

2. Non-discrimination
   The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of sub-contractors, including procurement of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3. Solicitations for Sub-contracts, Including Procurement of Materials and Equipment
   In all solicitations either by competitive bidding or negotiations made by the contractor for work to be performed under a sub-contract, including procurement of materials or leases of equipment, each potential sub-contractor or supplier shall be notified by the contractor of the contractor’s obligations under this contract and the Regulations relative to non-discrimination on the grounds of race, color, sex, or national origin.

4. Information and Reports
   The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the contracting agency or the appropriate federal agency to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to ITD or the USDOT as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Non-compliance
   In the event of the contractor’s non-compliance with the non-discrimination provisions of this contract, the contracting agency shall impose such contract sanctions as it or the USDOT may determine to be appropriate, including, but not limited to:
   • Withholding of payments to the contractor under the contract until the contractor complies, and/or;
   • Cancellation, termination, or suspension of the contract, in whole or in part

Incorporation of Provisions
   The contractor shall include the provisions of paragraphs (1) through (5) in every sub-contract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any sub-contractor or procurement as the contracting agency or USDOT may direct as a means of enforcing such provisions including sanctions for non-compliance.

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a sub-contractor or supplier as a result of such direction, the contractor may request ITD enter into such litigation to protect the interests of the state and, in addition, the contractor may request the USDOT enter into such litigation to protect the interests of the United States.
Attachment 2

The following clauses shall be included in any and all deeds affecting or recording the transfer of real property, structures or improvements thereon, or interest therein from the United States.

GRANTING CLAUSE

NOW THEREFORE, Department of Transportation, as authorized by law, and upon the condition that the state of Idaho will accept title to the lands and maintain the project constructed thereon, in accordance with Title 23, United States Code, the Regulations for the Administration of Federal Aid for Highways and the policies and procedures prescribed by the United States Department of Transportation and, also in accordance with and in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter referred to as the Regulations) pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252: 42 USC 2000d to 2000d - 4) does hereby remise, release, quitclaim, and convey unto the state of Idaho all the right, title, and interest of the Department of Transportation in and to said land described in Exhibit A attached hereto and made a part thereof.

HABENDUM CLAUSE

TO HAVE AND TO HOLD said lands and interests therein unto the state of Idaho, and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which the federal financial assistance is extended or for another purpose involving the provisions of similar services or benefits and shall be binding on the state of Idaho, its successors, and assigns.

The state of Idaho, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person shall on the grounds of race, color, sex or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed, (2) that the state of Idaho, shall use the lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, part 21, Non-discrimination of federally assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended and (3) that in the event of breach of any of the above mentioned non-discrimination conditions, the department shall have a right to reenter said lands and facilities on said land, and the above described land and facilities shall thereon revert to and vest in and become the absolute property of the Department of Transportation and its assigns as such interest existed prior to this instruction.¹

¹ Reverter Clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purpose of Title VI of the Civil Rights Act of 1964.