

# EXHIBIT 1



**BUILDING AMERICA®**

April 12, 2017

Barry Greene  
1026 W. Broadway Ave.  
Public Works Building  
Spokane, WA. 99260-0170

**Re: Union Pacific Railroad Crossing Assessment Process and Safety Enhancement  
Recommendations, Spokane Valley railroad crossing at Wellesley Ave DOT # 662535B**

Dear Mr. Greene:

As part of its continued commitment to safety, Union Pacific Railroad Company (UPRR) has launched a new initiative, the Crossing Assessment Process (CAP) to enhance grade crossing safety in our communities. CAP draws on data to identify grade crossings for further safety enhancement and is most successful when communities and roadway authorities work with UPRR in concert.

When a crossing is maintained to UPRR maintenance standards, the stage has been set for a reasonably prudent driver to traverse the crossing safely. UPRR crossings are safe because they meet these standards. The intent of CAP is to enhance even further the safety of these crossings and, as a result, enhance public safety in general.

Through CAP, UPRR has identified a railroad crossing in the County of Spokane that it believes would benefit from the safety enhancements recommended as shown in the attached.

I would appreciate the opportunity to review and discuss with you or any other appropriate persons the recommended safety enhancements. I will follow up with you within one week to schedule a date and time to meet and answer any questions that you may have.

Please feel free to contact me if you have any questions.

Very truly yours,

Terrel A. Anderson  
Manager of Industry and Public Projects  
1 So. Pyramid Way  
Sparks, NV. 89431  
taanders@up.com  
775-356-2644 Office  
916-390-3693 Cell

## EXHIBIT 2

**Nelson, Michael A.**

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**From:** Zlateff, Chariti EMAIL 5 OF 5  
**Sent:** Wednesday, September 23, 2020 9:45 AM  
**To:** Pilgrim, Jessica; Colyar, Brandi J.; Coles, Chad  
**Subject:** FW: Otis Orchards\_ Wellesley Ave, 662535B\_ 16.73 Spokane\_WA - Attorney Client Communication-Do Not Release

Please note that the interpretation of the railroad in the email below which seems to be reaching to include maintenance costs. From what I understand, the Project is not requiring the railroads to share the cost of the actual Wellesley project.

Thank you,

Chariti Zlateff, P.E.  
Project Engineer  
Cell: 509.724.7992 | Office: 509.477.7254 | [czlateff@spokanecounty.org](mailto:czlateff@spokanecounty.org)  
Spokane County Public Works | [www.spokanecounty.org](http://www.spokanecounty.org)



INTEGRITY – COMMUNICATION – ACCOUNTABILITY – RESPECT – INNOVATION – SERVICE – SAFETY

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**From:** Mays, Ellis [mailto:EMays@benesch.com] EMAIL 4 OF 5  
**Sent:** Thursday, July 16, 2020 5:09 PM  
**To:** Zlateff, Chariti <CZLATEFF@SpokaneCounty.org>  
**Cc:** Mary Schroll <MRSCHROL@up.com>; Schenk, Andrew E. <ASCHEK@SpokaneCounty.org>; Schwab, Tim <TSCHWAB@spokanecounty.org>; Colyar, Brandi J. <BCOLYAR@spokanecounty.org>; Greene, Barry <BGreene@spokanecounty.org>; Thompson, Nathan <NThompson@spokanecounty.org>  
**Subject:** RE: Otis Orchards\_ Wellesley Ave, 662535B\_ 16.73 Spokane\_WA

Chariti,

After further conversations with UPRR this project WILL require an annual signal maintenance fee per the trailing emails.

For reference CFR Title 23, Chapter I, Subchapter G, 646.210:

**(b) Pursuant to 23 U.S.C. 130(b), and 49 CFR 1.48:**

**(1) Projects for grade crossing improvements are deemed to be of no ascertainable net benefit to the railroads and there shall be no required railroad share of the costs.**

UPRR interprets this language to mean that the railroad should incur no costs as part of this project to include maintenance costs, and, as such those costs should be paid by the county. This same standard will apply to all applicable signal projects moving forward.

Mary Schroll, copied, can answer any further questions relating to the annual signal maintenance fee.

Thanks,

Ellis A. Mays | Project Manager

**Alfred Benesch & Company** | 3017 Douglas Blvd, Ste 300, Roseville, CA 95661  
C 402-427-4231 | E [emays@benesch.com](mailto:emays@benesch.com) | W [www.benesch.com](http://www.benesch.com)

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**From:** Mays, Ellis  
**Sent:** Monday, July 6, 2020 10:41 PM EMAIL 3 OF 5  
**To:** Zlateff, Chariti <[CZLATEFF@SpokaneCounty.org](mailto:CZLATEFF@SpokaneCounty.org)>  
**Cc:** Mary Schroll <[MRSCHROL@up.com](mailto:MRSCHROL@up.com)>; Schenk, Andrew E. <[ASCHEK@SpokaneCounty.org](mailto:ASCHEK@SpokaneCounty.org)>; Schwab, Tim <[TSCHWAB@spokanecounty.org](mailto:TSCHWAB@spokanecounty.org)>; Colyar, Brandi J. <[BCOLYAR@spokanecounty.org](mailto:BCOLYAR@spokanecounty.org)>; Greene, Barry <[BGreene@spokanecounty.org](mailto:BGreene@spokanecounty.org)>; Thompson, Nathan <[NThompson@spokanecounty.org](mailto:NThompson@spokanecounty.org)>  
**Subject:** RE: Otis Orchards\_ Wellesley Ave, 662535B\_ 16.73 Spokane\_WA

Chariti,

Just to follow up on our phone call I will defer to Mary for further discussions regarding the annual maintenance costs (or to at least be part of that conversation) – unfortunately, she is off this week but I am hopeful we can resume that conversation next week. I do not believe we should be looking at any notable delays at this time.

Also, if you get a chance, can you send me the UTC order for my files.

Thanks,

Ellis A. Mays | Project Manager

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**From:** Zlateff, Chariti <[CZLATEFF@SpokaneCounty.org](mailto:CZLATEFF@SpokaneCounty.org)>  
**Sent:** Monday, July 6, 2020 2:20 AM EMAIL 2 OF 5  
**To:** Mays, Ellis <[EMays@benesch.com](mailto:EMays@benesch.com)>  
**Cc:** Mary Schroll <[MRSCHROL@up.com](mailto:MRSCHROL@up.com)>; Schenk, Andrew E. <[ASCHEK@SpokaneCounty.org](mailto:ASCHEK@SpokaneCounty.org)>; Schwab, Tim <[TSCHWAB@spokanecounty.org](mailto:TSCHWAB@spokanecounty.org)>; Colyar, Brandi J. <[BCOLYAR@spokanecounty.org](mailto:BCOLYAR@spokanecounty.org)>; Greene, Barry <[BGreene@spokanecounty.org](mailto:BGreene@spokanecounty.org)>; Thompson, Nathan <[NThompson@spokanecounty.org](mailto:NThompson@spokanecounty.org)>  
**Subject:** RE: Otis Orchards\_ Wellesley Ave, 662535B\_ 16.73 Spokane\_WA

Ellis,

Thank you for the update. As I am in the process of applying for the federal funding to be obligated for construction, I believe the agreement is essential. I typically supply all necessary documentation, to include agreements, to be a part of the bid package for the contractor and we will be running to bid when the funding is approved. I have added underlined topic discussion points to follow along with the questions you have asked below.

Agreement & Annual Signal Maintenance Fee - I was unaware that the agreement has language regarding the annual signal maintenance costs of \$6,630 at this location. The other railroad crossing locations we have laid out to complete similar work for other railroads do not have any signal maintenance costs charged to Spokane County to my knowledge. I am unfamiliar with Spokane County supplying funding fees yearly for the railroad to maintain the railroad signals. There have been no previous conversations regarding an annual fee. I will have to have a few conversations internally to understand how that may work and to see if that can be approved and by whom.

- Can you reference any agreements that Spokane County currently has with UPRR to supply yearly maintenance funds so that I may direct my questions to that person or find out who signed off on that?
- This project is being constructed with 100% Federal Funds under the safety grant so perhaps you can add a maintenance fee to the estimate to cover the costs for a duration of time if that is permitted. Thoughts?

Plan Question - The off-quadrant flasher unit shown at the intersection of Wellesley Ave and E Railroad Ave as an existing facility that was there at the time of survey and I am assuming it will still be there while our contractor is working in that area. Spokane County plans are specifically for the contracted road work updating Wellesley Ave and Railroad Ave. The plans do not specify the railroads, other than a few locations where we have "by others", intent to install, modify and or update the railroad facilities under the terms of the safety grant with the Federal Funds.

Diagnostic Meeting - I can ask about the meeting minutes and sign in sheet from the 2015 diagnostic at this location. I believe the diagnostic for this project was done in October of 2017 and the railroad project manager at the time, Terrell Anderson, may not have left that information behind. I did supply any information and documentation I had with Peggy Ygbuhay over a year ago when we started this process so hopefully she left that file with her predecessor.

Please let me know if any of this information or questions may cause additional delays, we have a time limit to obligate the construction funding. Perhaps it would be best to continue any further questions via conference call?

Thank you,

Chariti Zlateff, P.E.  
Project Engineer

Cell: 509.724.7992 | Office: 509.477.7254 | [czlateff@spokanecounty.org](mailto:czlateff@spokanecounty.org)

Spokane County Public Works | [www.spokanecounty.org](http://www.spokanecounty.org) [[spokanecounty.org](http://spokanecounty.org)]



INTEGRITY – COMMUNICATION – ACCOUNTABILITY – RESPECT – INNOVATION – SERVICE – SAFETY

**From:** Mays, Ellis [<mailto:EMays@benesch.com>]

**Sent:** Saturday, July 4, 2020 2:56 PM

EMAIL 1 OF 5

**To:** Zlateff, Chariti <[CZLATEFF@SpokaneCounty.org](mailto:CZLATEFF@SpokaneCounty.org)>

**Cc:** Mary Schroll <[MRSCHROL@up.com](mailto:MRSCHROL@up.com)>

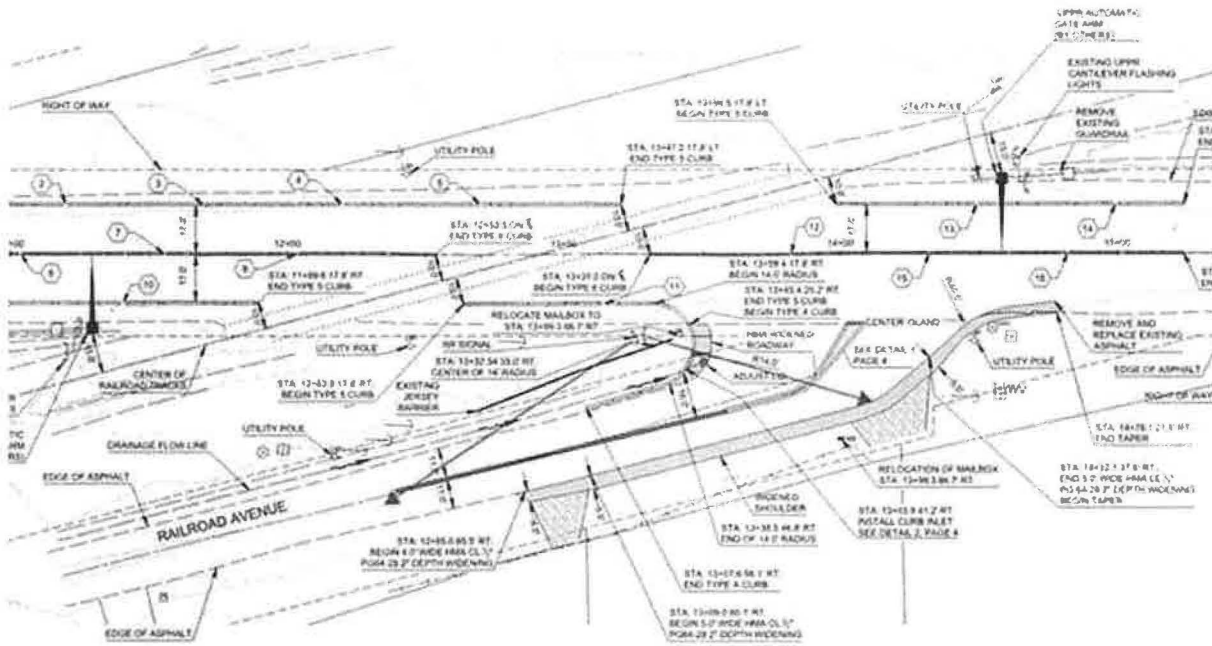
**Subject:** Otis Orchards\_ Wellesley Ave, 662535B\_ 16.73 Spokane\_

Chariti,

It looks like UPRR is in the final processes of approving the DRAFT agreement for subject location internally, and, as such it should be making its way to the County shortly.

In the interim I do want to make you aware that the agreement does have language regarding the annual signal maintenance costs which will be \$6,630 at this location. I am unsure if previous conversation prior to me have made this point clear as the County will be responsible for the annual cost per the agreement.

Additionally, I want to make you aware that the off-quadrant flasher unit at the intersection of Wellesley Ave and E Railroad Ave has been removed from the signal design, presumably as it will serve no purpose when that road is made right-out only. I do see the flasher on the plans still – was this just an oversight on the design or was there an intent to keep that signal in place? (My arrows show where the flashers are aimed currently)



Lastly, can you share the meeting minutes and sign in sheet from the 2015 diagnostic at this location for my records? A diagnostic is typically required when making modifications to a crossing and I show this one was done 5/20/2015.

Thanks,

Ellis A. Mays | Project Manager

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C 402-427-4231 | E [emays@benesch.com](mailto:emays@benesch.com) | W [www.benesch.com](http://www.benesch.com)

# EXHIBIT 3



**PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT**

WELLESLEY AVENUE  
662535B  
16.73 – SPOKANE SUBDIVISION  
SPOKANE, SPOKANE COUNTY, WASHINGTON

THIS AGREEMENT ("Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ ("Effective Date"), by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, to be addressed at Real Estate Department, 1400 Douglas Street, Mail Stop 1690, Omaha, Nebraska 68179 ("Railroad") and **COUNTY OF SPOKANE**, a municipal corporation or political subdivision of the State of Washington to be addressed at 1026 West Broadway Avenue, Spokane, Washington 99260-0170 ("Political Body").

**RECITALS:**

By instrument dated December 14, 1972, SPOKANE INTERNATIONAL RAILROAD COMPANY and the Political Body entered into an agreement (the "Original Agreement") covering the construction, use, maintenance and repair of an at grade public road crossing over WELLESLEY AVENUE DOT Number 662535B at Railroad's Milepost 16.73 on Railroad's Spokane Subdivision at or SPOKANE, SPOKANE COUNTY, WASHINGTON.

The Railroad named herein is successor in interest to the SPOKANE INTERNATIONAL RAILROAD COMPANY

The Political Body now desires to undertake as its project (the "Project") the reconstruction and widening of the road crossing that was constructed under the Original Agreement. The road crossing, as reconstructed and widened is hereinafter the "Roadway" and the portion of the Railroad's property where the Roadway crosses the Railroad's property is the "Crossing Area."

The right of way granted by SPOKANE INTERNATIONAL RAILROAD COMPANY to the Political Body under the terms of the Original Agreement or a separate document is not sufficient to allow for the reconstruction and widening of the Roadway. Therefore, under this Agreement, the Railroad will be granting additional rights to the Political Body to facilitate the reconstruction and widening of the Roadway. The portion of Railroad's property that Political Body needs to use in connection with the Roadway ("New

Crossing Area”) including the right of way area covered under the Original Agreement or in a separate document (“Existing Crossing Area”) is shown on the print marked **Exhibit A**, attached hereto and hereby made a part hereof (the “Crossing Area”).

In support of its Project, the Political Body has requested the Railroad’s cooperation in connection with upgrading grade crossing protection devices. Said work is to be performed at the sole expense of Political Body.

The Railroad and the Political Body are entering into this Agreement to cover the above.

### **AGREEMENT:**

NOW, THEREFORE, it is mutually agreed by and between the parties hereto as follows:

#### **Section 1. EXHIBIT B**

The general terms and conditions marked **Exhibit B**, are attached hereto and hereby made a part hereof.

#### **Section 2. RAILROAD GRANTS RIGHT**

For and in consideration of the sum of **TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500)** to be paid by the Political Body to the Railroad upon the execution and delivery of this Agreement and in further consideration of the Political Body’s agreement to perform and comply with the terms of this Agreement, the Railroad hereby grants to the Political Body the right to construct, maintain and repair the Roadway over and across the Crossing Area.

For purposes of advanced signal preemption, Railroad hereby grants permission and authority to Political Body and/or its Contractor (as defined below) to install the conduit with the necessary wiring on Railroad right of way on the condition that prior to performing any work on Railroad’s property, Political Body shall, or shall require its Contractor to, notify the Railroad and/or enter into a right of entry agreement with Railroad, as applicable pursuant to the terms and conditions of this Agreement.

#### **Section 3. DEFINITION OF CONTRACTOR**

For purposes of this Agreement the term “Contractor” shall mean the contractor or contractors hired by the Political Body to perform any Project work on any portion of the Railroad’s property and shall also include the Contractor’s subcontractors and the Contractor’s and subcontractor’s respective employees, officers and agents, and others acting under its or their authority.

**Section 4. CONTRACTOR'S RIGHT OF ENTRY AGREEMENT - INSURANCE**

A. Prior to Contractor performing any work within the Crossing Area and any subsequent maintenance and repair work, the Political Body shall require the Contractor to:

- execute the Railroad's then current Contractor's Right of Entry Agreement
- obtain the then current insurance required in the Contractor's Right of Entry Agreement; and
- provide such insurance policies, certificates, binders and/or endorsements to the Railroad.

B. The Railroad's current Contractor's Right of Entry Agreement is marked **Exhibit D**, attached hereto and hereby made a part hereof. The Political Body confirms that it will inform its Contractor that it is required to execute such form of agreement and obtain the required insurance before commencing any work on any Railroad property. Under no circumstances will the Contractor be allowed on the Railroad's property without first executing the Railroad's Contractor's Right of Entry Agreement and obtaining the insurance set forth therein and also providing to the Railroad the insurance policies, binders, certificates and/or endorsements described therein.

C. All insurance correspondence, binders, policies, certificates and/or endorsements shall be sent to:

Senior Manager - Contracts  
Union Pacific Railroad Company  
Real Estate Department  
1400 Douglas Street, Mail Stop 1690  
Omaha, NE 68179-1690  
UP File Folder No. 730-22

D. If the Political Body's own employees will be performing any of the Project work, the Political Body may self-insure all or a portion of the insurance coverage subject to the Railroad's prior review and approval.

**Section 5. FEDERAL AID POLICY GUIDE**

If the Political Body will be receiving any federal funding for the Project, the current rules, regulations and provisions of the Federal Aid Policy Guide as contained in 23 CFR 140, Subpart I and 23 CFR 646, Subparts A and B are incorporated into this Agreement by reference.

**Section 6. NO PROJECT EXPENSES TO BE BORNE BY RAILROAD**

The Political Body agrees that no Project costs and expenses are to be borne by the Railroad. In addition, the Railroad is not required to contribute any funding for the

Project.

**Section 7. WORK TO BE PERFORMED BY RAILROAD; BILLING SENT TO POLITICAL BODY; POLITICAL BODY'S PAYMENT OF BILLS**

A. The work to be performed by the Railroad, at the Political Body's sole cost and expense, is described in the Railroad's Material and Force Account Estimate dated April 8, 2020,, marked **Exhibit C**, attached hereto and hereby made a part hereof (the "Estimate"). As set forth in the Estimate, the Railroad's estimated cost for the Railroad's work associated with the Project is **Two Hundred Eighty Eight Thousand Nine Hundred Seventy Nine Dollars (\$288,979.00)**.

B. The Railroad, if it so elects, may recalculate and update the Estimate submitted to the Political Body in the event the Political Body does not commence construction on the portion of the Project located on the Railroad's property within six (6) months from the date of the Estimate.

C. The Political Body acknowledges that the Estimate does include an estimate of flagging or other protective service costs that are to be paid by the Political Body or the Contractor in connection with flagging or other protective services provided by the Railroad in connection with the Project. All of such costs incurred by the Railroad are to be paid by the Political Body or the Contractor as determined by the Railroad and the Political Body. If it is determined that the Railroad will be billing the Contractor directly for such costs, the Political Body agrees that it will pay the Railroad for any flagging costs that have not been paid by any Contractor within thirty (30) days of the Contractor's receipt of billing

D. The Railroad shall send progressive billing to the Political Body during the Project and final billing to the Political Body within one hundred eighty (180) days after receiving written notice from the Political Body that all Project work affecting the Railroad's property has been completed.

E. The Political Body agrees to reimburse the Railroad within thirty (30) days of its receipt of billing from the Railroad for one hundred percent (100%) of all actual costs incurred by the Railroad in connection with the Project including, but not limited to, all actual costs of engineering review (including preliminary engineering review costs incurred by Railroad prior to the Effective Date of this Agreement), construction, inspection, flagging (unless flagging costs are to be billed directly to the Contractor), procurement of materials, equipment rental, manpower and deliveries to the job site and all direct and indirect overhead labor/construction costs including Railroad's standard additive rates.

**Section 8. PLANS**

A. The Political Body, at its expense, shall prepare, or cause to be prepared by others, the detailed plans and specifications for the Project and the Structure and

submit such plans and specifications to the Railroad's Assistant Vice President Engineering-Design, or his authorized representative, for prior review and approval. The plans and specifications shall include all Roadway layout specifications, cross sections and elevations, associated drainage, and other appurtenances.

B. The final one hundred percent (100%) completed plans that are approved in writing by the Railroad's Assistant Vice President Engineering-Design, or his authorized representative, are hereinafter referred to as the "Plans". The Plans are hereby made a part of this Agreement by reference.

C. No changes in the Plans shall be made unless the Railroad has consented to such changes in writing.

D. The Railroad's review and approval of the Plans will in no way relieve the Political Body or the Contractor from their responsibilities, obligations and/or liabilities under this Agreement, and will be given with the understanding that the Railroad makes no representations or warranty as to the validity, accuracy, legal compliance or completeness of the Plans and that any reliance by the Political Body or Contractor on the Plans is at the risk of the Political Body and Contractor.

#### **Section 9. NON-RAILROAD IMPROVEMENTS**

A. Submittal of plans and specifications for protecting, encasing, reinforcing, relocation, replacing, removing and abandoning in place all non-railroad owned facilities (the "Non Railroad Facilities") affected by the Project including, without limitation, utilities, fiber optics, pipelines, wirelines, communication lines and fences is required under Section 8. The Non Railroad Facilities plans and specifications shall comply with Railroad's standard specifications and requirements, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines. Railroad has no obligation to supply additional land for any Non Railroad Facilities and does not waive its right to assert preemption defenses, challenge the right-to-take, or pursue compensation in any condemnation action, regardless if the submitted Non Railroad Facilities plans and specifications comply with Railroad's standard specifications and requirements. Railroad has no obligation to permit any Non Railroad Facilities to be abandoned in place or relocated on Railroad's property.

B. Upon Railroad's approval of submitted Non Railroad Facilities plans and specifications, Railroad will attempt to incorporate them into new agreements or supplements of existing agreements with Non Railroad Facilities owners or operators. Railroad may use its standard terms and conditions, including, without limitation, its standard license fee and administrative charges when requiring supplements or new agreements for Non Railroad Facilities. Non Railroad Facilities work shall not commence before a supplement or new agreement has been fully executed by Railroad and the Non Railroad Facilities owner or operator, or before Railroad and Political Body mutually agree in writing to (i) deem the approved Non Railroad Facilities plans and

specifications to be Plans pursuant to Section 8B, (ii) deem the Non Railroad Facilities part of the Structure, and (iii) supplement this Agreement with terms and conditions covering the Non Railroad Facilities.

**Section 10. EFFECTIVE DATE; TERM; TERMINATION**

A. This Agreement is effective as of the Effective Date first herein written and shall continue in full force and effect for as long as the Roadway remains on the Railroad's property.

B. The Railroad, if it so elects, may terminate this Agreement effective upon delivery of written notice to the Political Body in the event the Political Body does not commence construction on the portion of the Project located on the Railroad's property within twelve (12) months from the Effective Date.

C. If the Agreement is terminated as provided above, or for any other reason, the Political Body shall pay to the Railroad all actual costs incurred by the Railroad in connection with the Project up to the date of termination, including, without limitation, all actual costs incurred by the Railroad in connection with reviewing any preliminary or final Project Plans.

**Section 11. CONDITIONS TO BE MET BEFORE  
POLITICAL BODY CAN COMMENCE WORK**

Neither the Political Body nor the Contractor may commence any work within the Crossing Area or on any other Railroad property until:

- (i) The Railroad and Political Body have executed this Agreement.
- (ii) The Railroad has provided to the Political Body the Railroad's written approval of the Plans.
- (iii) Each Contractor has executed Railroad's Contractor's Right of Entry Agreement and has obtained and/or provided to the Railroad the insurance policies, certificates, binders, and/or endorsements required under the Contractor's Right of Entry Agreement.
- (iv) Each Contractor has given the advance notice(s) required under the Contractor's Right of Entry Agreement to the Railroad Representative named in the Contactor's Right of Entry Agreement.

**Section 12. FUTURE PROJECTS**

Future projects involving substantial maintenance, repair, reconstruction, renewal and/or demolition of the Roadway shall not commence until Railroad and Political Body

agree on the plans for such future projects, cost allocations, right of entry terms and conditions and temporary construction rights, terms and conditions.

**Section 13. ASSIGNMENT; SUCCESSORS AND ASSIGNS**

A. Political Body shall not assign this Agreement without the prior written consent of Railroad.

B. Subject to the provisions of Paragraph A above, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of Railroad and Political Body.

**Section 14. SPECIAL PROVISIONS PERTAINING TO AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**

If the Political Body will be receiving American Recovery and Reinvestment Act ("ARRA") funding for the Project, the Political Body agrees that it is responsible in performing and completing all ARRA reporting documents for the Project. The Political Body confirms and acknowledges that Section 1512 of the ARRA provisions applies only to a "recipient" receiving ARRA funding directing from the federal government and, therefore, (i) the ARRA reporting requirements are the responsibility of the Political Body and not of the Railroad, and (ii) the Political Body shall not delegate any ARRA reporting responsibilities to the Railroad. The Political Body also confirms and acknowledges that (i) the Railroad shall provide to the Political Body the Railroad's standard and customary billing for expenses incurred by the Railroad for the Project including the Railroad's standard and customary documentation to support such billing, and (ii) such standard and customary billing and documentation from the Railroad provides the information needed by the Political Body to perform and complete the ARRA reporting documents. The Railroad confirms that the Political Body and the Federal Highway Administration shall have the right to audit the Railroad's billing and documentation for the Project as provided in Section 11 of **Exhibit B** of this Agreement.

**Section 15. TERMINATION OF ORIGINAL AGREEMENT**

Upon the completion of the Roadway, the Original Agreement shall terminate and the terms and conditions of this Agreement shall govern the use, maintenance and repair of the Roadway.

**Section 16. SIGNAL PREEMPTION**

A. Political Body and Railroad, severally and collectively, agree to interconnect and coordinate the operation of the railroad grade crossing protection devices with the operation of the highway traffic control signals at the Crossing Area, in accordance with the design schematic marked **Exhibit E**, hereto attached and hereby made a part hereof (the "Designs").

B. Political Body, at its expense, shall furnish all material, labor, equipment and supervision for the installation and maintenance of highway traffic control signals at the Crossing Area, as applicable in accordance with the Designs.

C. Railroad, at Political Body's expense, shall furnish all material, labor, equipment and supervision for the work described in the Estimate(s) and in accordance with the Designs, including, as applicable, installation of signals and/or appurtenances and installation of the necessary relays and other materials required to interconnect and coordinate the operation of the highway traffic control signals to be installed by the Political Body.

D. Each party shall take all suitable precautions to prevent any interference (by induction, leakage of electricity or otherwise) with the operation of the other party's signals or communications lines, or those of its tenants; and if, at any time, the operation or maintenance of its signals results in any electrostatic effects, the party whose signals are causing the interference shall, at its expense, immediately take such action as may be necessary to eliminate such interference.

E. Except as set forth in this Section, Political Body shall not be liable to Railroad on account of any failure of Railroad's warning devices to operate properly, nor shall Railroad have or be entitled to maintain any action against Political Body arising from any failure from Railroad's warning devices to operate properly. Similarly, Railroad shall not be liable to Political Body on account of any failure of Political Body's traffic signal to operate properly, nor shall Political Body have or be entitled to maintain any action against Railroad arising from any failure of Political Body's traffic signal to operate properly.

#### **Section 17. SIGNAL MAINTENANCE COSTS**

A. Effective as of the Effective Date of this Agreement, the Political Body, in addition to maintaining at its sole cost and expense the portion of the Roadway described in Section 2 of **Exhibit B**, agrees to pay to Railroad the sum of Six Thousand Six Hundred Thirty Dollars (\$6,630.00) per annum, payable annually in advance, as payment for Railroad's maintenance of the railroad crossing warning signals that are to be installed by the Railroad at the Crossing Area.

B. The above annual fee is based on the number of current signal units at the Crossing Area as shown in **Exhibit F** attached hereto and hereby made a part hereof. Effective on the first anniversary of this Agreement and on the anniversary date of each subsequent one year period, the annual fee will be increased at a rate based on the American Association of Railroad's (AAR) signal unit cost index. Such changes in the maintenance fee may be made by the Railroad by means of automatic adjustment in billing. The signal unit base for the annual fee may be re-determined by the Railroad at any time subsequent to the expiration of five (5) years following the date on which the annual rental was last determined or established. Such changes in the maintenance fee may be made by means of automatic adjustment in billing.



IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the Effective Date first herein written.

**UNION PACIFIC RAILROAD COMPANY**  
*(Federal Tax ID #94-6001323)*

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**COUNTY OF SPOKANE**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT A  
TO  
PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT

**Exhibit A** will be a print showing the Crossing Area (see Recitals)

# EXHIBIT 4

**Nelson, Michael A.**

---

**From:** Zlateff, Chariti EMAIL 15 OF 15  
**Sent:** Tuesday, September 15, 2020 9:13 AM  
**To:** Pilgrim, Jessica; Colyar, Brandi J.  
**Subject:** RE: Otis Orchards\_ Wellesley Ave, 662535B\_ 16.73 Spokane\_WA - Meeting Request - Follow up Call

Jessica,

Agreed.

When I spoke to Mary, she stated she will be available for another meeting so that she can participate. I offered her the option of another meeting if they would like to move forward, she did not chose to speak to that option. I have not heard from her since so I am unaware if they are just willing to stick with the CFR and maintain that as their stance on the project or move forward.

This issue was not presented until recently when I asked for the Construction & Maintenance Agreement that allows the County to work within the Railroad right of way to complete the Spokane County portion of the project. This agreement is being withheld due to the Section 17 that was added recently by UPRR and stricken by me as a Spokane County representative.

Brandi stated that if this project does not go forward all funds that the railroad has charged us for will need to be paid back by the railroad and the funds we charged to the project will need to be paid back to federal funds. I would like to avoid that outcome.

Thank you,

Chariti Zlateff, P.E.  
*Project Engineer*  
Cell: 509.724.7992 | Office: 509.477.7254 | [czlateff@spokanecounty.org](mailto:czlateff@spokanecounty.org)  
Spokane County Public Works | [www.spokanecounty.org](http://www.spokanecounty.org)



INTEGRITY – COMMUNICATION – ACCOUNTABILITY – RESPECT – INNOVATION – SERVICE – SAFETY

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**From:** Pilgrim, Jessica EMAIL 14 OF 15  
**Sent:** Tuesday, September 15, 2020 8:22 AM  
**To:** Zlateff, Chariti <CZLATEFF@SpokaneCounty.org>; Colyar, Brandi J. <BCOLYAR@spokanecounty.org>  
**Subject:** RE: Otis Orchards\_ Wellesley Ave, 662535B\_ 16.73 Spokane\_WA - Meeting Request - Follow up Call

Chariti,

I have another meeting with Josephine on Thursday at 11. It seems to me what we really need to know is less of a legal standpoint and more of a "whether the railroad intends to pay for maintenance" standpoint. Should we wait until Mary is back in the office for another telephone meeting. Ultimately, my thought is, even if the federal law permits the Railroad to not have to participate, that would be permissive only, and the Railroad could still opt to pay. And it sounds to me like if the Railroad chooses that path, then we are prepared to walk away from the project. If that is correct, then we ultimately just need to know whether the RR intends to pay for maintenance or not.

Thoughts?

## Jessica Pilgrim

Spokane County Deputy Prosecuting Attorney – Civil Unit  
509.477.2813 | [jpilgrim@spokanecounty.org](mailto:jpilgrim@spokanecounty.org)

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---

**From:** Zlateff, Chariti  
**Sent:** Friday, September 11, 2020 10:49 AM EMAIL 13 OF 15  
**To:** Colyar, Brandi J. <[BCOLYAR@spokanecounty.org](mailto:BCOLYAR@spokanecounty.org)>  
**Cc:** Pilgrim, Jessica <[JPILGRIM@spokanecounty.org](mailto:JPILGRIM@spokanecounty.org)>  
**Subject:** RE: Otis Orchards\_ Wellesley Ave, 662535B\_ 16.73 Spokane\_WA - Meeting Request - Follow up Call

I spoke to Mary Schroll this morning. She stated that Josephine Jordan had relayed that we needed to have a follow up call however they did not recap the meeting.

I let her know that we had discussed the possibility of another meeting and Josephine Jordan had relayed the UPRR's current position. I let her know we would be happy to meet if we could move forward and to check the action items that were discussed in the meeting.

Thank you,

Chariti Zlateff, P.E.  
*Project Engineer*  
Cell: 509.724.7992 | Office: 509.477.7254 | [czlateff@spokanecounty.org](mailto:czlateff@spokanecounty.org)  
Spokane County Public Works | [www.spokanecounty.org](http://www.spokanecounty.org)



INTEGRITY – COMMUNICATION – ACCOUNTABILITY – RESPECT – INNOVATION – SERVICE – SAFETY

---

**From:** Colyar, Brandi J.  
**Sent:** Wednesday, September 9, 2020 3:31 PM EMAIL 12 OF 15  
**To:** Zlateff, Chariti <[CZLATEFF@SpokaneCounty.org](mailto:CZLATEFF@SpokaneCounty.org)>  
**Subject:** RE: Otis Orchards\_ Wellesley Ave, 662535B\_ 16.73 Spokane\_WA - Meeting Request

I think it would be good to keep communication open. I would recommend that she check in with Justine for a recap of the meeting and then determine if they still want to schedule. They may want to complete the agreed action items by the attorneys before proceeding but if Mary thinks progress can be made to move forward with another meeting that would be wonderful.

Brandi

---

**From:** Zlateff, Chariti

**Sent:** Wednesday, September 9, 2020 1:51 PM

EMAIL 11 OF 15

**To:** Colyar, Brandi J. <BCOLYAR@spokanecounty.org>

**Subject:** FW: Otis Orchards\_ Wellesley Ave, 662535B\_ 16.73 Spokane\_WA - Meeting Request

Hi Brandi,

I wanted to see if this is something we should agree to. It seems to me another call would be a waste of time since we do have a different perspective than the railroad. Thoughts?

Thank you,

Chariti Zlateff, P.E.

*Project Engineer*

Cell: 509.724.7992 | Office: 509.477.7254 | [czlateff@spokanecounty.org](mailto:czlateff@spokanecounty.org)

Spokane County Public Works | [www.spokanecounty.org](http://www.spokanecounty.org)



INTEGRITY – COMMUNICATION – ACCOUNTABILITY – RESPECT – INNOVATION – SERVICE – SAFETY

---

**From:** Mary R. Schroll [<mailto:MRSCHROL@up.com>]

**Sent:** Tuesday, September 8, 2020 6:34 PM

EMAIL 10 OF 15

**To:** Zlateff, Chariti <CZLATEFF@SpokaneCounty.org>

**Cc:** Pilgrim, Jessica <JPILGRIM@spokanecounty.org>; Colyar, Brandi J. <BCOLYAR@spokanecounty.org>; Greene, Barry <BGreene@spokanecounty.org>; Mays, Ellis <EMays@benesch.com>; Thompson, Nathan <NThompson@spokanecounty.org>; Schwab, Tim <TSCHWAB@spokanecounty.org>; Josephine Jordan <JJORDAN1@up.com>

**Subject:** Re: Otis Orchards\_ Wellesley Ave, 662535B\_ 16.73 Spokane\_WA - Meeting Request

All,

Sorry I didn't join this morning. I lost cell service.

Please advise your availability later this week and into next week and we'll reschedule. Josephine has limited availability later this week, so next week may be best. I apologize. I'll check with her once we have your proposed dates/times and respond.

Mary

Sent from my iPhone

On **Sep 4, 2020**, at 10:37 AM, Zlateff, Chariti <CZLATEFF@spokanecounty.org> wrote:

EMAIL 9 OF 15

**\* PROCEED WITH CAUTION - This email was sent from outside the Company \***

Mary,

We will schedule a conference call at 9am on Tuesday, September 8<sup>th</sup> to discuss on Wellesley Railroad Crossing Safety project can move forward.

Thank you,

Chariti Zlateff, P.E.

*Project Engineer*

Cell: 509.724.7992 | Office: 509.477.7254 | [czlateff@spokanecounty.org](mailto:czlateff@spokanecounty.org)

Spokane County Public Works | [www.spokanecounty.org](http://www.spokanecounty.org)

<image002.jpg>

INTEGRITY – COMMUNICATION – ACCOUNTABILITY – RESPECT – INNOVATION – SERVICE – SAFETY

**From:** Mary R. Schroll [<mailto:MRSCHROL@up.com>]

**Sent:** Thursday, **September 3, 2020** 6:39 PM

EMAIL 8 OF 15

**To:** Pilgrim, Jessica <[JPILGRIM@spokanecounty.org](mailto:JPILGRIM@spokanecounty.org)>

**Cc:** Colyar, Brandi J. <[BCOLYAR@spokanecounty.org](mailto:BCOLYAR@spokanecounty.org)>; Greene, Barry <[BGreene@spokanecounty.org](mailto:BGreene@spokanecounty.org)>; Zlateff, Chariti <[CZLATEFF@SpokaneCounty.org](mailto:CZLATEFF@SpokaneCounty.org)>; Mays, Ellis <[EMays@benesch.com](mailto:EMays@benesch.com)>; Thompson, Nathan <[NThompson@spokanecounty.org](mailto:NThompson@spokanecounty.org)>; Schwab, Tim <[TTSCHWAB@spokanecounty.org](mailto:TTSCHWAB@spokanecounty.org)>; Josephine Jordan <[JJORDAN1@up.com](mailto:JJORDAN1@up.com)>

**Subject:** Re: Otis Orchards\_ Wellesley Ave, 662535B\_ 16.73 Spokane\_ WA - Meeting Request

**Importance:** High

Hi, Jessica.

Sorry I didn't respond sooner. Crazy day!

Can we schedule a conference call with you, Chariti, me, and Josephine, my attorney, on Tuesday, September 8th between 9am - 11am PT or 1-2pm PT?

I think 30 minutes should suffice. We'd like to understand and discuss your concerns as well as present ours. I will be on vacation starting tomorrow, returning September 21, 2020. That said, I find this important enough I'll call in for this meeting.

Ellis - If the City can meet September 8th, please schedule the call in my absence. Thanks!

Sincerely,

**Mary Schroll**

Union Pacific Railroad - Engineering  
9451 Atkinson Street| Roseville, CA 95747 USA

☎: 916.789.6111 (office) | 402.319.7217 (cell) | ✉: [mrschrol@up.com](mailto:mrschrol@up.com)

<image003.gif>

Public Project Information: [http://www.up.com/real\\_estate/roadxing/industry/index.htm](http://www.up.com/real_estate/roadxing/industry/index.htm)  
Contractor Safety Requirements: <http://www.up.com/suppliers/contractor-safety/index.htm>  
Real Estate/Utility Information: [http://www.up.com/real\\_estate/utilities/index.htm](http://www.up.com/real_estate/utilities/index.htm)  
Right of Entry Application: [http://www.up.com/real\\_estate/tempuse/index.htm](http://www.up.com/real_estate/tempuse/index.htm)  
Technical Specifications for Construction of Industrial  
Tracks: <http://www.uprr.com/aboutup/operations/specs/track/index.shtml>  
Public Safety Information: <http://www.upcares.com>

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If this information is not provided, your submittal and UPRR's response thereto will likely result in delay.*

Fiber optic cable systems may be buried on the **Railroad's** property. Protection of these systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Call the telephone the **Railroad's Fiber Optic Hotline** at **1-800-336-9193** (a 24-hour number) to determine if fiber optic cable is buried anywhere on the **Railroad's** property. Notification is required at least 48 hours prior to start of construction.

From: "Pilgrim, Jessica" <[JPILGRIM@spokanecounty.org](mailto:JPILGRIM@spokanecounty.org)>  
To: "Mary R. Schroll" <[MRSCHROL@up.com](mailto:MRSCHROL@up.com)>, "Zlateff, Chariti" <[CZLATEFF@SpokaneCounty.org](mailto:CZLATEFF@SpokaneCounty.org)>  
Cc: "Colyar, Brandi J." <[BCOLYAR@spokanecounty.org](mailto:BCOLYAR@spokanecounty.org)>, "Greene, Barry" <[BGreene@spokanecounty.org](mailto:BGreene@spokanecounty.org)>, "Mays, Ellis" <[EMays@benesch.com](mailto:EMays@benesch.com)>, "Thompson, Nathan" <[NThompson@spokanecounty.org](mailto:NThompson@spokanecounty.org)>, "Schwab, Tim" <[TSCHWAB@spokanecounty.org](mailto:TSCHWAB@spokanecounty.org)>  
Date: 09/02/2020 07:30 PM  
Subject: Re: Otis Orchards\_ Wellesley Ave, 662535B\_ 16.73 Spokane\_WA

EMAIL 7 OF 15

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**\* PROCEED WITH CAUTION - This email was sent from outside the Company \***

Mary,

Can you explain why you won't sign the document with section 17 stricken in accordance with the Railroad's responsibility under Washington State law?

Jessica Pilgrim  
Senior Deputy Prosecuting Attorney



---

From: Mary R. Schroll <MRSCHROL@up.com>

Sent: Wednesday, September 2, 2020, 5:36 PM

EMAIL 6 OF 15

To: Zlateff, Chariti

Cc: Colyar, Brandi J.; Greene, Barry; Mays, Ellis; Pilgrim, Jessica; Thompson, Nathan; Schwab, Tim

Subject: RE: Otis Orchards\_ Wellesley Ave, 662535B\_ 16.73 Spokane\_WA

Chariti,

Can you advise why the C&M agreement is required for you to bid a contractor?

**Mary Schroll**

**Union Pacific Railroad - Engineering**

9451 Atkinson Street| Roseville, CA 95747 USA

☎ :916.789.6111 (office) | 402.319.7217 (cell) | ✉ : mrschrol@up.com

<image003.gif>

Public Project Information: [http://www.up.com/real\\_estate/roadxing/industry/index.htm](http://www.up.com/real_estate/roadxing/industry/index.htm)

Contractor Safety Requirements: <http://www.up.com/suppliers/contractor-safety/index.htm>

Real Estate/Utility Information: [http://www.up.com/real\\_estate/utilities/index.htm](http://www.up.com/real_estate/utilities/index.htm)

Right of Entry Application: [http://www.up.com/real\\_estate/tempuse/index.htm](http://www.up.com/real_estate/tempuse/index.htm)

Technical Specifications for Construction of Industrial

Tracks: <http://www.uprr.com/aboutup/operations/specs/track/index.shtml>

Public Safety Information: <http://www.upcares.com>

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*"Project type, % Plans, City, State, Street, Milepost, Subdivision, DOT# and Lat/Long"*

*If this information is not provided, your submittal and UPRR's response thereto will likely result in delay.*

Fiber optic cable systems may be buried on the **Railroad's** property. Protection of these systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Call the telephone the **Railroad's Fiber Optic Hotline at 1-800-336-9193** (a 24-hour number) to determine if fiber optic cable is buried anywhere on the **Railroad's** property. Notification is required at least 48 hours prior to start of construction.

---

From: Mary R. Schroll/UPC

To: "Zlateff, Chariti" <CZLATEFF@SpokaneCounty.org>

Cc: "Colyar, Brandi J." <BCOLYAR@spokanecounty.org>, "Greene, Barry" <BGreene@spokanecounty.org>, "Mays, Ellis" <EMays@benesch.com>, "Pilgrim, Jessica" <JPILGRIM@spokanecounty.org>, "Thompson, Nathan" <NThompson@spokanecounty.org>, "Schwab, Tim" <TSCHWAB@spokanecounty.org>

Date: 09/02/2020 12:39 PM

Subject: RE: Otis Orchards\_ Wellesley Ave, 662535B\_ 16.73 Spokane\_WA

EMAIL 5 OF 15

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Chariti,

I have a meeting with Law tomorrow on this project. I will forward your changes to her.

**Mary Schroll**

**Union Pacific Railroad - Engineering**

9451 Atkinson Street| Roseville, CA 95747 USA

☎: 916.789.6111 (office) | 402.319.7217 (cell) | ✉: [mrschrol@up.com](mailto:mrschrol@up.com)

<image003.gif>

Public Project Information: [http://www.up.com/real\\_estate/roadxing/industry/index.htm](http://www.up.com/real_estate/roadxing/industry/index.htm)

Contractor Safety Requirements: <http://www.up.com/suppliers/contractor-safety/index.htm>

Real Estate/Utility Information: [http://www.up.com/real\\_estate/utilities/index.htm](http://www.up.com/real_estate/utilities/index.htm)

Right of Entry Application: [http://www.up.com/real\\_estate/tempuse/index.htm](http://www.up.com/real_estate/tempuse/index.htm)

Technical Specifications for Construction of Industrial

Tracks: <http://www.uprr.com/aboutup/operations/specs/track/index.shtml>

Public Safety Information: <http://www.upcares.com>

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*"Project type, % Plans, City, State, Street, Milepost, Subdivision, DOT# and Lat/Long"*

*If this information is not provided, your submittal and UPRR's response thereto will likely result in delay.*

Fiber optic cable systems may be buried on the **Railroad's** property. Protection of these systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Call the telephone the **Railroad's Fiber Optic Hotline** at **1-800-336-9193** (a 24-hour number) to determine if fiber optic cable is buried anywhere on the **Railroad's** property. Notification is required at least 48 hours prior to start of construction.

From: "Zlateff, Chariti" <[CZLATEFF@SpokaneCounty.org](mailto:CZLATEFF@SpokaneCounty.org)>  
To: "Mays, Ellis" <[EMays@benesch.com](mailto:EMays@benesch.com)>, "Mary R. Schroll (MRSCHROL@up.com)" <[MRSCHROL@up.com](mailto:MRSCHROL@up.com)>  
Cc: "Schwab, Tim" <[TSCHWAB@spokanecounty.org](mailto:TSCHWAB@spokanecounty.org)>, "Colyar, Brandi J." <[BCOLYAR@spokanecounty.org](mailto:BCOLYAR@spokanecounty.org)>, "Greene, Barry" <[BGreene@spokanecounty.org](mailto:BGreene@spokanecounty.org)>, "Thompson, Nathan" <[NThompson@spokanecounty.org](mailto:NThompson@spokanecounty.org)>, "Pilgrim, Jessica" <[JPILGRIM@spokanecounty.org](mailto:JPILGRIM@spokanecounty.org)>  
Date: **09/02/2020** 12:38 PM  
Subject: RE: Otis Orchards\_ Wellesley Ave, 662535B\_ 16.73 Spokane\_WA

EMAIL 4 OF 15

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**\* PROCEED WITH CAUTION - This email was sent from outside the Company \***

Ellis,

I have marked up the agreement with track changes where the word international was misspelled. I have stricken, with track changes, Section 17 from the document as it is not applicable per Washington State law (RCW 81.53.295) that states the railroad is responsible for the maintenance of devices installed to improve the safety of grade crossings.

If there are legal questions, please direct them to Jessica Pilgrim, Deputy Prosecuting Attorney with Spokane County.

I have the project bid to obtain a contractor to complete construction on hold for this project. I would prefer to complete this project construction season before the snow hits. We usually have snow the first week of November, sometimes sooner.

Thank you,

Chariti Zlateff, P.E.

*Project Engineer*

Cell: 509.724.7992 | Office: 509.477.7254 | [czlateff@spokanecounty.org](mailto:czlateff@spokanecounty.org)  
Spokane County Public Works | [www.spokanecounty.org](http://www.spokanecounty.org)

<image004.jpg>

INTEGRITY – COMMUNICATION – ACCOUNTABILITY – RESPECT – INNOVATION – SERVICE – SAFETY

**From:** Mays, Ellis [<mailto:EMays@benesch.com>]

EMAIL 3 OF 15

**Sent:** Monday, August 24, 2020 11:50 AM

**To:** Zlateff, Chariti <[CZLATEFF@SpokaneCounty.org](mailto:CZLATEFF@SpokaneCounty.org)>; Mary R. Schroll ([MRSCHROL@up.com](mailto:MRSCHROL@up.com)) <[MRSCHROL@up.com](mailto:MRSCHROL@up.com)>

**Cc:** Schwab, Tim <[TSCHWAB@spokanecounty.org](mailto:TSCHWAB@spokanecounty.org)>; Colyar, Brandi J. <[BCOLYAR@spokanecounty.org](mailto:BCOLYAR@spokanecounty.org)>; Greene, Barry <[BGreene@spokanecounty.org](mailto:BGreene@spokanecounty.org)>; Thompson, Nathan <[NThompson@spokanecounty.org](mailto:NThompson@spokanecounty.org)>

**Subject:** RE: Otis Orchards\_ Wellesley Ave, 662535B\_ 16.73 Spokane\_WA

Chariti,

Please see attached draft C&M agreement for subject project.

Please note, as proposed, Section 17 of the agreement does reference the previously discussed annual maintenance costs – at this time UPRR's legal team is still reviewing the appropriateness of such costs.

Thanks,

Ellis A. Mays |Project Manager

**Alfred Benesch & Company** | 3017 Douglas Blvd, Ste 300, Roseville, CA 95661  
C402-427-4231 | [Eemays@benesch.com](mailto:Eemays@benesch.com) | [www.benesch.com](http://www.benesch.com)

**From:** Zlateff, Chariti <[CZLATEFF@SpokaneCounty.org](mailto:CZLATEFF@SpokaneCounty.org)>

EMAIL 2 OF 15

**Sent:** Sunday, August 23, 2020 8:46 PM

**To:** Mays, Ellis <[EMays@benesch.com](mailto:EMays@benesch.com)>; Mary R. Schroll ([MRSCHROL@up.com](mailto:MRSCHROL@up.com)) <[MRSCHROL@up.com](mailto:MRSCHROL@up.com)>; [eamays@upcontractor.up.com](mailto:eamays@upcontractor.up.com)

**Cc:** Schwab, Tim <[TSCHWAB@spokanecounty.org](mailto:TSCHWAB@spokanecounty.org)>; Colyar, Brandi J. <[BCOLYAR@spokanecounty.org](mailto:BCOLYAR@spokanecounty.org)>; Greene, Barry <[BGreene@spokanecounty.org](mailto:BGreene@spokanecounty.org)>; Thompson, Nathan <[NThompson@spokanecounty.org](mailto:NThompson@spokanecounty.org)>

**Subject:** RE: Otis Orchards\_ Wellesley Ave, 662535B\_ 16.73 Spokane\_WA

Spokane County has moved forward with the Construction Funding for Wellesley Railroad Crossing Safety Improvement project and will be going to bid shortly with the resolution from the County Commissioners.

Please forward the UPRR Construction Agreement at your earliest convenience so we can get that signed and send to contractor once complete.

Thank you,

Chariti Zlateff, P.E.

*Project Engineer*

Cell: 509.724.7992 | Office: 509.477.7254 | [czlateff@spokanecounty.org](mailto:czlateff@spokanecounty.org)  
Spokane County Public Works | [www.spokanecounty.org](http://www.spokanecounty.org) [[spokanecounty.org](http://spokanecounty.org)]

<image005.jpg>

INTEGRITY – COMMUNICATION – ACCOUNTABILITY – RESPECT – INNOVATION – SERVICE – SAFETY

**From:** Zlateff, Chariti

**Sent:** Monday, August 10, 2020 9:50 AM

EMAIL 1 OF 15

**To:** Mays, Ellis <EMays@benesch.com>; Mary R. Schroll (MRSCHROL@up.com) <MRSCHROL@up.com>; eamays@upcontractor.up.com

**Cc:** Schwab, Tim <TSCHWAB@spokanecounty.org>; Colyar, Brandi J. <BCOLYAR@spokanecounty.org>; Greene, Barry <BGreene@spokanecounty.org>; Thompson, Nathan <NThompson@spokanecounty.org>

**Subject:** Otis Orchards\_ Wellesley Ave, 662535B\_16.73 Spokane\_WA

Great Monday Morning.

Spokane County has received notification that Construction Funding for Wellesley Railroad Crossing Safety Improvement project has been approved. Please forward the construction agreement at your earliest convenience so we can get that signed and send this project to bid.

Thank you,

Chariti Zlateff, P.E.

*Project Engineer*

Cell: 509.724.7992 | Office: 509.477.7254 | [czlateff@spokanecounty.org](mailto:czlateff@spokanecounty.org)

Spokane County Public Works | [www.spokanecounty.org](http://www.spokanecounty.org)[\[spokanecounty.org\]](mailto:spokanecounty.org)

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\*\*

# EXHIBIT 5

**Nelson, Michael A.**

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**From:** Zlateff, Chariti  
**Sent:** Wednesday, September 23, 2020 12:09 PM  
**To:** Greene, Barry; Colyar, Brandi J.  
**Cc:** Coles, Chad; Pilgrim, Jessica  
**Subject:** CRP 3252 Wellesley Railroad Crossing Improvement - Meeting with UPRR

Our meeting with UPRR today was to further discover if we could move forward with the Federally Funded project at Wellesley Railroad Crossing.

The meeting revisited the railroads approach to the UPRR interpretation of the language for CFR Title 23, Chapter I, Subchapter G, 646.210:

*(b) Pursuant to 23 U.S.C. 130(b), and 49 CFR 1.48:*

*(1) Projects for grade crossing improvements are deemed to be of no ascertainable net benefit to the railroads and there shall be no required railroad share of the costs.*

UPRR states the project costs include maintenance fee. The UPRR Crossing #55021 is currently identified by UPRR as a Tier 2 crossing (*Barry, all documentation I have from the past project discussions says Tier 1*). Although, identified by the CAP program with UPRR to need improvement, the current position of the UPRR is Wellesley Crossing Improvement project is based on the county's need for safety improvement at this location and not UPRR's assessment.

Today the railroad also brought up the intent of the Section 130 grant and what the guidelines, rules, requirements were to obtain those. The railroad representative stated that based on Section 130, this is state delegated funds so we must meet those guidelines. (*Barry, do you have more information on what that means or what those requirements are inclusive of? Also, what are the potential ramifications if we are not able to move forward with this project due to the railroads requirement for us to pay maintenance fees? Do we lose our ranking? Do we lose opportunities for future funding?*)

The equipment maintenance, to include costs, is the currently the responsibility of the railroad. The change of material condition to have Spokane County pay for the annual maintenance cost of \$6,630 rather than UPRR was presented in early July 2020. The railroad has agreed they could move forward without Spokane County paying the maintenance fees and are not willing to do so at this time.

**We continue to be at an impasse as the fees are the responsibility of the railroad per state law and the railroad will not accept that due to the railroads interpretation of federal law as stated above.**

Please feel free to let me know if you have any questions or comments.

Thank you,

Chariti Zlateff, P.E.  
Project Engineer  
Cell: 509.724.7992 | Office: 509.477.7254 | [czlateff@spokanecounty.org](mailto:czlateff@spokanecounty.org)  
Spokane County Public Works | [www.spokanecounty.org](http://www.spokanecounty.org)



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