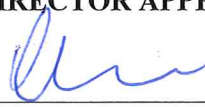


**CITY OF MARYSVILLE AGENDA BILL**

**EXECUTIVE SUMMARY FOR ACTION**

**CITY COUNCIL MEETING DATE: 2/9/2015**

<b>AGENDA ITEM:</b> Amendment to Construction & Maintenance Agreement with BNSF Railway State Avenue 116 <sup>th</sup> Street NE to 136 <sup>th</sup> Street NE Corridor Improvements	
<b>PREPARED BY:</b> Patrick Gruenhagen, Project Manager	<b>DIRECTOR APPROVAL:</b> 
<b>DEPARTMENT:</b> Public Works - Engineering	
<b>ATTACHMENTS:</b> <ul style="list-style-type: none"><li>• Agreement Amendment</li><li>• Underlying 2001 Construction &amp; Maintenance Agreement</li></ul>	
<b>BUDGET CODE:</b> 30500030.563000 R1404	<b>AMOUNT:</b> \$422,024.00
<b>SUMMARY:</b>	

The City's *State Avenue 116th Street NE to 136th Street NE* project is scheduled to be advertised for construction this spring. In conjunction with the planned road widening – from the existing three lane configuration to five – the project has brought about the need for corresponding improvements at the “Arlington Spur” railroad crossing of State Avenue. This work, to be undertaken by BNSF Railway Company (“BNSF”), involves widening of the existing concrete crossing surface and installation of new warning signals — *one each for vehicles and pedestrians* — along the east side of the roadway.

Before work can begin, the City and BNSF must enter into an agreement to establish the framework for planned construction activities at and adjacent to the crossing. That agreement has taken the form of an Amendment to a prior agreement between the City and BNSF, and both documents are enclosed herein. In light of the fact that this represents a continuation and “second phase” of past improvements at the crossing, completed in 2007, the City and BNSF recognized this to be the most efficient means of memorializing and administering the new work. (*versus drafting and entering into a completely new and separate agreement*)

It is estimated by BNSF that the work to construct the needed improvements will be in the amount of \$372,024.00. Staff is requesting a management reserve of \$50,000.00 to cover any potential increased costs associated with construction. The City will be responsible to reimburse BNSF actual construction costs which could be above or below the estimate.

<b>RECOMMENDED ACTION:</b> Staff recommends that Council authorize the Mayor to sign and execute the enclosed Amendment in the amount of \$372,024.00 with BNSF Railway Company with a management reserve of \$50,000 – for a total authorization of \$422,024.00.
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## CONSTRUCTION AND MAINTENANCE AGREEMENT AMENDMENT

BF10006995, A-1-BF16808  
Mile Post 0.17  
Line Segment 406  
U.S. DOT Number 092077P  
Bellingham Subdivision

THIS CONSTRUCTION AGREEMENT AMENDMENT (hereinafter called, "Agreement"), executed to be effective as of \_\_\_\_\_, 2015 is an amendment to agreement BF16808 originally dated February 16, 2001 (the "Agreement"), by and between the City of Marysville, a Political Subdivision of the State of Washington, (hereinafter called, "AGENCY"), and BNSF RAILWAY COMPANY, a Delaware Corporation (hereinafter called, "RAILROAD");

This Amendment to the original agreement is written to allow for the updated plans to widen the State Avenue at-grade crossing in Marysville, Washington. The following are changes to Agreement:

### ARTICLE I

The following paragraph is hereby added at the end of Article I Section 1:

1. Prior to commencing any work on BNSF's property or right-of-way, BNSF will grant to Agency, its successors and assigns, an easement (hereinafter called, the "Easement"), to enter upon and use that portion of BNSF's right-of-way as is necessary to construct, use, and maintain the crossing for roadway purposes, substantially in the form of Exhibit B attached to this Agreement. Agency must pay BNSF the sum of Seventy Four Thousand One Hundred Forty Eight and No/100 Dollars (\$74,148.00) as compensation for the Easement within thirty (30) days of issuing a Notice to Proceed pursuant to Article III, Section 16 of this Agreement. If Agency fails to pay BNSF within the thirty day time period set forth in the preceding sentence, BNSF may stop construction of the Project until full payment is received by BNSF.

Section 2(b) is hereby deleted in its entirety and replaced with the following:

2. (b) Extend east side of State Avenue crossing 168 feet for two additional vehicular lanes and for pedestrian crossing surface with a new concrete and rubber crossing surface;

Section 2(c) is hereby deleted in its entirety and replaced with the following:

2. (c) Remove and replace existing cantilever on east side of roadway with new cantilever signal and add new pedestrian signals;

Section 2(d) is hereby deleted in its entirety and replaced with the following:

2. (d) Provide at Agency's expense flagging and/or track protection as determined by the Roadmaster;

The following is hereby added to Article 1:

6. After installation of the new crossing surface is completed, the Railroad will maintain, at its own cost and expense, the crossing surface, against normal wear and tear, in a satisfactory manner for the expected life of the crossing surface. Notwithstanding the preceding sentence, the Railroad shall be entitled to receive any contribution toward the cost of such maintenance made available by reason of any existing or future laws, ordinances, regulations, orders, grants, or other means or sources.

### ARTICLE II

The following is hereby added to Article II:

14. For any future inspection or maintenance, either routine or otherwise, performed by contractors on behalf of the Agency, Agency shall require the contractors to execute the current version of Exhibit C&C-1 documents. Prior to performing any future maintenance with its own personnel, Agency shall: comply with all of BNSF's applicable safety rules and regulations; require any Agency employee performing maintenance to complete the safety training program at the BNSF's Internet Website "contractororientation.com"; notify BNSF when, pursuant to the requirements of exhibit C, a flagger is required to be present; procure Railroad Protective Liability insurance.

### **ARTICLE III**

Article III Section 15 is hereby deleted in its entirety and replaced with the following:

15. Any notice provided for herein or concerning this Agreement must be in writing and delivered in digital format to the Manager of Public Projects and will be deemed sufficiently given when sent to the parties at the following addresses:

BNSF Railway Company:

BNSF's Manager of Public Projects  
Richard Wagner  
2454 Occidental Ave South Ste 2D  
Seattle, WA 98134  
206-625-6152  
Richard.Wagner@BNSF.com

City of Marysville

Pat Gruenhagen  
80 Columbia Ave  
Marysville, WA 98270  
Pat Gruenhagen <PGruenhagen@marysvillewa.gov>

### **EXHIBITS**

The following Exhibits are hereby deleted in their entirety and replaced with the attached:

See new Exhibits A, B, C, C-1, and D attached. These are to replace all original Exhibits.

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

**BNSF RAILWAY COMPANY**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CITY OF MARYSVILLE**

By: \_\_\_\_\_

Printed Name: Jon Nehring

Title: Mayor

**Exhibit "A"**



Exhibit "B"

**EASEMENT AGREEMENT  
FOR ROADWAY PURPOSES ON STATE AVENUE**

**THIS EASEMENT AGREEMENT FOR ROADWAY PURPOSES ("Easement Agreement")** is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_ 2014 ("**Effective Date**"), by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Grantor**"), and **THE CITY OF MARYSVILLE**, a political subdivision of the State of Washington ("**Grantee**").

A. Grantor owns or controls certain real property situated at or near the vicinity of Marysville, County of Snohomish, State of Washington, on Line Segment 406 at Mile Post .02 , as described or depicted on Exhibit "A-1 and A-2" attached hereto and made a part hereof (the "**Premises**").

B. Grantor and Grantee have entered into that certain Construction and Maintenance Agreement dated as of February 16, 2001, as amended on \_\_\_\_\_ concerning improvements on or near the Premises (the "**C&M Agreement**").

C. Grantee has requested that Grantor grant to Grantee an easement over the Premises for the Easement Purpose (as defined below).

D. Grantor has agreed to grant Grantee such easement, subject to the terms and conditions set forth in this Easement and in the C&M Agreement incorporated herein as if fully set forth in this instrument which terms shall be in full force and effect for purposes of this Easement even if the C&M Agreement is, for whatever reason, no longer in effect.

**NOW, THEREFORE**, for and in consideration of the foregoing recitals which are incorporated herein, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**Section 1     Granting of Easement.**

1.1     Easement Purpose. The "**Easement Purpose**" shall be for the purposes set forth in the C&M Agreement. Any improvements to be constructed in connection with the Easement Purpose are referred to herein as "**Improvements**" and shall be constructed, located, configured and maintained by Grantee in strict accordance with the terms of this Easement Agreement and the C&M Agreement.

1.2     Grant. Grantor does hereby grant unto Grantee a non-exclusive easement ("**Easement**") for construction, maintenance, repair, operation and reconstruction of roadway improvements over, under and through the Premises for the Easement Purpose and for no other purpose. The Easement is granted subject to any and all restrictions, covenants, easements, licenses, permits, leases and other encumbrances of whatsoever nature whether or not of record, if any, relating to the Premises and subject to all with all applicable federal, state and local laws, regulations, ordinances, restrictions, covenants and court or administrative decisions and orders, including Environmental Laws (defined below) and zoning laws (collectively, "**Laws**"). Grantor may not make any alterations or improvements or perform any maintenance or repair activities within the Premises except in accordance with the terms and conditions of the C&M Agreement.

1.3     Reservations by Grantor. Grantor excepts and reserves the right, to be exercised by Grantor and any other parties who may obtain written permission or authority from Grantor:

- (a) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any existing pipe, power, communication, cable, or utility lines and appurtenances and other facilities or structures of like character (collectively, "**Lines**") upon, over, under or across the Premises;
- (b) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; and

- (c) to use the Premises in any manner as the Grantor in its sole discretion deems appropriate, provided Grantor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Grantee for the Easement Purpose.

**Section 2** Term of Easement. The term of the Easement, unless sooner terminated under provisions of this Easement Agreement, shall be perpetual.

**Section 3** No Warranty of Any Conditions of the Premises. Grantee acknowledges that Grantor has made no representation whatsoever to Grantee concerning the state or condition of the Premises, or any personal property located thereon, or the nature or extent of Grantor's ownership interest in the Premises. Grantee has not relied on any statement or declaration of Grantor, oral or in writing, as an inducement to entering into this Easement Agreement, other than as set forth herein. GRANTOR HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF ANY SUCH PROPERTY, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTOR SHALL NOT BE RESPONSIBLE TO GRANTEE OR ANY OF GRANTEE'S CONTRACTORS FOR ANY DAMAGES RELATING TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTEE ACCEPTS ALL RIGHTS GRANTED UNDER THIS EASEMENT AGREEMENT IN THE PREMISES IN AN "AS IS, WHERE IS" AND "WITH ALL FAULTS" CONDITION, AND SUBJECT TO ALL LIMITATIONS ON GRANTOR'S RIGHTS, INTERESTS AND TITLE TO THE PREMISES. Grantee has inspected or will inspect the Premises, and enters upon Grantor's rail corridor and property with knowledge of its physical condition and the danger inherent in Grantor's rail operations on or near the Premises. Grantee acknowledges that this Easement Agreement does not contain any implied warranties that Grantee or Grantee's Contractors (as hereinafter defined) can successfully construct or operate the Improvements.

**Section 4** Nature of Grantor's Interest in the Premises. GRANTOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND GRANTEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE. In case of the eviction of Grantee by anyone owning or claiming title to or any interest in the Premises, or by the abandonment by Grantor of the affected rail corridor, Grantor shall not be liable to refund Grantee any compensation paid hereunder.

**Section 5** Improvements. Grantee shall take, in a timely manner, all actions necessary and proper to the lawful establishment, construction, operation, and maintenance of the Improvements, including such actions as may be necessary to obtain any required permits, approvals or authorizations from applicable governmental authorities. Any and all cuts and fills, excavations or embankments necessary in the construction, maintenance, or future alteration of the Improvements shall be made and maintained in such manner, form and extent as will provide adequate drainage of and from the adjoining lands and premises of the Grantor; and wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from such lands and premises of the Grantor, the Grantee shall construct and maintain such culverts or drains as may be requisite to preserve such natural and pre-existing drainage, and shall also wherever necessary, construct extensions of existing drains, culverts or ditches through or along the premises of the Grantor, such extensions to be of adequate sectional dimensions to preserve the present flowage of drainage or other waters, and of materials and workmanship equally as good as those now existing. In the event any construction, repair, maintenance, work or other use of the Premises by Grantee will affect any Lines, fences, buildings, improvements or other facilities (collectively, "Other Improvements"), Grantee will be responsible at Grantee's sole risk to locate and make any adjustments necessary to such Other Improvements. Grantee must contact the owner(s) of the Other Improvements notifying them of any work that may damage these Other Improvements and/or interfere with their service and obtain the owner's written approval prior to so affecting the Other Improvements. Grantee must mark all Other Improvements on the Plans and Specifications and mark such Other Improvements in the field in order to verify their locations. Grantee must also use all reasonable methods when working on or near Grantor's property to determine if any Other Improvements (fiber optic, cable, communication or otherwise) may exist. The Grantee agrees to keep the above-described premises free and clear from combustible materials and to cut and

Form 704CM; Rev. 08/17/11



remove or cause to be cut and removed at its sole expense all weeds and vegetation on said premises, said work of cutting and removal to be done at such times and with such frequency as to comply with Grantee's use and local laws and regulations and abate any and all hazard of fire.

**Section 6** Taxes and Recording Fees. Grantee shall pay when due any taxes, assessments or other charges (collectively, "Taxes") levied or assessed upon the Improvements by any governmental or quasi-governmental body or any Taxes levied or assessed against Grantor or the Premises that are attributable to the Improvements. Grantee agrees to purchase, affix and cancel any and all documentary stamps in the amount prescribed by statute, and to pay any and all required transfer taxes, excise taxes and any and all fees incidental to recordation of the Memorandum of Easement. In the event of Grantee's failure to do so, if Grantor shall become obligated to do so, Grantee shall be liable for all costs, expenses and judgments to or against Grantor, including all of Grantor's legal fees and expenses.

**Section 7** Environmental.

7.1 Compliance with Environmental Laws. Grantee shall strictly comply with all federal, state and local environmental Laws in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Toxic Substances Control Act (collectively referred to as the "Environmental Laws"). Grantee shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on the Premises. Grantee shall not handle, transport, release or suffer the release of "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any Environmental Laws.

7.2 Notice of Release. Grantee shall give Grantor immediate notice to Grantor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Grantee's use of the Premises. Grantee shall use its best efforts to promptly respond to any release on or from the Premises. Grantee also shall give Grantor immediate notice of all measures undertaken on behalf of Grantee to investigate, remediate, respond to or otherwise cure such release or violation.

7.3 Remediation of Release. In the event that Grantor has notice from Grantee or otherwise of a release or violation of Environmental Laws which occurred or may occur during the term of this Easement Agreement, Grantor may require Grantee, at Grantee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises. If during the construction or subsequent maintenance of the Improvements, soils or other materials considered to be environmentally contaminated are exposed, Grantee will remove and safely dispose of said contaminated soils. Determination of soils contamination and applicable disposal procedures thereof, will be made only by an agency having the capacity and authority to make such a determination.

7.4 Preventative Measures. Grantee shall promptly report to Grantor in writing any conditions or activities upon the Premises known to Grantee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Grantee's reporting to Grantor shall not relieve Grantee of any obligation whatsoever imposed on it by this Easement Agreement. Grantee shall promptly respond to Grantor's request for information regarding said conditions or activities.

7.5 Evidence of Compliance. Grantee agrees periodically to furnish Grantor with proof satisfactory to Grantor that Grantee is in compliance with this **Section 7**. Should Grantee not comply fully with the above-stated obligations of this **Section 7**, notwithstanding anything contained in any other provision hereof, Grantor may, at its option, terminate this Easement Agreement by (1) serving on Grantee a notice of noncompliance and opportunity to cure providing a reasonable opportunity to cure (minimum time period of thirty (30) days and (2) if cure is not effected after a reasonable opportunity is given, serving five (5) days' notice of termination upon Grantee. Upon termination, Grantee shall remove the Improvements and restore the Premises as provided in **Section 9**.

**Section 8**      **Default and Termination.**

8.1      **Grantor's Performance Rights.** If at any time Grantee, or Grantee's Contractors, fails to properly perform its obligations under this Easement Agreement, Grantor, in its sole discretion, may: (i) seek specific performance of the unperformed obligations, or (ii) at Grantee's sole cost, may arrange for the performance of such work as Grantor deems necessary for the safety of its rail operations, activities and property, or to avoid or remove any interference with the activities or property of Grantor, or anyone or anything present on the rail corridor or property with the authority or permission of Grantor. Grantee shall promptly reimburse Grantor for all costs of work performed on Grantee's behalf upon receipt of an invoice for such costs. Grantor's failure to perform any obligations of Grantee or Grantee's Contractors shall not alter the liability allocation set forth in this Easement Agreement.

8.2      **Abandonment.** Grantor may, at its option, terminate this Easement Agreement by serving five (5) days' notice in writing upon Grantee if Grantee should abandon or cease to use the Premises for the Easement Purpose. Any waiver by Grantor of any default or defaults shall not constitute a waiver of the right to terminate this Easement Agreement for any subsequent default or defaults, nor shall any such waiver in any way affect Grantor's ability to enforce any section of this Easement Agreement.

8.3      **Effect of Termination or Expiration.** Neither termination nor expiration will release Grantee from any liability or obligation under this Easement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date the Premises are restored as required by **Section 9**.

8.4      **Non-exclusive Remedies.** The remedies set forth in this **Section 8** shall be in addition to, and not in limitation of, any other remedies that Grantor may have under the C&M Agreement, at law or in equity.

**Section 9**      **Surrender of Premises.**

9.1      **Removal of Improvements and Restoration.** Upon termination of this Easement Agreement, whether by abandonment of the Easement or by the exercise of Grantor's termination rights hereunder, Grantee shall, at its sole cost and expense, immediately perform the following:

- (a)      remove all or such portion of Grantee's Improvements and all appurtenances thereto from the Premises, as Grantor directs at Grantor's sole discretion;
- (b)      repair and restore any damage to the Premises arising from, growing out of, or connected with Grantee's use of the Premises;
- (c)      remedy any unsafe conditions on the Premises created or aggravated by Grantee; and
- (d)      leave the Premises in the condition which existed as of the Effective Date.

9.2      **Limited License for Entry.** If this Easement Agreement is terminated, Grantor may direct Grantee to undertake one or more of the actions set forth above, at Grantee's sole cost, in which case Grantee shall have a limited license to enter upon the Premises to the extent necessary to undertake the actions directed by Grantor. The terms of this limited license include all of Grantee's obligations under this Easement Agreement. Termination will not release Grantee from any liability or obligation under this Easement Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Grantee's Improvements are removed and the Premises are restored to the condition that existed as of the Effective Date. If Grantee fails to surrender the Premises to Grantor upon any termination of the Easement, all liabilities and obligations of Grantee hereunder shall continue in effect until the Premises are surrendered.

**Section 10**    **Liens.**    Grantee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Grantee on the Premises or attributable to Taxes that are the responsibility of Grantee pursuant to **Section 6**. Grantor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by Law to prevent the attachment of any such liens to any portion of the Premises; provided, however, that failure of Grantor to take any such action shall not relieve Grantee of any obligation or liability under this **Section 10** or any other section of this Easement Agreement.

**Section 11**    **Tax Exchange.**    Grantor may assign its rights (but not its obligations) under this Easement Agreement to Goldfinch Exchange Company LLC, an exchange intermediary, in order for Grantor to effect an exchange under Section 1031 of the Internal Revenue Code. In such event, Grantor shall provide Grantee with a Notice of Assignment, attached as Exhibit C, and Grantee shall execute an acknowledgement of receipt of such notice.

**Section 12**    **Notices.**    Any notice required or permitted to be given hereunder by one party to the other shall be delivered in the manner set forth in the C&M Agreement. Notices to Grantor under this Easement shall be delivered to the following address: BNSF Railway Company, Real Estate Department, 2500 Lou Menk Drive, Ft. Worth, TX 76131, Attn: Permits, or such other address as Grantor may from time to time direct by notice to Grantee.

**Section 13**    **Recordation.**    It is understood and agreed that this Easement Agreement shall not be in recordable form and shall not be placed on public record and any such recording shall be a breach of this Easement Agreement. Grantor and Grantee shall execute a Memorandum of Easement in the form attached hereto as Exhibit "B" (the "**Memorandum of Easement**") subject to changes required, if any, to conform such form to local recording requirements. The Memorandum of Easement shall be recorded in the real estate records in the county where the Premises are located. If a Memorandum of Easement is not executed by the parties and recorded as described above within 30 days of the Effective Date, Grantor shall have the right to terminate this Easement Agreement upon notice to Grantee.

**Section 14**    **Miscellaneous.**

14.1    All questions concerning the interpretation or application of provisions of this Easement Agreement shall be decided according to the substantive Laws of the State of Washington without regard to conflicts of law provisions.

14.2    In the event that Grantee consists of two or more parties, all the covenants and agreements of Grantee herein contained shall be the joint and several covenants and agreements of such parties. This instrument and all of the terms, covenants and provisions hereof shall inure to the benefit of and be binding upon each of the parties hereto and their respective legal representatives, successors and assigns and shall run with and be binding upon the Premises.

14.3    If any action at law or in equity is necessary to enforce or interpret the terms of this Easement Agreement, the prevailing party or parties shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party or parties may be entitled.

14.4    If any provision of this Easement Agreement is held to be illegal, invalid or unenforceable under present or future Laws, such provision will be fully severable and this Easement Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof will remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, there will be added automatically as a part of this Easement Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

14.5 This Easement Agreement is the full and complete agreement between Grantor and Grantee with respect to all matters relating to Grantee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Grantee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Grantee or Grantee's obligation to defend and hold Grantor harmless in any prior written agreement between the parties.

14.6 Time is of the essence for the performance of this Easement Agreement.

**ADMINISTRATIVE FEE**

15. Grantee acknowledges that a material consideration for this agreement, without which it would not be made, is the agreement between Grantee and Grantor, that the Grantee shall pay upon return of this Agreement signed by Grantee to Grantor's Broker a processing fee in the amount of \$2,000.00 over and above the agreed upon Acquisition Price. Said fee shall be made payable to BNSF Railway Company by a separate check.

Witness the execution of this Easement Agreement as of the date first set forth above.

**GRANTOR:**

**BNSF RAILWAY COMPANY**, a Delaware corporation

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

**GRANTEE:**

**THE CITY OF MARYSVILLE**, a political subdivision of the State of Washington

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

**EXHIBIT "A-1" AND "A-2"**

**Premises**



Pacific Surveying & Engineering

1812 Cornwall Avenue  
Bellingham, WA 98225  
Phone 360-671-7387 ^ Fax 360-671-4685  
www.psesurvey.com

**"EXHIBIT A-1"**  
**EASEMENT FROM BURLINGTON NORTHERN SANTA FE RAILROAD**  
**SITUATED WITHIN THE NW ¼ OF SECTION 9 TOWNSHIP 30 NORTH, RANGE 5 EAST OF**  
**THE WILLAMETTE MERIDIAN, SNOHOMISH COUNTY, WASHINGTON**

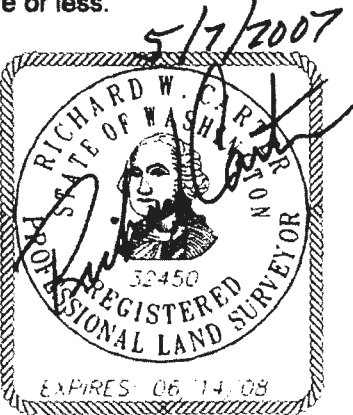
5/7/2007

**SURVEYORS NOTE:**

The center line of State Avenue is based on the Right of Way plans titled State Avenue, 116<sup>th</sup> St NE to 136<sup>th</sup> St NE, dated December 26, 2006.

Commencing at the centerline of State Avenue marked by a brass cap monument at the Right of Way Plan station 237+44.46; thence North 12°31'41" West along said centerline 1550.87 feet to station 252+95.33; thence at right angles North 77°28'19" East 30.00 feet to the easterly margin of said State Avenue and Point of Beginning; thence North 12°31'41" West parallel with said centerline along said easterly margin 542.35 feet to station 258+37.68 being a point of intersection with the westerly margin of the said Burlington Northern Santa Fe Railroad, also being the beginning of a curve concave to the east, from which radius point bears South 89°14'54" East 5779.58 feet; thence along said curve and said westerly margin northerly 55.48 feet through a central angle of 0°33'00" to the end of curve at station 258+91.62, 43.00 feet right of said centerline; thence South 12°31'41" East parallel with said centerline 199.33 feet to station 256+92.29, 43.00' right from said centerline; thence North 89°12'23" East 22.55' to station 256+87.70, 65.08 feet right from said centerline; thence South 01°08'26" East 99.18 feet to station 255+90.47, 45.50 feet right from said centerline; thence parallel with said centerline South 12°31'41" East 119.05 feet to station 254+71.42, 45.50 feet right from said centerline; thence perpendicular to said centerline South 77°28'19" West 2.50 feet to station 254+71.42, 43.00 feet right from said centerline; thence parallel with said centerline South 12°31'41" East 88.00 feet to the intersection with the easterly margin of said Railroad and beginning of a curve concave to the east at station 253+83.42, 43.00 feet right from said centerline from which radius point bears North 86°19'02" East 5679.58 feet; thence along said curve and said easterly margin southerly 89.02 feet through a central angle of 0°53'53" to the end of curve and intersection with said easterly margin of said State Avenue and Point of Beginning.

Containing 8,365 Square Feet more or less.

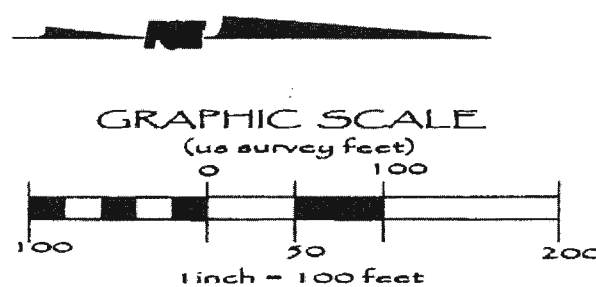
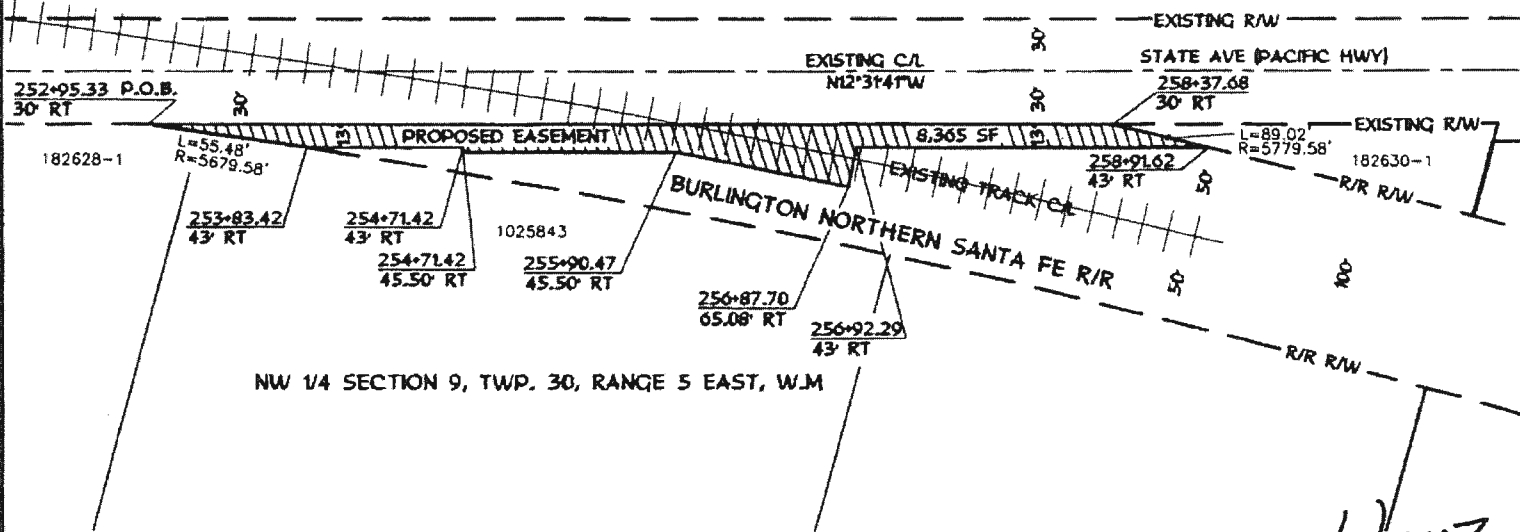




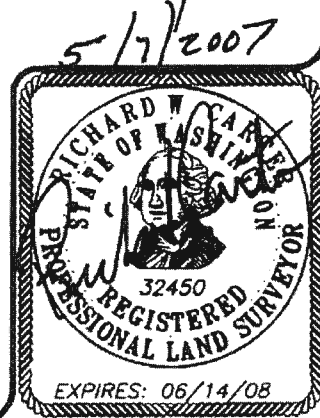
PACIFIC SURVEY & ENGINEERING INC  
 22122 20TH AVE, SE, SUITE 159, BOTHELL, WA 98021 PH: 425.205.2035 F: 205.205.2038  
 EMAIL: pse@pacificsurvey.com www.pacificsurvey.com

**E X H I B I T A-2: FOR PROPOSED EASEMENT**

THE RIGHT OF WAY AND STATIONING OF STATE AVE IS REFERENCED TO  
 THE RIGHT OF WAY PLAN CALLED "STATE AVENUE, 116TH ST NE TO 136TH ST NE",  
 MARYSVILLE, WASHINGTON, DATED DECEMBER 26, 2006.  
 ON FILE WITH THE PUBLIC WORKS DEPT., CITY OF MARYSVILLE, WA.



PREPARED BY RC 5/7/07  
 RRASEEXHIBIT.DWG  
 2004094.02



**EXHIBIT "B"**

**MEMORANDUM OF EASEMENT**



**After recording return document to:**

City Clerk  
City of Marysville  
1049 State Street  
Marysville, WA 98270

**DOCUMENT TITLE:**

Memorandum of Easement

**REFERENCE NO. OF DOCUMENT(S) ASSIGNED OR RELEASED:**

N/A

**GRANTOR(S):**

1. BNSF RAILWAY COMPANY, a Delaware corporation

**GRANTEE(S):**

1. CITY OF MARYSVILLE, a Washington municipal corporation

**ADDITIONAL LEGAL DESCRIPTION ON PAGE(S):**

Exhibit "A-1"

**MEMORANDUM OF EASEMENT**

**THIS MEMORANDUM OF EASEMENT** is hereby executed this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Grantor**"), whose address for purposes of this instrument is 2500 Lou Menk Drive, Fort Worth, Texas 76131, and **THE CITY OF MARYSVILLE**, a political subdivision of the State of Washington ("**Grantee**"), whose address for purposes of this instrument is 1049 State Street, Marysville, Washington, which terms "Grantor" and "Grantee" shall include, wherever the context permits or requires, singular or plural, and the heirs, legal representatives, successors and assigns of the respective parties:

**WITNESSETH:**

**WHEREAS**, Grantor owns or controls certain real property situated in Snohomish County, as described on **Exhibit "A-1 and A-2"** attached hereto and incorporated herein by reference (the "**Premises**");

**WHEREAS**, Grantor and Grantee entered into an Easement Agreement, dated \_\_\_\_\_, 2014 (the "**Easement Agreement**") which set forth, among other things, the terms of an easement granted by Grantor to Grantee over and across the Premises (the "**Easement**"); and

**WHEREAS**, Grantor and Grantee desire to memorialize the terms and conditions of the Easement Agreement of record.

For valuable consideration the receipt and sufficiency of which are hereby acknowledged, Grantor does grant unto Grantee and Grantee does hereby accept from Grantor the Easement over and across the Premises.

The term of the Easement, unless sooner terminated under provisions of the Easement Agreement, shall be perpetual.

All the terms, conditions, provisions and covenants of the Easement Agreement are incorporated herein by this reference for all purposes as though written out at length herein, and both the Easement Agreement and this Memorandum of Easement shall be deemed to constitute a single instrument or document. This Memorandum of Easement is not intended to amend, modify, supplement, or supersede any of the provisions of the Easement Agreement and, to the extent there may be any conflict or inconsistency between the Easement Agreement or this Memorandum of Easement, the Easement Agreement shall control.

**IN WITNESS WHEREOF**, Grantor and Grantee have executed this Memorandum of Easement to as of the date and year first above written.

**GRANTOR:**

**BNSF RAILWAY COMPANY**, a Delaware corporation

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

STATE OF TEXAS

§  
§  
§

COUNTY OF TARRANT

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2014,  
by \_\_\_\_\_ (name) as  
\_\_\_\_\_ (title) of **BNSF RAILWAY COMPANY**, a Delaware  
corporation.

\_\_\_\_\_  
Notary Public

My appointment expires: \_\_\_\_\_

(Seal)

**GRANTEE:**

**THE CITY OF MARYSVILLE**, a political  
subdivision of the State of Washington

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

STATE OF \_\_\_\_\_ §  
  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_,  
2014, by \_\_\_\_\_ (name) as  
\_\_\_\_\_ (title) of \_\_\_\_\_, a  
\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My appointment expires: \_\_\_\_\_

(Seal)

**Exhibit "C"**  
**CONTRACTOR REQUIREMENTS**

**1.01 General**

- **1.01.01** The Contractor must cooperate with **BNSF RAILWAY COMPANY**, hereinafter referred to as "Railway" where work is over or under on or adjacent to Railway property and/or right-of-way, hereafter referred to as "Railway Property", during the construction of the State Avenue 116<sup>th</sup> Street NE to 136<sup>th</sup> Street NE Widening Project.
- **1.01.02** The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit "C-1" Agreement, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit "C-1". Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to Rosa Martinez at Marsh, USA, 214-303-8519.
- **1.01.03** The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.
- **1.01.04** The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations. Railway will have the right to stop construction work on the Project if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the Project work in a manner which is hazardous to Railway property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Contractor fails to pay Railway for the Temporary Construction License or the Easement. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer or until additional insurance has been delivered to and accepted by Railway. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, Railway may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of Railway. Railway's right to stop the work is in addition to any other rights Railway may have including, but not limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop construction work on the Project, Railway agrees to immediately notify the following individual in writing:

Pat Gruenhagen  
City of Marysville  
80 Columbia Ave  
Marysville, WA 98270

- **1.01.05** The Contractor is responsible for determining and complying with all Federal, State and Local Governmental laws and regulations, including, but not limited to environmental laws and regulations (including but not limited to the Resource Conservation and Recovery Act, as amended; the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA), and health and safety laws and regulations. The Contractor hereby indemnifies, defends and holds harmless Railway for, from and against all fines or penalties imposed or assessed by Federal, State and Local Governmental Agencies against the Railway which arise out of Contractor's work under this Agreement.

- **1.01.06** Contractor must notify the City of Marysville at (360) 363-8279 and Railway's Manager Public Projects, telephone number (206) 625-6029 at least thirty (30) calendar days before commencing any work on Railway Property. Contractor's notification to Railway; must refer to Railroad's file 092077P.
- **1.01.07** For any bridge demolition and/or falsework above any tracks or any excavations located with any part of the excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin work until notified by the Railway that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.
- **1.01.08** Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

## **1.02 Contractor Safety Orientation**

- **1.02.01** No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site [www.contractororientation.com](http://www.contractororientation.com). The Contractor must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any work is performed on the Project. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway Contractor Safety Orientation. The Contractor must renew the Railway Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Representative.

## **1.03 Railway Requirements**

- **1.03.01** The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Agency.
- **1.03.02** The Contractor must notify the Railway's Division Superintendent and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.
- **1.03.03** The Contractor must abide by the following temporary clearances during construction:

- 15'           Horizontally from centerline of nearest track
  - 21'-6"       Vertically above top of rail
  - 27'-0"       Vertically above top of rail for electric wires carrying less than 750 volts
  - 28'-0"       Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
  - 30'-0"       Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
  - 34'-0"       Vertically above top of rail for electric wires carrying more than 20,000 volts
- **1.03.04** Upon completion of construction, the following clearances shall be maintained:
  - 25'           Horizontally from centerline of nearest track
  - 23'-3 1/2"   Vertically above top of rail
- **1.03.05** Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to the City of Marysville and must not be undertaken until approved in writing by the Railway, and until the City of Marysville has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.
- **1.03.06** In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Agency.
- **1.03.07** The details of construction affecting the Railway's Property and tracks not included in the contract plans must be submitted to the Railway by the City of Marysville for approval before work is undertaken and this work must not be undertaken until approved by the Railway.
- **1.03.08** At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across the Railways tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed and, at the completion of the project, removed at the expense of the Contractor.
- **1.03.09** Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor must immediately notify the Railway's Resource Operations Center at 1(800) 832-5452, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.
- **1.03.10** The Contractor, upon completion of the work covered by this contract, must promptly remove from the Railway's Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said property by said Contractor or any Subcontractor, employee or agent of Contractor or of any Subcontractor, and must cause Railway's Property to be left in a condition acceptable to the Railway's representative.

#### **1.04 Contractor Roadway Worker on Track Safety Program and Safety Action Plan**

- **1.04.01** Each Contractor that will perform work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway Project Representative to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site [www.contractororientation.com](http://www.contractororientation.com), which will be made available to Railway

prior to commencement of any work on Railway Property. During the performance of work, the Contractor must audit its work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.

### 1.05 Railway Flagger Services:

- **1.05.01** The Contractor must give Railway's Roadmaster (telephone 425-304-6690) a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.
- **1.05.02** Unless determined otherwise by Railway's Project Representative, Railway flagger will be required and furnished when Contractor's work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:
  - **1.05.02a** When, upon inspection by Railway's Representative, other conditions warrant.
  - **1.05.02b** When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.
  - **1.05.02c** When work in any way interferes with the safe operation of trains at timetable speeds.
  - **1.05.02d** When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.
  - **1.05.02e** Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.
- **1.05.03** Flagging services will be performed by qualified Railway flaggers.
  - **1.05.03a** Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railways Representative.
  - **1.05.03b** Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.
  - **1.05.03c** The cost of flagger services provided by the Railway will be borne by the (Agency). The estimated cost for one (1) flagger is approximately between \$800.00-\$1,600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. **THE FLAGGING RATE IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF FLAGGING PURSUANT TO THIS PARAGRAPH.**
  - **1.05.03d** The average train traffic on this route is 1 freight trains per 24-hour period at a timetable speed 10 MPH.



## 1.06 Contractor General Safety Requirements

- **1.06.01** Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations.
- **1.06.02** Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).
- **1.06.03** Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by the Railway's Project Representative. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.
- **1.06.04** When Contractor employees are required to work on the Railway Property after normal working hours or on weekends, the Railroad's representative in charge of the project must be notified. A minimum of two employees must be present at all times.
- **1.06.05** Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway's Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway's Property by that employee will be denied.
- **1.06.06** Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's representative in charge of the project. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway representative in charge of the project and to the Railway's Resource Operations Center at 1(800) 832-5452. Local emergency numbers are to be obtained from the Railway representative in charge of the project prior to the start of any work and must be posted at the job site.
- **1.06.07** For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway's Property.
- **1.06.08** All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, [www.contractororientation.com](http://www.contractororientation.com), however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railroad's representative in charge of the project is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **(NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**
- **1.06.09** **THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF THE SAME WILL OBSTRUCT THE VIEW**

**OF A TRAIN APPROACHING THE CROSSING. PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE AREA WITH CONCURRENCE OF THE RAILROAD'S REPRESENTATIVE.**

- **1.06.10** Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway's Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)
- **1.06.11** Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any work performed over water must meet all Federal, State and Local regulations.
- **1.06.12** All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

### **1.07 Excavation**

- **1.07.01** Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor must determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact BNSF's Field Engineering Representative (206-625-6189). All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. **It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.**
- **1.07.02** The Contractor must cease all work and notify the Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.
- **1.07.03** All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.
- **1.07.04** Any excavations, holes or trenches on the Railway's Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

### **1.08 Hazardous Waste, Substances and Material Reporting**

- **1.08.01** If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to Railway's Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor must immediately: (a) notify the Railway's Resource Operations Center at 1(800)

832-5452, of such discovery: (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties; and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

### **1.09 Personal Injury Reporting**

- 1.09.01 The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invitees while on the Railway's Property must be reported immediately (by phone mail if unable to contact in person) to the Railway's representative in charge of the project. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1(817) 352-7595 and to the Railway's Project Representative no later than the close of shift on the date of the injury.

**NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION**

INFORMATION REQUIRED TO BE COLLECTED PURSUANT TO FEDERAL REGULATION. IT SHOULD BE USED FOR COMPLIANCE WITH FEDERAL REGULATIONS ONLY AND IS NOT INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY.

1. Accident City/St \_\_\_\_\_ 2. Date: \_\_\_\_\_ Time:  
County: \_\_\_\_\_ 3. Temperature: \_\_\_\_\_ 4. Weather  
(if non-Railway location)
5. Social Security # \_\_\_\_\_
6. Name (last, first, mi) \_\_\_\_\_
7. Address: Street: \_\_\_\_\_ City: \_\_\_\_\_ St. \_\_\_\_\_ Zip: \_\_\_\_\_
8. Date of Birth: \_\_\_\_\_ and/or Age \_\_\_\_\_ Gender: \_\_\_\_\_  
(if available)
9. (a) Injury: \_\_\_\_\_ (b) Body Part: \_\_\_\_\_  
(i.e. (a) Laceration (b) Hand)
11. Description of Accident (To include location, action, result, etc.): \_\_\_\_\_
12. Treatment:  
? First Aid Only  
? Required Medical Treatment  
? Other Medical Treatment
13. Dr. Name \_\_\_\_\_ 30. Date: \_\_\_\_\_
14. Dr. Address:  
Street: \_\_\_\_\_ City: \_\_\_\_\_ St: \_\_\_\_\_ Zip: \_\_\_\_\_
15. Hospital Name: \_\_\_\_\_
16. Hospital Address:  
Street: \_\_\_\_\_ City: \_\_\_\_\_ St: \_\_\_\_\_ Zip: \_\_\_\_\_
17. Diagnosis: \_\_\_\_\_

**FAX TO  
RAILWAY AT (817) 352-7595  
AND COPY TO  
RAILWAY ROADMASTER FAX**

# Exhibit "C-1"

**Agreement  
Between  
BNSF RAILWAY COMPANY  
and the  
CONTRACTOR**

**BNSF RAILWAY COMPANY**  
**Attention: Manager Public Projects**

**Railway File: BFXXXXXX**  
**Agency Project: \_\_\_\_\_**

Gentlemen:

The undersigned (hereinafter called, the "Contractor"), has entered into a contract (the "Contract") dated \_\_\_\_\_, 200\_\_ with the City of Marysville for the performance of certain work in connection with the following project: ~~State Street Widening~~ State Avenue 116<sup>th</sup> Street NE to 136th Widening. Performance of such work will necessarily require contractor to enter BNSF RAILWAY COMPANY ("Railway") right of way and property ("Railway Property"). The Contract provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for the City of Marysville (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Contract, has agreed and does hereby agree with Railway as follows:

## **Section 1. RELEASE OF LIABILITY AND INDEMNITY**

Contractor hereby waives, releases, indemnifies, defends and holds harmless Railway for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about Railway's property or right-of-way. **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**

**THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE BOILER INSPECTION ACT, WHENEVER SO CLAIMED.**

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all claims made against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being

brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

## Section 2. TERM

This Agreement is effective from the date of the Contract until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

## Section 3. INSURANCE

Contractor must, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. Commercial General Liability insurance. This insurance must contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$4,000,000. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limit to the following:

- ◆ Bodily Injury and Property Damage
- ◆ Personal Injury and Advertising Injury
- ◆ Fire legal liability
- ◆ Products and completed operations

This policy must also contain the following endorsements, which must be indicated on the certificate of insurance:

- ◆ It is agreed that any workers' compensation exclusion does not apply to **Railroad** payments related to the Federal Employers Liability Act or a **Railroad** Wage Continuation Program or similar programs and any payments made are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law.
- ◆ The definition of insured contract must be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Any exclusions related to the explosion, collapse and underground hazards must be removed.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy.

B. Business Automobile Insurance. This insurance must contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ◆ Bodily injury and property damage
- ◆ Any and all vehicles owned, used or hired

C. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

- ◆ Washington's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

D. Railroad Protective Liability insurance naming only the **Railroad** as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 10 93 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
- ◆ Endorsed to remove any exclusion for punitive damages.
- ◆ No other endorsements restricting coverage may be added.
- ◆ The original policy must be provided to the **Railroad** prior to performing any work or services under this Agreement

**Other Requirements:**

All policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

Contractor agrees to waive its right of recovery against **Railroad** for all claims and suits against **Railroad**. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against **Railroad** for all claims and suits. The certificate of insurance must reflect the waiver of subrogation endorsement. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against **Railroad** for loss of its owned or leased property or property under contractor's care, custody or control.

Contractor's insurance policies through policy endorsement, must include wording which states that the policy is primary and non-contributing with respect to any insurance carried by **Railroad**. The certificate of insurance must reflect that the above wording is included in evidenced policies.

All policy(ies) required above (excluding Workers Compensation and if applicable, Railroad Protective) must include a severability of interest endorsement and **Railroad** must be named as an additional insured with respect to work performed under this agreement. Severability of interest and naming **Railroad** as additional insured must be indicated on the certificate of insurance.

Contractor is not allowed to self-insure without the prior written consent of **Railroad**. If granted by **Railroad**, any deductible, self-insured retention or other financial responsibility for claims must be covered directly by contractor in lieu of insurance. Any and all **Railroad** liabilities that would otherwise, in accordance with the provisions of this **Agreement**, be covered by contractor's insurance will be covered as if contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the Work, contractor must furnish to **Railroad** an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify **Railroad** in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision must be indicated on the certificate of insurance. Upon request from **Railroad**, a certified duplicate original of any required policy must be furnished. Contractor should send the certificate(s) to the following address:

BNSF RISK MANAGEMENT  
2500 Lou Menk Drive AOB-1  
Fort Worth, TX 76131-2828  
Fax: 817-352-7207

Any insurance policy must be written by a reputable insurance company acceptable to **Railroad** or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provide.

Contractor represents that this *Agreement* has been thoroughly reviewed by contractor's insurance agent(s)/broker(s), who have been instructed by contractor to procure the insurance coverage required by this *Agreement*. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above.

Not more frequently than once every five years, *Railroad* may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by contractor, contractor must require that the subcontractor provide and maintain the insurance coverages set forth herein, naming *Railroad* as an additional insured, and requiring that the subcontractor release, defend and indemnify *Railroad* to the same extent and under the same terms and conditions as contractor is required to release, defend and indemnify *Railroad* herein.

Failure to provide evidence as required by this section will entitle, but not require, *Railroad* to terminate this *Agreement* immediately. Acceptance of a certificate that does not comply with this section will not operate as a waiver of contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by contractor will not be deemed to release or diminish the liability of contractor including, without limitation, liability under the indemnity provisions of this *Agreement*. Damages recoverable by *Railroad* will not be limited by the amount of the required insurance coverage.

For purposes of this section, *Railroad* means "Burlington Northern Santa Fe Corporation", "BNSF RAILWAY COMPANY" and the subsidiaries, successors, assigns and affiliates of each.

#### Section 4. EXHIBIT "C" CONTRACTOR REQUIREMENTS

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Contract, and the Contractor Requirements set forth on Exhibit "C" attached to the Contract and this Agreement, , including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site.

#### Section 5. TRAIN DELAY

Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.



The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. Damages for train delay for certain trains may be as high as \$50,000.00 per incident.

**Contractor and its subcontractors must give Railway's representative (4) four weeks advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.**

**Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.**

Kindly acknowledge receipt of this letter by signing and returning to the Railway two original copies of this letter, which, upon execution by Railway, will constitute an Agreement between us.

\_\_\_\_\_  
(Contractor)

**BNSF Railway Company**

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Manager Public Projects

Contact Person: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Phone: \_\_\_\_\_  
E-mail: \_\_\_\_\_

Accepted and effective this \_\_\_\_\_ day of 200\_.

**Exhibit "D"**

AUTHORITY FOR EXPENDITURE

LOCATION : KRUSE JCT	LINE SEGMENT : 406	AFE NUMBER :
PLANITEM NUMBER : 102496000	MILEPOST : 0.164	RFA NUMBER : 5971914
PROPERTY OF : BNSF RAILWAY COMPANY	DIVISION : NW	CPAR NUMBER : CB960114
OPERATED BY : BNSF RAILWAY COMPANY	SUBDIVISION : BELLINGHAM	BUDGET YEAR : 2014
JOINT FACILITY : CITY OF MARYSVILLE	TRACK TYPE : S	BUDGET CLASS : 6
% BILLABLE (+/-) : 100.0	TAX STATE : WA	REPORTING OFFICE : 716
	SPONSOR : VP ENGINEERING	CENTER/ROLLUP : 23915

PURPOSE, JUSTIFICATION AND DESCRIPTION

PIP STATE AVE REHAB NWN DIV BELLINGHAM SUB LS 406 MP .164 - DOT# 092077P - 100% BILLABLE CITY OF MARYSVILLE  
 PRIMARY FUNDING SOURCE IS CITY FUNDS

PLAN ITEM	LINE SEG	BEG MP	END MP	TRK NBR	BEGIN STATION	END STATION	PROJECT TYPE	BUD YEAR
102496000	406	0.164	0.164	S	KRUSE JCT	KRUSE JCT	PUBLIC IMPROVEMENT PROJECT	2014

	CASH CAPITAL	NONCASH CAPITAL	OPERATING EXP	REMOVAL COSTS	BILLABLE	TOTALS
LABOR COSTS	0	0	0	0	101,715	101,715
MATERIAL COSTS	0	0	0	0	151,721	151,721
OTHER COSTS	0	0	0	0	28,215	28,215
TOTALS	0	0	0	0	281,651	281,651

SYSTEM MAINTENANCE AND PLANNING  
 ESTIMATE REF. NUMBER: 5971914  
 COSTING DATE: 09/18/2014

PRINTED ON: 09/24/2014  
 ESTIMATED BY: GRACIA  
 PRINTED BY: GRACIA



CEPS PLAN ITEM DOCUMENT  
(FOR INTERNAL BNSF RAILWAY USE ONLY)

LOCATION : KRUSE JCT	LINE SEGMENT : 406	AFE NUMBER :
PLANITEM NUMBER : 000251358	MILEPOST : 0.16	RFA NUMBER :
PROPERTY OF : BNSF RAILWAY COMPANY	DIVISION : NW	CPAR NUMBER :
OPERATED BY : BNSF RAILWAY COMPANY	SUBDIVISION : BELLINGHAM	BUDGET YEAR : 2014
JOINT FACILITY : CITY OF MARYSVILLE	ENGR. DIVISION : NORTHWEST NORTH	BUDGET CLASS : 10
% BILLABLE (+/-) : 100.0	TAX STATE : WA, CO: SNOHOMISH	REPORTING OFFICE : 461
REQUESTOR ID : Q446	MATL DATE :	SPONSOR : VP ENGINEERING
PROJECT TYPE : PIP	LOCATION CODE : 513052	DEPT CODE : MOWGH
DOT NUMBER : 092077P	TRACK TYPE : 1	DERAILMENT CODE :
STIMULUS FUND TYPE : FHWA	STIMULUS STATUS : BUY AMERICAN	

PURPOSE, JUSTIFICATION AND DESCRIPTION

STATE STREET - MARYSVILLE, WA; INSTALL FLASHERS ; NORTHWEST DIV; BELLINGHAM SUBDIV; LS 406; MP 0.16; DOT# 092077P; SEQ# 56163.

MONTHLY POWER UTILITY COST CENTER : 61504.

THE MATERIAL LIST BELOW REFLECTS TYPICAL REPRESENTATIVE PACKAGES USED FOR ESTIMATING PURPOSES ONLY.

THIS ESTIMATE IS GOOD FOR 90 DAYS. THEREAFTER THE ESTIMATE IS SUBJECT TO CHANGE IN COST FOR LABOR, MATERIAL, AND OVERHEAD.

CONTRACTS HAVE BEEN ESTABLISHED FOR PORTIONS OF SIGNAL WORK ON THE BNSF RAILROAD.

\*\*\*\*\* SIGNAL WORK ONLY \*\*\*\*\*

THE CITY OF MARYSVILLE, WA IS FUNDING 100% OF THIS PROJECT.

MAINTAIN PROPRIETARY CONFIDENTIALITY.

PRIMARY FUNDING SOURCE IS FHWA

\*\* BUY AMERICA(N) APPLIES \*\*

	CASH CAPITAL	NONCASH CAPITAL	OPERATING EXP	REMOVAL COSTS	BILLABLE	TOTALS
LABOR COSTS	0	0	0	0	45,461	45,461
MATERIAL COSTS	0	0	0	0	19,883	19,883
OTHER COSTS	0	0	0	0	25,029	25,029
<b>TOTALS</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>90,373</b>	<b>90,373</b>

SYSTEM MAINTENANCE AND PLANNING

ESTIMATE REF. NUMBER : 000251358 - 2--2S

COSTING DATE : 09/18/2014

PRINTED ON : 10/23/2014

ESTIMATED BY : GRAY

PRINTED BY : GRAY



TOTAL BILLABLE COST

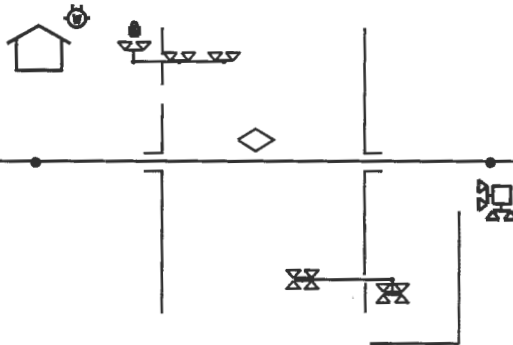
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90,373

The Burlington Northern & Santa Fe Railway Company

TO KRUSE JCT.

TO ARLINGTON



STATE ROAD  
DOT # 092 077 P  
PROJECT #56163

INSTALL: FLASHERS









CONTROL DEVICES: CONSTANT WARNING

**BOLD - IN**

~~FLASH~~ - OUT

SALVAGE: NONE



-  INSTRUMENT HOUSE
-  BELL
-  METER
-  CROSSING CONTROL CONNECTIONS
-  BIDIRECTIONAL CROSSING CONTROL
-  UNIDIRECTIONAL CROSSING CONTROL
-  COUPLER OR TERMINATION
-  GUARD RAIL

Warning device placement:  
 Clearance to C.L. Track = Min. 12'  
 Edge of Road to C.L. Foundation:  
     Min. 4'3" with curb,  
     Min. 8'3" without curb,  
     Max. 12'  
 House Clearance:  
     25' Min. to Near Rail  
     30' Min. to Edge of Road  
 ALL LIGHTS TO BE LED

**BNSF RAILWAY CO.**  
**LOCATION: MARYSVILLE, WA**  
 STREET: STATE ST.  
 LS: 406  
 M.P. 0.16  
 DOT # 092 077 P  
 DIVISION: NORTHWEST  
 SUBDIVISION: BELLINGHAM  
 KANSAS CITY  
 NO SCALE  
 DATE: 10/23/2014  
 FILE: 56163 STATESKETCH.dgn  
 JFK





**CONSTRUCTION AND MAINTENANCE AGREEMENT  
WIDEN AND IMPROVE STATES STREET (MP 0.17)  
MARYSVILLE, WASHINGTON**

RAILWAY Contract NO. \_\_\_\_\_  
File No \_\_\_\_\_

AGREEMENT, made this 16<sup>th</sup> day of February, 2008, between THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, a Delaware corporation, hereinafter referred to as the "Railway", and MARYSVILLE, WASHINGTON, a municipal corporation, hereinafter referred to as the "Agency".

**RECITALS:**

- WHEREAS: the Bellingham Subdivision is currently owned and operated by the Railway; and
- WHEREAS: in the interest of aiding motor vehicle traffic the Agency is proposing to widen and improve the State Street at grade crossing, hereinafter referred to as the Project.
- WHEREAS: the centerline of the State Street at grade crossing crosses over the Railway's right-of-way and mainline at railroad survey station 193+91.5, Railroad MP 0+829.3', (MP 0.17), and
- WHEREAS: the Project is located in the NE1/4 of the NW 1/4 of Section 9, T 30 N, R 5 E, WM. as shown on the plans marked Exhibit "A" attached hereto and made a part hereof, and
- WHEREAS: Automatic flashing light traffic control devices, cantilever type, and train activation devices will be removed and replaced under this contract.
- WHEREAS: the Railway will be required to perform certain work on its facilities, and
- WHEREAS: the parties hereto desire that the work to be performed by the Agency in connection with said construction be performed in accordance with plans and specifications to be prepared by the Agency, and
- WHEREAS: the Agency is willing to undertake the construction of said project with Agency funds, state funds and such federal funds as may be available, and
- WHEREAS: the Railway is willing to consent to the execution of the said project upon the terms and conditions herein stated and not otherwise, and
- WHEREAS: the parties hereto desire to contract for work to be performed by each of them in connection with this project and the payment of costs and expenses therein involved, and

**AGREEMENT:**

**ARTICLE I**

**NOW THEREFORE**, in consideration of the covenants of the Agency hereinafter contained, and faithful performance thereof, Railway agrees:

1. The Railway shall grant to the Agency by separate instrument:
  - a) For and consideration of \$ 2,500, a crossing easement of 250 square feet more or less, for roadway purposes across the Railway's right-of-way (outlined in bold) as identified on Exhibit "A" attached.
  - b) For and consideration of \$ 2,000 the Agency shall pay an administration fee to the Railway.

2. To furnish all labor, materials, tools, and equipment, and do "Railroad Work" required due to the construction of the Project, such railroad work and the estimated cost thereof being as shown in Exhibit "B" attached hereto and made a part hereof. In the event that construction of the Project has not commenced within six (6) months from the effective date of this Agreement, Railway may, in its sole and absolute discretion, revise the cost estimates set forth in said Exhibit "B". In such case, Railway shall provide to the Agency its revised cost estimates highlighting all changes that are made. Any item of work incidental to those items listed in Exhibit "B", but not specifically mentioned therein, may be included as part of this agreement as an item of work upon written approval of Agency, if practicable.

The Railway may submit progress bills to the Agency during the progress of the work for the actual cost of services and expenses. The Agency will then pay progress bills within 30 days after receipt of a properly submitted bill. If the billing is disputed for any reason, the Agency will promptly notify the Railway and will pay any undisputed amount.

The Railway and the Agency shall maintain records regarding the work performed and the costs and expenses incurred by the parties for the project in accordance with generally accepted accounting principles and practices. Said records shall be made available to the other party, or for Agency, or federal audit, upon request during normal business hours, for a period of three years after the final payment.

**Construction of the Project shall include the following work by Railway:**

- (a) Preliminary engineering, design, and contract preparation;
  - (b) Remove the existing crossing surface, Place a 376' concrete crossing, complete with new ties, ballast and engineering fabric. Additional ties will be provide for the ultimate 5 lane configuration.
  - (c) Remove and replace antiquated cantilevers, with new cantilevers signals, with new train activation devices.
  - (d) Furnishing of such watchmen and flagmen as may be necessary for the safety of its property and the operation of its trains during construction of said Project; and
  - (e) Furnishing of engineering and inspection as required for construction of said Project.
3. To do all work provided in Article I, Section 2 above with its own employees working under Railroad Labor Agreements or by contractor(s), if necessary, and on an actual cost basis.
  4. Agency agrees to reimburse Railway for work of an emergency nature caused by Agency or Agency's contractor, in connection with the Project which Railway deems is reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons or Railway property. Such work may be performed by Railway without prior approval of Agency and Agency agrees to reimburse Railway for all such emergency work.
  5. To submit to Agency for payment upon completion of the Project, a detailed statement covering the cost of the work performed by Railway, segregated as to labor and materials, and in accordance with and subject to the terms and provisions of Federal Highway Administration's FHPM 143, as amended. All applicable portions of the Federal Highway Administration's FHPM 662.1 as amended and FHPM 143 as amended are by reference incorporated herein and made a part hereof.

## ARTICLE II

**IN CONSIDERATION** of the covenants of Railway herein set forth and the faithful performance thereof, Agency agrees as follows:

1. To furnish to Railway plans and specifications for the Project. Four sets of said plans, together with two copies of specifications, shall be submitted to Railway for approval prior to commencement of construction. After having been approved by both parties hereto, said plans and specifications are hereby adopted and incorporated into this agreement by reference.

2. To acquire, at no cost to Railway, all rights of way necessary for the construction of the Project.
3. To make any and all arrangements to secure the location or relocation of wire lines, pipe lines and other facilities owned by private persons, companies, corporations, political subdivisions or public utilities other than BNSF which may be found necessary to locate or relocate in any manner whatsoever due to the construction of the project.
4. To construct the Project as shown on Exhibit "A" and do all work provided for in the plans and specifications for the Project, except such work that Railway herein agrees to do. Principal elements of work to be performed by Agency in the construction of the Project are as follows:
  - (a) Necessary Grading and Paving of the roadway approaches to the crossing and furnish and place asphalt concrete paving up to the crossing.
  - (b) Furnish and place advance warning signs and standard pavement parkings for the railroad at grade crossing.
  - (c) Perform all other work not specifically mentioned as work to be performed by the Railway necessary to complete the project in accordance with the plans and specifications.
6. To furnish all labor, materials, tools, and equipment in performing the work it agrees to perform herein. All work of construction with respect to said Project shall be undertaken by Agency, or Agency's contractor and shall be performed at such times as shall not endanger or interfere with the safe and timely operations of Railway's track and other facilities.
7. To require its contractor(s) to notify Railway's Roadmaster at least 30 calendar days in advance of commencing work on Railway property or near Railway's tracks, when requesting a Railway flagman in accordance with the requirements of "The Right of Entry Agreement" attached hereto, in order to protect Railway from damage to its trains and property.
8. To require its contractor(s) to furnish Railway's Manager of Public Projects, for approval, four copies of plans and two sets of calculations of any shoring or cribbing proposed to be used over, under, or adjacent to Railway's tracks.
9. The Agency agrees to include the following provisions in its contract with a contractor performing work on said Project.
  - (a) Fiber optic cable systems owned by various telecommunication companies may cross or run parallel in Railway's rail corridor. The Contractor shall be responsible to contact Railway and/or the telecommunications companies to determine whether there are any fiber optic cable systems located within the Project boundaries that could be damaged or their service disrupted due to the construction of the Project. The contractor shall also pothole all lines either shown on the plans or marked in the field in order to verify their locations. The contractor shall also use all reasonable methods when working in the Railway rail corridor to determine if any other fiber optic lines may exist.
  - (b) The telecommunication companies shall be responsible for the rearrangement of any facilities determined to interfere with the construction. The contractor shall cooperate fully with any company performing these rearrangements.
10. To also incorporate in each contract for construction of the Project, or the specifications therefor, the provisions set forth in Article II, Sections 6, 7, 8, 9, 11, (a) and 12 (b), and in Article III, Sections 3, 4, 10, and 11, and the provisions set forth in the "Right-of-Entry Agreement" attached hereto and by reference made a part hereof.
11. That, except as hereinafter otherwise provided, all work to be performed hereunder by Agency in the construction of the Project will be performed pursuant to a contract or contracts to be let by Agency, and all such contracts shall provide.
  - (a) That all work performed thereunder, within the limits of Railway's right of way shall be performed in a good and workmanlike manner, and in accordance with plans and specifications approved by Railway. Those changes or modifications during construction that affect safety or Railway's operations shall also be subject to Railway's approval;

- (b) That no work shall be commenced within Railway's right of way until each of the contractors employed in connection with said work shall have (i) executed and delivered to Railway an Agreement in the form of "The Right-of-Entry Agreement" delivered to and secured Railway's approval of the insurance required by said "Right-of-Entry Agreement".
12. (a) Railway shall have the right to request that any Agency employee, any Agency contractor, or any employee of a Agency contractor who performs any work within Railway's right of way and which affects Railways operations or facilities, be removed from the Project for incompetence, neglect of duty, unsafe conduct or misconduct. In the event Agency or its contractor elects not to honor such request, Railway may stop work within its right of way until the matter has been fully resolved to Railway's satisfaction. The party whose employee has been asked to leave the Project will indemnify the requesting party against any claims arising from such removal.
- (b) Agency's employees, agents, contractors, representatives and invitees shall wear the current BNSF Personnel Protective Equipment ("PPE") when on the Railway's rail corridor. Railway PPE shall meet applicable OSHA and ANSI specifications. Existing Railway PPE requirements are: (i) safety glasses; permanently affixed side shields; no yellow lenses; (ii) hard hats with high visibility orange cover; (iii) safety shoes with hardened toe, above the ankle lace up and a defined heel; and (iv) high visibility reflective orange vests. Hearing protection, fall protection and respirators will be worn as required by state and federal regulations.
13. To advise Railway's Manager Public Projects, in writing, of the completion date of the Project within thirty (30) days after such completion and to notify Railway's Manager Public Projects, in writing, of the date on which Agency and/or its Contractor will meet with Railway for the purpose of making final inspection of the Project.

### ARTICLE III

IN CONSIDERATION of the premises, it is mutually agreed as follows:

1. That all work contemplated in this agreement shall be performed in a good and workmanlike manner, in accordance with plans and specifications approved by BNSF, and each portion shall be promptly commenced by the parties hereto obligated to do the same and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications during construction that affect Railway shall be subject to approval by Railway prior to commencement of such changes or modifications.
2. That such work shall be done in accordance with detailed plans and specifications approved by both parties.
3. Agency and Railway shall to the extent reasonably practicable adhere to the construction schedule for all Project work. The parties agree that Railway's failure to complete Railroad work in accordance with the construction schedule by reason of inclement weather, unforeseen railroad emergencies, or other conditions beyond its reasonable control, will not constitute a breach of this Agreement by Railway nor subject Railway to any liability or responsibility for added expense to the Agency.
4. In the event of an unforeseen railroad emergency and regardless of the requirements of the construction schedule, Railway reserves the right to reallocate all or a portion of its labor forces assigned to perform the Railroad Work when Railway believes such reallocation is necessary to provide for the immediate restoration of railroad operations of Railway or its affiliates or to protect persons or property on or near any Railway owned property or any related railroad. Railway will reassign such labor forces to again perform the Railroad Work when, in its sole but good faith opinion, such emergency condition no longer exists. Railway will not be liable for any additional costs or expenses of the Project resulting from any such reallocation of its labor forces. The parties further agree that such reallocation of labor forces by Railway and any direct or indirect results of such reallocation will not constitute a breach of this Agreement by Railway.
5. That if any Agency Contractor shall prosecute the Project work contrary to the Plans and Specifications or if any Agency Contractor shall prosecute the Project work in a manner Railway deems to be hazardous to its property, facilities or the safe and expeditious movement of its traffic, or the insurance described in "The Right-of-Entry Agreement" hereof shall be canceled during the course of the Project, the Railway shall have the right to stop the work until the acts or omissions of such Agency Contractor have been fully rectified to the satisfaction of

Railway's Division Engineer, or additional insurance has been delivered to and accepted by Railway. Such work stoppage shall not give rise to or impose upon Railway any liability to Agency, or to any Agency Contractor. The right of Railway to stop the work is in addition to any other rights Railway may have which include, but are not limited to, actions for damages or lost profits. In the event that Railway shall desire to stop work, Railway agrees to give immediate notice thereof in writing to those individuals set forth in Section 15 of this Article III.

6. The Agency shall supervise and inspect the operations of all Agency contractors to assure compliance with the plans and specifications, the terms of this agreement and all safety requirements of Agency. If at any time during construction Agency determines that proper supervision and inspection is not being performed by Agency personnel, Agency shall have the right to stop construction (within or adjacent to its operating right of way) and to request that the Agency correct the situation before construction is allowed to proceed. If Railway believes the situation is not being corrected in an expeditious manner, Railway shall immediately notify the Agency so that the Agency can take appropriate corrective action.
7. The Project shall not be commenced by Railway until Agency has issued Railway a "Notice to Proceed". Agency's Contractor shall not commence construction of the Project until the Agency shall have given not less than thirty (30) days prior written notice to Agency's Manager of Public Projects which notice shall state the time that Agency's Contractor plans to begin construction of the Project. Each notice shall make reference to Railway's file name Marysville, WA. - Widen and Improve State Street.
8. The construction of said Project shall be performed and effected in such a manner as not to interfere with the safe and timely operation of locomotives, trains, cars and on track maintenance equipment, over Railway's tracks.
9. After completion of the construction of the Project as hereinabove described:
  - (a) Railway will maintain at its sole cost and expense the crossing surface in accordance with state law.
  - (b) Agency at its sole cost and expense, maintain all improvements, other appurtenances, advance warning signs, and standard pavement markings.
10. Before entering upon Railway's right of way for maintenance purposes, Agency shall notify Railway's Manager Public Projects to obtain prior authorization, and, If work is contracted, Agency will require its contractor(s) to comply with the obligations in favor of Railway, set forth in the "Right -of-Entry Agreement" as may be revised from time to time, and accepts responsibility for compliance by its contractor(s).
11. Agency shall indemnify and save harmless Railway, its agents and employees, against all liability, claims, demands, damages, or costs for (a) death or bodily injury to persons including, without limitation, the employees of the parties hereto, (b) injury to property including, without limitation, the property of the parties hereto, (c) design defects, or (d) any other loss, damage or expense arising under either (a), (b) or (c), and all fines or penalties imposed upon or assessed against Railway, and all expenses of investigating and defending against same, arising in any manner out of (1) activities, use, or presence, or negligence of Agency, or Agency's employees, or Agency's contractors, subcontractors, agents, invitees or any of their employees, in, on, or near Railway's right of way, or, (2) The performance, or failure to perform, by the Agency, its contractors, subcontractors, or agents, its work or any obligation under this agreement..
11. This Agreement shall be interpreted in accordance with the laws of the State of Washington.
13. All the covenants and provisions of this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, except that no party may assign any of its rights or obligations hereunder without the prior written consent of the other party.
14. In the event that construction of the Project has not begun for a period of three years from the date of this agreement, this agreement shall become null and void.
15. Any notice provided for or concerning this agreement shall be in writing and be deemed sufficiently given when sent by certified mail, return receipt requested, to the parties at the following addresses:

The Burlington Northern and  
Santa Fe Railway Company:

**Railway's Manager of Public Projects**

John M. (Mike) Cowles  
2454 Occidental Avenue So., Suite 1-A  
Seattle, WA. 98134-1451  
Telephone No: (206) 625-6146  
Telecopy No.: (206) 625-6115

With a copy to:

Division Engineer  
2454 Occidental Ave. So. - Ste 1-A  
Seattle, WA. 98134  
Telephone No. (206) 625-6363  
Telecopy No. (206) 625-6265

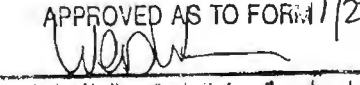
Roadmaster  
2900 Bond Street  
Everett, WA. 98201  
Telephone No. (425) 304-6690  
Telecopy No. (425) 304-6627

**CITY OF MARYSVILLE, WA.**

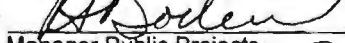
Robin Nelson, P.E.  
Project Manager  
80 Columbia Avenue  
Marysville, WA. 98270  
Telephone No. (360) 651-5170  
Telecopy No. (360) 651-5099

IN WITNESS WHEREOF, County has caused this Agreement to be executed and witnessed by its duly qualified and authorized officials, and BNSF has executed this Agreement, both as of the day and year first above written.

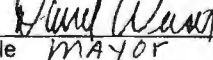
WITNESS:

APPROVED AS TO FORM 1/22/01  
  
Burlington Northern Santa Fe Law Department

THE BURLINGTON NORTHERN AND  
SANTA FE RAILWAY COMPANY

By   
~~Manager Public Projects~~  
AVP-Engineering Services

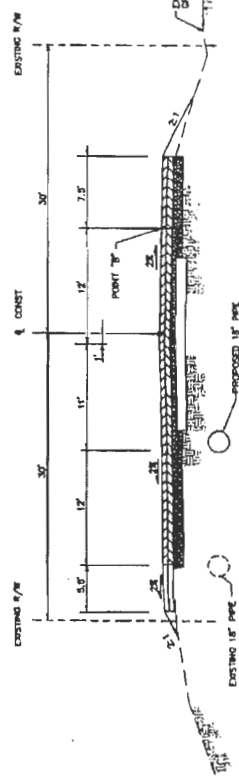
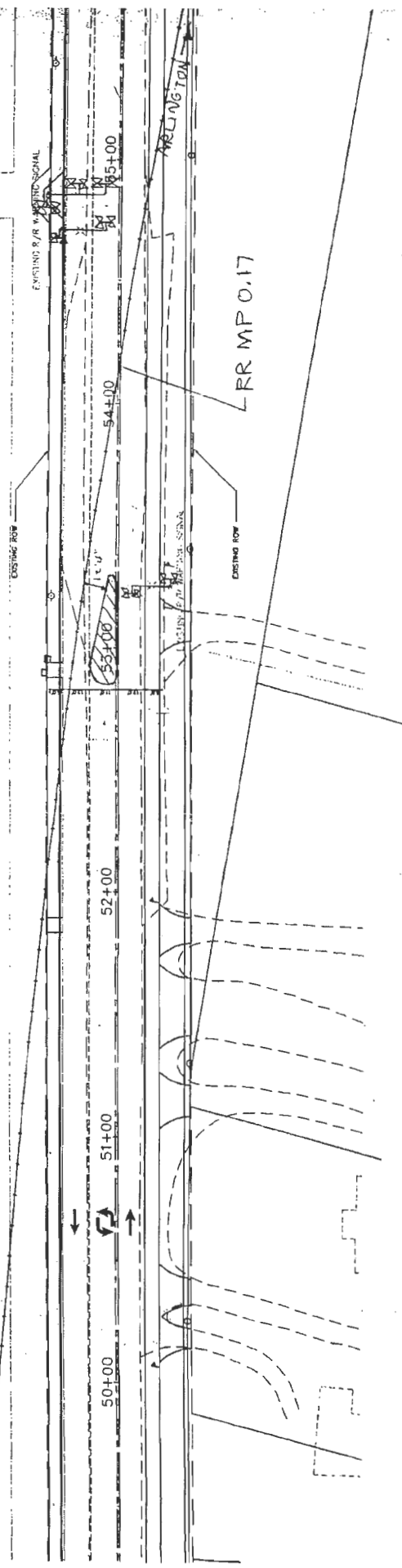
MARYSVILLE, WASHINGTON

By   
Title MAYOR

← ML. SEPTUE

← KRUIE JCT.

VERTICAL DATUM ML BLAINS



TYPICAL SECTION PHASE ONE  
NOT TO SCALE

PHASE	EXISTING
CONST. SLOPE EASMENT	---
EXIST. ROW	---
EXIST. ROW CL.	---
EXIST. ROW	---

EXHIBIT "A"

DESIGNED BY	DATE
12/27/09	12/27/09
CHECKED BY	12/27/09
PROJ. ENGR.	12/27/09

REVISIONS



**SI** Skillings - Connolly Inc.  
Consulting Engineers  
CIVIL ENGINEERING ENVIRONMENTAL  
1000 ...

**R/R  
PHASE I**

**PARTIAL SITE PLAN**  
APPROVAL FOR CONSTRUCTION: ...  
DATE: ...



THE B. N. S. F. RAILWAY COMPANY  
FHPM ESTIMATE FOR  
CITY OF MARYSVILLE

LOCATION - EDGECOMB

DETAILS OF ESTIMATE

PURPOSE, JUSTIFICATION AND DESCRIPTION

UPGRADE CROSSING SURFACE FROM CONCRETE SLABS AND ASPHALT TO CONCRETE, REPLACE 100 LB RAIL WITH 136 LB RAIL.

CITY OF MARYSVILLE, WA. TO RESPONSIBLE FOR 100% OF THE COST.

DESCRIPTION	QUANTITY	U/M	COST	TOTAL \$
*****				
LABOR				
*****				
PICKUP CROSS TIES	156.96	MH	2,733	
PICKUP RAIL/OTM	156.96	MH	2,733	
PLACE FIELD WELDS	122.08	MH	2,327	
REPLACE CROSS TIES	352.07	MH	6,130	
REPLACE PUBLIC CROSSING	352.07	MH	6,130	
REPLACE RAIL/OTM	352.07	MH	6,130	
SIGNAL FIELD LABOR	87.20	MH	1,708	
SURFACE TRACK	52.32	MH	911	
UNLOAD BALLAST	43.60	MH	760	
WORK TRAIN - BALLAST	18.00	MH	459	
PAYROLL ASSOCIATED COSTS			18,543	
EQUIPMENT EXPENSES			12,447	
SUPERVISION EXPENSES			20,380	
INSURANCE EXPENSES			4,498	
TOTAL LABOR COST			85,889	85,889
*****				
MATERIAL				
*****				
ANCHOR, RAIL, UNIT, 6 IN BASE, 132#/136#	140.00	EA	87	
BALLAST, FROM DELTA YARD	400.00	NT	2,696	
JOINT, COMPROMISE, LH, 3L & 4L	2.00	PR X	400	
JOINT, COMPROMISE, RH, 1R & 2R	2.00	PR X	270	
JOINT, COMPROMISE, 136#/115# LH, 3L & 4L	2.00	PR X	336	
JOINT, COMPROMISE, 136#/115# RH, 1R & 2R	2.00	PR X	336	
PLATE, TIE, 6 IN BASE, DS	70.00	EA	320	
PLUG, RAIL, INSULATED, BONDED, 20 FT	4.00	EA	1,980	
RAIL, 136 LB NEW WELDED :STANDARD CARBON	1200.00	LF	14,148	
SPIKE, TIMBER SCREW, 5/8X12 IN, F/ROAD XING	564.00	EA	548	
SPIKES, TRACK, 5/8 X 6-IN. 241 PER KEG	241.00	EA	51	
TIE, TRK, 10', PRE-PLATED, PANDROL, 6", ROUND HOLE	320.00	EA	22,167	
TIE, TRK, GRADE 5, TREATED, HARDWOOD, 8.5 FT	20.00	EA	626	
WELD, KIT, GENERIC FOR ALL RAIL WEIGHTS	14.00	KT	798	
CONC 136 OB-SEC WITH FILLER FOR WOOD	376.00	TF	52,283	
SIGNAL MATERIAL	1.00	LS	500	
STORE EXPENSES			2,401	
ONLINE TRANSPORTATION			4,807	
USE TAX			6,489	
OFFLINE TRANSPORTATION			725	
TOTAL MATERIAL COST			111,968	111,968
*****				
OTHER				
*****				
COMPACTOR RENTAL	21.00	DAY	2,100	
FRONT END LOADER RENTAL	21.00	DAY	10,500	
TIE DISPOSAL COSTS	340.00	EA	340	
TOTAL OTHER ITEMS COST			12,940	12,940
PROJECT SUBTOTAL				210,797
CONTINGENCIES				17,737
BILL PREPARATION FEE				1,143
GROSS PROJECT COST				229,677
LESS COST PAID BY BNSF				0
TOTAL BILLABLE COST				229,677

EXHIBIT "B"



TOTAL OTHER ITEMS COST	27,000	27,000
		-----
PROJECT SUBTOTAL		172,420
CONTINGENCIES		17,242
BILL PREPARATION FEE		949
		-----
GROSS PROJECT COST		190,611
LESS COST PAID BY BNSF		0
		-----
TOTAL BILLABLE COST		190,611
		=====

EXHIBIT "B"

**CONTRACTOR'S  
RIGHT OF ENTRY AGREEMENT  
FOR CONSTRUCTION PROJECTS ON OR ADJACENT TO PROPERTY OF  
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**

Gentlemen:

The undersigned, hereinafter referred to as Contractor, has entered into a Contract dated \_\_\_\_\_, 2000, with Marysville, Washington ("City") for the performance of certain work in connection with the project. The widening and the improvements to the State Street at-grade crossing in the performance of which work the Contractor will necessarily be required to conduct operations within THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY ("Railway"), right of way and property ("Railway Property"). The Contract provides that no work shall be commenced within Railway Property until the Contractor employed in connection with said work for County executes and delivers to Railway an Agreement, in the form hereof, and shall have provided insurance of the coverage and limits specified in said Contract and Section 2 of this Agreement. If this Agreement is executed by other than the Owner, General Partner, President or Vice President of Contractor, evidence is furnished to you herewith certifying that the signatory is empowered to execute this Agreement for the Contractor.

Accordingly, as one of the inducements to and as part of the consideration for Railway granting permission to Contractor to enter upon Railway Property, Contractor, effective on the date of said Contract, has agreed and does hereby agree with Railway as follows:

**SECTION 1. RELEASE OF LIABILITY AND INDEMNITY**

Contractor agrees to release Railway from any claims arising from the performance of this Agreement which Contractor or any of its employees, subcontractors, agents or invitees could otherwise assert against Railway, regardless of the negligence of Railway, except to the extent that such claims are proximately caused by the intentional misconduct or gross negligence of Railway.

Contractor shall indemnify and hold harmless Railway for all judgments, awards, claims, demands, and expenses (including attorney's fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or failure to perform any obligation hereunder. **THE LIABILITY ASSUMED BY CONTRACTOR SHALL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**

**THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR SHALL INCLUDE ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE BOILER INSPECTION ACT, WHENEVER SO CLAIMED.**

Nothing in this agreement is intended to be construed as a requirement for the indemnification against the sole negligence of the Railway, its officers, employees or agents for any work relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, highway, road, railroad, excavation, or other structure, project, development, or improvement attached to real estate, including moving and demolition in connection therewith, performed in the State of Washington. Indemnification against liability for damages arising out of bodily injury to persons or damage to property for any work relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, highway, road, railroad, excavation, or other structure, project, development, or improvement attached to real estate, including moving and demolition in connection therewith, performed in the State of Washington and caused by or resulting from the concurrent negligence of the Railway and the Agency and its agents or employees will be enforceable only to the extent of the negligence of the Agency and its agents and employees.

The indemnification obligation shall include all claims brought by Contractor's employees against the Railway, its agents, servants, employees or otherwise, and Contractor expressly waives its immunity under the industrial insurance act (RCW Title 51) and assumes potential liability for all actions brought by its employees.

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it shall adjust and settle all claims made against Railway, and shall, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway shall give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor shall proceed to adjust and handle to a conclusion such claims, and in the event of a brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, shall defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement shall survive any termination of this Agreement.

## SECTION 2. INSURANCE.

(a). Before commencing any work under this Agreement, Contractor must provide and maintain in effect throughout the term of this Agreement insurance, at Contractor's expense, covering all of the work and services to be performed hereunder by Contractor and each of its subcontractors, as described below:

(1). Workers' Compensation coverage as is required by State law. **THE CERTIFICATE MUST CONTAIN A SPECIFIC WAIVER OF THE INSURANCE COMPANY'S SUBROGATION RIGHTS AGAINST THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY.**

(2). Commercial General Liability insurance covering liability, including but not limited to Public Liability, Personal Injury, Property Damage and Contractual Liability covering the obligations assumed by Contractor in Section 1, with coverage of at least \$2,000,000 per occurrence and \$4,000,000 in the aggregate. Where explosion, collapse, or underground hazards are involved, the X, C, and U exclusions must be removed from the policy.

(3). Automobile Liability insurance, including bodily injury and property damage, with coverage of at least \$1,000,000 combined single limit or the equivalent covering any and all vehicles owned or hired by the Contractor and used in performing any of the services under this agreement.

(4). Railroad Protective Liability insurance stating The Burlington Northern and Santa Fe Railway Company is the Named Insured covering all of the liability assumed by the Contractor under the provisions of this Agreement with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. Coverage shall be issued on a standard ISO form CG 00 35 01 96 and endorsed to include ISO form CG 28 31 10 93 and the Limited Seepage and Pollution Endorsement (see attached copy).

(b). The average train traffic per 24-hour period on this route is 2 through freight trains at a timetable speed of 10 MPH.

(c). All insurance shall be placed with insurance companies licensed to do business in the States in which the work is to be performed, and with a current Best's Insurance Guide Rating of A- and Class VII, or better.

(d). In all cases except Workers' Compensation and Railroad Protective Liability coverage the certificate must specifically state that **THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY IS AN ADDITIONAL INSURED.**

(e) Any coverage afforded Railway, the Certificate Holder, as an Additional Insured shall apply as primary and not excess to any coverage issued in the name of Railway.

(f). Such insurance shall be approved by the Railway before any work is performed on Railway's Property and shall be carried until all work required to be performed on or adjacent to Railway's Property under the terms of the contract is satisfactorily completed as determined by the city of Everett, Washington, and thereafter until all tools, equipment and materials not belonging to the Railway, have been removed from Railway's Property and Railway Property is left in a clean and presentable condition. The insurance herein required shall be obtained by the Contractor and Contractor shall furnish Railway with an original certificate of insurance, signed by the insurance company, or its authorized representative, evidencing the issuance of insurance coverage as prescribed in (a) 1, 2 and 3 above, plus the original Railroad Protective Liability insurance policy to:

Attention: Maintenance Field Support  
The Burlington Northern and Santa Fe Railway Company  
Maintenance Field Support  
4501 Kansas Avenue  
Kansas City, Kansas 66106

(g). The certificate of insurance shall guarantee that the policies will not be amended, altered, modified or canceled insofar as the coverage contemplated hereunder is concerned, without at least thirty (30) days notice mailed by registered mail to Railway.

(h). Full compensation for all premiums which the Contractor is required to pay on all the insurance described hereinafter shall be considered as included in the prices paid for the various items of work to be performed under the Contract, and no additional allowance will be made therefor or for additional premiums which may be required by extensions of the policies of insurance.

It is further distinctly understood and agreed by the Contractor that its liability to the Railway herein under SECTION 1 will not in any way be limited to or affected by the amount of insurance obtained and carried by the Contractor in connection with said Contract.

### **SECTION 3. CONTRACTOR REQUIREMENTS**

(a). While on or about Railway Property, Contractor shall fully comply with Railway's "Contractor Requirements", including (but not limited to) clearance requirements and personal protective equipment requirements. Contractor shall be responsible for fully informing itself as to Railway "Contractor Requirements".

(b). Prior to entering Railway Property, each person providing labor, material, supervision, or services connected with the work to be performed on or about Railway Property shall attend a Safety Orientation session conducted or approved by Railway. Contractor shall contact Manger Public Projects, J. M. (Mike) Cowles, telephone (206) 625-6146 fax (206) 625-6115, at least thirty (30) calendar days in advance to arrange the necessary safety orientation session(s).

(c). Prior to entering Railway property, the Contractor shall prepare and implement a safety action plan acceptable to Railway. Contractor shall audit it's compliance with that plan during the course of it's work. A copy of said plan and audit results shall be kept at the work site and shall be available for inspection by Railway at all reasonable times

### **SECTION 4. PROTECTION OF RAILWAY FACILITIES AND RAILWAY FLAGGER SERVICES**

(a). The Contractor shall give a minimum of at least thirty (30) working days notice to Ron Kazen the Railways Roadmaster at telephone (425) 304-6690, in advance of when flagging services will be required to bulletin the flaggers position and shall provide five (5) working days notice to the Roadmaster to abolish the position per union requirements.

(b). Railway flagger and protective services and devices will be required and furnished when Contractor's work activities are located over or under of and within twenty-five (25) feet measured horizontally from center line of the nearest track and when cranes or similar equipment positioned outside of 25-foot horizontally from track center line that could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:

(1). When in the opinion of the Railway's representative, it is necessary to safeguard Railway's Property, employees, trains, engines and facilities.

(2). When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.

(3). When work in any way interferes with the safe operation of trains at timetable speeds.

(4). When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.

(5). Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.

(a). Flagging services will be performed by qualified Railway flaggers. The base cost per hour for (1) flagger is \$50.00 which includes vacation allowance, paid holidays, Railway and Unemployment: Insurance, Public Liability and Property Damage Insurance, health and welfare benefits, transportation, meals, lodging and supervision, for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. These rates are subject to any increases which may result from Railway Employees-Railway Management negotiations or which may be authorized by Federal authorities. State/Contractor will be billed on actual costs in effect at time work is performed.

(1). A flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railway's representative.

(2). Each time a flagger is called, the minimum period for billing shall be the eight (8) hour basic day.

(3). The cost of flagger services provided by the Railway, when deemed necessary by the Railway's representative, will be borne by the State/Contractor.

(4). The average train traffic per 24-hour period on this route is 2 freight trains at a timetable speed of 10 MPH.

## SECTION 5. TRAIN DELAYS

No work performed by Contractor shall cause any interference with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Railway, it's lessees, licensees or others, unless specifically permitted under this agreement, or specifically authorized in advance by the Railway Representative. Nothing shall be done or suffered to be done by the Contractor at any time that would in any manner impair the safety thereof. When not in use, Contractor's machinery and materials shall be kept at least 50 feet from the centerline of Railway's nearest track, and there shall be no vehicular crossings of Railway's track except at existing open public crossings.

Contractor shall be responsible to Railway, including its affiliated railway companies, and its tenants for damages for any unscheduled delay to freight or passenger trains that are caused by the Contractor as follows:

### (a). Train Delay Damages, Passenger Trains

(1). Contractor will be billed and Contractor shall pay Railway within 30 days, as provided below, for the actual economic losses arising from loss of contractual incentive pay and bonuses, and contractual penalties resulting from passenger train delays, whether caused by Contractor, or subcontractors, or by the Railway performing Railway Work associated with this project. Railway agrees that it will not perform any act to unnecessarily cause passenger train delay.

(2). Passenger trains operate under incentive/penalty contract with the Railway. Under these arrangements, if Railway does not meet its contract service commitment, Railway may suffer loss of performance or incentive pay or be subject to a penalty payment. Contractor shall be responsible for any passenger train performance and incentive penalties

or other contractual economic losses actually incurred by Railway which are attributable to a passenger train delay caused by Contractor, or subcontractors.

(3). As example, a passenger train arrives 30 minutes after its contract service commitments with the Railway and Railway is assessed damages per terms of the contract. Contractor, and/or it's subcontractors, caused a 29 minute delay to the passenger train and therefore the Contractor is not responsible for passenger train performance incentives, penalties or other contractual economic losses actually incurred by Railway.

(4). As example, a passenger train arrives 30 minutes after its contract service commitment and Railway is assessed damages per terms of the contract. Contractor, and/or it's subcontractors, caused a 31 minute delay to the passenger train and therefore the Contractor is 100% responsible for any passenger train performance incentive, penalties or other contractual economic losses actually incurred by Railway.

(5). The contractual relationship between Railway and its passenger customers is proprietary and confidential. In the event of a passenger train delay covered by this Agreement, Railway will share information relevant to any passenger train delay to the maximum extent consistent with Railway confidentiality obligations. Damage for passenger train delays for certain passenger trains could be as high as \$50,000.00 per passenger train.

**(b). Train Delays Damages, Freight Trains**

(1). Contractor will be billed and Contractor shall pay Railway within 30 days, as provided herein, for the damages for freight train delays, whether caused by the State, its contractors or subcontractors, or by the Railway working for the State. The Contractor will be billed at a rate of \$304.28 (for 1998) per freight train hour for each freight train delayed as determined from Railway's records. Each delay may cause delays to more than one freight train at the same time. These rates will be updated annually and Contractor will be billed at rate per hour in effect at the time the delay occurred.

**Kindly acknowledge receipt of this letter by signing and returning to the undersigned two original copies of this letter, which, upon execution by Railway, shall constitute an Agreement between us.**

Yours truly,

(Contractor)

**The Burlington Northern and Santa Fe  
Railway Company**

By \_\_\_\_\_

By \_\_\_\_\_  
Manager Public Projects

\_\_\_\_\_  
(Title)

Accepted this \_\_\_\_ day of \_\_\_\_\_,  
2000

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip.



**LIMITED SEEPAGE, POLLUTION AND CONTAMINATION COVERAGE  
ENDORSEMENT WORDING**

In consideration of the premium charged it is understood and agreed that Exclusion f. of Coverage A. of this Policy shall not apply to the liability of the Insured resulting from seepage and/or pollution and/or contamination caused solely by:

- a) unintended fire, lightning or explosion: or
- b) a collision or overturning of a road vehicle: or
- c) a collision or overturning or derailment of a train.

Notwithstanding the foregoing it is agreed that the coverage provided by this Endorsement shall not apply to:

- 1. loss of, damage to or loss of use of property directly or indirectly resulting from sub-surface operations of the Insured, and/or removal of, loss of or damage to sub-surface oil, gas or any other substance;
- 2. any site or location used in whole or in part for the handling, processing, treatment, storage, disposal or dumping of any waste materials or substances;
- 3. the cost of evaluating and/or monitoring and/or controlling seeping and/or polluting and/or contaminating substances;
- 4. the cost of removing and/or nullifying and/or cleaning up seeping and/or polluting and /or contaminating substances on property at any time owned and/or leased and/or rented by the insured and/or under the control of the Insured.

Notwithstanding the foregoing, Item 1 does not apply to tunnels.