

RESOLUTION NO. R- 2698

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING THE CITY MANAGER TO SIGN ON BEHALF OF THE CITY OF KIRKLAND CERTAIN CONSTRUCTION AND MAINTENANCE AGREEMENTS BETWEEN THE CITY OF KIRKLAND AND BURLINGTON NORTHERN, INC., RELATING TO RAILROAD CROSSINGS AT N.E. 112TH STREET AND 120TH AVENUE N.E.

WHEREAS, the City Council heretofore, by Resolution R-2621, authorized the City to make application for State and Federal grant funds for use in construction of the N.E. 112th Street and 120th Avenue N.E. crossings of Burlington Northern Railway right-of-way; and

WHEREAS, the grant of said funds to the City of Kirkland requires the substitution of new construction and maintenance contracts between the City of Kirkland and Burlington Northern, Inc., to replace the single contract heretofore entered into between said parties on March 9, 1979.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Kirkland as follows:

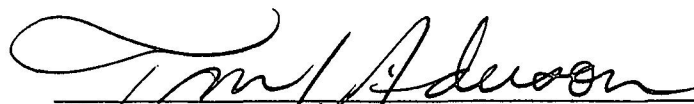
Section 1. The City Manager is hereby authorized and directed to sign on behalf of the City those certain construction and maintenance agreements between the City of Kirkland and Burlington Northern, Inc. for construction and maintenance of railroad crossings at N.E. 112th Street and 120th Avenue N.E. Copies of said agreements are attached to the original of this Resolution and by this reference incorporated herein.

PASSED by the Kirkland City Council in regular meeting on the 4th day of February, 1980.

SIGNED IN AUTHENTICATION THEREOF on the 4th day of February, 1980.


MAYOR

ATTEST:


Director of Administration & Finance
(ex officio City Clerk)

CONSTRUCTION AND MAINTENANCE AGREEMENT
WIDEN AND IMPROVE N.E. 112th Street at MP 19+627 AT
KIRKLAND, WASHINGTON

Agreement made this _____ day of _____, 19____,
between KIRKLAND, a municipal corporation of the State of Washington,
hereinafter called the "City," and the BURLINGTON NORTHERN INC., a Delaware
corporation, hereinafter called the "Railway";

Handwritten notes:
C.A.L.
G.M.
R.A.B.
B.H.A.

WITNESSETH:

WHEREAS, the City and the Railway entered into an agreement
designated as Railway Agreement Docket BN 10354 dated March 9, 1979, to widen
and improve N.E. 112th Street, and

WHEREAS, the City and the Railway desire to cancel and supersede said
agreement dated March 9, 1979; and

Handwritten notes:
R.S. 11/10/81
Vino
and O'Connell

WHEREAS, in the interest of aiding motor vehicle traffic, the City is
proposing to widen and improve N.E. 112th Street, the centerline of which will
cross the Railway's right-of-way and tracks at Railway Survey Station 262+26,
MP 19+627, in the W-1/2 of the NW-1/4, Sec. 33, Twp. 26 N., R. 5 E., W.M., at
Kirkland, Washington, at the location shown on map marked Exhibit "A", attached
hereto and made a part hereof; and

WHEREAS, the City desires that automatic flashing light traffic
control devices, cantilever type, with gates and motion sensing equipment be
installed at the widened and improved N.E. 112th Street crossing, said
installation to be covered by a separate agreement; and

WHEREAS, in connection therewith the City desires to acquire an
easement for roadway purposes, and will construct said improvements; and

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 City in connection with said project be performed in accordance with plans
and specifications to be prepared by the City; and

WHEREAS, the City and the Railway agree that the Railway will receive
no cognizable benefit from the construction of the said project; and

WHEREAS, the City is willing to undertake the construction of said
project with City Funds and such Federal Funds as may be available for this
purpose pursuant to the Federal Highway Acts applicable thereto, and 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 with reference to the
work to be done by each of them in connection therewith, the protection of
Railway facilities and the payment of costs and expenses therein involved;

NOW THEREFORE, in consideration of the mutual covenants herein
contained, it is mutually agreed as follows:

I

The Railway has granted an easement to the City for roadway purposes
only upon and across the surface of the Railway's right-of-way and tracks as
shown outlined in green on Exhibit "A". Said easement was granted for a
consideration of \$500.00.

II

The automatic flashing light warning devices to be installed at this grade crossing will be covered by a separate agreement between the parties hereto.

III

The City shall perform its work in accordance with detailed plans and specifications which shall be prepared by the City and submitted to the Assistant Vice President, Engineering of the Railway for approval and approved by it when such plans and specifications are applicable or affect any right-of-way or facility of the Railway, and no work pursuant to said plans and specifications shall be performed on the right-of-way of the Railway prior to receipt of notices to proceed given by the said Assistant Vice President, Engineering to the City Engineer or their respective authorized representatives. Nothing provided in this agreement with respect to said plans and specifications shall be construed or deemed to be a ratification or an adoption by the Railway of either or both said plans as its own.

IV

The City and the Railway shall perform the various items of work as follows:

- A. WORK TO BE PERFORMED AND MATERIALS TO BE FURNISHED BY THE CITY OR ITS CONTRACTOR AT CITY EXPENSE.
 1. Except as otherwise herein provided, furnish all plans, engineering, supervision, labor, material, supplies and equipment necessary for construction of the project.
 2. Do all grading of the roadway approaches to the crossings and furnish and place asphaltic concrete paving through the crossings, including between the rails.
 3. Provide all drainage structures under the roadway, if required.
 4. Furnish and place advance warning signs and standard pavement markings for railroad grade crossings.
 5. 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.
- B. WORK TO BE PERFORMED AND MATERIALS TO BE FURNISHED BY THE RAILWAY AT CITY EXPENSE.
 1. Track and Crossing Work

Remove 36 ft. plank crossing, 2 crossbucks and 2 stop signs, place 117 T.F. of 115# welded rail replacing 117 T.F. of 112# bolted rail, rehabilitate track including ties, ballast and fastenings and place 38 T.F. of flange and header rail.
 2. Engineering and Preparation of Bills

Perform preliminary and special engineering and inspection, including field and office work and preparation of bills.
 3. Flagging, Protective Services and Devices

Perform flagging and furnish protective services and devices during construction, account operations of the City or its contractor, as deemed necessary by the Railway.

V

All work herein provided for, to be done by the City or its contractors on the Railway's right-of-way, shall be performed by the City or its contractors in a manner satisfactory to the Railway and shall be performed at such time and in such manner as not to interfere unnecessarily with the movement of trains or traffic upon the tracks of the Railway. The City or its contractors shall use all care and precaution necessary to avoid accident, damage, or interference to the Railway's tracks or to the trains or traffic using its tracks and notify the Railway a sufficient time in advance whenever it is about to perform work adjacent to any track to enable the Railway to furnish flagging and such other protective services and devices as might be necessary to ensure safety of railway operations, and the Railway shall have the right to furnish all such flagging or protective services and devices as in its judgment is necessary, and the City shall reimburse the Railway for the cost thereof. The Railway will submit bills for flagging and other protective services and devices currently during progress of the work contemplated by this agreement. The Railway will submit complete billing for flagging and other protective services and devices at the earliest practical date, and the City shall pay such bills promptly. Attached hereto, marked Exhibit "B", and by this reference made a part hereof, is a statement of conditions when flagmen and protective services and devices will be furnished by the Railway. Wherever the safeguarding of trains or traffic of the Railway is mentioned in this agreement, it is intended to cover and include all users of the Railway's tracks having permission for such use.

VI

In accordance with FHPM 6-6-2-1, the Railway will receive no ascertainable net benefits from said project and, therefore, is not required to contribute to the cost of said project.

VII

It is understood that Exhibit "C" attached hereto is a current estimate of the cost of the work to be performed by the Railway at City expense and is for information purposes only, and it is further understood that, except for progress bills, billings made by the Railway under the authority of this agreement will be on the basis of the actual cost of the work performed.

Progress bills may be submitted by the Railway to the City during the progress of the work included in this agreement on the basis of the Railway Engineer's estimate of the percentage of completion of the various cost reimbursable items shown on Exhibit "C", and the City shall pay such bills promptly.

It is further agreed that a final and complete billing of all incurred actual costs of the work performed by the Railway, including labor, additives, materials, preliminary and construction engineering, preparation of bills, and the cost of transportation of said materials, ascertained in accordance with the provisions of the FHPM 1-4-3, shall be made at the earliest practical date. The City shall, upon presentation of final billing, promptly reimburse the Railway for the cost of the work included in this agreement. Preliminary engineering costs incurred subsequent to February 17, 1978, may be charged against the project.

VIII

All contracts between the City and its contractor, for either the construction herein provided for or maintenance work on the highway within any easement area described herein or shown on the exhibits attached hereto, shall require the contractor to protect and hold harmless the Railway and any other railroad company occupying or using the Railway's right-of-way or line of railroad against all loss, liability and damage arising from activities of the contractor, its forces or any of its subcontractors or agents; and shall further provide that the contractor shall:

1. Furnish to the Railway a Railroad Protective Policy in the form provided by FHPM 6-6-2-2. The combined single limit of said policy shall not be less than Two Million Dollars (\$2,000,000.00) for all damages arising out of bodily injuries to or death of any person or persons and for all damages arising out of loss or destruction of or injury or damage to property in any one occurrence during the policy period. Said insurance policy executed by a corporation qualified to write the same in the State in which the work is to be performed shall be in form and substance satisfactory to the Railway and shall be delivered to and approved by the Railway prior to the entry upon use of its property by the contractor.

2. Carry regular Contractor's Public Liability and Property Damage Insurance as specified in FHPM 6-6-2-2 providing for a limit of not less than One Million Dollars (\$1,000,000) for all damages arising out of bodily injuries to or death of one person, and, subject to that limit for each person, a total limit of not less than Two Million Dollars (\$2,000,000) for all damages arising out of bodily injuries to or death of two or more persons in any one accident; and providing for a limit of not less than One Million Dollars (\$1,000,000) for all damages to or destruction of property in any one accident and subject to that limit a total (or aggregate) limit of not less than Two Million Dollars (\$2,000,000) for all damages to or destruction of property during the policy providing said Contractor's Public Liability and Property Damage Insurance, executed by a corporation qualified to write the same in the state in which the work is to be performed, in form and substance satisfactory to the Railway shall be delivered to and approved by the Railway prior to the entry upon or use of the Railway's property by the contractor.

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

IX

The City, without expense to the Railway, shall secure from the owner or owners of that certain property lying adjacent to and outside of the Railway's right-of-way all necessary easements, permits or other interest therein necessary for the occupancy and use of said property during the construction, maintenance and operation of the roadway and its appurtenances.

X

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

XI

In case said road shall at any time cease to be used as a public road, or shall by operation of law become vacated or abandoned, the rights and benefits to the City under this agreement shall immediately cease, and the Railway shall be entitled to repossess the land to which it has executed easements and permits to the City, and to use the same thereafter as if this agreement had never been executed, without the necessity of any further legal proceedings.

XII

If the Railway enters into a contract or agreement with a contractor to perform any of the work, which the Railway is required to perform under the terms of this agreement by reason of the construction of the City's project, the Railway, for itself, its assigns and successors in interest, agrees that it will not discriminate in its choice of contractors and will include all the nondiscrimination provisions set forth in Exhibit "D", attached hereto and made a part hereof, in any such contract or agreement.

XIII

This agreement cancels and supersedes that certain agreement dated March 9, 1979.

XIV

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

IN WITNESS WHEREOF, the parties have caused this agreement to be executed the day and year first hereinabove written.

ATTEST:

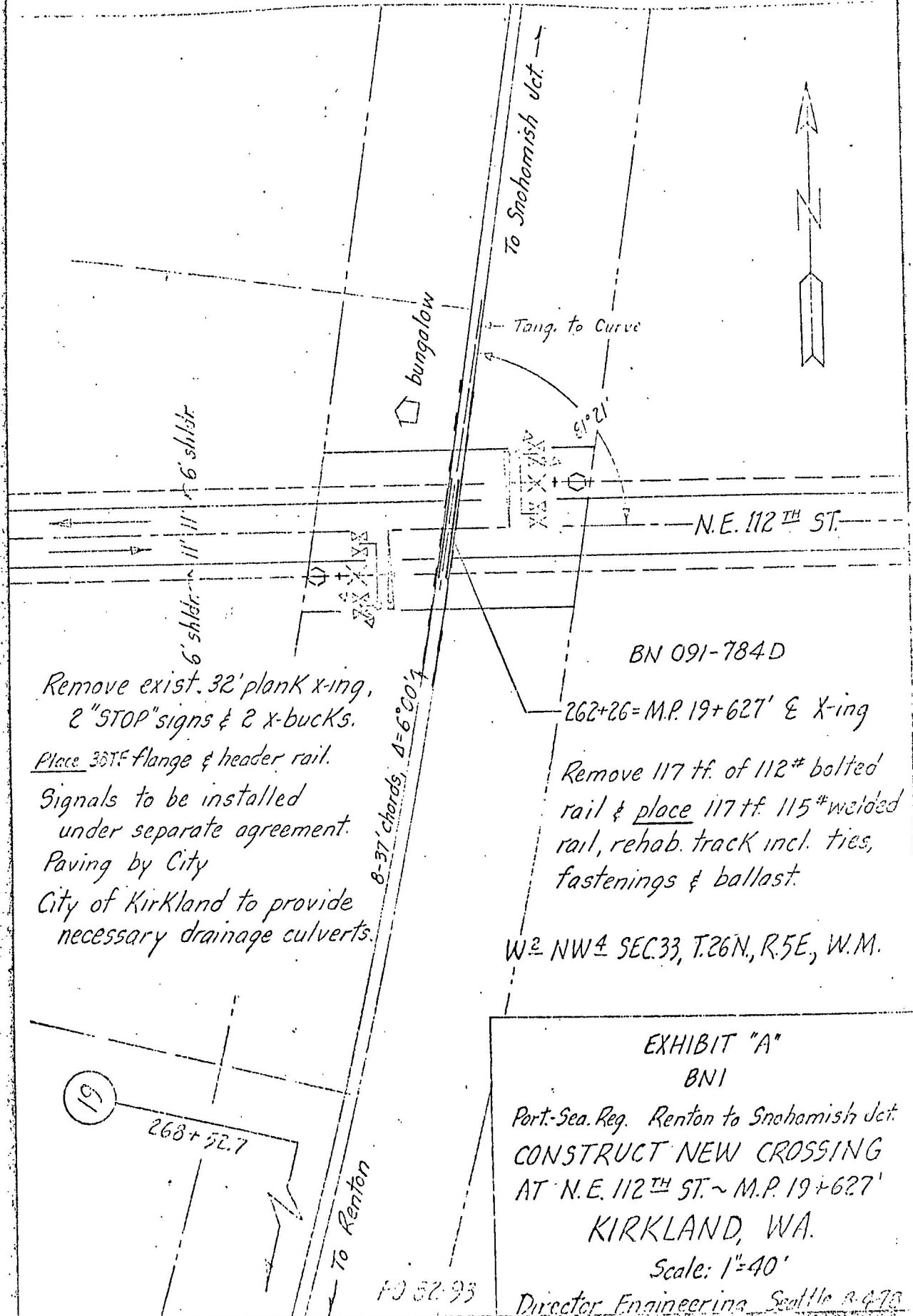
KIRKLAND, WASHINGTON

(Title)

By Allen B. Beck
(Title) *City Manager*

BURLINGTON NORTHERN INC.

By G.W. Thompson
(Title)



Remove exist. 32' plank x-ing,
 2 "STOP" signs & 2 x-bucks.
 Place 36Tf. flange & header rail.
 Signals to be installed
 under separate agreement.
 Paving by City
 City of Kirkland to provide
 necessary drainage culverts.

Remove 117 tf. of 112# bolted
 rail & place 117 tf. 115# welded
 rail, rehab. track incl. ties,
 fastenings & ballast.

W² NW⁴ SEC. 33, T. 26N, R. 5E, W.M.

EXHIBIT "A"
 BNI
 Port-Sea Reg. Renton to Snohomish Jct.
CONSTRUCT NEW CROSSING
AT N.E. 112TH ST. ~ M.P. 19+627'
KIRKLAND, WA.
 Scale: 1"=40'
 Director Engineering Seattle B-478

EXHIBIT "D"

STATEMENT OF CONDITIONS WHEN FLAGMEN, PROTECTIVE SERVICES
AND DEVICES WILL BE FURNISHED BY THE RAILWAY

Railway flagmen, protective services and devices will be furnished but not limited thereto for the following conditions:

- (1) When in the opinion of the Railway protection is necessary to safeguard the Railway's trains, engines, facilities and property.
- (2) When any work is performed over, under, or in close proximity to tracks or any Railway facilities.
- (3) When work in any way interferes with the operation of trains at usual speeds or threatens, damages, or endangers track or Railway facilities.
- (4) When any hazard is presented to Railway communications, signal, electrical, or other facilities either due to person, material, equipment or blasting in the vicinity.
- (5) Where or when material is being hauled across tracks. Special clearance must be obtained from the Railway before moving heavy or cumbersome objects and equipment which might result in making the track impassable.

COST OF FLAGGING AND OTHER PROTECTIVE SERVICES AND DEVICES

(a) NUMBER	(b) CLASSIFICATION	(c) BASE PAY	(d) HEADQUARTERS
3	Sectionmen	\$8.27 per hour per 8 hour day plus additives.	Woodinville, WA

NOTES:

- (a) A full flagging crew generally consists of three men. Under certain conditions more than three men may be required or a lesser number may be sufficient. However, additional personnel, such as communications linemen and/or signalmen may be used to protect communications and signal facilities, if deemed necessary by the Railway.
- (b) The Classification is shown solely for the prospective bidder's information, and there is no guarantee that the above classes of labor will actually be used or that the rates of pay shown in column (c) will be those in effect at the time the work is undertaken.
- (c) Shows base pay rate per man per hour for normal eight-hour shift in effect August, 1979.
- (d) Estimated costs for travel per employee from headquarters to job site and return is \$ 18.00 per round trip. The estimated daily cost for meals and other accommodations is \$ ---- per employee.
- (e) In addition, protective devices, such as crossing signals, indicators, telltales, lights, telephone, etc., may be required. In this connection telltales may be installed by the Railway, at its option, as a condition of its approval of any proposed restrictions of vertical clearance during construction to less than 22-1/2 feet.
- (f) It shall be the duty and responsibility of the City and its Contractors to notify the Railway's Division Superintendent at least forty-eight (48) hours in advance of when flagmen or other protective services and devices are required.

To all direct labor costs, there shall be additional charges for Vacation Allowance, Health and Welfare, Railroad Retirement and Unemployment Taxes; Public Liability, Property Damage and Workmen's Compensation Insurance; and accounting and billing. For estimating purposes only, these additives collectively may be considered as approximating 45 % of direct labor costs.

BURLINGTON NORTHERN INC.

PACIFIC DIVISION
STATE OF WASHINGTON

KIRKLAND

7TH SUBDIVISION
VALUATION SECTION N-8A

EXHIBIT "C"

Estimated cost to widen and improve N.E. 112th Street as per Exhibit "A".

<u>ESTIMATED COST</u>	<u>LABOR</u>	<u>NON-LABOR</u>
PART I - Not Estimated		
PART II		
1. <u>Track and Crossing Work</u>		
Remove existing 32 ft. plank crossing, two crossbucks and two stop signs; place 117 TF of 115# welded, replacing 117 TF-100# bolted rail, rehabilitate track, including ties, ballast and fastenings and place 96 TF of flange and header rail.		
Material Handling	\$ 1,095	\$ 3,280
Freight	---	155
Equipment Rental	---	185
Salvage	---	295
		(445)
Subtotals without Labor Surcharges	\$ 1,095	\$ 3,470
2. <u>Engineering and Preparation of Bills</u>		
Preliminary Engineering	\$ 150	---
Construction, Engineering and Inspection	350	---
Preparation of Bills	120	---
Equipment Rental	---	20
Subtotals without Labor Surcharges	\$ 620	\$ 20
3. <u>Flagging, Protective Services and Devices</u>		
Not Estimated - see Exhibit "B"	---	---
<u>SUMMARY</u>		
1. Track and Crossing Work	\$ 1,095	\$ 3,470
2. Engineering and Bill Preparation	620	20
3. Flagging, Protective Services and Devices	Not Estimated	
4. Liability Insurance - \$1,000,000 Coverage	---	265
	\$ 1,715	\$ 3,645
4. <u>Labor Surcharges:</u>		
Vacation Pay, Paid Holidays, Railroad Retirement, Unemployment, Health and Welfare Benefits	\$ 815	---
	\$ 2,530	\$ 3,645
		2,530
		\$ 6,175
Contingencies		527
		\$ 6,702
Washington State Sales Tax		172
		\$ 6,874
Total B/C vs. City of Kirkland		\$ 6,874

Office of Director, Engineering
Seattle, Washington
December 3, 1979

R-2698

EXHIBIT "D"

Appendix A

Nondiscrimination Provisions of Title VI of the Civil Rights Act of 1964.

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the 'contractor'), agree as follows:

(1) Compliance with Regulations: The contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in federally-assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

* (2) Nondiscrimination: The contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix "A", "B" and "C".

(3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the ground of race, color or national origin.

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

(5) Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the State Highway Department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to,

(a) withholding of payments to the contractor under the contract until the contractor complies, and/or

(b) cancellation, termination or suspension of the contract, in whole or in part.

(6) Incorporation of Provisions: The contractor will include the provisions of paragraph (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The contractor will take such action with respect to any subcontract or procurement as the State Highway Department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the State to enter into such litigation to protect the interests of the State, and, in addition, the contractor may request the United States to enter into such litigations to protect the interests of the United States.

* PROHIBITION OF DISCRIMINATION ON THE BASIS OF SEX.

SEC. 162. (a) Chapter 3 of Title 23, United States Code is amended by adding at the end thereof the following new section:

"S. 324, Prohibition of discrimination on the basis of sex.
No person shall on the ground of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal assistance under this title or carried on under this title. This provision will be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination, under title VI of the Civil Rights Act of 1964. However, this remedy is not exclusive and will not prejudice or cut off any other legal remedies available to a discriminatee."