

RESOLUTION R - 3046

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND, APPROVING A CONTRACT WITH BURLINGTON NORTHERN RAILROAD COMPANY TO PERFORM CERTAIN STREET AND OTHER IMPROVEMENTS WITHIN THE NORTHEAST 124TH STREET RAILROAD CROSSING RIGHT-OF-WAY IN CONJUNCTION WITH THE NORTHEAST 124TH STREET IMPROVEMENT PROJECT, AND AUTHORIZING THE CITY MANAGER TO SIGN SAID CONTRACT ON BEHALF OF THE CITY OF KIRKLAND.

Whereas, the City of Kirkland desires to make certain street and railroad crossing improvements in conjunction with its Northeast 124th Street improvement project at the railroad crossing identified by Burlington Northern Railroad Company as MP 19+4165; and

Whereas, said parties desire to contract with reference to the work to be done by the City of Kirkland and by Burlington Northern Railway in connection with said improvements, the protection of railway facilities and the payment of costs and expenses therein involved; and

Whereas, each party is authorized to enter into such contract, now, therefore,

Be it resolved by the City Council of the City of Kirkland as follows:

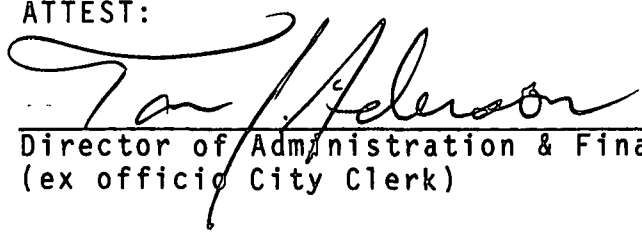
Section 1. The City Manager is hereby authorized and directed to sign on behalf of the City of Kirkland, that certain "Construction and Maintenance Agreement" between the City of Kirkland and Burlington Northern Railroad Company to widen and improve Northeast 124th Street and replace signals at MP 19+4165 at Kirkland, Washington. A copy of said contract is attached to the original of this resolution and by this reference fully incorporated herein.

Passed by majority vote of the Kirkland City Council in regular, open meeting this 6th day of September, 1983.

Signed in authentication thereof this 6th day of September, 1983.

  
MAYOR

ATTEST:

  
Director of Administration & Finance  
(ex officio City Clerk)

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CONSTRUCTION AND MAINTENANCE AGREEMENT

IMPROVE 124TH AVENUE N.E. AND RELOCATE SIGNALS AT MP 19+4350  
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 RAILROAD COMPANY, a  
Delaware corporation, hereinafter called the "Railway";

WITNESSETH:

WHEREAS, in the interest of aiding motor vehicle traffic, the City is  
proposing to improve 124th Avenue NE, the centerline of which will cross the  
Railway's right-of-way and tracks at Railway Survey Station 224+91, MP 19+4350,  
in the NE 1/4 of the SW 1/4, Sec. 28, 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 existing automatic flashing light  
traffic control device on the south side of the crossing be relocated at the  
improved 124th Avenue NE crossing; and

WHEREAS, in connection therewith the City desires that the signals at  
124th Avenue NE operate together with proposed new signals at NE 124th Street  
crossing and that these signals be intertied with traffic lights at the  
intersection of NE 124th Street and 124th Avenue NE; 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 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 specifi-  
cations 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 pro-  
vided 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.

## II

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

- PART I. 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.

PART II. WORK TO BE PERFORMED AND MATERIALS TO BE FURNISHED BY THE RAILWAY AT CITY EXPENSE.

1. Signal Work

Prepare plans for, and relocate existing cantilever signal on south side of crossing, modify circuitry and provide for intertie to City traffic light.

2. Track and Crossing Work

Rehabilitate track for crossing extension including ties, ballast, flange railing and fastenings.

3. Engineering and Preparation of Bills

Perform preliminary and special engineering and inspection, including field and office work and preparation of bills.

4. 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.

## III

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.

IV

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.

V

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 March 8, 1982, may be charged against the project.

VI

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) for all damages arising out of bodily injuries to or death of any person or persons and for all damages arising out of the loss or destruction of or injury or damage to property in any one occurrence during the policy period, and subject to that limit a total (or aggregate) limit of not less than Six Million Dollars (\$6,000,000) for all damage 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 the form and substance satisfactory to the Railway Company and shall be delivered to and approved by the Railway prior to the entry upon or use of its property by the contractor.

2. Carry regular Contractor's Public Liability and Property Damage Insurance 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

period. A certified copy of 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 for or by the failure to do or perform anything for which it is responsible under the provisions hereof, shall damage or destroy any property of the Railway, such damage or destruction shall be corrected by the City in the event its contractor or the insurance carriers fail to repair or restore the same.

VII

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.

VIII

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.

IX

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.

X

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.

XI

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 \_\_\_\_\_

(Title)

BURLINGTON NORTHERN RAILROAD COMPANY

By \_\_\_\_\_

(Title)

NE 1/4 SW 1/4 SEC 28  
T.26N., R.5E., WM

226+88 = E XING =  
MP 19+4165 (19.79)

224+97 E XING =  
MP 19+4356 (19.83)

Existing 84'  
EASEMENT

Existing 80'  
EASEMENT

WORK by BNRR

**RELOCATE** - Existing Signal  
(Cantilever Type) in  
NEly Quadrant as shown

**NOTE:** Signals at both NE  
124th St. and 124th Ave.  
NE. will operate together  
and both will be  
intertied to traffic lights  
at intersection of NE 124th  
St. and 124th Ave. NE.

**EXTEND** - Existing Asphalt  
Crossing to GO (Paving  
by Others)

**EXTEND** - flange railing  
12'

**REHABILITATE** - with new ties,  
fastenings ballast for  
crossing extension

EXHIBIT A

BN RAILROAD CO.

SEA-PORT REG. - WOODINVILLE-RENTON

REHABILITATE  
124TH AVE. NE XING

KIRKLAND, WA.

CHIEF ENGINEER REGION-SEATTLE 12-2-82

REV DATE 2-11-82 R.22-83 MMC

SCALE 1" = 50'  
DOT# BN 91-790 G

EXHIBIT "B"

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	\$11.50 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 1, 1983.
- (d) Estimated costs for travel per employee from headquarters to job site and return is \$19.00 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 RAILROAD COMPANY

PACIFIC DIVISION

7TH SUBDIVISION

STATE OF WASHINGTON

KIRKLAND

VALUATION SECTION N-8A

EXHIBIT "C"

Estimated cost to improve 124th Avenue crossing at MP 19+4350 as per Exhibit "A".

<u>ESTIMATED COST</u>	<u>LABOR</u>	<u>NON-LABOR</u>
Part I - Not Estimated.		
Part II -		
1. <u>Signal Work</u>		
Relocate existing cantilever flashing light signal on south side of crossing, modify circuitry and provide for intertie to City traffic light.	\$2,100	\$10,110
Material Handling	--	720
Freight	--	100
Equipment Rental	--	525
Expenses	--	210
Subtotals without Labor Surcharges	\$2,100	\$11,665
2. <u>Track and Crossing Work</u>		
Rehabilitate track for crossing extension, including ties, ballast, flange railing and fastenings.	\$ 240	\$ 325
Material Handling	--	15
Freight	--	20
Equipment Rental	--	130
Expenses	--	25
Subtotals Without Labor Surcharges	\$ 240	\$ 515
3. <u>Engineering and Preparation of Bills</u>		
Preliminary engineering, office work, construction engineering and inspection.	\$ 590	\$ --
Preparation of bills.	230	--
Subtotals Without Labor Surcharges	\$ 820	\$ --
4. <u>Flagging, Protective Services and Devices</u>		
Not Estimated - see Exhibit "B"		
<u>SUMMARY</u>		
1. Signal Work	\$2,100	\$11,665
2. Track and Crossing Work	240	515
3. Engineering and Bill Preparation	820	--
4. Flagging, Protective Services and Devices	--	--
5. Liability Insurance	--	340
	<u>\$3,160</u>	<u>\$12,520</u>
Labor Surcharges:		
Vacation Pay, Paid holidays, Railroad Retirement, Unemployment, Health and Welfare Benefits	\$1,580	\$ --
	<u>\$4,740</u>	<u>\$12,520</u>
Contingencies		<u>\$17,260</u>
Washington State Sales Tax		<u>1,730</u>
		<u>\$18,990</u>
Total B/C vs. City of Kirkland		<u>745</u>
		<u>\$19,735</u>

Office of Chief Engineer  
Seattle, Washington  
August 17, 1983

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"), agrees 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."

City

CONSTRUCTION AND MAINTENANCE AGREEMENT

WIDEN AND IMPROVE N.E. 124TH STREET AND REPLACE SIGNALS AT MP 19+4165  
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 RAILROAD COMPANY, a Delaware corporation, hereinafter called the "Railway";

WITNESSETH:

WHEREAS, King County, the State of Washington, and the Northern Pacific Railway Company entered into an agreement designated Northern Pacific Docket No. 25526, dated August 10, 1966, to install automatic flashing light signals at the NE 124th Street crossing; and

WHEREAS, the Railway is successor in interest by merger, to the Northern Pacific Railway Company; and

WHEREAS, the City is successor to the State of Washington and King County; and

WHEREAS, the City and the Railway desire to cancel and supersede said agreement dated August 10, 1966; and

WHEREAS, in the interest of aiding motor vehicle traffic, the City is proposing to widen and improve NE 124th Street, the centerline of which will cross the Railway's right-of-way and tracks at Railway Survey Station 226+88, MP 19+4165, in the NE 1/4 of the SW 1/4, Sec. 28, 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 motion sensing equipment be installed at the widened and improved NE 124th Street crossing; 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 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.

## II

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

Part I: 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.

Part II: WORK TO BE PERFORMED AND MATERIALS TO BE FURNISHED BY THE RAILWAY AT CITY EXPENSE.

1. Signal Work  
Remove existing signals. Prepare plans for, furnish and install automatic flashing light traffic control devices, cantilever type. Provide intertie to city traffic light.
2. Track and Crossing Work  
Place 78 TF of 112# bolted rail, replacing 78 TF of 100# bolted rail, field weld replacement rail, rehabilitate track for crossing extension, including ties, ballast, flange railing and fastenings.
3. Engineering and Preparation of Bills  
Perform preliminary and special engineering and inspection, including field and office work and preparation of bills.
4. 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.

## III

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.

#### IV

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.

#### V

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 March 8, 1982, may be charged against the project.

#### VI

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) for all damages arising out of bodily injuries to or death of any person or persons and for all damages arising out of the loss or destruction of or injury or damage to property in any one occurrence during the policy period, and subject to that limit a total (or aggregate) limit of not less than Six Million Dollars (\$6,000,000) for all damage 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 the form and substance satisfactory to the Railway Company and shall be

delivered to and approved by the Railway prior to the entry upon or use of its property by the contractor.

2. Carry regular Contractor's Public Liability and Property Damage Insurance 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 period. A certified copy of 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 for or by the failure to do or perform anything for which it is responsible under the provisions hereof, shall damage or destroy any property of the Railway, such damage or destruction shall be corrected by the City in the event its contractor or the insurance carriers fail to repair or restore the same.

#### VII

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.

#### VIII

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.

#### IX

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.

#### X

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.

#### XI

This agreement cancels and supersedes that certain agreement dated August 10, 1966.

XII

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

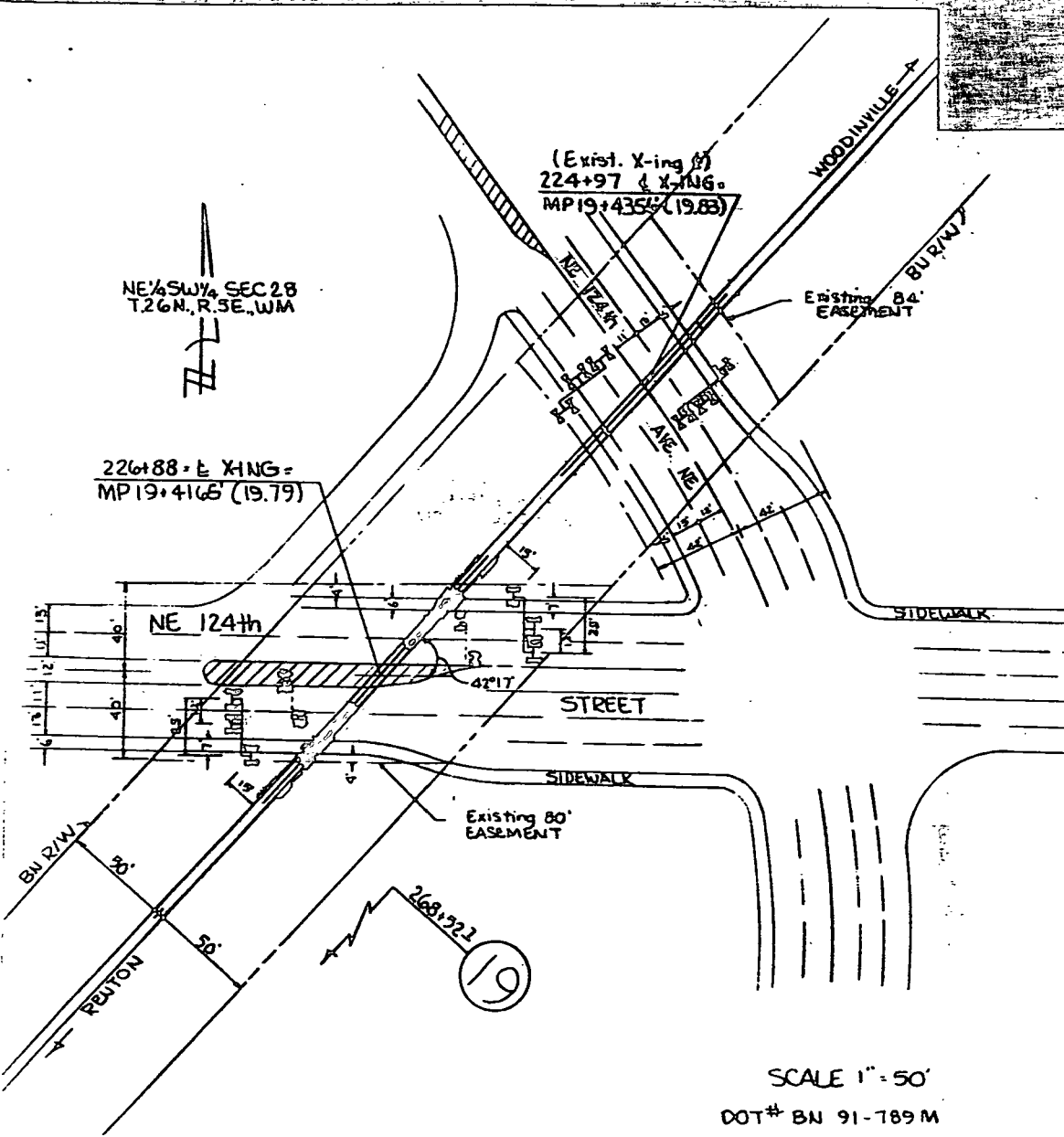
\_\_\_\_\_  
(Title)

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

BURLINGTON NORTHERN RAILROAD COMPANY

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





NE 1/4 SW 1/4 SEC 28  
T.26 N., R. 3E., WM

226+88 = E XING =  
MP 19+4168' (19.79)

(Exist. X-ing @)  
224+97 & X-ING.  
MP 19+4356' (19.83)

Existing 84'  
EASEMENT

Existing 80'  
EASEMENT

SCALE 1" = 50'

DOT# BN 91-789 M

WORK by BNRR

EXTEND- Existing 32'  
asphalt crossing to 98'  
(Paving by Others)

EXTEND- Flange rail  
GOTF

REPLACE- 78 TF of 100°  
botted rail with 78 TF  
of SH 112° bottled rail

REHABILITATE- with new  
ties, fastenings & ballast  
for crossing extension

REMOVE- Existing Cant. type  
signals.

INSTALL- Automatic flashing  
light traffic control  
devices (cant type)  
and motion sensing devices

NOTE: Signals at both  
NE 124th St. and 124th  
Ave. NE. will operate  
together and both  
will be intertied to  
traffic lights at inter-  
section of NE 124th St.  
and 124th Ave. NE.

EXHIBIT A

BN RAILROAD CO.  
SEA-PORT REG. - WOODINVILLE - RENTON

REHABILITATE  
NE 124TH ST. XING.

KIRKLAND WA.  
CHIEF ENGINEER REGION - SEATTLE 12-2-82  
REV. DATE - 3-11-89, 8-23-83

J.M.C.

EXHIBIT "B"

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	\$11.50 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 1, 1983.
- (d) Estimated costs for travel per employee from headquarters to job site and return is \$19.00 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 RAILROAD COMPANY

PACIFIC DIVISION  
STATE OF WASHINGTON

KIRKLAND  
EXHIBIT "C"

7TH SUBDIVISION  
VALUATION SECTION N-8A

Estimated cost to widen and improve the NE 124th Street crossing at MP 19+4165 as per Exhibit "A".

<u>ESTIMATED COST</u>	<u>LABOR</u>	<u>NON-LABOR</u>
Part I - Not Estimated.		
Part II -		
1. <u>Signal Work</u>		
Remove existing signals and install automatic flashing light traffic control devices, cantilever type, and provide for intertie to City traffic light.	\$ 5,750	\$22,490
Material handling	---	1,595
Freight	---	225
Equipment Rental	---	1,440
Expenses	---	575
Subtotals Without Labor Surcharges	\$ 5,750	\$26,325
2. <u>Track and Crossing Work</u>		
Place 78 TF of 112# bolted rail replacing 78 TF of 100# bolted rail, field weld replacement rail, rehabilitate track for crossing extension including ties, ballast, flange railing and fastenings.	\$ 2,330	\$ 2,480
Material Handling	---	80
Freight	---	120
Equipment Rental	---	640
Expenses	---	130
Subtotals Without Labor Surcharges	\$ 2,330	\$ 3,450
3. <u>Engineering and Preparation of Bills</u>		
Preliminary engineering, office work, construction engineering and inspection	\$ 1,760	
Preparation of bills	680	
Subtotals Without Labor Surcharges	\$ 2,440	
4. <u>Flagging, Protective Services and Devices</u>		
Not Estimated - see Exhibit "B"		
<u>SUMMARY</u>		
1. Signals Work	\$ 5,750	\$26,325
2. Track and Crossing Work	2,330	3,450
3. Engineering and Bill Preparation	2,440	---
4. Flagging, Protective Services and Devices	---	---
5. Liability Insurance	---	1,070
	<u>\$10,520</u>	<u>\$30,845</u>

ESTIMATED COST

LABOR

NON-LABOR

Part II - (Continued)

Labor Surcharges:

Vacation Pay, Paid holidays, Railroad  
Retirement, Unemployment, Health and  
Welfare Benefits

\$ 5,120  
\$15,640

\$ ---  
\$30,845  
15,640  
\$46,485  
4,650  
\$51,135  
2,290  
\$53,425  
(210)  
\$53,215

Contingencies

Washington State Sales Tax

Salvaqe  
Total B/C vs. City of Kirkland

Office of Chief Engineer  
Seattle, Washington  
August 17, 1983

sardengc1021

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"), agrees 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."