

ATTACHMENT "B"

CONSTRUCTION AND MAINTENANCE AGREEMENT
CONSTRUCTION OF THE N.E. 195TH ST. CROSSING (MP 25.86)
WOODINVILLE, WASHINGTON

BURLINGTON NORTHERN RAILROAD CO.
DOCKET NUMBER **BN 27951**

Agreement made this 20th day of October, 1989 between KING COUNTY, hereinafter called the "Agency", and the BURLINGTON NORTHERN RAILROAD COMPANY, a Delaware corporation, hereinafter called the "Railway":

WITNESSETH:

WHEREAS, in the interest of public safety and motor vehicle traffic, the Agency is proposing to construct a public grade crossing where it crosses our Pacific 7th Subdivision located at Railway Survey Station 1331 + 47, MP 25 + 4607; MP 25.86, in the SE 1/4 of the NW 1/4 of Section 3, T. 26N., R. 5 E., W.M., in Woodinville, Washington, at the location shown on map marked Exhibit 'A' attached hereto and made a part hereof; and

WHEREAS, the Agency desires to acquire an easement for roadway purposes across the surface of the Railway's right-of-way; 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 Agency in connection with said widening be performed in accordance with plans and specifications to be prepared by the Agency, and

WHEREAS, the parties hereto desire that the plans and specifications for the installation of said Signals be prepared by the Railway; and

WHEREAS, the parties hereto agree that the Railway will receive no ascertainable benefit from the construction of said project, and

WHEREAS, the Agency is willing to undertake the construction of said project with Agency 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 shall grant to the Agency, for and in consideration of \$ 4,865.00 by separate instrument an easement for roadway purposes only upon and across the surface of the Railway's right-of-way as shown outlined in green on Exhibit "A".

II

The Agency shall perform its work in accordance with detailed plans and specifications which shall be prepared by the Agency and submitted to the Chief Engineer 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 Chief Engineer to the Agency 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.

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

- I. WORK TO BE PERFORMED AND MATERIALS TO BE FURNISHED BY THE AGENCY OR ITS CONTRACTOR AT AGENCY 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 crossing and furnish and place asphaltic concrete paving up to the crossing.
 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.

- II. WORK TO BE PERFORMED AND MATERIALS TO BE FURNISHED BY THE RAILWAY AT AGENCY EXPENSE.
 1. Track and Crossing Work
Place a 93' rubber crossing, rehabilitate crossing with new ties, fastenings, ballast, and fabric.
 2. Signal Work
Install automatic flashing light traffic control devices, cantilever type, train activation devices. Intertie with the traffic signals at the intersection of N.E. 195th Street and Woodinville-Snohomish Road.
 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 Agency or its contractor, as deemed necessary by the Railway.

IV

All work herein provided for, to be done by the Agency or its contractors on the Railway's right-of-way, shall be performed by the Agency 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 Agency 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 Agency 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 Agency 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.

V

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

VI

The Railway agrees not to commence construction work for said project until receipt from the Agency of written notice to proceed with the work, and that reimbursement will be limited to construction costs incurred subsequent to the date of said notification.

VII

The Signals shall be installed at the Railway grade crossing shown on Exhibit "A" in accordance with plans and estimates furnished by the Railway.

VIII

It is understood that Exhibit "C", attached hereto and made a part hereof, is a current estimate of the cost of the work to be performed by the Railway at Agency expense and is for informational purposes only.

The Agency shall reimburse the Railway for all cost and expense incurred by the Railway in connection with the construction work as indicated in this agreement. The Railway may submit progress bills to the Agency during the progress of the work included in this agreement for the actual cost of services and expenses and the Agency shall pay such bills promptly.

It is further agreed that a final and complete billing of all actual incurred costs and expenses, ascertained in accordance with the provisions of FHPM 1-4-3, which by this reference is incorporated in this agreement, shall be made at the earliest practical date. The Agency shall, upon presentation of final billing promptly reimburse the Railway for the cost of services and expenses of work included in this agreement. Preliminary engineering costs incurred subsequent to May 9, 1988, may be charged against this project.

IX

All contracts between the Agency 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 damages 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 certificate of insurance providing proof of Contractor's Public Liability and Property Damage Insurance which specifically names the Railway as an additional insured and contains a thirty (30)-day advance written notice to the Railway in the event of

cancellation, nonrenewal or material change of policy, 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 Agency, 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 Agency in the event its contractor or the insurance carriers fail to repair or restore the same.

For any work performed in the State of Washington, nothing in this agreement is intended to be construed as a requirement for an indemnification against the sole negligence of the Railway, its officers, employees or agents. Moreover, for any work performed in the state of Washington, the contractor shall specifically and expressly agree to indemnify 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 damages, including environmental damage, hazardous materials damage, or penalties or fines that may be assessed, caused by or resulting from the concurrent negligence of (a) the Railway or the Railway's officers, employees or agents, and (b) the contractor or the contractor's employees, agents or subcontractors, to the extent of the contractor's negligence.

The contractor shall further agree that it has a duty to defend at its own expense, in the name and on behalf of the Railway, all claims or suits for injuries or death of persons or damage to property arising or growing out of the work carried on under this agreement, for which the Railway is liable or is alleged to be liable. However, upon a final determination in a court of law in which a percentage of negligence is attributed to the Railway, the Railway agrees to reimburse the contractor in the same percentage for the costs involved in defending the suit.

Additionally, the Agency shall require the contractor to specifically and expressly waive any immunity it may have under Washington Industrial Insurance, Title 51 RCW, and acknowledge that this waiver was mutually negotiated by the parties thereto.

X

The Railway shall, with its own forces and under its own labor agreements, install the Signals. The Agency, with its own forces, shall furnish and install advance warning signs and standard pavement markings for railroad crossings. The Railway shall furnish all materials for the Signals from its store stock, or by purchase, in accordance with the provisions of FHPM 1-4-3 and any amendments and supplements thereto.

XI

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

XII

Upon completion of the installation of said Signals, the Railway, shall thereafter operate and maintain said Signal installation of the branchline track in accordance with normal operating procedures and requirements. The Agency will reimburse the Railway for 100 percent of the annual maintenance cost based upon the Association of American Railroads (AAR) maintenance cost recovery index. The signals in this proposed installation contain 22 AAR units and the annual maintenance cost is \$ 151.97 per AAR unit based on 1987 costs.

XIII

In the event the signal system installed under this agreement is partially or wholly destroyed and the cost of repair or replacement cannot be recovered from the person or persons responsible for such destruction, then, in that event the cost of repair or replacement shall be borne by the Agency.

XIV

In the event that either highway or Railway changes will necessitate revisions of the Signals by rearrangement, replacement, or additions at the said location, the party

whose changes cause said revisions will bear the entire cost of the same without obligation to the other.

XV

If, for any reason, said Signals shall no longer be required at the said grade crossing, the Railway, on the approval of the Agency, may remove said Signals, and credit the Agency with the salvage value less cost of removal.

XVI

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 Agency'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.

XVII

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:

By [Signature]
(Title) D.E.A. DIRECTOR

APPROVED AS TO FORM
Brodley J. Helli
Deputy Prosecuting Attorney
7/13/89
Date

KING COUNTY

By [Signature]
(Title) KING COUNTY EXECUTIVE
8/18/89

BURLINGTON NORTHERN RAILROAD COMPANY

By [Signature]
(Title) DIVISION ENGINEER

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	\$13.50/hour/ 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 March, 1989.
- (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 Agency 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 55% of direct labor costs.

BURLINGTON NORTHERN RAILROAD COMPANY

PACIFIC DIVISION

18TH SUBDIVISION

WOODINVILLE, WASHINGTON

STATE OF WASHINGTON

VALUATION SECTION WA 9-N

EXHIBIT "C"

Estimated cost for the construction of the N.E. 95th Street grade crossing located at MP 25.86 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> Place a 93' rubber crossing. Rehabilitate with new ties, fastenings, ballast and engineering fabric	\$ 5,245	\$ 20,244
Material Handling		1,721
Freight		2,024
Equipment Rental		2,126
Expenses		1,724
Salvage		(110)
Subtotal Without Labor Surcharges	\$ 5,245	\$ 27,729
2. <u>Signals</u> Install automatic flashing light traffic control devices, cantilever type, with gates and train activation devices. Intertie with the traffic signals at the Woodinville - Snohomish Road and N.E. 195th Street intersection.	\$ 10,600	\$ 26,325
Material Handling		2,200
Equipment Rental		2,650
Freight		550
Expenses		3,900
Subtotal Without Labor Surcharges	\$ 10,600	\$ 35,625
3. <u>Flagging, Protective Services and Devices</u> Not estimated--See Exhibit "B"	\$-----	\$-----
4. <u>Engineering and Preparation of Bills</u> Preliminary and Special Engineering	\$ 1,750	\$ 250
Construction Engineering	750	
Preparation of Bills	1,390	
Subtotal Without Labor Surcharges	\$ 3,890	\$ 250

SUMMARY

1. Track and Crossing Work	\$ 5,245	\$ 27,729
2. Signal Work	10,600	35,625
3. Flagging, Protective Services and Devices		-----
4. Engineering and Bill Preparation	3,890	250
5. Liability Insurance		1,380
Totals	\$ 19,735	\$ 64,984
6. <u>Labor Surcharges</u>		
Vacation Pay, Paid Holidays, Railroad Retirement, Unemployment Insurance, Health and Welfare Benefits	\$ 9,292	\$ -----
	\$ 29,027	\$ 29,027
		64,984

		\$ 94,011
Contingencies		9,439

		\$ 103,450
State of Washington Tax		3,756

Total B/C vs. King County		\$ 107,206

Office of Supt. Maint. & Engineering
Seattle, Washington

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 Appendixes "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 paragraphs (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."

SE1/4 NW1/4 SEC 3
T. 26 N., R 5 E., W.M.

1331 + 47 CL. CROSSING =
MP 25 + 4607' (25.86)

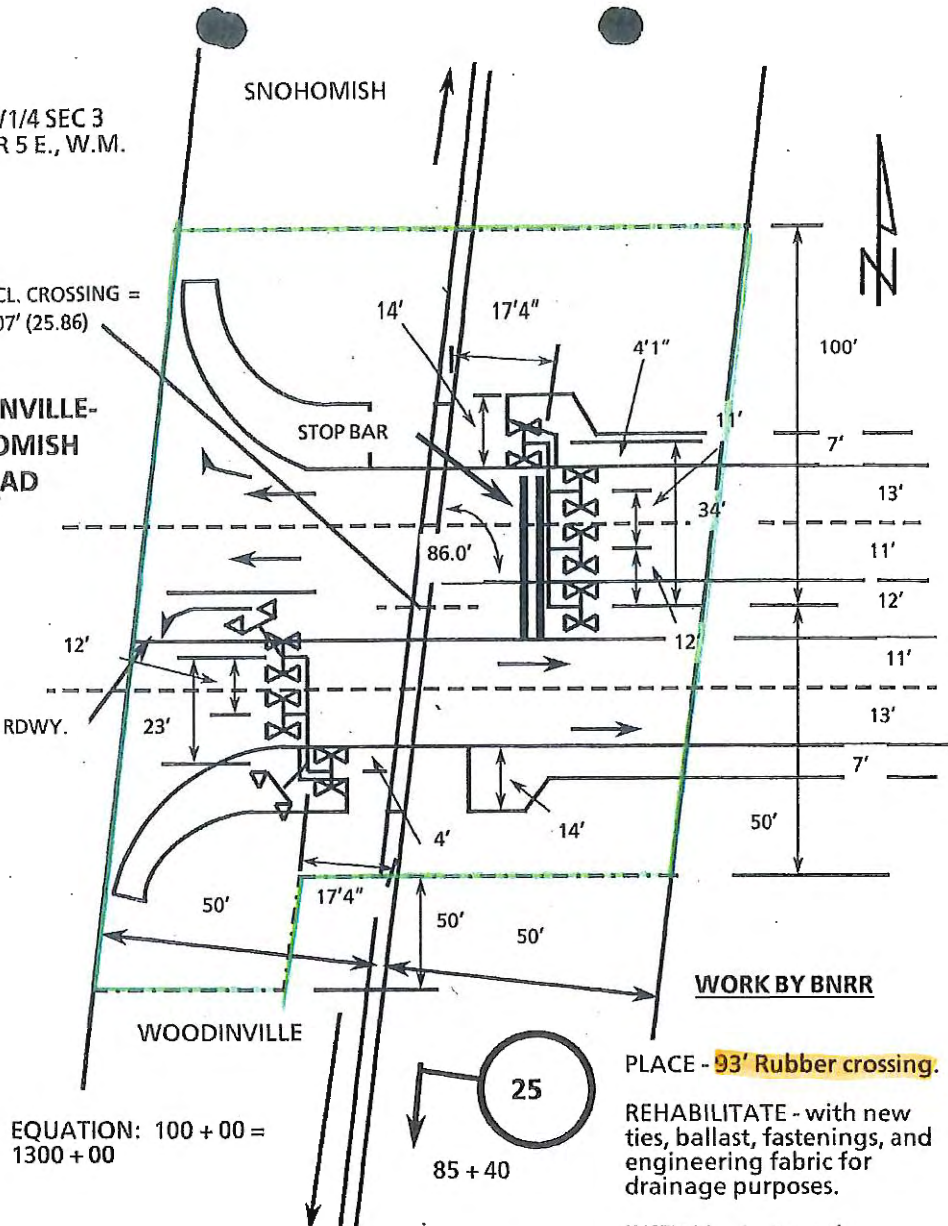
WOODINVILLE-
SNOHOMISH
ROAD

CL. PROP. RDWY.

EQUATION: 100 + 00 =
1300 + 00

SNOHOMISH

WOODINVILLE



WORK BY BNRR

PLACE - 93' Rubber crossing.

REHABILITATE - with new ties, ballast, fastenings, and engineering fabric for drainage purposes.

INSTALL - Automatic flashing light traffic control devices, cantilever type, with activation devices.

INSTALL - an intertie between the railroad signals and the traffic signals at the Woodinville-Snohomish Rd. / 195th St. intersection.

PLACE - "Do Not Stop on Tracks" sign in N.E. quadrant near the stopbar (Done by County forces)

PLACE - "Stop Here on Red" sign near the stopbar in N.E. quadrant of crossing. (Done by County forces)

EXHIBIT 'A'
BN RAILROAD CO.
NORTHERN REGION - PACIFIC DIVISION
**CONSTRUCTION OF THE N.E. 195TH ST.
CROSSING
WOODINVILLE, WA.**

NO SCALE
SUPT. MAINT. & ENGINEERING - SEATTLE, WA. - 6-8-88
Revised 10-9-89

Filed For Record At The Request Of

[Signature]
King County Real Property Division

R/W 2088 #14

EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that BURLINGTON NORTHERN RAILROAD COMPANY (formerly named Burlington Northern Inc.), a Delaware corporation, whose address for purposes of this instrument is 2100 First Interstate Center, 999 Third Avenue, Seattle, Washington 98104, Grantor, for Five Thousand and no/100 Dollars (\$5,000.00) to it paid by KING COUNTY, a body politic, Grantee, and the promises of the Grantee hereinafter specified, does hereby remise, release and quitclaim unto the Grantee, subject to the terms and conditions hereinafter set forth, an EASEMENT for **construction, maintenance, replacement, repair and removal of a public street grade crossing where N.E. 195th Street crosses Grantor's track(s) and right of way at Railroad M.P. 25.86, hereinafter called street, over, upon and across the following described premises, situated in King County, State of Washington, to-wit:**

All that part of Burlington Northern Railroad Company's 100.0 foot wide Seattle to Sumas Branch Line right of way, being 50.0 feet wide on each side of said Railroad's Main Track centerline, situated in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ and the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 3, T26N, R5E, W.M., said King County, Washington; as shown on Exhibit "A" attached hereto and being a part hereof.

RESERVING, however, unto the Grantor, its successors and assigns, the right to construct, maintain, use, operate, relocate, reconstruct and renew such tracks and facilities as it may at any time, and from time to time, desire within the limits of the land hereinbefore described, including the right and privilege to use said land for any and all purposes, not inconsistent with the use thereof for street purposes.

The foregoing easement is **made subject to and upon the following express conditions:**

1. To existing interests in the above-described premises to whomsoever belonging and of whatsoever nature and any and all extensions and renewals thereof, including but not limited to underground pipe line or lines, or any type of wire line or lines, if any.
2. Any and all cuts and fills, excavations or embankments necessary in the construction, maintenance, or future alteration of said street 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.

1051201106

90/11/07 #1501
RECD F .00
CASHSL 55

EXCISE TAX NOT REQUIRED
King Co. Records Division
By *[Signature]* Deputy

F

- 901071501
3. The Grantee shall bear the cost of removal, relocation or reconstruction of any and all right of way fences, telephone or telegraph poles, or other facilities, the removal, relocation or reconstruction of which may be made necessary by reason of the use of said premises for said street purposes.
 4. The Grantee shall, at its own cost and expense, make adjustment with industries or other lessees of Grantor for buildings or improvements that may have to be relocated, reconstructed or destroyed by reason of the construction and maintenance of said street on said premises.
 5. This instrument is granted according to the terms and conditions of that certain Construction and Agreement between the Grantor and the Grantee dated October 20, 1989 and made subject to the terms and conditions contained therein.
 6. If said described premises, or any part thereof, shall at any time cease to be used by said Grantee, or by the public, for the purpose, as aforesaid, or should they be converted to any other use whatsoever, or should the Grantee fail to perform any of the conditions herein expressed, then and in any such event, all the right, title, interest, benefits and enjoyment of said Grantee, or of the public, in and to said premises, for any purposes whatsoever, shall immediately cease and the said Grantor, its successors and assigns, may, at its or their option, re-enter, retake and hold said described lands and premises as of the present estate of said Grantor without compensation to said Grantee, the public, or any other person whomever, for improvements or property removed, taken or destroyed, or liability for loss of, or damage to any premises or the improvements thereon abutting on said easement area or any part thereof.
 7. The Grantee shall, or shall require its contractor to, notify the Grantor's Regional Chief Engineer a sufficient time in advance whenever the Grantee or its contractor is about to perform work on or adjacent to Grantor's right of way and tracks to enable Grantor to furnish flagging and such other protective service as might be necessary and Grantee shall reimburse Grantor for the cost thereof.
 8. The Grantor does not warrant its title to said premises nor undertake to defend the Grantee in the peaceable possession, use or enjoyment thereof; and the grant herein made is subject to all outstanding rights or interest of others, including the tenants and licensees of the Grantor.

TO HAVE AND TO HOLD THE SAME, together with all the hereditaments and appurtenances thereunto belonging to Grantee for public use and enjoyment for the purposes aforesaid and for no other purpose whatsoever subject to the terms and conditions hereinbefore stated.

IN WITNESS WHEREOF, the said BURLINGTON NORTHERN RAILROAD COMPANY has caused this instrument to be signed by its authorized officers, and the corporate seal affixed on the 23rd day of October, 1990.

BURLINGTON NORTHERN RAILROAD COMPANY

ACCEPTED:
KING COUNTY

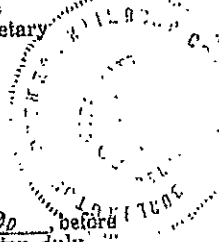
BY [Signature]
Title

BY [Signature]
J. H. Ilkka
Director - Title Services

ATTEST:

BY _____
Title

BY [Signature]
Anita D. Wells
Assistant Secretary



STATE OF WASHINGTON)
COUNTY OF KING) ss.

9011071501

On this 23rd day of October, 1990, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared J. H. Ilkka and Anita D. Wells, to me known to be the Director - Title Services, and Assistant Secretary, respectively, of Burlington Northern Railroad Company, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

Witness my hand and official seal hereto affixed the day and year first above written



[Signature]
Notary Public in and for the State of Washington
Residing at: Seattle, Washington
My appointment expires: January 9, 1990

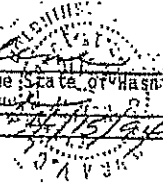
BN 9823 Woodinville, WA

STATE OF WASHINGTON)
COUNTY OF KING } ss

I certify that Jesus Sanchez signed this instrument,
on oath stated that he was authorized by the King County Executive to execute
the instrument, and acknowledged it as the Quinto, DEA
of King County, Washington to be the free and voluntary act of said County for
the uses and purposes mentioned in the instrument.

Dated: 9/11/90

David V. Clark
NOTARY PUBLIC in and for the State of Washington
residing at Redmond, WA
My appointment expires 2/15/91



9011071501

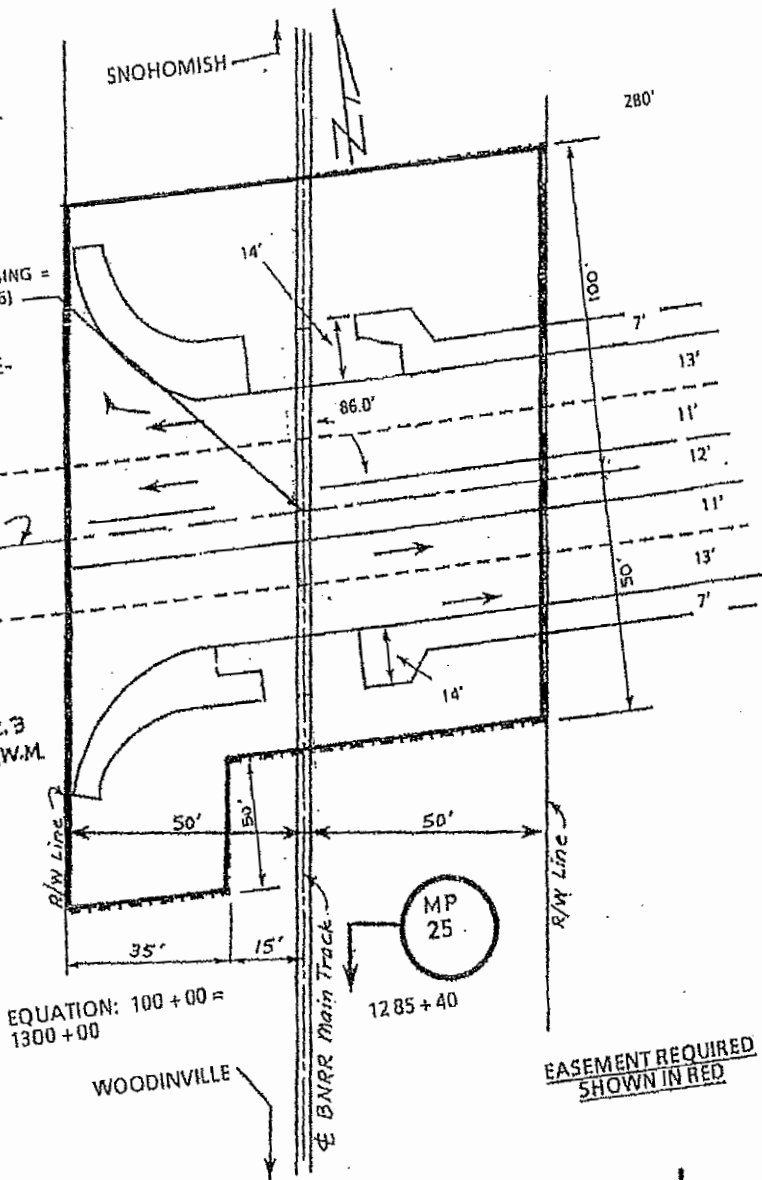
SE 1/4 NW 1/4 SEC 3
T. 26 N., R 5 E., W.M.

WOODINVILLE-SNOHOMISH ROAD

E-W Sec. 3

NE 1/4 SW 1/4 SEC. 3
T. 26 N., R 5 E., W.M.

9011071501



EQUATION: $100 + 00 = 1300 + 00$

EASEMENT REQUIRED SHOWN IN RED

EXHIBIT 'A'
 BN RAILROAD CO.
 NORTHERN REGION - PACIFIC DIVISION
EASEMENT REQUIRED FOR
THE NEW N.E. 195TH ST.
CROSSING
WOODINVILLE, WA.

NO SCALE
 SUPT. MAINT. & ENGINEERING - SEATTLE, WA. - 9-9-88
 Revised 4-25-89



NOV 7 2 24 PM '88

RECORDED THIS DAY

BN 9823