

ATTACHMENT "C"

CONSTRUCTION AND MAINTENANCE AGREEMENT
WIDENING AND IMPROVEMENTS TO THE N.E. 190TH STREET
AND THE WOODINVILLE-SNOHOMISH ROAD GRADE CROSSING AT MP 25.63
WOODINVILLE, WASHINGTON

Agreement made this 24th day of July, 1991, 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 widen and improve the N.E. 190th St and Woodinville-Snohomish Road public grade crossing where it will cross the Pacific 18th Subdivision located at Railway Survey Station 1318 + 76, MP 25 + 3336'; MP 25.63, in the NE1/4 of the NW1/4 of Section 3, T. 26 N., R. 5 E., W. M. near Woodinville, Washington, at the location shown on map marked Exhibit 'A' attached hereto and made a part hereof; and

WHEREAS, the Agency desires that automatic flashing light traffic control devices, shoulder mount type, with gates be installed at the widened and improved N.E. 190th Street and Woodinville-Snohomish Road crossing, said installation to be covered by a separate agreement; 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 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 \$ 11,500.00 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-1".

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 Agency shall perform its work in accordance with detailed plans and specifications which shall be prepared by the Agency and submitted to the Superintendent Maintenance and 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 Superintendent Maintenance and Engineering 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.

IV

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
Remove the existing 72' concrete crossing, replace 320TF of 100# rail with 320TF of new 115# CWR, rehabilitate crossing with new ties, fastenings, ballast, and engineering fabric. Place a 210' rubber crossing.
 2. 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.
 3. Engineering and Preparation of Bills
Perform preliminary and special engineering and inspection, including field and office work and preparation of bills.

V

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.

VI

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.

VII

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 construction 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 January 22, 1990, may be charged against this project.

VIII

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 contractor's negligence, provided, however, if such loss, liability, damage, penalties or fines are caused by or result 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, such indemnity shall be valid and enforceable only to the extent of the negligence of the contractor or the contractor's employees, agents or subcontractors.

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.

IX

The Agency 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 Agency, at its sole cost and expense, shall maintain all improvements, other appurtenances, advance warning signs and pavement markings, with the exception of the crossing which will be maintained by the Railway and the Agency under the following terms.

Highway traffic control whenever necessary for Railway maintenance work on the roadway crossing shall in all cases be performed by the Agency at its sole cost and expense.

The Railway shall maintain the roadway crossing with the portion representing the existing crossing length being maintained at Railway expense and the portion representing the additional crossing length being maintained at Agency expense.

The Agency shall reimburse the Railway for 100 percent of the annual crossing maintenance cost for the additional crossing length, including the cost of removal and reinstallation of the crossing surface material for periodic track maintenance work as well as renewals as required, amounting to \$ 15 per track foot. The additional crossing length in this project amounts to (210' proposed minus 72' existing) 138 track feet at \$15 per track foot equals \$ 2,070 annual maintenance cost based on 1989 costs. Adjustments to the annual maintenance charge will be made annually commencing July 1, 1991, and will be based upon the percentage of change in the Association of American Railroads' Cost Recovery Index Series RCR (1977 equals 100), Table A for the Western District Material Prices, Wage Rates and Supplements Combined (excluding fuel), or successor index mutually agreed upon by the parties, from year 1989 which shall be used as a base year for the calendar year immediately prior to the year in which the change is to be made effective.

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.

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 Agency 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 Agency and to use the same thereafter as if this agreement had never been executed, without the necessity of any further legal proceedings.

XII

Either party hereto may assign any receivables due them under this agreement provided, however, such assignments shall not relieve the assignor of any of its rights or obligations under this agreement.

XIII

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.

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:

KING COUNTY

By _____
(Title)

By *[Signature]*
(Title) King County Executive

BURLINGTON NORTHERN RAILROAD COMPANY

APPROVED AS TO FORM

By *[Signature]*
(Title)

[Signature]
Deputy Prosecuting Attorney

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 February 1991.
- (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, WA.

STATE OF WASHINGTON

VALUATION SECTION WA 9-N

EXHIBIT "C"

Estimated cost to widen and improve the N.E. 190th Street and Woodinville-Snohomish Road grade crossing as per Exhibit "A".

<u>ESTIMATED COST</u>	<u>LABOR</u>	<u>NON-LABOR</u>
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PART I--Not Estimated

PART II

1. Track and Crossing Work

Remove 72' concrete crossing, rehabilitate with new ties, fastenings, ballast & fabric, replace 320TF of 100# rail with 320TF of new 115# CWR, and place a 210' rubber crossing.

	\$ 11,140	\$ 43,840
Material Handling		4,192
Freight		808
Equipment Rental		5,125

Subtotal Without Labor Surcharges	\$ 11,140	\$ 53,965
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2. Flagging, Protective Services and Devices

Not estimated--See Exhibit "B"	\$-----	\$-----
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3. Engineering and Preparation of Bills

Preliminary and Special Engineering	\$ 836	\$ ----
Construction Engineering	278	----
Preparation of Bills	1,114	----

Subtotal Without Labor Surcharges	\$ 2,228	\$ ----
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SUMMARY

1. Track and Crossing Work	\$ 11,140	\$ 53,965
2. Flagging, Protective Services and Devices	-----	-----
3. Engineering and Bill Preparation	2,228	-----
4. Liability Insurance	-----	2,206
Totals	\$ 13,368	\$ 56,171

6. Labor Surcharges

Vacation Pay, Paid Holidays, Railroad Retirement, Unemployment Insurance, Health and Welfare Benefits	\$ 7,430	\$ -----
	\$ 20,798	\$ 20,798

Contingencies		\$ 76,969
		7,704
		\$ 84,673

State of Washington Tax		3,527
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Total B/C vs. King County		\$ 88,200
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Office of Supt. Maint. & Engineering
Seattle, WA.

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.

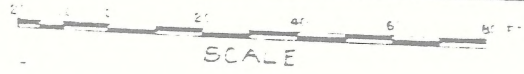
SEC. 162. (a) Chapter 3 of Title 23, United States Code, is amended by adding at the end thereof the following new section:

"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."

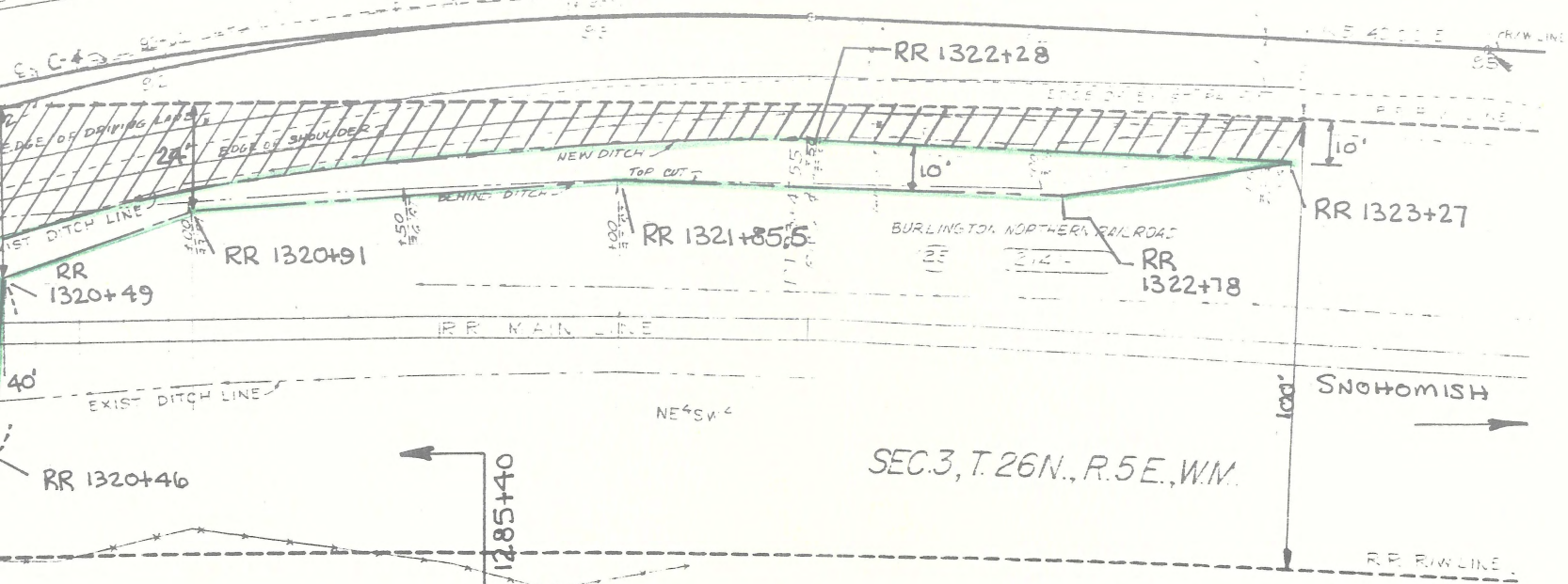
DAY CITY

SNOHOMISH RD



BASIS OF BEARINGS KCAS

EDGE OF SHOULDER
EDGE OF DRIVING LANE



STA 95+00.00
END CONSTR.



Existing Easement



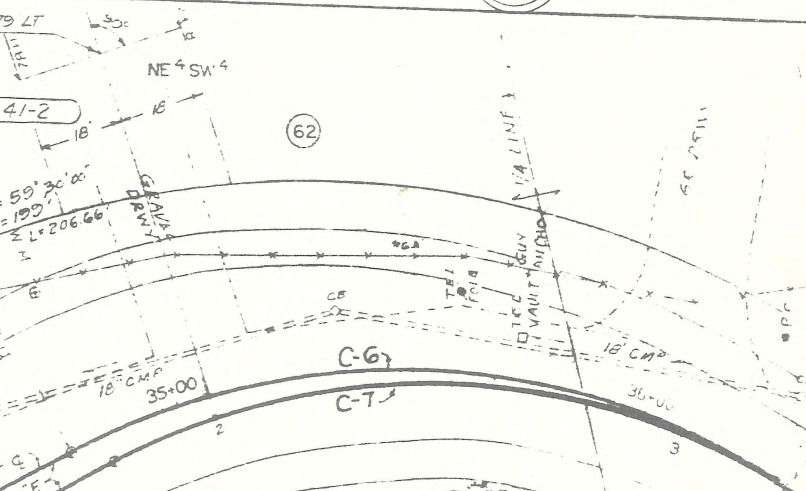
Additional Easement Shown
in Red Green

25

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

NOTE

SEE CORRESPONDING PROFILES ON SHEETS



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

NW 1/4 SE 1/4

STA 3+89.00
END CONSTR

HORIZONTAL CURVE DATA					
CURVE	DELTA	RADIUS	ARC LENGTH	CHORD LENGTH	TANGENT LENGTH
C-2	+26° 55' 30"	573.00	289.27	286.21	147.78
C-4	+25° 27' 30"	779.12	346.19	343.35	176.00
C-6	+59° 30' 00"	150.00	155.77	148.86	85.73
C-7	+59° 30' 00"	143.24	143.75	142.16	81.87
C-8	-55° 00' 00"	318.31	305.56	293.96	165.70