

**AGREEMENT FOR CONSTRUCTION AND MAINTENANCE OF
SAFETY IMPROVEMENTS RELATED TO QUIET ZONE**

**BNSF Secy. Cont. No: _____
Mukilteo Quiet Zone Project**

THIS AGREEMENT made and entered into this 14 day of APRIL, 2007⁸, by and between the CITY OF MUKILTEO, hereinafter referred to as "City", and the BNSF RAILWAY COMPANY, a Delaware corporation, hereinafter referred to as "BNSF". City and BNSF are collectively referred to as "Parties".

RECITALS

WHEREAS, BNSF owns a railroad line in and through the City which crosses Mount Baker Avenue with DOT# 085452V (the "Crossing") and over which trains are operated at all times of the day and night in a manner that provides safety for motorists, including a system of warning signals and gates at the crossing and the use of warning horns on trains; and

WHEREAS, the City is currently seeking authorization and approval from the Washington Utilities and Transportation Commission ("WUTC") to construct certain safety improvements at the Crossing, as shown in Exhibit "A" attached hereto and incorporated herein by this references (the "Project"); and

WHEREAS, the City is desirous of creating a quiet zone as provided by the Federal Railroad Administration ("FRA") and 49 CFR Parts 222 and 229; and

WHEREAS, it is anticipated that the construction of the safety improvements (the "Improvement") will enable the FRA to authorize BNSF and other train operators to operate trains at all times of the day and night without routinely sounding train horns or similar warning devices as trains approach and pass through the Crossing; and

WHEREAS, Mukilteo Lane, which crosses at grade an industrial spur of BNSF and is adjacent to the Mount Baker Avenue crossing, is not included in the proposed quiet zone, nor has any safety improvements associated with this Project; and

WHEREAS, the safety improvements are intended to be permanent improvements at the Crossing unless the Crossing is grade separated or closed to vehicular traffic; and

WHEREAS, BNSF and City are willing to undertake construction of the safety improvements at the City's sole cost and expense.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth, and subject to the approval of the Project by the WTUC, it is agreed as follows:

AGREEMENT

ARTICLE I

1. BNSF, at City's sole cost and expense, shall furnish all labor, materials, tools, and equipment and perform the railroad work required for construction of the safety improvements, such work and the estimated cost thereof being shown in Exhibit "B" attached hereto. The principal elements of the work to be performed by BNSF in the construction of the safety improvements shall include the following:

- a. Construction and installation of two exit gates as the addition to the original railroad signal active warning devices (with the exception of the vehicle detection system) as shown on Exhibit "A". With the addition of the exit gates, the crossing signal system will be upgraded from a two-quadrant gate system to a four-quadrant gate system.
- b. Furnishing watchmen and flagmen as may be necessary for the safety of BNSF's property and the operation of its trains during the construction of the safety improvements.

2. BNSF agrees to perform all work provided in Article I, Section 1, with its own employees, working under Railroad Labor Agreements or by contractor(s), if necessary.

3. BNSF shall invoice the City annually for the cost of maintenance of the additional active warning devices located within BNSF's right-of-way as calculated in accordance with the formula set forth in Article II, Section 3 of this Agreement.

4. BNSF is hereby authorized to include any extraordinary charge to cover the cost of BNSF's self-insurance expense covering Employer's Liability, including liability under the Federal Employer's Liability Act, for protection of its employees in connection with the construction of the Project. Such charge may not exceed the amount allowed by the Federal Highway Administration at the time of billing and shall be considered a portion of the actual cost of the Project regardless of the nature or amount of ultimate liability for injury, loss or death to BNSF's employees, if any.

5 CITY FUNDING:

- a. Final Engineering, Design and Estimation.

City will pay BNSF the cost of engineering, design and estimation for the project as indicated in Exhibit B. BNSF will bill the city on a 30-day cycle as BNSF perform the project.

b. Material Ordering.

After giving the Notice to Proceed in accordance with Article III, Section 9 of this Agreement, City will pay BNSF for the cost of all material of the Improvement, upon receipt of the bill from BNSF on a 30-day cycle.

c. Labor.

BNSF will notify/invoice the City sixty (60) days prior to start of construction of the Improvement. City will pay BNSF for the cost of all labor of the Improvement, upon receipt of the bill from BNSF on a 30-day cycle.

d. Reconciliation.

120 days after completion of the Project, any over runs or under runs will be billed or refunded as the case may be.

ARTICLE II

1. City, at its sole cost and expense, shall furnish all labor, materials, tools, and equipment and construct all safety improvements as shown in Exhibit "A", except for the railroad work to be performed by BNSF hereunder. The principal elements of the work to be performed by City in the construction of the safety improvements shall include the following:

- a. Obtaining from the WUTC an order authorizing and approving the construction of the safety improvements;
- b. Providing engineering, supervision, labor, material, supplies, and equipment necessary for construction of the safety improvements to be located outside of BNSF's right-of-way;
- c. Installation of the vehicle detection system;
- d. Obtaining easement and /or permit from BNSF for installation, construction and maintenance of the safety improvement components of the Project, whichever are City's responsibility, including, without limitation, the vehicle detection system.
- e. Construction of the roadway surface, including without limitation, curbs, gutters and fencing as shown on Exhibit "A".

2. City shall reimburse BNSF for the actual costs incurred by BNSF in constructing the safety improvements.

3. City shall pay to BNSF the City's share of the annual Inspection, Maintenance and Replacement (Causality/Capital) costs for the following specific components of the Project's Safety Improvements: (A) "Exit Gates 3 or 4 Quad" = 9 AAR (American Association of Railroads) units per gate mech., (B) "Exit Gate timing/logic controller" = 10 AAR units, (C) "Interconnection to road authority vehicle detection system", = 2 AAR units as invoiced pursuant to Article I, Section 3 of this Agreement. Costs have been calculated per Crossing Signal AAR unit to maintain highway/rail grade automated crossing warning systems. These costs are to be adjusted annually and the Parties agree to review the AAR units to ensure their appropriateness every three years.

Cost Break down:

1. Inspection/Maintenance of active warning device equipment:

- a. 4 Quad System = $(2 \times 9 + 10 + 2)$ AAR Units = 30 AAR Units total for 4 quad x average cost of \$162/AAR unit = \$4,860
- b. Inspection / Maintenance of systems includes all monthly inspections, and all trouble calls requiring the equipment to also be inspected or gates replaced (excessive gate replacement may be billed additional after a review is made by BNSF and City.
- c. These costs will be billed to the City on an annual basis.

2. Replacement (Casualty / Capital) costs:

- a. Causality – Cost to replace the equipment due to an accident at the site causing damage to the exit gate components.
- b. Capital – Cost to replace the equipment of the entire crossing signal system (with the exception of the exit gates and vehicle detection system, which are at City's sole cost and expense) due to age. If the Crossing Signal Equipment installed hereunder cannot, through age, be maintained, or, by virtue of its obsolescence, requires replacement, the cost of installation of new crossing signal equipment will be negotiated by the parties hereto on the basis of the current Federal Aid Railroad Signal Program participation and applicable AGENCY at the time of such replacement is warranted.

4. City agrees to reimburse BNSF for work of an emergency nature caused by City or City's contractor, in connection with construction of the safety improvements which BNSF deems reasonably necessary for the immediate restoration of railroad

operations, or for the protection of persons or BNSF property. Such work may be performed by BNSF without prior approval of City and City agrees to fully reimburse BNSF for all reasonable costs of such emergency work.

5. Except as expressly set forth in this Agreement, BNSF shall be responsible for all construction, reconstruction, operation, maintenance and repair costs related to its business activities.

6. City agrees to acquire permits necessary for the construction of the safety improvements.

7. City agrees to make any and all arrangements to secure the location or relocation of wire lines, pipe lines and other facilities owned by private persons, companies, corporations, political subdivisions or public utilities other than BNSF which may be found necessary to locate or relocate in any manner whatsoever due to the construction of the Project.

8. **City hereby indemnifies, defends and holds harmless BNSF for, from and against any and all claims, suits, losses, damages, costs and expenses for injury to or death to third parties or BNSF's officers and employees, and for loss and damage to property belonging to any third parties (including damage to the property of BNSF officers and employees), to the extent caused by the negligence of the City or any of its employees, agents or contractors. The City also releases BNSF from and waives any claims for injury or damage to the City's highway traffic control signals or other equipment which may occur as a result of any of the work provided for in this Agreement or the operation or the maintenance thereafter of any of the City's highway traffic control signals, cables, connections at and about the grade crossing.**

9. Nothing in this Agreement is intended to be construed as a requirement for an indemnification against the negligence of BNSF its officers, employees or agents. The City will require its contractor to indemnify BNSF and any other railroad company occupying or using BNSF's right-of-way or line of railroad against all loss, liability and damages, including environmental damages, hazardous materials damage, penalties or fines that maybe 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) BNSF or BNSF's officers, employees, or agents, and (b) the City's 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 City's contractor or the contractor's employees, agents or subcontractors. Likewise, if such loss, liability, damage, penalties or fines are caused by or result from the concurrent negligence of (a) BNSF or the BNSF's officers, employees or agents, and (b) the City officers, employees or agents, such indemnity shall be valid and enforceable only to the extent of the negligence of the City's officers, employees or agents.

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

11. City agrees that City, or City's contractor(s) or subcontractor(s), shall not begin Project work until City shall have given not less than thirty (30) days prior written notice to BNSF's Manager of Public Projects, making reference to BNSF's "Mukilteo Quiet Zone Project", which notice shall state the time that onsite Project work shall commence. If work is contracted, City shall require its prime contractor(s) to comply with the obligations in favor of BNSF, set forth in Exhibits "C" and "C-1", as may be revised from time to time, and accepts responsibility for compliance by its prime contractor(s).

12. City must provide a flagman at its sole cost or temporarily close the crossing in the event of a vehicle detection failure.

ARTICLE III

1. The City agrees to include the following provision in its contract with any contractor performing construction and maintenance work on the Project in the BNSF right-of-way:

- a. Fiber optic cable systems owned by various telecommunications companies may cross or run parallel in the railroad operating right-of-way. The locations of these lines have been included on the plans based on information from the telecommunications companies. The contractor shall be responsible to contact BNSF and/or the telecommunications companies regarding any work that may damage these facilities or interfere with their service. The contractor shall also pothole all lines either shown on the plans or marked in the field in order to verify their locations. The contractor shall also use all reasonable methods when working within the BNSF right-of-way to determine if any other fiber optic lines may exist;

- b. Failure to notify, pothole or identify these lines shall be sufficient cause for the City Engineer to stop construction at no cost to the City or BNSF until these items are completed. Costs for repairs and loss of revenues and profits due to damage to these facilities through negligent acts of the contractor shall be the sole responsibility of the contractor. The contractor shall indemnify and hold the City and BNSF harmless against and from all cost, liability and expense arising out of or in any way connected to the negligent acts of the contractor;

2. The City shall incorporate in each prime contract for construction of the Project in, over or under the BNSF right-of-way, or the specifications therefore, the provisions set forth in Exhibits "C" and "C-I", attached hereto and by reference made a part hereof:

3. Except as hereinafter otherwise provided, all work to be performed hereunder by City in the construction of the Project will be performed pursuant to a contract or contracts to be let by City, and all such contracts shall provide:

- a. That all work performed thereunder shall be performed in a good and workmanlike manner, and in accordance with plans and specifications approved by BNSF. Those changes or modifications during construction that affect safety or BNSF's operations shall also be subject to BNSF's approval;
- b. That no work shall be commenced within BNSF's right-of-way until each of the prime contractors employed in connection with said work shall have (i) executed and delivered to BNSF a letter agreement in the form of Exhibit "C-1", and (ii) delivered to BNSF, and secured its approval of, the required insurance;
- c. That if, in City's opinion, it shall be for its best interest, City may direct that the construction of the Project be done by day labor under the direction and control of City, or if at any time, in the opinion of City, the contractor has failed to prosecute with diligence the work specified in and by the terms of said contract, it may, in the manner provided by law, terminate the contractor's control over said work and take possession of all or any part thereof and proceed to complete the same by day labor or by employing another contractor(s), provided that all such contractor(s) shall be required to comply with the obligations in favor of BNSF hereinabove set forth and, provided further, that if such construction is performed by day labor, City will, at its expense, procure and maintain on behalf of BNSF the insurance required by Exhibit "C-1".

4. If any City Contractor performs construction work within the BNSF right-of-way contrary to the Plans and Specifications or if any City Contractor performs

construction work within the BNSF right-of-way in a manner BNSF deems to be hazardous to its property, facilities or the safe and expeditious movement of its traffic, or if the insurance described in said Exhibit "C-1" hereof shall be canceled during the course of the Project, BNSF shall have the right to stop the work within the BNSF right-of-way until the acts or omissions of such City Contractor have been fully rectified to the satisfaction of the BNSF's Division Engineer, or additional insurance has been delivered to and accepted by BNSF. Such work stoppage shall not give rise to or impose upon BNSF any liability to City, or to any City Contractor. The right of BNSF to stop the work is in addition to any other rights BNSF may have. In the event that BNSF shall desire to stop work, BNSF agrees to give immediate notice thereof in writing to the City representative identified in Article III, Section 13 of this Agreement.

5. The City shall supervise and inspect the operations of all City contractors working within BNSF's right-of-way to assure compliance with the Project plans and specifications, the terms of this Agreement and all safety requirements of BNSF. If at any time during construction within BNSF's right-of-way BNSF determines that the proper supervision and inspection is not being performed by the City, BNSF shall have the right to stop construction (within or immediately adjacent to its right-of-way) and to request that the City correct the situation before construction is allowed to proceed. If BNSF feels the situation is not being corrected in an expeditious manner, BNSF shall immediately notify the City's Director of Public Works for appropriate corrective action.

6. City's contractor(s) and subcontractor(s) shall perform and complete work in a manner that does not interfere with the normal movement of trains and according to contractor's own manner and methods and with and by contractor(s)' and subcontractor(s)' own means and employees, free from any supervision, inspection, or control whatsoever by BNSF, except that BNSF shall have the right to inspect City's contractor(s)' or subcontractor(s)' work to determine whether the work performed complies with the requirements of this Agreement, it being the intention of the Parties that the contractor(s) and subcontractor(s) shall be and remain independent contractor(s) and subcontractor(s) and that nothing contained in this Agreement shall be construed as inconsistent with that status. City shall require its contractors and their subcontractors constructing any of the safety improvements within BNSF's right-of-way to execute and comply with all Contractor Requirements, as set forth in Exhibit "C" hereto.

7. City shall require its contractor(s) and subcontractor(s) to comply with all applicable federal, state and local requirements and regulations with respect to the performance of Project work. To the extent that any City contractor or subcontractor performs work in BNSF's right-of-way, BNSF may advise such contractor or subcontractor, or contractor's or subcontractor's work site supervisor, that an agent or employee of the contractor or subcontractor is working in an unsafe manner or may potentially work in an unsafe manner, in which event such contractor's or subcontractors' work site supervisor shall cause the agent or employee to immediately correct the problem or leave the work site and BNSF's property.

8. The Parties agree that after completion of the safety improvements, BNSF shall maintain and operate all crossing gates and signals. City shall reimburse BNSF for maintenance of the safety improvements constructed pursuant to this Agreement in accordance with Article I, Section 3.

9. The Parties agree that after completion of the safety improvements, the vehicle detection system shall be owned and maintained by the City at City's sole cost and expense.

10. The Parties agree that if BNSF deems it necessary or desirable in the performance of its duty as a common carrier, to raise or lower the grade or change the alignment of its tracks or to lay additional track or tracks or to build other facilities in connection with the operation of its railroad, BNSF shall, at its own expense, have full right to make such changes or additions, provided such changes or additions do not change or alter the safety improvements and provided further, however, that should it become necessary or desirable in the future to change, alter, widen, or reconstruct the safety improvements to accommodate BNSF railroad projects, the costs of such work, including any cost incidental to alteration of railroad or highway facilities made necessary by the alteration of the safety improvements, shall be paid by BNSF.

Notwithstanding the foregoing, nothing in this Agreement shall be construed as waiving or conditioning the right of the City to object to any effort by BNSF to change the grade or track alignment in any way that would impact (a) the City's interests in or use of adjacent right-of-way or (b) the use of the at-grade crossings that are the subject of this Agreement.

11. The Parties agree that if City shall deem it necessary or desirable in the future, due to traffic or other conditions, to alter or reconstruct the safety improvements, it shall have full right to do so, at City's own expense and subject to WUTC approval, provided, however, that such alteration or reconstruction shall not encroach further upon or occupy the surface of BNSF's right-of-way to a greater extent than is contemplated by this Agreement without the prior WUTC approval and written consent of BNSF and the execution of an amendment to this Agreement or the completion of a separate agreement.

12. The books, papers, records and accounts of the Parties hereto, insofar as they relate to the items of expense for labor and materials or are in any way connected with the work herein contemplated, shall at all reasonable times be open to inspection and audit by the agents and authorized representatives of the other Party hereto, and representatives of governmental agencies as required by law, for a period of three (3) years from the date of final payment. Upon completion of the Project, City, and/or representatives of governmental agencies as required by law, may assign an auditor to review and report on BNSF and City's time sheets and financial records related to this Project. BNSF and City shall work with such auditors to reconcile excepted costs that may arise from any audit. All books, records and accounts relating to the maintenance costs which are the subject of an invoice pursuant to Article II, Section 3 shall be open

to inspection and audit by agents and authorized representatives of the City for a period of three (3) years from the date that BNSF provides such invoice to the City.

13. All notices shall be in writing and shall be considered given either: (i) when delivered in person to the recipient named below; or (ii) on the date of delivery or refusal shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid; (iii) on the date of delivery or refusal, when delivered by Federal Express or other commercial express delivery service providing acknowledgements of receipt; or (iv) on the date of delivery when delivered by facsimile or other electronic transmission providing verification of delivery and receipt. Such notices or communications shall be given to the Parties at their addresses set forth below:

To BNSF: BNSF Railway Company
 John Li
 Manager of Public Projects
 2454 Occidental Avenue S.
 Suite 1A
 Seattle, WA 98134-1451

With Copy To:

To City: City of Mukilteo
 Larry Waters, P.E.
 Public Works Director
 4480 Chennault Beach Rd.
 Mukilteo, WA 98275

With Copy To:

Either Party may change its address for notices by written notice to the other Party given in the manner provided in this section.

14. Exhibits "A", "B", "C" and "C-1" attached hereto, are an integral part of this Agreement and shall be construed for all purposes as a part of this Agreement.

15. The venue for any action to enforce or interpret this Agreement shall lie in the Federal Court.

16. Any waiver by the Parties of any default or breach of any covenant, condition, or term contained in this Agreement shall not be construed to be a waiver of any subsequent or other default or breach, nor shall the failure to require exact, full, and complete compliance with any of the covenants, conditions, or terms contained in this Agreement be construed as changing the terms of this Agreement in any manner or preventing the enforcement of the full provisions hereof.

17. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs.

18. This Agreement constitutes the entire understanding and agreement of the Parties hereto and supersedes all previous negotiations, discussions, and agreements between the Parties with respect to the subject matter hereof. No parole evidence shall be permitted to contradict or vary the terms of this Agreement.

19. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be invalid under the applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the reminder of that provision, or the remaining provisions of this Agreement.

20. The Parties agree that all of the covenants and provisions of this Agreement shall be binding upon and inure to the benefit of the Parties' successors and assigns, except that neither City nor BNSF may assign any of its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld.

21. This Agreement shall be effective upon its execution by all parties hereto.

22. The Recitals above are hereby incorporated into this section as though fully set forth herein and each party acknowledges and agrees that such Party is bound, for purposes of this Agreement, by the same.

23 Each of the undersigned represents and warrants that he or she is duly authorized to execute and deliver this Agreement and that such execution is binding upon the entity for which he or she is executing this document.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and attested by its duly qualified and authorized officials as of the date first hereinabove written.

CITY OF MUKILTEO

By:

Joe Marine
Mayor Joe Marine

ATTEST:

By:

C. Bouhmar
City Clerk

APPROVED as to form and legality, this 14th day of April, 2007⁸.

Office of the City Attorney

Angela Belben

Deputy City Attorney

BNSF RAILWAY COMPANY

By

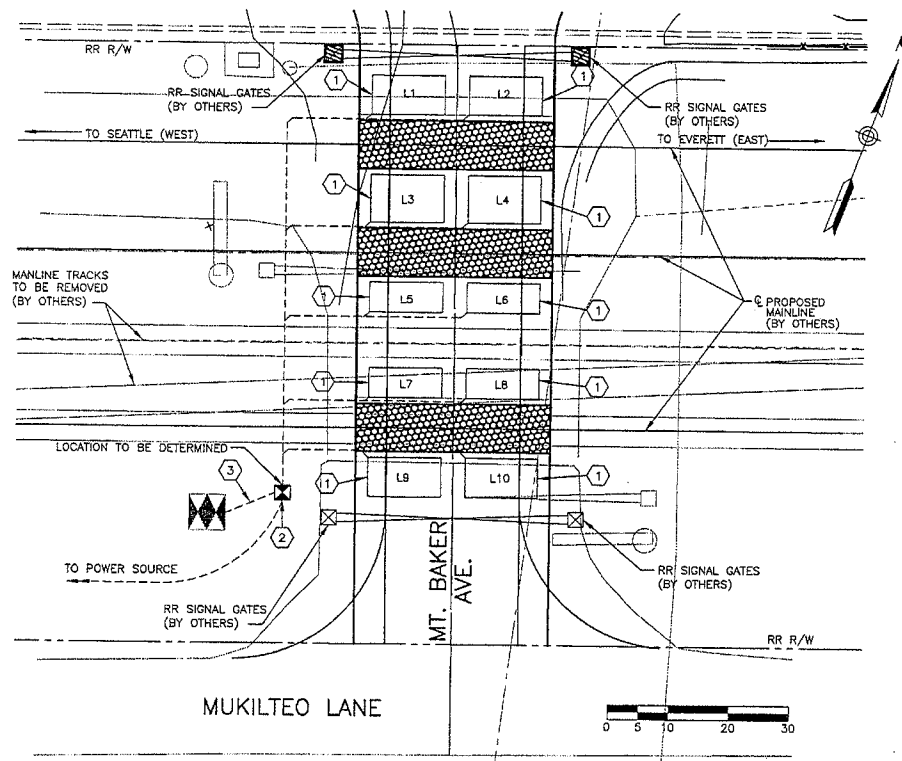
John Li
John Li, Manager of Public Projects

Exhibit A

(Insert design plan of the crossing)

(Insert design plan of the crossing)

SEC 33, T29 N, R4 E, WM



STREET NAME - MOUNT BAKER AVE.
CITY - MUKILTEO
STATE - WASHINGTON
M.P. - 28.88
RAILROAD - BNSF RAILWAY
SUB - SCENIC
DOT # 085-452V

CONSTRUCTION NOTES

- ① INSTALL PREFORMED LOOP AS SHOWN ON PLANS PER RAILROAD CONTROLS LIMITED (RCL) RECOMMENDED PRACTICES.
- ② INSTALL SINGLE LOW CASE PER RCL REQUIREMENTS.
- ③ COORDINATE WITH BNSF FOR LOOP WIRE TERMINATIONS.

GENERAL NOTES

1. SEE RDSG2 FOR LOOP INSTALLATION NOTES.

LOOP SCHEDULE					
LOOP #	SIZE (FTxFT)	AREA (SF)	STATION FRONT EDGE	STATION OFFSET	LOOP CABLE PART NO.
L1	6.5x12	78	STA XX+XX.X	X.X' RT	PLC-37-80
L2	6.5x12	78	STA XX+XX.X	X.X' RT	PLC-37-95
L3	8x12	96	STA XX+XX.X	X.X' LT	PLC-40-60
L4	8x12	96	STA XX+XX.X	X.X' LT	PLC-40-75
L5	5x12	60	STA XX+XX.X	X.X' RT	PLC-34-45
L6	5x12	60	STA XX+XX.X	X.X' RT	PLC-34-60
L7	5x12	60	STA XX+XX.X	X.X' LT	PLC-34-30
L8	5x12	60	STA XX+XX.X	X.X' LT	PLC-34-45
L9	6.5x12	78	STA XX+XX.X	X.X' LT	PLC-37-25
L10	6.5x12	78	STA XX+XX.X	X.X' LT	PLC-37-40

LEGEND

EXISTING	PROPOSED	
□	□	SINGLE LOW CASE
X	X	PREFORMED LOOP (LOOP NO.)
■	■	SIGNAL BUNGLOW
—	—	SIGNAL GATE

Call 2 Working Days Before You Dig
1-800-424-5555
 Utilize Underground Location Center
 (ID, MT, ND, OR, WA)

60% DESIGN

Puchana 12/07/07 3:00pm - C:\Pworking\SEA\014641A\RDSG1.dwg



HDR
ENGINEERING INC.

NO.	DATE	BY	REVISION	NO.	DATE	BY	REVISION
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PROJECT ENGINEER: FSL
DESIGNED BY: FSL
DRAWN BY: JTB
APPROVED BY: XXXX
SCALE: 1"=20'
DATE: 12-06-07
CHECKED BY: XXX

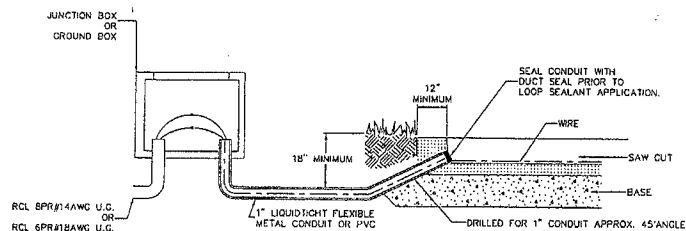
PORT OF EVERETT

PORT OF EVERETT
CITY OF MUKILTEO
MT BAKER AVE

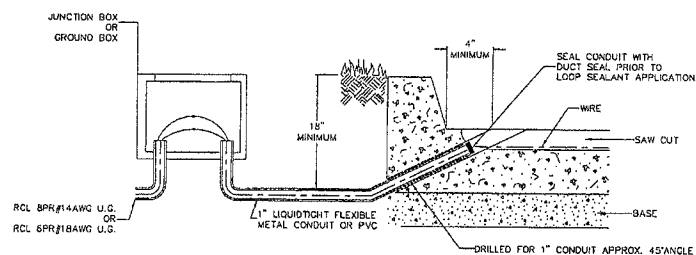
QUIET ZONE TRAFFIC LOOP DETECTION PLAN

DWG. NO. RDSG1
CIP NO. XXX
PROJECT NO. XXX
SHEET NO. 1 OF 2

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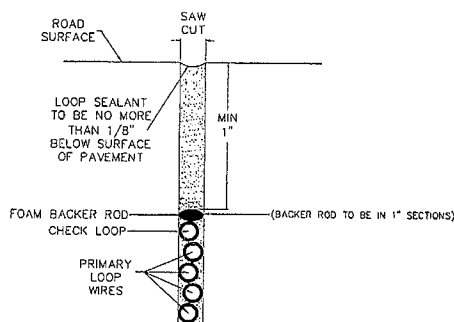
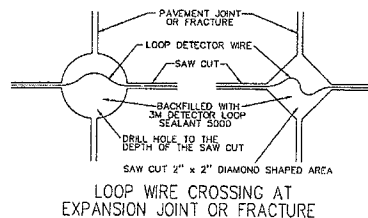
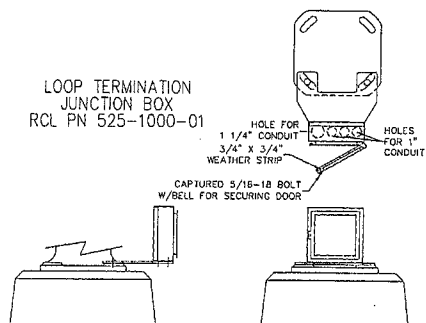


TYPICAL LEAD IN CONFIGURATION (WITHOUT CURBING)

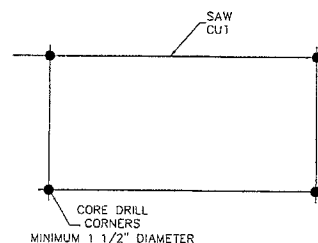


TYPICAL LEAD IN CONFIGURATION (WITH CURBING)

LOOP TERMINATION
JUNCTION BOX
RCL PN 525-1000-01



LOOP SAW CUT CROSS-SECTION



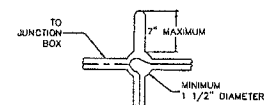
TYPICAL LOOP LAYOUTS

GENERAL INSTALLATION NOTES:

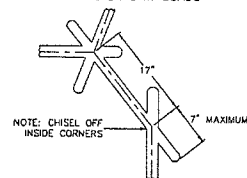
- HIGHWAY CROSSING GATES SHOULD BE INSTALLED A MINIMUM OF 15' FROM CENTERLINE OF TRACK IN ORDER TO MAINTAIN A MINIMUM TYPICAL LOOP WIDTH OF 5' (DIM "G") AND THE RECOMMENDED 3 1/2' DISTANCE FROM THE ENTRANCE GATE TO EDGE OF LOOP (DIM "E").
- SPICES BETWEEN THE LOOP LEAD-IN CABLE AND LOOP DETECTOR SHALL BE MADE ONLY IN THE JUNCTION BOX NEAR THE LOOP IT IS SERVING.
- THERE ARE TWO STANDARD DIRECT BURIAL HOME RUN CABLES. LOOP DETECTOR HOME RUN CABLE SHALL BE RCL PART # 03-094-005 6PR#18AWG OR RCL PART # 03-094-003 8PR#14AWG. ALTERNATIVELY, RENO A&E LW-418 OR RR-418 MAY BE INSTALLED IN CONDUIT. REFER TO RCL CABLE BROCHURE FOR DETAILED SPECIFICATIONS. LOOP CONNECTIONS TO THE HOME RUN CABLES SHALL USE WAGO LEVER CLAMP RCL PART # 03-082-029 OR SHALL BE SOLDERED. ALL CONNECTIONS ARE TO BE SEALED TO PREVENT MOISTURE PENETRATION. LOOP CONNECTIONS SHALL BE SEALED WITH LOW MOISTURE ABSORPTION 3M SCOTCH SEAL 2229 1"x10' MASTIC OR WITH A SCOTCH CAST SPLICER ASSEMBLY.
- THE PRIMARY AND CHECK LOOP WITH HOME RUN CABLE CONNECTED SHALL HAVE AN INSULATION RESISTANCE GREATER THAN 100 MEG OHMS UPON INSTALLATION.

PREFORMED LOOP INSTALLATION NOTES:

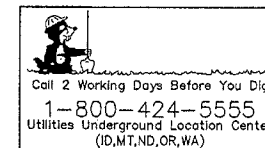
- WHERE ROAD SURFACE IS REPLACED, RCL PLC PREFORMED LOOPS SHALL BE INSTALLED UNDER OR WITHIN NEW SURFACE OVERLAYMENT. INSTALL PREFORMED LOOPS WITH A MINIMUM OF 3"-4" OF ASPHALT OVERLAY.
- PREFORMED LOOP WILL HAVE A 3 TURN PRIMARY LOOP AND A ONE TURN CHECK LOOP. THE PRIMARY LOOP WIRES ARE WHITE AND BLACK. THE CHECK LOOP WIRES ARE RED AND GREEN. THE LOOP SHALL BE CONSTRUCTED USING A RENO A&E HIGH IMPACT GLASS IMPREGNATED PLASTIC SPLICER CONTAINER, RENO A&E LW-418 CABLE, INJECTION MATERIAL FOR THE SPLICER CAVITY, AND SOLDERED CONNECTIONS. LOOP TO BE PRE TESTED FOR LEAKAGE @ 500 VDC. SPECIFY LOOP PERIMETER AND LEAD IN LENGTH TO JUNCTION BOX WHEN ORDERING CONTACT RCL.
- RECTANGULAR LOOP
DRILLED CORNER DETAIL



RECTANGULAR LOOP
SAWCUT CORNER DETAIL
7" OVERRUN BASED ON
24" DIAMETER SAW BLADE



TYPICAL CORNER DETAILS



HR
ENGINEERING INC.

NO.	DATE	BY	REVISION	NO.	DATE	BY	REVISION

PROJECT ENGINEER: FSL	SCALE: NTS
DESIGNED BY: FSL	DATE: 12-06-07
DRAWN BY: JTB	CHECKED BY: XXX
APPROVED BY: XXX	

PORT OF EVERETT

PORT OF EVERETT
CITY OF MUKILTEO
MT BAKER AVE

QUIET ZONE TRAFFIC LOOP DETECTION DETAIL

DWG. NO. RDSG2
CIP NO. XXX
PROJECT NO. XXX
SHEET NO. 2 OF 2

Exhibit B

***** MAINTAIN PROPRIETARY CONFIDENTIALITY *****

THE B. N. S. F. RAILWAY COMPANY
SOUNDTRANSIT ESTIMATE FOR
CITY OF MUKITEL

LOCATION:- MP 27 TO MUKILTEO DETAILS OF ESTIMATE PLAN ITEM: 000125639
VERSION: 1

PURPOSE, JUSTIFICATION AND DESCRIPTION

SIGNAL COST ESTIMATE TO INSTALL UPGRADE TO 4 QUAD GATES WITH INTERTIE AT MOUNT BAKER AVE
LS 50 MP 27.50 - 30.00 NORTHWEST DIV. SCENIC SUB.

PURPOSE

THE MATERIAL LIST BELOW REFLECTS TYPICAL REPRESENTATIVE PACKAGES USED FOR ESTIMATING

ONLY.

THEY CAN BE EXPECTED TO CHANGE AFTER THE ENGINEERING PROCESS. DETAILED AND ACCURATE
MATERIAL LISTS WILL BE FURNISHED WHEN ENGINEERING IS COMPLETED.

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

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

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

THE CITY OF MUKILTEO IS FUNDING 100% OF THIS PROJECT

MAINTAIN PROPRIETARY CONFIDENTIALITY

	DESCRIPTION	QUANTITY	U/M	COST
TOTAL \$				

	LABOR			

	SIGNAL FIELD LABOR - CAP	168.00	MH	3,666
	PAYROLL ASSOCIATED COSTS			2,265
	G & A LABOR OVERHEADS			553
	EQUIPMENT EXPENSES			1,266
	DA LABOR OVERHEADS			1,996
	PERDIEM EXPENSES			1,365
	INSURANCE EXPENSES			578
	TOTAL LABOR COST			11,689
11,689				

	MATERIAL			

	MT BAKER AVE XING UPGRADE TO 4QUAD GATES	1.00	LS	33,195
	MATERIAL HANDLING			1,659
	USE TAX			2,788
	OFFLINE TRANSPORTATION			418
	TOTAL MATERIAL COST			38,060
38,060				

	OTHER			

	CONTRACT ENGR.	1.00	LS	29,000
	MACHINE RENTAL	1.00	LS	3,744
	TOTAL OTHER ITEMS COST			32,744
32,744				

-----			---
82,493	PROJECT SUBTOTAL		
8,249	CONTINGENCIES		
-----			---
90,742	GROSS PROJECT COST		
0	LESS COST PAID BY BNSF		
-----			---
90,742	TOTAL BILLABLE COST		

=====

EXHIBIT "C"
CONTRACTOR REQUIREMENTS

1.01 General

- **1.01.01** The Contractor must cooperate with **BNSF RAILWAY COMPANY**, hereinafter referred to as "Railway" where work is over or under on or adjacent to Railway property and/or right-of-way, hereafter referred to as "Railway Property", during the construction of Mukilteo Quiet Zone Project.
- **1.01.02** The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit "C-1" Agreement, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit "C-1".
- **1.01.03** The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.
- **1.01.04** The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations.
- **1.01.05** The Contractor is responsible for determining and complying with all Federal, State and Local Governmental laws and regulations, including, but not limited to environmental laws and regulations (including but not limited to the Resource Conservation and Recovery Act, as amended; the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA), and health and safety laws and regulations. The Contractor hereby indemnifies, defends and holds harmless Railway for, from and against all fines or penalties imposed or assessed by Federal, State and Local Governmental Agencies against the Railway which arise out of Contractor's work under this Agreement.
- **1.01.06** The Contractor must notify the (City of Mukilteo) at (425) 355-4141 and Railway's Manager Public Projects, telephone number (206) 625-6146 at least thirty (30) calendar days before commencing any work on Railway Property. Contractor's notification to Railway, must refer to Railroad's file "Mukilteo Quiet Zone".
- **1.01.07** For any falsework above any tracks or any excavations located, whichever is greater, within twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 1 ½ horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must

furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin work until notified by the Railway that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.

- **1.01.08** Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

1.02 Contractor Safety Orientation

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

1.03 Railway Requirements

- **1.03.01** The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Agency.
- **1.03.02** The Contractor must notify the Railway's General Manager, Douglas B. Jones at (206) 625-6333 and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.

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

- **1.03.10** The Contractor upon completion of the work covered by this contract, must promptly remove from the Railway's Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said property by said Contractor or any Subcontractor, employee or agent of Contractor or of any Subcontractor, and must cause Railway's Property to be left in a condition acceptable to the Railway's representative.

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

- **1.04.01** Each Contractor that will perform work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway Project Representative to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site www.contractororientation.com, which will be made available to Railway prior to commencement of any work on Railway Property. During the performance of work, the Contractor must audit its work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.

1.05 Protection of Railway Facilities and Railway Flagger Services:

- **1.05.01** The Contractor must give Railway's Roadmaster, Alex Franco, Jr. (telephone 360-922-1401) a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.
- **1.05.02** Unless determined otherwise by Railway's Project Representative, Railway flagger and protective services and devices will be required and furnished when Contractor's work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:
 - **1.05.02a** When in the opinion of the Railway's Representative it is necessary to safeguard Railway's Property, employees, trains, engines and facilities.
 - **1.05.02b** When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.

- **1.05.02c** When work in any way interferes with the safe operation of trains at timetable speeds.
- **1.05.02d** When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.
- **1.05.02e** Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.
- **1.05.03** Flagging services will be performed by qualified Railway flaggers.
- **1.05.03a** Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railways Representative.
- **1.05.03b** Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.
- **1.05.03c** The cost of flagger services provided by the Railway, when deemed necessary by the Railway's representative, will be borne by the City of Mukilteo. The estimated cost for one (1) flagger is \$600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, transportation, meals, lodging and supervision. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. The flagging rate in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of flagging pursuant to this paragraph.
- **1.05.03d** The average train traffic on this route is 29 freight trains per 24-hour period at a timetable speed 50 MPH and 10 passenger trains at a timetable speed of 55 MPH.

1.06 Contractor General Safety Requirements

- **1.06.01** Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations.
- **1.06.02** Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).

- **1.06.03** Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by the Railway's Project Representative. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.
- **1.06.04** When Contractor employees are required to work on the Railway Property after normal working hours or on weekends, the Railroad's representative in charge of the project must be notified. A minimum of two employees must be present at all times.
- **1.06.05** Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway's Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway's Property by that employee will be denied.
- **1.06.06** Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's representative in charge of the project. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway representative in charge of the project and to the Railway's Resource Operations Center at 1(800) 832-5452. Local emergency numbers are to be obtained from the Railway representative in charge of the project prior to the start of any work and must be posted at the job site.
- **1.06.07** For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway's Property.
- **1.06.08** All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, **www.contractororientation.com**, however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railroad's representative in charge of the project is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **(NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**
- **1.06.09** The Contractor must not pile or store any materials, machinery or equipment closer than 25'-0" to the center line of the nearest Railway track. Materials, machinery or equipment must not be stored or left within 250 feet of any highway/rail at-grade crossings, where

storage of the same will interfere with the sight distances of motorists approaching the crossing. Prior to beginning work, the Contractor must establish a storage area with concurrence of the Railroad's representative.

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

1.07 Excavation

- **1.07.01** Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor must determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact **BNSF's Field Engineering Representative (Rusty Olson 206 625-6189)**. All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. **It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.**
- **1.07.02** The Contractor must cease all work and notify the Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.
- **1.07.03** All excavations must be conducted in compliance with applicable OSHA regulations

and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.

- **1.07.04** Any excavations, holes or trenches on the Railway's Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

1.08 Hazardous Waste, Substances and Material Reporting

- **1.08.01** If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to Railway's Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor must immediately: (a) notify the Railway's Resource Operations Center at 1(800) 832-5452, of such discovery: (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties: and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

1.09 Personal Injury Reporting

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

NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

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

1. Accident City/St _____
County: _____
(if non-Railway location)
2. Date: _____ Time: _____
3. Temperature: _____
4. Weather _____
5. Social Security # _____
6. Name (last, first, mi) _____
7. Address: Street: _____ City: _____ St. _____ Zip: _____
8. Date of Birth: _____ and/or Age _____ Gender: _____
(if available)
9. (a) Injury: _____ (b) Body Part: _____
(i.e. (a) Laceration (b) Hand)
11. Description of Accident (To include location, action, result, etc.): _____

12. Treatment:
 - ? First Aid Only
 - ? Required Medical Treatment
 - ? Other Medical Treatment

13. Dr. Name _____ 30. Date: _____
14. Dr. Address:
Street: _____ City: _____ St: _____ Zip: _____
15. Hospital Name: _____
16. Hospital Address:
Street: _____ City: _____ St: _____ Zip: _____
17. Diagnosis: _____

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

LAW DEPARTMENT APPROVED

EXHIBIT "C-1"

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

BNSF RAILWAY COMPANY
Attention: Manager Public Projects

Railway File: Mukilteo Quiet Zone Project

Agency Project: _____

Gentlemen:

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

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

Section 1. RELEASE OF LIABILITY AND INDEMNITY

Contractor hereby waives, releases, indemnifies, defends and holds harmless Railway for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about Railway's property or right-of-way. **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION,**

DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE WILLFUL MISCONDUCT OR SOLE NEGLIGENCE OF RAILWAY.

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

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

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

Section 2. TERM

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

Section 3. INSURANCE

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

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

- ◆ Bodily Injury and Property Damage
- ◆ Personal Injury and Advertising Injury

- ◆ Fire legal liability
- ◆ Products and completed operations

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

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

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

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

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

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

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

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

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

Other Requirements:

To the extent permitted by law, all policies (applying to coverage listed above) must not contain any exclusion for vicariously assessed punitive damages and certificates of insurance must reflect that no exclusion exists.

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 4. EXHIBIT "C" CONTRACTOR REQUIREMENTS

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

Section 5. TRAIN DELAY

Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability

to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, but only to the extent caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

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

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

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

Contractor and its subcontractors must give Railway's representative Rusty Olson (206) 625-6189 four weeks advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.

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

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

(Contractor)

BNSF Railway Company

By: _____
Printed Name: _____
Title: _____

By: _____
Name: _____
Manager Public Projects

Contact Person: _____
Address: _____

Accepted and effective this ____ day of 20__.

City: _____ State: ____ Zip: _____
Fax: _____
Phone: _____
E-mail: _____