

CITY/COUNTY Mukilteo	CITY/COUNTY RAILWAY AGREEMENT FOR FEDERAL AID SAFETY PROJECTS HIGHWAY RAILWAY GRADE CROSSING WARNING DEVICES	PROJECT NO BN10854
RAILWAY Burlington Northern Inc.		AGREEMENT NO.

The above parties having complied, or hereby agreeing to comply, with the terms and conditions set forth in (1) Title 23, U. S. Code, Highways, (2) The regulations issued pursuant thereto and (3) The Policies and Procedures promulgated by the Washington State Department of Highways, relating to Grade Crossing Warning Devices, hereby agree to proceed with the accomplishment and completion of the project hereinafter described.

PROJECT DESCRIPTION

City/County Road Name First Street (Mount Baker Avenue)
 Location Mukilteo, Washington
 Railway Line Name Burlington Northern Inc.
 Location MP 28+4660 - Pacific 1st Subdivision Lot 1, Sec. 33, T. 29 N., R. 4 E. W. M. (2B 28.90) BN 085-452V)

DESCRIPTION OF WORK:

Install automatic flashing light traffic control devices, cantilever type, with gates and shoulder mount automatic flashing light signal, and motion sensing equipment. Also removal of one track through the crossing area sufficient to give better sight distances.

The site plan attached hereto as "Exhibit C" further describes the work.

Construction is estimated to be completed in 365 days, following execution of this agreement and authorization to proceed

TYPE OF WORK	ESTIMATE OF COST		
	LABOR	NON-LABOR	TOTAL
1. Install Warning Devices			
(Type)	13,130.00	43,020.00	56,150.00
a. Freight Material Handling		3,485.00	3,485.00
b. Equipment Rental		2,625.00	2,625.00
c. Expenses		2,625.00	2,625.00
d. Salvage		(50.00)	(50.00)
e. Other	2,340.00	7,520.00	9,860.00
2. Engineering and Accounting	2,925.00		2,925.00
3. Liability Insurance		1,475.00	1,475.00
4. Labor Surcharge	7,350.00		7,350.00
5. Other Work by Railroad			
Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Exhibit "A" attached hereto	2,650.00	1,012.00	3,662.00
6. Total Project Cost	28,395.00	61,712.00	90,107.00

* IF DETAIL IS REQUIRED, ATTACH "EXHIBIT A". INSERT "EXHIBIT A" TOTALS IN THIS LINE.

The above parties further stipulate that they agree to and will comply with the provisions set forth on the reverse hereof and made a part of this agreement. Where a Franchise or Permit exists, the parties shall determine to what extent the Franchise or Permit is superseded by this agreement. Such determination should be in writing and attached as part of the agreement.

REPAIR OR REPLACEMENT OF DAMAGED OR OBSOLETE SIGNALS To the extent Federal, state or other public funds are not available for the purpose as provided in Section VI, hereof, the cost of repair or replacement of the signals shall be borne on the ratio of 15 percent City/County and 25 percent Railway.

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

ADOPTED by Resolution/Ordinance No.: 79-2

Railroad Official: [Signature]
 Title: Vice President

City/County Official: [Signature]
 Mayor/CHAIRMAN COUNTY COMMISSIONERS

Date: May 2, 1979

Date: June 13, 1979

I. SCOPE OF WORK

The Railway will provide all the work, labor, materials and services to install the warning devices hereinafter called "signals" as described and set forth in the "Project Description" and "Estimate of Cost"

The City/County shall perform those services necessary to facilitate the processing of all necessary documents required for the orderly progress of the project in accordance with the Policies and Procedures of the Washington State Department of Highways (hereinafter called "Department") and the Federal-aid Highway Program Manual of the Federal Highway Administration (hereinafter called FHWA)

The City/County shall install without expense to the Railway advance warning signs, standard pavement markings for railroad crossings, and guard rails or barriers to protect the signals from highway traffic when such protection is required

II. FUNDING

The Project will be financed in conformity with FHWA regulations adopted for safety improvement projects authorized in the Highway Safety Act of 1973 or the Highway Safety Act of 1976 utilizing ninety percent (90%) Federal Funds and ten percent (10%) City/County Funds for those costs necessary to complete the project

III. PAYMENT

Upon written authorization by the City/County, the Railway may proceed with the project. Following execution of this agreement, progress bills may be submitted to the City/County for the cost of labor, materials and other services provided to date of billings and as shown in the estimate of cost or supplemental estimates of cost furnished by the Railway and accepted by the City/County. The City/County shall pay such progress billings promptly upon receipt. Final and detailed billing of all incurred costs shall be made by the Railway within one year of project completion, and the City/County shall pay all eligible amounts of such bill, less progress payments previously made

The City/County agrees to reimburse the Railway for the amount shown in the Estimate of Cost for the actual cost of labor, materials, and other services furnished by the Railway pursuant to this agreement, provided the costs are eligible for Federal aid reimbursement in accordance with the provisions of the FHWA Federal-aid Highway Program Manual, Volume 1, Chapter 4, Section 3 and any amendments and supplements thereto.

Overruns above the amount shown in the Estimate of Costs, eligible for Federal aid participation will be reimbursed in accordance with the provisions of FASP Guidelines No. 7, 2

IV. AVAILABILITY OF RECORDS

All project records in support of all costs incurred and expenditures are to be kept and maintained by the Railway and by City/County in accordance with procedures prescribed by the FHWA Federal-aid Highway Program Manual Volume 1, Chapter 7, Section 2

The records shall be open to inspection by the Department and FHWA at all reasonable times and shall be retained and made available for such inspection for a period of not less than three years from the final payment of any funds to the Railway

V. MAINTENANCE OF FACILITY

Upon completion of installation, the Railway shall operate and maintain the signals as required by law. The City/County will maintain the advance warning signs, the standard pavement markings for railroad crossings, and protective barriers or guardrails at City/County expense. However, in the event that any existing or future legislation makes Federal, State or other public funds available for the operation, maintenance, repair or replacement of signals at grade crossings, the City/County shall cooperate with the Railway to secure said funds for the operation, maintenance, repair or replacement of the signals installed pursuant hereto. This agreement shall be supplemented and amended as necessary for the operation and maintenance of said signals to qualify for such funds

VI. REPAIR OR REPLACEMENT OF DAMAGED OR OBSOLETE FACILITY

In the event one or more of the signals installed under this agreement are partially or wholly destroyed and its or their replacement value or cost of repairing, cannot be recovered from the person or persons responsible for such destruction, then, in that event, cost of repair of the signals, or cost of installation of a new signal or signals, shall be borne on a ratio agreed upon by the Railway and the City/County as specified on the front hereof

If the damage to a signal is caused by highway traffic, City/County will cooperate with the Railway in determining the location and identification of the parties responsible to the extent of making accident records available

If said damaged signals cannot, through age, be maintained or require replacement by virtue of their obsolescence, then the cost of replacing the signals shall be negotiated by the City/County and the Railway as specified on the front hereof, with such State, Federal or other public funds as may be available at the time such replacement becomes necessary

VII. DISPOSITION OF SIGNALS NO LONGER REQUIRED

If for any reason, signals shall no longer be required at grade crossings, and, in the opinion of the Railway, they are not obsolete, the Railway, on the approval of the City/County with concurrence of the Department may remove said signals and reinstall them at some other grade crossing within the City/County on the tracks of the Railway. If no other crossing is agreed upon or prescribed by the appropriate public authority, the signals shall be salvaged and the City/County shall be credited with the value of the salvage recovered less the cost of removal. If said relocation is agreed upon by the City/County and the Railway, and prescribed by the public authority, the division of cost of such relocation shall be agreed upon between the City/County and the Railway prior to such removal. If for any reason, the signals shall no longer be required at a grade crossing, and in the opinion of the Railway the signals are obsolete, the Railway may remove the signals and credit the City/County with the value of salvage recovered less cost of removal

VIII. RELOCATION REQUIRED BY IMPROVEMENT

In the event that either railway or highway improvement will necessitate a rearrangement or relocation or alteration of the existing signals at said crossing, the party whose improvement causes such changes shall bear the entire cost thereof without expense to the other party. The Railways will make the decision as to whether the signals or control circuits will be obsolete or inadequate to accommodate an improvement, subject to conformance with the Policies and Procedures promulgated by the Washington State Department of Highways, relating to Grade Crossing Warning Devices.

IX. NON DISCRIMINATION PROVISION

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, the Railway for itself, assigns and successors in interest agrees that it will not unlawfully discriminate in its choice of contractors and will include all the non-discrimination provisions set forth in "Exhibit "B" attached hereto and made a part hereof, in any such contract or agreement.

Upon completion of the installation of the signals covered by this agreement, the City/County shall, on presentation of a progress bill therefor, pay to the Railway an amount equal to eighty (80%) percent of the estimate of cost or supplemental estimate of cost of said signals.

BURLINGTON NORTHERN INC.

Pacific Division

1st Subdivision

MUKILTEO

STATE OF WASHINGTON

VALUATION SECTION G-15

EXHIBIT "A"

Estimated cost to remove siding for signalization as per Exhibit "C"

	<u>Labor</u>	<u>Non-Labor</u>
1. <u>Track Work</u>		
Remove 41 ^T asphalt crossing,		
Remove 429 T.F. of siding,		
Remove 2 crossbucks and		
Place 2 bumping posts	\$1,300.00	\$1,315.00
Material handling		50.00
Freight		35.00
Equipment rental		350.00
Salvage		<u>(1,115.00)</u>
Sub-totals without Labor Surcharges	\$1,300.00	\$635.00
2. <u>Engineering & Accounting</u>		
Engineering	250.00	-
Bill preparation	<u>100.00</u>	-
Sub-totals without Labor Surcharges	350.00	-
3. <u>Flagging not Estimated</u>		
<u>SUMMARY</u>		
1. Track work	1,300.00	635.00
2. Engineering & Accounting	350.00	-
3. Flagging	-	-
4. Liability Insurance	-	145.00
	<u>1,650.00</u>	<u>780.00</u>
5. <u>Labor Surcharges</u>		
Vacation Pay, paid holidays, Railroad Retirement,		
Unemployment, Health & Welfare Benefits	<u>760.00</u>	-
	2,410.00	<u>780.00</u>
		2,410.00
		3,190.00
		<u>412.00</u>
Contingencies		3,602.00
State Tax		60.00
Total B/C vs State of Washington		<u>\$3,662.00</u>

EXHIBIT "E,"

Appendix A

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

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

- (1) Compliance with Regulations: The contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in federally-assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- * (2) Nondiscrimination: The contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix "A", "B" and "C".
- (3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the ground of race, color or national origin.
- (4) Information and Reports: The contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State Highway Department or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the State Highway Department, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the State Highway Department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to,
 - (a) withholding of payments to the contractor under the contract until the contractor complies, and/or
 - (b) cancellation, termination or suspension of the contract, in whole or in part.

(6) Incorporation of Provisions: The contractor will include the provisions of paragraph (1) through (6) in every subcontract, including procurement 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."

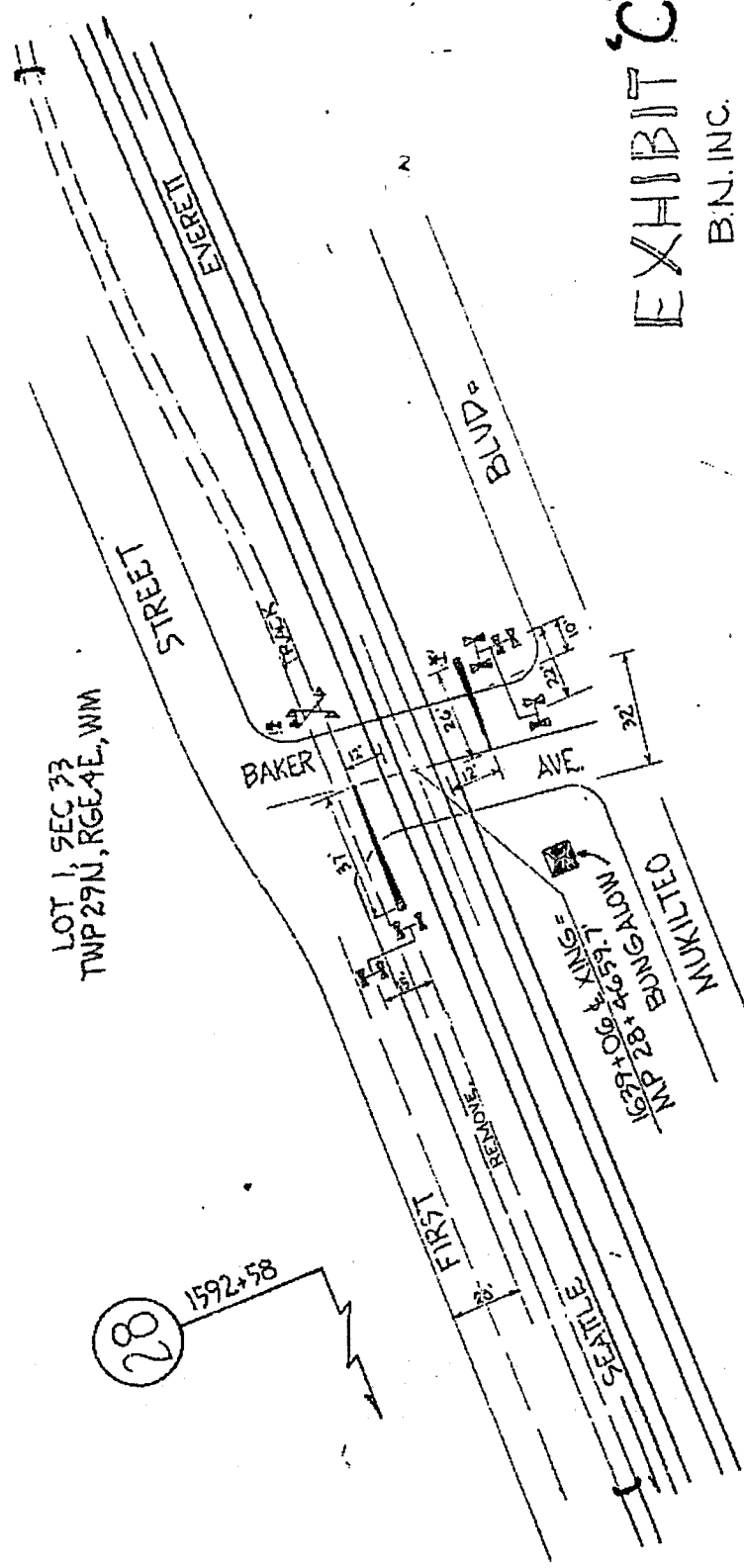


EXHIBIT C

B.N.I. INC.

PORT-SEA REGION - SEATTLE - EVERETT
 INSTALL SIGNALS and
 TRACK REMOVAL - MP 28+466
 MUKILTEO, WA 5116

SCALE 1"=40'

DIRECTOR OF ENGINEERING, SEATTLE 2-13-79

J.M.C.

- WORK by BNI
- REMOVE - 4' Asphalt Crossing; Existing signs; 429 TF of 90" bolted rail.
- INSTALL - 2 bumping posts, 1 shldr. mount & 2-Automatic flashing light traffic control devices, Cantilever type, with gates & motion sensing devices.
- CITY - To pave through crossing removal area & to place fill for burlap

AGENCY UNLIMITED, VAN
 PROJECT NO. _____ ITEM NO. _____
 LOCATION FIRST STREET (MOUNT BAKER AVE.)
 RAILROAD(S) BURLINGTON NORTHERN INC.

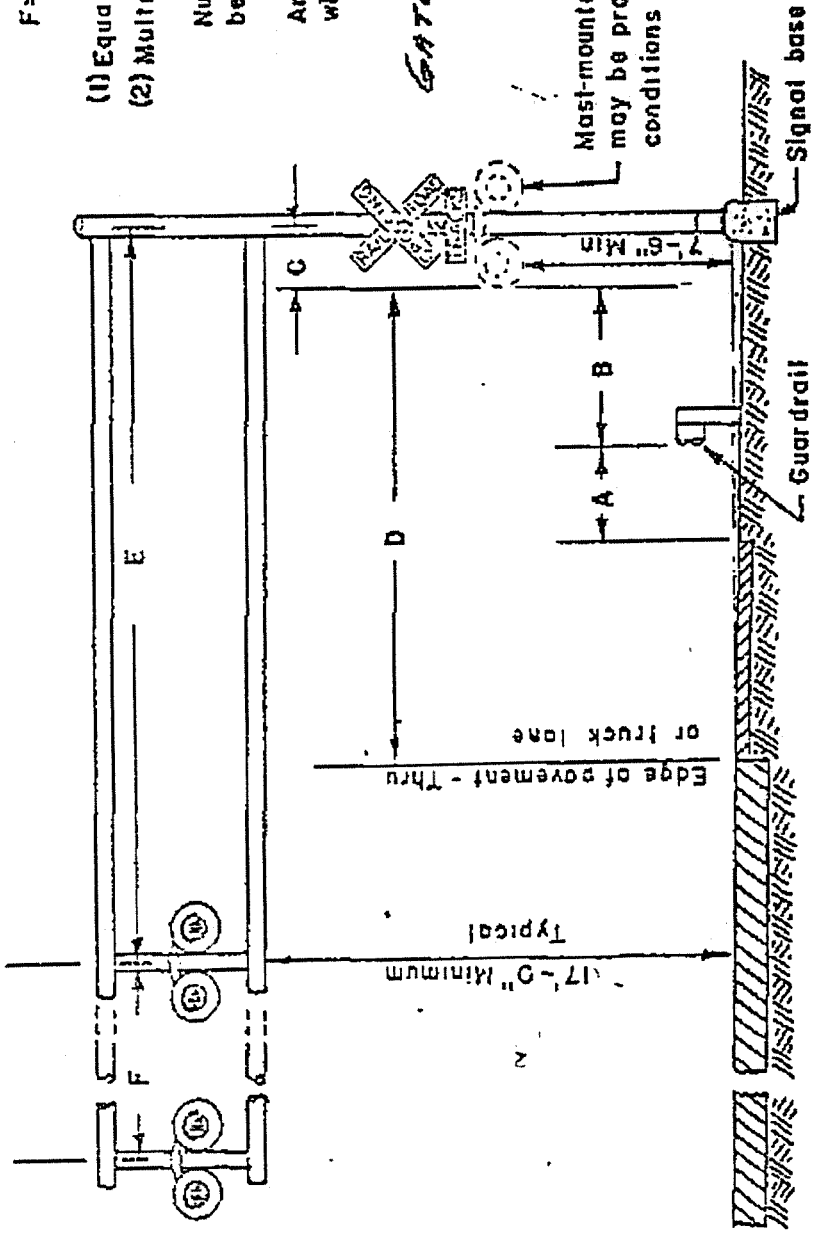
DIMENSIONS

A = _____
 B = _____
 C = 2'-1" (1)
 D = 8'-0"
 E = 37'-0"
 F = _____ (2)

(1) Equals zero if no mast mounted lig.
 (2) Multilane facilities only.

Number of lanes to be protected = 1
 Amount of future widening = 0

GATE TO BE 37'-0" LONG



ELEVATION VIEW

No Scale

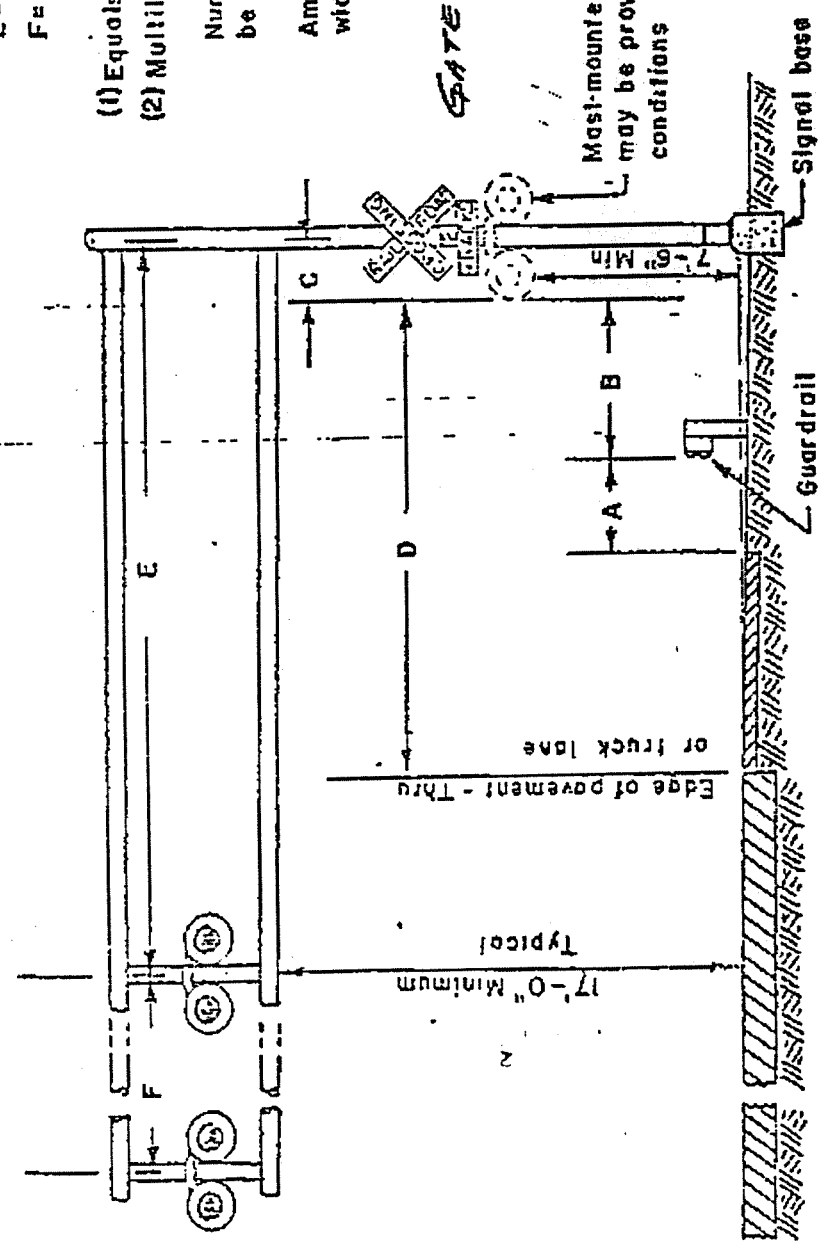
DATE 4-30-79 BY L.L.G.

AGENCY MUNICIPAL WA
 PROJECT NO. _____ ITEM NO. _____
 LOCATION FIRST STREET (MOUNT BAKER AVE.)
 RAILROAD(S) BURLINGTON NORTHERN (NE)

DIMENSIONS
 A = _____
 B = _____
 C = 21' (1)
 D = 8'-0"
 E = 22'-0" (2)
 F = _____

(1) Equals zero if no mast mounted lights.
 (2) Multilane facilities only.
 Number of lanes to be protected = 1
 Amount of future widening = 0

GATE TO BE 26'-0" LONG



ELEVATION VIEW

No Scale

DATE 4-30-79 BY L.L.G.