



## WENATCHEE CITY COUNCIL

**Thursday, May 23, 2024**

Wenatchee City Hall Council Chambers  
301 Yakima Street  
Wenatchee, WA 98801

### AGENDA

*"To create community through responsive leadership and services for the citizens and visitors of the Apple Capital of the World."*

#### 5:15 p.m. Regular Meeting

#### 1. Call to Order, Pledge of Allegiance, and Roll Call

#### 2. Citizen Requests/Comments

The "Citizen Comments" period is to provide the opportunity for members of the public to address the Council on any matter, including items on the agenda. Comments on public hearing items will be taken during the public hearing. The Mayor will ask if there are any citizens wishing to address the Council. When recognized, please step up to the microphone, give your name and mailing address, and state the matter of your interest. Citizen comments will be limited to three minutes.

#### 3. Consent Items

- *Motion to approve agenda, vouchers, and minutes from previous meetings.*  
Vouchers:  
Claim checks #300363 through #300483 in the amount of \$1,259,233.85 for May 9, 2024  
Claim checks #300484 through #300579 in the amount of \$2,290,670.10 for May 16, 2024
- *Motion to approve Resolution No. 2024-16, appointing Richard Upton as a voting member to the Code Enforcement Board.*
- *Motion to approve Resolution No. 2024-17, designating three City Councilmembers as voting representatives on behalf of the City of Wenatchee at the Association of Washington Cities Annual Business Meeting Conference for 2024.*

#### 4. Presentations

- Memorial Day Proclamation
- Chelan County PUD Presentation – Commissioner Kelly Allen

#### 5. Action Items

- A. Department of Archaeology and Historic Preservation Grant for Cemetery  
Presented by Parks, Recreation & Cultural Services Director David Erickson  
**Action Requested:** *Motion for City Council to authorize the Parks, Recreation and Cultural Services Director to sign a grant agreement with the State of Washington Department of Archaeology and Historic Preservation (DAHP) for the Cemetery Sign Project.*

- B.** Confluence Parkway South, Project #2201.1 Budget Amendment  
Amendment #1 to Task Order CP South for Design Build Services with Kraemer Scarsella Brothers Joint Venture  
Presented by City Engineer Jake Lewing  
**Action Requested:** *Motion for City Council to amend the project budget and authorize the City Administrator to execute Amendment #1 to Task Order CP South with Kraemer Scarsella Brothers Joint Venture for the Confluence Parkway South project (Project No. 2201.1).*
- C.** City Project 1801 – 9<sup>th</sup> Street Rail Crossing Project – BNSF C&M Agreement  
Presented by Project Engineer Nicole Brockwell  
**Action Requested:** *Motion for City Council to authorize the City Administrator to execute the Construction and Maintenance (C&M) Agreement between the City of Wenatchee and BNSF for railroad crossing improvements to be constructed as part of the 9<sup>th</sup> Street Rail Crossing Project, City Project No. 1801.*
- D.** Pallet Shelter Installation Change Orders  
Presented by Community Development Director Glen DeVries  
**Action Requested:** *Motion for City Council to authorize the City Administrator to sign change orders in the amount of \$82,784.80 for the completion of the site and utility work at the Wenatchee Rescue Mission for the Pallet Shelter facility located at 1450 South Wenatchee Avenue, Wenatchee, WA.*
- E.** Wenatchee Rescue Mission Sewer Lift Station Pump Replacement  
Presented by Community Development Director Glen DeVries  
**Action Requested:** *Motion for City Council to authorize the financial contribution in the amount of \$74,000 for the sewer lift system to be rebuilt and upgraded at 1450 South Wenatchee Avenue for the Wenatchee Rescue Mission.*
- F.** Bid Award for 2024 Pavement Preservation Project  
Presented by Project Engineer Charlotte Mitchell  
**Action Requested:** *Motion for the City Council to authorize the City Administrator's signature and award the contract for City Project Number 2301 – 2024 Pavement Preservation to the lowest responsive bidder.*

## 6. Executive Session

Executive session to consider the acquisition of real estate by purchase when public knowledge regarding such consideration would cause a likelihood of increased price. RCW 42.30.110(1)(b).

**Action Requested:** *Motion to meet in executive session for a time period not to exceed 15 minutes, with legal counsel present, to consider the acquisition of real estate by purchase when public knowledge regarding such consideration would cause a likelihood of increased price. RCW 42.30.110(1)(b). Action is not expected to be taken following the executive session.*

## **7. Reports**

- a. Mayor's Report
- b. Reports/New Business of Council Committees

## **8. Announcements**

## **9. Close of Meeting**



**DRAFT**

## WENATCHEE CITY COUNCIL

**Thursday, May 9, 2024**

Wenatchee City Hall Council Chambers  
301 Yakima Street  
Wenatchee, WA 98801

### MINUTES

*"To create community through responsive leadership and services for the citizens and visitors of the Apple Capital of the World."*

**Present:** Mayor Mike Poirier; Councilmember District 1 Jose Cuevas; Councilmember District 2 Chelsea Ewer; Councilmember District 3 Top Rojanasthien; Councilmember District 4 Travis Hornby; Councilmember District 5 Charlie Atkinson; Councilmember At-Large "A" Linda Herald; Councilmember At-Large "B" Keith Huffaker (via phone)

**Staff Present:** City Administrator Laura Gloria; Assistant City Attorney Steve Smith; City Clerk Tammy McCord; IT Support Zach Steele; Human Resources Director Kari Page; Community Development Director Glen DeVries; Finance Director Brad Posenjak; Public Works Director Rob Jammerman; Utility Planner Darci Ronning; Police Chief Steve Crown

### 5:15 p.m. Regular Meeting

**1. Call to Order, Pledge of Allegiance, and Roll Call.** Mayor Mike Poirier called the meeting to order at 5:16 p.m. The Cub Scouts led the Pledge of Allegiance. All Councilmembers were present, with Councilmember Keith Huffaker participating via phone.

**2. Citizen Requests/Comments.** The Mayor asked for citizen comments. There was no one who wished to speak.

### 3. Consent Items

- *Motion to approve agenda and vouchers, and minutes from previous meetings.*

Vouchers:

Payroll distribution (retirees) in the amount of \$11,589.26 dated 4/19/2024

Claim checks #300001 through #300179 in the amount of \$2,441,598.22 dated 4/4/2024 – 4/19/2024

Wires #1-3 and claim checks #300180 through #300275 in the amount of \$1,488,834.52 dated 4/20/2024 – 4/25/2024

Claim checks #300276 through #300362 in the amount of \$558,568.64 dated 4/26/2024 – 5/3/2024

Benefits/deductions in the amount of \$1,099,406.19 dated 4/30/2024

Payroll distribution in the amount of \$16,749.86 dated 5/2/2024

Payroll distribution in the amount of \$653,170.88 dated 5/3/2024

- *Motion for City Council to accept the work performed by the contractor, Allied Trenchless, LLC, on the small works CIPP Project No. SW23-03, and further authorize the City Administrator to sign the Final Contract Voucher Certification on behalf of the City of Wenatchee.*



Motion by Councilmember Travis Hornby to approve agenda and vouchers, and minutes from previous meetings, and for City Council to accept the work performed by the contractor, Allied Trenchless, LLC, on the small works CIPP Project No. SW23-03, and further authorize the City Administrator to sign the Final Contract Voucher Certification on behalf of the City of Wenatchee. Councilmember Charlie Atkinson seconded the motion. Motion carried (7-0).

#### 4. Presentations

- Employee Years of Service Milestone Awards. Human Resources Director Kari Page recognized the Years of Service Milestone Awards for the following employees:

Tina Erwert	30 years
Edgar Reinfeld	25 years
Gary Bryant	10 years
Brian Smiddy	10 years
Ruth Traxler	5 years
Lorenzo Cornelio	5 years
Lukas Lee	5 years
Kelly Weatherman	5 years

Edgar Reinfeld and Kelly Weatherman were present to accept their awards from Mayor Poirier.

- Police Week Proclamation read by Councilmember Linda Herald and presented to Wenatchee Police Department staff who were present. Chief Crown said a few words about Police Week and the planned vigil and other activities.
- Public Works Week Proclamation read by Councilmember Chelsea Ewer and presented to Public Works staff who were present. Public Works Director Rob Jammerman said a few words about Public Works Week and the planned activities.
- Historic Preservation Month Proclamation read by Councilmember Top Rojanasthien and presented to City Planner Kirstin Larsen and Historic Preservation Board Vice Chair Blythe Kelly who said a few words about the upcoming Historic Home Tour.
- Common Ground Update – Common Ground Executive Director Thom Nees presented an update and overview (Power Point Presentation) of Community Housing Trust projects underway.

#### 5. Action Items

- A. Introduction of Current Salary Commission Members and Resolution to Reappoint Lorna Klemanski

Human Resources Director Kari Page introduced the current Salary Commission members, Lorna Klemanski, Darrell Dickeson and Craig Larsen. She then presented the staff report for Resolution 2024-08.

*Motion by Councilmember Top Rojanasthien for City Council to pass Resolution No. 2024-08, confirming the reappointment of Lorna Klemanski to Position One on the Salary Commission. Councilmember Travis Hornby seconded the motion. Motion carried (7-0).*

**B. Subordination agreement for property located at 1101 and 1105 Red Apple Road**

Community Development Director Glen DeVries presented the staff report.

*Motion by Councilmember Charlie Atkinson for City Council to authorize the City Administrator to sign a subordination agreement between the City and requestors GCP ELEVEN01 LLC, a Delaware limited liability company, ACV WENATCHEE, LLC, a Delaware limited liability company, and ACV LA ROSA, LLC, a California limited liability company. Councilmember Travis Hornby seconded the motion. Motion carried (7-0).*

**C. Financial Policy Updates**

Finance Director Brad Posenjak presented the staff report.

*Motion by Councilmember Travis Hornby for City Council to adopt Resolution 2024-14 amending Section 1.2.01 of the City Financial Policy and Procedure Manual. Councilmember Jose Cuevas seconded the motion. Motion carried (7-0).*

**D. Resolution 2024-15 Emergency Declaration for Fifth and Emerson Stormwater Main Repair**

Public Works Director Rob Jammerman presented the staff report.

*Motion by Councilmember Top Rojanasthien for the City Council to pass Resolution No. 2024-15 declaring an emergency to repair the stormwater main in Fifth Street and authorize the Mayor's signature. Councilmember Chelsea Ewer seconded the motion. Motion carried (7-0).*

**E. City Project 2310– Roosevelt Utility Improvements**

Legal Contract Agreement and Authorization to Sign Funding Agreement

Utility Planner Darci Ronning presented the staff report.

*Motion by Councilmember Top Rojanasthien for City Council to approve the Public Works Board Legal Contract Agreement for the Roosevelt Utility Improvements project, project*

number 2310 and authorize the City Administrator to sign the agreement. Councilmember Travis Hornby seconded the motion. Motion carried (7-0).

- F. City Project 2101 – Ninth Street Basin Water Quality Retrofit Authorization to Award Construction Contract

Utility Planner Darci Ronning presented the staff report. Council asked questions.

Motion by Councilmember Travis Hornby for City Council to award the construction contract for the Ninth Street Basin Water Quality Retrofit, City Project No. 2101, to the lowest responsive bidder J & K Earthworks, LLC and authorize the Mayor to sign the contract documents. Councilmember Charlie Atkinson seconded the motion. Motion carried (7-0).

**6. Public Hearing Items.** The Mayor explained the public hearing procedures.

- G. Right-of-Way Vacation of a Portion of North Columbia Street

Public Works Director Rob Jammerman presented the staff report. The Mayor asked for public comment. There was none.

Motion by Councilmember Charlie Atkinson for City Council to approve Ordinance No. 2024-07, vacating a portion of North Columbia Street. Councilmember Linda Herald seconded the motion. Motion carried (7-0).

**7. Executive Session.**

Executive session to consider the acquisition of real estate by purchase when public knowledge regarding such consideration would cause a likelihood of increased price (RCW 42.30.110(1)(b)); the minimum price for which real estate will be offered for sale when public knowledge regarding such consideration would cause a likelihood of decreased price (RCW 42.30.110(1)(c)); and to evaluate the qualifications of applicants for public employment (RCW 42.30.110(g));

The Council met in executive session starting at 6:07 p.m. Councilmember Keith Huffaker participated via phone.

Motion by Councilmember Linda Herald for City Council to meet in executive session for a time period not to exceed 30 minutes, with legal counsel present, to consider the acquisition of real estate by purchase when public knowledge regarding such consideration would cause a likelihood of increased price (RCW 42.30.110(1)(b)); the minimum price for which real estate will be offered for sale when public knowledge regarding such consideration would cause a likelihood of decreased price (RCW 42.30.110(1)(c)); and to evaluate the qualifications of applicants for public employment (RCW 42.30.110(q)). Councilmember Travis Hornby seconded the motion. Motion carried (7-0).

An additional 10 minutes was requested at 6:37 p.m. Council adjourned from executive session at 6:47 p.m.

*[Councilmember Keith Huffaker left the meeting]*

- H. Action Requested:** *Motion for the City Council to authorize the City Administrator to execute purchase and sale agreement for property at 135 S Chelan after review of documents by City Attorney.*

*Motion by Councilmember Chelsea Ewer for the City Council to authorize the City Administrator to execute purchase and sale agreement for property at 135 S Chelan after review of documents by City Attorney. Councilmember Jose Cuevas seconded the motion. Motion carried (6-0).*

## 8. Reports

- a. Mayor's Report. The Mayor reported on the following:
- (1) He attended last evening's Law Enforcement Recognition Ceremony;
  - (2) He participated in the Apple Blossom festivities;
  - (3) The groundbreaking ceremony was on Monday for the Wenatchee Convention Center project;
  - (4) The city was successful in obtaining an additional \$1,000,000 allocation from the Chelan Douglas Transportation Council.

- b. Reports/New Business of Council Committees

Councilmember Linda Herald reported that the pallet shelters are all in place; however, there are some sewage issues that need to be addressed before they can open. She is proud of the city for doing this work and having a place to help those people who really need the help for them to succeed.

Councilmember Jose Cuevas reported that he has been participating in the South Wenatchee Corridor Study project and gathering surveys.

Councilmember Chelsea Ewer reported that she attended finance committee, a very busy Apple Blossom and wonderful Misawa celebration.

Councilmember Charlie Atkinson reported that the Chelan Douglas Homeless Housing Advisory Committee is working on a rental assistance program.

Councilmember Travis Hornby reported that the Wenatchee Downtown Association is working on a block captain program to keep downtown clean. Also, they were very appreciative of the criterium and how it was run and efforts to clean up afterwards. It was a larger event this year, and is expected to be even larger next year.

**9. Close of Meeting.** With no further business, the meeting adjourned at 6:55 p.m.

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Mike Poirier, Mayor

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Tammy McCord, City Clerk

## **RESOLUTION NO. 2024-16**

**A RESOLUTION,** of the City of Wenatchee, Washington appointing Richard Upton as a voting member to the Code Enforcement Board.

**WHEREAS,** the City of Wenatchee has created a Code Enforcement Board (“Board”) with powers and duties as stated in Chapter 2.10 of the Wenatchee City Code; and

**WHEREAS,** the Board has a vacate position; and

**WHEREAS,** Richard Upton has expressed a desire to be appointed to the Board to fill the vacant position; and

**WHEREAS,** Richard Upton qualifies to serve on the Board; and

**WHEREAS,** the Department of Community Development is the “responsible department,” as that term is used in Resolution 2009-34, for the Board; and

**WHEREAS,** the Director of the Department of Community Development recommends that Richard Upton be appointed as a voting member to the Board.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WENATCHEE HEREBY RESOLVES AS FOLLOWS:**

**Section 1. Appointment.** The City Council hereby makes the following appointment, as a voting member, to the Code Enforcement Board with a term as stated below:

**NAME and ADDRESS**

Richard Upton  
613 Meadows Dr.  
Wenatchee, WA 98801

**TERM BEGINS**

Immediately

**TERM EXPIRES**

December 31, 2025

**Section 2.** Effective Date. This Resolution shall take effect upon adoption.

**ADOPTED** by the City Council of the City of Wenatchee, Washington, this 23rd day of May, 2024.

**CITY OF WENATCHEE**, a Municipal Corporation

By: \_\_\_\_\_  
MIKE POIRIER, Mayor

ATTEST:

By: \_\_\_\_\_  
TAMMY McCORD, City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
DANIELLE R. MARCHANT, City Attorney



### VOLUNTEER COMMISSION/BOARD APPLICATION

#### COMMISSION/BOARD INFORMATION

Board(s) I would like to be considered for: (if more than one, please rank them in order of preference)

- |   |   |
|---|---|
| <input type="checkbox"/> Arts, Recreation & Parks Commission    | <input type="checkbox"/> Housing Authority                                |
| <input type="checkbox"/> Cemetery Advisory Board                | <input type="checkbox"/> Lodging Tax Advisory Committee                   |
| <input type="checkbox"/> Civil Service Board                    | <input type="checkbox"/> Planning Commission                              |
| <input checked="" type="checkbox"/> Code Enforcement Board      | <input type="checkbox"/> Salary Commission for Councilmember Compensation |
| <input checked="" type="checkbox"/> Historic Preservation Board | <input type="checkbox"/> Tourism Promotion Area Board                     |

#### APPLICANT INFORMATION

City of Wenatchee Resident  Yes  No

*Residency Requirement: Applicants must reside within the City Limits of Wenatchee except the Historic Preservation Board, and the Arts, Recreation & Parks Commission*

Last Name: Upton First Name: Richard Initial: L.

Physical Address: 613 Meadows Dr City: Wenatchee Zip: 98801

Mailing Address: Same City: \_\_\_\_\_ Zip: \_\_\_\_\_

Day Phone: cell 520-403-5204 Evening Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_ Years lived in Wenatchee Valley: \_\_\_\_\_

Occupation: Retired Mayor/Educator of Colorado Years of Experience: 10/30

Work Address: retired City: \_\_\_\_\_ Zip: \_\_\_\_\_

Education and Formal Training: College M.ed, Industrial Education

Have you ever been convicted of a felony or released from prison?  Yes  No  
(A conviction record will not necessarily bar you from serving. Factors such as the nature and gravity of the crime, the length of time that has passed since the conviction and/or completion of any sentence, and the nature of the position for which you have applied will be considered.)

#### Volunteer/Community Experience:

- |  |                                  |
|--|----------------------------------|
| Organization and Duties: <u>Museum, board + president</u>                  | Length of Service: <u>15 yrs</u> |
| Organization and Duties: <u>Car show organizer</u>                         | Length of Service: <u>6 yrs</u>  |
| Organization and Duties: <u>City gov. - zoning planning, council Mayor</u> | Length of Service: <u>10 yrs</u> |
| Organization and Duties: <u>housing construction + remodeling</u>          | Length of Service: <u>50 yrs</u> |
| Organization and Duties: _____   | Length of Service: _____         |



Skills/Special Interests: construction, remodeling, Antique car restoration

Experience related to the Commission/Board: \_\_\_\_\_

50 yrs building & remodeling - plans review  
working with city building codes

Why are you seeking this appointment? \_\_\_\_\_

I have been out of it for a couple of years  
dealing with my wife's dementia and she is  
now in a facility and I have time & would like  
to be involved again.

Would any conflict of interest be created as a result of your appointment?  Yes  No

If yes, please explain: \_\_\_\_\_

**REFERENCES**

Name: Mayor MIKE POIRIEN.  
Address: 1417 Apple Ridge St City: Wenatchee Zip: 98801  
Phone: 509 888-6204 Email: mike@wenatchee.wa.gov  
Occupation: \_\_\_\_\_ Years known: 1

Name: Frank Kuntz  
Address: \_\_\_\_\_ City: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_ Email: \_\_\_\_\_  
Occupation: CPA Retired Mayor. Years known: 2

Name: Eric Mudgett  
Address: 2030 3rd St NE City: East Wenatchee Zip: 98802  
Phone: 509-322-1996 Email: eric@nc2ss.net  
Occupation: City of Wenatchee Years known: \_\_\_\_\_

**AFFIDAVIT OF APPLICANT**

I, Richard L. Upton, do hereby certify that the information contained in the foregoing application is true and correct to the best of my knowledge and belief. I also understand that this completed application may be made available for public inspection.

Richard L. Upton  
(Signature)  
Date: 5/14/24

## RESOLUTION NO. 2024-17

**A RESOLUTION,** of the City of Wenatchee, Washington, designating three City Councilmembers as voting representatives on behalf of the City of Wenatchee at the Association of Washington Cities Annual Business and Meeting Conference for 2024.

**WHEREAS,** the City of Wenatchee is a member of the Association of Washington Cities (“AWC”); and

**WHEREAS,** AWC conducts its annual business meeting during the AWC Conference, which is held in June of this year; and

**WHEREAS,** under the AWC bylaws, each member, prior to the annual membership meeting, will designate up to three delegates who shall be duly elected or appointed officials or employees of such member as voting representatives of the member in the affairs of AWC, and shall file with the chief executive officer of AWC certificates of designation prior to the annual meeting.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WENATCHEE HEREBY RESOLVES AS FOLLOWS:**

**Section 1. Designation of Voting Representatives.** The City Council hereby designates the following Councilmembers as voting representatives on behalf of the City of Wenatchee at the Association of Washington Cities Annual Conference and Business Meeting for 2024:

1. Councilmember Linda Herald
2. Councilmember Charlie Atkinson
3. \_\_\_\_\_

**Section 2.** Effective Date. This Resolution shall take effect upon adoption.

**ADOPTED** by the City Council of the City of Wenatchee, Washington, this 23rd day of May, 2024.

**CITY OF WENATCHEE,**  
a Municipal Corporation

By: \_\_\_\_\_  
MIKE POIRIER, Mayor

ATTEST:

By: \_\_\_\_\_  
TAMMY McCORD, City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
DANIELLE R. MARCHANT, City Attorney

# Proclamation

**WHEREAS,** Since the inception of our country by the establishment of the United States Constitution, it has on occasion, been necessary to protect the concepts of the Constitution; and

**WHEREAS,** At times, it became necessary to resort to armed conflict to protect these concepts, which give each citizen of the United States certain inalienable rights; and

**WHEREAS,** Citizens of our great country have given of their lives in the protection of these unalienable rights; and

**WHEREAS,** Each year we set aside one day to which we can revive the memory of those who have sacrificed and those who have passed on.

NOW, THEREFORE, I, Mike Poirier, Mayor of the City of Wenatchee, do hereby proclaim, May 27, 2024, as

## MEMORIAL DAY

in the city of Wenatchee and I urge all citizens to join us in honoring their memory.

IN WITNESS WHEREOF, I have caused the seal of the City of Wenatchee to be affixed on this 23<sup>rd</sup> day of May, 2024.



*/s/ Mike Poirier*  
Mike Poirier, Mayor



## CITY COUNCIL AGENDA REPORT

**TO:** Mike Poirier, Mayor  
City Council

**FROM:** David Erickson, Parks, Recreation and Cultural Services Director

**MEETING DATE:** May 23, 2024

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### I. SUBJECT

Department of Archaeology and Historic Preservation Grant for the Cemetery.

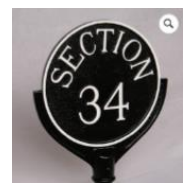
### II. ACTION REQUESTED

Motion to authorize the Parks, Recreation and Cultural Services Director to sign a grant agreement with the State of Washington Department of Archaeology and Historic Preservation (DAHP) for the Cemetery Sign Project.

### III. OVERVIEW

In September 2023, staff prepared and submitted a grant application through the Washington Department of Archaeology and Historic Preservation in the amount of \$20,265 for the Cemetery Sign Project. On February 2, 2024, staff received notice that the grant application was successful. The grant agreement will be provided by the State DAHP via DocuSign. The City received a similar grant in 2018 to renovate the Clark Mausoleum.

The project is planned to design, fabricate and install 14 section signs and an information sign and kiosk. The section signs are intended to be installed by cemetery staff along the primary access roads. The kiosk would be installed adjacent to the cemetery office and be visible from the main entrance to the cemetery. The kiosk would incorporate a cemetery map with the sections, general information and also include a QR code that when scanned would provide a link to the city website where the individual would be able to search the cemetery burial map and find the specific grave they are looking for. The brochure holder would include maps so they can take one with them to locate the grave in the cemetery. It would also include cemetery informational brochures. Currently, unless staffing is present the person would be on their own to navigate the cemetery.



### IV. FISCAL IMPACT

The total project budget is \$23,265. Of that \$20,265 is being provided by the grant. The remaining \$3,000 is the estimated staff time to manage the project and install the signs.

**V. PROPOSED PROJECT SCHEDULE**

Upon grant award, the kiosk sign design and section signs would be finalized by staff. A local sign company would fabricate the kiosk sign. The pre-fabricated kiosk and section signs would also be ordered. When they arrive in the summer of 2024, they will be installed by cemetery staff. The section signs and kiosk would be anchored in concrete. The project is projected to be complete by mid to late summer. The signs would become part of the cemetery infrastructure providing much improved customer service. They would be maintained with the rest of the cemetery.

**VI. REFERENCE(S)**

**VII. ADMINISTRATIVE ROUTING**

Tammy McCord, City Clerk  
Laura Gloria, City Administrator  
Brad Posenjak, Finance Director



**Grant Agreement**  
Between  
Washington State  
Department of Archaeology and Historic Preservation  
And  
City of Wenatchee

**Grant No.**                    **FY24-90009-002**  
**Grant Title:**                Wenatchee Cemetery  
**Effective Date:**            December 1, 2023  
**End Date:**                    June 30, 2025  
**Grant Amount:**             \$20,265

**Grant Purpose**

Provide support for the rehabilitation of the Wenatchee Cemetery located in Wenatchee, Chelan County.

This agreement is made between The Department of Archaeology and Historic Preservation hereinafter referred to as the DEPARTMENT, and City of Wenatchee hereinafter referred to as the GRANTEE.

**Parties' Contact Information**

DAHP Contact Person: Marivic Quintanilla | Contracts & Grants Manager  
phone: 360-870-6383 | email: marivic.quintanilla@dahp.wa.gov

GRANTEE Contact Person: David Erickson | Parks, Recreation, and Cultural Services Director  
phone: (509) 888-3284 | email: derickson@wenatcheewa.gov

### **Section 1. Responsibilities of the Grantee**

- A. The GRANTEE will perform or cause others to perform the work described in the “Scope of Work” (Attachment 2). Additional special conditions or specifics about the work required by this agreement, if any, are in attachments as enumerated and described in Section 2. The GRANTEE agrees to perform the work in accordance with any such special conditions or specifics.
- B. The GRANTEE understands that the work called for under this agreement must conform to state administrative requirements as they relate to the DEPARTMENT, and the GRANTEE agrees to comply with such requirements.
- C. The GRANTEE agrees to comply with the restrictions of lobbying with appropriated funds: No part of the money appropriated by any enactment of State Legislation shall, in the absence of express authorization by such, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner an elected official, to favor or oppose, by vote or otherwise, any legislation or appropriation by legislation, whether before or after the introduction of any bill or resolution
- D. The GRANTEE agrees to maintain records in a manner which will provide an audit trail to all expenditures reported to the DEPARTMENT. The GRANTEE agrees to keep these records for at least six years following the ending date of the grant. In the event that an audit of the GRANTEE or of the DEPARTMENT should take exception to any expenditure by the GRANTEE, the GRANTEE agrees to refund to the DEPARTMENT on demand the amount determined by the audit as due. In the event that the DEPARTMENT is required to institute legal proceedings to enforce this repayment provision, the DEPARTMENT shall be entitled to its costs thereof, including reasonable attorney’s fees. When arranging for an audit, the DEPARTMENT should contact:

David Erickson  
PO Box 519  
Wenatchee, WA 98807

Phone: (509) 888-3284  
Email: derickson@wenatcheewa.gov

- E. The GRANTEE agrees to pay all the costs involved in carrying out the terms of this agreement prior to seeking reimbursement as provided for in Section 2. A. When seeking reimbursement, the GRANTEE will submit a completed reimbursement form in writing to the DEPARTMENT and provide such supporting documents as an affidavit of publication for newspaper advertising soliciting bids, contracts, photocopies of canceled checks and invoices, and other documents as may be requested by the DEPARTMENT. The DEPARTMENT will provide the GRANTEE with the reimbursement form and guidelines for financial reporting procedures. The GRANTEE agrees to submit its request for



reimbursement within thirty (30) days following completion of the work.

- F. The GRANTEE agrees to provide the DEPARTMENT with a completion/project report acceptable to the DEPARTMENT. The GRANTEE will submit this on or before the end date of this grant. The GRANTEE agrees that the DEPARTMENT shall have the right to withhold all or part of the funds under this grant pending receipt of an accepted completion/project report. Guy Tasa, DEPARTMENT Physical Anthropologist shall have acceptance approval or denial of the completion/project report.
- G. The GRANTEE agrees that the "Budget" (Attachment 1) shall be a financial guide for the work called for by this agreement. The GRANTEE may exceed the budgeted amounts, but this shall in no way obligate the DEPARTMENT for a greater amount than the Grant Amount. If the GRANTEE should spend less than the budgeted amount on an object or element in the Budget, the DEPARTMENT may either reduce its obligation proportionately or it may terminate this agreement. The GRANTEE agrees to maintain records which will render an accurate accounting of each element or object in the Budget. The actual expenditures for the amounts reflected in the Budget may vary by 15 percent without requiring an amendment to this grant agreement.
- H. The GRANTEE agrees that the DEPARTMENT shall have the right to terminate this agreement if the GRANTEE shall fail to fulfill in a timely and proper manner its obligations under this agreement or if the GRANTEE shall violate any of the covenants, conditions, or stipulations of the agreement. In case of such termination by the DEPARTMENT, the GRANTEE agrees to return to the DEPARTMENT within thirty (30) days of the effective date of termination, any payments made by the DEPARTMENT to the GRANTEE under the terms of this agreement or any portion of such payments as may be directed by the DEPARTMENT. The GRANTEE agrees to submit evidence of completion of all work elements identified in the Scope of Work on or before the grant end date. GRANTEE acknowledges and understands that final work elements which do not conform to the terms and conditions of this agreement will not be reimbursed.
- I. The GRANTEE will maintain regular contact with the DEPARTMENT regarding the progress of the grant project. The GRANTEE agrees that the DEPARTMENT shall have the right to monitor the work called for by this agreement.
- J. The GRANTEE agrees that it, its agents, officers and employees, and any other person or entity performing any work under this agreement, are independent contractors and not employees of the State of Washington ("State").

- K. State funds are the basis for this agreement. The GRANTEE certifies that neither it nor its principals are presently debarred, declared ineligible, or voluntarily excluded from participation in transactions by any State department or agency. Should for any reason the State funds which are the basis for this agreement become withdrawn, reduced, or not appropriated by legislation the agreement may be terminated without penalty to the DEPARTMENT.
- L. To the fullest extent permitted by law, GRANTEE shall indemnify, defend and hold harmless the State, agencies of the State and all officials, agents and employees of State, from and against all claims for injuries or death arising out of or resulting from the performance of the agreement. GRANTEE's obligation to indemnify, defend, and hold harmless includes any claim by GRANTEE's agents, employees, representatives, or any subcontractor or its employees.

GRANTEE expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to GRANTEE's or any subcontractor's performance or failure to perform the Agreement. GRANTEE's obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials.

The parties shall make every effort to resolve disputes arising out of, or relating to, this agreement through discussion and negotiation.

Should discussion and negotiation fail to resolve a dispute arising under this agreement, the parties shall select a dispute resolution team to resolve the dispute. The team shall consist of a representative appointed by each party and a third party mutually agreed upon by the parties. The team shall attempt, by majority vote, to resolve the dispute.

- M. The GRANTEE agrees to provide or purchase industrial insurance coverage, as applicable, prior to performing work under this agreement. The DEPARTMENT will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for this GRANTEE, or any sub-grantee or employee of the GRANTEE, which might arise under the industrial insurance laws during performance of work under this agreement. If the Department of Labor and Industries, upon audit, determines that industrial insurance payments are due and owing as a result to work performed under this agreement, those payments shall be made by the GRANTEE; the GRANTEE shall indemnify the DEPARTMENT and guarantee payment of such amounts.
- N. The GRANTEE agrees to include written acknowledgment of The Department of Archaeology and Historic Preservation support for all grant-related publications and public information materials including audio-visual and workshop materials.

- o. The GRANTEE agrees to any additional conditions as may be identified in amendments under Section 3 and attached to this agreement.
- p. There shall be no discrimination against any person employed by the GRANTEE in connection with work covered by or related to this agreement, or against any applicant for such employment, because of race, creed, color, sex, age, marital status, national origin, the presence of any sensory, mental, or physical handicap, or any other condition as set forth Chapter 49.60 RCW. This provision shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or advertising; layoff or termination; rates of pay or other forms of compensation and selection for training. The GRANTEE shall insert a similar provision in all subcontracts for services covered by this agreement.

During the performance of this agreement, the GRANTEE shall comply with all federal and state nondiscrimination laws, regulations and policies.

- q. In accordance with legislative findings and policies set forth in Chapter 39.19 RCW the GRANTEE is encouraged in the participation and use of Minority and Women's Business Enterprise firms certified by OMWBE.
- r. The GRANTEE agrees to a \$0.00 match of funds. One hundred percent (100%) being the full amount of the let grant amount, zero percent (00%) being the match amount by the GRANTEE. Further, the GRANTEE agrees that any match specifically identified to this grant agreement by the GRANTEE the GRANTEE will not claim match directly earmarked or identified for this agreement as match for any other grant, agreement or contract. The DEPARTMENT has first and exclusive claim to match provided by the GRANTEE to this agreement as indirect eligible match to the National Park Service, Historic Preservation Fund awarded to the DEPARTMENT.

**DEPARTMENT:** Grant Amount: \$20,265.00

**GRANTEE:** Minimum Grant Match Amount: \$0.00

### ***Section 2. Responsibilities of the DEPARTMENT***

- A. The DEPARTMENT agrees to reimburse the GRANTEE one hundred (100) percent of its actual authorized expenditures for the purpose of this agreement, provided:
  - (1) The total paid by the DEPARTMENT shall not exceed the amount stipulated in the "Budget" (Attachment 1) as DEPARTMENT share.
  - (2) All expenditures were incurred between the beginning and ending dates of the grant.

- (3) No expenditures have been previously claimed in any other grant from any agency of the state or federal government.
  - (4) The DEPARTMENT has authority to expend the funds required to meet the obligations contained herein.
  - (5) The GRANTEE has met all requirements contained in this agreement.
  - (6) The DEPARTMENT will accept as match expenditures presented by the GRANTEE on rehabilitation projects completed in accordance with the Secretary of Interior's Standards for the Rehabilitation of Historic Properties that were completed on or after July 1 of the year 2023 and prior to the effective date of this contract.
- B. The DEPARTMENT agrees to consider requests from the GRANTEE for progress payments if, in the DEPARTMENT'S judgment, the public interest will be served by doing so and if such payments are administratively practical and provided appropriated funds are available for which to issue a progress payment.
- c. The DEPARTMENT may unilaterally terminate all or part of this contract, or may reduce its scope of work and budget, if there is a reduction in funds by the source of those funds, and if such funds are the basis for this contract.

The following attachments are hereby incorporated into and made a part of this agreement.

- |                 |   |
|-----------------|---|
| Attachment 1    | "Budget", consisting of one page.   |
| Attachment 2    | "Scope of Work", consisting of one page.  |
| Attachment 3    | "State Form A19-1 Invoice Voucher" to be used as basis for billing, consisting of one page.   |
| Attachment 4a-c | "Report of Services/Labor Value Appraisal," "Report of Donated Equipment," and "Report of Donated Material" forms to be used by GRANTEE to document donated labor costs and the value of donated equipment and materials, consisting of four pages. |
| Attachment 5    | "Historic Preservation Easement" consisting of four pages.<br>(See <i>easement document attachment</i> .)   |
| Attachment 6    | "Heritage Cemetery Grant Special Terms and Conditions" consisting of one page.  |

### **Section 3. Amendments**

This grant agreement may only be amended if such amendment is in writing (with the exception of the 15% variance for actual expenditures identified in Section 1.G), agreed to and signed by all the parties, and attached hereto.

**DEPARTMENT:**

Department of Archaeology  
and Historic Preservation

**GRANTEE:**

City of Wenatchee

\_\_\_\_\_  
By: Allyson Brooks Ph.D.  
Its: Director

\_\_\_\_\_  
By: David Erickson  
Its: Parks, Recreation, and Cultural Services Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Attachment 1  
**BUDGET**

Construction Costs:	STATE Dollars	Hard Match	Soft Match	Total
Interpretive Displays	\$20,265	\$0	\$3,100	\$23,365
Totals	\$20,265	\$0	\$3,100	\$23,365

Attachment 2  
**SCOPE OF WORK**

The GRANTEE shall perform or shall cause to perform the following procedures as related to potential ground disturbance prior to project work beginning:

Depending on signage and kiosk footing locations, an inadvertent discovery protocol (IDP), archaeologist, or permit from DAHP may be required. The GRANTEE shall provide the locations of signage and kiosk to grant administrators prior to installation to confirm. An IDP template can be found at:

<https://dahp.wa.gov/archaeology/human-remains/recommended-inadvertent-human-remains-discovery-language>

The GRANTEE shall perform or shall cause to perform the following project scope of work:

1. Interpretive Displays
  - a. Design, fabricate, and install fourteen (14) section signs along primary access roads and an information sign and kiosk adjacent to the cemetery office.


The GRANTEE shall provide final architectural/construction drawings and/or designs for the work noted above to the Washington Trust for Historic Preservation to ensure compliance with the stated plans before work begins. For signage, please provide specifications/details on the proposed products before purchase and installation.

**STATE FORM: A-19 INVOICE VOUCHER**

*Attached on the next page.*



FORM  
**A 19-1A**  
 (Rev. 5/91)



STATE OF WASHINGTON  
**INVOICE VOUCHER**

5/23/2024 Wenatchee City Council <b>AGENCY USE ONLY</b>		
<b>AGENCY NO.</b>	<b>LOCATION CODE</b>	<b>P.R. OR AUTH. NO.</b>
355		

<b>AGENCY NAME</b>
Department of Archaeology and Historic Preservation PO Box 48380 Olympia WA 98504-8343
<b>VENDOR OR CLAIMANT (Warrant is to be payable to)</b>

*INSTRUCTIONS TO VENDOR OR CLAIMANT: Submit this form to claim payment for materials, merchandise or services. Show complete detail for each item.*

**Vendor's Certificate:** I hereby certify under penalty of perjury that the items and totals listed herein are proper charges for materials, merchandise or services furnished to the State of Washington, and that all goods furnished and/or services rendered have been provided without discrimination because of age, sex, marital status, race, creed, color, national origin, handicap, religion, or Vietnam era or disabled veterans status.

BY \_\_\_\_\_  
 (SIGN IN INK)

\_\_\_\_\_  
 (TITLE) (DATE)

<b>FEDERAL I.D. NO. OR SOCIAL SECURITY NO. (For reporting Personal Services Contract Payments to I.R.S.)</b>	<b>RECEIVED BY</b>	<b>DATE RECEIVED</b>
--	--------------------	----------------------

DATE	DESCRIPTION	QUANTITY	UNIT	AMOUNT	FOR AGENCY USE

PREPARED BY	TELEPHONE NUMBER	DATE	AGENCY APPROVAL	DATE
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DOC. DATE	PMT DUE DATE	CURRENT DOC. NO.	REF DOC.	VENDOR NUMBER	VENDOR MESSAGE	UBI NUMBER
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REF DOC SUF	TRANS CODE	M O D	FUND	MASTER INDEX		SUB OBJ	SUB SUB OBJECT	ORG INDEX	WORKCLASS ALLOC	COUNTY BUDGET UNIT	CITY/TOWN MOS	PROJECT	SUB PROJ	PROJ PHAS	AMOUNT	INVOICE NUMBER
				APPN INDEX	PROGRAM INDEX											

ACCOUNTING APPROVAL FOR PAYMENT	DATE	WARRANT TOTAL	WARRANT NUMBER
---------------------------------	------	---------------	----------------

Attachment 4a  
**REPORT OF SERVICES / LABOR VALUE APPRAISAL**

*Attached on the next page.*

## REPORT OF SERVICES

Name of Project:
Name of Person Performing Services:
Address:
Telephone:
Did you receive any compensation for the time you devoted to this project?
Yes                      No
If yes, who paid you?
How much were you paid?

Month:	Year:
Describe the services you performed. (If you supervised others, include their names and positions.)	
How was the hourly rate shown below determined?	
\$33.02 per hour is the minimum value of donated labor, and \$79.68 per hour is the maximum professional labor, as determined by the Department of Archaeology and Historic Preservation and the National Park Service, respectively.	

<b>Total number of hours worked each day during this month:</b>								
Beginning	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Totals

I hereby swear that I devoted the time reported above, performing the work described on the project named. This time has not been reported for any other Federal or State project.

\_\_\_\_\_ Date \_\_\_\_\_

I supervised or coordinated this person's work and verify that it was performed as indicated above.

\_\_\_\_\_ Date \_\_\_\_\_

Washington State Department of Archaeology and Historic Preservation  
1110 Capitol Way South, Suite 30  
PO Box 48343  
Olympia, WA 98504-8343

<b>Total hours this month:</b>		# of hours
<b>Hourly rate:</b>	\$32.02-\$79.68	Per hour
<b>Amount charged to project:</b>	\$	

**INSTRUCTIONS:**

Use this form to document all labor, whether paid or voluntary, which is claimed against a grant or used for the matching share of a grant. Complete it on a timely basis, i.e., fill it out immediately after the service is provided.

Attachment 4b  
**REPORT OF DONATED EQUIPMENT**

*Attached on the next page.*

## REPORT OF DONATED EQUIPMENT

Name of Project:
Name of Person supplying donated equipment:
Address:
Telephone:
Type of equipment donated:
Did you receive any compensation for this piece of equipment devoted to this project?
Yes                      No

Month:	Year:
Describe the services performed/equipment utilized.	
How was the rate shown below determined?	

<b>Times the donated equipment was used during this month:</b>								
Beginning	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	<b>Totals</b>

I hereby swear that the equipment was on site being used or required, performing the work described on the project named.

\_\_\_\_\_ Date \_\_\_\_\_

I coordinated the use of this equipment and verify that it was used as indicated above.

\_\_\_\_\_ Date \_\_\_\_\_

<b>Total this month:</b>		# of days
<b>Rate:</b>		Per day
<b>Amount charged to project:</b>		

Attachment 4c  
**REPORT OF DONATED MATERIAL**

*Attached on the next page.*

## REPORT OF DONATED MATERIAL

Name of Project:
Name of Person Donating Material:
Address:
Telephone:
Did you receive any compensation for the time you devoted to this project?
Yes                      No
If yes, who paid you?
How much were you paid?

Month:	Year:
Describe the material donated.	
How was the value shown below determined?	

I hereby swear that I donated the material reported above. This material has not been reported for any other Federal or State project.

\_\_\_\_\_ Date \_\_\_\_\_

I supervised or coordinated this person's donation and verify that it was performed as indicated above.

\_\_\_\_\_ Date \_\_\_\_\_

Washington State Department of Archaeology and Historic Preservation  
1110 Capitol Way South, Suite 30  
PO Box 48343  
Olympia, WA 98504-8343

<b>Total Value:</b>		
<b>Unit Rate:</b>		Per Unit
<b>Amount charged to project:</b>		

Attachment 5  
**CEMETERY GRANT EASEMENT**

*This page intentionally left blank – see easement document.*



This Space Provided for Recorder's Use

**When Recorded Return to:**

Department of Archaeology and Historic Preservation  
C/O Washington Trust for Historic Preservation  
1204 Minor Avenue, Seattle, WA 98101

**Historic Preservation Easement  
Cemetery Property**

Grantor(s): [Property Owner's Name(s)]

Grantee(s): State of Washington

Legal Description: [Insert abbreviated legal description – lot, block & plat, or section, township, range, and quarter/quarter section ]

Assessor's Property Tax Parcel or Account Number: [Insert Parcel Number]

**WHEREAS THE** Grantor is owner of certain premises known as the [name of property] located at [street address], [town], [county], Washington; and

**WHEREAS THE** State of Washington through the Director of the Washington State Department of Archaeology and Historic Preservation is presently responsible for precluding any activity or omission at the premises which would destroy or impair its value to the public as an historic place and historic cemetery; and

**WHEREAS THE** Grantor is willing to grant to the State of Washington the preservation interest as hereinafter expressed for the purpose of insuring that the value of the premises for such purposes will not be destroyed or impaired;

**NOW THEREFORE** in consideration of the sum of One Dollar and other valuable consideration paid to the Grantor, the receipt whereof is hereby acknowledged, the Grantor does hereby give, grant, bargain, sell and convey, with covenant of warranty, to the State of Washington a preservation interest in the following described lots or parcel of land, with the improvements thereon (the real property together with the improvements thereon and attached thereto and the appurtenances thereof, being hereinafter collectively referred to as the "Property") located in [town, county], Washington and described in the [county name] County Registry of Deeds, Book [number], Page [number].

The preservation interest herein granted shall be of the nature and character hereinafter expressed and shall be binding upon the Grantor; its successors and assigns.

The Property is comprised of grounds, collateral or appurtenant improvements, and all or part is used or intended to be used for the placement of human remains and is dedicated for cemetery purposes.

The foregoing description of the Property may be amended, replaced, or elaborated upon in more detail, and a description of the style, landscaping and similar particulars of the grounds, and any collateral or appurtenant improvements on the Property may be added, by an instrument in writing, signed by both parties hereto, making reference to this Historic Preservation Easement and filed of record in the [county name] County Registry of Deeds. If and when such an instrument is placed of record, it shall be deemed to be a part of this Historic Preservation Easement as if set out herein.

For the purpose of preserving, protecting, maintaining the Property, including its significance and value to the public as an historic place and historic cemetery, the Grantor does hereby covenant and agree, on behalf of itself, its successors and assigns with the Grantee, its successors and assigns, to the following, for a period of 10 years:

1. The Grantor agrees to assume the cost of continued maintenance and repair of the property, so as to preserve the architectural, historical, or archaeological integrity of the property.

Nothing in this agreement shall prohibit the Grantor from seeking financial assistance from any source available to Grantor.

2. No construction, alteration, remodeling, changes of surfacing, or any other thing shall be undertaken or permitted to be undertaken on the Property which would affect the structural integrity, the appearance, the cultural use, or archaeological value of the Property without the express prior written approval of the State of Washington through the Director of the Washington State Department of Archaeology and Historic Preservation, or any successor agency. Notwithstanding the foregoing, the parties understand and agree that Grantor will undertake regular and necessary cemetery maintenance and may undertake new interments, in a manner that is consistent with the historic character, features and materials of the cemetery.
3. Grantee, its agents and designees shall have the right to inspect the Property at all reasonable times in order to ascertain whether or not the terms and conditions of this Historic Preservation Easement are being complied with.
4. If the Grantor fails to observe or if the Grantor violates any covenant, agreement, or provision contained herein, then the Grantee shall in addition to all other remedies available at law or in equity, have the right to enforce this Historic Preservation Easement, including each of its provisions, by specific performance or injunctive relief.
5. The Historic Preservation Easement set forth herein is intended by the parties hereto to preserve the historic integrity of the Property pursuant to the provisions of Laws of 2007, Chapter 333, codified as RCW 27.34.420, or other provisions of law that may be applicable.
6. This Historic Preservation Easement provides the Grantee with additional legal rights and does not supercede or replace any pre-existing legal obligations of the Grantor or legal rights of the Grantee.
7. The Historic Preservation Easement set forth herein shall be binding upon and shall inure to the benefit of the Grantor and the Grantee and their respective successors and assigns. **TO HAVE AND TO HOLD** the aforegranted and bargained Easement with all the privileges and appurtenances thereof to the said State of Washington through the Director of the Washington State Department of Archaeology and Historic Preservation, its successors and assigns, to its and their use for a period of 10 years from and after the date hereof.
8. SEVERABILITY CLAUSE It is understood and agreed by the parties hereto that if any part, term, or provision of this agreement is held to be illegal by the courts, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular part, term, or provision held to be invalid.

**Grantor Name**

By: (Print name of person signing) \_\_\_\_\_

Grantor Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Its: \_\_\_\_\_ (Title of person signing – use for an organization, LLC or corporation – either non-profit or for profit)

**If Grantor is an individual:**

State of Washington

County of . . . . .

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: -----

.....  
(Signature)

(Seal or stamp)

.....  
Title  
My appointment expires . . . . .

**If Grantor is an organization, LLC, or corporation:**

State of Washington

County of . . . . .

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of \_\_\_\_\_ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: . . . . .

.....  
(Signature)

(Seal/ stamp)

.....  
Title  
My appointment expires . . . . .

Attachment 6

**HERITAGE CEMETERY GRANT SPECIAL TERMS AND CONDITIONS**

- 1) Grantee agrees to record a Historic Preservation Easement in a form as specified by the Department.
- 2) Grantee agrees to proactively maintain the Heritage Cemetery for a minimum of ten (10) years, in accordance with the terms of this Grant Agreement. If within a period of ten (10) years, action is taken with respect to the Heritage Cemetery which causes it to be no longer eligible for listing in the Washington Heritage Register or the Washington State Heritage Cemetery Register, grant funds shall be repaid in full within one year.
- 3) If the Heritage Cemetery is not visible from a public right of way, Grantee agrees to provide public access to the exterior of the Heritage Cemetery under reasonable terms and conditions, as set forth in Laws of 2007, Chapter 333, codified as RCW 27.34.
- 4) All work must comply with the United States secretary of the interior's standards as set forth in the Grant Agreement, provided, however, that exceptions may be made for retention or installation of metal roofs. Such exceptions shall be made on a case-by-case basis at the sole discretion of the Department.
- 5) The Heritage Cemetery Preservation Fund ("Fund") shall be acknowledged on any materials produced and in publicity for the work performed under this Grant Agreement. Grantee agrees to post a sign acknowledging the Fund at the worksite for the duration of this Grant Agreement.



## CITY COUNCIL AGENDA REPORT

**TO:** Mike Poirier, Mayor  
City Council

**FROM:** Jake Lewing, City Engineer  
Public Works Department

**MEETING DATE:** May 23, 2024

---

**I. SUBJECT**

Confluence Parkway South, Project #2201.1  
Amendment #1 to Task Order CP South for Design Build Services with Kraemer Scarsella Brothers Joint Venture  
Budget Amendment for 2201.1

**II. ACTION REQUESTED**

*Staff recommends the City Council amend the project budget and authorize the City Administrator to execute Amendment #1 to Task Order CP South with Kraemer Scarsella Brothers Joint Venture for the Confluence Parkway South project (Project No. 2201.1).*

**III. OVERVIEW**

The City of Wenatchee and its partners were awarded approximately \$92.4M in INFRA funds to supplement a combination of state and local funding to complete the Apple Capital Loop network of projects which includes Confluence Parkway South. Confluence Parkway North was awarded \$85M by the Move Ahead Washington (MAW) legislation. The two segments are being delivered under the same Confluence Parkway progressive design build project.

In May 2023, a Request for Qualifications was issued for design build services and 5 teams submitted their qualifications. 4 of the teams were shortlisted and invited to submit proposals for the project in July 2023. Kraemer Scarsella Brothers Joint Venture (KSJV) were notified they were the highest scoring proposer on September 19, 2023, and the City executed a contract with KSJV on November 8, 2024.

The contract initially included task orders to complete Phase 1a – Validation for each of the primarily INFRA-funded Confluence Parkway South and the MAW-funded Confluence Parkway North segments. During the Validation Phase, the City, its Owner Advisor, and the Design Builder partner together to develop a target project budget, scope, and schedule. This is accomplished through such activities as collaborating with the City to explore ideas and potential changes to the project criteria, develop practical design alternatives which meet the purpose and need, identify risks and opportunities, and developing the rest of the Phase 1 scope and fee estimate. For Confluence Parkway South, Phase 1a has been completed.

This amendment to Task Order CP South includes the rest of the Phase 1 scope to advance the project through the Design Development Phase 1b. During this phase, KSJV will advance the design to the target budget, develop a detailed cost model in collaboration with the City and its Independent Cost Estimator, mitigate and transfer risks, and develop a Guaranteed Max Proposal (GMP). Upon completion of Phase 1b, the City and KSJV will negotiate a GMP to complete the design and construct the project (Phase 2 – Final Design and Construction).

**IV. FISCAL IMPACT**

The task order amendment will increase the maximum amount payable from the current contract amount of \$2,396,911.29 to a new maximum amount payable up to \$7,909,066.39. The project budget was approved by the Finance Committee and City Council on November 16, 2023 (see attached). Combined with Owner Advisor services, legal support services, and internal City staff time currently under contract or budgeted, the total budget for preliminary engineering for Confluence Parkway South has increased from \$13,267,000 to \$15,200,000 with this Task Order Amendment which will extend all design services to the Construction phase. Due to design revisions, the total Right of Way budget has decreased from \$10,199,000 to \$9,000,000. The proposed Draft Budget Amendment makes these revisions to the applicable expenditure categories.

The Draft Budget Amendment also amends the project revenues to reflect the most current funding sources for the project. As detailed in the Amended INFRA Term Sheet, the project has secured State funding (Freight Mobility Strategic Investment Board (FMSIB) and Move Ahead Washington (MAW) legislation) to replace the local funds previously shown in the project budget. The Draft Budget Amendment does not make any revisions to the overall Project Budget.

**V. PROPOSED PROJECT SCHEDULE**

The design build contract was executed in November 2023, starting the Validation Phase 1A. Phase 1b – Design Development will commence with the execution of this amendment and is expected to be completed in November 2024. Phase 2 Final Design & Construction is anticipated to begin November 2024, with actual construction activities anticipated to begin Spring 2025.

**VI. REFERENCE(S)**

1. 2201.1 Draft Budget Amendment
2. Amendment #1 to Task Order CP South

**VII. ADMINISTRATIVE ROUTING**

Tammy McCord, City Clerk  
Laura Gloria, City Administrator  
Brad Posenjak, Finance Director  
Rob Jammerman, Public Works Director  
Nataliann Tutino, Senior Financial Analyst  
Anna Carr, Administrative Assistant



## Capital Project Budget

**Date:** August 22, 2023 **Project Number:** 2201.1

**Project Name:** Apple Capital Loop Segments 1B, 2A (CP South) **Dept/Category:** Public Works - Street Project

**Project Description:** Design, Right-of-Way acquisition and construction of the McKittrick St. underpass and Confluence Parkway South. This is an INFRA funded project identified as segments 1B and 2A of the Apple Capital Loop. The combined projects will eliminate two at-grade railroad crossings, construct two grade separated crossings, construct and reconstruct existing minor arterial streets, construct and reconstruct traffic signals and other work.

<b>Project Lead:</b>	Lewing	<b>Start Year:</b>	2022
<b>Assigned Department:</b>	Public Works	<b>End Year:</b>	2027
<b>Original Project Budget:</b>	\$107,961,858	<b>Total City Funding:</b>	\$0
<b>Budget Amendment:</b>	\$97,961,858	<b>Other Funding:</b>	\$97,961,858

**Project Notes:**  
The "Original" Budget is per the 2024 Adopted Capital Budget. Budget amendment reflects recent amendment to INFRA Grant term sheet (additional INFRA funds transferred to Component 4 (City Project 2201.2), inclusion of additional state funds to Component 4 (MAW, FMSIB)). Preliminary Engineering and Right-of-Way budgets have also been adjusted to reflect most current estimates with Design Builder.

Project Expenditures by Category	Original Budget	Amended Budget	Prior Years Spent	ESTIMATES			Project Total
				2024	2025	2026+	
Preliminary Engineering	13,267,000	1,933,000	3,500,000	9,700,000	2,000,000	-	15,200,000
Right-of-Way	10,199,000	(1,199,000)		6,000,000	3,000,000		9,000,000
Construction/Contingency	74,495,858	(734,000)	1,000,000	5,000,000	25,000,000	42,761,858	73,761,858
Art Fund							
<b>Total Project Expenditures</b>	<b>97,961,858</b>		<b>4,500,000</b>	<b>20,700,000</b>	<b>30,000,000</b>	<b>42,761,858</b>	<b>97,961,858</b>

Project Revenues by Category		Original Budget	Amended Budget	Prior Years	ESTIMATES			Project Total
					2024	2025	2026+	
Fund:	109 - Arterial Streets	6,699,952	(6,699,952)	-			-	
Fund:								
Fund:								
Fund:								
Fund:								
GRANTS:								
	INFRA	83,087,004	(4,565,112)	4,500,000	20,700,000	21,825,098	31,496,794	78,521,892
	PWTF	4,174,902				4,174,902		4,174,902
	BNSF	1,000,000				1,000,000		1,000,000
	FMSIB	3,000,000				3,000,000		3,000,000
	MAW		11,265,064				11,265,064	11,265,064
<b>Total Project Revenues</b>		<b>97,961,858</b>		<b>4,500,000</b>	<b>20,700,000</b>	<b>30,000,000</b>	<b>42,761,858</b>	<b>97,961,858</b>

Approved by City Council: \_\_\_\_\_ Date





**Progressive Design-Build  
for the  
Design and Construction of Confluence Parkway Project**

**between**

**City of Wenatchee  
and  
Kraemer-Scarsella Joint Venture**

**CP South – Amendment No. 1 – May 23, 2024**

Project Number 2201.1	Project Title Confluence Parkway Project	Federal Aid Number INFRA-9904(017) - Component No 3
Task Order Number <b>CP South – Amendment No. 1</b>	Task Order Description <b>Confluence Parkway South, (CP South) (INFRA Grant Term Sheet - Component No 3)</b>	Date <b>May 23, 2024</b>
Design-Builder <b>Kraemer-Scarsella Joint Venture</b>		

Description	<ol style="list-style-type: none"> <li>1. The Design-Builder and Owner hereby entered into this Contract Amendment to Task Order CP South (this <b>“Amendment”</b>) to include the scope of Work required to complete Phase 1 for CP South. Unless expressly modified by terms set forth below, all terms of the Design-Build Contract shall remain in full force and effect.</li> <li>2. The Design-Builder and Owner collaboratively explored ideas and potential changes to the Owner’s Project Criteria and Phase 1 and 2 Scope of Services that may eliminate, alter, or provide interim solutions for certain Project design elements yet still satisfy the Project’s purpose and need in accordance with Section 1 02.1 of the General Provisions. The parties compiled a written evaluation in the form of comments and recommendations to assist discussion and agreement upon what revisions, if any, should be made to such criteria as set forth in the amended Exhibit A and Exhibit C of the Contract Documents attached to this Amendment.</li> <li>3. The Design-Builder has completed the Phase 1 Validation Period for Task Order CP South and submitted to the Owner a Validation Period Report pursuant to Section C2.2.4 of Exhibit C of the Agreement.</li> <li>4. The Phase 1 Validation Period Report includes terms that were collaboratively developed by the parties as required by Section 6.6.2.2.b of the Agreement and includes a list of Submittals for such report as required pursuant to Exhibit C.</li> <li>5. This Amendment is issued in accordance with Section 6.6 (Task Order Phases) of the Agreement and sets out amendments to the Contract Documents that are agreed between the Owner and Design-Builder in order to establish the Design Development Period Completion Date and Not-to-Exceed Sum, for the Phase 1 Work to be performed by the Design-Builder including:             <ol style="list-style-type: none"> <li>a. CP South Phase 1 Commercial Terms:                 <ol style="list-style-type: none"> <li>i. The Phase 1 scope of Work for the Design Development Period as set forth in the amended Exhibit A and Exhibit C of the Contract Documents, and</li> <li>ii. The Phase 1 Not-to-Exceed Sum (“Phase 1 NTE”) in the amount of \$5,512,155.11, and</li> <li>iii. The Phase 1 Schedule with a Completion Date of November 12, 2024.</li> </ol> </li> <li>b. CP South Project Commercial Terms:                 <ol style="list-style-type: none"> <li>i. Target Budget Amount based on the Design-Builder Target Budget submitted April 25, 2024, with comments reconciled between both Parties, and</li> <li>ii. Target Schedule Completion Date based on the Design-Builder Target Schedule submitted April 25, 2024, with comments reconciled between both Parties, and</li> <li>iii. Initial Project Scope based on the Design-Builder 30% Plans submitted May 17, 2024, with comments reconciled between both Parties.</li> </ol> </li> </ol> </li> <li>6. The Phase 1 NTE Sum is based on the hourly rates, hour estimates, and reimbursable items included in Exhibit D of the Contract Documents. Table 1 attached to this Amendment provides a schedule of the Cost of the Work and applicable Design-Builder Fee.</li> <li>7. The Completion Date above is for the Work set out in Section C3.19.13 (Additional Phase 1 Work) to conclusion of Phase 1, The parties will establish a date for Substantial Completion of the entire Work as part of the GMP Amendment.</li> <li>8. Provided the parties agree on the applicable terms, Design-Builder and Owner shall enter into a Contract Amendment to establish the GMP Amendment to complete the Phase 2 Work at the conclusion of Phase 1 CP South Design Development Period,</li> </ol>
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# Task Order Amendment

9. The Design-Builder and Owner mutually agreed amendments to Exhibit A and Exhibit C with comments reconciled in good faith between both parties. The amendments have been reproduced as a redline modification of the Contract Documents as set forth in Attachment 1 (Exhibit A – Owner’s Project Criteria Redline) and Attachment 2 (Exhibit C – Phase 1 and 2 Scope of Services Redline) to this Amendment.
10. By executing this Contract Amendment, the parties agree that the documents attached hereto are fully incorporated into the Agreement as if fully set forth therein.
11. Pursuant to Section 2.4.3 of the General Conditions, the Owner’s review and approval of the Exhibit A and Exhibit C Submittals incorporated by this Contract Amendment shall not be deemed to transfer any design liability from Design-Builder to Owner.
12. Pursuant to Section 10.2 of the Agreement, Design-Builder shall provide a Payment and Performance Bond pursuant to RCW Chapter 39.08 equal to one hundred percent (100%) of the amount of the CP South Phase 1 NTE Amount set forth above.
13. In executing this Amendment, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Amendment, and each has the necessary corporate approvals to execute this Amendment, and perform the services described herein.

**IN WITNESS WHEREOF**, the parties hereto have caused this Amendment to be executed on the date set forth below.

Original Completion Date <b>April 26, 2024</b>	Est. Net Change Calendar Days <b>+200</b>	Phase 1 Completion Date <b>November 12, 2024</b>	
Original Task Order Amount <b>\$2,396,911.29</b>	Current Task Order Amount <b>\$2,396,911.29</b>	Est. Net Change Amount <b>\$5,512,155.11</b>	Est. Task Order Amount <b>\$7,909,066.39</b>

<input checked="" type="checkbox"/> Approval Recommended	Approved
By Design-Builder	City of Wenatchee (Owner)
Date	Date
	Other Approval As Required
	Signature _____ Date _____
	Representing _____



## CITY COUNCIL AGENDA REPORT

**TO:** Mike Poirer, Mayor  
City Council

**FROM:** Nicole Brockwell, Project Engineer  
Public Works

**MEETING DATE:** May 23<sup>rd</sup>, 2024

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**I. SUBJECT**

City Project 1801 – 9<sup>th</sup> Street Rail Crossing Project – BNSF C&M Agreement

**II. ACTION REQUESTED**

*Motion for the City Council to authorize the City Administrator to execute the Construction and Maintenance (C&M) Agreement between the City of Wenatchee and BNSF for railroad crossing improvements to be constructed as part of the 9<sup>th</sup> Street Rail Crossing Project, City Project No. 1801.*

**III. OVERVIEW**

The City was awarded \$1,321,165 of federal funding in January of 2018 through WSDOT’s Railway/Highway Crossing (Section 130) Program to address the 9<sup>th</sup> Street rail road crossing (USDOT Crossing No. 065838N). The goal of the project is to improve safety for the railroad crossing at 9th Street for vehicles, bicyclists and pedestrians by clearly defining their crossing routes; installing a four-quadrant gate signal system with pedestrian gates for positive protection, clear routes (concrete walkways over the tracks & connecting to existing sidewalks where applicable), installing curb ramps, improving signage, pavement markings, and illumination.

The proposed construction and maintenance agreement outlines the terms of construction for the project and future maintenance responsibility and obligations for both the City of Wenatchee and BNSF.

Per the proposed construction and maintenance agreement, BNSF will construct all signal and gate improvements as well as concrete panels adjacent to their rails. The City will construct all other improvements. The agreements also outlines that the City will be responsible for maintaining the “passive” elements of the crossing, i.e., the asphalt roadway, raised median, concrete sidewalks, pavement markings, road signage and illumination. BNSF will, at its sole cost and expense, operate and maintain “active” elements of the crossing, i.e. the Crossing Signal Equipment, Crossing Signal Control House, and the new crossing surfaces, from end-of-tie to end-of-tie, in proper condition and the new crossing surfaces, from end-of-tie to end-of-tie.

**IV. FISCAL IMPACT**

Approval of the construction and maintenance agreement will not affect the current project budget. Aside from initial filing fees and associated construction costs incorporated within the project budget, the agreement does require any future fees to be paid to BNSF.

**V. PROPOSED PROJECT SCHEDULE**

It is anticipated that BNSF will construct their portion of the improvements in Fall of 2024 or Early Spring of 2025. The City's portion of the improvements will be constructed in Summer/Fall of 2025.

**VI. REFERENCE(S)**

1. Draft Construction and Maintenance Agreement

**VII. ADMINISTRATIVE ROUTING**

Tammy McCord, City Clerk  
Laura Gloria, City Administrator  
Brad Posenjak, Finance Director  
Rob Jammerman, Public Works Director  
Jessica Shaw, Deputy Public Works Director  
Jake Lewing, City Engineer  
Ryan Harmon, Engineering Services Manager  
Nataliann Tutino, Financial Analyst

## **GRADE CROSSING CONSTRUCTION AND MAINTENANCE AGREEMENT**

**BNSF File No.: BF10015663**

Wenatchee, WA DOT 065838N 9th Street Crossing  
Columbia River Subdivision, Line Segment 37, Mile Post 1651.29

This Agreement ("**Agreement**"), is executed to be effective as of \_\_\_\_\_ ("**Effective Date**"), by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**BNSF**"), and the **City of Wenatchee**, a political subdivision of the State of Washington ("**Agency**").

### **RECITALS:**

WHEREAS, BNSF owns and operates a line of railroad in and through the City of Wenatchee, County of Chelan, State of Washington; and

WHEREAS, in the interest of aiding vehicular travel and public safety, the Agency is undertaking a project to improve the existing 9th Street at-grade crossing, located at BNSF Line Segment 0037 and Milepost 1651.29, and designated by D.O.T. No. 065838N, by reconstructing and widening the roadway, installing a raised median, installing concrete sidewalks, adding pavement markings, updating signage, adding illumination and installing railroad crossing signals and activation equipment within the existing roadway easement across the BNSF right-of-way as indicated on the Exhibit A, attached hereto and incorporated herein; and

WHEREAS, the parties agree that the RAILROAD will receive no ascertainable benefit from the installation of advance warning signs, pavement marking stop bars or crossing signal equipment (hereinafter collectively called, "Crossing Signal Equipment"); and

WHEREAS, the Agency also desires BNSF to install a new crossing surface at 9th Street with a new concrete and rubber crossing surface; and

WHEREAS, the Agency is paying for the acquisition and installation of crossing signal equipment and the new crossing surface at 9th Street with State and Federal funds pursuant to 23 U.S.C. § 130; and

WHEREAS, the BNSF agrees to purchase and install, at AGENCY'S sole expense, the crossing signal equipment and the new crossing surface described in the scope of work herein, and upon the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1) **SCOPE OF WORK**

1. The term "**Project**" as used herein includes any and all work related to the reconstruction, widening, and construction of asphalt roadway, raised median, concrete sidewalks, pavement markings, signage, and illumination at 9th Street by Agency and installation of crossing signals/activation equipment/new crossing surfaces at U.S. D.O.T No. 065838N, (hereinafter referred to as the "**Crossing**") by BNSF, more particularly described on the Exhibit A, including, but not limited to, any and all changes to telephone, telegraph, signal and electrical lines and appurtenances, temporary and permanent track work, fencing, grading, alterations to or new construction of drainage facilities, preliminary and construction engineering and contract preparation.

2) **RAILROAD OBLIGATIONS**

In consideration of the covenants of Agency set forth herein and the faithful performance thereof, BNSF agrees as follows:

1. Upon Agency's payment to BNSF of an administrative fee in the sum of Two Thousand Five Hundred and No/100 Dollars (\$2,500.00), together with the Temporary Construction License Fee in the sum of five thousand seven hundred and No/100 Dollars (\$5,700.00), BNSF hereby grants to Agency, its successors and assigns, upon and subject to the terms and conditions set forth in this Agreement, a temporary non-exclusive license (hereinafter called, "Temporary Construction License") to enter upon and use the portion of BNSF's right-of-way as is necessary to reconstruct, and widen and thereafter maintain, the Crossing as described further on Exhibit A-1, excepting and reserving BNSF's rights, and the rights of any others who have obtained, or may obtain, permission or authority from BNSF, to do the following:

- (a) Operate, maintain, renew and/or relocate any and all existing railroad track or tracks, wires, pipelines and other facilities of like character upon, over or under the surface of said right-of-way;
- (a) Construct, operate, maintain, renew and/or relocate upon said right-of-way, without limitation, such facilities as the BNSF may from time to time deem appropriate;

- (b) Otherwise use or operate the right-of-way as BNSF may from time to time deem appropriate.

The term of the Temporary Construction License begins on the Effective Date and ends on the earlier of (i) substantial completion of the Structure, or (ii) thirty-six (36) months following the Effective Date. The Temporary Construction License and related rights given by BNSF to Agency in this provision are without warranty of title of any kind, express or implied, and no covenant of warranty of title will be implied from the use of any word or words herein contained. The Temporary Construction License is for construction of the Project only and shall not be used by the Agency for any other purpose. Agency acknowledges and agrees that Agency shall not have the right, under the Temporary Construction License, to use the Structure for any other purpose than construction. In the event the Agency is evicted by anyone owning, or claiming title to or any interest in said right-of-way, BNSF will not be liable to Agency for any damages, losses or any expenses of any nature whatsoever. The granting of similar rights to others, subsequent to the date of this Agreement, will not impair or interfere with the rights granted to Agency herein.

Upon Agency's payment to BNSF of the additional sum of seventeen thousand one hundred and No/100 Dollars (\$17,100.00), such payment to be made within thirty (30) days of issuing the Notice to Proceed pursuant to Article III, Section 16 of this Agreement, and provided further that Agency is in compliance with the term and conditions of this Agreement, BNSF will grant to Agency, its successors and assigns, an easement (hereinafter called, the "Easement") to enter upon and use that portion of BNSF's right-of-way as is necessary to use and maintain the Crossing, substantially in the form of Exhibit B attached to this Agreement. If the Agency fails to pay BNSF within the thirty day time period set forth in the preceding sentence, BNSF may stop construction of the Project until full payment is received by BNSF.

2. BNSF will furnish all labor, materials, tools, and equipment for railroad work required for the construction of the Project, such railroad work and the estimated cost thereof being as shown on Exhibit D attached hereto and made a part hereof. In the event construction on the Project has not commenced within six (6) months following the Effective Date, BNSF may, in its sole and absolute discretion, revise the cost estimates set forth in said Exhibit D. In such event, the revised cost estimates will become a part of this Agreement as though originally set forth herein. Any item of work incidental to the items listed on Exhibit D not specifically mentioned therein may be included as a part of this Agreement upon written approval of Agency, which approval will not be unreasonably withheld. Construction of the Project must include the following railroad work by BNSF:



- (a) Procurement of materials, equipment and supplies necessary for the railroad work; and
- (b) Preliminary engineering, design, and contract preparation; and
- (c) Furnishing of flagging services during construction of the Project as required and set forth in further detail on Exhibit C, attached to this Agreement and made a part hereof; and
- (d) Furnishing engineering and inspection as required in connection with the construction of the Project; and
- (c) Removal and disposal of the existing crossing surfaces from the Crossing; and
- (d) Installation of Crossing Signal Equipment and Crossing Signal Control House as shown on Exhibit A; and
- (e) Make such changes in the alignment, location and elevation of its telephone, telegraph, signal and/or wire lines and appurtenances along, over or under the tracks, both temporary and permanent, as may become necessary by reason of the construction of the Project.

3. BNSF will do all railroad work set forth in Article II, Section 2 above on an actual cost basis, when BNSF, in its sole discretion, determines it is required by its labor agreements to perform such work with its own employees working under applicable collective bargaining agreements.

4. Agency agrees to reimburse BNSF for work of an emergency nature caused by Agency or Agency's contractor in connection with the Project which BNSF deems is 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 Agency and Agency agrees to fully reimburse BNSF for all such emergency work.

5. BNSF may charge Agency for insurance expenses, including self-insurance expenses, when such expenses cover the cost of Employer's Liability (including, without limitation, liability under the Federal Employer's Liability Act) in connection with the construction of the Project. Such charges will be considered part 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.

6. During the construction of the Project, BNSF will send Agency progressive invoices detailing the costs of the railroad work performed by BNSF under this Agreement. Agency must reimburse BNSF for completed force-account work within thirty (30) days of the date of the invoice for such work. Upon completion of the Project, BNSF will send Agency a detailed invoice of final costs, segregated as to labor and materials for each item in the recapitulation shown on Exhibit D. Pursuant to this section and Article IV, Section 7 herein, Agency must pay the final invoice within ninety (90) days of the date of the final invoice. BNSF will assess a finance charge of .033% per day (12% per annum) on any unpaid sums or other charges due under this Agreement which are past its credit terms. The finance charge continues to accrue daily until the date payment is received by BNSF, not the date payment is made or the date postmarked on the payment. Finance charges will be assessed on delinquent sums and other charges as of the end of the month and will be reduced by amounts in dispute and any unposted payments received by the month's end. Finance charges will be noted on invoices sent to Agency under this section.

### 3) **AGENCY OBLIGATIONS**

In consideration of the covenants of BNSF set forth herein and the faithful performance thereof, Agency agrees as follows:

1. Agency must furnish to BNSF plans and specifications for the Project. Said plans (reduced size 11" x 17"), showing the plan and profile of the roadway work on BNSF right-of-way and marked as Exhibit A, attached hereto and made a part hereof, must be submitted to BNSF for the development of railroad cost estimates.
2. Agency must make any required application and obtain all required permits and approvals for the construction of the Project.
3. Agency must acquire all rights of way necessary for the construction of the Project.
4. Agency must make any and all arrangements, in compliance with BNSF's Utility Accommodation Manual (<http://www.bnsf.com/communities/faqs/pdf/utility.pdf>), for the installation 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 necessary for the construction of the Project.

5. Agency must construct the Project as shown on the attached Exhibit A and do all work (“Agency’s Work”) provided for in the plans and specifications for the Project, except railroad work that will be performed by BNSF hereunder. Agency must furnish all labor, materials, tools and equipment for the performance of Agency’s Work. The principal elements of Agency’s Work are as follows:

- (a) Design and Reconstruction/Construction of 9th Street; and
- (b) Installation of a pavement marking stop bar in accordance with the Manual on Uniform Traffic Control Devices (hereinafter called, “MUTCD”); and
- (c) Installation of advance warning signs in accordance with the MUTCD; and
- (d) Perform all necessary grading and paving, including backfill of excavations and restoration of disturbed vegetation on BNSF’s right-of-way; and
- (e) Provide suitable drainage, both temporary and permanent; and
- (f) Provide all barricades, lights, flagmen or traffic control devices necessary for preventing vehicular traffic from using a portion of the Crossing, during the installation of the concrete crossing surfaces, and also during the installation of the Crossing Signal Equipment; and
- (g) Construct asphalt/concrete roadway surface, sidewalks and medians on approaches to each track; and
- (h) Construct illumination at the crossing location; and
- (i) Job site cleanup including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials to the satisfaction of BNSF;

6. The Agency will approve the location of the signals and signal bungalow prior to the installation by BNSF.

7. The Agency must have advanced railroad crossing signs and standard pavement markings in place at the crossing shown on Exhibit A (if the same are required by the MUTCD) prior to the acceptance of this Project by the Agency.

8. The Agency must give BNSF's Manager Public Projects written notice to proceed ("**Notice to Proceed**") with the railroad portion of the work after receipt of necessary funds for the Project. BNSF will not begin the railroad work (including, without limitation, procurement of supplies, equipment or materials) until written Notice to Proceed is received from Agency.

9. The Agency's Work must be performed by Agency or Agency's contractor in a manner that will not endanger or interfere with the safe and timely operations of BNSF and its facilities.

10. For any future inspection or maintenance, either routine or otherwise, performed by subcontractors on behalf of the Agency, Agency shall require the subcontractors to comply with the provisions of the attached Exhibit C and execute the agreement attached hereto as Exhibit C-1. Prior to performing any future maintenance with its own personnel, Agency shall: comply with all of BNSF's applicable safety rules and regulations; require any Agency employee performing maintenance to complete the safety training program at the BNSF's Internet Website "[www.BNSFContractor.com](http://www.BNSFContractor.com)"; notify BNSF when, pursuant to the requirements of Exhibit C, a flagger is required to be present; procure, and have approved by BNSF's Risk Management Department, Railroad Protective Liability insurance.

11. Agency must require its contractor(s) to notify BNSF's Roadmaster at least thirty (30) calendar days prior to requesting a BNSF flagman in accordance with the requirements of Exhibit C attached hereto. Additionally, Agency must require its contractor(s) to notify BNSF's Manager of Public Projects thirty (30) calendar days prior to commencing work on BNSF property or near BNSF tracks.

12. Agency must include the following provisions in any contract with its contractor(s) performing work on said Project:

- (a) The Contractor is placed on notice that fiber optic, communication and other cable lines and systems (collectively, the "Lines") owned by various telecommunications companies may be buried on BNSF's property or right-of-way. The locations of these Lines have been included on the plans based on information from the telecommunications companies. The contractor will be responsible for contacting BNSF and the telecommunications companies and notifying them of any work that may damage these Lines or facilities and/or interfere with their service. The contractor must also mark all Lines shown on the plans or marked in the field in order to verify their locations.

The contractor must also use all reasonable methods when working in the BNSF right-of-way or on BNSF property to determine if any other Lines (fiber optic, cable, communication or otherwise) may exist.

- (b) Failure to mark or identify these Lines will be sufficient cause for BNSF's engineering representative Steven Freeman at 509-664-2267 to stop construction at no cost to the Agency or BNSF until these items are completed.
- (c) The Contractor will be responsible for the rearrangement of any facilities or Lines determined to interfere with the construction. The Contractor must cooperate fully with any telecommunications company(ies) in performing such rearrangements.
- (d) In addition to the liability terms contained elsewhere in this Agreement, the contractor hereby indemnifies, defends and holds harmless BNSF for, from and against all cost, liability, and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of Contractor, its subcontractors, agents and/or employees that cause or in any way or degree contribute to (1) any damage to or destruction of any Lines by Contractor, and/or its subcontractors, agents and/or employees, on BNSF's property or within BNSF's right-of-way, (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on BNSF's property or within BNSF's right-of-way, and/or (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of such telecommunication company(ies). **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY, DEATH, CAUSE OF ACTION OR CLAIM WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR SOLE NEGLIGENCE OF BNSF.**

**It is mutually negotiated between the parties that the indemnification obligation shall include all claims brought by Provider's employees against BNSF, its agents, servants,**

**employees or otherwise, and Provider expressly waives its immunity under the industrial insurance act (RCW Title 51) and assumes potential liability for all actions brought by its employees.**

13. Agency must require compliance with the obligations set forth in this agreement, including Exhibit C and Exhibit C-1, and incorporate in each prime contract for construction of the Project, or the specifications therefor (i) the provisions set forth in Article III and IV; and (ii) the provisions set forth in Exhibit C and Exhibit C-1, attached hereto and by reference made a part hereof.

14. Except as otherwise provided below in this Section 13, all construction work performed hereunder by Agency for the Project will be pursuant to a contract or contracts to be let by Agency, and all such contracts must include the following:

- (j) All work performed under such contract or contracts within the limits of BNSF's right-of-way must be performed in a good and workmanlike manner in accordance with plans and specifications approved by BNSF;
- (k) Changes or modifications during construction that affect safety or BNSF operations must be subject to BNSF's approval;
- (l) No work will be commenced within BNSF's right-of-way until each of the prime contractors employed in connection with said work must have (i) executed and delivered to BNSF an agreement in the form of Exhibit C-1, and (ii) delivered to and secured BNSF's approval of the required insurance; and
- (m) If it is in Agency's best interest, Agency may direct that the construction of the Project be done by day labor under the direction and control of Agency, or if at any time, in the opinion of Agency, the contractor has failed to prosecute with diligence the work specified in and by the terms of said contract, Agency may terminate its contract with the contractor and take control over the work and proceed to complete the same by day labor or by employing another contractor(s) provided; however, that any contractor(s) replacing the original contractor(s) must comply with the obligations in favor of BNSF set forth above and, provided further, that if such construction is performed by day labor, Agency will, at its expense, procure and maintain on behalf of BNSF the insurance required by Exhibit C-1.

- (n) To facilitate scheduling for the Project, Agency shall have its contractor give BNSF's Roadmaster 60 days in advance notice of the proposed times and dates for work windows. BNSF and Agency's contractor will establish mutually agreeable work windows for the Project. BNSF has the right at any time to revise or change the work windows, due to train operations or service obligations. BNSF will not be responsible for any additional costs and expenses resulting from a change in work windows. Additional costs and expenses resulting from a change in work windows shall be accounted for in the contractor's expenses for the Project.

15. Agency must advise the appropriate BNSF Manager Public Projects, in writing, of the completion date of the Project within thirty (30) days after such completion date. Additionally, Agency must notify BNSF's Manager Public Projects, in writing, of the date on which Agency and/or its Contractor will meet with BNSF for the purpose of making final inspection of the Project.

**16. TO THE FULLEST EXTENT PERMITTED BY THE LAWS OF THE STATE OF WASHINGTON, AGENCY HEREBY RELEASES, INDEMNIFIES, DEFENDS AND HOLDS HARMLESS BNSF, ITS AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO) OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART) (I) THE USE, OCCUPANCY OR PRESENCE OF AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (II) THE PERFORMANCE, OR FAILURE TO PERFORM BY THE AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS, ITS WORK OR ANY OBLIGATION UNDER THIS AGREEMENT, (III) THE SOLE OR CONTRIBUTING ACTS OR OMISSIONS OF AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (IV) AGENCY'S BREACH OF THE TEMPORARY CONSTRUCTION LICENSE OR EASEMENT GRANTED TO AGENCY PURSUANT TO ARTICLE II OF THIS AGREEMENT, (V) ANY RIGHTS OR INTERESTS GRANTED TO AGENCY PURSUANT TO THE TEMPORARY CONSTRUCTION LICENSE OR EASEMENT DISCUSSED IN ARTICLE II OF THIS AGREEMENT, (VI) AGENCY'S OCCUPATION AND USE OF BNSF'S PROPERTY OR RIGHT-OF-WAY,**

**INCLUDING, WITHOUT LIMITATION, SUBSEQUENT MAINTENANCE OF THE STRUCTURE BY AGENCY, OR (VII) AN ACT OR OMISSION OF AGENCY OR ITS OFFICERS, AGENTS, INVITEES, EMPLOYEES OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER. THE LIABILITY ASSUMED BY AGENCY WILL APPLY ONLY TO THE EXTENT OF THE NEGLIGENCE OF AGENCY, ITS AGENTS OR EMPLOYEES, AND THIS WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY OR DEATH WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR SOLE NEGLIGENCE OF BNSF.**

**It is mutually negotiated between the parties that the indemnification obligation shall include all claims brought by Agency's employees against BNSF, its agents, servants, employees or otherwise, and Agency expressly waives its immunity under the industrial insurance act (RCW Title 51) and assumes potential liability for all actions brought by its employees.**

#### **4) JOINT OBLIGATIONS**

IN CONSIDERATION of the premises, the parties hereto mutually agree to the following:

1. All work contemplated in this Agreement must be performed in a good and workmanlike manner and each portion must be promptly commenced by the party obligated hereunder to perform the same and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications during construction which affect BNSF will be subject to BNSF's approval prior to the commencement of any such changes or modifications.
2. The work hereunder must be done in accordance with the Exhibit A and the detailed plans and specifications approved by BNSF.
3. Agency must require its contractor(s) to reasonably adhere to the Project's construction schedule for all Project work. The parties hereto mutually agree that BNSF's failure to complete the railroad work in accordance with the construction schedule due to inclement weather or unforeseen railroad emergencies will not constitute a breach of this Agreement by BNSF and will not subject BNSF to any liability. Regardless of the requirements of the construction schedule, BNSF reserves the right to reallocate the labor forces assigned to complete the railroad work in the event of an emergency to provide for



the immediate restoration of railroad operations of either BNSF or its related railroads, or to protect persons or property on or near any BNSF owned property. BNSF will not be liable for any additional costs or expenses resulting from any such reallocation of its labor forces. The parties mutually agree that any reallocation of labor forces by BNSF pursuant to this provision and any direct or indirect consequences or costs resulting from any such reallocation will not constitute a breach of this Agreement by BNSF.

4. BNSF will have the right to stop construction work on the Project if any of the following events take place: (i) Agency (or any of its contractors) performs the Project work in a manner contrary to the plans and specifications approved by BNSF; (ii) Agency (or any of its contractors), in BNSF's opinion, prosecutes the Project work in a manner that is hazardous to BNSF property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Agency fails to pay BNSF for the Temporary Construction License or the Easement pursuant to Article II, Section 1 of this Agreement. The work stoppage will continue until all necessary actions are taken by Agency or its contractor to rectify the situation to the satisfaction of BNSF's Division Engineer or until proof of additional insurance has been delivered to and accepted by BNSF. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, BNSF may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of BNSF. BNSF's right to stop the work is in addition to any other rights BNSF may have including, but not limited to, actions or suits for damages or lost profits. In the event that BNSF desires to stop construction work on the Project, BNSF agrees to immediately notify the following individual in writing:

Nicole Brockwell Phone: 509-888-3295  
Email: NBrockwell@wenatcheewa.gov  
City of Wenatchee, Public Works Dept.  
301 Yakima St, Suite 100, P.O. Box 519  
Wenatchee, WA 98801

5. Agency must supervise and inspect the operations of all Agency contractors to ensure compliance with the plans and specifications approved by BNSF, the terms of this Agreement and all safety requirements of BNSF. If BNSF determines that proper supervision and inspection are not being performed by Agency personnel at any time during construction of the Project, BNSF has the right to stop construction (within or adjacent to its operating right-of-way). Construction of the Project will not proceed until Agency corrects the situation to BNSF's reasonable satisfaction. If BNSF feels the

situation is not being corrected in an expeditious manner, BNSF will immediately notify Ryan Harmon for appropriate corrective action.

6. Pursuant to this section and Article II, Section 6 herein, Agency must, reimburse BNSF in full for the **actual costs** of all work performed by BNSF under this Agreement (including taxes, such as applicable sales and use taxes, business and occupation taxes, and similar taxes).

7. All expenses detailed in statements sent to Agency pursuant to Article II, Section 6 herein will comply with the terms and provisions of the Title 23 U.S. Code, Title 23 Code of Federal Regulations, and the Federal-Aid Policy Guide, U.S. Department of Transportation, as amended from time to time, which manual is hereby incorporated into and made a part of this Agreement by reference. The parties mutually agree that BNSF's preliminary engineering, design, and contract preparation costs described in Article II, Section 2 herein are part of the costs of the Project even though such work may have preceded the date of this Agreement.

8. The construction of the Project will not commence until Agency gives BNSF's Manager Public Projects thirty (30) days prior written notice of such commencement. The commencement notice will reference BNSF's file number BF10015663 and D.O.T. Crossing No. 065838N and must state the time that construction activities will begin.

9. In addition to the terms and conditions set forth elsewhere in this Agreement, BNSF and the Agency agree to the following terms upon completion of construction of the Project:

- (a) Agency will own and be fully responsible for repairs, maintenance, future construction or reconstruction of the 9th Street roadway approaches, medians, sidewalks and all apparatus thereto.
- (b) Agency will maintain the elevation of the 9th Street roadway approaches to match the elevation on the railroad track crossing surfaces and to be no more than three (3) inches above or six (6) inches below top-of-rail elevation at a distance measured thirty (30) feet from the nearest rail.
- (c) Agency will maintain the advanced railroad crossing warning signs and pavement markings and agrees to hold harmless and indemnify BNSF for any claims, damages or losses, in whole or in part, caused by or due to the Agency's failure to maintain the advanced warning signs and markings or other requirements of the MUTCD.

- (d) Agency will do nothing and permit nothing to be done in the maintenance of the 9th Street roadway, which will interfere with or endanger facilities of BNSF.
- (e) It is expressly understood by Agency and BNSF that any right to install utilities will be governed by a separate permit or license agreement between the parties hereto.
- (f) BNSF will, at its sole cost and expense, operate and maintain “active” elements of the crossing, i.e. the Crossing Signal Equipment, Crossing Signal Control House, and the new crossing surfaces, from end-of-tie to end-of-tie, in proper condition and the new crossing surfaces, from end-of-tie to end-of-tie, Agency shall maintain the “passive” elements of the crossing, i.e. the asphalt roadway, raised median, concrete sidewalks, pavement markings, road signage, and illumination.
- (g) Notwithstanding the preceding provision, if any regulations, ordinances, acts, rules or other laws subsequently passed or amended by the Agency or any other governmental or legislative authority increase the Agency’s portion of maintenance cost under this Agreement, BNSF will receive the benefit of any such regulations, ordinances, acts, rules or other laws and the Agency’s increased portion of maintenance costs will be incorporated into and made a part of this Agreement.
- (a) Notwithstanding the preceding provision, if any regulations, ordinances, acts, rules or other laws subsequently passed or amended by the Agency or any other governmental or legislative authority increase the Agency’s portion of maintenance cost under this Agreement, BNSF will receive the benefit of any such regulations, ordinances, acts, rules or other laws and the Agency’s increased portion of maintenance costs will be incorporated into and made a part of this Agreement.
- (b) If a railway or highway improvement project necessitates rearrangement, relocation, or alteration of the Crossing Signal Equipment, Crossing Signal House, or the new crossing surface installed hereunder, the costs for such rearrangement, relocation or alteration will be the responsibility of the party requesting such changes.

- (c) If any of the Crossing Signal Equipment is partially or wholly destroyed, then such repair and/or replacement costs must be distributed among the parties as follows:
1. In the event the BNSF's sole negligence destroys or damages the Crossing Signal Equipment and/or the Crossing Signal House, BNSF must, at its sole cost and expense, replace or repair such Crossing Signal Equipment and/or Crossing Signal House.
  2. In the event the Crossing Signal Equipment is damaged or destroyed by any other cause, Agency must reimburse BNSF for the costs to replace or repair such Crossing Signal Equipment and/or Crossing Signal House.
- (d) If the Crossing Signal Equipment and/or Crossing Signal House installed hereunder cannot, through age, be maintained, or by virtue of its obsolescence, requires replacement, the cost of installation of the new crossing signal equipment and/or new crossing signal house 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.

10. Agency must notify and obtain prior authorization from BNSF's Manager of Public Projects before entering BNSF's right-of-way for **Inspection and Maintenance** purposes and the BNSF Manager of Public Projects will determine if flagging is required. If the construction work hereunder is contracted, Agency must require its prime contractor(s) to comply with the obligations set forth in Exhibit C and Exhibit C-1, as the same may be revised from time to time. Agency will be responsible for its contractor(s) compliance with such obligations.

11. Any books, papers, records and accounts of the parties hereto relating to the work hereunder or the costs or expenses for labor and material connected with the construction will at all reasonable times be open to inspection and audit by the agents and authorized representatives of the parties hereto, as well as the State of Washington and the Federal Highway Administration for a period of three (3) years from the date of final BNSF invoice under this Agreement.

12. The covenants and provisions of this Agreement are binding upon and inure to the benefit of the successors and assigns of the parties hereto. Notwithstanding the

preceding sentence, neither party hereto may assign any of its rights or obligations hereunder without the prior written consent of the other party.

13. In the event construction of the Project does not commence within twelve (12) months of the Effective Date, this Agreement will become null and void.

14. Neither termination nor expiration of this Agreement will release either party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration.

15. To the maximum extent possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Agreement is prohibited by, or held to be invalid under, applicable law, such provision will be ineffective solely to the extent of such prohibition or invalidity and the remainder of the provision will be enforceable.

16. This Agreement (including exhibits and other documents, manuals, etc. incorporated herein) is the full and complete agreement between BNSF and Agency with respect to the subject matter herein and supersedes any and all other prior agreements between the parties hereto.

17. Any notice provided for herein or concerning this Agreement must be in writing and will be deemed sufficiently given when sent by certified mail, return receipt requested, to the parties at the following addresses:

BNSF:                   BNSF's Manager Public Projects  
2454 Occidental Ave S, Ste 2D  
Seattle, WA 98134

Agency:               City of Wenatchee Public Works  
1350 McKittrick St  
Wenatchee, WA 98801

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by its duly qualified and authorized officials as of the day and year first above written.

**BNSF RAILWAY COMPANY**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**AGENCY**

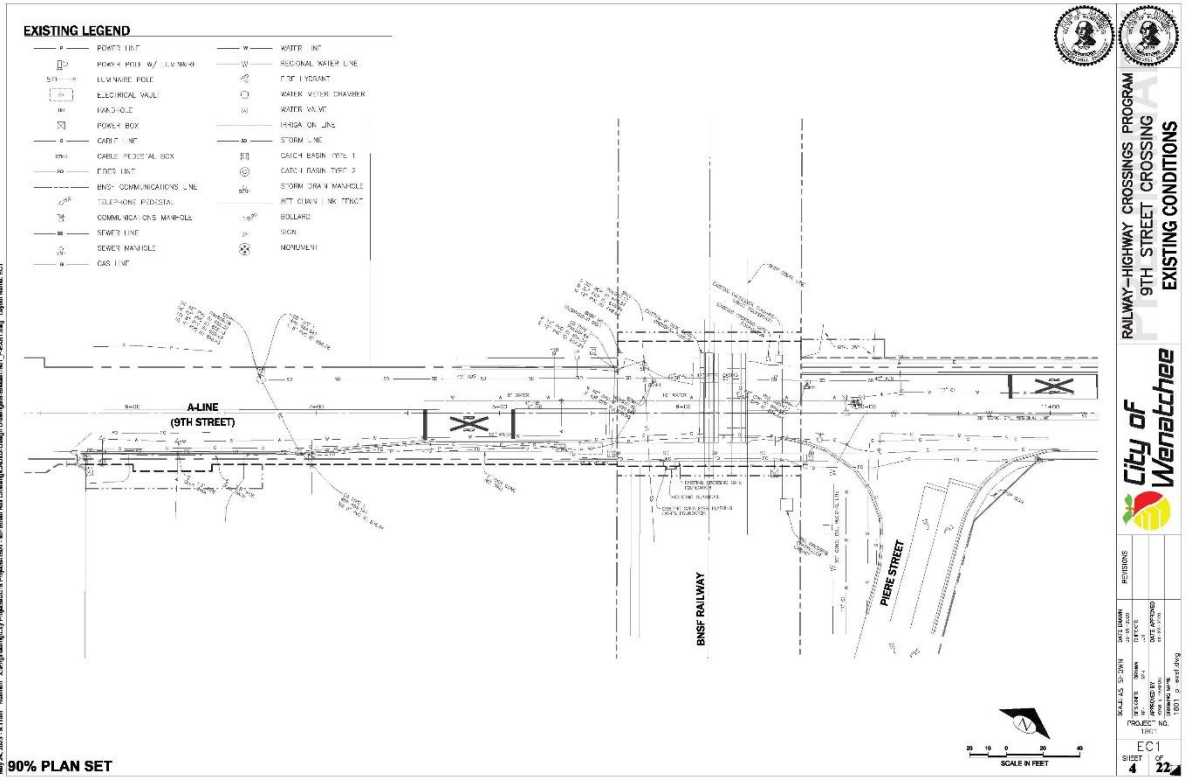
**City of Wenatchee**

By: \_\_\_\_\_

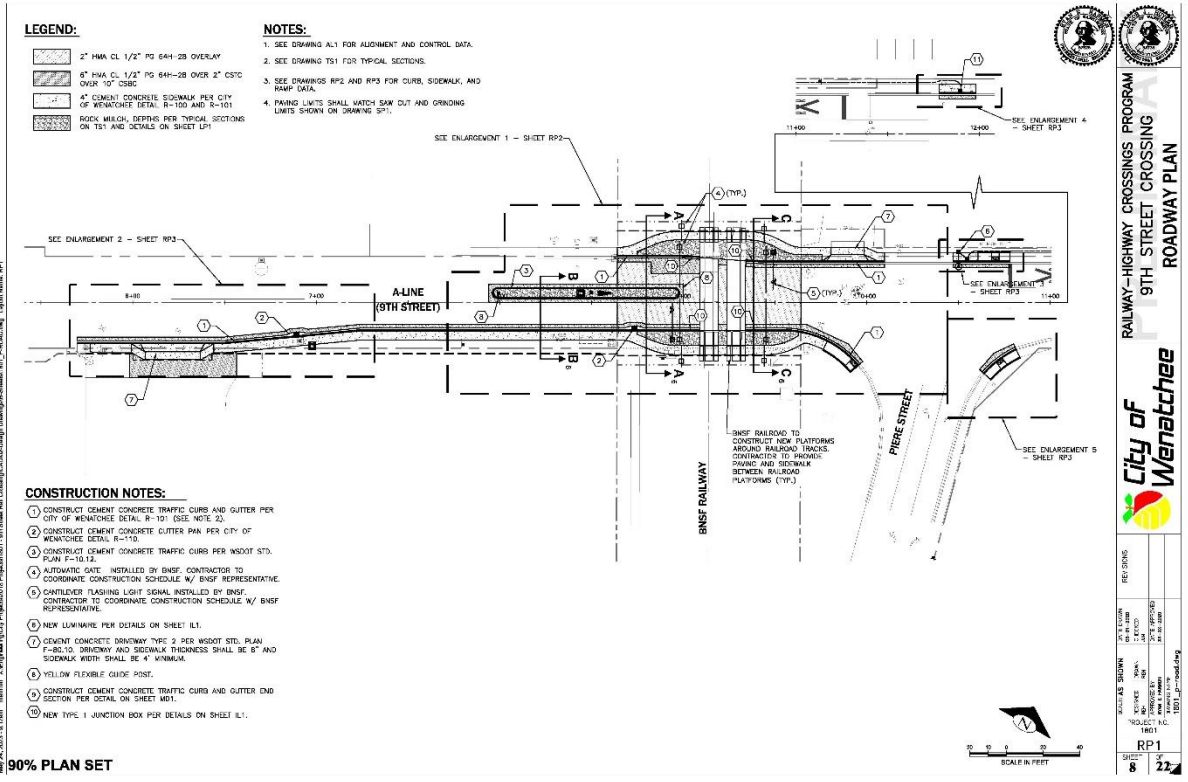
Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**  
**[PLAN OVERVIEW]**



90% PLAN SET



90% PLAN SET

RAILWAY-HIGHWAY CROSSINGS PROGRAM  
9TH STREET CROSSING  
EXISTING CONDITIONS

City of Wenatchee

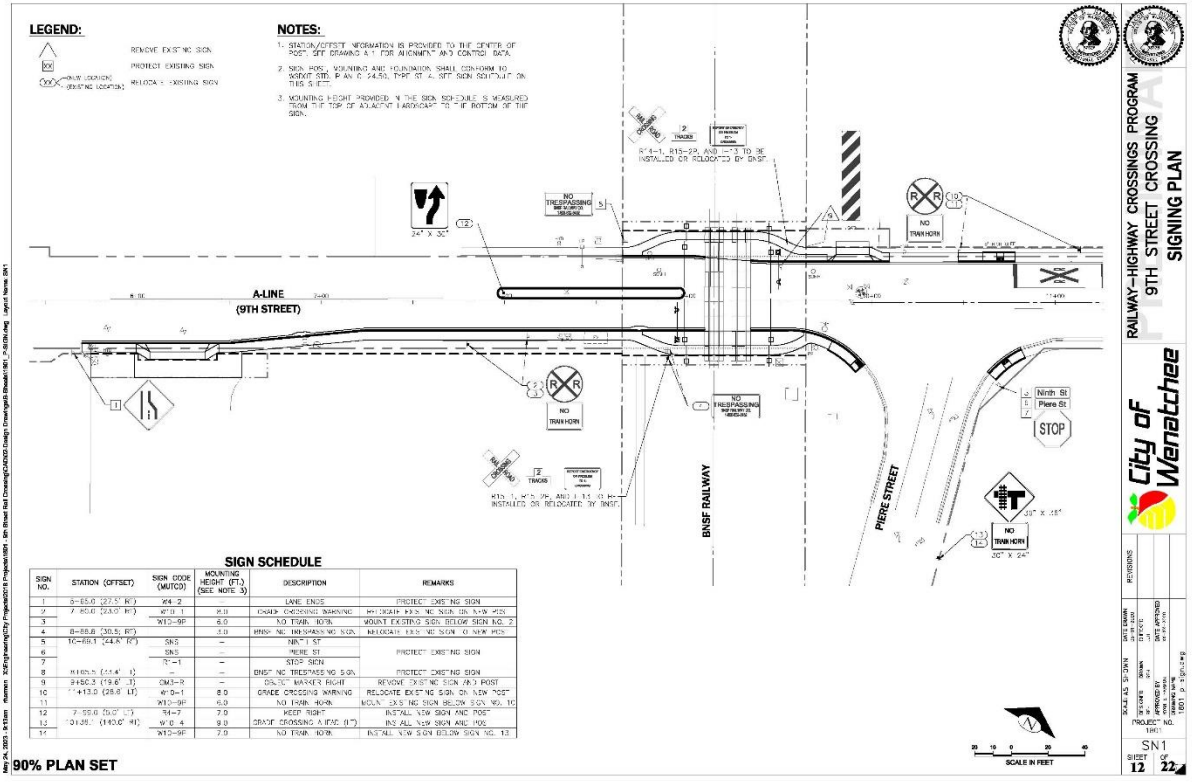
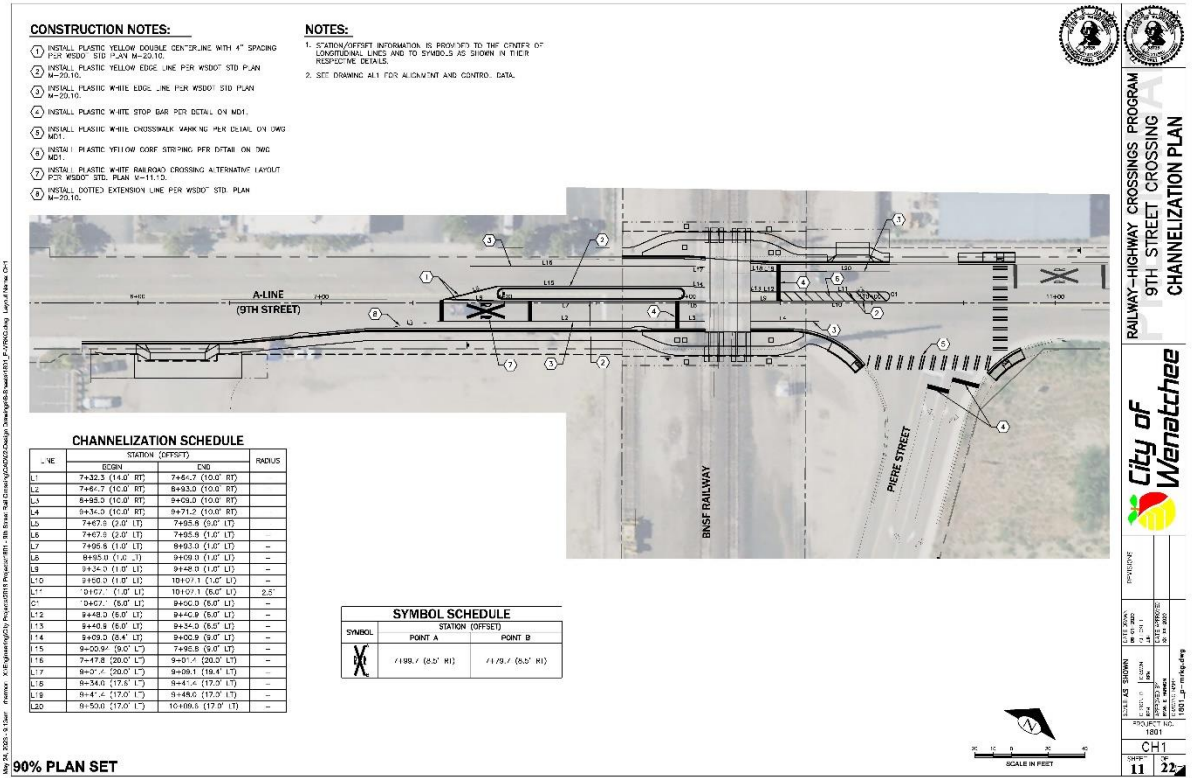
PROJECT NO.	18011
SHEET NO.	4
TOTAL SHEETS	22

RAILWAY-HIGHWAY CROSSINGS PROGRAM  
9TH STREET CROSSING  
ROADWAY PLAN

City of Wenatchee

PROJECT NO.	18011
SHEET NO.	8
TOTAL SHEETS	22





RAILWAY-HIGHWAY CROSSINGS PROGRAM  
9TH STREET CROSSING  
CHANNELIZATION PLAN

City of Wenatchee

PROJECT NO. 1801  
SHEET 17 OF 22

RAILWAY-HIGHWAY CROSSINGS PROGRAM  
9TH STREET CROSSING  
SIGNING PLAN

City of Wenatchee

PROJECT NO. 1801  
SHEET 18 OF 22

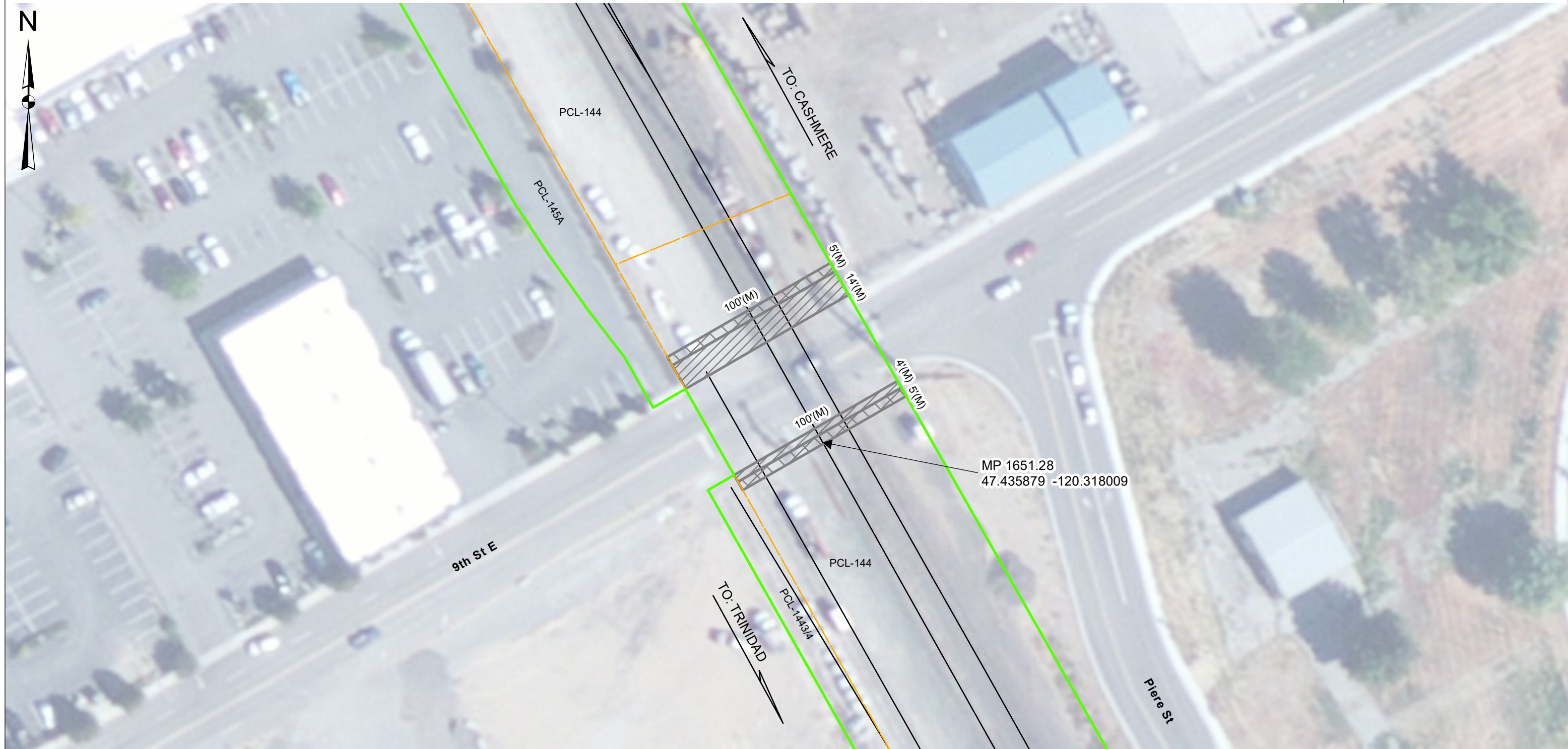
**Exhibit A-1**



SCALE: 1 IN = 50 FT

JLL TI #: -  
BW Proj. No.: 12196.003  
MAP REFERENCE:  
STA. = s62322  
R/W = -

This map used by BNSF RAILWAY COMPANY in the ordinary course of business, but it is subject to audit and should be used only with the expressed understanding the BNSF make no representations whatsoever about the quality, accuracy, errors or omissions relating to this map.



TO: CITY OF WENATCHEE  
AT: WENATCHEE  
CHELAN COUNTY,  
WA

**LEGEND:**

- PERMANENT EASEMENT
- TEMPORARY EASEMENT
- RIGHT OF WAY LINE
- PARCEL LINES
- TRACK



MEASUREMENTS BASED ON PROVIDED SURVEYS  
(S) MEASUREMENTS TAKEN OFF SURVEY  
(M) MEASUREMENT

NORTHWEST DIVISION  
COLUMBIA RIVER SUBDIVISION - L.S. 0037-6  
VAL.SEC. 51003  
GN RY WA-03, MAP 19  
SEC. 3, T22N, R20E WILLM  
DATE: 5/17/2021  
MP 1651.28

**EXHIBIT "B"**

**EASEMENT AGREEMENT**

**FOR** \_\_\_\_\_  
(C&M Agreement)

THIS EASEMENT AGREEMENT FOR \_\_\_\_\_ ("**Easement Agreement**") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ ("**Effective Date**"), by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Grantor**"), and \_\_\_\_\_, a \_\_\_\_\_ ("**Grantee**").

A. Grantor owns or controls certain real property situated at or near the vicinity of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_, at Mile Post \_\_\_\_\_, [Project # \_\_\_\_\_], as described or depicted on **Exhibit "A-1"** attached hereto and made a part hereof (the "**Premises**").

B. Grantor and Grantee have entered into that certain C&M Agreement dated as of \_\_\_\_\_ concerning improvements on or near the Premises (the "**C&M Agreement**").

C. Grantee has requested that Grantor grant to Grantee an easement over the Premises for the Easement Purpose (as defined below).

D. Grantor has agreed to grant Grantee such easement, subject to the terms and conditions set forth in this Easement Agreement.

NOW, THEREFORE, for and in consideration of the foregoing recitals which are incorporated herein, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**Section 1 Granting of Easement.**

- 1.1 Easement Purpose. The "**Easement Purpose**" shall be for the purposes set forth in the C&M Agreement. Any improvements to be constructed in connection with the Easement Purpose are referred to herein as "**Improvements**" and shall be constructed, located, configured and maintained by Grantee in strict accordance with the terms of this Easement Agreement and the C&M Agreement.
- 1.2 Grant. Grantor does hereby grant unto Grantee a non-exclusive easement ("**Easement**") over the Premises for the Easement Purpose and for no other purpose. The Easement is granted subject to any and all restrictions, covenants, easements, licenses, permits, leases and other encumbrances

of whatsoever nature whether or not of record, if any, relating to the Premises and subject to all with all applicable federal, state and local laws, regulations, ordinances, restrictions, covenants and court or administrative decisions and orders, including Environmental Laws (defined below) and zoning laws (collectively, "**Laws**"). Grantor may not make any alterations or improvements or perform any maintenance or repair activities within the Premises except in accordance with the terms and conditions of the C&M Agreement.

- 1.3 Reservations by Grantor. Grantor excepts and reserves the right, to be exercised by Grantor and any other parties who may obtain written permission or authority from Grantor:
- (a) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any existing pipe, power, communication, cable, or utility lines and appurtenances and other facilities or structures of like character (collectively, "**Lines**") upon, over, under or across the Premises;
  - (b) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; and
  - (c) to use the Premises in any manner as the Grantor in its sole discretion deems appropriate, provided Grantor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Grantee for the Easement Purpose.

**Section 2 Term of Easement.** The term of the Easement, unless sooner terminated under provisions of this Easement Agreement, shall be perpetual. **[If this is a temporary easement replace the preceding sentence with the following:** The term of this Easement, unless sooner terminated under provisions of this Easement Agreement, shall expire on the date that is \_\_\_\_\_ after the Effective Date.]

**Section 3 No Warranty of Any Conditions of the Premises.** Grantee acknowledges that Grantor has made no representation whatsoever to Grantee concerning the state or condition of the Premises, or any personal property located thereon, or the nature or extent of Grantor's ownership interest in the Premises. Grantee has not relied on any statement or declaration of Grantor, oral or in writing, as an inducement to entering into this Easement Agreement, other than as set forth herein. GRANTOR HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR

WORKMANSHIP OF ANY SUCH PROPERTY, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTOR SHALL NOT BE RESPONSIBLE TO GRANTEE OR ANY OF GRANTEE'S CONTRACTORS FOR ANY DAMAGES RELATING TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTEE ACCEPTS ALL RIGHTS GRANTED UNDER THIS EASEMENT AGREEMENT IN THE PREMISES IN AN "AS IS, WHERE IS" AND "WITH ALL FAULTS" CONDITION, AND SUBJECT TO ALL LIMITATIONS ON GRANTOR'S RIGHTS, INTERESTS AND TITLE TO THE PREMISES. Grantee has inspected or will inspect the Premises, and enters upon Grantor's rail corridor and property with knowledge of its physical condition and the danger inherent in Grantor's rail operations on or near the Premises. Grantee acknowledges that this Easement Agreement does not contain any implied warranties that Grantee or Grantee's Contractors (as hereinafter defined) can successfully construct or operate the Improvements.

**Section 4 Nature of Grantor's Interest in the Premises.** GRANTOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND GRANTEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE. In case of the eviction of Grantee by anyone owning or claiming title to or any interest in the Premises, or by the abandonment by Grantor of the affected rail corridor, Grantor shall not be liable to refund Grantee any compensation paid hereunder.

**Section 5 Improvements.** Grantee shall take, in a timely manner, all actions necessary and proper to the lawful establishment, construction, operation, and maintenance of the Improvements, including such actions as may be necessary to obtain any required permits, approvals or authorizations from applicable governmental authorities. Any and all cuts and fills, excavations or embankments necessary in the construction, maintenance, or future alteration of the Improvements shall be made and maintained in such manner, form and extent as will provide adequate drainage of and from the adjoining lands and premises of the Grantor; and wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from such lands and premises of the Grantor, the Grantee shall construct and maintain such culverts or drains as may be requisite to preserve such natural and pre-existing drainage, and shall also wherever necessary, construct extensions of existing drains, culverts or ditches through or along the premises of the Grantor, such extensions to be of adequate sectional dimensions to preserve the present flowage of drainage or other waters, and of materials and workmanship equally as good as those now existing. In the event any construction, repair, maintenance, work or other use of the Premises by Grantee will affect any Lines, fences, buildings, improvements or other facilities (collectively, "**Other Improvements**"), Grantee will be responsible at Grantee's sole risk to locate and make any adjustments necessary to such Other Improvements. Grantee must contact the owner(s) of the Other Improvements notifying them of any work that may damage these Other Improvements



and/or interfere with their service and obtain the owner's written approval prior to so affecting the Other Improvements. Grantee must mark all Other Improvements on the Plans and Specifications and mark such Other Improvements in the field in order to verify their locations. Grantee must also use all reasonable methods when working on or near Grantor property to determine if any Other Improvements (fiber optic, cable, communication or otherwise) may exist. The Grantee agrees to keep the above-described premises free and clear from combustible materials and to cut and remove or cause to be cut and removed at its sole expense all weeds and vegetation on said premises, said work of cutting and removal to be done at such times and with such frequency as to comply with Grantee and local laws and regulations and abate any and all hazard of fire.

**Section 6 Taxes and Recording Fees.** Grantee shall pay when due any taxes, assessments or other charges (collectively, "**Taxes**") levied or assessed upon the Improvements by any governmental or quasi-governmental body or any Taxes levied or assessed against Grantor or the Premises that are attributable to the Improvements. Grantee agrees to purchase, affix and cancel any and all documentary stamps in the amount prescribed by statute, and to pay any and all required transfer taxes, excise taxes and any and all fees incidental to recordation of the Memorandum of Easement. In the event of Grantee's failure to do so, if Grantor shall become obligated to do so, Grantee shall be liable for all costs, expenses and judgments to or against Grantor, including all of Grantor's legal fees and expenses.

**Section 7 Environmental.**

7.1 **Compliance with Environmental Laws.** Grantee shall strictly comply with all federal, state and local environmental Laws in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Toxic Substances Control Act (collectively referred to as the "**Environmental Laws**"). Grantee shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on the Premises. Grantee shall not handle, transport, release or suffer the release of "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any Environmental Laws.

7.2 **Notice of Release.** Grantee shall give Grantor immediate notice to Grantor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Grantee's use of the Premises. Grantee shall use its best efforts to promptly respond to any release on or from the Premises. Grantee also shall give Grantor immediate notice of all measures undertaken on behalf of Grantee to investigate, remediate, respond to or otherwise cure such release or violation.

7.3 Remediation of Release. In the event that Grantor has notice from Grantee or otherwise of a release or violation of Environmental Laws which occurred or may occur during the term of this Easement Agreement, Grantor may require Grantee, at Grantee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises. If during the construction or subsequent maintenance of the Improvements, soils or other materials considered to be environmentally contaminated are exposed, Grantee will remove and safely dispose of said contaminated soils. Determination of soils contamination and applicable disposal procedures thereof, will be made only by an agency having the capacity and authority to make such a determination.

7.4 Preventative Measures. Grantee shall promptly report to Grantor in writing any conditions or activities upon the Premises known to Grantee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Grantee's reporting to Grantor shall not relieve Grantee of any obligation whatsoever imposed on it by this Easement Agreement. Grantee shall promptly respond to Grantor's request for information regarding said conditions or activities.

7.5 Evidence of Compliance. Grantee agrees periodically to furnish Grantor with proof satisfactory to Grantor that Grantee is in compliance with this **Section 7**. Should Grantee not comply fully with the above-stated obligations of this **Section 7**, notwithstanding anything contained in any other provision hereof, Grantor may, at its option, terminate this Easement Agreement by serving five (5) days' notice of termination upon Grantee. Upon termination, Grantee shall remove the Improvements and restore the Premises as provided in **Section 9**.

## **Section 8 Default and Termination.**

8.1 Grantor's Performance Rights. If at any time Grantee, or Grantee's Contractors, fails to properly perform its obligations under this Easement Agreement, Grantor, in its sole discretion, may: (i) seek specific performance of the unperformed obligations, or (ii) at Grantee's sole cost, may arrange for the performance of such work as Grantor deems necessary for the safety of its rail operations, activities and property, or to avoid or remove any interference with the activities or property of Grantor, or anyone or anything present on the rail corridor or property with the authority or permission of Grantor. Grantee shall promptly reimburse Grantor for all costs of work performed on Grantee's behalf upon receipt of an invoice for such costs. Grantor's failure to perform any obligations of Grantee or Grantee's Contractors shall not alter the liability allocation set forth in this Easement Agreement.

8.2 Abandonment. Grantor may, at its option, terminate this Easement Agreement by serving five (5) days' notice in writing upon Grantee if Grantee should abandon or cease to use the Premises for the Easement Purpose. Any waiver by Grantor



of any default or defaults shall not constitute a waiver of the right to terminate this Easement Agreement for any subsequent default or defaults, nor shall any such waiver in any way affect Grantor's ability to enforce any section of this Easement Agreement.

8.3 Effect of Termination or Expiration. Neither termination nor expiration will release Grantee from any liability or obligation under this Easement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date the Premises are restored as required by **Section 9**.

8.4 Non-exclusive Remedies. The remedies set forth in this **Section 8** shall be in addition to, and not in limitation of, any other remedies that Grantor may have under the C&M Agreement, at law or in equity.

## **Section 9 Surrender of Premises.**

9.1 Removal of Improvements and Restoration. Upon termination of this Easement Agreement, whether by abandonment of the Easement or by the exercise of Grantor's termination rights hereunder, Grantee shall, at its sole cost and expense, immediately perform **the following**:

- (e) remove all or such portion of Grantee's Improvements and all appurtenances thereto from the Premises, as Grantor directs at Grantor's sole discretion;
- (f) repair and restore any damage to the Premises arising from, growing out of, or connected with Grantee's use of the Premises;
- (g) remedy any unsafe conditions on the Premises created or aggravated by Grantee; and
- (h) leave the Premises in the condition which existed as of the Effective Date.

9.2 Limited License for Entry. If this Easement Agreement is terminated, Grantor may direct Grantee to undertake one or more of the actions set forth above, at Grantee's sole cost, in which case Grantee shall have a limited license to enter upon the Premises to the extent necessary to undertake the actions directed by Grantor. The terms of this limited license include all of Grantee's obligations under this Easement Agreement. Termination will not release Grantee from any liability or obligation under this Easement Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Grantee's Improvements are removed and the Premises are restored to the condition that existed as of the Effective Date. If Grantee fails to surrender the Premises to Grantor upon any

termination of the Easement, all liabilities and obligations of Grantee hereunder shall continue in effect until the Premises are surrendered.

**Section 10 Liens.** Grantee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Grantee on the Premises or attributable to Taxes that are the responsibility of Grantee pursuant to **Section 6**. Grantor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by Law to prevent the attachment of any such liens to any portion of the Premises; provided, however, that failure of Grantor to take any such action shall not relieve Grantee of any obligation or liability under this **Section 10** or any other section of this Easement Agreement.

**Section 11 Tax Exchange.** Grantor may assign its rights (but not its obligations) under this Easement Agreement to Goldfinch Exchange Company LLC, an exchange intermediary, in order for Grantor to effect an exchange under Section 1031 of the Internal Revenue Code. In such event, Grantor shall provide Grantee with a Notice of Assignment, attached as Exhibit C, and Grantee shall execute an acknowledgement of receipt of such notice.

**Section 12 Notices.** Any notice required or permitted to be given hereunder by one party to the other shall be delivered in the manner set forth in the C&M Agreement. Notices to Grantor under this Easement shall be delivered to the following address: BNSF Railway Company, Real Estate Department, 2500 Lou Menk Drive, Ft. Worth, TX 76131, Attn: Permits, or such other address as Grantor may from time to time direct by notice to Grantee.

**Section 13 Recordation.** It is understood and agreed that this Easement Agreement shall not be in recordable form and shall not be placed on public record and any such recording shall be a breach of this Easement Agreement. Grantor and Grantee shall execute a Memorandum of Easement in the form attached hereto as Exhibit "B-1" (the "**Memorandum of Easement**") subject to changes required, if any, to conform such form to local recording requirements. *[IF LEGAL DESCRIPTION IS NOT AVAILABLE USE THE FOLLOWING IN PLACE OF THE PRIOR SENTENCE: As of the Effective Date, a legal description of the Premises is not available. Grantee and Grantor shall work together in good faith to establish the legal description for the Premises. Once Grantor and Grantee have approved the legal description, Grantor and Grantee shall execute a Memorandum of Easement in the form attached hereto as Exhibit "B-1" (the "**Memorandum of Easement**").]* The Memorandum of Easement shall be recorded in the real estate records in the county where the Premises are located. If a Memorandum of Easement is not executed by the parties and recorded as described above within \_\_\_\_ days of the Effective Date, Grantor shall have the right to terminate this Easement Agreement upon notice to Grantee.

**Section 14 Miscellaneous.**

14.1 All questions concerning the interpretation or application of provisions of this Easement Agreement shall be decided according to the substantive Laws of the State of **[Texas]** without regard to conflicts of law provisions.

14.2 In the event that Grantee consists of two or more parties, all the covenants and agreements of Grantee herein contained shall be the joint and several covenants and agreements of such parties. This instrument and all of the terms, covenants and provisions hereof shall inure to the benefit of and be binding upon each of the parties hereto and their respective legal representatives, successors and assigns and shall run with and be binding upon the Premises.

14.3 If any action at law or in equity is necessary to enforce or interpret the terms of this Easement Agreement, the prevailing party or parties shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party or parties may be entitled.

14.4 If any provision of this Easement Agreement is held to be illegal, invalid or unenforceable under present or future Laws, such provision will be fully severable and this Easement Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof will remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, there will be added automatically as a part of this Easement Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

14.5 This Easement Agreement is the full and complete agreement between Grantor and Grantee with respect to all matters relating to Grantee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Grantee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Grantee or Grantee's obligation to defend and hold Grantor harmless in any prior written agreement between the parties.

14.6 Time is of the essence for the performance of this Easement Agreement.

## **Section 15 Administrative Fee.**

15.1 Grantee acknowledges that a material consideration for this agreement, without which it would not be made, is the agreement between Grantee and Grantor, that the Grantee shall pay upon return of this Agreement signed by Grantee to Grantor's Broker a processing fee in the amount of **\$2,000.00** over and above the agreed upon Acquisition Price. Said fee shall be made payable to BNSF Railway Company by a separate check.

Witness the execution of this Easement Agreement as of the date first set forth above.

**GRANTOR:**

BNSF RAILWAY COMPANY, a Delaware  
corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**GRANTEE:**

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## **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  

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- **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". Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to **Rosa Martinez** at Marsh, USA, 214-303-8519.
- **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. Railway will have the right to stop construction work on the Project if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the Project work in a manner which is hazardous to Railway property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Contractor fails to pay Railway for the Temporary Construction License or the Easement. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer or until additional insurance has been delivered to and accepted by Railway. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, Railway may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of Railway. Railway's right to stop the work is in addition to any other rights Railway may have including, but not limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop construction work on the Project, Railway agrees to immediately notify the following individual in writing:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- **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 **(Agency)** at \_\_\_\_\_ and Railway's Manager Public Projects, telephone number (\_\_\_\_\_) at least thirty (30) calendar days before commencing any work on Railway Property. Contractor's notification to Railway must refer to Railway's file \_\_\_\_\_.
- **1.01.07** For any bridge demolition and/or falsework above any tracks or any excavations located with any part of the excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 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. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. 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.BNSFContractor.com](http://www.BNSFContractor.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 Division Engineer \_\_\_\_\_ at (\_\_\_\_\_) \_\_\_\_\_ 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:
  - 15'-0" Horizontally from centerline of nearest track
  - 21'-6" Vertically above top of rail
  - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
  - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
  - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
  - 34'-0" 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
  - 23' 6" 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 **(Agency)** and must not be undertaken until approved in writing by the Railway, and until the **(Agency)** 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 **(Agency)** 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 Construction 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 constructed and, at the completion of the project, removed 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.BNSFContractor.com](http://www.BNSFContractor.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.

**1.04.02** Contractor shall have a background investigation performed on all of its employees, subcontractors and agents who will be performing any services for Railroad under this Agreement which are determined by Railroad in its sole discretion **a)** to be on Railroad's property, or **b)** that require access to Railroad Critical Infrastructure, Railroad Critical Information Systems, Railroad's Employees, Hazardous Materials on Railroad's property or is being transported by or otherwise in the custody of Railroad, or Freight in Transit involving Railroad.

The required background screening shall at a minimum meet the rail industry background screening criteria defined by the e-RAILSAFE Program as outlined at [www.eVerifile.com](http://www.eVerifile.com), in addition to any other applicable regulatory requirements.

Contractor shall obtain written consent from all its employees, subcontractors or agents screened in compliance with the e-RAILSAFE Program to participate in the Program on their behalf and to release completed background information to Railroad's designee. Contractor shall be subject to periodic audit to ensure compliance.

Contractor subject to the e-RAILSAFE Program hereunder shall not permit any of its employees, subcontractors or agents to perform services hereunder who are not first approved under e-RAILSAFE Program standards. Railroad shall have the right to deny entry onto its premises or access as described in this section above to any of Contractor's employees, subcontractors or agents who do not display the authorized identification badge issued by a background screening service meeting the standards set forth in the e-RAILSAFE Program, or who in Railroad's opinion, which may not be unreasonable, may pose a threat to the safety or security of Railroad's operations, assets or personnel.

Contractors shall be responsible for ensuring that its employees, subcontractors and agents are United States citizens or legally working in the United States under a lawful and appropriate work VISA or other work authorization.

## **1.05 Railway Flagger Services:**

- **1.05.01** The Contractor must give Railway's **Roadmaster (telephone \_\_\_\_\_)** 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 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, upon inspection by Railway's Representative, other conditions warrant.
  - **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 will be borne by **(Agency)**. The estimated cost for one (1) flagger is approximately between \$800.00-\$1,600.00 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, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. 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 \_\_\_\_\_ freight trains per 24-hour period at a timetable speed \_\_\_\_\_ MPH and \_\_\_\_\_ passenger trains at a timetable speed of \_\_\_\_\_ 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 Railway'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.BNSFContractor.com](http://www.BNSFContractor.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 Railway'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 OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF THE SAME WILL OBSTRUCT THE VIEW OF A TRAIN APPROACHING THE CROSSING. PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE AREA WITH CONCURRENCE OF THE RAILWAY'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 (\_\_\_\_\_)**. 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

(If injuries are in connection with rail equipment accident/incident, highway rail grade crossing accident or automobile accident, ensure that appropriate information is obtained, forms completed and that data entry personnel are aware that injuries relate to that specific event.)

Injured Person Type:

- Passenger on train (C)       Non-employee (N)  
*(i.e., emp of another railroad, or, non-BNSF emp involved in vehicle accident, including company vehicles)*
- Contractor/safety sensitive (F)       Contractor/non-safety sensitive (G)
- Volunteer/safety sensitive (H)       Volunteer/other non-safety sensitive (I)
- Non-trespasser (D) - to include highway users involved in highway rail grade crossing accidents who did not go around or through gates
- Trespasser (E) - to include highway users involved in highway rail grade crossing accidents who went around or through gates
- Non-trespasser (J) - Off railroad property

If train involved, Train ID:

\_\_\_\_\_

Transmit attached information to Accident/Incident Reporting Center by:

Fax 1-817-352-7595

or by Phone 1-800-697-6736

or email to: [Accident-Reporting.Center@BNSF.com](mailto:Accident-Reporting.Center@BNSF.com)

Officer Providing Information:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Employee No.)

\_\_\_\_\_  
(Phone #)

**REPORT PREPARED TO COMPLY WITH FEDERAL ACCIDENT REPORTING REQUIREMENTS AND PROTECTED FROM DISCLOSURE PURSUANT TO 49 U.S.C. 20903 AND 83 U.S.C. 490**

### 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 IT IS NOT INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY.

I. Accident City/St: \_\_\_\_\_ 2. Date: \_\_\_\_\_ Time: \_\_\_\_\_  
County: \_\_\_\_\_ 3. Temperature: \_\_\_\_\_ 4. Weather: \_\_\_\_\_  
(if non BNSF location)

Mile Post / Line Segment: \_\_\_\_\_

5. Driver's License No (and state) or other ID: \_\_\_\_\_ **SSN (required):** \_\_\_\_\_

6. Name (last, first, mi): \_\_\_\_\_

7. Address: \_\_\_\_\_ City: \_\_\_\_\_ St: \_\_\_\_\_ Zip: \_\_\_\_\_

8. Date of Birth: \_\_\_\_\_ and/or Age: \_\_\_\_\_ Gender: \_\_\_\_\_  
(if available)

Phone Number: \_\_\_\_\_ Employer: \_\_\_\_\_

9. Injury: \_\_\_\_\_ 10. Body Part: \_\_\_\_\_  
(i.e., Laceration, etc.) (i.e., Hand, etc.)

II. Description of Accident (To include location, action, result, etc.): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12. Treatment:  
 First Aid Only  
 Required Medical Treatment \_\_\_\_\_  
 Other Medical Treatment \_\_\_\_\_

13. Dr. Name: \_\_\_\_\_ Date: \_\_\_\_\_

14. Dr. Address:  
Street: \_\_\_\_\_ City: \_\_\_\_\_ St: \_\_\_\_\_ Zip: \_\_\_\_\_

15. Hospital Name: \_\_\_\_\_

16. Hospital Address:  
Street: \_\_\_\_\_ City: \_\_\_\_\_ St: \_\_\_\_\_ Zip: \_\_\_\_\_

17. Diagnosis: \_\_\_\_\_

## EXHIBIT "C-1"

### Agreement Between BNSF RAILWAY COMPANY and the CONTRACTOR

Railway File: \_\_\_\_\_

Agency Project: \_\_\_\_\_

\_\_\_\_\_ (hereinafter called "Contractor"), has entered into an agreement (hereinafter called "Agreement") dated \_\_\_\_\_, with the **City of Wenatchee** for the performance of certain work in connection with the following project: BF-10015663. Performance of such work will necessarily require Contractor to enter **BNSF RAILWAY COMPANY** (hereinafter called "Railway") right of way and property (hereinafter called "Railway Property"). The Agreement provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for City of Wenatchee (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 Agreement, has agreed and does hereby agree with Railway as follows:

#### 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.

**This obligation shall not include such claims, costs, damages, or expenses which may be caused by the sole negligence of Railway or its contractors, agents or employees; Provided, that if the claims or damages are caused by or result from the concurrent negligence or other acts or omissions of (a) Railway, its contractors, agents or employees and (b) Contractor, its subcontractors, agents or employees, this provision shall be valid and enforceable only to the extent of the negligence of the Contractor, its subcontractors, agents or employees.**



**It is mutually negotiated between the parties that the indemnification obligation shall include all claims brought by Contractor's employees against Railway, its agents, servants, employees or otherwise, and Contractor expressly waives its immunity under the industrial insurance act (RCW Title 51) and assumes potential liability for all actions brought by its employees.**

**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 LOCOMOTIVE 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.

In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify Railway to the fullest extent permitted by applicable law.

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

## **2) TERM**

This Agreement is effective from the date of the Agreement 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.

## **3) INSURANCE**

Contractor shall, 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 shall 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 but in no event less than the amount otherwise carried by the Contractor. Coverage must be purchased on a post 2004 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 shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- ◆ The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Waiver of subrogation in favor of and acceptable to Railway.
- ◆ Additional insured endorsement in favor of and acceptable to Railway.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to **Railway** employees.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy with regard to the work being performed under this agreement.

B. Business Automobile Insurance. This insurance shall 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

The policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- ◆ Waiver of subrogation in favor of and acceptable to Railway.
- ◆ Additional insured endorsement in favor of and acceptable to Railway.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

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

- ◆ Contractor'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.

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

- ◆ Waiver of subrogation in favor of and acceptable to Railway.

A. Railroad Protective Liability insurance naming only the **Railway** 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 12 04 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment
- ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
- ◆ Endorsed to remove any exclusion for punitive damages.
- ◆ No other endorsements restricting coverage may be added.
- ◆ The original policy must be provided to the **Railway** prior to performing any work or services under this Agreement
- ◆ Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured' care, custody, and control arising out of the acts or omissions of the contractor named on the Declarations.

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate (if available) in Railway's Blanket Railroad Protective Liability Insurance Policy.

#### **Other Requirements:**

Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.

Contractor agrees to waive its right of recovery against **Railway** for all claims and suits against **Railway**. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against **Railway** for all claims and suits. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against **Railway** for loss of its owned or leased property or property under Contractor's care, custody or control.

Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

Contractor is not allowed to self-insure without the prior written consent of **Railway**. If granted by **Railway**, any self-insured retention or other financial responsibility for claims shall be covered directly by Contractor in lieu of insurance. Any and all **Railway** 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 services, Contractor shall furnish to **Railway** an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments. The certificate should be directed to the following address:

BNSF Railway Company  
c/o CertFocus  
P.O. Box 140528  
Kansas City, MO 64114  
Toll Free: 877-576-2378  
Fax number: 817-840-7487  
Email: [BNSF@certfocus.com](mailto:BNSF@certfocus.com)  
[www.certfocus.com](http://www.certfocus.com)

Contractor shall notify **Railway** in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration.

Any insurance policy shall be written by a reputable insurance company acceptable to **Railway** 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 provided.

If coverage is purchased on a "claims made" basis, Contractor hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this Agreement. Annually Contractor agrees to provide evidence of such coverage as required hereunder.

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.

Not more frequently than once every five years, **Railway** 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 shall require that the subcontractor shall provide and maintain insurance coverage(s) as set forth herein, naming **Railway** as an additional insured, and shall require that the subcontractor shall release, defend and indemnify **Railway** to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify **Railway** herein.

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

The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor shall 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 **Railway** shall not be limited by the amount of the required insurance coverage.

In the event of a claim or lawsuit involving **Railway** arising out of this agreement, Contractor will make available any required policy covering such claim or lawsuit.

These insurance provisions are intended to be a separate and distinct obligation on the part of the Contractor. Therefore, these provisions shall be enforceable and Contractor shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work covered hereunder is performed.

For purposes of this section, **Railway** shall mean "Burlington Northern Santa Fe LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

#### **4) SALES AND OTHER TAXES**

In the event applicable sales taxes of a state or political subdivision of a state of the United States are levied or assessed in connection with and directly related to any amounts invoiced by Contractor to Railway ("Sales Taxes"), Railway shall be responsible for paying only the Sales Taxes that Contractor separately states on the invoice or other billing documents provided to Railway; *provided, however*, that (i) nothing herein shall preclude Railway from claiming whatever Sales Tax exemptions are applicable to amounts Contractor bills Railway, (ii) Contractor shall be responsible for all sales, use, excise, consumption, services and other taxes which may accrue on all services, materials, equipment, supplies or fixtures that Contractor and its subcontractors use or consume in the performance of this Agreement, (iii) Contractor shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) that Contractor fails to separately state on the invoice or other billing documents provided to Railway or fails to collect at the time of payment by Railway of invoiced amounts (except where Railway claims a Sales Tax exemption), and (iv) Contractor shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) if Contractor fails to issue separate invoices for each state in which Contractor delivers goods, provides services or, if applicable, transfers intangible rights to Railway.

Upon request, Contractor shall provide Railway satisfactory evidence that all taxes (together with any penalties, fines or interest thereon) that Contractor is responsible to pay under this Agreement have been paid. If a written claim is made against Contractor for Sales Taxes with respect to which Railway may be liable for under this Agreement, Contractor shall promptly notify Railway of such claim and provide Railway copies of all correspondence received from the taxing authority. Railway shall have the right to contest, protest, or claim a refund, in Railway's own name, any Sales Taxes paid by Railway to Contractor or for which Railway might otherwise be

responsible for under this Agreement; provided, however, that if Railway is not permitted by law to contest any such Sales Tax in its own name, Contractor shall, if requested by Railway at Railway's sole cost and expense, contest in Contractor's own name the validity, applicability or amount of such Sales Tax and allow Railway to control and conduct such contest.

Railway retains the right to withhold from payments made under this Agreement amounts required to be withheld under tax laws of any jurisdiction. If Contractor is claiming a withholding exemption or a reduction in the withholding rate of any jurisdiction on any payments under this Agreement, before any payments are made (and in each succeeding period or year as required by law), Contractor agrees to furnish to Railway a properly completed exemption form prescribed by such jurisdiction. Contractor shall be responsible for any taxes, interest or penalties assessed against Railway with respect to withholding taxes that Railway does not withhold from payments to Contractor.

## 1) **EXHIBIT "C" CONTRACTOR REQUIREMENTS**

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Agreement, and the Contractor Requirements set forth on Exhibit "C" attached to the Agreement 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. Contractor shall execute a Temporary Construction Crossing Agreement or Private Crossing Agreement (<http://www.bnsf.com/communities/fags/permits-real-estate/>), for any temporary crossing requested to aid in the construction of this Project, if approved by BNSF.

## 2) **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, whether 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. The rate then in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of train delay pursuant to this agreement.

Contractor and its subcontractors must give Railway's representative (\_\_\_\_\_) \_\_\_\_\_ (\_\_) 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.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized officer the day and year first above written.

**Contractor**

**BNSF Railway Company**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Name: \_\_\_\_\_  
Manager Public Projects

Title: \_\_\_\_\_

Accepted and effective this \_\_\_\_\_ day of 20\_\_.

Contact Person: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

Fax: \_\_\_\_\_

Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_



**EXHIBIT D**

**ESTIMATE FOR RAILROAD WORK**

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

BNSF RAILWAY COMPANY  
 FHFM ESTIMATE FOR  
 STATE OF WA

LOCATION WENATCHEE DETAILS OF ESTIMATE PLAN ITEM: 000303106 VERSION: 8

PURPOSE, JUSTIFICATION AND DESCRIPTION

9TH ST - WENATCHEE, WA; REPLACE CONSTANT WARNING / FLASHERS / GATES / CANTILEVERS, INSTALL RADAR; NORTHWEST DIV;  
 SCENIC SUBDIV; LS 0037; MP 1651.40; DOT# 065838N. SEQ. #70544.

MONTHLY POWER UTILITY COST CENTER: 61504.

THE MATERIAL LIST BELOW REFLECTS TYPICAL REPRESENTATIVE PACKAGES USED FOR ESTIMATING PURPOSES ONLY.

THIS ESTIMATE IS GOOD FOR 180 DAYS. THE ESTIMATE IS SUBJECT TO CHANGE IN COST FOR LABOR, MATERIAL, AND OVERHEAD.

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

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

THE STATE OF WASHINGTON IS FUNDING 100% OF THIS PROJECT.

MAINTAIN PROPRIETARY CONFIDENTIALITY.  
 PRIMARY FUNDING SOURCE IS FHWA  
 \*\* BUY AMERICA(N) APPLIES \*\*

DESCRIPTION	QUANTITY	U/M	COST	TOTAL \$
*****				
LABOR				
*****				
ELECTRICAL LABOR F/SIGNAL EQUIPMENT	54.0	MH	2,787	
SIGNAL FIELD - REPLACE	1400.0	MH	60,716	
SIGNAL SHOP LABOR - CAP	0.01	MH	1	
PAYROLL ASSOCIATED COSTS			41,511	
DA OVERHEADS			68,920	
EQUIPMENT EXPENSES			14,122	
INSURANCE EXPENSES			11,112	
TOTAL LABOR COST			199,169	199,169
*****				
MATERIAL				
*****				
ARRESTOR, MDSA-2 XS	1.0	EA N	700	
BATTERY, VGL-255	20.0	EA N	5,170	
BATTERY, VGL-350	18.0	EA N	6,077	
BATTERY, VGL-420	10.0	EA N	3,904	
BELLS	4.0	EA N	823	
BUNGALOW 8X10 W/ AC	1.0	LS N	18,757	
BUNGALOW MATERIAL	1.0	LS N	16,975	
CABLE, 2C/6 TW	700.0	FT N	1,099	
CABLE, 3C/2	250.0	FT N	1,883	
CABLE, 5C/10	500.0	FT N	1,150	
CABLE, 5C/6	2000.0	FT N	10,480	
CABLE, 7C/14	2000.0	FT N	4,280	
CANTILEVER (REQUIRES QUOTE)	2.0	EA N	42,400	
CHARGERS, 12/80 (20/40/60)	4.0	EA N	5,989	
CONSTANT WARNING, XP4, 2TK	1.0	EA N	28,460	
ELECTRICAL MATERIAL	1.0	EA N	3,000	
ELGX 4-SLOT	1.0	EA N	5,174	
EVENT RECORDER	1.0	EA N	5,657	
FIELD MATERIAL	1.0	LS N	18,461	
FILL DIRT	30.0	CY N	750	
FOUNDATION, CANT	2.0	EA N	8,040	
FOUNDATION, CONCRETE	8.0	EA N	2,186	
GATE KEEPER	4.0	EA N	5,465	
GATE MECHANISM, S-60	6.0	EA N	35,017	
GATE MECHANISM, S-60 EXIT	2.0	EA N	12,575	
HAWK 48 DIM	1.0	EA N	4,199	
LED LIGHT	46.0	EA N	10,301	
RADAR KIT	1.0	LS N	35,000	
RADAR MAST	2.0	EA N	3,817	
RELAY	30.0	EA N	22,500	
SHUNT, NBS	4.0	EA N	3,964	
SIDE LIGHT, 1-WAY	2.0	EA N	1,697	
SURFACE ROCK	30.0	CY N	1,500	

USE TAX		31,614	
OFFLINE TRANSPORTATION		4,109	
		<hr/>	
TOTAL MATERIAL COST		363,173	363,173
*****			
OTHER			
*****			
AC POWER SERVICE	1.0 EA N	6,250	
BUNGALOW, WIRE AND TEST	1.0 LS N	13,200	
CONTRACT ENGINEERING	1.0 LS N	12,000	
DIRECTIONAL BORING	300.0 FT N	25,500	
		<hr/>	
TOTAL OTHER ITEMS COST		56,950	56,950
PROJECT SUBTOTAL			619,292
CONTINGENCIES			59,073
BILL PREPARATION FEE			6,784
			<hr/>
GROSS PROJECT COST			685,149
LESS COST PAID BY BNSF			0
			<hr/>
TOTAL BILLABLE COST			685,149

AUTHORITY FOR EXPENDITURE

LOCATION : WENATCHEE	LINE SEGMENT : 37	AFE NUMBER :
PLANITEM NUMBER : 968430000	MILEPOST : 1651.29	RFA NUMBER : 5922024
PROPERTY OF : BNSF RAILWAY COMPANY	DIVISION : NW	CPAR NUMBER : CB960024
OPERATED BY : BNSF RAILWAY COMPANY	SUBDIVISION : COLUMBIA RIVER	BUDGET YEAR : 2024
JOINT FACILITY : WSDOT	TRACK TYPE : 2	BUDGET CLASS : 6
% BILLABLE (+/-) : 100.0	TAX STATE : WA	REPORTING OFFICE : 118
	SPONSOR : VP ENGINEERING	CENTER/ROLLUP : 29125

PURPOSE, JUSTIFICATION AND DESCRIPTION

PIP NWE DIV COLUMBIA RIVER SUB LS 37 MP 1651.29 REBILLABLE TO WSDOT WENATCHEE WA 9TH ST CROSSING MODIFICATION DOT 065838N

PRIMARY FUNDING SOURCE IS FHWA

\*\* BUY AMERICA(N) APPLIES \*\*

PLAN ITEM	LINE SEG	BEG MP	END MP	TRK NBR	BEGIN STATION	END STATION	PROJECT TYPE	BUD YEAR
968430000	37	1651.29	1651.29	2	WENATCHEE	WENATCHEE	PUBLIC IMPROVEMENT PROJECT	2024

	CASH CAPITAL	NONCASH CAPITAL	OPERATING EXP	REMOVAL COSTS	BILLABLE	TOTALS
LABOR COSTS	0	0	0	0	54,226	54,226
MATERIAL COSTS	0	0	0	0	96,878	96,878
OTHER COSTS	0	0	0	0	16,122	16,122
TOTALS	0	0	0	0	167,226	167,226

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

BNSF RAILWAY COMPANY  
FHPM ESTIMATE FOR  
WSDOT

LOCATION WENATCHEE    DETAILS OF ESTIMATE    PLAN ITEM : 968430000    VERSION : 2

PURPOSE, JUSTIFICATION AND DESCRIPTION

PIP NWE DIV COLUMBIA RIVER SUB LS 37 MP 1651.29 REBILLABLE TO WSDOT WENATCHEE WA 9TH ST CROSSING  
MODIFICATION DOT 065838N

9TH STREET SECTION 130 PROJECT


REQUESTED BY ALEX FUNDERBURG 1/18/24  
PRIMARY FUNDING SOURCE IS FHWA  
\*\* BUY AMERICA(N) APPLIES \*\*

DESCRIPTION	QUANTITY U/M	COST	TOTAL \$
*****			
LABOR			
*****			
PLACE CROSS TIES - CAP	8.0 MH	301	
PLACE FIELD WELDS - CAP	43.0 MH	1,708	
REPLACE PUBLIC CROSSING - TOTAL REHAB	144.0 MH	5,416	
REPLACE TRACK PANELS - CAP	27.0 MH	1,016	
SIGNAL LABOR - CAP	5.0 MH	220	
SURFACE TRACK - REPLACEMENT - CAP	48.0 MH	1,856	
UNLOAD BALLAST - REPLACEMENT - CAP	1.0 MH	38	
UNLOAD CROSSING MATERIAL - PUBLIC - CAP	72.0 MH	2,708	
UNLOAD TRACK PANELS - REPLACEMENT	13.0 MH	489	
PAYROLL ASSOCIATED COSTS		8,914	
DA OVERHEADS		15,455	
EQUIPMENT EXPENSES		13,512	
INSURANCE EXPENSES		2,593	
TOTAL LABOR COST		54,226	54,226
*****			
MATERIAL			
*****			
BALLAST NT, SYSTEM AVERAGE COST	200.0 NT **	2,938	
CLIP:PR601A	80.0 EA **	324	
PANEL,TRACK;80FT;136LB;SC;10FT;PANDROL	2.0 EA **	32,608	
RAIL, TRANS,141N;132W; 40 FT; UNVRSL	8.0 EA	11,360	
SIGNAL MATERIAL	99.0 EA	99	
SPIKE, TBR SCREW 3/4"X13", F/ROAD XING	324.0 EA **	969	
TIE 10FT,PRE-PLATED, PANDROL, 6IN , SQ HOLE	20.0 EA	4,900	
WELDKIT, GENERIC FOR ALL RAIL WEIGHTS	4.0 KT **	306	
CROSSING,CONCRETE PANELS;10 FT TIES TANGENT	144.0 FT **	27,108	
XING CONC RAMP 136LB COMPLETE SET	1.0 ST **	349	
MATERIAL HANDLING		4,044	
ONLINE TRANSPORTATION		3,140	
USE TAX		7,815	
OFFLINE TRANSPORTATION		918	
TOTAL MATERIAL COST		96,878	96,878
*****			
OTHER			
*****			
TOTAL OTHER ITEMS COST		0	0
PROJECT SUBTOTAL			151,104
CONTINGENCIES			14,466
BILL PREPARATION FEE			1,656
GROSS PROJECT COST			167,226
LESS COST PAID BY BNSF			0
TOTAL BILLABLE COST			167,226



## CITY COUNCIL AGENDA REPORT

**TO:** Mike Poirier, Mayor  
City Council

**FROM:**  Glen A. DeVries, Community Development Director  
Community Development Department

**MEETING DATE:** May 23, 2024

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### I. SUBJECT

The City of Wenatchee entered into a contract with the Wenatchee Rescue Mission allowing for the placement and then the management of unsheltered households in 43 individual low barrier shelter units manufactured by the Pallet Shelter Company. The Wenatchee City Council authorized the Mayor to enter into a contract with Pipkin Construction for the site preparation, utility and infrastructure work at 1450 S. Wenatchee Ave. A contract was signed in September 2023 in the amount of \$743,823.23. Additional site work through change orders was authorized by the Community Development Director and then the City Administrator to address unforeseen constraints and infrastructure needs within their budget authorities including training costs for Pallet Shelter Installation, removal of undocumented fill, a fence line relocation to facilitate power pole relocations, additional light poles, and safety guard rail. Three remaining items are necessary that require the authorization of the City Council to complete site work under the Pipkin Construction contract.

### II. ACTION REQUESTED

Motion requested to authorize the City Administrator to sign change orders in the amount of \$82,784.80 for the completion of the site and utility work at the Wenatchee Rescue Mission for the Pallet Shelter facility located at 1450 S. Wenatchee Ave., Wenatchee WA. The authorization is necessary to provide for power and weatherization for the shower/restroom trailer and to facilitate the compliant access and use of the 4 ADA designated Pallet Shelters.

### III. OVERVIEW

Remaining components for the Pallet Shelter site construction are associated with the shower trailer/restroom and the 4 ADA Pallet Shelter units. The costs for change orders for the additional work requires the authorization of the City Council.

- Shower/restroom trailer- additional weather protection for the shower trailer is necessary to protect the plumbing of the shower/restroom facility in the winter.
- Power to the shower facility was not sufficiently addressed in the original engineered site plans. An electrical feed has to be trenched and extended to the shower/restroom facility separate from the existing power to the Wenatchee Rescue Mission.
- Four ADA units were designated for the facility. Site engineering has to be revised to facilitate the successful use of the four units and a new ramping system will have to be developed and installed.

Change orders for the following corresponding work required include:

1. Provide and install a 20 amp dedicated circuit to portable shower and freeze protection for plumbing: \$2,732.80
2. Install an ADA Ramp system to the ADA shelters along with any necessary revisions to the shelters to facilitate compliant access: \$23,000.00
3. Trenching and electrical service to the shower/restroom trailer: \$42,052.00
4. Contingency is requested given that designs need to be completed and accepted by the contractors: \$15,000.00

**Total Request: \$82,784.80**

**IV. FISCAL IMPACT**

Funds are sufficient within City of Wenatchee Fund 117 under Capital Outlay and do not impact required reserves or other funded programs. There will be no financial impact to city general funds.

**V. PROPOSED PROJECT SCHEDULE**

Staff will coordinate with the contractors to facilitate the completion of the remaining items as soon as feasible.

**VI. REFERENCE(S)**

**VII. ADMINISTRATIVE ROUTING**

Tammy McCord, City Clerk  
Laura Gloria, Executive Services Director  
Brad Posenjak, Finance Director





## CITY COUNCIL AGENDA REPORT

**TO:** Mike Poirier, Mayor  
City Council

**FROM:** *GAN* Glen DeVries, Community Development Director

**MEETING DATE:** May 23, 2024

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**I. SUBJECT**

Participating in the costs for the pump replacement of the sewer lift station at the Wenatchee Rescue Mission at 1450 S Wenatchee Ave, Wenatchee.

**II. ACTION REQUESTED**

Motion for the City Council to authorize the financial contribution in the amount of \$74,000.00 for the sewer lift system to be rebuilt and upgraded at 1450 S. Wenatchee Ave for the Wenatchee Rescue Mission. These upgrades are necessary to support infrastructure essential to the contracts with the Wenatchee Rescue Mission for low barrier shelter, Safe Park 1 and the Pallet Shelter services to be established and continue. The City of Wenatchee's contribution will be combined with County and private contributions for the work to be completed.

**III. OVERVIEW**

The City of Wenatchee has contracted with Pipkin Construction Inc. for site development and installation of 43 Pallet Shelters at the Wenatchee Rescue Mission. To facilitate and support the development of the shelters and shower/bathroom trailer and maintain the existing contracted 65 bed low barrier shelter and Safe Park 1, a system replacement is necessary for the pumps and electrical service of the lift station. The City of Wenatchee Council previously authorized payment for the engineering design of the rebuilt/upgraded system.

Osborn Consulting and their sub-consultant have provided a cost estimate for the project in the amount of \$114,037.00. The Wenatchee Rescue Mission has \$12,884.96 in County funding and \$26,550.00 in private contributions for a remaining balance of \$74,000. The Wenatchee Rescue Mission and their consultant and contractor are working on a value engineering process to determine if they can provide an equal or greater pump system at a reduced cost. If the cost is reduced, the City's contribution would decrease. At this time the Wenatchee Rescue Missions pump system is operating with a single rebuilt pump that could fail at any time. The other rebuilt pump already failed. County funds were utilized to rebuild these interim pump solutions and pump out the system.

**IV. FISCAL IMPACT**



Capital funds within fund 117 of the Homeless Program are sufficient to cover the pump system costs. Staff is scheduling a special meeting vote by the Columbia River Homeless Task Force for a financial recommendation for the City Council for the homeless funds.

**V. PROPOSED PROJECT SCHEDULE**

Installation of the improvements would be as soon as feasible, in Summer 2024. The Wenatchee Rescue Mission's Board has identified this as an emergency action and has already procured the services of a contractor.

**VI. REFERENCE(S)**

1. Exhibit A, Electrical Construction Cost Estimate
2. Exhibit B, Fee Estimate for Pump Replacement

**VII. ADMINISTRATIVE ROUTING**

Tammy McCord, City Clerk  
Laura Gloria, City Administrator  
Brad Posenjak, Finance Director

Exhibit "A"

## ELECTRICAL CONSTRUCTION COST ESTIMATE

<b>CLIENT:</b> <u>Osborn Consulting</u>	<b>CONTACT:</b> <u>B. Doohan</u>	<b>DATE:</b> <u>5/15/2024</u>
<b>PROJECT #</b> _____	_____	<b>ESTIMATOR:</b> <u>Weisz</u>
<b>PROJECT:</b> <u>Wenatchee Lift Station</u>	<b>FILE NAME:</b> _____	<b>PHASE:</b> <u>Budgetary</u>

TOTALS	QUANTITY		MATERIAL		LABOR		TOTAL COST
	NO. UNITS	UNIT MEAS.	PER UNIT	TOTAL	PER UNIT	TOTAL	
RACEWAYS (1 OF 2)							\$1,878
RACEWAYS (2 OF 2)							\$8,188
LIFT STATION EQUIPMENT							\$3,972
TOTAL							\$14,037

## ***ELECTRICAL CONSTRUCTION COST ESTIMATE***

CLIENT: Osborn Consulting CONTACT: B. Doohan DATE: 5/15/2024  
 PROJECT # \_\_\_\_\_ ESTIMATOR: Weisz  
 PROJECT: Wenatchee Lift Station PHASE: Budgetary  
 FILE NAME: \_\_\_\_\_

RACEWAYS (1 OF 2)	QUANTITY		MATERIAL		LABOR		TOTAL COST
	NO. UNITS	UNIT MEAS.	PER UNIT	TOTAL	PER UNIT	TOTAL	
P-LS							
2" PVC	5	LF	9	\$45	6.35	\$32	\$77
P-LS1A							
1" RGS CONDUIT	10	LF	7.85	\$79	8.8	\$88	\$167
10 AWG	45	LF	0.48	\$22	0.575	\$26	\$47
14 AWG	90	LF	0.164	\$15	0.44	\$40	\$54
1" RGS ELBOW	1	EA	14.4	\$14	24	\$24	\$38
SEAL	1	EA	29	\$29	50.5	\$51	\$80
P-LS2A & B							
1" RGS CONDUIT	10	LF	7.85	\$79	8.8	\$88	\$167
10 AWG	45	LF	0.48	\$22	0.575	\$26	\$47
14 AWG	90	LF	0.164	\$15	0.44	\$40	\$54
1" RGS ELBOW	1	EA	14.4	\$14	24	\$24	\$38
SEAL	1	EA	29	\$29	50.5	\$51	\$80
C-LS1A & B							
1" RGS CONDUIT	10	LF	7.85	\$79	8.8	\$88	\$167
14 AWG	180	LF	0.164	\$30	0.44	\$79	\$109
1" RGS ELBOW	1	EA	14.4	\$14	24	\$24	\$38
SEAL	1	EA	29	\$29	50.5	\$51	\$80
G-LS1 & 2							
6 AWG BARE CU	25	LF	1.05	\$26	0.885	\$22	\$48
ALL COSTS PER RS MEANS 2024							
SUBTOTALS				\$539		\$752	\$1,291
SHIPPING							
MISCELLANEOUS						(15%)	\$194
CONTRACTOR OVERHEAD	(15%)		& PROFIT	(10%)		(26.5%)	\$393
					TOTAL		\$1,878

## ELECTRICAL CONSTRUCTION COST ESTIMATE

CLIENT: Osborn Consulting	CONTACT: B. Doohan	DATE: 5/15/2024
PROJECT #		ESTIMATOR: Weisz
PROJECT: Wenatchee Lift Station		PHASE: Budgetary
FILE NAME:		

RACEWAYS (2 OF 2)	QUANTITY		MATERIAL		LABOR		TOTAL COST
	NO. UNITS	UNIT MEAS.	PER UNIT	TOTAL	PER UNIT	TOTAL	
P-LS1C							
2" RGS CONDUIT	5	LF	16.55	\$83	12.75	\$64	\$147
JUNCTION BOX	1	LF	1,275	\$1,275	320	\$320	\$1,595
CGB	2	LF	30.50	\$61	14.35	\$29	\$90
P-LS2C							
2" RGS CONDUIT	5	LF	16.55	\$83	12.75	\$64	\$147
JUNCTION BOX	1	LF	1,275	\$1,275	320	\$320	\$1,595
CGB	2	LF	30.50	\$61	14.35	\$29	\$90
C-LS1B							
2" RGS CONDUIT	5	LF	16.55	\$83	12.75	\$64	\$147
JUNCTION BOX	1	LF	1,275	\$1,275	320	\$320	\$1,595
CGB	5	LF	30.50	\$153	14.35	\$72	\$224
ALL COSTS PER RS MEANS 2024							
SUBTOTALS			\$4,348		\$1,280		\$5,628
SHIPPING							
MISCELLANEOUS						(15%)	\$844
CONTRACTOR OVERHEAD		(15%)	& PROFIT		(10%)	(26.5%)	\$1,715
<b>TOTAL</b>						<b>\$8,188</b>	

## ELECTRICAL CONSTRUCTION COST ESTIMATE

CLIENT: Osborn Consulting	CONTACT: B. Doohan	DATE: 5/15/2024
PROJECT # _____		ESTIMATOR: Weisz
PROJECT: Wenatchee Lift Station		PHASE: Budgetary
FILE NAME: _____		

LIFT STATION EQUIPMENT	QUANTITY		MATERIAL		LABOR		TOTAL COST
	NO. UNITS	UNIT MEAS.	PER UNIT	TOTAL	PER UNIT	TOTAL	
DEMO	4	HR			71.7	\$287	\$287
60A/3P BRANCH CIRCUIT BREAKER	1	EA	209	\$209	92.5	\$93	\$302
PUMP CONTROL PANEL (NOT INCLUDED)							
FLOATS (NOT INCLUDED)							
FLOAT CORD MOUNTING BRACKET	1	EA	150	\$150	71.7	\$72	\$222
HANDHOLE 2' X 2' X 3'	1	EA	890	\$890	595	\$595	\$1,485
GROUND ROD	2	EA	65	\$130	130	\$260	\$390
GROUND CLAMP	2	EA	4.74	\$9	17.95	\$36	\$45
ALL COSTS PER RS MEANS 2024							
SUBTOTALS				\$1,388		\$1,342	\$2,730
SHIPPING							
MISCELLANEOUS						(15%)	\$410
CONTRACTOR OVERHEAD		(15%)				(26.5%)	\$832
			& PROFIT	(10%)			
						TOTAL	\$3,972

Exhibit "B"

Low-Barrier Shelter Design - Amendment 4 Pump Replacement 50% Costs						
			OCI Project No.	Date		
			30-220026	April 24, 2024		
Project Name Low-Barrier Shelter Design - Amendment 4 Pump Replacement						
Location Wenatchee, WA						
Owner City of Wenatchee						
Project No. City Project # 2214-4						
Estimated By: Date:			Checked By: KHK Date: 4/24/2024			
BTD 4/24/2024						
ITEM NO.	SPEC SECTION	DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL COST
<b>DIVISION 1 - GENERAL REQUIREMENTS</b>						
1	1-05	CONSTRUCTION SURVEYING	1	LS	\$500	\$500
2	1-05	RECORD DRAWINGS	1	LS	\$500	\$500
3	1-07	UTILITY POTHOLING	1	EA	\$750	\$750
4	1-09	MOBILIZATION	1	LS	\$3,910	\$3,910
<b>DIVISION 4 - BASES</b>						
5	2-09	STRUCTURE EXCAVATION CLASS B INCL. HAUL	20	CY	\$20	\$400
<b>DIVISION 4 - BASES</b>						
6	4-04	CRUSHED SURFACING TOP COURSE	3	CY	\$70	\$210
<b>DIVISION 7 - DRAINAGE STRUCTURES, STORM SEWERS, SANITARY SEWERS WATER MAINS, AND CONDUITS</b>						
7	7-17	PVC SANITARY SEWER PIPE 3 IN. DIAM.	45	LF	\$60	\$2,700
8	7-17	DUCTILE IRON SANITARY SEWER PIPE 3 IN. DIAM.	15	LF	\$130	\$1,950
9	7-20 SP	PUMP SYSTEM PACKAGE	1	LS	\$45,500	\$45,500
10	7-21 SP	VALVE VAULT STRUCTURE	1	EA	\$11,050	\$11,050
11	7-22 SP	PIPE BENDS & FITTINGS	1	LS	\$11,000	\$11,000
<b>DIVISION 8 - MISCELLANEOUS CONSTRUCTION</b>						
12	8-01	TEMPORARY EROSION AND SEDIMENT CONTROL (TESC)	1	LS	\$600	\$600
13	8-20	ELECTRICAL	1	LS	\$5,000	\$5,000
					<b>Subtotal Project Cost</b>	<b>\$84,070</b>
					<b>Tax 8.6%</b>	<b>\$7,230</b>
					<b>Contingency 10.0%</b>	<b>\$8,407</b>
					<b>TOTAL PROJECT COST</b>	<b>\$99,707</b>
					<b>TOTAL PROJECT COST (ROUNDED)</b>	<b>\$100,000</b>



## CITY COUNCIL AGENDA REPORT

**TO:** Mike Poirier, Mayor  
City Council

**FROM:** Charlotte Mitchell, Project Engineer  
Public Works

**MEETING DATE:** May 23, 2024

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- I. **SUBJECT**  
This is the bid award for the 2024 Pavement Preservation Project.
- II. **ACTION REQUESTED**  
Motion for the City Council to authorize the City Administrator's signature and award the contract for City Project Number 2301 – 2024 Pavement Preservation to the lowest responsive bidder.
- III. **OVERVIEW**  
This is our annual pavement preservation project. The contractor will mill and pave portions of Brown Street, Seattle Avenue, Welch Avenue, Maple Street, North Harrison Street, and North Garfield Street. Staff will provide the low bidder information at the council meeting.
- IV. **FISCAL IMPACT**  
None at this time
- V. **PROPOSED PROJECT SCHEDULE**  
This project has 60 working days and will start around the beginning of July.
- VI. **REFERENCE(S)**  
None
- VII. **ADMINISTRATIVE ROUTING**  
Tammy McCord, City Clerk  
Laura Gloria, City Administrator  
Brad Posenjak, Finance Director