

CITY OF REDMOND, WASHINGTON

RESOLUTION NO. 280

A RESOLUTION, approving an agreement between the City of Redmond, Burlington-Northern, Inc., and State Highway Department for the reconstruction of the railroad undercrossing on Redmond Way; and authorizing and empowering the Mayor and City Clerk to execute such agreement on behalf of the City of Redmond.

WHEREAS, the City of Redmond, in cooperation with the Urban Arterial Board (UAB Project No. 8-1-107(02)), the State Highway Department (Agreement GC 2734), and King County (Forward Thrust Funds), is undertaking the improvement of an arterial street project upon a portion of Redmond Way under City Project No. 70-ST-41, which involves the reconstruction of the Burlington-Northern railway undercrossing designated as Bridge 6.1; and

WHEREAS, the parties involved have worked out a three-party agreement between the City, State and Railroad in connection with the reconstruction of the railway undercrossing to determine the relative responsibilities with respect to the reconstruction and replacement of such facility; and

WHEREAS, the City Council has duly considered the proposed agreement and the recommendations of the Director of Public Works and deems such agreement is in the public interest and should be approved, Now, Therefore,

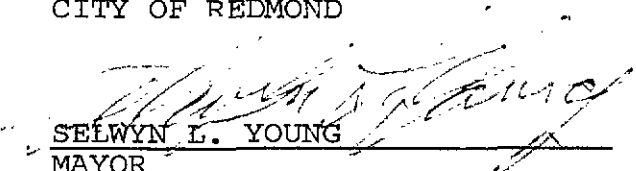
THE CITY COUNCIL OF THE CITY OF REDMOND DO RESOLVE AS FOLLOWS:

1. Agreement approved. That the proposed agreement between the City of Redmond, the State Highway Department and Burlington-Northern Inc., a copy of which is attached and by this reference made a part hereof, is hereby approved.

2. Execution authorized. That the Mayor and City are authorized and empowered to sign said agreement on behalf of the City of Redmond.

PASSED by the Council of the City of Redmond, Washington, at a regular meeting thereof, and APPROVED by the Mayor this 19th day of October, 1971.

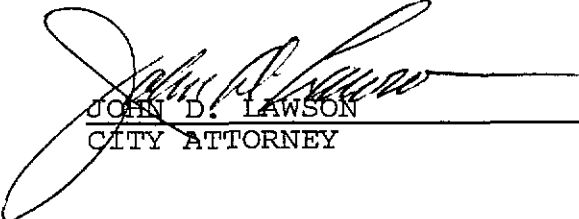
CITY OF REDMOND


SELWYN L. YOUNG
MAYOR

ATTEST:


ELEANOR J. HAYDEN
CITY CLERK

APPROVED AS TO FORM:


JOHN D. LAWSON
CITY ATTORNEY

CONSTRUCTION AND MAINTENANCE AGREEMENT

RECONSTRUCTION OF BRIDGE NO. 6.1
8TH SUB, PACIFIC DIVISION, REDMOND, WASHINGTON

AGREEMENT made this _____ day of _____, 1971, by and between the CITY OF REDMOND, a municipal corporation of the State of Washington, hereinafter called the "City", the STATE OF WASHINGTON, acting through its Director of Highways, hereinafter called the "State", and BURLINGTON NORTHERN INC., a Delaware corporation, hereinafter called the "Railway";

WITNESSETH:

WHEREAS, in the interest of aiding motor vehicular traffic, the City and the State in connection with the widening of FAS 364, also known as Redmond Way, are proposing to remove and reconstruct existing Railroad Bridge 6.1 (highway undercrossing) on the Railway's North Bend Line at Railway Station 335+73, MP 6+1915, located in the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 11, Township 25 N., Range 5 E., W. M., at Redmond, Washington, as more particularly shown on map marked Exhibit "A", attached hereto and made a part hereof; and

WHEREAS, said undercrossing was constructed pursuant to an agreement dated April 20, 1925, between King County and the Northern Pacific Railway Company; to which the City of Redmond by annexation is the successor in interest to the former county road, and Burlington Northern Inc. is the successor in interest by merger to the railroad and right of way of the Northern Pacific Railway Company; and

WHEREAS, this is to be a joint project of the City of Redmond and the State of Washington with the use of Federal funds; and the City desires to acquire additional right of way for the construction of the larger undercrossing; and the Railway will be required to temporarily relocate its facilities during said construction and the City will provide part of the necessary right of way therefor; and

WHEREAS, it is agreed that the Railway will receive no benefits from said project; and the parties desire to contract on that basis with reference to the work to be performed and materials to be furnished by each of them in connection therewith, the protection of Railway facilities, and the payment of costs and expenses therein involved, the City and State being willing to undertake the construction of said project from funds

available for such purposes;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

I

The Railway will grant to the City, for and in consideration of the sum of \$4,000 , by separate instrument, an easement for roadway purposes only under and across the Railway's right of way as shown outlined in green on Exhibit "A".

The Railway hereby grants to the City, for and in consideration of the sum of \$300.00 , a temporary permit to utilize that portion of the Railway's right of way as required for the construction of the shoofly fill thereon shown outlined in brown on Exhibit "A".

Contemporaneously with the granting of the above, the City will, without expense to the Railway, secure from the owner or owners of that certain land lying adjacent to and outside of the Railway's right of way all necessary easements, permits, and other interests therein necessary for the construction, use and occupancy of a temporary railway shoofly fill and track during the construction of said new under-crossing.

II

The City shall perform all work in accordance with detailed plans and specifications, which shall be prepared by the City and submitted to the Railway for approval. Work shall not commence upon said Railway right of way prior to review and approval of said plans and specifications by the Railway.

The City will check all shop plans and details before submission to the Railway for approval and shall also provide shop inspection for all structural steel and castings used in fabrication of Bridge No. 6.1. If the City employs an inspection firm for shop inspection, the firm shall be approved by the Railway.

Nothing provided in this agreement with respect to said plans and specifications shall be construed or deemed to be a ratification or an adoption by the Railway of either or both said plans and specifications as its own.

III

The City and the Railway will perform the various items of work as follows:

I. WORK TO BE PERFORMED BY THE CITY OF REDMOND OR ITS CONTRACTOR AT CITY AND STATE OF WASHINGTON EXPENSE

1. Except as otherwise herein provided, furnish all plans, engineering, supervision, labor, material, supplies and equipment necessary for construction of the project, complete in all details.
2. Construct new Bridge No. 6.1, complete in all details.
3. Remove existing Bridge No. 6.1 - To become City's property.
4. Construct and remove shoofly fills and crib walls per plans to be approved by the Railway.
5. Lower Redmond Way to provide plan clearance and properly take care of all drainage of roadway and bridge to satisfaction of the Railway.
6. Perform all other work not specifically mentioned as work to be performed by the Railway necessary to complete the project in accordance with the plans and specifications.

II. WORK TO BE PERFORMED BY THE RAILWAY AT THE EXPENSE OF THE CITY OF REDMOND AND THE STATE OF WASHINGTON

1. Construct and remove shoofly track, including ballast.
2. Remove track from existing bridge and replace track after new bridge is constructed, including ballast.
3. Review all design plans and shop plans for new Bridge No. 6.1.
4. Engineering and Preparation of Bills - Perform preliminary and special engineering and inspection, including field and office work and preparation of bills.
5. Flagging and Protective Services and Devices - Perform flagging and furnish protective services and devices account operations of the City or its contractor, as deemed necessary by the Railway.

IV

All work herein provided for, to be done by the City or its contractor on the Railway's right of way or in the vicinity of the Railway's tracks, shall be performed by the City or its contractor in a manner satisfactory to the Railway and shall be performed

at such time and in such manner as not to interfere unnecessarily with the movement of trains or traffic upon the tracks of the Railway. The City or its contractor shall use all care and precaution necessary to avoid accident, damage or interference to the Railway's tracks or to the trains or traffic using its tracks and notify the Railway a sufficient time in advance whenever it is about to perform work adjacent to any track to enable the Railway to furnish flagging and such other protective services and devices as might be necessary to insure safety of railway operations, and the Railway shall have the right to furnish all such flagging or protective services and devices as in its judgment is necessary, and the City shall reimburse the Railway for the cost thereof. The Railway will submit bills for flagging and other protective services and devices currently during progress of the work contemplated by this agreement. The Railway will submit complete billing for flagging and other protective services and devices at the earliest practical date, and the City shall pay such bills promptly. Attached hereto, marked Exhibit "B", and by this reference made a part hereof, is a statement of conditions when flagmen and protective services and devices will be furnished by the Railway. Wherever the safeguarding of trains or traffic of the Railway is mentioned in this agreement, it is intended to cover and include all users of the Railway's tracks having permission for such use.

V

In compliance with Policy and Procedure Memorandum No. 21-10, dated October 3, 1958, as amended, concerning benefits and liabilities in connection with the construction of the said undercrossing, the Railway will receive no ascertainable benefit from the construction of said project, and, consequently, no contribution will be required from the Railway toward the cost of said project.

VI

It is understood that Exhibit "C", attached hereto is a current estimate of the cost of the work to be performed by the Railway at City and State expense and is for information purposes only, and it is further understood that billings made by the Railway under the authority of this agreement will be on the basis of the actual cost of the work performed, ascertained in accordance with the provisions of Bureau of

Public Roads' Policy and Procedure Memorandum No. 30-3, dated October 15, 1966, as subsequently amended. The City and State shall, upon presentation of monthly progress bills, promptly reimburse the Railway for their share of the cost of the work included in this agreement, on the basis of Railway Engineer's estimate of the percentage of completion of the work shown on Exhibit "C".

VII

It is agreed that a final and complete billing of all incurred actual costs of the work performed by the Railway, including labor, additives, materials, design and shop plan checking, preliminary and construction engineering, preparation of bills, and the cost of transportation of said materials, shall be made at the earliest practicable date. Preliminary engineering costs incurred subsequent to April 28, 1970, may be charged against the project.

VIII

All contracts between the City and its contractor shall require the contractor to protect the Railway and any other railroad company occupying or using the Railway's right of way or line of railroad against all loss and damages arising from activities of the contractor, his forces, or any of his subcontractors or agents; and shall further provide that the contractor shall:

1. Furnish to the Railway a railroad protective policy in the form provided by the Federal Highway Administration's Policy and Procedure Memorandum No. 20-12. The limits of said policy shall not be less than Five Hundred Thousand Dollars (\$500,000) for all damages arising out of bodily injury to or death of any one person and subject to that limit for each person a total of not less than One Million Dollars (\$1,000,000) for all damages arising out of bodily injury to or death of two or more persons in any one accident; and not less than Five Hundred Thousand Dollars (\$500,000) for all damages arising out of injury to or destruction of property in any one accident and subject to that limit for any one accident a total limit of not less than One Million Dollars (\$1,000,000) for all damages arising out of injury to or destruction of property during the policy period. Said insurance policy executed by a corporation qualified to write

the same in the State in which the work is to be performed shall be in form and substance satisfactory to the Railway, and shall be delivered to and approved by the Railway prior to the entry upon or use of its property by the contractor.

2. Carry regular Contractor's Public Liability and Property Damage Insurance as specified in the Federal Highway Administration's Policy and Procedure Memorandum No. 20-12 providing for a limit of not less than Five Hundred Thousand Dollars (\$500,000) for all damages arising out of the bodily injuries to or death of one person, and, subject to that limit for each person, a total limit of not less than One Million Dollars (\$1,000,000) for all damages arising out of bodily injuries to or death of two or more persons in any one accident, and providing for a limit of not less than Five Hundred Thousand Dollars (\$500,000) for all damages to or destruction of property in any one accident and subject to that limit a total (or aggregate) limit of not less than One Million Dollars (\$1,000,000) for all damages to or destruction of property during the policy period. A certified copy of the policy providing said Contractor's Public Liability and Property Damage Insurance, executed by a corporation qualified to write the same in the State in which the work is to be performed, in form and substance satisfactory to the Railway, shall be delivered to and approved by the Railway prior to the entry upon or use of the Railway's property by the contractor.

IX

The bridge plans and shop drawings shall be prepared on tracing cloth in pencil or ink or, in lieu thereof with prior approval of the Railway, on polyester based film reproducibles. Such drawings shall be corrected to show all changes in the plans made during the construction and, after completion of the work, shall be furnished to and become the property of the Railway. The Railway shall be furnished, in duplicate, copies of the City's field progress reports, foundation pile driving records, test reports on concrete cylinder samples, certified physical and chemical test reports of steel and tabulation of weights of structural steel, showing in detail the weights of the various component parts furnished by the fabricator.

X

Upon completion of the items of work as herein stated, the City shall require its contractor to leave the Railway's right of way in a neat condition satisfactory to the Railway.

XI

Upon completion of the project, the City and the Railway shall maintain the said undercrossing structure as provided by law. The City and State will maintain Redmond Way. The City agrees that it will do nothing and permit nothing to be done in the maintenance of said grade separation which will interfere with, or endanger facilities or operations of the Railway. The Railway may make changes in, or additions to its existing facilities within the limits of said grade separation structure; provided, however, that the usefulness thereof, and purposes of said grade separation, shall not thereby be impaired.

XII

Neither party shall do or permit anything to be done to reduce the horizontal or vertical clearances provided by the approved plans for said undercrossing.

XIII

In the event that the said undercrossing shall at any time cease to be used by the public as a highway, or shall, by operation of law, or otherwise, become vacated or abandoned, the rights and benefits of the City under this agreement shall immediately cease, and the Railway shall be entitled to use said lands as if this agreement had never been executed, without the necessity of any further legal proceedings. If the Railway so desires, the City will pay for the expense of removing and filling said undercrossing.

XIV

If the Railway enters into a contract or agreement with a contractor to perform any of the work, which the Railway is required to perform under the terms of this agreement by reason of the construction of the City's project, the Railway, for itself, its assigns and successors in interest, agrees that it will not discriminate in its choice of contractors and will include all the nondiscrimination provisions set forth in Exhibit "D", attached hereto and made a part hereof, in any such contract or agreement.

XV

Effective with the date of removal of said existing undercrossing and appurtenances as constructed pursuant to that certain agreement dated April 20, 1925, the parties hereto agree that such agreement shall be deemed cancelled and terminated.

XVI

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

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their proper officers thereunto duly authorized the day and year first hereinabove written.

ATTEST:

(Title)

CITY OF REDMOND

By _____
(Title)

STATE OF WASHINGTON
STATE HIGHWAY DEPARTMENT

By _____
(Title)

BURLINGTON NORTHERN INC.

By *BB. [Signature]*
(Title)

EXHIBIT "B"

STATEMENT OF CONDITIONS WHEN FLAGMEN, PROTECTIVE SERVICES
AND DEVICES WILL BE FURNISHED BY THE RAILWAY

Railway flagmen, protective services and devices will be furnished but not limited thereto for the following conditions:

- (1) When in the opinion of the Railway protection is necessary to safeguard the Railway's trains, engines, facilities and property.
- (2) When any work is performed over, under, or in close proximity to tracks or any Railway facilities.
- (3) When work in any way interferes with the operation of trains at usual speeds or threatens, damages, or endangers track or Railway facilities.
- (4) When any hazard is presented to Railway communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.
- (5) Where or when material is being hauled across tracks. Special clearance must be obtained from the Railway before moving heavy or cumbersome objects and equipment which might result in making the track impassable.

COST OF FLAGGING AND OTHER PROTECTIVE SERVICES AND DEVICES

(a) NUMBER	(b) CLASSIFICATION	(c) BASE PAY	(d) HEADQUARTERS
3	Sectionmen	\$4.15 per hour per 8 hour day plus additives	Woodinville, Washington

NOTES:

- (a) A full flagging crew generally consists of three men. Under certain conditions more than three men may be required or a lesser number may be sufficient. However, additional personnel, such as communications linemen and/or signalmen may be used to protect communications and signal facilities, if deemed necessary by the Railway.
- (b) The Classification is shown solely for the prospective bidder's information, and there is no guarantee that the above classes of labor will actually be used or that the rates of pay shown in column (c) will be those in effect at the time the work is undertaken.
- (c) Shows base pay for normal eight-hour shift in effect August, 1971.
- (d) Estimated costs for travel per employe from headquarters to job site and return is \$ 12.00 per round trip. The estimated daily cost for meals and other accommodation is \$ ----- per employe.
- (e) In addition, protective devices, such as crossing signals, indicators, telltales, lights, telephone, etc. may be required.
- (f) It shall be the duty and responsibility of the State and its Contractors to notify the Railway's Division Superintendent at least forty-eight (48) hours in advance of when flagmen or other protective services and devices are required.

To all direct labor costs, there shall be additional charges for Vacation Allowance, Health and Welfare; Railroad Retirement and Unemployment Taxes; Public Liability, Property Damage and Workmen's Compensation insurance; and accounting and billing. For estimating purposes only, these additives collectively may be considered as approximately 40 % of direct labor costs.

Office of Manager Engineering
Burlington Northern Inc.
Seattle, Washington
August 27, 1971

BURLINGTON NORTHERN INC.

PACIFIC DIVISION

8TH SUB

REDMOND

STATE OF WASHINGTON

N.P. VALUATION SECTION NO. 23

EXHIBIT "C"

Estimated cost of Railway work account reconstruction of Bridge 6.1 at MP 6+1915 as per Exhibit "A".

<u>ESTIMATED COST</u>	<u>LABOR</u>	<u>NON-LABOR</u>
1. <u>Construct and Remove Shoofly Track</u>		
Throw and replace 300 T.F. 90#, incl. ballast	\$1,200	\$ 766
Construct 441 T.F. 112# for shoofly, incl. ballast	2,100	4,372
Freight	---	301
Material handling	---	220
Equipment rental	---	990
Engineering	330	---
Salvage	---	(3,560)
Sub totals without labor surcharges	<u>\$3,630</u>	<u>\$3,089</u>
2. <u>Remove and Replace Track from Bridge</u>		
Remove and replace 200 T.F. 90# incl. ballast	\$ 950	\$ 488
Freight	---	446
Material handling	---	26
Equipment rental	---	285
Engineering	95	---
Sub totals without labor surcharges	<u>\$1,045</u>	<u>\$1,245</u>
3. <u>Engineering Checking of Design and Shop Plans</u>	\$4,500	---
4. <u>Engineering and Preparation of Bills</u>		
Perform preliminary and special engineering and inspection including field and office work	\$1,000	\$ ---
Preparation of bills	250	---
Equipment rental	---	250
Sub totals without labor surcharges	<u>\$1,250</u>	<u>\$ 250</u>
5. <u>Flagging</u>		
Not estimated - Billed per Exhibit "B"		
<u>SUMMARY</u>		
1. Construct and Remove Shoofly Track	\$ 3,630	\$ 3,089
2. Remove and Replace Track for Bridge	1,045	1,245
3. Engineering Checking	4,500	---
4. Engineering and Preparation of Bills	1,250	250
5. Flagging - Per Exhibit "B"	---	---
6. Liability Insurance \$1,000 Coverage	---	1,147
Sub totals without labor surcharges	<u>\$10,425</u>	<u>\$ 5,731</u>
7. Labor Surcharges:		
Vacation Pay, Paid Holidays, Railroad Retirement, Unemployment, Health & Welfare Benefits - 34.714%	3,619	---
	<u>\$14,044</u>	<u>\$ 5,731</u>
Contingencies	1,450	1,008
	<u>\$15,494</u>	<u>\$ 6,739</u>
		15,494
		<u>\$22,233</u>
State of Washington use tax 5%		1,167
	TOTAL CER	<u>\$23,400</u>
50% State of Washington		\$11,700
50% City of Redmond		\$11,700

EXHIBIT "D"
APPENDIX A

Non-Discrimination Provisions of Title VI of the Civil Rights Act of 1964.

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

- (1) Compliance with Regulations: The contractor will comply with the Regulations of the Department of Commerce relative to nondiscrimination in federally-assisted programs of the Department of Commerce (Title 15, Code of Federal Regulations, Part 8, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) Nondiscrimination: The contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate either directly or indirectly in the discrimination prohibited by Section 8.4 of the Regulations, including employment practices when the contract covers a program set forth in Appendix A-II of the Regulations.
- (3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the ground of race, color or national origin.
- (4) Information and Reports: The contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State Highway Department or the Bureau of Public Roads to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the State Highway Department, or the Bureau of Public Roads as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the State Highway Department shall impose such contract sanctions as it or the Bureau of Public Roads may determine to be appropriate, including, but not limited to,
 - (a) withholding of payments to the contractor under the contract until the contractor complies, and/or
 - (b) cancellation, termination or suspension of the contract, in whole or in part.
- (6) Incorporation of Provisions: The contractor will include the provisions of paragraph (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The contractor will take such action with respect to any subcontract or procurement as the State Highway Department or the Bureau of Public Roads may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the State to enter into such litigation to protect the interests of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.