



<h1>Railway Flagging Services Agreement</h1>		Railroad Company and Address	
		Section / Location	
Agreement Number			
State Route	Control Section		
Region	Estimated Amount		
		\$	
Railway's Reference			

This agreement made and entered into this _____ day of _____, _____, by and between the STATE OF WASHINGTON, Department of Transportation, acting by and through the Secretary of Transportation, hereinafter called the "STATE", and the above named Railroad Company, hereinafter called the "RAILWAY".

WHEREAS, the STATE desires to construct the above described improvements at the referenced location, and

WHEREAS, it is deemed to be in the best public interest for the RAILWAY, as owners of the track or tracks, to perform flagging during the construction of the states project, and

WHEREAS, the STATE is obligated to reimburse the RAILWAY for all or part of the cost incurred by the RAILWAY in undertaking specific work as herein described.

NOW THEREFORE, in consideration of the terms, conditions, covenants and performances contained herein, or attached and incorporated and made a part hereof, IT IS MUTUALLY AGREED AS FOLLOWS:

I WORK TO BE PERFORMED

The STATE and/or its contractor will perform the work noted above under section/location and as shown on the site plan labeled Exhibit "B", attached hereto and by this reference made a part of this AGREEMENT.

The RAILWAY hereby grants the STATE permission to enter upon the RAILWAY's property for the purpose of performing said work.

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 at least 30 calendar days prior to performing work adjacent to any track to enable the RAILWAY to furnish flagging services. The RAILWAY shall have the right to furnish all such flagging and the STATE shall reimburse the RAILWAY for the cost thereof. Whenever 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.

II FLAGGING SERVICES

All work herein provided for to be done by the STATE or its contractors, on the RAILWAY's right of way, shall be performed by the STATE or its contractors in such a manner as not to interfere with the movement of trains or traffic upon the tracks of the RAILWAY. The STATE or its contractors shall use

III PAYMENT

The STATE, in consideration of the faithful performance of the protective services work to be done by the RAILWAY, agrees to pay the RAILWAY actual direct and related indirect costs accumulated in accordance with a work order accounting procedure as prescribed and approved by the ICC Uniform System of Accounts, or its equivalent.

An itemized estimate of cost for the work to be performed by the RAILWAY at the STATE's expense is shown on Exhibit "A," attached hereto and by this reference made a part of this AGREEMENT.

Following the execution of this AGREEMENT, progress bills may be submitted to the STATE to cover costs incurred and the STATE shall pay such progress billings within 60 days of receipt from the RAILWAY. If the billing is disputed for any reason, the STATE will promptly notify the RAILWAY and will pay any undisputed amount.. Progress bills are not to be submitted more frequently than one (1) per month.

The RAILWAY will submit a final billing for flagging within one hundred twenty (120) days after notification by the STATE of completion of the project, said one hundred twenty (120) days to commence upon receipt, by the RAILWAY, of said notification of completion of the project.

It is agreed that payment of any billing will not constitute agreement as to the appropriateness of any item and that at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the RAILWAY, the RAILWAY agrees to refund such overpayment to the STATE.

During the progress of construction and for a period not less than three years from the date of final payment to the RAILWAY, the records and accounts pertaining to the construction of the project and accounting therefore are to be kept available for inspection and audit by the STATE and/or Federal Government and copies of all records, accounts, documents or other data pertaining to the project will be furnished upon request. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claim or audit finding has been resolved even though such litigation, claim or audit continues past the three-year retention period.

IV INSURANCE

The contract between the STATE and its contractor for construction work herein provided, if any, shall require the contractor to protect and hold harmless the RAILWAY and any other railroad company occupying or using the RAILWAY's right of way or line of railroad against all loss, liability and damage arising from activities of the contractor, its forces or any of its subcontractors or agents. Such RCW 4.24.115 as amended by Ch. 305, Laws of 1986. The contract shall further provide that the contractor shall:

1. Furnish to the RAILWAY a Railroad Protective Insurance Policy with the combined single limit of not less than Two Million Dollars (\$2,000,000) for all damages arising out of bodily injuries to or death of any person or persons and for all damages arising out of the loss or destruction of or injury or damage to property in any one occurrence during the policy period, and subject to that limit a total (or aggregate) limit of not less than Six Million Dollars (\$6,000,000) for all damages during the policy period. Said insurance policy is to be executed by a corporation qualified to write the same in the STATE in which the work is to be performed, shall be in the form and substance satisfactory to the RAILWAY 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 providing for a limit of not less than One Million Dollars (\$1,000,000) for all damages arising out of bodily injuries to or death of one person, and subject to that limit for each person, a total limit of not less than Two Million Dollars (\$2,000,000) for all damages arising out of bodily injuries to or death of two or more persons in any one occurrence; and providing for a limit of not less than One Million Dollars (\$1,000,000) for all damages to or destruction of property in any one occurrence and subject to that limit a total (or aggregate) limit of not less than Two Million Dollars (\$2,000,000) for all damages to or destruction of property during the policy period. A certificate of insurance providing proof of contractor's Public Liability and Property Damage Insurance, executed by a corporation qualified to write the same in the State of Washington and in form and substance satisfactory to the RAILWAY, shall be delivered to and approved by the RAILWAY prior to the entry upon or use of the RAILWAY's property by the contractor.

If the STATE, its contractor, subcontractors or agents, in the performance of the work herein provided for or by the failure to do or perform anything for which it is responsible under the provisions hereof, shall damage or destroy any property of the RAILWAY, such damage or destruction shall be corrected by the STATE in the event its contractor or the insurance carriers fail to repair or restore the same.

For any work performed in the State of Washington, nothing in this AGREEMENT is intended to be construed as a requirement for an indemnification against the sole negligence of the RAILWAY, its officers, employees or agents. Moreover, for any work performed in the State of Washington, the contractor shall specifically and expressly agree to indemnify the RAILWAY and any other railroad company occupying or using the RAILWAY'S right-of-way or line of railroad against all loss, liability and damages, including environmental damage, hazardous materials

damage, or penalties of fines that maybe assessed, caused by or resulting from the contractor's negligence, provided, however, if such loss, liability, damage, penalties or fines are caused by or result from the concurrent negligence of (a) the RAILWAY or the RAILWAY'S officers, employees or agents, and (b) the contractor or the contractor's employees, agents or subcontractors, such indemnity shall be valid and enforceable only to the extent of the negligence of the contractor or the contractor's employees, agents or subcontractors.

The contractor shall further agree that it has a duty to defend at its own expense, in the name and on behalf of the RAILWAY, all claims or suits for injuries or death of persons or damage to property arising or growing out of the work carried on under this agreement, for which the RAILWAY is liable or is alleged to be liable. However, upon a final determination in court of law in which a percentage of negligence is attributed to the RAILWAY, the RAILWAY agrees to reimburse the contractor in the same percentage for the cost involved in defending the suit.

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

IN WITNESS WHEREOF, the parties have executed this AGREEMENT as of the day and year first above written.

Railway

**State of Washington
Department of Transportation**

By _____

By _____

Title _____

Title _____

Date _____

ANY MODIFICATION, CHANGE OR REFORMATION of this Boilerplate Agreement shall require approval as to form by the Office of the Attorney General.