

BNSF CONTRACT NO. BF 76/22

BNSF RAILWAY COMPANY
INDUSTRY TRACK AGREEMENT

THIS INDUSTRY TRACK AGREEMENT ("**Agreement**") is made to be effective August 31 2015, (the "**Effective Date**") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Railroad**" or "**BNSF**"), and **SNOHOMISH COUNTY**, a Washington State political subdivision ("**Industry**").

RECITALS

A. Railroad owns or controls certain rail, ties, ballast, and appurtenances thereto shown as heavy solid on Drawing No. 56002, dated 04/24/2015, marked Exhibit "A" attached hereto and incorporated herein by reference (collectively, the "**Railroad Track**").

B. Industry owns or controls certain additional rail, ties, ballast, and appurtenances thereto shown as heavy hatched on Exhibit "A" (the "**Industry Track**"). The Railroad Track and Industry Track, together with all appurtenances, may be hereinafter collectively called the "**Track**".

C. Industry desires that Railroad (i) maintain and operate over the Railroad Track, and (ii) operate over the Industry Track, located at Everett, County of Snohomish, State of Washington.

D. Railroad desires to provide such service, subject to the terms of this Agreement.

AGREEMENTS

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

Section 1. OWNERSHIP; ACCESS BY RAILROAD.

1.1 Railroad shall own or control the Railroad Track and Industry shall own or control the Industry Track. Industry represents and warrants that it owns or controls the land underlying the Industry Track and that there are no existing easements or encumbrances affecting such land that would interfere with Railroad's rights under this Agreement. Industry shall not cause or allow the Industry Track to be blocked, obstructed, or used in any manner that would impair or diminish Railroad's ability to use the Industry Track for the purposes set forth in this Agreement.

1.2 Industry hereby grants Railroad a license to enter upon Industry's property and the Industry Track so that Railroad may operate over the Industry Track. This Agreement does not grant or convey to Railroad any real property interest in any property of Industry.

1.3 Industry shall have no right under this Agreement to enter upon the Railroad Track or any other Railroad property.

Section 2. MAINTENANCE AND OPERATION.

2.1 Industry shall be responsible for obtaining, without expense to Railroad, all necessary real property rights and public authority and permission, including without limitation applicable licenses and permits, for the maintenance and operation of the Industry Track, provided Industry obtains prior written consent from Railroad. Industry, at Industry's expense, shall at all times comply with the requirements of each such permit and license. Industry shall further comply with (a) all applicable laws, statutes, regulations, ordinances, orders, covenants, restrictions, codes, rules or any order, decision, injunction, judgment, award or decree of any public body or authority having jurisdiction over Industry, the Track, this Agreement, and/or Industry's obligations under this Agreement, and including all Environmental Laws (defined below) (collectively, "**Legal Requirements**") and (b) other Railroad requirements relating to the construction, use, maintenance and operation of the Track, Facilities (defined below) or Equipment (defined below) by Industry. Industry shall use the Track solely for receiving railcars for Industry's own account (i.e., private carriage) and for no other purpose. All railcar movement operations shall be performed by Railroad. Industry shall not permit or admit any third party to use all or any portion of the Track, nor have the right to detour trains of any other party over or upon the Track without obtaining BNSF's prior written consent. Industry shall not enter into or make a contract or agreement for the handling of Industry equipment, cars or trains over or upon the Track, or any portion thereof, without obtaining BNSF's prior written consent.

2.2 Railroad shall, for the accommodation of and at the sole expense of Industry, maintain the Railroad Track. Any switch connection that may be necessary to connect Railroad's mainline track to the Track, including without limitation the existing switch connection or any switch connection that may be installed after the Effective Date, shall be considered part of the Railroad Track for purposes of this Agreement. Industry shall at all times, and at its sole risk and expense, maintain, or cause to be maintained, the Industry Track and all Facilities and Equipment (defined below) (if any) in a safe and satisfactory condition and in compliance with all applicable Legal Requirements.

2.3 Maintenance, for purposes of this Agreement, means keeping the Track in good working order and condition, including without limitation: (a) providing proper drainage along the Track; (b) keeping the Track free and clear of snow, ice, vegetation, structures, and other obstacles; and (c) maintaining adequate grade crossing warning devices, passive warning signs, gates, fences, barriers, roadways, track drainage facilities, lighting and track and other signals, all as determined by Railroad in Railroad's sole discretion.

2.4 Without relieving Industry from any of its obligations under this Agreement, Railroad may refuse to operate over the Industry Track or use or enter the Facilities or contact the Equipment whenever Railroad, in its sole discretion, determines that the same is unsatisfactory for Railroad's operation, entry or contact. If and when Industry has remedied such condition to Railroad's sole satisfaction, Railroad may resume operation over the Industry Track or use of or entry into the Facilities or contact with the Equipment. Railroad's operation over the Track or use of or entry into any Facility or contact with any Equipment with knowledge of an unsatisfactory condition is not a waiver of Industry's obligations contained herein or of any right of Railroad to recover for or be indemnified and defended against damages to property or injury to or death of persons that may result therefrom.

2.5 Industry shall, at its sole expense, pay all costs for changes, repairs, relocations or alterations to the Industry Track that may be necessary to conform to any changes of grade or relocation of the Railroad Track at the point of connection with the Industry Track, if such change of grade or relocation (i) is required to comply with any Legal Requirement, (ii) is requested by any governmental agency, or (iii) is made for any other reason beyond Railroad's reasonable control. Without limiting the generality of the foregoing, in the event the public authority having jurisdiction thereover orders the separation of the grade of the Track and any street, road, highway, other rail line or the like, Industry hereby consents to the removal and/or relocation of the Track and shall reimburse Railroad for all expenses incurred in connection with or related to the removal and/or relocation of the Track.

2.6 If Industry installs any gates or fencing across the Track, or a track scale, unloading pit, loading or unloading device, adjustable loading dock, warehouse door, or any other structure (collectively, "**Facilities**") affecting the Track, Industry shall be solely responsible for assuring the safe and satisfactory condition of the same and shall not allow any Facilities to be a source of danger to the safe operation of the Track, or a source of environmental harm, or interfere with the safe operations of Railroad over the Track. Industry shall also be solely responsible for assuring the safe and satisfactory condition of all of Industry's equipment touching, used in conjunction with, or otherwise affecting the Track ("**Equipment**") and shall not allow any Equipment to be a source of danger to the safe operation of the Track. Before utilizing or unloading any equipment spotted onto the Track, Industry shall inspect the same and all other Equipment and Facilities for the safety of persons working on or about these items to assure compliance with the foregoing. Industry shall utilize all Facilities, Equipment and spotted equipment so as not to negatively affect safe and efficient operation over the Track. In furtherance of the foregoing obligations of Industry but not in limitation of the same, Industry shall do, among others, the following things: (a) keep any gates across the Track open whenever necessary, in Railroad's sole judgment, to enable Railroad to safely and efficiently operate over the Track; (b) keep unloading pits securely covered when not in actual use and at all times when the Track is being switched by Railroad; (c) keep all doors firmly secured, and adjustable loading docks at warehouses and the facility operated by Industry ("Plant") shall likewise be securely fastened in an upright position when not in actual use and at all times when the Track is being switched by Railroad; and (d) operate and maintain all other Facilities so as not to negatively affect the safe and efficient operation of Railroad over the Track.

2.7 Railroad may require for safety purposes that Industry, at its sole cost and expense, use Railroad's flaggers and provide lights, traffic control devices, automatic warning devices, or any such safety measure that Railroad deems appropriate in connection with the use of the Track by or for Industry. Industry shall reimburse Railroad within thirty (30) days of receipt of bills rendered therefor for all of Railroad's costs in connection with such safety measures, including but not limited to the furnishing of Railroad's flaggers and any vehicle rental costs incurred. The cost of flagger services and other safety measures provided by Railroad, when deemed necessary by Railroad's representative, will be the sole responsibility of Industry. Flagger costs shall include, but not be limited to, the following: pay for at least an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays (as applicable); vacation allowance; paid holidays (as applicable); Railroad and unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. Negotiations for Railroad labor or collective bargaining agreements and rate changes authorized by appropriate Federal

authorities may increase flagging rates. Flagging rates in effect at the time of performance by the flaggers will be used to calculate the flagging costs pursuant to this **Section 2.7**.

2.8 Industry shall not: (a) place, permit to be placed, or allow to remain, any permanent or temporary material, structure, pole, container, storage vessel, above-ground or underground tank, or other obstruction (i) within eight and one-half (8-1/2) feet laterally from the center (nine and one-half (9-1/2) feet on either side of the centerline of curved track) or (ii) within twenty-three and one-half (23-1/2) feet vertically from the top of the rail of any track, or (b) place or allow to be placed any freight cars, materials, machinery, or other equipment within 250 feet of either side of any at-grade crossings on the Track (collectively, "**Minimal Clearances**"), provided that if any Legal Requirement requires greater clearances than those provided for in this **Section 2.8**, then Industry shall strictly comply with such Legal Requirement. However, vertical or lateral clearances which are less than the Minimal Clearances but are in compliance with applicable Legal Requirements will not be a violation of this **Section 2.8**, so long as Industry strictly complies with the terms of any such Legal Requirement and posts a sign in a location approved by Railroad clearly noting the existence of such reduced clearance. Any such sign shall be painted with black and white reflective paint. Railroad or Industry's operation with knowledge of an unauthorized reduced clearance will not be a waiver of the covenants of Industry contained in this **Section 2.8** or of any right of Railroad to recover for and be indemnified and defended against such damages to property or the environment, or injury to or death of persons, that may result therefrom.

Section 3. TERM. Unless earlier terminated as provided herein, this Agreement will be in force for a term commencing on the Effective Date and shall automatically continue thereafter until terminated by either party giving the other thirty (30) days' written notice of its desire to terminate this Agreement (the "**Term**"); provided that such Term is included herein for the sole purpose of establishing the duration of the parties' rights and obligations under this Agreement (unless such rights and obligations expressly survive this Agreement), and nothing herein shall constitute any commitment or agreement regarding the commercial terms and conditions by which Railroad may, from time to time, provide rail service to, from or on the Track, or a modification or amendment to any other arrangement or agreement regarding such service. Notwithstanding the foregoing, Industry shall have no right to terminate this Agreement for so long as it desires to receive rail service from Railroad over the Industry Track.

Section 4. INDEMNITY.

4.1 For purposes of this Agreement: (a) "**Indemnitees**" means Railroad and Railroad's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees and agents; (b) "**Liabilities**" means all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments and expenses (including, without limitation, court costs, reasonable attorneys' fees, costs of investigation, removal and remediation and governmental oversight costs) environmental or otherwise; and (c) "**Industry Parties**" means Industry or Industry's officers, agents, invitees, licensees, employees, or contractors, or any party directly or indirectly employed by any of them, or any party they control or exercise control over.

4.2 **INDUSTRY SHALL RELEASE, INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITIES UNDER CERCLA OR OTHER ENVIRONMENTAL LAWS ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY CLAIM THAT BY VIRTUE OF THE USE OF THE TRACK CONTEMPLATED IN THIS AGREEMENT RAILROAD IS (I) AN "OWNER", "OPERATOR", "ARRANGER" OR "TRANSPORTER" OF THE INDUSTRY TRACK OR THE PLANT, OR (II) OTHER THAN A COMMON CARRIER WITH RESPECT TO THE TRACK REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF ANY INDEMNITEE. IN THE EVENT ANY AGENCY OR COURT CONSTRUES THE AGREEMENT TO BE A WAIVER OF RAILROAD'S COMMON CARRIER DEFENSES, INDUSTRY AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND RAILROAD FOR ANY LIABILITIES RELATED TO THAT CONSTRUCTION OF THIS AGREEMENT.**

4.3 **IF ANY EMPLOYEE OF ANY ENTITY OTHER THAN AN INDEMNITEE ASSERTS THAT HE OR SHE IS AN EMPLOYEE OF ANY INDEMNITEE, INDUSTRY SHALL RELEASE, INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITIES (AS DEFINED IN SECTION 4.1 ABOVE) ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY SUCH ASSERTION INCLUDING, BUT NOT LIMITED TO, THE FEDERAL EMPLOYERS' LIABILITY ACT, THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE. FOR THE PURPOSES OF THIS INDEMNITY AND IN REGARD TO CLAIMS BROUGHT BY EMPLOYEES OF ANY INDUSTRY PARTY AGAINST THE INDEMNITEES, INDUSTRY WAIVES ANY IMMUNITY THAT INDUSTRY WOULD OTHERWISE HAVE AGAINST SUCH CLAIMS UNDER THE INDUSTRIAL INSURANCE PROVISIONS OF TITLE 51 OF THE REVISED CODE OF WASHINGTON, AND STIPULATES THAT THIS WAIVER HAS BEEN EXPRESSLY NEGOTIATED BY THE PARTIES. INDUSTRY'S OBLIGATIONS UNDER THIS SECTION 4.3 ARE REGARDLESS OF ANY ACTUAL**

OR ALLEGED NEGLIGENCE, FAULT, OR COMPARATIVE FAULT OF ANY INDEMNITEE RELATED TO SUCH CAUSES OF ACTION.

4.4 Upon written notice from Railroad, Industry agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnitee by any entity, relating to any matter covered by this Agreement for which Industry has an obligation to assume liability for and/or save and hold harmless any Indemnitee. Industry shall pay all costs and expenses incident to such defense, including, but not limited to, reasonable attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

Section 5. INSURANCE. Industry shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

5.1 Commercial General Liability Insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$1,000,000 each occurrence and an aggregate limit of at least \$2,000,000 but in no event less than the amount otherwise carried by Industry. Coverage must be purchased on a post 2004 ISO occurrence or equivalent and include coverage for, but not limited to, Bodily Injury and Property Damage, Products and completed operations. 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.

5.2 Workers' Compensation and Employers' Liability Insurance. This insurance shall include coverage for, but not limited to:

- Industry's statutory liability under the workers' 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.

5.3 Industry shall comply with the following additional requirements with respect to such insurance:

Any insurance policy shall be written by a reputable insurance company 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 Industry subcontracts any portion of the operation, Industry shall require that the subcontractor provide and maintain insurance coverage as set forth herein.

Prior to commencing operations, Industry shall furnish to Railroad an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments.

The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance.

In the event of a claim or lawsuit involving Railroad arising out of this Agreement, Industry will immediately make available any required policy covering such claim or lawsuit.

Failure to provide evidence as required by this **Section 5** shall entitle, but not require, Railroad to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this **Section 5** shall not operate as a waiver of Industry's obligations hereunder. The fact that insurance (including, without limitation, self-insurance) is obtained by Industry shall not be deemed to release or diminish the liability of Industry including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad shall not be limited by the amount of the required insurance coverage.

Snohomish County, a charter county government under the constitution of the State of Washington, hereinafter referred to as "Industry", maintains a fully funded Self-Insurance program as defined in Snohomish County Code 2.90 for the protection and handling of the Industry's liabilities including injuries to persons and damage to property.

The Industry agrees, at its own expense, to maintain, through its self-funded program, coverage for all of its liability exposures for this Industry Track Agreement. The Industry agrees to provide the Railroad with at least 30 days prior written notice of any material change in the Industry's self-funded program and will provide the Railroad with a certificate of self-insurance as adequate proof of coverage for the insurance requirements above.

Should the Industry elect to cease self-insuring its liability exposures and purchase Commercial General Liability insurance, Industry agrees to add the Railroad as an additional insured.

Section 6. DEFINITION OF COST AND EXPENSE.

6.1 For the purpose of this Agreement, "cost" or "costs" "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.

6.2 All invoices are due thirty (30) days after the date of invoice. In the event that Industry shall fail to pay any monies due to Railroad within thirty (30) days after the invoice date, then Industry shall pay interest on such unpaid sum from thirty (30) days after its invoice date to the date of payment by Industry at an annual rate equal to (i) the greater of (a) for the period January 1 through June 30, the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2 1/2%), and for the period July 1 through December 31, the prime rate last published in *The Wall Street Journal* in the preceding June plus two and one-half percent (2 1/2%), or (b) twelve percent (12%), or (ii) the maximum rate permitted by law, whichever is less.

Section 7. RIGHT OF RAILROAD TO CONSTRUCT FUTURE FACILITIES. Railroad retains the right, without liability to Industry or any other party, to construct or allow to be constructed upon its property other facilities, and to use its property in any manner, provided Railroad uses all commercially reasonable efforts to avoid material interference with the use of the Track for Industry as described herein.

Section 8. PUBLIC ASSESSMENTS. Industry shall timely pay all compensation, assessments and levies required at any time by any public authority, entity, or person for the privilege of maintaining and operating the Track, and shall not cause or permit any liens to be filed against the Railroad Track or any Railroad property. In the event any such liens are filed, Industry shall cause such liens to be released within fifteen (15) days.

Section 9. NOTIFICATION REQUIREMENTS.

9.1 Industry shall give Railroad immediate notice to Railroad's Resource Operations Center at (800) 832-5452 of any release of Hazardous Materials on, from, or affecting the Track, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to the use of the Track for Industry. Industry also shall give Railroad immediate notice of all measures undertaken by or on behalf of Industry to investigate, remediate, respond to or otherwise cure each such release or violation.

9.2 Industry shall promptly report to Railroad in writing any conditions or activities upon the Plant or Track which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to mitigate injury or damage to persons, property or the environment arising out of such conditions or activities, including but not limited to releases or violations of Environmental Laws; provided, however, that Industry's reporting to Railroad shall not relieve Industry of any obligation whatsoever imposed on it by this Agreement or by any Legal Requirement. Industry shall promptly respond to Railroad's request for information regarding such conditions or activities. To the extent such conditions or activities with respect to the Track are attributable to Industry, Railroad may require Industry, at Industry's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such conditions or activities on, from, or otherwise affecting the Track.

9.3 For purposes of this Agreement, "**Environmental Laws**" means any federal, state, or local law, statute, ordinance, code, rule, regulation, policy, common law, license, authorization, decision, order, or injunction which pertains to health, safety, any Hazardous Material (as hereinafter defined), or the environment (including but not limited to ground, air, water, or noise pollution or contamination, and underground or above-ground tanks) and shall include, without limitation, the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.*, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 *et seq.* ("**CERCLA**"); the Hazardous Materials Transportation Act, 49 U.S.C. §5101 *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C. §1251 *et seq.*; the Clean Air Act, 42 U.S.C. §7401 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. §2601 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. §300f *et seq.*; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 *et seq.*, the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 to 136y; the Oil Pollution Act, 33 U.S.C. 2701 *et seq.*; and the Occupational Safety and Health Act, 29 U.S.C. 651 *et seq.*; all as have been amended from time to time, and any other federal, state, or local environmental requirements, together with all rules, regulations, orders, and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

9.4 For purposes of this Agreement, "Hazardous Material(s)" shall include but shall not be limited to any substance, material, or waste that is regulated by any Environmental Law or otherwise regulated by any federal, state, or local governmental authority because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or the environment, including without limitation asbestos and asbestos-containing materials, radon, petroleum and petroleum products, urea formaldehyde foam insulation,

methane, lead-based paint, polychlorinated biphenyl compounds, hydrocarbons or like substances and their additives or constituents, pesticides, agricultural chemicals, and any other special, toxic, or hazardous (i) substances, (ii) materials, or (iii) wastes of any kind, including without limitation those now or hereafter defined, determined, or identified as "hazardous chemicals", "hazardous substances," "hazardous materials," "toxic substances," or "hazardous wastes" in any Environmental Law.

Section 10. DEFAULT. The following events shall constitute defaults under this Agreement: (a) creating or allowing to remain any condition, including without limitation, any environmental condition, on, about or affecting the Track, which in Railroad's sole judgment interferes with or endangers Railroad's operations; (b) assignment or transfer by operation of law of Industry's rights or obligations under this Agreement; or (c) defaults on any of the covenants or agreements of Industry contained in this Agreement.

Section 11. REMEDIES; TERMINATION.

11.1 In addition to the parties' termination rights set forth elsewhere in this Agreement, and in addition to all other remedies available at law or in equity, Railroad may, without incurring any liability to Industry, terminate this Agreement, discontinue the maintenance and operation of the Track, and remove the Railroad Track, effective immediately by written notice to Industry, if any of the following events occurs:

- (i) any default as described in **Section 10**, other than a default under **Section 10(c)** occurs;
- (ii) any default as described in **Section 10(c)** occurs and persists for thirty (30) days following written notice from Railroad;
- (iii) Industry fails to utilize rail service from Railroad to or from the Plant for a period of eight (8) months in any twelve (12) month period;
- (iv) Railroad is authorized by competent public authority to abandon its line to which the Track is connected;
- (v) Railroad is dispossessed of the right to operate over the Track or its connecting track or any part thereof; or
- (vi) Industry fails to provide evidence of insurance as required by **Section 5**.

11.2 Either party may terminate this Agreement, at any time, by serving thirty (30) days' written notice of termination upon the other party, as set forth in **Section 3** above. Upon expiration of the time specified in such notice, this Agreement and all rights of Industry shall absolutely cease (except for any rights and obligations that expressly survive this Agreement).

11.3 Industry hereby agrees to waive and release all claims, rights, and causes of action that Industry has, may have, or may assert against Railroad because of the discontinuance of operation and/or removal of the Railroad Track as provided in this **Section 11**.

Section 12. ASSIGNMENT.

12.1 This Agreement will inure to the benefit of and be binding upon the approved successors and assigns of the parties hereto; provided, however, that Industry may not sell, assign, transfer, or hypothecate this Agreement or any interest herein (either voluntarily or by operation of law) without the prior written consent of Railroad, which shall not be unreasonably withheld. Any attempted assignment by Industry in violation of this **Section 12** shall be absolutely void. For purposes of this **Section 12**, the word "assign" shall include without limitation (a) any sale of the equity interests of Industry following which the equity interest holders of Industry immediately prior to such sale own, directly or indirectly, less than 50% of the combined voting power of the outstanding voting equity interests of Industry, (b) any sale of all or substantially all of the assets of (i) Industry and (ii) Industry's parent and subsidiaries (to the extent such entities exist), taken as a whole, or (c) any reorganization, recapitalization, merger or consolidation involving Industry, except for a reorganization, recapitalization, merger or consolidation following which the equity interest holders of Industry immediately prior to such reorganization, recapitalization, merger or consolidation own, directly or indirectly, at least 50% of the combined voting power of the outstanding voting equity interests of Industry or any successor thereto or the entity resulting from such reorganization, recapitalization, merger or consolidation. Either party hereto may assign any receivables due them under this Agreement; provided, however, that such assignments will not relieve the assignor of any of its rights or obligations under this Agreement. **NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT TO THE CONTRARY, THIS AGREEMENT SHALL NOT RUN WITH THE LAND WITHOUT RAILROAD'S WRITTEN CONSENT.**

12.2 Railroad shall have the right to transfer and assign, in whole or in part, all of its rights and obligations under this Agreement, and upon such transfer, Railroad shall be released from any further obligations hereunder, and Industry agrees to look solely to the successor in interest of Railroad for the performance of such obligations.

Section 13. NOTICES. Any notice required or permitted to be given hereunder must be in writing and the same shall be given and will be deemed to have been given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice. The address for such notice shall be the address set forth below each party's signature, which may be changed by written notice to the other party.

Section 14. MISCELLANEOUS.

14.1 It is understood and agreed that this Agreement shall not be recorded in the real property records in the county or counties in which the Track is located or otherwise placed of public record.

14.2 All questions concerning the interpretation or application of provisions of this Agreement shall be decided according to the laws of the State of Washington. To the fullest extent permitted by law any dispute arising under or in connection with this Agreement or related to any subject matter which is the subject of this Agreement shall be subject to the sole and exclusive jurisdiction of the United States District Court for the Western District of Washington. The aforementioned choice of venue is intended by the parties to be mandatory and not permissive. Each party hereto hereby irrevocably consents to the jurisdiction of the United States District Court for the Western District of Washington in any such dispute and irrevocably waives, to the fullest extent permitted by law, any objection that it may now have or hereafter have to the laying of venue in such court and that any such dispute which is brought in such court has been brought in an inconvenient forum.

14.3 To the maximum extent possible, each provision of this Agreement must be interpreted in such manner as to be effective and valid under applicable law, but 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 this will not invalidate the remainder of such provision or any other provision of this Agreement.

14.4 This Agreement is the full and complete agreement between Railroad and Industry with respect to all matters relating to the maintenance and operation of the Track and supersedes all other agreements between the parties hereto relating to the maintenance and operation of the Track. However, nothing herein is intended to terminate any surviving obligation of Industry or Industry's obligation to defend and hold Railroad harmless in any prior written agreement between the parties.

14.5 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 of this Agreement, or if later, the date when Railroad's property is restored in accordance with the applicable provisions of this Agreement or any other written agreement between the parties.

14.6 One or more waivers of any covenant, term, or condition of this Agreement by Railroad shall not be construed as a waiver of a subsequent breach of the same covenant, term, or condition. The consent or approval by Railroad to or of any act by Industry requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act. The remedies set forth hereunder shall be in addition to, and not in limitation of, any other remedies that Railroad may have at law or in equity.

14.7 In the event that Industry consists of two or more parties, all covenants and agreements of Industry herein contained shall be the joint and several covenants and agreements of such parties.

14.8 The parties acknowledge that each party and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

14.9 In this Agreement, the use of one gender shall include the other gender; and the singular shall mean the plural, and vice versa, all as the context may require.

14.10 This Agreement may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this Agreement may also be exchanged via electronic facsimile machines and any electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes.

14.11 The captions are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Agreement, nor the intent of any provision thereof.


14.12 Except as may be elsewhere specifically provided in this Agreement, if either party is delayed or hindered in, or prevented from the performance required under this Agreement (except for payment of monetary obligations) by reason of earthquakes, landslides, strikes, lockouts, labor troubles, failure of power, riots, insurrection, war, acts of God or other reason of the like nature not the fault of the party delayed in performance of its obligation, such party is excused from such performance for the period of delay. The period for the performance of any such act will then be extended for the period of such delay.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date below each party's signature; to be effective, however, as of the Effective Date above.

RAILROAD:

BNSF Railway Company, a Delaware corporation

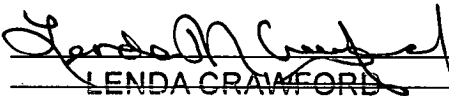
By: 
Name: Rebeca Ortiz
Title: Sr. Mgr. Corp. Real Estate
Date: _____

Address for notices:

Jones Lang LaSalle Brokerage, Inc.
4300 Amon Carter Blvd., Suite 100
Fort Worth, TX 76155-2670
Attn: Track Agreements

INDUSTRY:

Snohomish County, a Washington State political subdivision

By: 
Name: LENDA CRAWFORD
Title: Executive Director
Date: 7/30/15

Approved as to form

 6/12/15
Deputy Prosecuting Attorney
Snohomish County, WA

Address for notices:

Snohomish County
c/o Snohomish County Solid Waste
M/S 607
300 Rockefeller Ave.
Everett, WA 98201
Attn: Track Agreements

**APPROVED BY
RISK MANAGEMENT**

Date/Sig.  6/30/15

COUNCIL USE ONLY	
Approved:	<u>7-29-15</u>
Docfile:	<u>D-2</u>

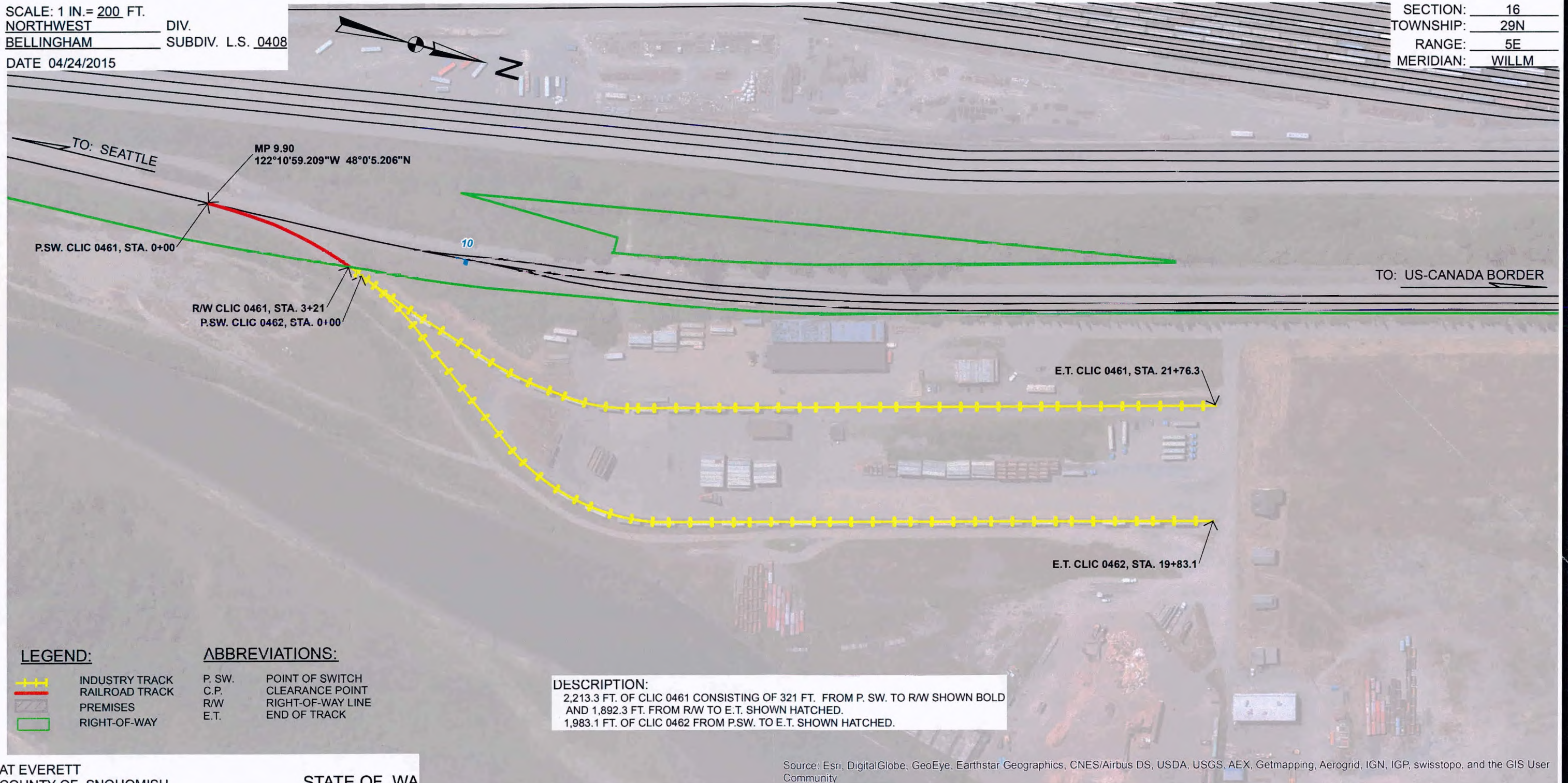
EXHIBIT "A"

ATTACHED TO CONTRACT BETWEEN
BNSF RAILWAY COMPANY
AND

SNOHOMISH COUNTY

SCALE: 1 IN. = 200 FT.
NORTHWEST DIV.
BELLINGHAM SUBDIV. L.S. 0408
DATE 04/24/2015

SECTION: 16
TOWNSHIP: 29N
RANGE: 5E
MERIDIAN: WILLM



LEGEND:

- INDUSTRY TRACK
- RAILROAD TRACK
- PREMISES
- RIGHT-OF-WAY

ABBREVIATIONS:

- P. SW. POINT OF SWITCH
- C.P. CLEARANCE POINT
- R/W RIGHT-OF-WAY LINE
- E.T. END OF TRACK

DESCRIPTION:

2,213.3 FT. OF CLIC 0461 CONSISTING OF 321 FT. FROM P. SW. TO R/W SHOWN BOLD AND 1,892.3 FT. FROM R/W TO E.T. SHOWN HATCHED.
1,983.1 FT. OF CLIC 0462 FROM P.S.W. TO E.T. SHOWN HATCHED.

AT EVERETT
COUNTY OF SNOHOMISH

STATE OF WA

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community