

## UNDERPASS AGREEMENT

BNSF File No. BF10001833  
Nason Creek Bridge  
U.S. D.O.T. No. N/A  
LS 037  
MP 1690.60 - 1691.40  
Scenic Subdivision

NASON

This Agreement ("**Agreement**"), is executed to be effective as of June 17, 2013 ("**Effective Date**"), by and between BNSF RAILWAY COMPANY, a Delaware corporation ("**BNSF**"), and the Chelan County, a political subdivision of the State of Washington ("**Agency**"). The BONNEVILLE POWER ADMINISTRATION (**BPA**) joins in this Agreement for purposes of Article IV, Mitigation Payment, only.

### RECITALS:

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

WHEREAS, Agency desires to improve the existing Nason Creek Waterway by undertaking a salmonid habitat restoration project, which such habitat restoration project is more particularly described in Exhibit B, attached hereto ("**Agency Work**");

WHEREAS, in order to accommodate the Agency Work, at the request of Agency and subject to the terms of this Agreement, BNSF will construct a new railroad bridge to be known as the Nason Creek Bridge, LS 37 MP 1690.60;

WHEREAS, the existing culverts at MP 1690.60 will be removed upon completion of construction and the placing in service of said underpass; and

WHEREAS, the Bonneville Power Administration (BPA) is a power-marketing agency having legal obligations under the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. §§ 839-839h ("**Northwest Power Act**") to protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, affected by the development and operation of Federal hydroelectric projects of the Columbia River and its tributaries, in a manner consistent with the purposes of the Northwest Power Act, the Fish and Wildlife Program adopted by the Pacific Northwest Electric Power and Conservation Planning Council under subsection 4(h) of the Northwest Power Act (16 U.S.C. § 839b(h)), and other environmental laws, including the Endangered Species Act, 16 U.S.C. §§ 1531-1544 ("**ESA**").

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:

## **ARTICLE I) SCOPE OF WORK**

1. The term "**Project**" as used herein includes any and all work related to the design and construction of the proposed Nason Creek Bridge (hereinafter referred to as the "**Structure**"), more particularly described on the Exhibit A attached hereto and incorporated herein, 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.

## **ARTICLE II) BNSF OBLIGATIONS**

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

1. In consideration of the faithful performance of the Agency's covenants contained herein, 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 perform the Agency Work across or upon the portion of BNSF's right-of-way described further on Exhibit A, 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;
- (b) 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, provided such facilities do not materially interfere with the Agency's use of the Structure;
- (c) Otherwise use or operate the right-of-way as BNSF may from time to time deem appropriate, provided such use or operations does not materially interfere with the Agency's use of the Structure.
- (d) Require the Agency or its contractor to execute a Temporary Construction Crossing Agreement, for any temporary crossing requested to aid in the construction of this Project.

Prior to commencing any work on BNSF's property or right-of-way, Agency must pay BNSF the sum of **\$9,640.00** as compensation for the Temporary Construction License. The term of the Temporary Construction License begins on the Effective Date and ends on the earlier of (i) substantial completion of the Agency Work, or (ii) 30 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 only for performance of the Agency Work and shall not be used by 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. In the event 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.

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 be provided to Agency and shall thereafter 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;
- (b) Preliminary engineering, design, and contract preparation;
- (c) Furnishing of flagging services during construction of the Project as required and set forth in further detail on Exhibit C;
- (d) Furnishing engineering and inspection as required in connection with the construction of the Project;
- (e) Providing a contract project coordinator, at Agency's expense, to serve as a project manager for the Project;
- (f) Construction of one railroad bridge on BNSF Right of Way (R/W);  
and
- (g) If required, installation and removal of temporary wayside signals.

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 Agency Work 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, however, BNSF shall notify Agency of such work and shall coordinate any such work with the Agency Work to the extent reasonably practicable.

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 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.

### **ARTICLE III) 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 Agency Work in digital format on disk or drive, as well as two (2) hard copy sets of said plans (reduced size 11" x 17"), together with two copies of calculations, and two copies of specifications

in **English Units**, must be submitted to BNSF for approval prior to commencement of any construction. BNSF will give Agency final written approval of the plans and specifications for Agency Work substantially in the form of Exhibit E, attached to this Agreement and made a part hereof. Upon BNSF's final written approval of the plans and specifications, said plans and specifications will become part of this Agreement and are hereby incorporated herein. Any approval of the plans and specifications by BNSF shall in no way obligate BNSF in any manner with respect to the finished product design and/or construction of the Agency Work. Any approval by BNSF shall mean only that the plans and specifications meet the subjective standards of BNSF, and such approval by BNSF shall not be deemed to mean that the plans and specifications or construction is structurally sound and appropriate or that such plans and specifications meet applicable regulations, laws, statutes or local ordinances and/or building codes.

2. Agency must make any required application and obtain all required permits and approvals for the Project and the Agency Work.

3. Agency must provide for and maintain minimum vertical and horizontal clearances in performing the Agency Work, as required in Exhibit C and as approved by BNSF as part of the plans and specifications for the Project.

4. Agency must acquire all rights of way necessary for the Agency Work.

5. Agency must make any and all arrangements, in compliance with BNSF's Utility Accommodation Manual (<http://www.bnsf.com/communities/fags/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 Agency Work.

6. Agency must perform the Agency Work as shown on the attached Exhibit B, and do all work provided for in the plans and specifications for the Agency Work. Agency must furnish all labor, materials, tools and equipment for the performance of Agency Work.

7. Agency's contractor will construct the permanent access road to the bridge location, remove culverts and reestablish the creek's channel under the bridge. Upon completion of the Agency Work, (i) the permanent access road shall be owned and maintained by BNSF, and (ii) use of the permanent access road shall be restricted to BNSF and its employees in connection with BNSF railroad operations. Access to the permanent access road shall be secured by a locked gate.

8. Agency 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.

9. For any Agency Work performed by subcontractors on behalf of the Agency, Agency shall require the subcontractors to execute the Exhibit C & C-1 documents in accordance with the requirements of Exhibits C & C-1.

10. 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.

11. Agency or its contractor(s) must submit four (4) copies of any plans (including two sets of calculations in **English Units**) for proposed shoring, falsework or cribbing to be used over, under, or adjacent to BNSF's tracks to BNSF's Manager of Public Projects for approval. The shoring, falsework or cribbing used by Agency's contractor shall comply with the BNSF Bridge Requirements set forth on Exhibit F and all applicable requirements promulgated by state and federal agencies, departments, commissions and other legislative bodies. If necessary, Agency must submit for approval two (2) copies of a professionally engineered demolition plan with applicable calculations to BNSF's Manager of Public Projects.

12. Agency must include the following provisions in any contract with its contractor(s) (the "**Provider**") performing the Agency Work:

- (a) The Provider 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 Provider will be responsible for contacting BNSF's Engineering Representative – Matt Keim, BNSF's Signal Representative – Gordon McElroy and the telecommunications companies and notifying them of any work that may damage these Lines or facilities and/or interfere with their service. The Provider must also mark all Lines shown on the plans or marked in the field in order to verify their locations. The Provider 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) The Provider will be responsible for the rearrangement of any facilities or Lines determined to interfere with the Agency Work. The Provider must cooperate fully with any telecommunications company(ies) in performing such rearrangements.
- (c) Failure to mark or identify these Lines will be sufficient cause for BNSF's engineering representative (Matthew Keim) to stop the Agency

Work at no cost to the Agency or BNSF until these items are completed.

- (d) In addition to the liability terms contained elsewhere in this Agreement, the Provider 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 Provider, 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 Provider, 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 PROVIDER WILL APPLY ONLY TO THE EXTENT OF THE NEGLIGENCE OF PROVIDER, ITS AGENTS OR EMPLOYEES, AND 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 performance of the Agency Work, or the specifications therefore (i) the provisions set forth in Article III; (ii) the provisions set forth in Article V; and (iii) 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 14, all the Agency Work will be performed pursuant to a contract or contracts to be let by Agency, and all such contracts must include the following:

- (a) 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;
- (b) Changes or modifications during performance of the Agency Work that affect safety or BNSF operations must be subject to BNSF's approval;
- (c) 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 a letter agreement in the form of Exhibit C-I, and (ii) delivered to and secured BNSF's approval of the required insurance; and
- (d) To facilitate scheduling for the Agency Work, Agency shall have its contractor give BNSF's representative Matthew Keim 206.625.6189 two (2) weeks advance notice of the proposed times and dates for work windows. BNSF and Agency's contractor will establish mutually agreeable work windows for the Agency Work. 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 Agency Work.
- (e) Intentionally left blank.

15. Agency must advise the appropriate BNSF Manager of Public Projects, in writing, of the completion date of the Agency Work within thirty (30) days after such completion date. Additionally, Agency must notify BNSF's Manager of 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 IN**



CONNECTION WITH THE AGENCY WORK, (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 IN CONNECTION WITH THE AGENCY WORK, (IV) AGENCY'S BREACH OF THE TEMPORARY CONSTRUCTION LICENSE GRANTED TO AGENCY PURSUANT TO ARTICLE II OF THIS AGREEMENT, (V) ANY RIGHTS OR INTERESTS GRANTED TO AGENCY PURSUANT TO THE TEMPORARY CONSTRUCTION LICENSE DISCUSSED IN ARTICLE II OF THIS AGREEMENT, (VI) AGENCY'S OCCUPATION AND USE OF BNSF'S PROPERTY OR RIGHT-OF-WAY IN CONNECTION WITH THE AGENCY WORK, 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, IN CONNECTION WITH THE AGENCY WORK. THE TERM "CONTRACTOR" AS IT IS USED IN THIS PARAGRAPH DOES NOT INCLUDE BNSF, ITS AGENTS, SERVANTS, OR EMPLOYEES. 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, ITS AGENTS, SERVANTS, OR EMPLOYEES.

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 for purposes of this Section 16 its immunity under the industrial insurance act (RCW Title 51) and assumes potential liability for all actions brought by its employees. This Section 16 shall not be interpreted or construed as a waiver of Agency's right to assert such immunity, defense or protection directly against any of its own employees, or such employee's estate or other representatives.

17. Agency must give BNSF's Manager of Public Projects written notice to proceed ("**Notice to Proceed**") with the railroad 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.

#### **ARTICLE IV) MITIGATION PAYMENT**

1. Upon substantial completion of the railroad work and final invoicing, **BPA** shall pay BNSF the sum of \$950,000.00 (Nine Hundred Fifty Thousand Dollars and No

Cents) (the "**Mitigation Payment**"). In consideration of the Mitigation Payment, and except as otherwise specifically provided in Article II, Paragraph 3, above, BNSF hereby fully releases and discharges each and both of BPA and the Agency from any and all claims, liens, demands, actions, costs, losses, expenses, harm, damages and liability (including, but not limited to, attorneys' fees) of any kind or character now or hereafter asserted or arising directly or indirectly from, on account of, or in connection with the design, construction, maintenance, repair, operation and use of the Structure. To the fullest extent permitted by applicable law, this release shall apply to all such liabilities, whether or not such liabilities are known or unknown as of the Effective Date, and regardless of whether such liabilities (i) existed prior to the Effective Date; (ii) exist as of the Effective Date, or (iii) arise at any time from and after the Effective Date.

## **ARTICLE V) 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 written approval prior to the commencement of any such changes or modifications from the David Johnson.
2. The work hereunder must be done in accordance with the Bridge Requirements set forth on Exhibit F 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 (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 Agency

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 Agency Work in a manner which is hazardous to BNSF property, facilities or the safe and expeditious movement of railroad traffic; or (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project. 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 additional insurance has been delivered to and accepted by BNSF. In the event of a breach of (i) this Agreement or, (ii) the Temporary Construction License, BNSF may immediately terminate the Temporary Construction License. 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:

Mike Kaputa  
316 Washington St Ste 401  
Wenatchee, WA 98801  
Phone: 509-670-6935  
Fax: 509-667-6527

Agency must supervise and inspect the operations of all Agency contractors to assure compliance with the plans and specifications approved by BNSF, the terms of this Agreement and all safety requirements of the BNSF railroad. If BNSF determines that proper supervision and inspection is 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

Mike Kaputa  
316 Washington St Ste 401  
Wenatchee, WA 98801  
Phone: 509-670-6935  
Fax: 509-667-6527

for appropriate corrective action.

5. All work completed must conform with the requirements of federal law and the flow-down provisions contained in the Intergovernmental Contract between BPA and the Agency, attached as Exhibit H and identified as Contract No. \_\_\_\_\_. BNSF and its employees have entered into a collective bargaining agreement negotiated consistent with the Railway Labor Act and therefore those wages are deemed to comply with the requirements of the Davis-Bacon Act. BPA shall provide BNSF the prevailing wage rates applicable to any work performed by BNSF's contractors or subcontractors.

6. Intentionally left blank

7. Intentionally left blank.

8. Intentionally left blank.

9. The parties mutually agree that no construction activities for the Project will be permitted during the fourth quarter of each calendar year. Emergency work will be permitted only upon prior notification to BNSF's Network Operations Center (telephone number: 800 832-5452). The parties hereto mutually understand and agree that trains cannot be subjected to delay during this time period.

10. Subject to the restrictions imposed by Article V, Section 9 above, the construction of the Project will not commence until Agency gives BNSF's Manager of Public Projects thirty (30) days prior written notice of such commencement. The commencement notice will reference the Contract Number BF10001833 and must state the time that construction activities will begin.

11. In addition to the terms and conditions set forth elsewhere in this Agreement, including, but not limited to, the terms and conditions stated in Exhibit F, BNSF and Agency agree to the following terms upon completion of construction of the Project:

- (a) BNSF will, at its sole cost and expense, accept, own, and maintain the Structure, its roadbed, track, any access gates installed pursuant to the Project, railroad drainage, the permanent access road and all other railroad facilities.
- (b) Intentionally left blank.
- (c) Intentionally left blank.
- (d) Intentionally left blank.
- (e) Intentionally left blank.
- (f) Intentionally left blank.
- (g) 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.
- (h) Intentionally left blank.
- (i) If Agency (including its contractors and agents) or BNSF, on behalf of Agency, performs (i) alterations or modifications to the Structure, or (ii) any maintenance or other work on the Structure with heavy tools, equipment or machinery at ground surface level horizontally within 25'-0"

of the centerline of the nearest track, or (iii) any maintenance or other work outside the limits of the deck of the Structure vertically above the top of the rail, then Agency or its contractors and/or agents must procure and maintain the following insurance coverage:

Railroad Protective Liability insurance naming only the **Railroad** as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 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 (ISO form CG 28 31 10 93)
- ◆ 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 **Railroad** prior to performing any work or services under this Agreement

As used in this paragraph, "**Railroad**" means "Burlington Northern Santa Fe, LLC", "BNSF RAILWAY COMPANY" and the subsidiaries, successors, assigns and affiliates of each.

In lieu of providing a Railroad Protective Liability Policy, Agency may participate in BNSF's Blanket Railroad Protective Liability Insurance Policy **if available** to Agency or its contractors. The limits of coverage are the same as above.

12. Intentionally left blank.

13. Intentionally left blank.

14. Intentionally left blank.

15. BNSF may, at its expense, make future changes or additions to the railroad components of the Structure if necessary or desirable, in BNSF's sole discretion, including, without limitation the following: (i) the right to raise or lower the grade or change the alignment of its tracks, (ii) the right to lay additional track or tracks, or (iii) the right to build other facilities in connection with the operation of its railroad.

16. Intentionally left blank.

17. 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 for a period of three (3) years from the date of final BNSF invoice under this Agreement.

18. 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.

19. In the event construction of the Project does not commence within 30 months of the Effective Date, this Agreement will become null and void.

20. 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.

21. 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.

22. 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.

23. 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 Railway Company:

BNSF's Manager Public Projects  
Richard Wagner  
2454 Occidental Avenue So., Ste. 2D  
Seattle, WA 98134

Agency:

Mike Kaputa  
316 Washington St., Ste. 401  
Wenatchee, WA 98801  
Phone: 509-667-6584  
Fax: 509-667-6527

24. If the Agency shall, on or before the expiration of a period of time not to exceed five (5) years from and after the Effective Date, propose a new, additional or expanded salmonid habitat restoration project within the Nason Creek floodplain, and such project is located within reasonably close proximity to the Nason Creek Bridge ("Second Project"), then in such event, upon the Agency's proposal of the Second Project to BNSF, the Parties shall, in good faith, exercise commercially reasonable efforts to enter into an Underpass Agreement providing for the implementation of the Second Project on terms and conditions that are substantially similar to the terms and conditions set forth in this Agreement. Notwithstanding the foregoing and for avoidance of doubt, nothing in this paragraph 24 shall require BNSF to bear any cost or expense in connection with the design and construction of the Second Project and BNSF shall consider a waiver of a further or additional Mitigation Payment for the Second Project if a Second Project is constructed.

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: Steve Anderson

Title: VP of Engineering

*Sanford Sexton*

WITNESS:

\_\_\_\_\_

**AGENCY**

**COUNTY OF CHELAN**

By: 

Printed Name: Mike Kaputa

Title: Director, Dep't of Natural Resources

WITNESS:



**THE BONNEVILLE POWER ADMINISTRATION**  
(for purposes of Article IV, Mitigation Payment, only)

By: F. Lorraine Bodi

Printed Name: F. Lorraine Bodi

Title: Vice Pres., Environment,  
Fish + Wildlife

WITNESS:





**Exhibit A**

**Railroad Work**

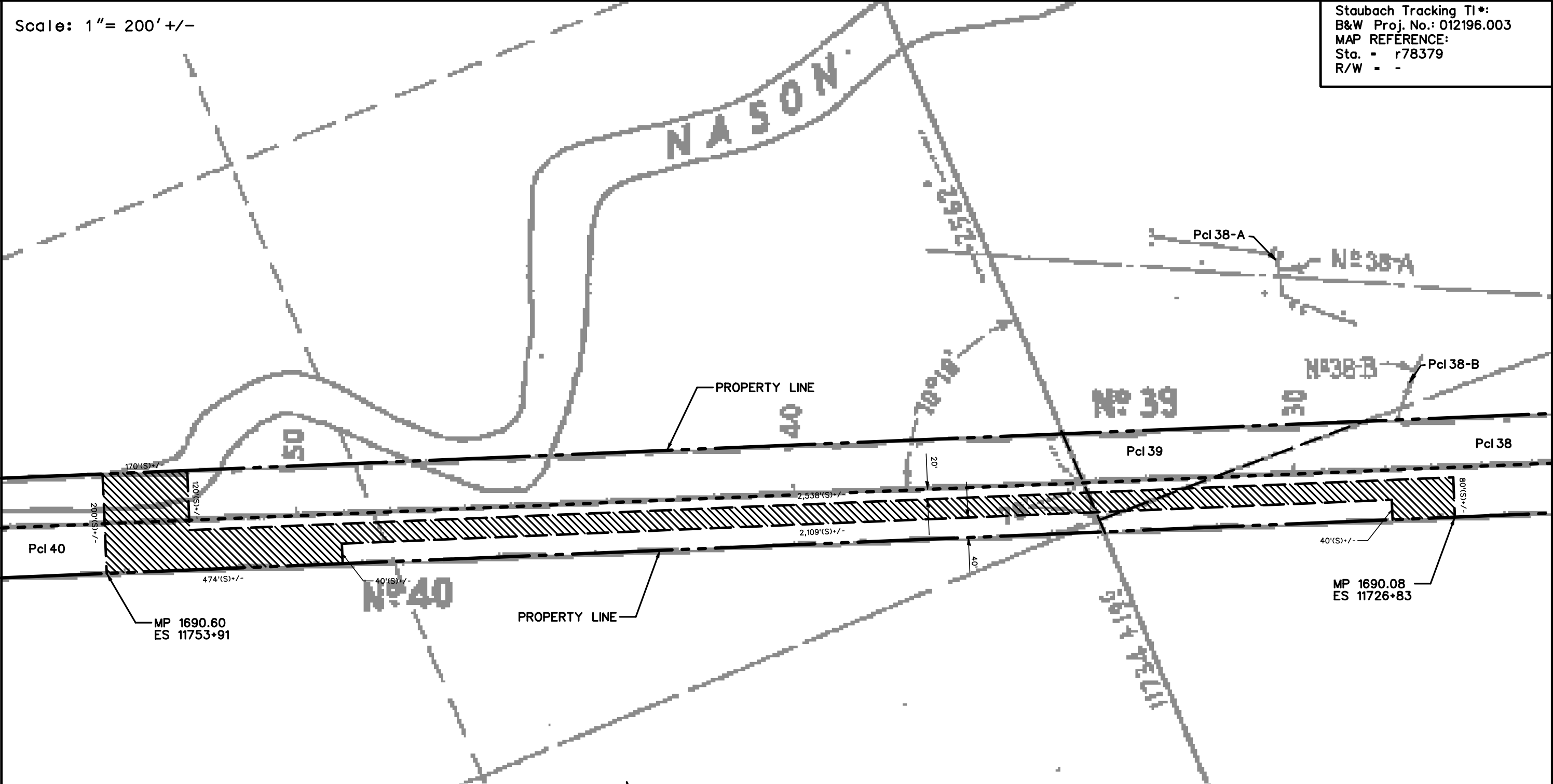
[Cross-hatched drawing of the Temporary Construction License and Structure]

EXHIBIT "A"

Staubach Tracking Tl\*:  
B&W Proj. No.: 012196.003  
MAP REFERENCE:  
Sta. - r78379  
R/W - -

Scale: 1"= 200' +/-

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.

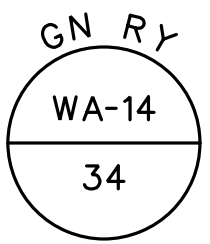
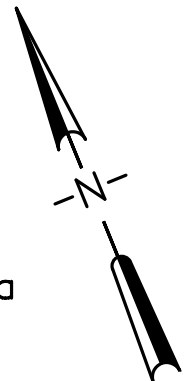


To: Seattle

To: Wenatchee

To: Chelan County  
At: Chelan  
Chelan County  
Washington

Legend:  
Temporary Easement Area



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

Northwest Division  
Scenic Subdivision - L.S. 0037-7  
Val. Sec. 51014  
GN RY WA-14, Map 34  
Sec. 11/12, T26N, R16E WILLM  
April 01, 2013  
M.P. 1690.08 JHL

## **Exhibit B**

### **Agency Work**

[Description of salmonid habitat restoration project provided by Chelan County]



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U.S. DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
COLUMBIA SNAKE RIVER SALMON RECOVERY PROGRAM - WASHINGTON  
FCRPS HABITAT IMPROVEMENT PROGRAM  
**WENATCHEE SUBBASIN**  
LOWER WHITE PINE OXBOW RECONNECTION PROJECT  
COVER SHEET

DRAWN  
N. TRUSCOTT

ACCEPTED  
NAME  
TITLE

BOISE, ID 2013-05-08

COVER SHEET

SHEET G-1  
SHEET 1 OF 21

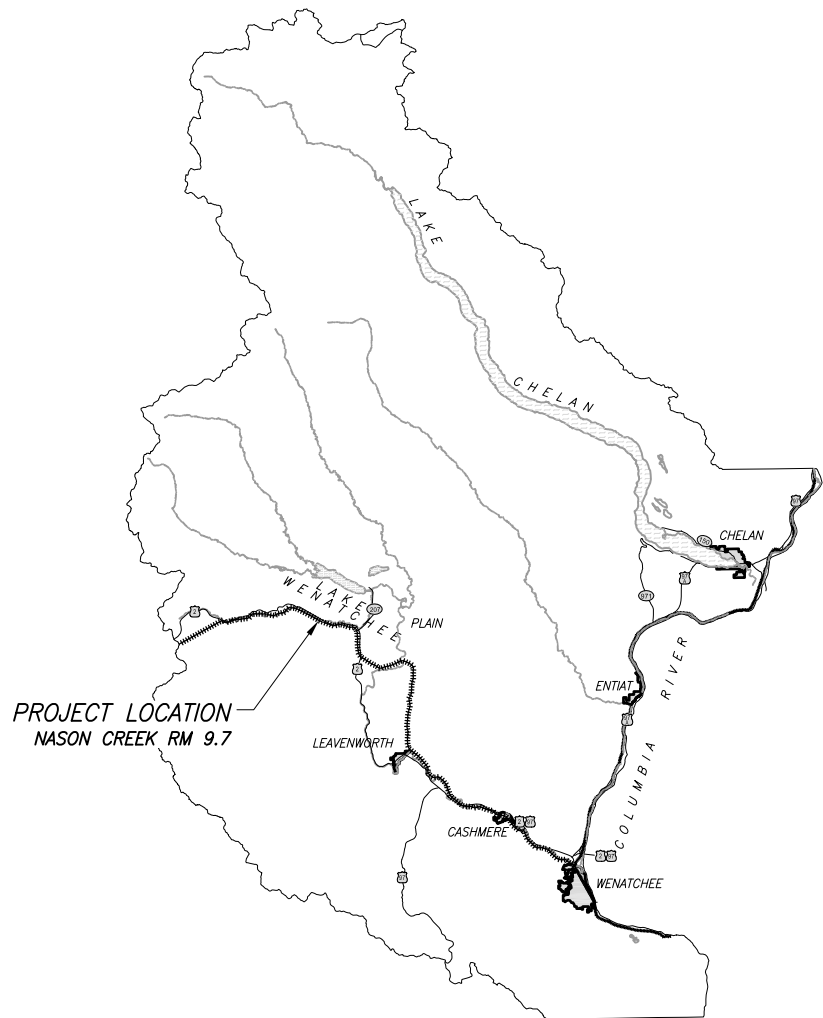
SITE SUMMARY

Chelan County  
Leavenworth, Washington

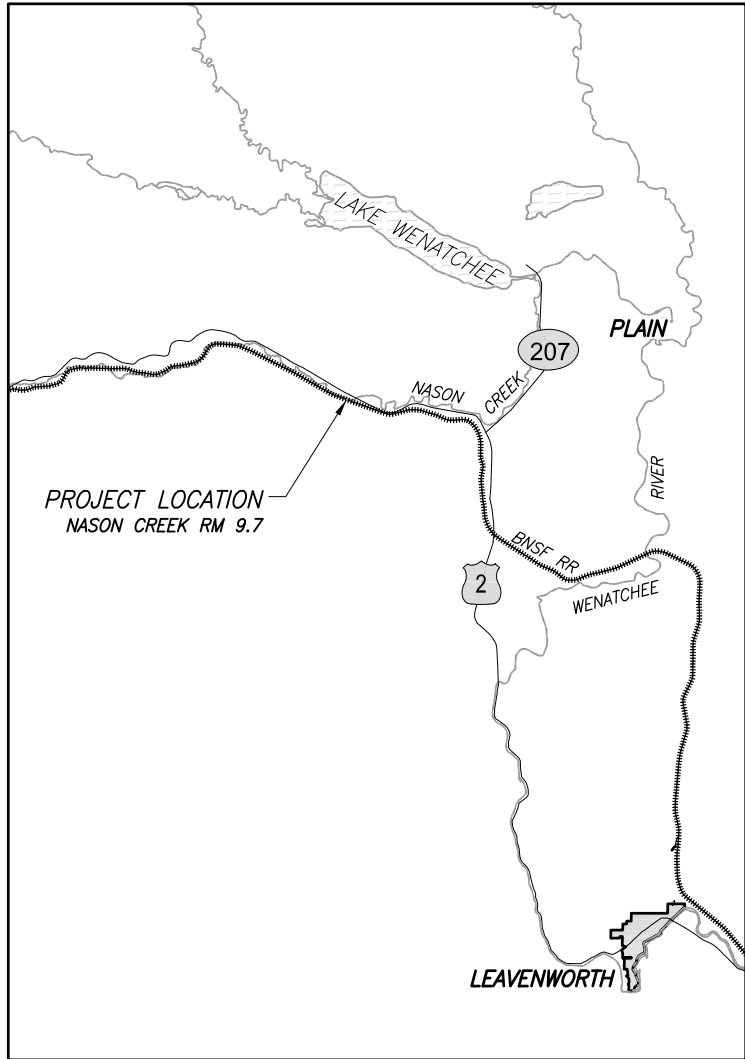
S2 T26N R16E  
S3 T26N R16E  
S10 T26N R16E  
S11 T26N R16E

N47°46'15", W120°49'01"

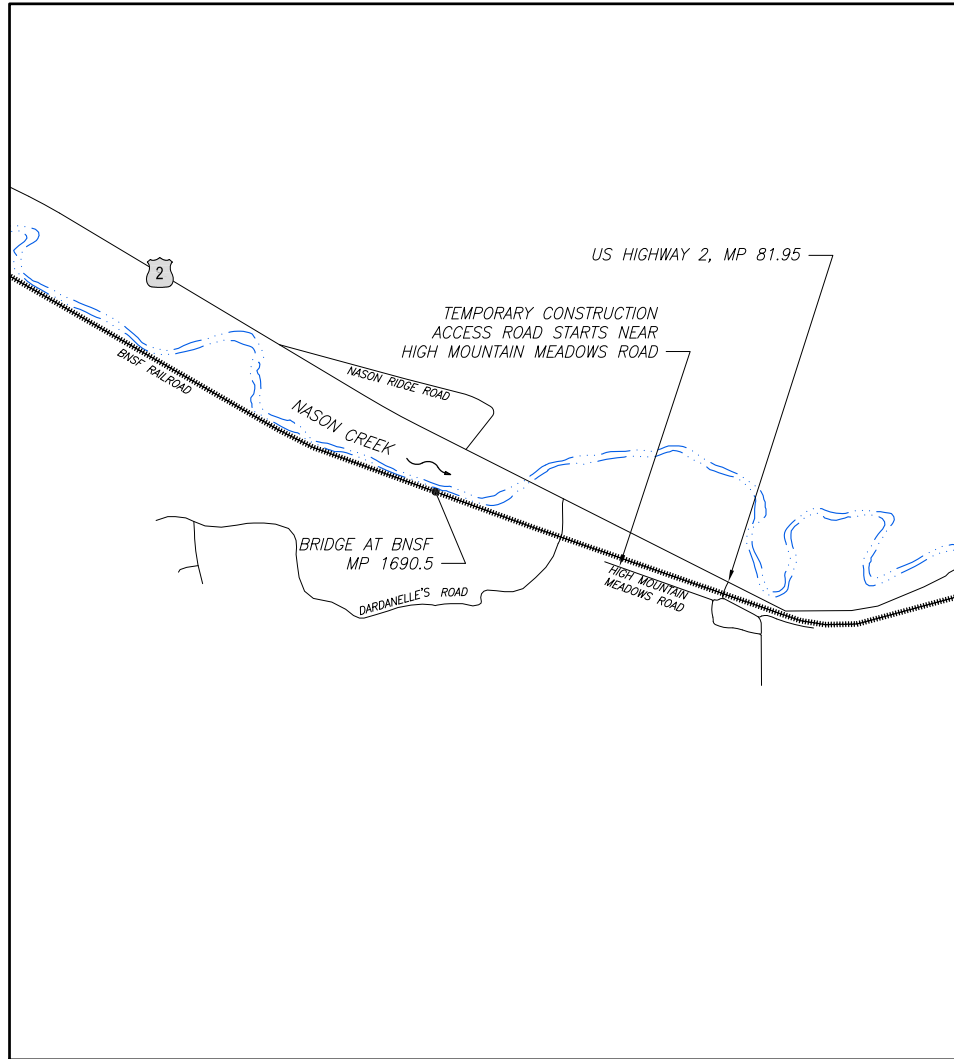
*Lower White Pine  
Oxbow Reconnection Project  
Chelan County, Washington*



CHELAN COUNTY, WASHINGTON  
NOT TO SCALE



LOCATION MAP  
NOT TO SCALE



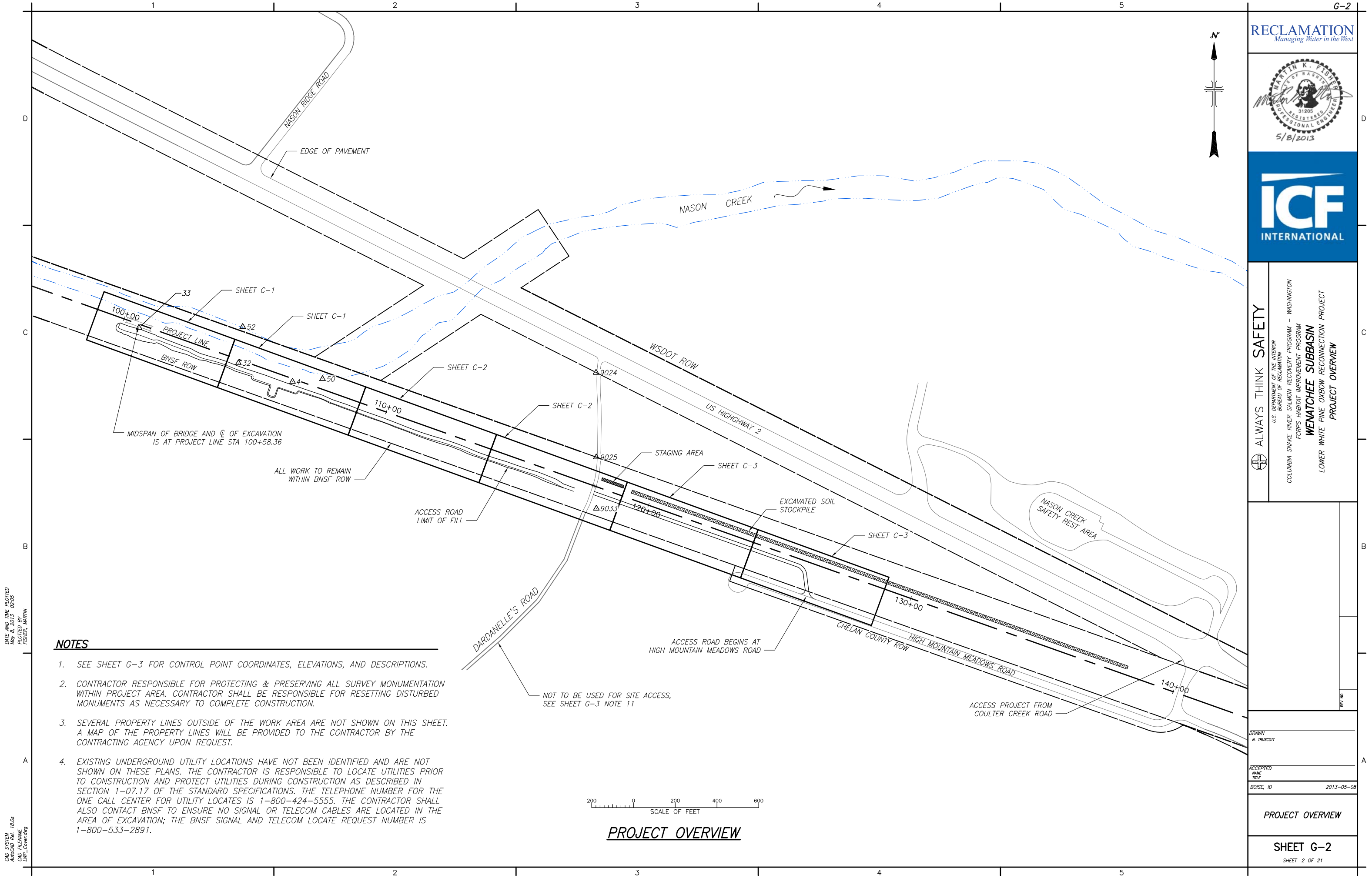
VICINITY MAP  
NOT TO SCALE

SHEET INDEX

COVER SHEET	G-1
PROJECT OVERVIEW	G-2
SUMMARY OF QUANTITIES, GENERAL NOTES & SURVEY CONTROL	G-3
ACCESS PLAN	C-1 THRU C-3
ACCESS ROAD DETAILS & NOTES	C-4
GEOFOAM LIGHTWEIGHT FILL PLAN & DETAILS	C-5
ACCESS ROAD PROFILE	C-6
ACCESS ROAD CROSS-SECTIONS	C-7 THRU C-10
FLOW BYPASS & SITE DEWATERING	C-11
GRADING PLAN	C-12
CHANNEL GRADING PROFILE	C-13
CHANNEL GRADING DETAILS	C-14
PLANTING PLAN PLAN	L-1
PLANT SCHEDULE & DETAILS	L-2 THRU L-4

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FISHER, MARTIN

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FISHER, MARTIN

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- NOTES**
- SEE SHEET G-3 FOR CONTROL POINT COORDINATES, ELEVATIONS, AND DESCRIPTIONS.
  - CONTRACTOR RESPONSIBLE FOR PROTECTING & PRESERVING ALL SURVEY MONUMENTATION WITHIN PROJECT AREA. CONTRACTOR SHALL BE RESPONSIBLE FOR RESETTling DISTURBED MONUMENTS AS NECESSARY TO COMPLETE CONSTRUCTION.
  - SEVERAL PROPERTY LINES OUTSIDE OF THE WORK AREA ARE NOT SHOWN ON THIS SHEET. A MAP OF THE PROPERTY LINES WILL BE PROVIDED TO THE CONTRACTOR BY THE CONTRACTING AGENCY UPON REQUEST.
  - EXISTING UNDERGROUND UTILITY LOCATIONS HAVE NOT BEEN IDENTIFIED AND ARE NOT SHOWN ON THESE PLANS. THE CONTRACTOR IS RESPONSIBLE TO LOCATE UTILITIES PRIOR TO CONSTRUCTION AND PROTECT UTILITIES DURING CONSTRUCTION AS DESCRIBED IN SECTION 1-07.17 OF THE STANDARD SPECIFICATIONS. THE TELEPHONE NUMBER FOR THE ONE CALL CENTER FOR UTILITY LOCATES IS 1-800-424-5555. THE CONTRACTOR SHALL ALSO CONTACT BNSF TO ENSURE NO SIGNAL OR TELECOM CABLES ARE LOCATED IN THE AREA OF EXCAVATION; THE BNSF SIGNAL AND TELECOM LOCATE REQUEST NUMBER IS 1-800-533-2891.

**PROJECT OVERVIEW**

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Managing Water in the West



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U.S. DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
COLUMBIA SNAKE RIVER SALMON RECOVERY PROGRAM - WASHINGTON  
FCRPS HABITAT IMPROVEMENT PROGRAM  
**WENATCHEE SUBBASIN**  
LOWER WHITE PINE OXBOW RECONNECTION PROJECT  
PROJECT OVERVIEW

DRAWN  
N. TRUSCOTT

ACCEPTED  
NAME  
TITLE  
BOISE, ID 2013-05-08

PROJECT OVERVIEW

**SHEET G-2**  
SHEET 2 OF 21

CAD SYSTEM  
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11/18/2013 12:05  
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FISHER, MARTIN

GENERAL NOTES

1. ANY ITEM NOT SPECIFICALLY DISCUSSED IN THE GENERAL CONTRACT FOR THIS PROJECT OR IN NOTES ON SHEETS IN THE PLANS SHALL BE AS DESCRIBED IN THE STANDARD SPECIFICATIONS FOR ROADS, BRIDGES, AND MUNICIPAL CONSTRUCTION, 2012 PUBLISHED BY THE STATE OF WASHINGTON DEPARTMENT OF TRANSPORTATION. THE CONTRACTOR IS RESPONSIBLE TO BE FAMILIAR WITH THE STANDARD SPECIFICATIONS AND TO HAVE ACCESS TO THE STANDARD SPECIFICATIONS AT THE PROJECT SITE TO ENSURE THAT CONSTRUCTION OF THE PROJECT IS IN CONFORMANCE WITH THE STANDARD SPECIFICATIONS.
2. THE NOTES ON THIS PLAN SET SUPERSEDE ANY DUPLICATE ITEMS IN THE STANDARD SPECIFICATIONS.
3. HORIZONTAL DATUM: STATE PLANE COORDINATE SYSTEM, WASHINGTON NORTH ZONE, NAD83/91, US SURVEY FEET.  
VERTICAL DATUM: NAVD88, FEET.
4. TOPOGRAPHIC MAPPING OF THE PROJECT AREA PERFORMED BY WH-PACIFIC IN 2010, SUPPLEMENTAL TOPOGRAPHIC MAPPING OUTSIDE THE AREA OF CONSTRUCTION IS BASED ON 2010 GPS AND 2006 LiDAR IMAGING, CHELAN COUNTY, WASHINGTON.
5. ELEVATIONS AND DISTANCES SHOWN ARE IN FEET AND DECIMALS WITH CONTOUR INTERVALS AT ONE FOOT INCREMENTS.
6. THE CONTRACTOR SHALL BE RESPONSIBLE FOR GENERAL SAFETY DURING CONSTRUCTION, AND ALL WORK SHALL CONFORM TO PERTINENT SAFETY REGULATIONS AND CODES. THE CONTRACTOR SHALL BE SOLELY AND COMPLETELY RESPONSIBLE FOR COMPLIANCE WITH ALL APPLICABLE PROVISIONS OF OSHA AND NRS CHAPTER 618, IN THE CONSTRUCTION PRACTICES FOR ALL EMPLOYEES DIRECTLY ENGAGED IN THE CONSTRUCTION OF THIS PROJECT.
7. ALL EMPLOYEES MUST COMPLY WITH BNSF SAFETY REQUIREMENTS. THIS INCLUDES BUT IS NOT LIMITED TO, PASSING A SAFETY COURSE, OBTAINING DOCUMENTATION OF SUCCESSFULLY PASSING THE COURSE, AND ADHERING TO REQUIREMENTS IDENTIFIED IN THE COURSE. THE REQUIRED BNSF SAFETY COURSE MAY BE ACCESSED AT THE FOLLOWING WEBSITE: [WWW.RAILROADCOURSES.COM](http://WWW.RAILROADCOURSES.COM).
8. A BNSF FLAGGER SHALL BE PRESENT ANY TIME THE CONTRACTOR IS WORKING WITHIN 25 FEET OF THE TRACKS. THE CONTRACTOR SHALL COMMUNICATE WITH THE CONTRACTING OFFICER TO ARRANGE FOR A FLAGGER TO BE PRESENT DURING THESE TIMES.
9. EXISTING UNDERGROUND UTILITY LOCATIONS HAVE NOT BEEN IDENTIFIED AND ARE NOT SHOWN ON THESE PLANS. THE CONTRACTOR IS RESPONSIBLE TO LOCATE UTILITIES PRIOR TO CONSTRUCTION AND PROTECT UTILITIES DURING CONSTRUCTION AS DESCRIBED IN SECTION 1-07.17 OF THE STANDARD SPECIFICATIONS. THE TELEPHONE NUMBER FOR THE ONE CALL CENTER FOR UTILITY LOCATES IS 1-800-424-5555. THE CONTRACTOR SHALL ALSO CONTACT BNSF TO ENSURE NO SIGNAL OR TELECOM CABLES ARE LOCATED IN THE AREA OF EXCAVATION; THE BNSF SIGNAL AND TELECOM LOCATE REQUEST NUMBER IS 1-800-533-2891.
10. PRIOR TO COMMENCEMENT OF WORK, CONTRACTOR SHALL PROVIDE THE CONTRACTING AGENCY WITH A DETAILED CONSTRUCTION SCHEDULE AND WORK PLAN FOR APPROVAL. THE CONTRACTOR SHALL NOT BEGIN ANY CONSTRUCTION WORK UNTIL THE PROJECT SCHEDULE AND WORK PLAN IS APPROVED BY THE CONTRACTING OFFICER.
11. ALL CONSTRUCTION SHALL BE CLOSELY COORDINATED WITH THE CONTRACTING OFFICER SO THAT THE QUALITY OF WORK CAN BE CHECKED FOR APPROVAL.
12. THE CONTRACTOR SHALL CONSTRUCT AN ACCESS ROAD OFF HIGH MOUNTAIN MEADOWS AT A LOCATION STAKED BY THE CONTRACTING OFFICER. THE CONTRACTOR SHALL USE THE ACCESS ROAD TO ACCESS THE SITE FOR ALL CONSTRUCTION RELATED ACTIVITIES AND SHALL NOT USE DARDANELLE'S ROAD FOR SITE ACCESS. IT IS ANTICIPATED THAT AN UNRELATED CONSTRUCTION PROJECT WILL BE TAKING PLACE CONCURRENT WITH THIS PROJECT IN THE SAME VICINITY; DARDANELLE'S ROAD WILL BE SHUT DOWN AT VARIOUS TIMES DUE TO THAT PROJECT AND SHALL NOT BE USED TO ACCESS THE SITE TO ENSURE NO CONFLICT TO SITE ACCESS FOR EITHER PROJECT WILL OCCUR.
13. TRAFFIC ON DARDANELLE'S ROAD HAS THE RIGHT-OF-WAY AT ALL TIMES; CONSTRUCTION TRAFFIC ON THE ACCESS ROAD SHALL YIELD TO TRAFFIC ON DARDANELLE'S ROAD.
14. BRIDGE INSTALLATION WILL BE PERFORMED BY BNSF FOLLOWING CONSTRUCTION OF THE ACCESS ROAD; THE CONTRACTOR SHALL MAINTAIN CLOSE COORDINATION WITH THE CONTRACTING OFFICER REGARDING THE TIMING OF WORK TO AVOID CONFLICTS WITH BRIDGE INSTALLATION OR RELATED ACTIVITIES.

CONTROL TABLE

CONTROL POINT	NORTHING	EASTING	ELEVATION	DESCRIPTION
4	1647305.75	280161.75	2150.86	REBAR W/ CAP
32	1647111.38	280228.48	2149.66	REBAR W/ CAP
33	1646754.11	280355.68	2150.36	REBAR W/ CAP
50	1647413.65	280171.58	2146.77	REBAR W/ CAP
52	1647126.90	280358.76	2142.02	REBAR W/ CAP
9024	1648396.19	280194.23	2155.46	MON - 2" ALUM. DISK
9025	1648396.84	279890.30	2163.51	MON - 2" ALUM. DISK
9033	1648397.25	279706.07	2157.37	MON - 3" BRASS DISK

PROJECT LINE COORDINATES

STATION	NORTHING	EASTING
100+00	280387.82	1646700.16
104+00	280253.83	1647077.05
108+00	280119.83	1647453.94
112+00	279985.84	1647830.83
116+00	279851.84	1648207.71
118+00	279784.84	1648396.16

CHANNEL LINE COORDINATES

STATION	NORTHING	EASTING
0+00	280413.77	1646771.29
0+50	280366.65	1646754.57
1+00	280319.53	1646737.86

15. THE CONTRACTOR SHALL BE RESPONSIBLE FOR MAINTAINING THE SITE IN A NEAT AND ORDERLY MANNER THROUGHOUT THE CONSTRUCTION PROCESS. ALL MATERIALS SHALL BE STORED WITHIN APPROVED CONSTRUCTION STAGING AREAS.
16. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING, AT THE CONTRACTOR'S EXPENSE, ALL CONSTRUCTION PERMITS AS REQUIRED BY THE LOCAL AGENCIES. THE CONTRACTOR SHALL PROVIDE ALL MATERIALS, LABOR AND EQUIPMENT REQUIRED TO COMPLY WITH ALL APPLICABLE PERMIT CONDITIONS AND REQUIREMENTS. THE CONTRACTING AGENCY HAS SECURED ENVIRONMENTAL PERMITS FOR THE PROJECT; THE CONTRACTOR SHALL COMPLY WITH ALL REQUIREMENTS LISTED IN THE PERMITS.
17. CONTRACTOR SHALL BE RESPONSIBLE FOR ALL CONSTRUCTION STAKING AND LAYOUT, UNLESS OTHERWISE SPECIFIED IN THE DRAWINGS. HORIZONTAL AND VERTICAL ALIGNMENT DATA FOR EXCAVATIONS AND FILLS ARE INCLUDED IN THESE PLANS.
18. THE CONTRACTOR SHALL PLACE TEMPORARY COFFERDAMS BETWEEN THE ACTIVELY FLOWING CREEK OR PONDED WATER IN THE OXBOW AREA AND THE EXTENTS OF ANY EXCAVATION TO KEEP WATER AND FISH FROM ENTERING THE ACTIVE CONSTRUCTION AREA. TWO COFFERDAMS WILL BE REQUIRED TO COMPLETE THE WORK SHOWN ON THESE PLANS, ONE ON THE NASON CREEK SIDE OF THE RAILROAD EMBANKMENT AND ONE ON THE OXBOW SIDE. THE COFFERDAM ON THE NASON CREEK SIDE OF THE EMBANKMENT SHALL BE INSTALLED BETWEEN JULY 1, AND AUGUST 10, 2013. THE NASON CREEK COFFERDAM SHALL REMAIN IN PLACE FROM INSTALLATION UNTIL OCTOBER 15, 2013. THE NASON CREEK COFFERDAM SHALL BE REMOVED ON OCTOBER 15, 2013. THE COFFERDAM ON THE OXBOW SIDE OF THE RAILROAD EMBANKMENT SHALL BE INSTALLED AFTER INSTALLATION OF THE NASON CREEK COFFERDAM; THE OXBOW COFFERDAM MAY BE REMOVED PRIOR TO BUT NO LATER THAN OCTOBER 15, 2013.
19. THE CONTRACTOR SHALL NOTIFY THE CONTRACTING OFFICER A MINIMUM OF 5 WORKING DAYS IN ADVANCE OF COFFERDAM CONSTRUCTION TO COORDINATE FISH REMOVAL. THE CONTRACTING AGENCY WILL BE RESPONSIBLE FOR ALL FISH REMOVAL AND HANDLING.
20. DEWATERING WITHIN COFFERDAMS SHALL BE PERFORMED TO THE EXTENT NECESSARY, AS DETERMINED BY THE CONTRACTOR, TO CONSTRUCT THE PROJECT AS SHOWN ON THESE PLANS. DISCHARGE FROM DEWATERING WITHIN THE WORK AREA SHALL BE ROUTED TO A SMALL SETTLING BASIN OR OTHER WDFW-APPROVED DETENTION OR FILTERING SYSTEM, AND TEMPORARILY DETAINED OR FILTERED SO AS TO ALLOW THE REMOVAL OF FINE SEDIMENTS OR OTHER CONTAMINANTS PRIOR TO BEING ALLOWED TO REENTER NASON CREEK OR WETLANDS. ALL PUMPS USED BY THE CONTRACTOR FOR DEWATERING SHALL HAVE SCREENED INTAKES THAT MEET WDFW SPECIFICATIONS AND JUVENILE FISH SCREENING CRITERIA.
21. ALL EQUIPMENT CONDUCTING IN-WATER WORK, WORKING WITHIN THE ACTIVELY FLOWING CREEK CHANNEL, WORKING WITHIN THE CHANNELS OR STANDING WATER AREAS OF THE OXBOW, AND WORKING ON THE TOP OF BANK ADJACENT TO THE ACTIVELY FLOWING CREEK CHANNEL, SHALL USE VEGETABLE OIL FOR HYDRAULIC FLUID.
22. MATERIAL EXCAVATED DURING CHANNEL EXCAVATION SHALL BE STOCKPILED ON BNSF PROPERTY AT THE LOCATION SHOWN ON SHEETS G-2 AND C-3. THE MATERIAL SHALL BE PLACED ON AND COVERED BY PLASTIC SHEETING WITH A MINIMUM THICKNESS OF 10 MILS, AND SANDBAGS SHALL BE PLACED ON THE PLASTIC SHEETING TO HOLD IT IN PLACE. THE STOCKPILE SHALL REMAIN IN PLACE UNTIL TESTING FOR CONTAMINANTS HAS BEEN COMPLETED BY THE CONTRACTING AGENCY; AFTER TESTING IS COMPLETE, THE CONTRACTOR SHALL HAUL THE STOCKPILED MATERIAL TO A LEGAL DISPOSAL SITE IDENTIFIED BY THE CONTRACTOR. FOR MORE INFORMATION REFER TO SECTION 2-03.3(14)M OF THE SPECIAL PROVISIONS.

SUMMARY OF QUANTITIES

ITEM NO.	QUANTITY	UNITS	ITEM
1	LUMP SUM	LS	MOBILIZATION
2	LUMP SUM	LS	SPCC PLAN
3	0.85	AC	CLEARING
4	5,000	DOLLAR	EROSION AND WATER POLLUTION CONTROL
5	1	EA	BEAVER DAM REMOVAL
6	LUMP SUM	LS	INSTALL ACCESS ROAD
7	600	CY	GEOFOAM LIGHTWEIGHT FILL
8	1	EA	ACCESS CONTROL GATE
9	475	LF	FLOATING SILT CURTAIN
10	LUMP SUM	LS	COFFERDAMS
11	LUMP SUM	LS	OXBOW FLOW BYPASS
12	LUMP SUM	LS	DEWATERING
13	1,680	CY	CHANNEL EXCAVATION
14	1,680	CY	HAUL STOCKPILED SOIL
15	375	TON	RIPRAP - CLASS A
16	LUMP SUM	LS	SURVEYING
17	1.24	AC	SEEDING & MULCHING
18	50	EA	PLANTING - LIVE STAKES
19	170	EA	PLANTING - 10 C.I. CONTAINER
20	50	EA	PLANTING - 40 C.I. CONTAINER
21	80	SY	PRE-PLANTED COIR MAT
22	5,000	DOLLAR	MINOR CHANGE



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COLUMBIA SNAKE RIVER SALMON RECOVERY PROGRAM - WASHINGTON  
FCRPS HABITAT IMPROVEMENT PROGRAM

WENATCHEE SUBBASIN  
LOWER WHITE PINE OXBOW RECONNECTION PROJECT  
SUMMARY OF QUANTITIES, GENERAL NOTES  
& SURVEY CONTROL

DRAWN  
N. TRUSCOTT

ACCEPTED  
NAME  
TITLE

BOISE, ID 2013-05-08

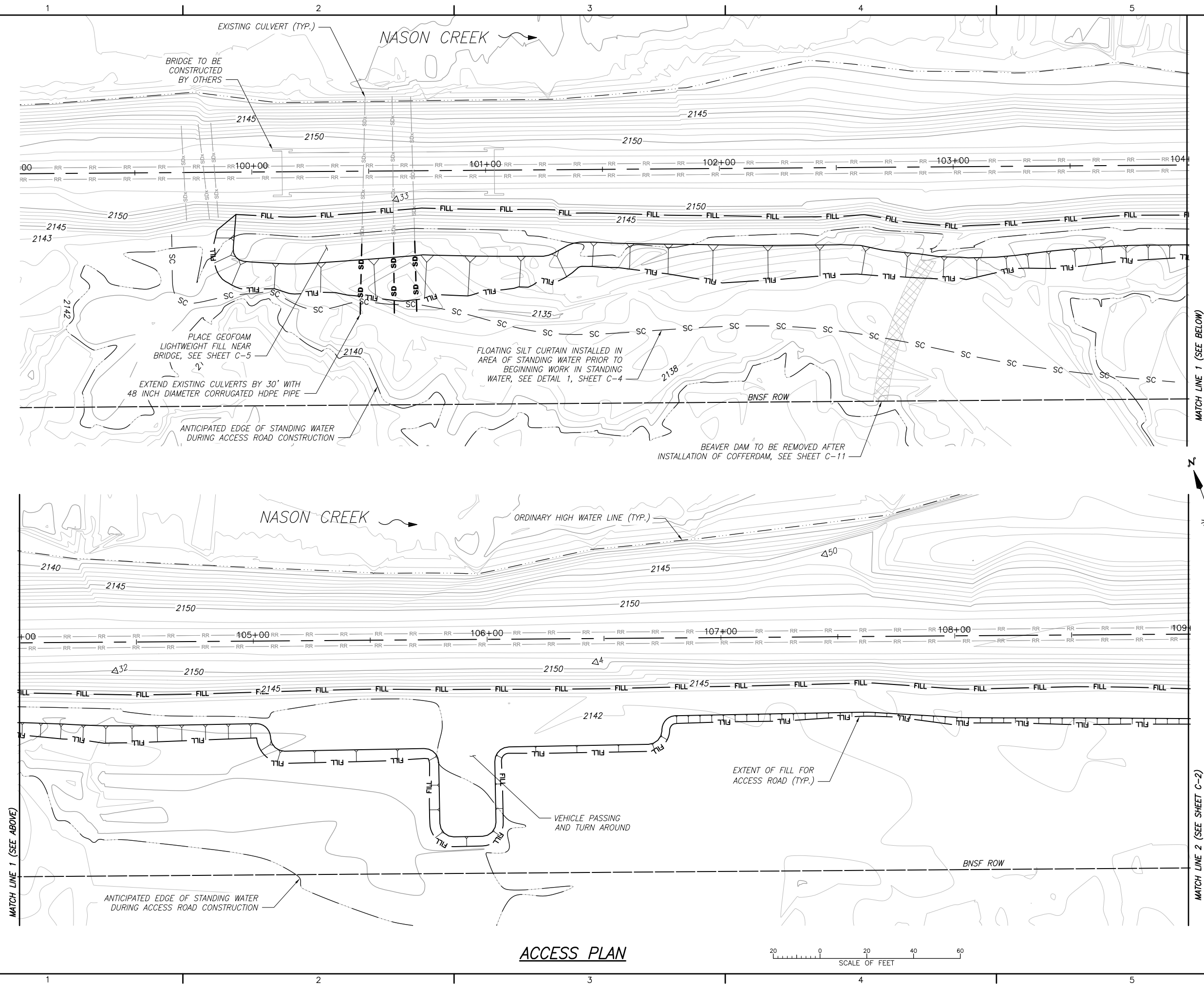
SUMMARY OF QUANTITIES,  
GENERAL NOTES &  
SURVEY CONTROL

SHEET G-3

SHEET 3 OF 21



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FISHER, MARTIN



# ACCESS PLAN

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ACCESS PLAN

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N. TRUSCOTT

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BOISE, ID

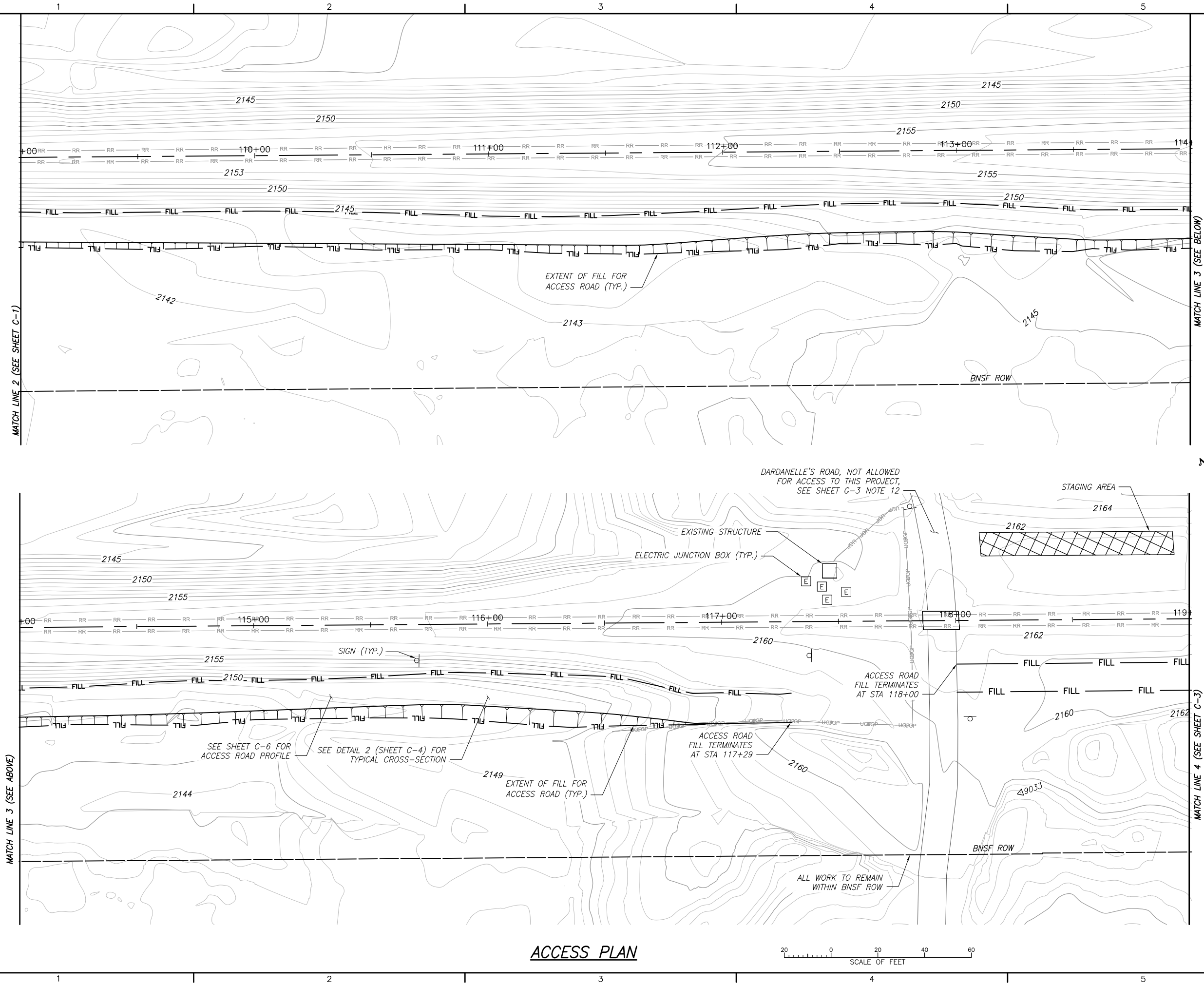
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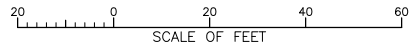
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FISHER, MARTIN



**ACCESS PLAN**



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**WENATCHEE SUBBASIN**  
LOWER WHITE PINE OXBOW RECONNECTION PROJECT  
ACCESS PLAN

DRAWN  
N. TRUSCOTT

ACCEPTED  
NAME  
TITLE

BOISE, ID

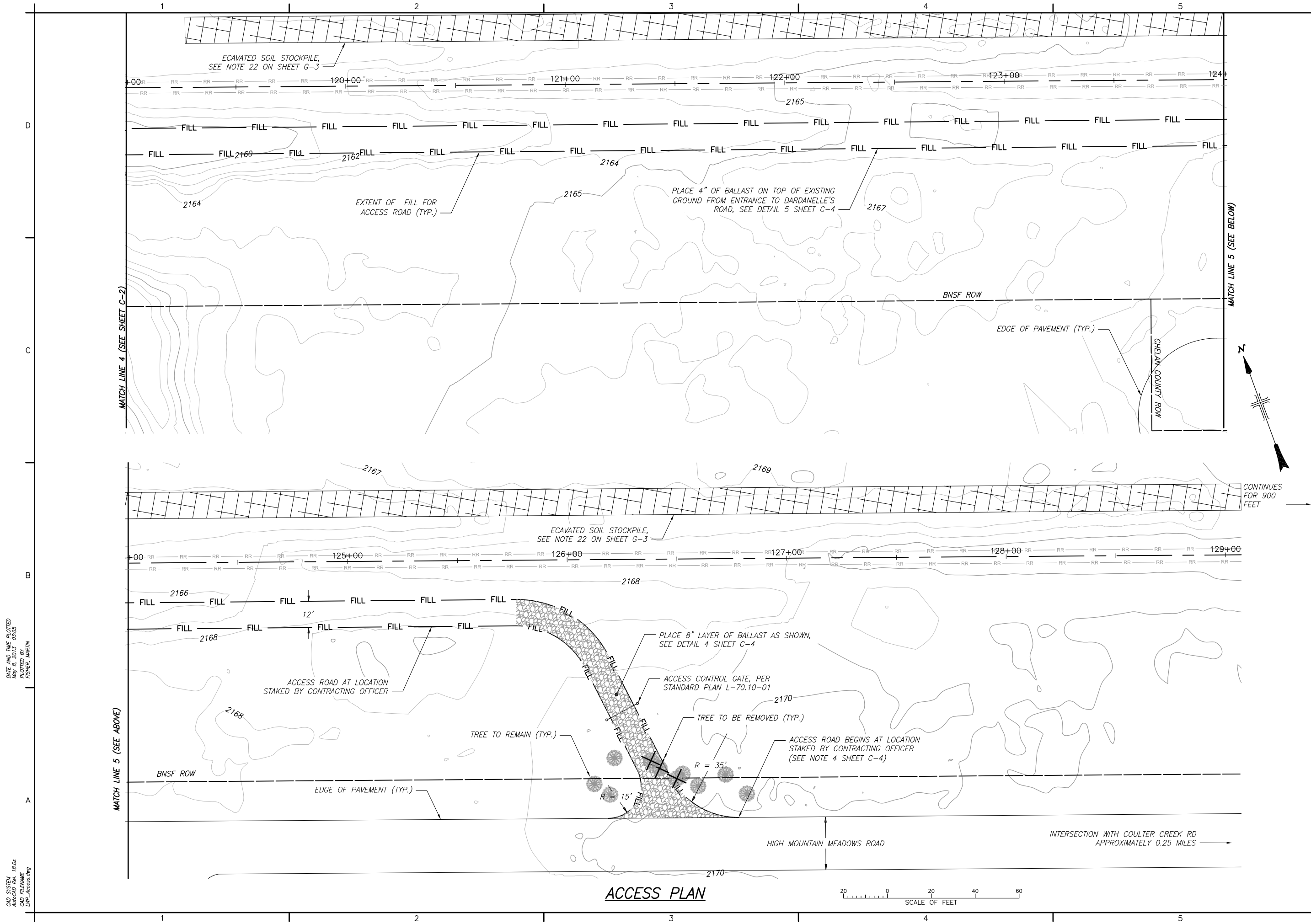
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ACCESS PLAN

SHEET C-2

SHEET 5 OF 21





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BUREAU OF RECLAMATION

COLUMBIA SNAKE RIVER SALMON RECOVERY PROGRAM - WASHINGTON  
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WENATCHEE SUBBASIN

LOWER WHITE PINE OXBOW RECONNECTION PROJECT

ACCESS PLAN

DRAWN  
N. TRUSCOTT

ACCEPTED  
NAME  
TITLE

BOISE, ID

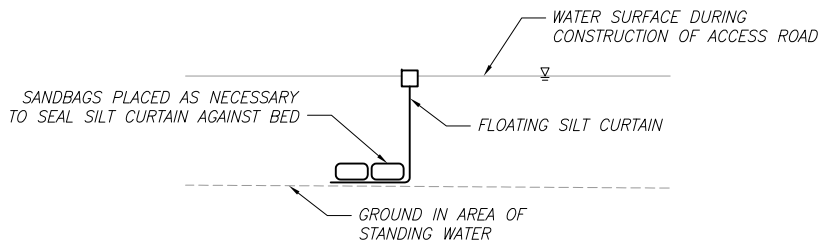
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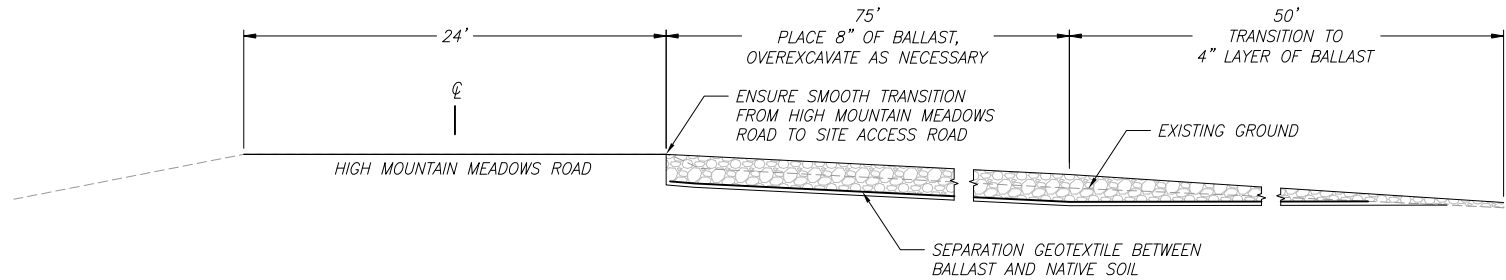
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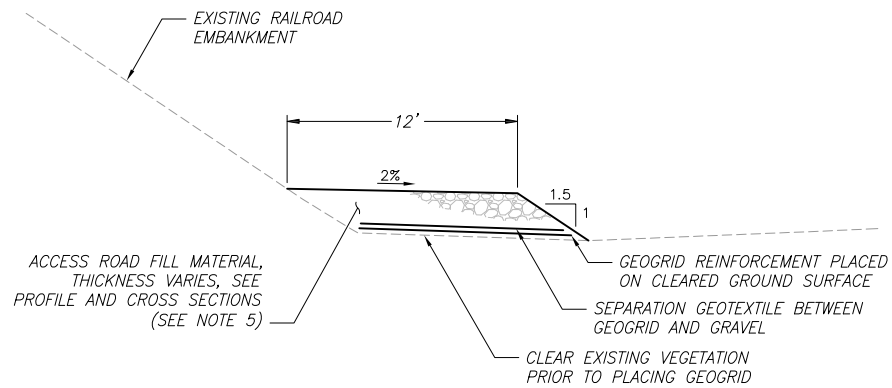
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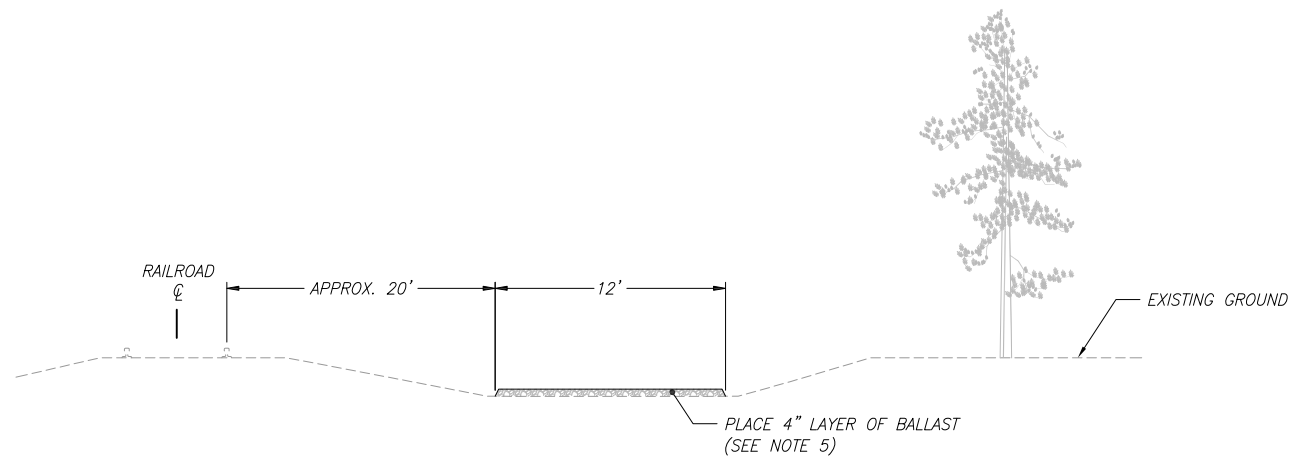
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C-4  
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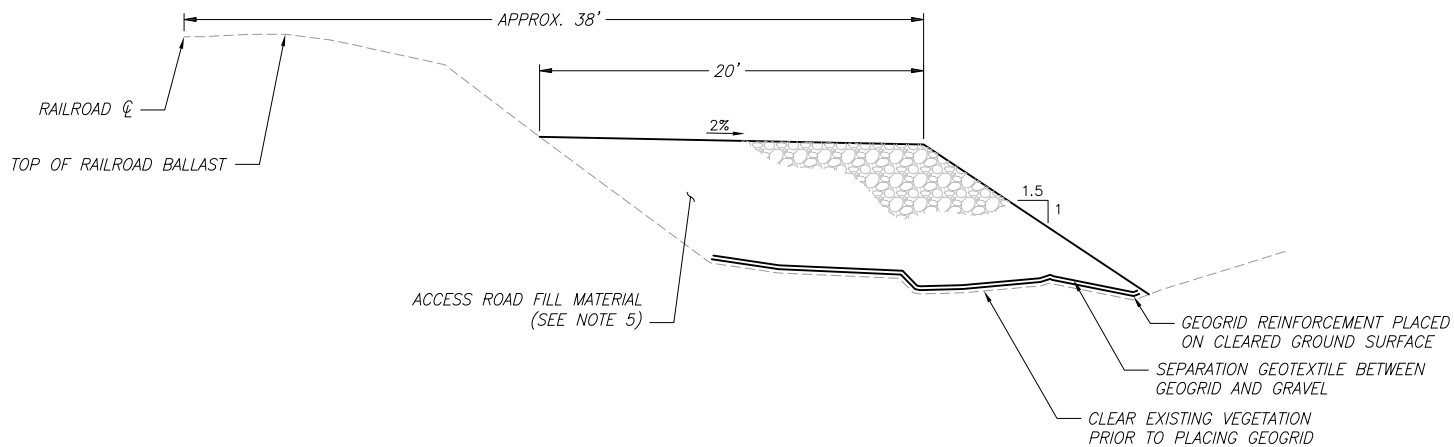
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C-4  
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2  
C-4  
ACCESS ROAD - TYPICAL DETAIL (PROJECT LINE STATION 101+75 TO 117+29)  
SCALE: 1" = 5'



5  
C-4  
ACCESS ROAD - TYPICAL DETAIL (PROJECT LINE STATION 118+00 TO 125+50)  
SCALE: NOT TO SCALE



3  
C-4  
ACCESS ROAD - TYPICAL DETAIL (PROJECT LINE STATION 99+95 TO 100+00 AND 100+45 TO 100+72)  
SCALE: 1" = 5'

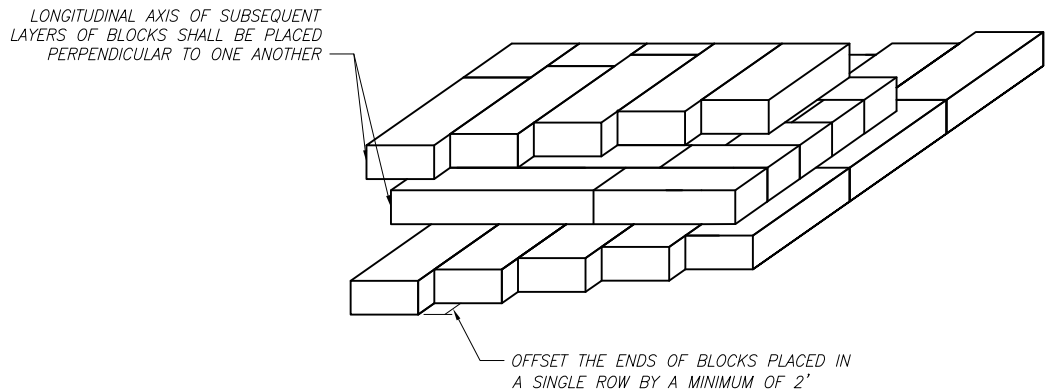
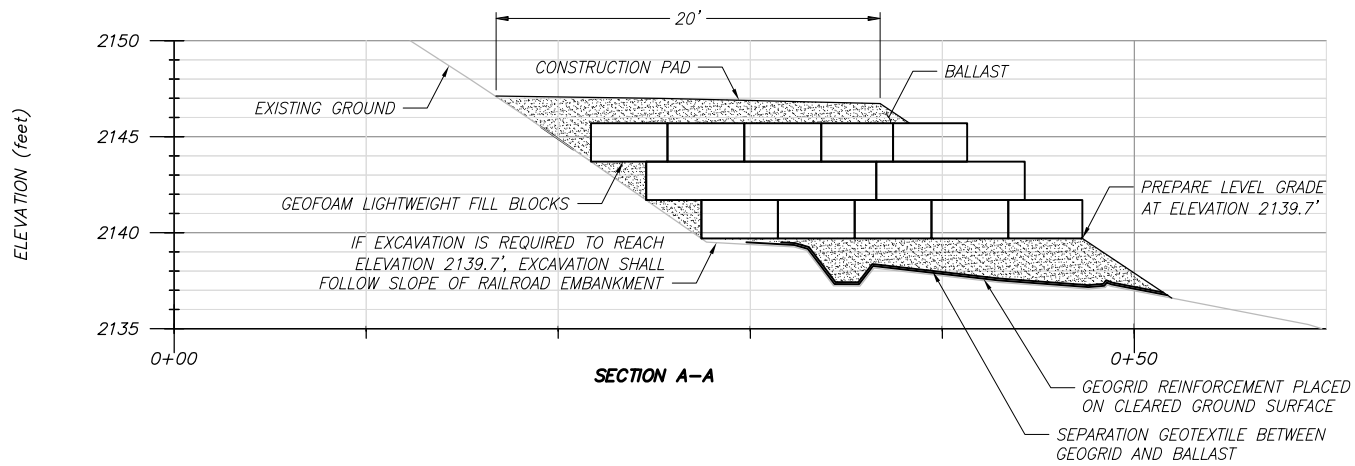
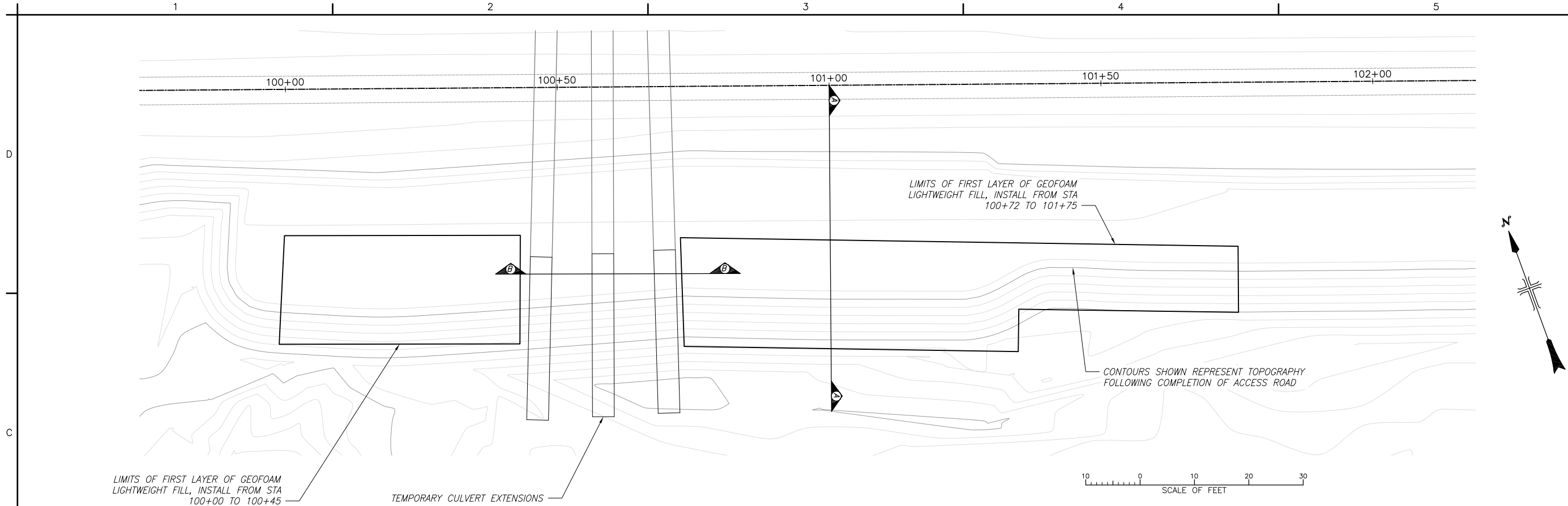
#### NOTES

1. THE CONTRACTOR SHALL NOT DAMAGE OR REMOVE VEGETATION OUTSIDE THE LIMITS OF FILL SHOWN ON SHEETS C-1, C-2 AND C-3 UNLESS APPROVED BY THE CONTRACTING OFFICER.
2. ALL WORK CONDUCTED BY THE CONTRACTOR SHALL COMPLY WITH BNSF SAFETY REQUIREMENTS.
3. FLOATING SILT CURTAIN SHALL BE INSTALLED PRIOR TO BEGINNING CONSTRUCTION OF ACCESS ROAD IN AREAS OF STANDING WATER.
4. THE LOCATION OF THE ACCESS ROAD ENTRANCE, ACCESS ROAD, AND TURN AROUND MAY BE SLIGHTLY ADJUSTED BY THE CONTRACTING OFFICER DEPENDING ON SITE CONDITIONS.
5. FILL FOR ACCESS ROAD SHALL BE BALLAST AND SHALL MEET REQUIREMENTS IN SECTION 9-03.9(1) OF THE STANDARD SPECIFICATIONS; TOTAL VOLUME REQUIRED FOR CONSTRUCTION OF ACCESS ROAD IS 3,000 CY.
6. A BNSF FLAGGER SHALL BE PRESENT ANYTIME THE CONTRACTOR USES THE ACCESS ROAD AND IS WITHIN 25 FEET OF THE TRACK. THE CONTRACTOR SHALL COMMUNICATE WITH THE CONTRACTING OFFICER TO ARRANGE FOR A FLAGGER TO BE PRESENT DURING THESE TIMES.
7. WORK WITHIN 4 FEET OF THE TRACKS IS CONSIDERED FOULING THE TRACK AND REQUIRES THE USE OF SPECIAL SAFETY RULES PER BNSF REQUIREMENTS. THE CONTRACTOR SHALL COMMUNICATE WITH THE CONTRACTING OFFICER REGARDING TIMES WHEN WORKING FOUL OF THE TRACK IS REQUIRED AND SHALL COMPLY WITH BNSF SAFETY REQUIREMENTS AT ALL TIMES.

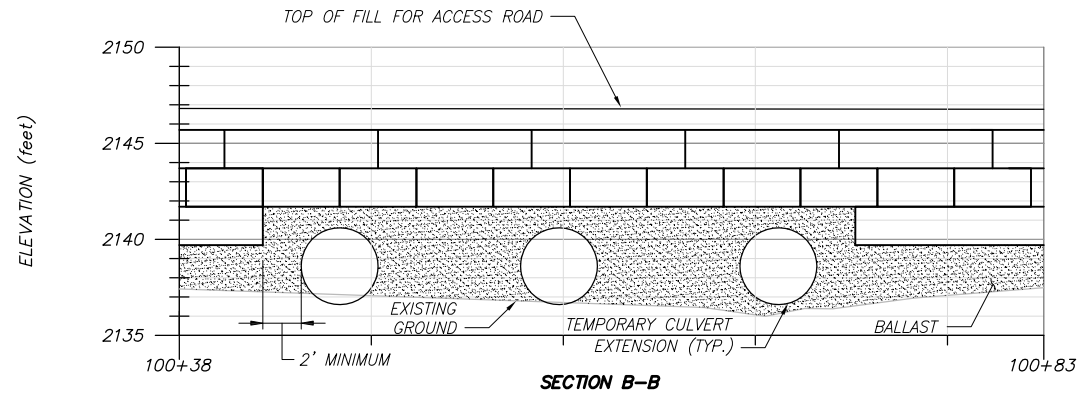
#### ACCESS ROAD DETAILS & NOTES



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Light\_Weight\_Fill\_Grading.dwg  
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1 GEOFOAM LIGHTWEIGHT FILL BLOCKS - PLACEMENT DETAIL  
C-5 SCALE: NTS



#### NOTES

- GEOFOAM LIGHTWEIGHT FILL SHALL MEET REQUIREMENTS DESCRIBED IN THE SPECIAL PROVISIONS.
- THE BOTTOM LAYER OF GEOFOAM LIGHTWEIGHT FILL BLOCKS SHALL BE PLACED AT AN ELEVATION OF 2139.7'. IF THE NATIVE SOIL IS DEEMED UNACCEPTABLE FOR A BASE MATERIAL BY THE CONTRACTING OFFICER, THE CONTRACTOR SHALL OVEREXCAVATE AS NECESSARY TO ALLOW FOR PLACEMENT OF AN 8" LAYER OF BALLAST.
- FOLLOWING COMPLETION OF BRIDGE DECK INSTALLATION BY BNSF, ALL GEOFOAM LIGHTWEIGHT FILL SHALL BE REMOVED; SEE SHEET C-12 FOR ACCESS ROAD REMOVAL.



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LOWER WHITE PINE OXBOW RECONNECTION PROJECT  
GEOFOAM LIGHTWEIGHT FILL PLAN & DETAILS

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2013-05-08

GEOFOAM LIGHTWEIGHT FILL  
PLAN & DETAILS

SHEET C-5

SHEET 8 OF 21



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LOWER WHITE PINE OXBOW RECONNECTION PROJECT  
ACCESS ROAD PROFILE

DRAWN  
N. TRUSCOTT

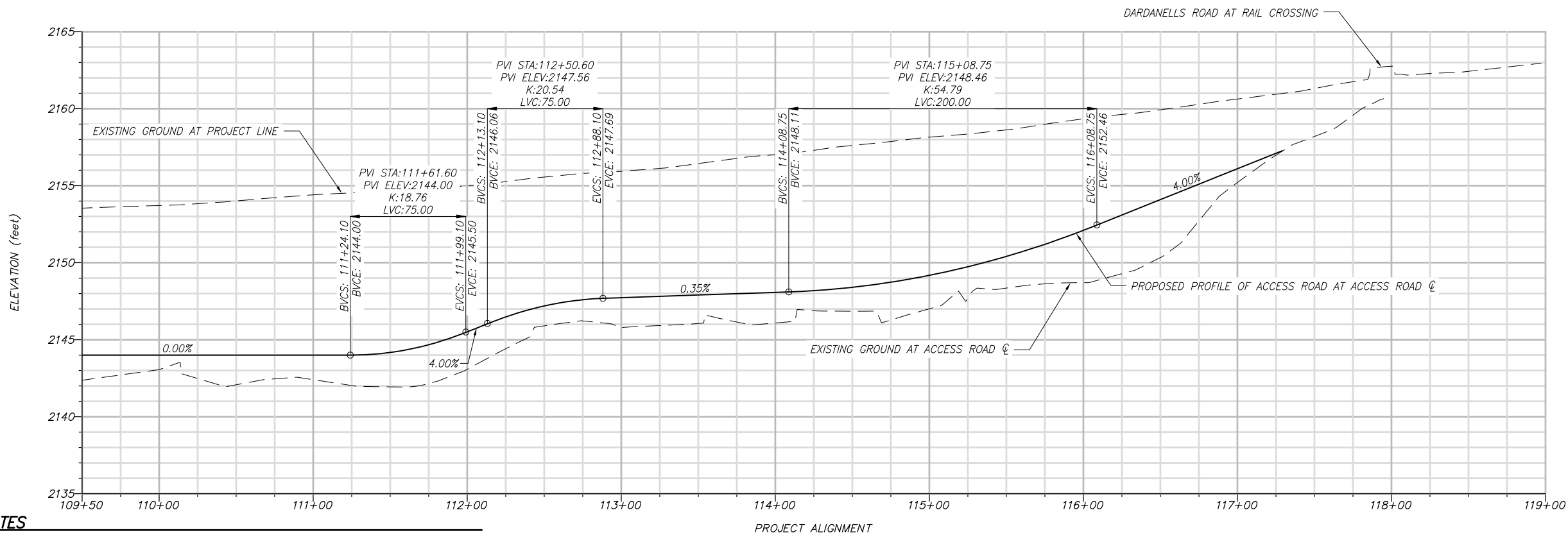
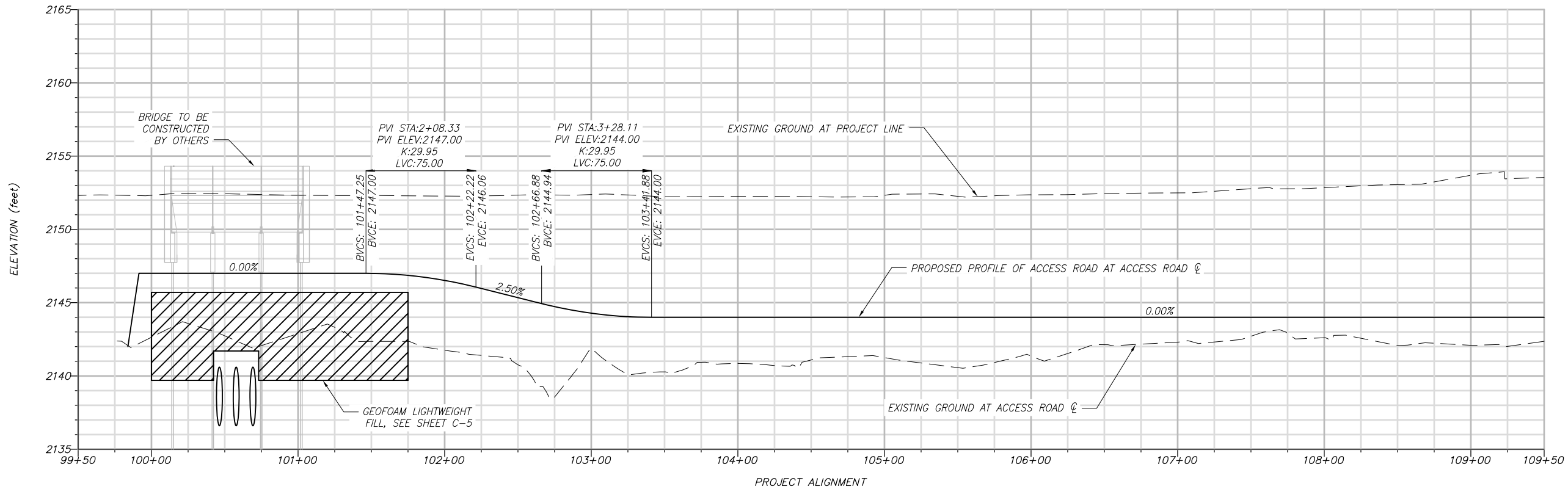
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TITLE

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ACCESS ROAD PROFILE

SHEET C-6

SHEET 9 OF 21



NOTES

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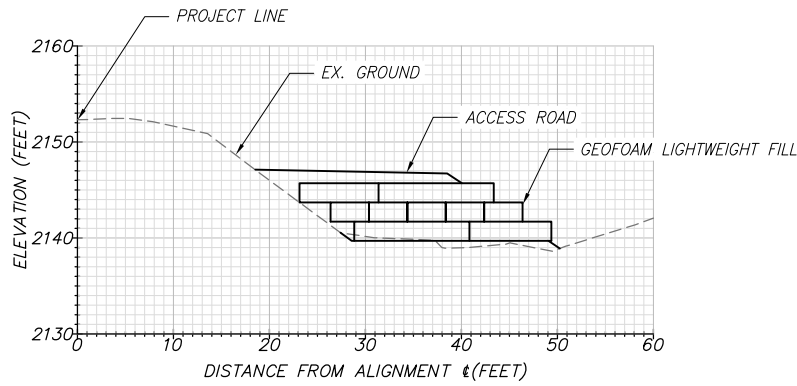
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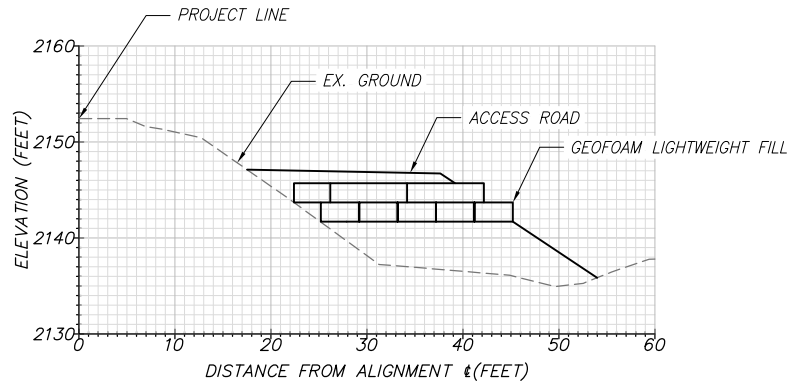
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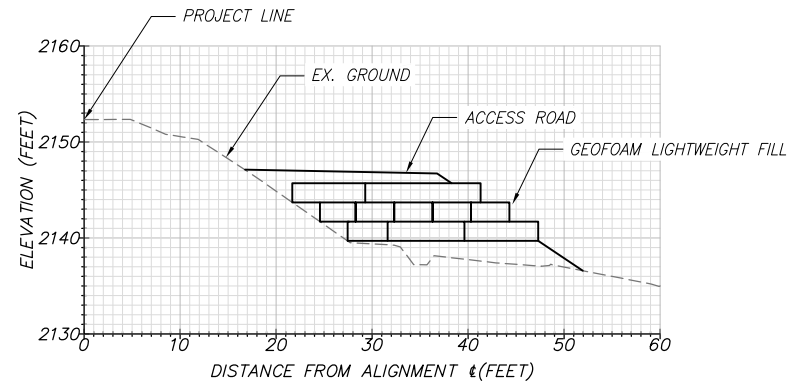
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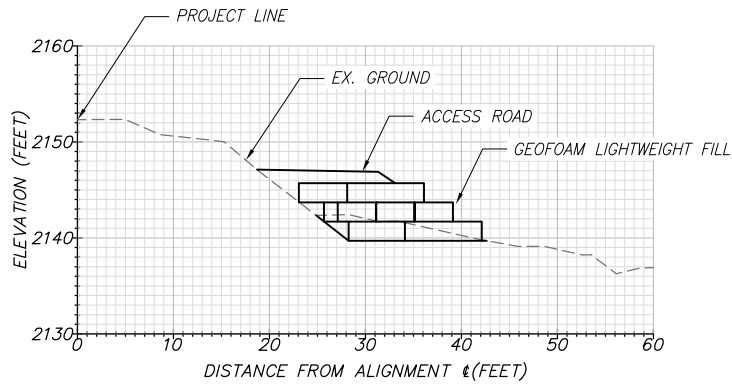
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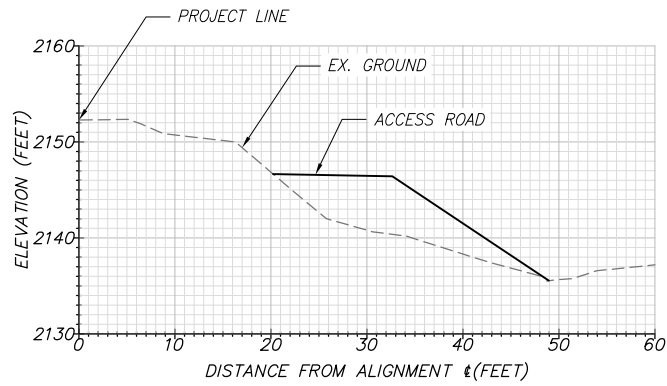
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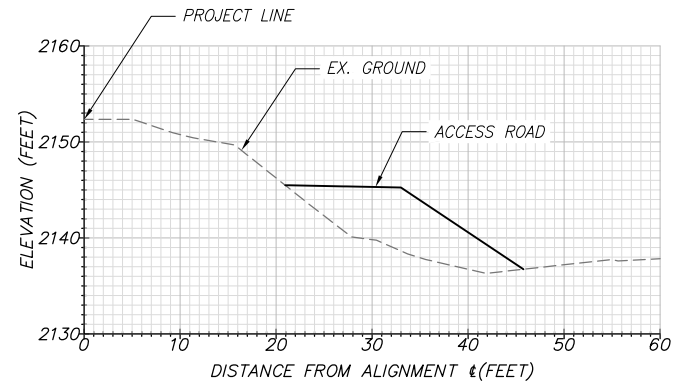
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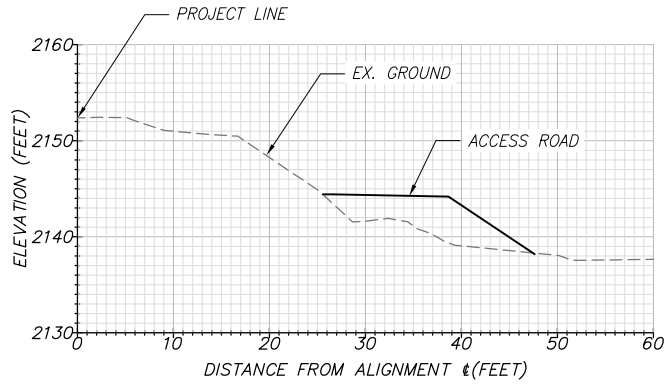
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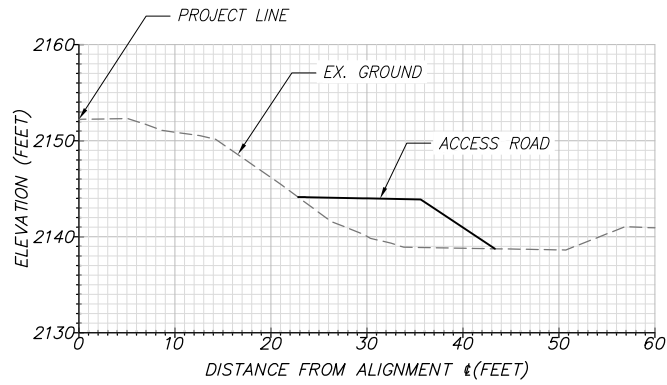
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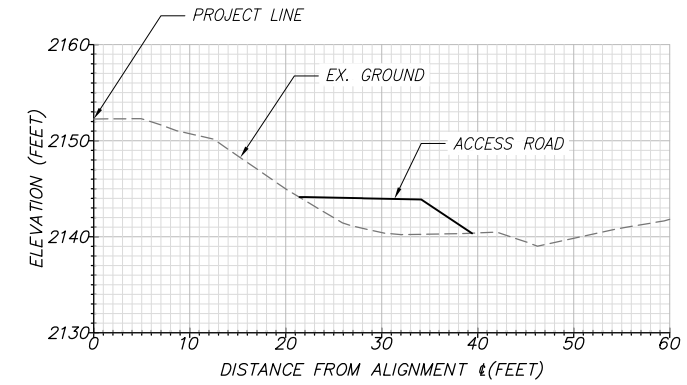
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SECTION 103+00



SECTION 103+50



SECTION 104+00

NOTES

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**WENATCHEE SUBBASIN**  
LOWER WHITE PINE OXBOW RECONNECTION PROJECT  
ACCESS ROAD CROSS-SECTIONS

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N. TRUSCOTT

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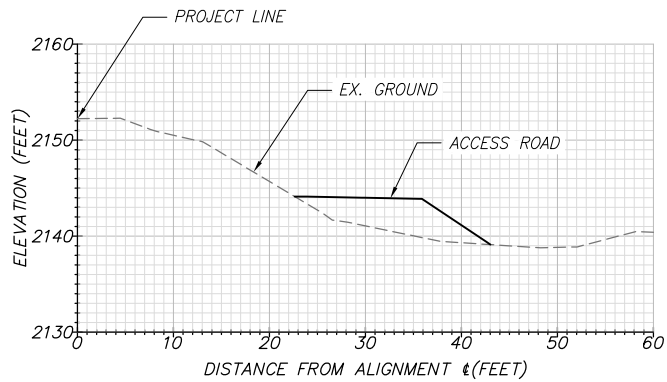
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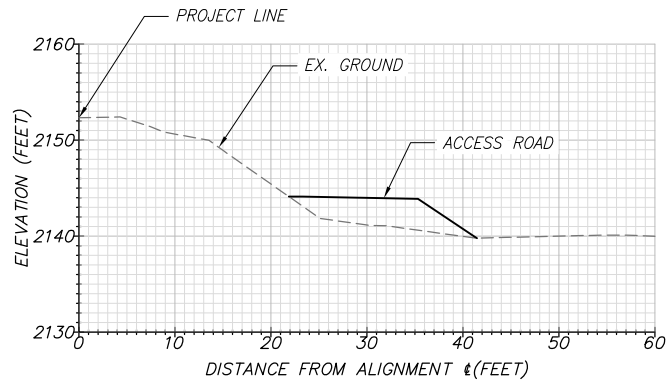
SHEET C-7

SHEET 10 OF 21

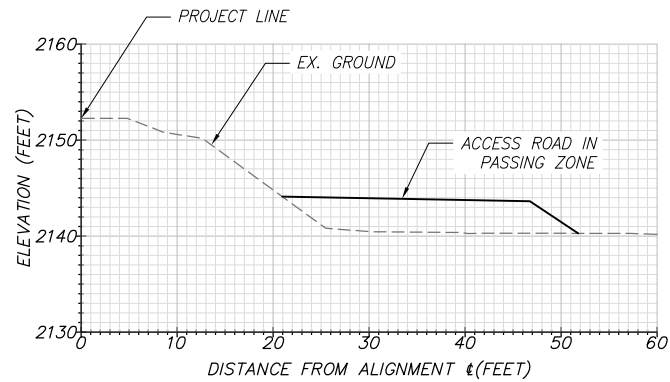
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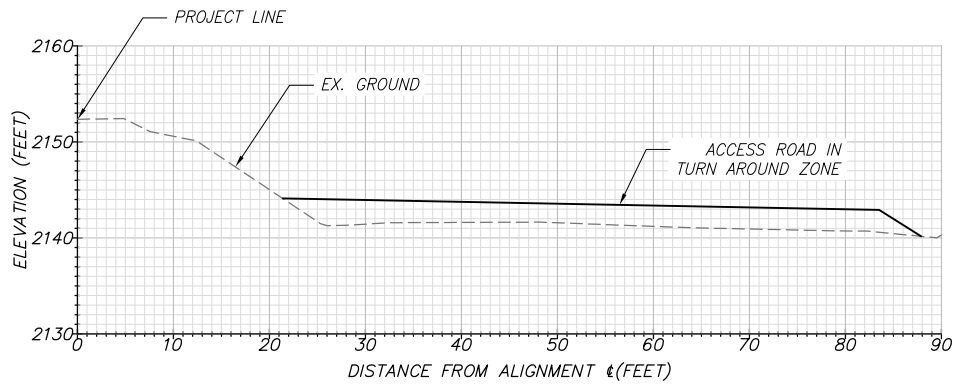
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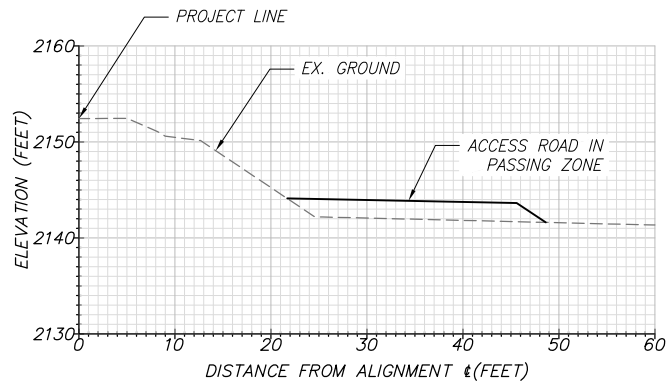
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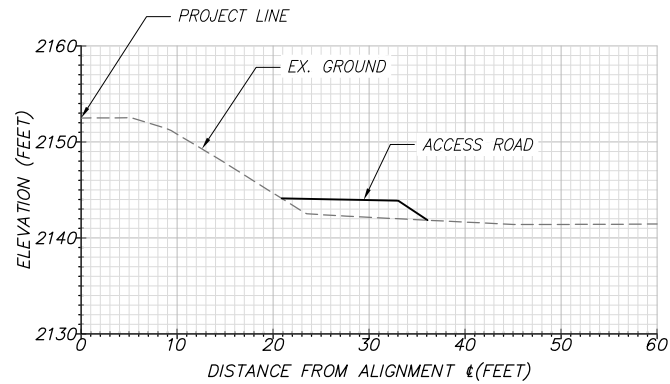
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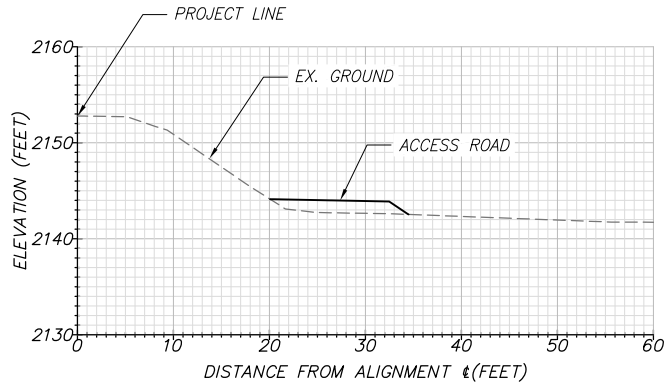
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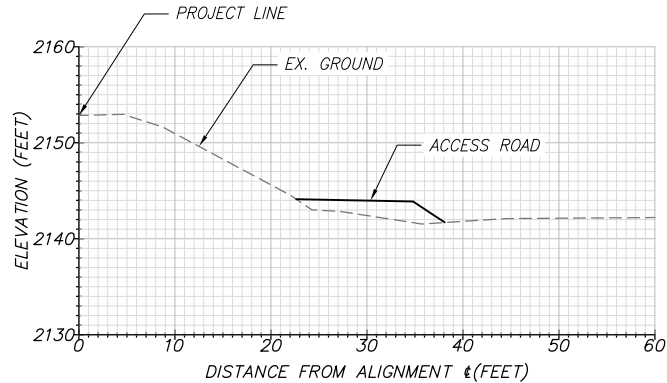
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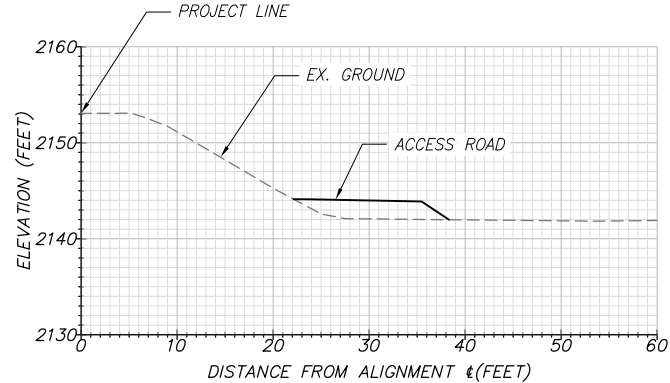
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SECTION 107+50



SECTION 108+00



SECTION 108+50

NOTES

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ACCESS ROAD CROSS-SECTIONS

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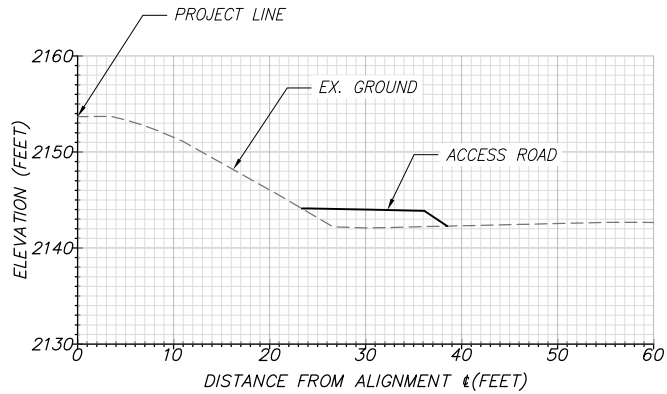
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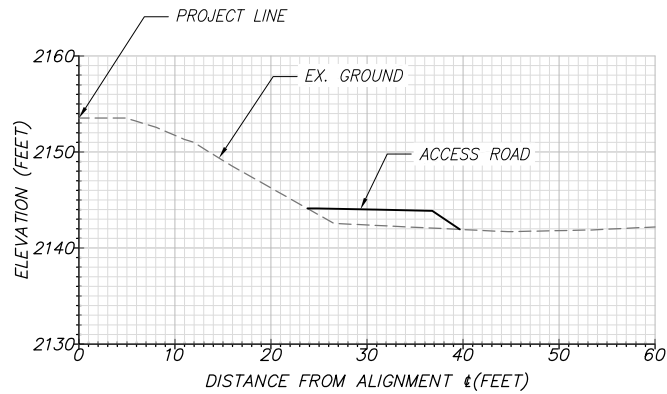
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SHEET 11 OF 21

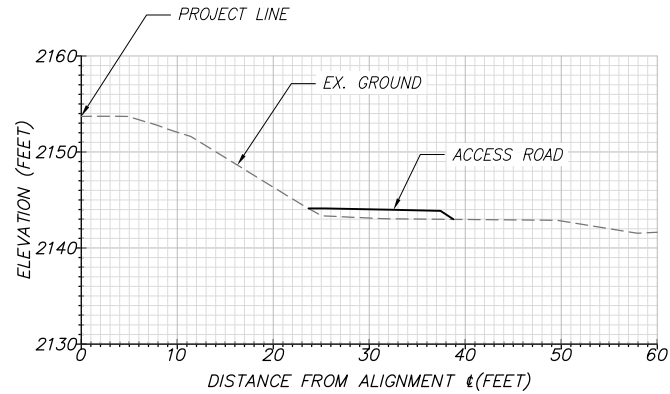
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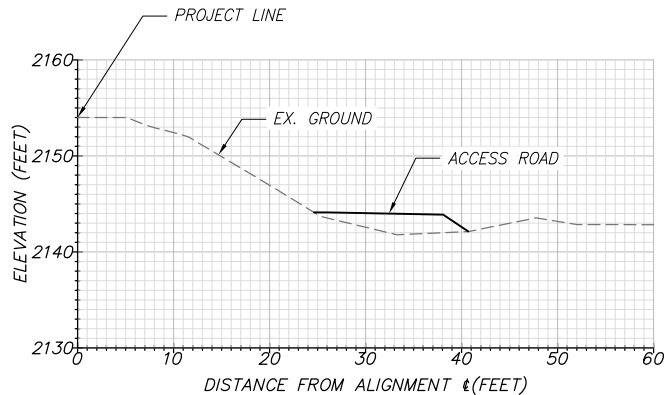
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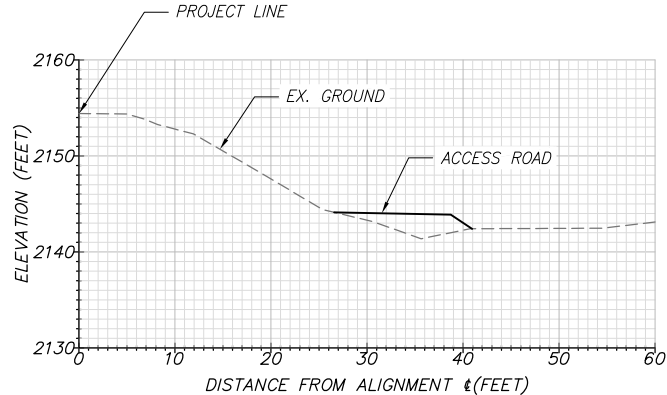
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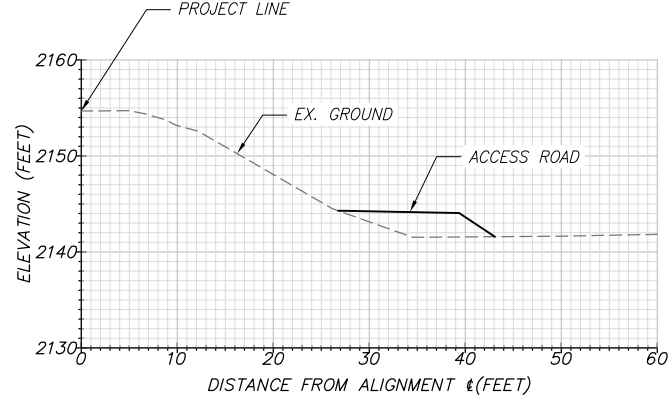
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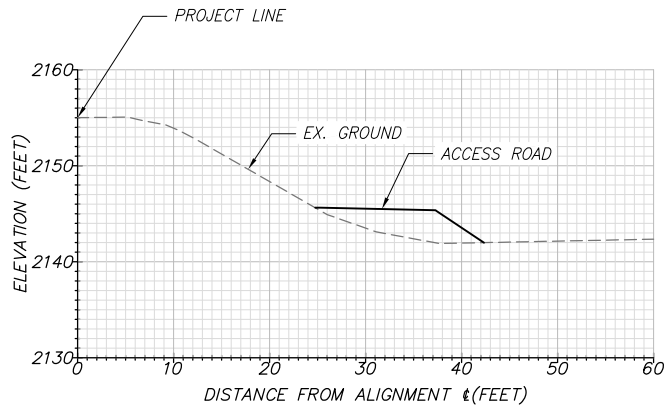
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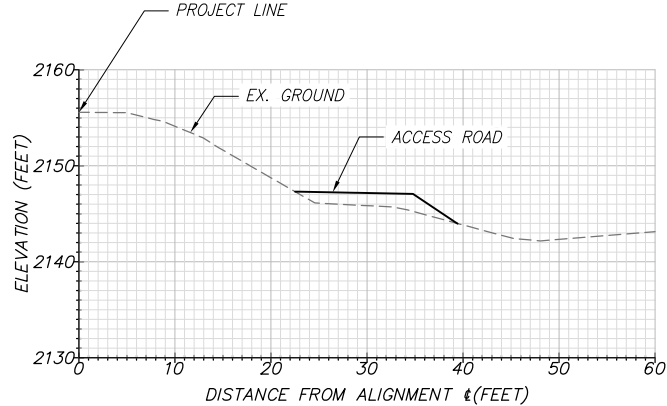
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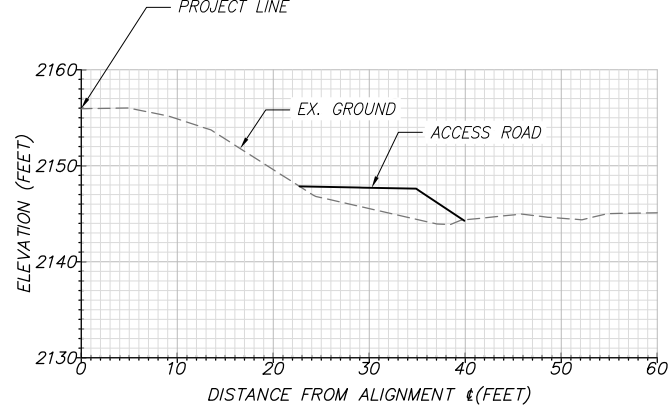
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SECTION 112+00



SECTION 112+50



SECTION 113+00

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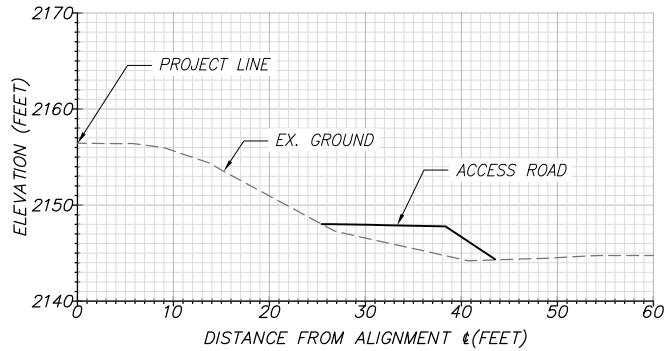
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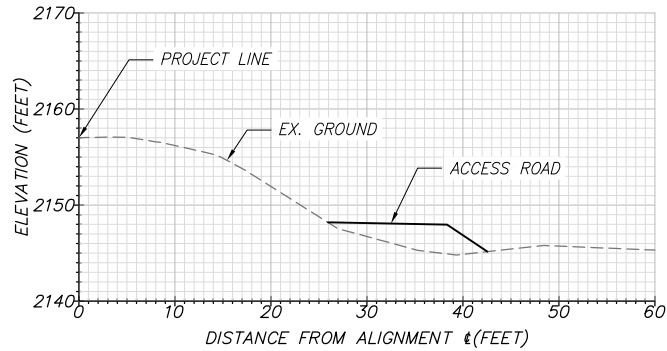
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SHEET 12 OF 21

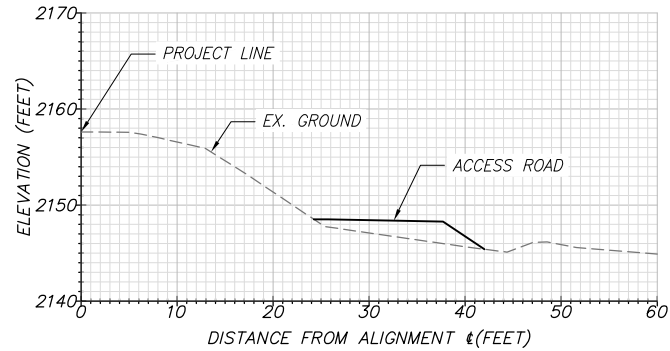
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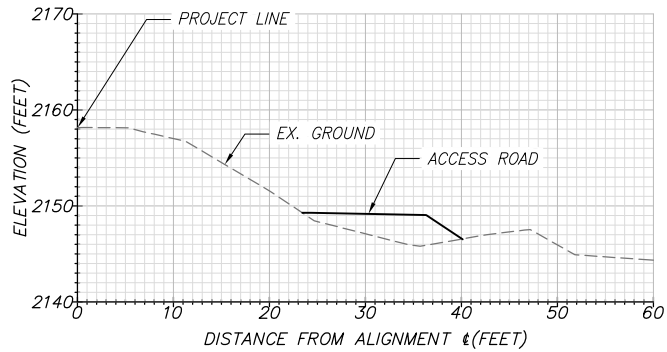
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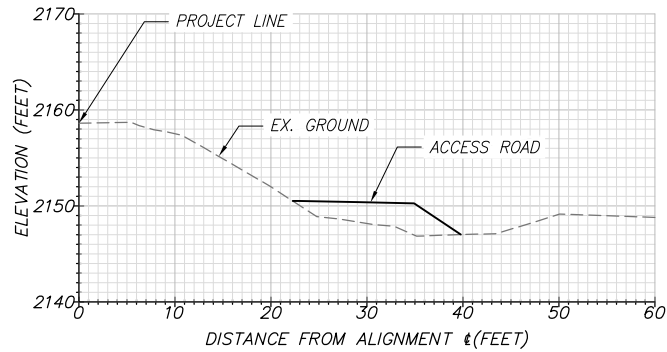
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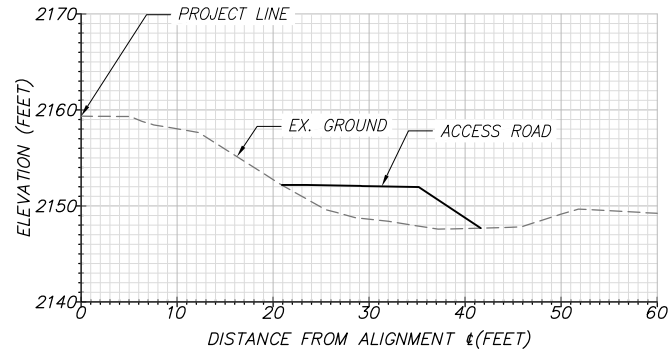
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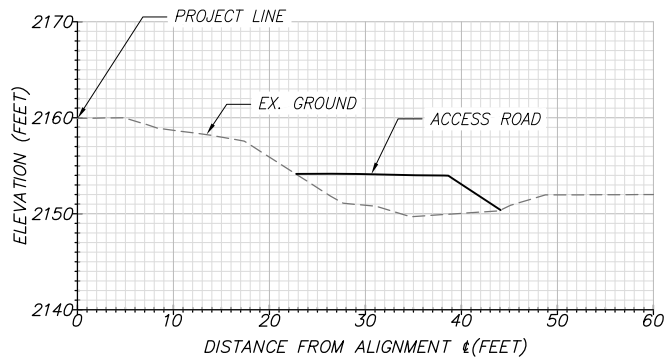
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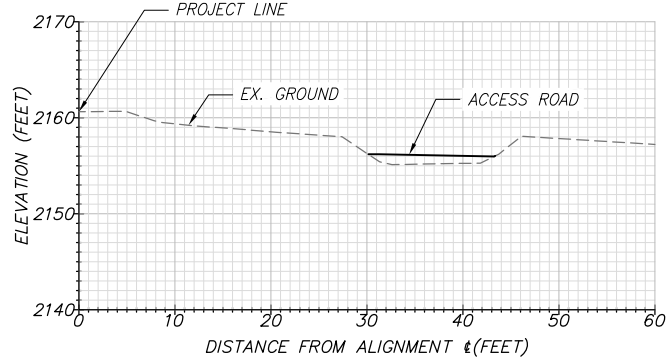
SECTION 115+50



SECTION 116+00



SECTION 116+50



SECTION 117+00

**NOTES**

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LOWER WHITE PINE OXBOW RECONNECTION PROJECT  
ACCESS ROAD CROSS-SECTIONS

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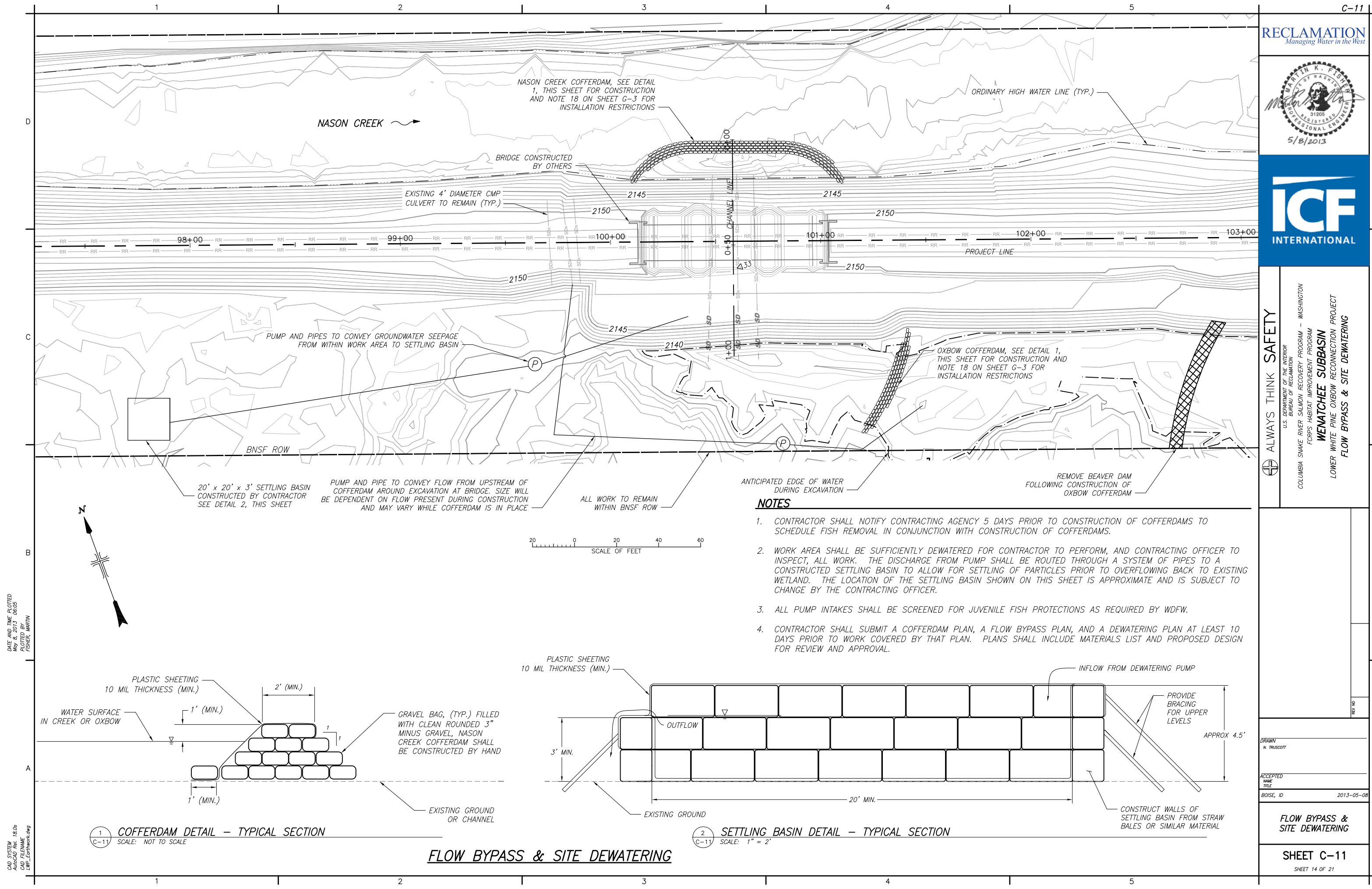
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SHEET C-10

SHEET 13 OF 21





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1 COFFERDAM DETAIL - TYPICAL SECTION  
C-11 SCALE: NOT TO SCALE

2 SETTLING BASIN DETAIL - TYPICAL SECTION  
C-11 SCALE: 1" = 2'

FLOW BYPASS & SITE DEWATERING

NOTES

1. CONTRACTOR SHALL NOTIFY CONTRACTING AGENCY 5 DAYS PRIOR TO CONSTRUCTION OF COFFERDAMS TO SCHEDULE FISH REMOVAL IN CONJUNCTION WITH CONSTRUCTION OF COFFERDAMS.
2. WORK AREA SHALL BE SUFFICIENTLY DEWATERED FOR CONTRACTOR TO PERFORM, AND CONTRACTING OFFICER TO INSPECT, ALL WORK. THE DISCHARGE FROM PUMP SHALL BE ROUTED THROUGH A SYSTEM OF PIPES TO A CONSTRUCTED SETTLING BASIN TO ALLOW FOR SETTLING OF PARTICLES PRIOR TO OVERFLOWING BACK TO EXISTING WETLAND. THE LOCATION OF THE SETTLING BASIN SHOWN ON THIS SHEET IS APPROXIMATE AND IS SUBJECT TO CHANGE BY THE CONTRACTING OFFICER.
3. ALL PUMP INTAKES SHALL BE SCREENED FOR JUVENILE FISH PROTECTIONS AS REQUIRED BY WDFW.
4. CONTRACTOR SHALL SUBMIT A COFFERDAM PLAN, A FLOW BYPASS PLAN, AND A DEWATERING PLAN AT LEAST 10 DAYS PRIOR TO WORK COVERED BY THAT PLAN. PLANS SHALL INCLUDE MATERIALS LIST AND PROPOSED DESIGN FOR REVIEW AND APPROVAL.



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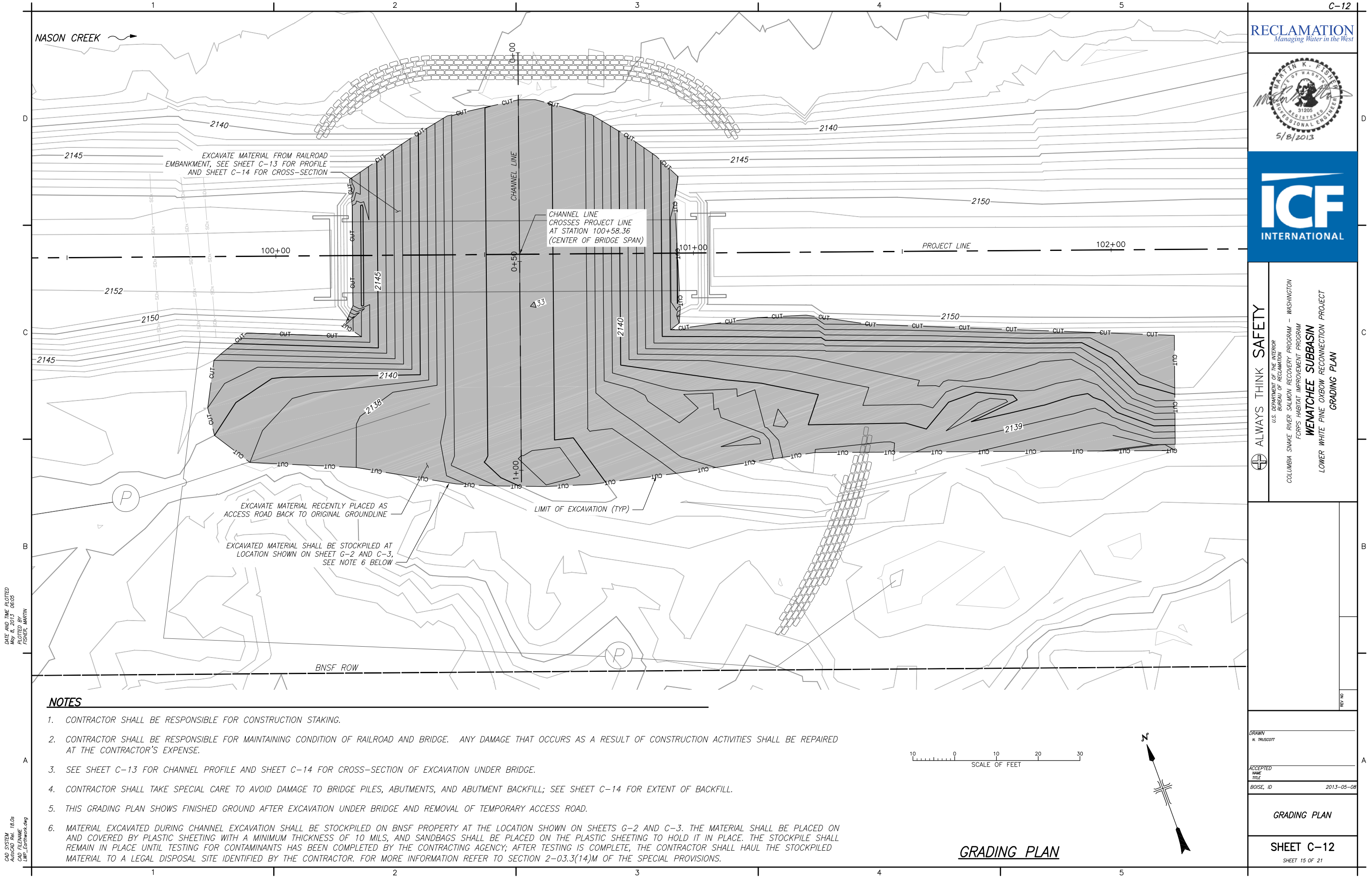
LOWER WHITE PINE OXBOW RECONNECTION PROJECT  
FLOW BYPASS & SITE DEWATERING

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NAME  
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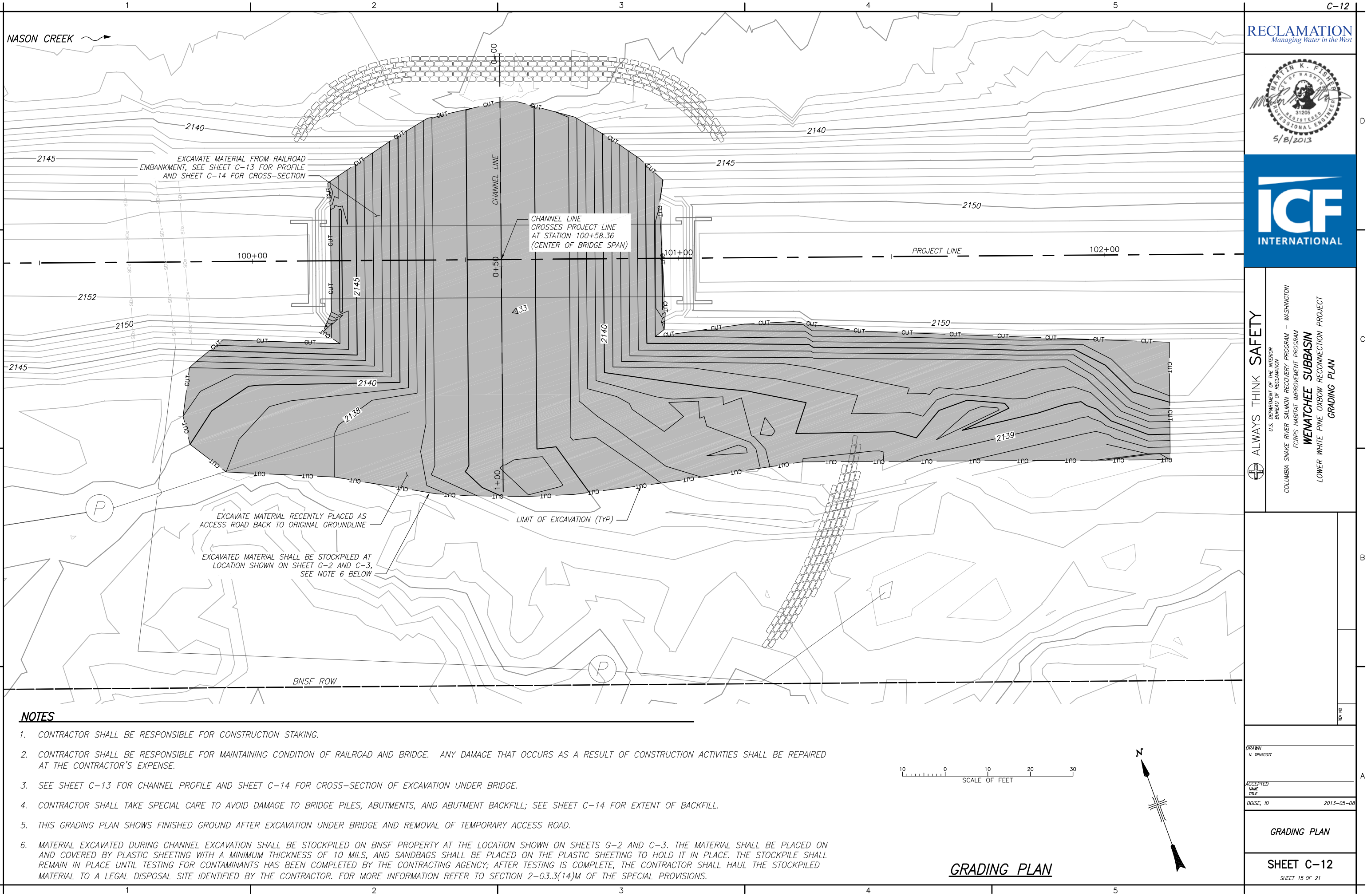
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FLOW BYPASS &  
SITE DEWATERING



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RECLAMATION  
Managing Water in the West

5/8/2013

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GRADING PLAN

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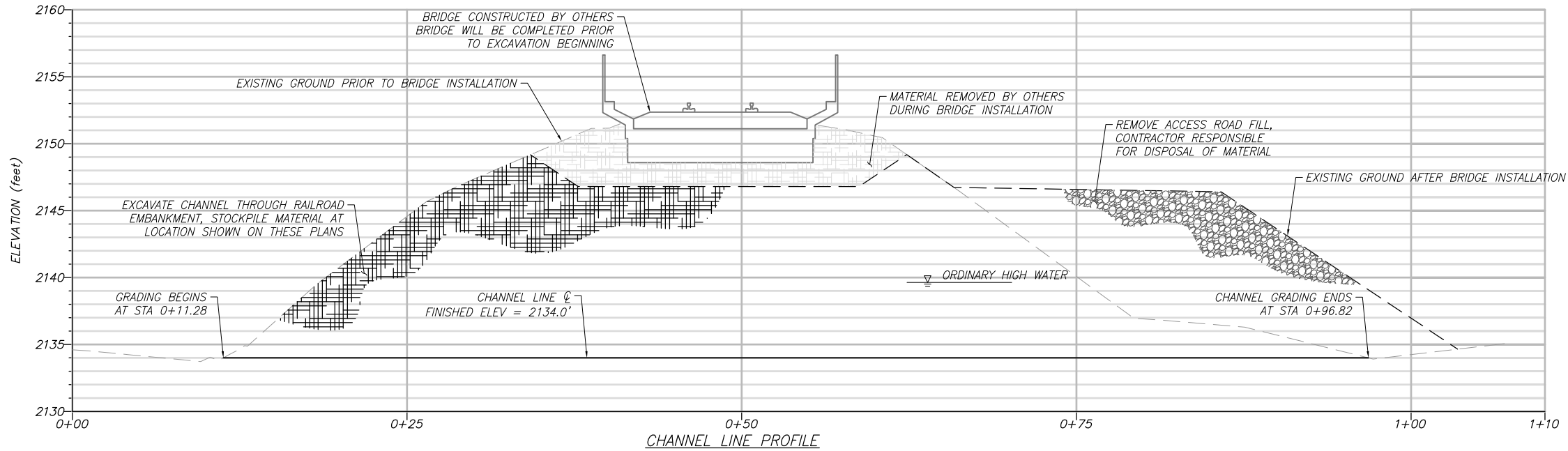
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**GRADING PLAN**

**SHEET C-12**  
SHEET 15 OF 21

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#### NOTES

1. BRIDGE WILL BE CONSTRUCTED BY BNSF UNDER SEPARATE CONTRACT. THE EXCAVATION UNDER BRIDGE WILL OCCUR AFTER THE BRIDGE IS COMPLETED. THE CONTRACTOR IS RESPONSIBLE TO REPAIR OR REPLACE ANY BRIDGE AND/OR RAILROAD COMPONENTS DAMAGED BY THE CONTRACTOR'S OPERATIONS. CONTRACTOR MAY BE HELD FINANCIALLY RESPONSIBLE FOR COSTS ASSOCIATED WITH RAIL SHUTDOWN DUE TO DAMAGE CAUSED BY THE CONTRACTOR.
2. MATERIAL EXCAVATED DURING CHANNEL EXCAVATION SHALL BE STOCKPILED ON BNSF PROPERTY AT THE LOCATION SHOWN ON SHEETS G-2 AND C-3. THE MATERIAL SHALL BE PLACED ON AND COVERED BY PLASTIC SHEETING WITH A MINIMUM THICKNESS OF 10 MILS, AND SANDBAGS SHALL BE PLACED ON THE PLASTIC SHEETING TO HOLD IT IN PLACE. THE STOCKPILE SHALL REMAIN IN PLACE UNTIL TESTING FOR CONTAMINANTS HAS BEEN COMPLETED BY THE CONTRACTING AGENCY; AFTER TESTING IS COMPLETE, THE CONTRACTOR SHALL HAUL THE STOCKPILED MATERIAL TO A LEGAL DISPOSAL SITE IDENTIFIED BY THE CONTRACTOR. FOR MORE INFORMATION REFER TO SECTION 2-03.3(14)M OF THE SPECIAL PROVISIONS.

#### CHANNEL GRADING PROFILE

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CHANNEL GRADING PROFILE

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CHANNEL GRADING  
PROFILE

SHEET C-13

SHEET 16 OF 21





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**WENATCHEE SUBBASIN**  
LOWER WHITE PINE OXBOW RECONNECTION PROJECT  
CHANNEL GRADING DETAILS

DRAWN  
N. TRUSCOTT

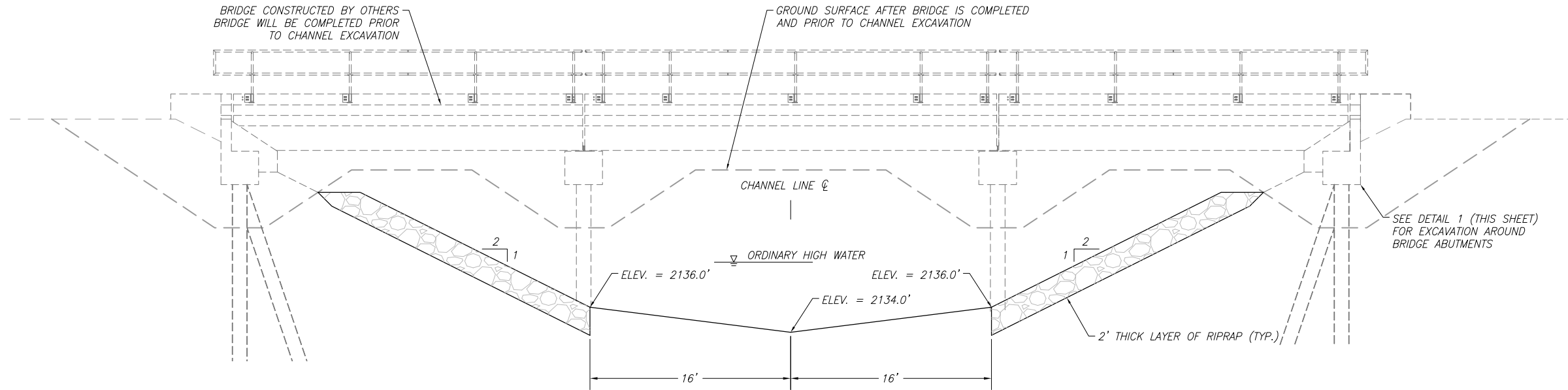
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BOISE, ID 2013-05-08

CHANNEL GRADING  
DETAILS

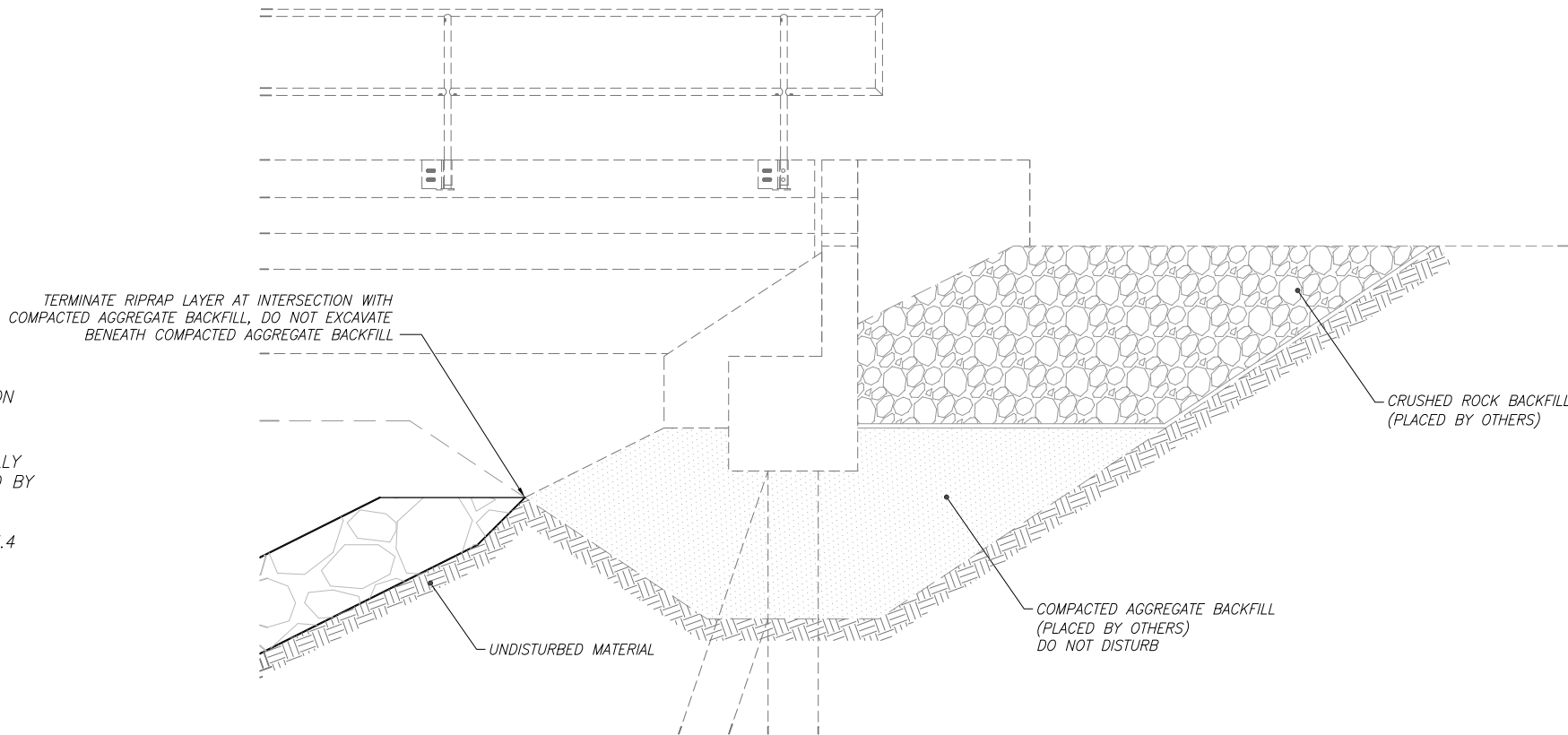
SHEET C-14

SHEET 17 OF 21



5 0 5 10 15  
SCALE OF FEET

CHANNEL CROSS SECTION AT PROJECT LINE



1  
C-14

BRIDGE ABUTMENT EXCAVATION DETAIL

SCALE: 1" = 2'

NOTES

- BRIDGE WILL BE CONSTRUCTED BY BNSF UNDER SEPARATE CONTRACT. THE EXCAVATION UNDER BRIDGE WILL OCCUR AFTER THE BRIDGE IS COMPLETED. THE CONTRACTOR IS RESPONSIBLE TO REPAIR OR REPLACE ANY BRIDGE AND/OR RAILROAD COMPONENTS DAMAGED BY THE CONTRACTOR'S OPERATIONS. CONTRACTOR MAY BE HELD FINANCIALLY RESPONSIBLE FOR COSTS ASSOCIATED WITH RAIL SHUTDOWN DUE TO DAMAGE CAUSED BY THE CONTRACTOR.
- RIPRAP FOR BANK PROTECTION AT BRIDGES SHALL BE "CLASS A" PER SECTION 9-13.4 OF THE STANDARD SPECIFICATIONS (GRADATION SHOWN BELOW):

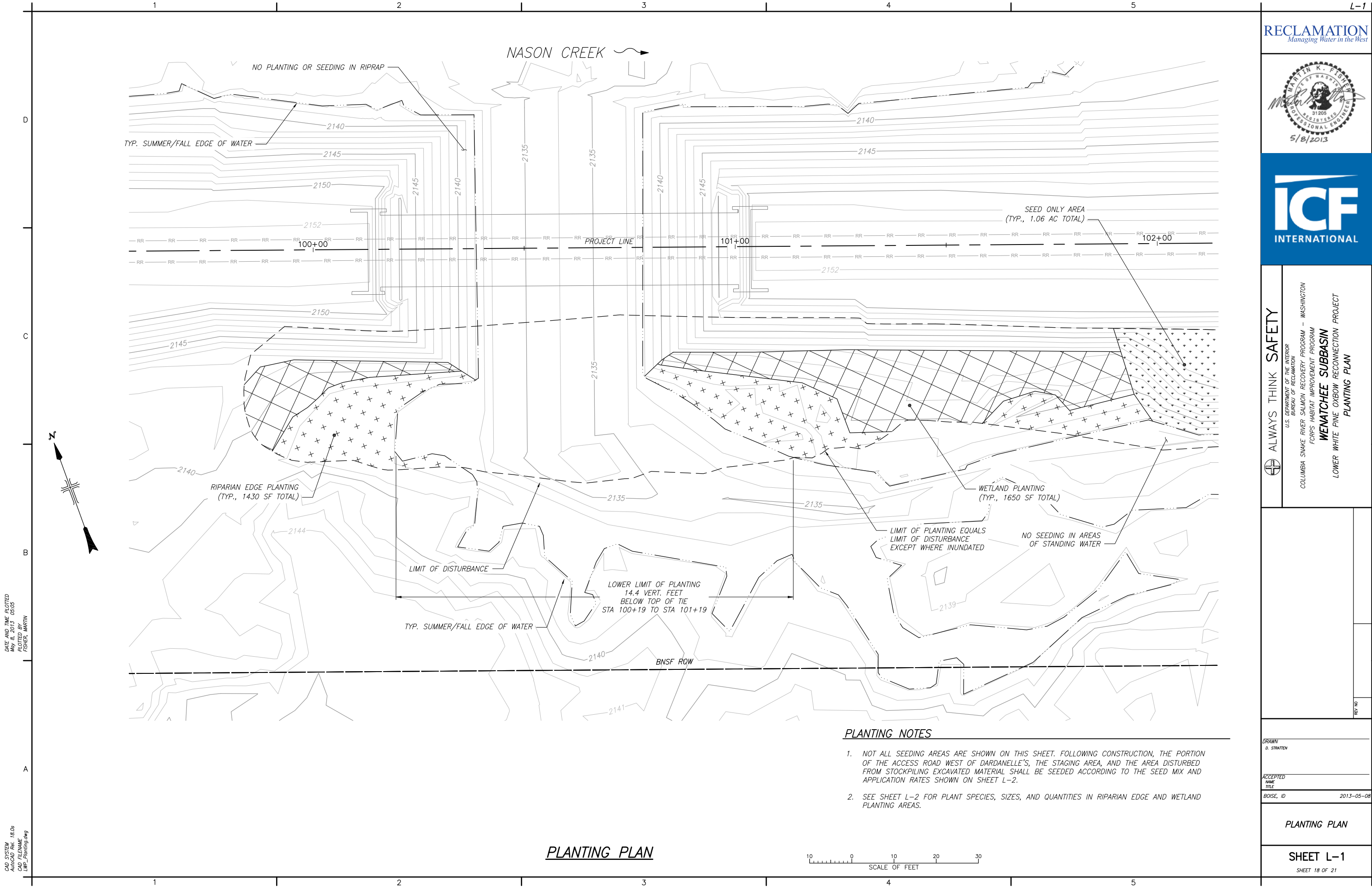
<u>DIAMETER (INCHES)</u>	<u>PERCENT PASSING</u>
18	100
16	80 - 95
12	50 - 80
8	15 - 50
4	15 MAX

- MATERIAL EXCAVATED DURING CHANNEL EXCAVATION SHALL BE STOCKPILED ON BNSF PROPERTY AT THE LOCATION SHOWN ON SHEETS G-2 AND C-3. THE MATERIAL SHALL BE PLACED ON AND COVERED BY PLASTIC SHEETING WITH A MINIMUM THICKNESS OF 10 MILS, AND SANDBAGS SHALL BE PLACED ON THE PLASTIC SHEETING TO HOLD IT IN PLACE. THE STOCKPILE SHALL REMAIN IN PLACE UNTIL TESTING FOR CONTAMINANTS HAS BEEN COMPLETED BY THE CONTRACTING AGENCY; AFTER TESTING IS COMPLETE, THE CONTRACTOR SHALL HAUL THE STOCKPILED MATERIAL TO A LEGAL DISPOSAL SITE IDENTIFIED BY THE CONTRACTOR. FOR MORE INFORMATION REFER TO SECTION 2-03.3(14)M OF THE SPECIAL PROVISIONS.

CHANNEL GRADING DETAILS

DATE AND TIME PLOTTED  
4/18/2013 10:05  
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2013/04/18 10:05  
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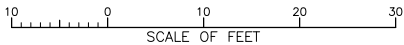


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**PLANTING NOTES**

1. NOT ALL SEEDING AREAS ARE SHOWN ON THIS SHEET. FOLLOWING CONSTRUCTION, THE PORTION OF THE ACCESS ROAD WEST OF DARDANELLE'S, THE STAGING AREA, AND THE AREA DISTURBED FROM STOCKPILING EXCAVATED MATERIAL SHALL BE SEEDDED ACCORDING TO THE SEED MIX AND APPLICATION RATES SHOWN ON SHEET L-2.
2. SEE SHEET L-2 FOR PLANT SPECIES, SIZES, AND QUANTITIES IN RIPARIAN EDGE AND WETLAND PLANTING AREAS.



**PLANTING PLAN**

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FCRPS HABITAT IMPROVEMENT PROGRAM  
**WENATCHEE SUBBASIN**  
LOWER WHITE PINE OXBOW RECONNECTION PROJECT  
PLANTING PLAN

DRAWN  
D. STRATTEN

ACCEPTED  
NAME  
TITLE

BOISE, ID

2013-05-08

PLANTING PLAN

SHEET L-1

SHEET 18 OF 21

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MAR 8, 2013 15:05  
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PLANT SCHEDULE

RIPARIAN EDGE	ID	SPECIES NAME	COMMON NAME	TYP. SPACING	QUANTITY	SIZE
1430 SQ FT	CMAT	SEE COIR MAT PLANT LIST (THIS SHEET)	PRE-PLANTED COIR MAT	AT DIRECTION OF C.O.	80 SY	N/A
	CAOB	CAREX OBNUPTA	SLOUGH SEDGE	2'	100	10 C.I. CONT.
	SCMI	SCIRPUS MICROCARPUS	PANTICLED BULRUSH	2'	70	10 C.I. CONT.
WETLAND						
1650 SQ FT	COSE	CORNUS SERICEA	RED-OSIER DOGWOOD	4'	30	40 C.I. CONT.
	SALA	SALIX LUCIDA SSP. LASIANDRA	PACIFIC WILLOW	4'	30	36" LIVE STAKE
	SASI	SALIX SITCHENSIS	SITKA WILLOW	4'	20	36" LIVE STAKE
	SPDO	SPIREA DOUGLASII	DOUGLAS SPIREA	4'	20	40 C.I. CONT.

PLANT SCHEDULE NOTES

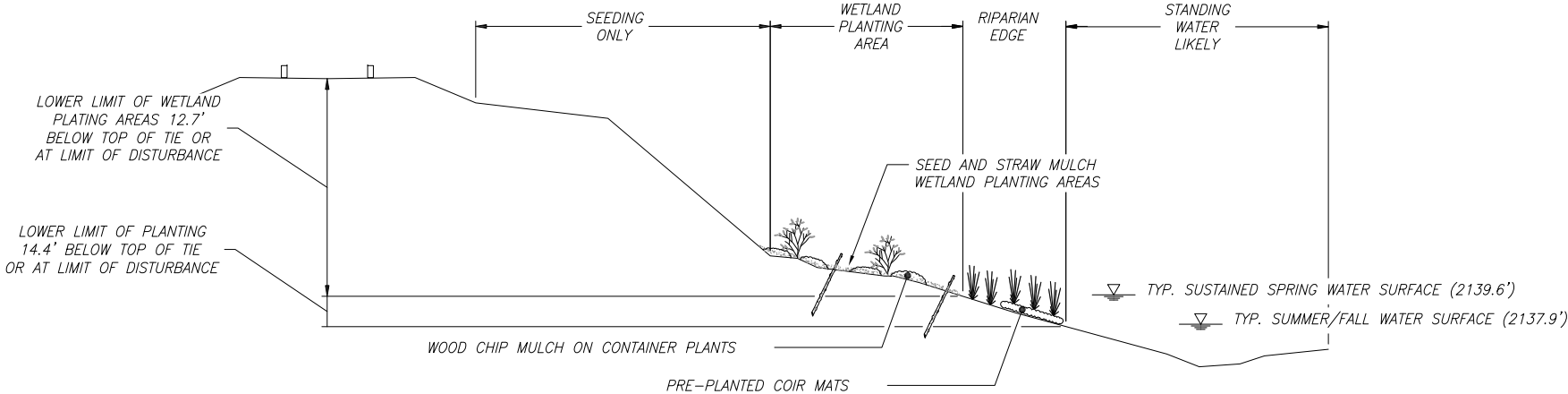
- DENSITY AND DISTRIBUTION OF PLANTS SHALL DEPEND ON SITE CONDITIONS AND SHALL BE SET AT THE DIRECTION OF THE CONTRACTING OFFICER.
- PLANT MATERIAL WILL BE PROVIDED AT NO ADDITIONAL COST TO THE CONTRACTOR. THE CONTRACTOR SHALL FURNISH ALL OTHER MATERIALS REQUIRED TO INSTALL PLANTS AS SHOWN ON THESE PLANS, INCLUDING WOOD CHIP MULCH (5 CY) AND PLANT TUBES (50).

PRE-PLANTED COIR MAT SPECIES SELECTION

ID	SPECIES NAME	COMMON NAME
CA	CAREX AQUATILIS	WATER SEDGE
CL	CAREX LANGUINOSA	WOOLY SEDGE
CN	CAREX NEBRASCENSIS	NEBRASKA SEDGE
CU	CAREX UTRICULATA	BEAKED SEDGE
JB	JUNCUS BALTICUS	BALTIC RUSH

PRE-PLANTED COIR MAT NOTES

- PRE-PLANTED COIR MATS WILL BE PROVIDED AT NO ADDITIONAL COST TO THE CONTRACTOR AND WILL CONTAIN AT LEAST 3 SPECIES FROM THE TABLE ABOVE. THE CONTRACTOR SHALL BE RESPONSIBLE FOR FURNISHING ALL OTHER MATERIAL REQUIRED TO INSTALL SEDGE MATS AS SHOWN ON THESE PLANS, INCLUDING WOODEN STAKES (128).
- PLANTS SHALL BE MATURE ENOUGH AS TO PROVIDE COVERAGE TO APPROXIMATELY 50 PERCENT OF THE COIR MAT.
- SEE PRE-PLANTED COIR MAT INSTALLATION DETAILS (SHEET L-4) FOR INSTALLATION DETAILS.



1  
L-2  
TYPICAL PLANTING CROSS-SECTION  
NOT TO SCALE

SEED MIX

SEED MIX	SPECIES NAME	COMMON NAME	LBS PLS./ACRE
0.97 ACRES	ACHNATHERUM HYMENOIDES	INDIAN RICEGRASS	12
	AGROPYRON SPICATUM	BLUEBUNCH WHEATGRASS	12
	ELYMUS TRACHYCAULUS	SLENDER WHEATGRASS	8
	FESTUCA IDAHOENSIS	IDAHO FESCUE	6
	TRITICUM AESTIVUM X SECALE CEREALE	STERILE TRITICALE	60
	POA SECUNDA	SANDBERG BLUEGRASS	4

SEEDING NOTES

- FOLLOWING CONSTRUCTION, THE PORTION OF THE ACCESS ROAD WEST OF DARDANELLE'S ROAD, THE STAGING AREA, AND THE AREA DISTURBED FROM STOCKPILING EXCAVATED MATERIAL SHALL BE SEEDED ACCORDING TO THE SEED MIX AND APPLICATION RATES SHOWN ON THIS SHEET.
- ALL SEEDING AREAS SHALL BE PREPARED IN ACCORDANCE WITH SECTION 8-01.3 OF THE STANDARD SPECIFICATIONS. SEEDING AREAS NEED NOT BE CULTIVATED, BUT SHALL BE RAKED OR CHAINED TO ENSURE A FRIABLE SURFACE FREE OF SOIL CLUMPS LARGER THAN 2 INCHES IN DIAMETER.
- APPLICATION OF SEED SHALL BE FOLLOWED BY THE APPLICATION OF STRAW MULCH APPLIED AT A RATE OF 2 TONS/ACRE (2.48 TONS TOTAL).
- THE SEED MIX SPECIFIED ABOVE WILL BE PROVIDED TO THE CONTRACTOR AT NO ADDITIONAL COST. THE CONTRACTOR SHALL BE RESPONSIBLE FOR FURNISHING ALL OTHER MATERIALS REQUIRED TO SEED AS SHOWN ON THESE PLANS.

TYPICAL PLANTING CROSS-SECTION NOTES

- THIS TYPICAL CROSS-SECTION IS INTENDED AS A GENERAL GUIDE TO PLANTING NEAR THE BREACH OF THE RAIL PRISM. SEE SHEET L-1 FOR LOCATION AND EXTENT OF ALL PLANTING AREAS.
- PLANT INSTALLATION SHALL OCCUR UNDER THE DIRECTION OF CONTRACTING OFFICER. LOCATION AND EXTENT OF PLANTING AREAS MAY CHANGE BASED ON SITE CONDITIONS.
- THE ANTICIPATED WATER SURFACE ELEVATION SHOWN ON THIS SHEET IS AN ESTIMATE OF LIKELY CONDITIONS AT THE TIME OF PLANTING. CONDITIONS MAY VARY. RIPARIAN EDGE PLANTINGS MAY BE INSTALLED IN WATER UP TO 4 INCHES DEEP.
- PLANTINGS SHALL MAINTAIN A 25 FOOT OFFSET FROM THE PROJECT LINE (CENTER OF TRACKS).



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WENATCHEE SUBBASIN

LOWER WHITE PINE OXBOW RECONNECTION PROJECT

PLANT SCHEDULE & DETAILS

DRAWN  
D. STRATTEN

ACCEPTED  
NAME  
TITLE

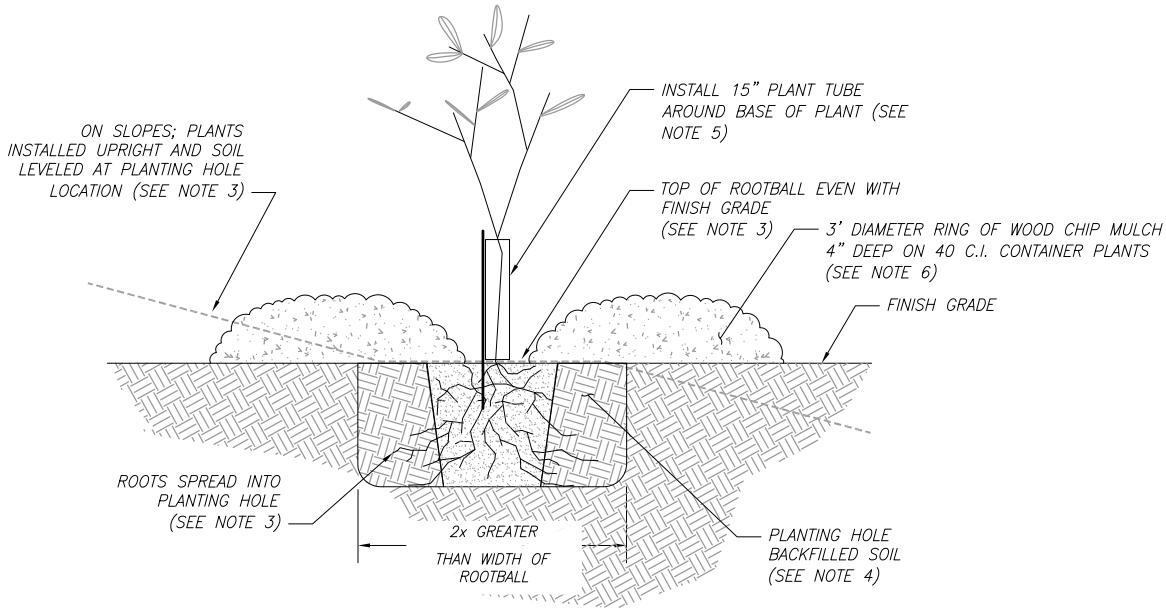
BOISE, ID

2013-05-08

PLANT SCHEDULE  
& DETAILS

SHEET L-2

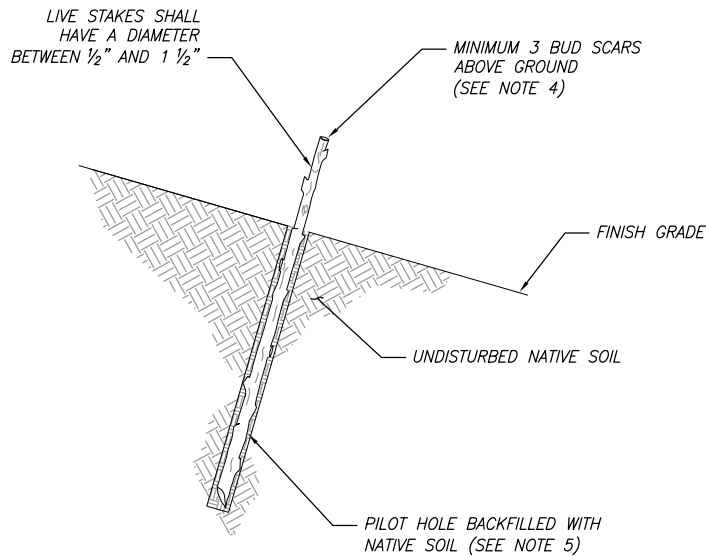
SHEET 19 OF 21



1  
L-3  
40 CUBIC INCH CONTAINER PLANT INSTALLATION  
NOT TO SCALE

#### CONTAINER PLANT INSTALLATION NOTES:

1. PRIOR TO INSTALLATION OF CONTAINER PLANT, CLEANLY PRUNE ANY BROKEN BRANCHES AND SCARIFY OUTER 1" OF ROOTBALL. CLEANLY PRUNE BROKEN, DEAD, OR DISEASED ROOTS. ROOTBOUND PLANTS SHALL BE REJECTED.
2. EXCAVATE CIRCULAR PLANTING HOLE WITH VERTICAL SIDES. SCARIFY SIDES AND BOTTOM OF PLANTING HOLE.
3. PLACE ROOTBALL ON UNDISTURBED NATIVE SOIL AT BASE OF PLANTING HOLE AND SPREAD ROOTS OUT TO SIDES OF HOLE. CLEANLY TRIM ANY ROOTS THAT ARE TOO LONG TO LAY STRAIGHT IN PLANTING HOLE. PLANTS SHALL BE UPRIGHT, PLUMB, AND TOP OF ROOTBALL SHALL BE EVEN WITH FINISH GRADE. WHEN PLANTING ON SLOPES, CREATE LEVEL PLANTING SURFACE TO ENSURE COVER OF ROOTS ON DOWNHILL SIDE OF PLANT.
4. BACKFILL PLANTING HOLE WITH SOIL EXCAVATED FROM PLANTING HOLE AND TAMP SOIL AROUND ROOTS. ANY TRASH OR DEBRIS FOUND IN EXCAVATED SOIL SHALL NOT BE USED TO BACKFILL THE PLANTING HOLE. BACKFILL SOIL SHALL MAKE GOOD CONTACT WITH THE ROOTBALL, LEAVING NO VOIDS.
5. EACH CONTAINER PLANT SHALL HAVE A 15" TRANSLUCENT PLASTIC GROW TUBE INSTALLED AROUND THE BASE OF THE PLANT PER MANUFACTURER'S INSTRUCTIONS.
6. ALL 40 CUBIC INCH CONTAINER STOCK PLANTS SHALL BE MULCHED WITH A 3 FOOT DIAMETER 4 INCH DEEP RING OF WOOD CHIP MULCH. MULCH SHALL BE KEPT OFF OF THE BASE OF PLANTS.
7. WITHIN 4 HOURS OF PLANT INSTALLATION, THOROUGHLY WATER IN EACH INSTALLED PLANT.



2  
L-3  
LIVE STAKE INSTALLATION  
NOT TO SCALE

#### LIVE STAKE INSTALLATION NOTES:

1. LIVE STAKES SHALL BE AS DESCRIBED IN SECTION 9-14.6 OF THE STANDARD SPECIFICATIONS. LIVE STAKES SHALL BE COLLECTED FROM PLANTS WITHIN THE NASON CREEK WATERSHED.
2. LIVE STAKES SHALL BE BETWEEN 1/2" AND 1 1/2" DIAMETER AND OF SPECIES AND LENGTH INDICATED ON THE PLANT SCHEDULE (THIS SHEET).
3. LIVE STAKES WHICH ARE NOT PLANTED WITHIN 8 HOURS OF CUTTING SHALL BE SOAKED IN WATER FOR 24-72 HOURS PRIOR TO INSTALLATION. STAKES WHICH HAVE DEVELOPED ROOTS SHALL NOT BE USED.
4. IF NECESSARY, CREATE PILOT HOLE IN SOIL PRIOR TO INSTALLATION.
5. INSTALL STAKES PERPENDICULAR TO FINISH GRADE WITH BUDS ORIENTED UPWARD. IF STAKES MUST BE POUNDED IN, USE DEAD-BLOW HAMMER. INSTALL STAKES SUCH THAT 2 FEET MINIMUM OF THE LENGTH OF THE ENTIRE STAKE IS IN SOIL AND SUCH THAT A MINIMUM OF 3 BUD SCARS REMAIN ABOVE FINISH GRADE. AVOID DAMAGING THE BUDS PRIOR TO AND DURING STAKE INSTALLATION.
6. AFTER INSTALLATION, BACKFILL AND WASH SOIL INTO PILOT HOLE SUCH THAT SOIL MAKES GOOD CONTACT WITH THE STAKE, LEAVING NO VOIDS.
7. WITHIN 4 HOURS OF INSTALLATION, THOROUGHLY WATER IN EACH INSTALLED STAKE.



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WENATCHEE SUBBASIN  
LOWER WHITE PINE OXBOW RECONNECTION PROJECT  
PLANT SCHEDULE & DETAILS

DRAWN  
D. STRATTEN

ACCEPTED  
NAME  
TITLE

BOISE, ID

2013-05-08

PLANT SCHEDULE  
& DETAILS

SHEET L-3

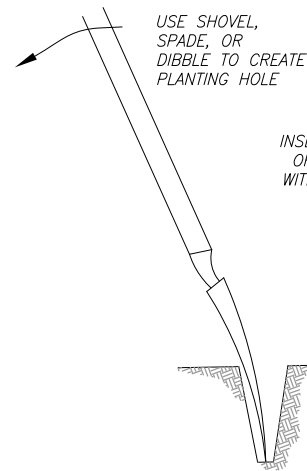
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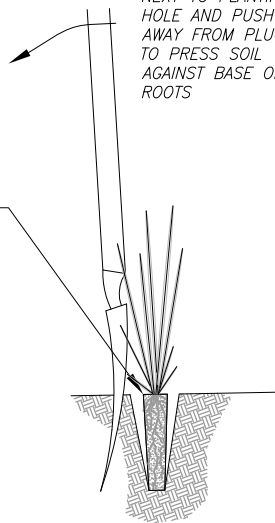
STEP 1.



USE SHOVEL,  
SPADE, OR  
DIBBLE TO CREATE  
PLANTING HOLE

STEP 2.

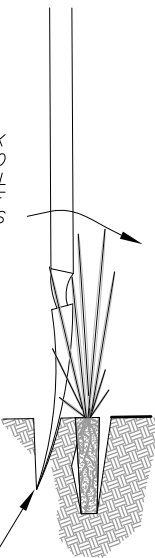
INSERT PLUG WITH TOP  
OF ROOT MASS LEVEL  
WITH EXISTING GROUND



INSERT TOOL  
NEXT TO PLANTING  
HOLE AND PUSH  
AWAY FROM PLUG  
TO PRESS SOIL  
AGAINST BASE OF  
ROOTS

STEP 3.

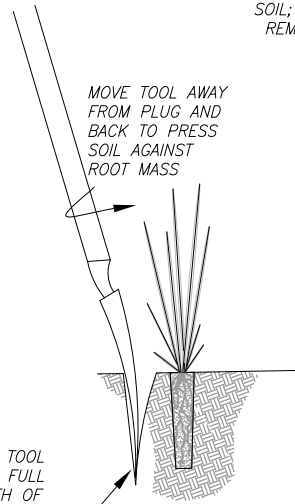
PULL TOOL BACK  
TOWARD PLANT TO  
SECURE SOIL  
AGAINST TOP OF  
ROOTS



INSERT TOOL  
TO HALF OF  
PLUG ROOT  
DEPTH

STEP 4.

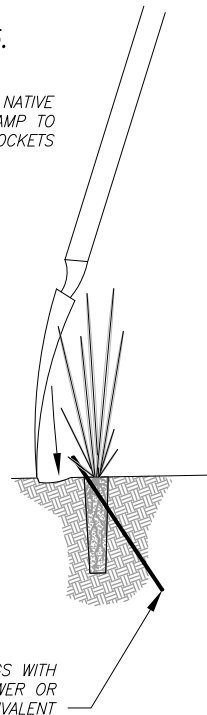
INSERT TOOL  
TO FULL  
DEPTH OF  
PLUG  
ROOTS



MOVE TOOL AWAY  
FROM PLUG AND  
BACK TO PRESS  
SOIL AGAINST  
ROOT MASS

STEP 5.

BACKFILL WITH NATIVE  
SOIL; LIGHTLY TAMP TO  
REMOVE AIR POCKETS



SECURE ALL PLUGS WITH  
BAMBOO SKEWER OR  
EQUIVALENT

#### 10 CUBIC INCH PLANT INSTALLATION NOTES:

1. USE A SHOVEL, SPADE OR DIBBLE TO CREATE A PLANTING HOLE LARGE ENOUGH TO ACCOMMODATE THE ROOT MASS AND SOIL OF THE PLUG WITHOUT BENDING ROOTS AND SUCH THAT THE TOP OF THE ROOT MASS CAN BE PLACED LEVEL WITH THE EXISTING GROUND.
2. PLACE THE PLUG INTO THE PLANTING HOLE WITH THE TOP OF THE ROOT MASS LEVEL WITH EXISTING GROUND. INSERT TOOL NEXT TO THE PLANTING HOLE TO THE DEPTH OF THE PLANTING HOLE. PUSH TOOL AWAY FROM PLANTING HOLE TO MOVE SOIL AGAINST THE BASE OF THE PLUG'S ROOT MASS.
3. INSERT TOOL TO HALF OF PLUG'S ROOT DEPTH. PULL TOOL TOWARD THE PLANTING HOLE TO SECURE SOIL AGAINST THE TOP OF THE ROOTS.
4. INSERT TOOL TO FULL DEPTH OF PLUG ROOTS. MOVE TOOL AWAY FROM PLANTING HOLE AND BACK TOWARD PLANTING HOLE TO PRESS SOIL AGAINST ROOT MASS.
5. BACKFILL WORK HOLE WITH NATIVE SOIL. REPEAT ON OTHER SIDES OF PLUG AS NEEDED TO ENSURE NO VOIDS AROUND THE ROOT MASS.
6. SECURE PLUG WITH A BAMBOO SKEWER, OR BIODEGRADABLE EQUIVALENT, THROUGH THE TOP OF THE ROOT MASS AND INTO THE NATIVE SOIL.

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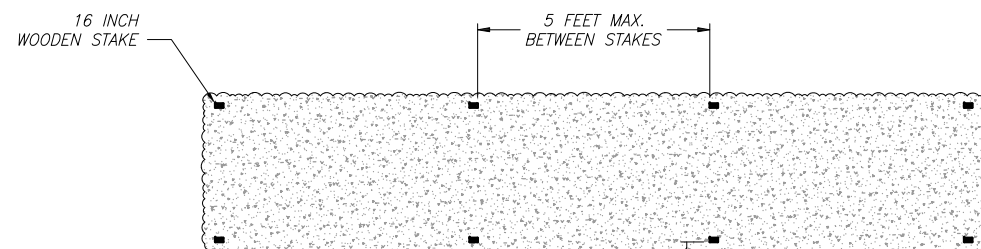
BOISE, ID 2013-05-08

PLANT SCHEDULE  
& DETAILS

SHEET L-4

SHEET 21 OF 21

#### 10 CUBIC INCH CONTAINER PLANT INSTALLATION NOT TO SCALE



INSTALL STAKES 1 TO 3  
INCHES FROM ALL EDGES

INSTALL STAKES 1 TO 3  
INCHES FROM MAT EDGE

DRIVE STAKES AT ANGLE  
TOWARD CENTER OF MAT

ENSURE CONSTANT CONTACT BETWEEN  
THE BOTTOM OF THE MAT OR  
PLANT ROOTS AND SOIL

#### PRE-PLANTED COIR MATS INSTALLATION NOTES:

1. PRE-PLANTED COIR MAT DELIVERY SHALL BE SCHEDULED TO COINCIDE WITH IMMEDIATE JOB SITE INSTALLATION. IF MATS CANNOT BE IMMEDIATELY INSTALLED, THEY SHALL BE STORED IN A SHADY LOCATION FOR NO MORE THAN THREE DAYS AND SHALL BE KEPT THOROUGHLY SATURATED AND COVERED DURING THAT TIME.
2. PLANTING AREAS SHALL BE CLEARED OF LARGE ROCKS, TREE BRANCHES, OR OTHER OBJECTS THAT WOULD PREVENT THE MAT FROM MAKING DIRECT CONTACT WITH THE SOIL. VERY ROUGH GROUND SHALL BE SMOOTHED PRIOR TO MAT INSTALLATION.
3. MATS SHALL BE MOVED TO THE INSTALLATION SITE, UNROLLED AND STAKED DOWN. ENSURE THAT THE PLANT ROOTS AND THE BOTTOM OF THE MAT ARE IN DIRECT CONTACT WITH THE SOIL PRIOR TO STAKING. LEAVE NO VOIDS.
4. ALL EDGES SHALL BE STAKED WITH 16" WOODEN STAKES SPACED AT A MAXIMUM OF EVERY 5 FEET ALONG THE EDGE OF THE MAT. STAKES SHALL BE INSTALLED 1 TO 3 INCHES FROM THE EDGE OF THE MAT.
5. STAKES SHALL BE INSTALLED AT AN ANGLE TOWARD THE CENTER OF THE MAT. FOUR INCHES OF EACH STAKE SHALL REMAIN ABOVE THE SURFACE OF THE MAT.
6. MATS MAY BE INSTALLED IN UP TO 4 INCHES OF STANDING WATER.

#### PRE-PLANTED COIR MAT INSTALLATION DETAIL NOT TO SCALE

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FISHER, MARTIN

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EASEMENT AGREEMENT

[No easement or other permanent rights to be provided to Chelan]

FOR \_\_\_\_\_  
(Underpass 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 Underpass Agreement dated as of \_\_\_\_\_ concerning improvements on or near the Premises (the "**Underpass 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 UNDERPASS 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 UNDERPASS 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 UNDERPASS 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 UNDERPASS 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**:

- (a) remove all or such portion of Grantee's Improvements and all appurtenances thereto from the Premises, as Grantor directs at Grantor's sole discretion;
- (b) repair and restore any damage to the Premises arising from, growing out of, or connected with Grantee's use of the Premises;
- (c) remedy any unsafe conditions on the Premises created or aggravated by Grantee; and
- (d) 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 reserves the right to assign this Easement Agreement to Apex Property & Track Exchange, Inc. ("**Apex**"). Apex is a qualified intermediary within the meaning of Section 1031 of the Internal Revenue Code of 1986, as amended, and Treas. Reg. § 1.1031(k)-1(g), for the purpose of completing a tax-deferred exchange under said Section 1031. Grantor shall bear all expenses associated with the use of Apex, or necessary to qualify this transaction as a tax-deferred exchange, and, except as otherwise provided herein, shall protect, reimburse, indemnify and hold harmless Grantee from and against any and all reasonable and necessary additional costs, expenses, including, attorneys fees, and liabilities which Grantee may incur as a result of Grantor's use of Apex or the qualification of this transaction as a tax-deferred transaction pursuant to Section 1031. Grantee shall cooperate with Grantor with respect to this tax-deferred exchange, and upon Grantor's request, shall execute such documents as may be required to effect this tax-deferred exchange.

**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 UNDERPASS Agreement. Notices to Grantor under this Easement shall be delivered to the following address: BNSF Railway Company, Real Estate Department, 2500 Lou Menk Drive, Fort 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.

14.7 The terms of the UNDERPASS Agreement are incorporated herein as if fully set forth in this instrument which terms shall be in full force and effect for purposes of this Easement even if the UNDERPASS Agreement is, for whatever reason, no longer in effect.

[Signature page follows]

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 "A-1"

Premises

EXHIBIT "B-1"

**Memorandum of Easement**

**THIS MEMORANDUM OF EASEMENT** is hereby executed this \_\_\_\_ day of \_\_\_\_, 20\_\_\_\_, by and between BNSF RAILWAY COMPANY, a Delaware corporation ("**Grantor**"), whose address for purposes of this instrument is 2500 Lou Menk Drive, Fort Worth, Texas 76131, and \_\_\_\_\_, a \_\_\_\_\_ ("**Grantee**"), whose address for purposes of this instrument is \_\_\_\_\_, which terms "Grantor" and "Grantee" shall include, wherever the context permits or requires, singular or plural, and the heirs, legal representatives, successors and assigns of the respective parties:

**WITNESSETH:**

**WHEREAS**, Grantor owns or controls certain real property situated in \_\_\_\_\_ County, \_\_\_\_\_ as described on **Exhibit "A-1"** attached hereto and incorporated herein by reference (the "**Premises**");

**WHEREAS**, Grantor and Grantee entered into an Easement Agreement, dated \_\_\_\_\_ (the "**Easement Agreement**") which set forth, among other things, the terms of an easement granted by Grantor to Grantee over and across the Premises (the "**Easement**"); and

**WHEREAS**, Grantor and Grantee desire to memorialize the terms and conditions of the Easement Agreement of record.

For valuable consideration the receipt and sufficiency of which are hereby acknowledged, Grantor does grant unto Grantee and Grantee does hereby accept from Grantor the Easement over and across the Premises.

The term of the Easement, unless sooner terminated under provisions of the Easement Agreement, shall be perpetual. Provisions regulating the use and purposes to which the Easement shall be limited, are set forth in detail in the Easement Agreement and Grantor and Grantee agree to abide by the terms of the Easement Agreement.

All the terms, conditions, provisions and covenants of the Easement Agreement are incorporated herein by this reference for all purposes as though written out at length herein, and both the Easement Agreement and this Memorandum of Easement shall be deemed to constitute a single instrument or document. This Memorandum of Easement is not intended to amend, modify, supplement, or supersede any of the provisions of the Easement Agreement and, to the extent there may be any conflict or inconsistency between the Easement Agreement or this Memorandum of Easement, the Easement Agreement shall control.

[Signature page follows]

**IN WITNESS WHEREOF**, Grantor and Grantee have executed this Memorandum of Easement to as of the date and year first above written.

**GRANTOR:**

BNSF RAILWAY COMPANY, a Delaware corporation

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

**GRANTEE:**

\_\_\_\_\_,  
\_\_\_\_\_

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

STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_ (name) as \_\_\_\_\_ (title) of BNSF RAILWAY COMPANY, a Delaware corporation.

\_\_\_\_\_  
Notary Public

(Seal)

My appointment expires: \_\_\_\_\_

STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_ (name) as \_\_\_\_\_ (title) of \_\_\_\_\_, a \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

(Seal)

My appointment expires: \_\_\_\_\_

## **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 1St & 4th Sts' Bridge Painting.
- **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:

Mike Kaputa  
316 Washington St., Ste. 401  
Wenatchee, WA 98801  
Phone: 509-667-6584  
Fax: 509-667-6527

- **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 509-667-6584 and Railway's Manager Public Projects, telephone number 206.625.6152 at least thirty (30) calendar days before commencing any work on Railway Property. Contractor's notification to Railway must refer to Railway's file **BF10004315**.
- **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.contractororientation.com](http://www.contractororientation.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 Wesley Pruitt at 509.536.2545 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.contractororientation.com](http://www.contractororientation.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 <http://www.e-railsafe.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 Paul Fullen (425.304.6690)** 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 44 freight trains per 24-hour period at a timetable speed 60 MPH and 2 passenger trains at a timetable speed of 79 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.contractororientation.com](http://www.contractororientation.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 Matthew Keim (206.625.6189)**. 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.

## EXHIBIT "C-1"

### Agreement Between BNSF RAILWAY COMPANY and the CONTRACTOR

**BNSF RAILWAY COMPANY**  
**Attention: Manager Public Projects**

**Railway File: BF10004315: Nason Crk/Lower White Pine Bridge**  
**Agency Project: \_\_\_\_\_**

Gentlemen:

The undersigned (hereinafter called, the "Contractor"), has entered into a contract (the "Contract") dated \_\_\_\_\_, 2013, [\*\*\***Drafter's Note: insert the date of the contract between the Agency and the Contractor here**\*\*\*] with **County of Chelan, WA** for the performance of certain work in connection with the following project: **Chelan Co Nason Crk Lower White Pine Bridge**. Performance of such work will necessarily require Contractor to enter **BNSF RAILWAY COMPANY** ("Railway") right of way and property ("Railway Property"). The Contract provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for **County of Chelan, WA** (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 Contract, has agreed and does hereby agree with Railway as follows:

#### **Section 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. **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY**

**THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENSIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**

**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. **THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILWAY FOR RAILWAY'S ACTS OF NEGLIGENCE**

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

## **Section 2. TERM**

This Agreement is effective from the date of the Contract 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.

## **Section 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 \$5,000,000 each occurrence and an aggregate limit of at least \$10,000,000 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.

D. Railroad Protective Liability insurance naming only the ***Railway*** as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 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**, 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 the Work, 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 addresses:

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 must 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 provide.

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 contract. 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 the insurance coverage(s) 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** means “Burlington Northern Santa Fe LLC”, “BNSF RAILWAY COMPANY” and the subsidiaries, successors, assigns and affiliates of each.

#### **Section 4. EXHIBIT “C” CONTRACTOR REQUIREMENTS**

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Contract, and the Contractor Requirements set forth on Exhibit “C” attached to the Contract 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.

#### **Section 5. 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. Damages for train delay are currently \$382.20 per hour per incident. **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 (**Roadmaster Paul Fullen (425.304.6690)** two (2) 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.

Kindly acknowledge receipt of this letter by signing and returning to the Railway two original copies of this letter, which, upon execution by Railway, will constitute an Agreement between us.

\_\_\_\_\_  
**Contractor**

**BNSF Railway Company**

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

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

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

Name: Richard W Wagner  
Manager Public Projects

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

Accepted and effective \_\_\_\_\_ of 2013.

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

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

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

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

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

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

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

**EXHIBIT D**

**[Cost Estimate for Railroad Work]**

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

BNSF RAILWAY COMPANY  
FHPM ESTIMATE FOR  
CHELAN COUNTY WA

### PURPOSE, JUSTIFICATION AND DESCRIPTION

100% CHELAN COUNTY WA

REQUESTOR - D JOHNSON

DESCRIPTION	QUANTITY	U/M	COST	TOTAL \$
*****				
LABOR				
*****				
FLAGGING - OTHER R.O.W.- CAP	720.0	MH	18,707	
PAYROLL ASSOCIATED COSTS			11,319	
DA OVERHEADS			18,024	
EQUIPMENT EXPENSES			6,186	
INSURANCE EXPENSES			2,944	
TOTAL LABOR COST			57,180	57,180
*****				
MATERIAL				
*****				
TOTAL MATERIAL COST			0	0
*****				
OTHER				
*****				
TOTAL OTHER ITEMS COST			0	0
PROJECT SUBTOTAL				57,180
CONTINGENCIES				5,718
BILL PREPARATION FEE				629
GROSS PROJECT COST				63,527
LESS COST PAID BY BNSF				0
TOTAL BILLABLE COST				63,527

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

BNSF RAILWAY COMPANY  
FHPM ESTIMATE FOR  
CHELAN COUNT WA

LOCATION EAST MERRITT DETAILS OF ESTIMATE PLAN ITEM : PTR3GIP401 VERSION : 1

PURPOSE, JUSTIFICATION AND DESCRIPTION

PIP INSPECTOR NWN DIV SCENIC SUB LS 37 MP 1691 DOT 3GIP40 NASON CREEK MERRITT, WA  
INSPECTION CONST RR BRIDGE FOR FISH HABITAT RESTORATION

100% CHELAN COUNTY WA

REQUESTOR - D JOHNSON

DESCRIPTION	QUANTITY U/M	COST	TOTAL \$
***** LABOR *****			
TOTAL LABOR COST		0	0
***** MATERIAL *****			
TOTAL MATERIAL COST		0	0
***** OTHER *****			
INSPECTION	1.0 LS	25,000	
TOTAL OTHER ITEMS COST		25,000	25,000
PROJECT SUBTOTAL			25,000
CONTINGENCIES			2,500
BILL PREPARATION FEE			275
GROSS PROJECT COST			27,775
LESS COST PAID BY BNSF			0
TOTAL BILLABLE COST			27,775

AUTHORITY FOR EXPENDITURE

LOCATION : EAST MERRITT	LINE SEGMENT : 37	AFE NUMBER :
PLANITEM NUMBER : 000223622	MILEPOST : 1690.58	RFA NUMBER : 5948413
PROPERTY OF : BNSF RAILWAY COMPANY	DIVISION : NW	CPAR NUMBER : CR120213
OPERATED BY : BNSF RAILWAY COMPANY	SUBDIVISION : SCENIC	BUDGET YEAR : 2013
JOINT FACILITY : CHELAN COUNTY WA	TRACK TYPE : 9	BUDGET CLASS : 7
% BILLABLE (+/-) : 100.0	TAX STATE : WA	REPORTING OFFICE : 301
	SPONSOR : VP ENGINEERING	CENTER/ROLLUP : S3509

PURPOSE, JUSTIFICATION AND DESCRIPTION

PIP BUILD NEW STD CONCRETE BRIDGE - 28', 33', 28' - BNSF ON-TRACK CONSTRUCTION - 100% BILLABLE TO CHELAN COUNTY

PLAN ITEM	LINE SEG	BEG MP	END MP	TRK NBR	BEGIN STATION	END STATION	PROJECT TYPE	BUD YEAR
000223622	37	1690.58	1690.58	9	EAST MERRITT	EAST MERRITT	BRIDGE - MISCELLANEOUS	2013

	CASH CAPITAL	NONCASH CAPITAL	OPERATING EXP	REMOVAL COSTS	BILLABLE	TOTALS
LABOR COSTS	0	0	0	0	292,433	292,433
MATERIAL COSTS	0	0	0	0	263,812	263,812
OTHER COSTS	0	0	0	0	93,545	93,545
TOTALS	0	0	0	0	649,790	649,790

SYSTEM MAINTENANCE AND PLANNING - KANSAS CITY  
ESTIMATE REF. NUMBER: 5948413  
COSTING DATE: 06/06/2013

PRINTED ON: 06/06/2013  
ESTIMATED BY: TREAT  
PRINTED BY: TREAT



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

BNSF RAILWAY COMPANY  
FHPM ESTIMATE FOR  
CHELAN COUNTY WA

LOCATION EAST MERRITT

DETAILS OF ESTIMATE

PLAN ITEM : 000223622

VERSION : 1

PURPOSE, JUSTIFICATION AND DESCRIPTION

DESCRIPTION	QUANTITY	U/M	COST	TOTAL \$
*****				
LABOR				
*****				
CONSTRUCT STRUCTURE - OPERATING	209.3	MH	5,483	
DRIVE PILES	580.0	MH	15,195	
FINALIZE PROJECT	349.0	MH	9,143	
PLACE CAPS	153.0	MH	4,009	
PLACE FIELD WELDS - CAP	123.2	MH	3,082	
PLACE SPANS	120.9	MH	3,168	
PLACE TRACK PANELS - ADDITION - CAP	64.0	MH	1,514	
PREPARE FOR STRUCTURE CHANGOUT	1451.3	MH	38,020	
REPLACE CROSS TIES - CAP	52.0	MH	1,230	
SIGNAL FIELD LABOR - CAP	20.0	MH	549	
UNLOAD BALLAST - REPLACEMENT - CAP	44.8	MH	1,060	
UNLOAD MATERIAL	240.0	MH	6,288	
PAYROLL ASSOCIATED COSTS			58,537	
DA OVERHEADS			82,071	
EQUIPMENT EXPENSES			48,190	
INSURANCE EXPENSES			14,894	
TOTAL LABOR COST			292,433	292,433
*****				
MATERIAL				
*****				
BALLAST-SPRAGUE	374.0	NT **	2,057	
TRACK PANEL, 136 STANDARD RAIL, 40 FT- 10 FT TIES-	4.0	EA **	19,276	
RAIL, TRANSN,BE,40 FT,136 - 1/4 WORN 132	4.0	EA **	5,124	
TIE, TRK,10FT,PRE-PLATED, PANDROL, 6IN, ROUND	20.0	EA **	2,684	
WELDKIT, GENERIC FOR ALL RAIL WEIGHTS	14.0	KT X	950	
BRIDGE MATERIAL	1.0	LS **	193,120	
MATERIAL HANDLING			11,158	
ONLINE TRANSPORTATION			5,837	
USE TAX			20,856	
OFFLINE TRANSPORTATION			2,750	
TOTAL MATERIAL COST			263,812	263,812
*****				
OTHER				
*****				
CONTRACTED SERVICES	1.0	LS	4,000	
EQUIPMENT RENTAL	1.0	LS	26,000	
TOTAL OTHER ITEMS COST			30,000	30,000
PROJECT SUBTOTAL				586,245
CONTINGENCIES				57,111
BILL PREPARATION FEE				6,434
GROSS PROJECT COST				649,790
LESS COST PAID BY BNSF				0
TOTAL BILLABLE COST				649,790

## **Exhibit E**

[Public Projects Manager's letterhead]

Date: \_\_\_\_\_

Mr./Ms. \_\_\_\_\_

\_\_\_\_\_[Name of Agency Here]

\_\_\_\_\_[Address for Agency]

\_\_\_\_\_

Re: Final Approval of Plans and Specifications dated \_\_\_\_\_, 20\_\_, drafted by  
\_\_\_\_\_ **[insert name of architecture or engineering firm  
here]** (hereinafter called, the "Plans and Specifications")

Dear \_\_\_\_\_:

This letter serves as BNSF RAILWAY COMPANY's ("BNSF") final written approval of the Plans and Specifications covering the construction of the Agency Work more particularly described in Exhibit B of that certain Underpass Agreement by and between BNSF and Agency, dated \_\_\_, 2013, per BNSF File No. BF10001833. This final written approval is given to the County of Chelan ("Agency") pursuant to Article III, Section 1 of said Underpass Agreement. If the Plans and Specifications are revised by Agency subsequent to the date set forth above, this letter shall no longer serve as final written approval of the Plans and Specifications and Agency must resubmit said Plans and Specifications to BNSF for final written approval.

Regards,

\_\_\_\_\_  
[Public Projects Manager's Name]

## **Exhibit F**

### **Bridge Requirements**

#### **BRIDGE DESIGN, PLANS & SPECIFICATIONS:**

Bridge design calculations will be submitted to BNSF for review and approval. Design calculations will be summarized on a cover sheet to state the design dead load, design live load and amount of impact and any secondary loads considered. Bridge design by other than a BNSF pre-approved consultant will be subject to a third party design check at the Agency's expense.

For railroad bridges and culverts over waterways, BNSF will be provided with the Hydrology and Hydraulic design criteria, calculations and site specific data, including electronic data utilized in computer simulation modeling. Design considerations should include future land use changes that would increase the volume, velocity or sediment transport characteristics of the streambed flows. Design shall include sediment transport calculations and erosion control mitigation measures if necessary.

Bridge plans will be submitted to BNSF for review and approval at the 30%, 60% and 90% stage of design. The final set of plans must be approved by BNSF prior to letting of bids for the Project.

.[BNSF is building the bridge, not the Provider]

#### **BRIDGE CONSTRUCTION:**

[Intentionally left blank]

#### **BRIDGE MAINTENANCE:**

[Intentionally left blank]

**Exhibit G**

Project's  
Estimated Total Project Cost

*[Applicable?]*

**Exhibit H**  
**(BPA Contract Flow-Down Provisions)**

**ORGANIZATIONAL CONFLICTS OF INTEREST (3-2)**

**(SEP 98)(BPI 3.4.6)**

- (a) The offeror or contractor warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are no relevant facts which could give rise to organizational conflicts of interest, as defined in BPI 3.4.1, and that the offeror or contractor has disclosed all relevant information to the Contracting Officer.
- (b) The offeror or contractor agrees that, if after award, an organizational conflict of interest with respect to this contract is discovered, an immediate and full disclosure in writing shall be made to the Contracting Officer which shall include a description of the action which the contractor has taken, or proposes to take, to avoid or mitigate such conflicts.
- (c) In the event that the contractor was aware of an organizational conflict of interest prior to the award of this contract and did not disclose the conflict to the Contracting Officer, BPA may terminate the contract for default.
- (d) The provisions of this clause shall be included in all subcontracts for work to be performed in aid of the services provided by the prime contractor, and the terms "contract," "contractor," "Contracting Officer" modified appropriately.

**CERTIFICATION, DISCLOSURE, AND LIMITATION REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (3-3)**

**(SEP 98)(BPI 3.5.6)**

- (a) As used in this clause:

"Covered Federal action" means:

- (1) The awarding of any Federal contract.
- (2) The extension, continuation, renewal, amendment, or modification of any Federal contract.

"Indian tribe" and "tribal organization" have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and includes Alaskan Natives.

"Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, includes a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation" means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment" means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient" includes all contractors and subcontractors. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed" means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

(b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that:

- (1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract or the extension, continuation, renewal, amendment, or modification of any Federal contract.
  - (2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, Standard Form-LLL, Disclosure of Lobbying Activities, to the Contracting Officer.
  - (3) He or she will include the language of this certification in all subcontract awards at any tier and that all sub-recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.
- (c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, U.S. Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10, 000 and not more than \$100,000 for each such failure.
- (d) A contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using non appropriated funds (to include profits from any covered Federal action), which would be prohibited under this clause if paid for with appropriated funds.
- (e) The contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraph (b) of this clause. An event that materially affects the accuracy of the information reported includes--
- (1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
  - (2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

- (3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
- (f) The contractor shall require the submittal of a certification, and if required, a disclosure form, by any person who requests or receives any subcontract exceeding \$100,000 under the Federal contract.
- (g) All subcontractor disclosure forms (but not certifications), shall be forwarded from tier to tier until received by the prime contractor. The prime contractor shall submit all disclosure forms to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding contractor.
- (h) Any person who makes an expenditure prohibited under this clause or who fails to file or amend the disclosure form to be filed or amended by this clause shall be subject to a civil penalty as provided by 31 U. S. Code 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

**CONTRACTOR POLICY TO BAN TEXT MESSAGING WHILE DRIVING (3-4)**  
**(MAY 11) (BPI 3.7.1.1)**

- (a) Definitions. As used in this clause--

“Driving”—(1) Means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise. (2) Does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

“Text messaging” means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park.

- (b) This clause implements Executive Order 13513, Federal Leadership on Reducing Text Messaging while driving, dated October 1, 2009.
- (c) The Contractor should adopt and enforce policies that ban text messaging while driving —(1) Company-owned or -rented vehicles or Government-owned vehicles; or (2) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.
- (d) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts that exceed \$10,000.

**SUBCONTRACTING WITH DEBARRED OR SUSPENDED ENTITIES (11-7)**  
**(DEC 12) (BPI 11.8.1; BPI 25.1.1)**

- (a) “Commercially available off-the-shelf (COTS) item,” as used in this clause means any item of supply (including construction material) that is:
  - (i) A commercial item (as defined in BPI 1.8);
  - (ii) Sold in substantial quantities in the commercial marketplace; and



(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace.

(b) The Government suspends or debars Contractors to protect the Government's interests. Other than a subcontract for a commercially available off-the-shelf item, the Contractor shall not enter into any subcontract in excess of \$30,000 with a Contractor that is debarred, suspended, by any executive agency unless there is a compelling reason to do so.

(c) The Contractor shall require each proposed subcontractor whose subcontract will exceed \$30,000, other than a subcontractor providing a commercially available off-the-shelf item, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended by the Federal Government.

(d) The Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party (other than a subcontractor providing a commercially available off-the-shelf item) that is debarred, suspended (see [www.sam.gov](http://www.sam.gov)).

(e) Subcontracts. Unless this is a contract for the acquisition of commercial items, the Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for the identification of the parties), in each subcontract that exceed \$30,000 in value and is not a subcontract for commercially available off-the-shelf items.

#### **RESTRICTION ON CERTAIN FOREIGN PURCHASES (9-8)**

##### **(MAY 11) (BPI 9.3.2)**

(a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR Chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <http://www.treas.gov/offices/enforcement/ofac/sdn>. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR Chapter V and/or on OFAC's website at <http://www.treas.gov/offices/enforcement/ofac>.

(c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

#### **NONDISCRIMINATION AND AFFIRMATIVE ACTION (10-1)**

##### **(APR 09)(BPI 10.2.1)**

(a) The Contractor shall not discriminate against its employees or applicants because of their race, color, religion, sex, national origin, age, status as Disabled or Vietnam Veterans, or physical or mental handicaps. The Contractor certifies that it does not, and will not, maintain segregated facilities or accommodations on the basis of race, color, religion or national origin. Regarding any position for which an employee or an applicant is qualified, the Contractor agrees to take affirmative action to employ, train, advance in employment and retain individuals in accordance with applicable laws and regulations including:

(1) For nondiscrimination based on race, color, religion, sex or national origin this includes, but is not limited to, the U. S. Constitution, and Parts II and IV of Executive Order 11246, September 24, 1965 (30 Fed. Reg. 12319). Contractor disputes related to compliance with its obligations shall

be handled according to the rules, regulations and relevant orders of the Secretary of Labor (See 41 CFR 60).

- (2) For nondiscrimination based on Disabled or Vietnam Veterans this includes, but is not limited to, the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4012); Executive Order 11701, January 24, 1973 (38 CFR 2675); and the regulations of the Secretary of Labor (41 CFR Part 60-250).
  - (3) For nondiscrimination based on the Handicapped this includes, but is not limited to, Section 503 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 793); Executive Order 11758, January 15, 1974; and the regulations of the Secretary of Labor (41 CFR Part 60-741).
  - (4) For nondiscrimination based on Age this includes, but is not limited to, Executive Order 11141, February 12, 1964 (29 CFR 2477).
- (b) The Contractor shall include the terms of this clause in every subcontract or purchase order exceeding \$50,000 and shall act as specified by the Department of Labor to enforce the terms and implement remedies.

#### **EMPLOYMENT PRACTICES (10-2)**

##### **(MAR 10)(BPI 10.4.4)**

The Contractor agrees to comply with all applicable Federal, State, local laws, and regulations concerning Equal Employment Opportunity, the payment of minimum wages (including, but not limited to, the Fair Labor Standards Act) and the use of safe practices (including, but not limited to, the Occupational Safety and Health Act).

#### **DAVIS-BACON ACT (10-7)**

##### **(SEP 98)(BPI 10.4.4)**

- (a) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period are deemed to be constructively made or incurred during such period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled "Apprentices, Trainees, and Helpers." Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (b) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.
- (b) Additional wage classifications.

- (1) The CO shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The CO shall approve an additional classification, and wage rate and fringe benefits therefor, only when all the following criteria have been met:
  - (A) Except with respect to helpers as defined in 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination.
  - (B) The classification is utilized in the area by the construction industry.
  - (C) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
  - (D) With respect to helpers, such classification prevails in the area in which the work is performed.
- (2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the CO agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the CO to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the CO or will notify the CO within the 30-day period that additional time is necessary.
- (3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the CO do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the CO shall refer the questions, including the views of all interested parties and the recommendation of the CO, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the CO or will notify the CO within the 30-day period that additional time is necessary.
- (4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (b)(2) or (b)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification. Pending approval of the wage rate classification by the Wage and Hour Division per (b)(2) or (b)(3), the CO may unilaterally modify the contract to incorporate wage rates for interim use, as determined by the CO pursuant to (b)(1) of this clause. Whenever payment of such interim wage rate is made as prescribed by the CO pursuant to (b)(1), and the paid wage rate materially differs from the wage rate approved by the Wage and Hour Division pursuant to subparagraphs (b)(2) or (b)(3) of this clause, the CO shall make an equitable adjustment (upward or downward) in the contract price. The amount of the adjustment shall be the difference between the sum of interim wage rate paid and the wage rate approved by the Wage and Hour Division.
- (c) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided that the Secretary

of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

- (e) The Contractor shall comply with the requirements of the Copeland ("Anti-Kickback") Act, as amended, (18 U.S.C. 874 and 40 U.S.C. 276c) and its implementing regulations (29 CFR Part 3), which require reasonable procedures in place to prevent and detect unlawful practices to induce or intimidate employees to accept lessor compensation than they are entitled to under a contract of employment.
- (f) Disputes concerning labor standards. The U.S. Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U. S. Department of Labor, or the employees or their representatives.

#### **WITHHOLDING -- LABOR VIOLATIONS (10-8)**

##### **(OCT 93)(BPI 10.4.4)**

The CO may withhold, or cause to be withheld, from the Contractor under this contract, or any other Federal contract with the same Prime Contractor, as much of the otherwise due payments, advances, or guarantee of funds, as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages and fringe benefits required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed, or working on the site of the work, all or part of the wages required by the contract, the CO may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

#### **PAYROLLS AND BASIC RECORDS (10-9)**

##### **(OCT 93)(BPI 10.4.4)**

- (a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under paragraph (d) of the clause entitled "Davis-Bacon Act" that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- (b) (1) Submission of payroll records to the CO is not required under this contract unless specifically requested by the CO. Providing the payrolls, when requested, shall be prompt, and shall not be considered a change to the contract. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause for

the periods identified by the CO. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

- (2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify
  - (A) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;
  - (B) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and
  - (C) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (3) The submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (b)(2) of this clause.
- (4) The falsification of any of the above certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.
- (c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the CO or authorized representatives of the CO or the Department of Labor. The Contractor or subcontractor shall permit the CO or representatives of the CO or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the CO may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### **APPRENTICES, TRAINEES, AND HELPERS (10-10)**

##### **(JUL 94)(BPI 10.4.4)**

- (a) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage

determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the DOL determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (b) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices.

Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (c) Helpers. Helpers will be permitted to work on a project if the helper classification is specified on an applicable wage determination or is approved pursuant to the conformance procedures set forth in paragraph (b) of the Davis Bacon Act clause. The allowable ratio of helpers to journeymen employed by the Contractor or subcontractor on the job site shall not be greater than two helpers for every three journeymen (in other words, not more than 40% of the total number of journeymen and helpers in each contractor's, or in each subcontractor's own workforce employed on the job site). Any worker listed on a payroll at a helper wage rate, who is not a helper as defined in 29 CFR 5.2(n)(4), shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any helper performing work on the job site in excess of the ratio permitted shall be paid not less than the applicable journeymen's (or laborer's, where appropriate) wage rate on the wage determination for the work actually performed.

- (d) Equal employment opportunity. The utilization of apprentices, trainees, helpers and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246 and 29 CFR Part 30.

**SUBCONTRACTS (LABOR STANDARDS) (10-11)**

**(JUL 94)(BPI 10.4.4)**

- (a) The Contractor or subcontractor shall include in any subcontracts the clauses entitled "Davis-Bacon Act," "Apprentices, Trainees and Helpers," "Payrolls and Basic Records," "Withholding -- Labor Violations," "Subcontracts (Labor Standards)," "Certification of Eligibility," and "Davis-Bacon Act Wage Rates." The Contractor shall include a clause requiring its subcontractors to include these clauses in any lower-tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with all the contract clauses cited in this paragraph.
- (b) Notification of subcontracting.
- (1) Within 14 days after award of the contract, the Contractor shall deliver to the CO a completed Statement and Acknowledgment Form (SF 1413) for each subcontract, including the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (a) of this clause have been included in the subcontract.
- (2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the CO an updated completed SF 1413 for such additional subcontract.

**CERTIFICATION OF ELIGIBILITY (10-12)**

**(OCT 93)(BPI 10.4.4)**

- (a) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**DAVIS-BACON ACT WAGE RATES (10-13)**

**(MAR 10)(BPI 10.5.5)**

The wage determination(s) referred to in the clause at 10-7, Davis-Bacon Act, are incorporated into the contract, and are identified as follows:

Decision Number: To be Determined

Last Modifications Number: To be Determined

Date: To be Determined

**AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (10-16)**

**(SEP 98)(BPI 10.6.4)**

- (a) Definitions. "Employer identification number," as used in this clause, means the Federal Social Security number used on the employer's quarterly federal tax return, U.S. Treasury Department Form 941.

"Minority," as used in this clause, means--

- (1) Black (all persons having origins in any of the black African racial groups not of Hispanic origin);



- (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);
  - (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
  - (4) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
- (b) If the Contractor, or a subcontractor at any tier, subcontracts a portion of the work involving any construction trade, each such subcontract in excess of \$35,000 shall include this clause, including the goals for minority and female participation stated herein.
- (c) The goals for minority and female participation, expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the covered area, are as follows:

Goals for minority participation    7.2%

Goals for female participation    6.9%

Compliance with the goals will be measured against the total work hours performed.

- (d) The Contractor shall provide written notification to the Office of Federal Contract Compliance Programs (OFCCP) area office within 10 working days following award of any construction subcontract in excess of \$35,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the --
- (1) Name, address, and telephone number of the subcontractor;
  - (2) Employer identification number of the subcontractor;
  - (3) Estimated dollar amount of the subcontract;
  - (4) Estimated starting and completion dates of the subcontract; and
  - (5) Geographical area in which the subcontract is to be performed.
- (e) The Contractor shall implement the affirmative action procedures in subparagraphs (f)(1) through (7) of this clause. The goals stated in this contract are expressed as percentages of the total hours of employment and training of minority and female utilization that the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for the geographical area where that work is actually performed. The Contractor is expected to make substantially uniform progress toward its goals in each craft.
- (f) The contractor shall take affirmative action steps at least as extensive as the following:
- (1) Ensure a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities where the Contractor's employees are assigned to work. The Contractor, if possible, will assign two or more women to each construction project. The Contractor shall ensure that foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at these sites or facilities.

- (2) Immediately notify the OFCCP area office when the union or unions, with which the Contractor has a collective bargaining agreement, has not referred back to the Contractor a minority or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- (3) Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under subparagraph (f)(2) above.
- (4) Review, at least annually, the Contractor's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions. Conduct reviews of this policy with all onsite supervisory personnel prior to initiation of construction work at a job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- (5) Disseminate the Contractor's equal employment policy externally by including it in any advertising in the news media, specifically including minority and female news media. Provide written notification to, and discuss this policy with, other Contractors and subcontractors with which the Contractor does or anticipates doing business.
- (6) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training, etc., opportunities for promotion.
- (7) Maintain a record of solicitations for subcontracts for minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
- (g) The Contractor is encouraged to participate in voluntary associations that may assist in fulfilling one or more of the affirmative action obligations contained in subparagraphs (f)(1) through (7). The efforts of a contractor association, joint contractor-union, contractor-community, or similar group of which the contractor is a member and participant, may be useful in achieving one or more of its obligations under subparagraphs (f)(1) through (7).
- (h) A single goal for minorities and a separate single goal for women shall be established. The Contractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of Executive Order 11246, as amended, if a particular group is employed in a substantially disparate manner.
- (i) The contractor shall not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
- (j) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts under Executive Order 11246, as amended.
- (k) The Contractor shall carry out such sanctions and penalties for violation of this clause and of the Nondiscrimination and Affirmative Action clause, including suspension, termination, and cancellation of existing subcontracts, as may be imposed or ordered under Executive Order 11246, as amended, and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered shall be a violation of this clause and Executive Order 11246, as amended.

Nothing contained herein shall be construed as a limitation upon the application of other laws that establish different standards of compliance.

**EMPLOYMENT ELIGIBILITY VERIFICATION (10-18)**  
**(JUN 12)(BPI 10.7.3)**

(a) "Employee assigned to the contract," as used in this clause, means an employee who was hired after November 6, 1986, who is directly performing work, in the United States, under a contract that is required to include the clause as prescribed by 10.7.3. An employee is not considered to be directly performing work under a contract if the employee—

(1) Normally performs support work, such as indirect or overhead functions; and

(2) Does not perform any substantial duties applicable to the contract.

(b) E-Verify enrollment and verification requirements.

(1) If the Contractor is not enrolled as a Federal Contractor in E-Verify at the time of the contract award, the Contractor shall:

(A) *Enroll.* Enroll as a Federal Contractor in the E-Verify program within 30 calendar days of contract award;

(B) *Verify all new employees.* Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (a) (3) of this section); and

(C) *Verify employees assigned to the contract.* For each employee assigned to the contract, initiate verification within 90 calendar days after date of enrollment or within 30 calendar days of the employee's assignment to the contract, whichever date is later (but see paragraph (a)(4) of this section).

(2) If the Contractor is enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall use E-Verify to initiate verification of employment eligibility of—

(A) All new employees.

(i) *Enrolled 90 calendar days or more.* The Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract within 3 business days after the date of hire (but see paragraph (a)(3) of this section); or

(ii) *Enrolled less than 90 calendar days.* Within 90 calendar days after enrollment as a Federal Contractor in E-Verify, the Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph)(3) of this section ); or

(B) Employees assigned to the contract. For each employee assigned to the contract, the Contractor shall initiate verification within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever date is later (but see paragraph (4) of this section).

- (3) If the Contractor is an institution of higher education; a state or local government, or the government of a federally recognized Indian tribe; or a surety performing under a takeover agreement entered into with a federal agency pursuant to a performance bond, the Contractor may choose to verify only employees assigned to the contract. The Contractor shall follow the applicable verification requirements at (a)(1) or (a)(2), respectively, except that any requirement for verification of new employees applies only to new employees assigned to the contract.
- (4) Option to verify employment eligibility of all employees. The Contractor may elect to verify all existing employees hired after November 6, 1986, rather than just those employees assigned to the contract. The Contractor shall initiate verification for each existing employee working in the United States who was hired after November 6, 1986, within 180 calendar days of—
  - (A) Enrollment in the E-Verify program; or
  - (B) Notification to E-Verify Operations of the Contractor's decision to exercise this option, using the contact information provided in the E-Verify program Memorandum of Understanding (MOU).
- (5) The Contractor shall comply, for the period of performance of this contract, with the requirement of the E-Verify program MOU.
  - (A) The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the Contractor's MOU and deny access to the E-Verify system in accordance with the terms of the MOU. In such case, the Contractor will be referred to a suspension or debarment official.
  - (B) During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the Contractor is excused from its obligations under paragraph (b) of this clause. If the suspension or debarment official determines not to suspend or debar the Contractor, then the Contractor must reenroll in E-Verify.
- (c) Web site. Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: <http://www.dhs.gov/E-Verify>.
- (d) Individuals previously verified. The Contractor is not required by this clause to perform additional employment verification using E-Verify for any employee—
  - (1) Whose employment eligibility was previously verified by the Contractor through the E-Verify program;
  - (2) Who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual; or
  - (3) Who has undergone a completed background investigation and been issued credentials pursuant to Homeland Security Presidential Directive (HSPD) -12, Policy for a Common Identification Standard for Federal Employees and Contractors.
- (e) *Subcontracts*. The contractor shall include the requirements of this clause, including this paragraph (d) (appropriately modified for identification of the parties), in each subcontract that—
  - (1) Is for:
    - (A) Services other than commercial services that are part of the purchase of a commercial-of-the-

shelf (COTS) item, performed by the COTS provider and are normally provided for that COTS item;

(B) Construction.

(2) Has a value of more than \$3,000; and

(3) Includes work performed in the United States.