



Contract Number: BF-20227098

UNDERPASS AGREEMENT

BNSF File No. BF-20227098
3rd Street Underpass
U.S. D.O.T. No. 026480N
MP 9.491
LS 7602
San Bernardino Sub Division

This Agreement ("**Agreement**"), is executed to be effective as of _____, by and between BNSF RAILWAY COMPANY, a Delaware corporation ("**BNSF**"), and the CITY OF Riverside, a California Charter City and Municipal Corporation ("**Agency**").

RECITALS:

WHEREAS, BNSF owns and operates a line of railroad in and through the City of Riverside, State of CA;

WHEREAS, Agency desires to improve the existing 3rd Street at-grade crossing by constructing a new crossing at separated grades to be known as the 3rd Street Underpass and, D.O.T. No. 980865H

WHEREAS, The existing 3rd Street at-grade crossing will be permanently closed, vacated and removed upon completion of construction and the placing in service of said underpass;

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 construction of the proposed 3rd Street Underpass (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. During



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construction of the Structure, vehicular traffic will be excluded from the use of Third Street between Vine Street and Commerce Street and rail traffic will be permanently relocated easterly at the existing Third Street Right of Way. Additionally, temporary controls during construction must be in compliance with Section 8A-5, "Traffic Controls During Construction and Maintenance" of the Uniform Traffic Control Devices Manual, U.S. Department of Transportation.

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 construct the Structure 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.

Prior to commencing any work on BNSF's property or right-of-way, Agency must pay BNSF an administrative fee in the sum of Zero and No/100 Dollars (\$0), together with Zero and No/100 Dollars (\$0) 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 Structure, or (ii) Thirty Six (36) months following the Effective Date. The Temporary Construction License and related rights given by BNSF to Agency in this provision are without warranty of



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title of any kind, express or implied, and no covenant of warranty of title will be implied from the use of any word or words herein contained. The Temporary Construction License is for construction of the Structure only 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.

Upon receiving the payment from Agency described in the subsequent sentence and provided Agency is in compliance with the terms and conditions of this Agreement, BNSF will grant to Agency, its successors and assigns, an easement (hereinafter called, the "Easement") to enter upon and use that portion of BNSF's right-of-way as is necessary to use and maintain the Structure, substantially in the form of Exhibit B attached to this Agreement. Agency must pay BNSF the sum of Zero and No/100 Dollars (\$0) as compensation for the Easement within thirty (30) days of issuing a Notice to Proceed pursuant to Article III, Section 17 of this Agreement. If Agency fails to pay BNSF within the thirty-day time period set forth in the preceding sentence, BNSF may stop construction of the Project until full payment is received by BNSF.

- 2) BNSF will furnish all labor, materials, tools, and equipment for railroad work required for the construction of the Project, such railroad work and the estimated cost thereof being as shown on Exhibit D attached hereto and made a part hereof. In the event construction on the Project has not commenced within six (6) months following the Effective Date, BNSF may, in its sole and absolute discretion, revise the cost estimates set forth in said Exhibit D. In such event, the revised cost estimates will become a part of this Agreement as though originally set forth herein. Any item of work incidental to the items listed on Exhibit D not specifically mentioned therein may be included as a part of this Agreement upon written approval of Agency, which approval will not be unreasonably withheld. Construction of the Project must include the following railroad work by BNSF:
 - A. Procurement of materials, equipment and supplies necessary for the railroad work;
 - B. Preliminary engineering, design, and contract preparation;
 - C. Furnishing flagging services or if BNSF's labor force is unavailable, The City will contract flagging services by an approved BNSF contractor as required, and set forth in further detail on Exhibit C;



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- D. engineering and inspection as required in connection with the construction of the Project;
 - E. Removal of the existing 3rd Street at-grade crossing, including removal of the automatic warning devices, and obliteration of the crossing between the rails and two feet outside thereof;
 - F. Providing a contract project coordinator, at Agency's expense, to serve as a project manager for the Project;
 - G. Construction of the relocated tracks for three main tracks including the lining over to the final condition;
- 3) BNSF will do all railroad work set forth in Article II, Section 2 above on an actual cost basis, when BNSF, in its sole discretion, determines it is required by its labor agreements to perform such work with its own employees working under applicable collective bargaining agreements.
- 4) Agency agrees to reimburse BNSF for work of an emergency nature caused by Agency or Agency's contractor in connection with the Project which BNSF deems is reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons or BNSF property. Such work may be performed by BNSF without prior approval of Agency and Agency agrees to fully reimburse BNSF for all such emergency work.
- 5) Agency agrees to a one time payment in the amount of Four Hundred Eleven Thousand and no/100, (\$411,000) in consideration for BNSF to inspect and maintain the Superstructure .
- 6) 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.
- 7) 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



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of the date of the invoice for such work. Upon completion of the Project, BNSF will send Agency a detailed invoice of final costs, segregated as to labor and materials for each item in the recapitulation shown on Exhibit D. Pursuant to this section and Article IV, Section 7 herein, Agency must pay the final invoice within ninety (90) days of the date of the final invoice. ~~BNSF will assess a finance charge of .033% per day (12% per annum) on any unpaid sums or other charges due under this Agreement which are past its credit terms. The finance charge continues to accrue daily until the date payment is received by BNSF, not the date payment is made or the date postmarked on the payment. Finance charges will be assessed on delinquent sums and other charges as of the end of the month and will be reduced by amounts in dispute and any unposted payments received by the month's end. Finance charges will be noted on invoices sent to Agency under this section.~~ **For purposes of computing the time limits prescribed by Section 911.2 of the California Government Code for the presentment of a claim against the Agency the cause of action for failure to reimburse BNSF for the costs of the Railroad work performed by it pursuant to this Agreement shall be deemed to have accrued one hundred and eighty (180) days of the date of the final invoice.**

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 Project. Four 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 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. 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 construction of the Project.



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- 3) Agency must provide for and maintain minimum vertical and horizontal clearances, as required and approved by BNSF as part of the plans and specifications for the Project.
- 4) Agency must acquire all rights of way necessary for the construction of the Project, at no cost to BNSF. Agency and BNSF will enter into a Purchase and Sale Contract which will govern the granting of property right to BNSF necessary for the construction of the project. The Purchase and Sale Contract will be substantially in the form as shown in Exhibit H, attached hereto.
- 5) Agency must make any and all arrangements for the installation or relocation of wire lines, pipe lines and other facilities owned by private persons, companies, corporations, political subdivisions or public utilities other than BNSF which may be necessary for the construction of the Project.
- 6) Agency must construct the Project as shown on the attached Exhibit A and do all work ("Agency's Work") provided for in the plans and specifications for the Project, except railroad work that will be performed by BNSF hereunder. Agency must furnish all labor, materials, tools and equipment for the performance of Agency's Work. The principal elements of Agency's Work are as follows:
 - A. Construction of the Structure;
 - B. Removal of BNSF maintenance buildings, foundations and concrete aprons;
 - C. All necessary grading and paving, including backfill of excavations and restoration of disturbed vegetation on BNSF's right-of-way;
 - D. Placement of a waterproof membrane on the deck of the Structure, and after the placement of such waterproofing membrane, placement of a layer of crushed rock ballast (not to exceed six (6) inches in thickness) on the deck of the Structure;
 - E. Provide suitable drainage, both temporary and permanent;
 - F. Installation of a gate in the fence at the four quadrants of BNSF's right of way in order to provide BNSF with permanent access for maintenance purposes;
 - G. Provide appropriate pedestrian control during construction;



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- H. Job site cleanup including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials to the satisfaction of BNSF;
- 7) Agency must apply and maintain said D.O.T. Crossing number **980865H** in a conspicuous location on the Structure.
 - 8) Agency's Work must be performed by Agency or Agency's contractor in a manner that will not endanger or interfere with the safe and timely operations of BNSF and its facilities.
 - 9) For any future inspection or maintenance, either routine or otherwise, performed by subcontractors on behalf of the Agency, Agency shall require the subcontractors to execute the C documents. Prior to performing any future maintenance with its own personnel, Agency shall: comply with all of BNSF's applicable safety rules and regulations; require any Agency employee performing maintenance to complete the safety training program at the BNSF's Internet Website "contractororientation.com"; notify BNSF when, pursuant to the requirements of exhibit C, a flagger is required to be present; procure, and have approved by BNSF's Risk Management Department, Railroad Protective Liability insurance.
 - 10) In order to prevent damage to BNSF trains and property, 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 or cribbing to be used over, under, or adjacent to BNSF's tracks to BNSF's Manager of Public Projects for approval. The shoring or cribbing used by Agency's contractor shall comply with BNSF Bridge Requirements set forth on Exhibit F attached to this Agreement and incorporated herein. Additionally, the shoring and cribbing must comply with all applicable requirements promulgated by state and federal agencies, departments, commissions and other legislative bodies. Additionally, Agency must submit for approval two (2) copies of a professionally engineered demolition plan to BNSF's Manager of Public Projects.



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

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

B. The Contractor will be responsible for the rearrangement of any facilities or Lines determined to interfere with the construction. The Contractor must cooperate fully with any telecommunications company(ies) in performing such rearrangements.

C. Failure to mark or identify these Lines will be sufficient cause for BNSF's engineering representative to stop construction 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 contractor hereby indemnifies, defends and holds harmless BNSF for, from and against all cost, liability, and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of Contractor, its subcontractors, agents and/or employees that cause or in any way or degree contribute to (1) any damage to or destruction of any Lines by Contractor, and/or its subcontractors, agents and/or employees, on BNSF's property or within BNSF's right-of-way, (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on BNSF's property or within BNSF's right-of-way, and/or (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of such telecommunication company(ies). **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY, DEATH, CAUSE OF ACTION OR CLAIM WAS OCCASIONED BY OR CONTRIBUTED TO**



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BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE WILLFUL MISCONDUCT OR SOLE NEGLIGENCE OF BNSF.

- 13)** Agency must require compliance with the obligations set forth in this agreement, including Exhibit C and Exhibit C-1, and incorporate in each prime contract for construction of the Project, or the specifications therefor (i) the provisions set forth in Article III; (ii) the provisions set forth in Article IV; 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 construction work performed hereunder by Agency for the Project will be pursuant to a contract or contracts to be let by Agency, and all such contracts must include the following:
- 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 construction that affect safety or BNSF operations will 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-1, and (ii) delivered to and secured BNSF's approval of the required insurance; and
 - D.** To facilitate scheduling for the Project, Agency shall have its contractor give BNSF's representative four 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 Project. BNSF has the right at any time to revise or change the work windows, due to train operations or service obligations. BNSF will not be responsible for any additional costs and expenses resulting from a change in work windows. Additional costs and expenses resulting from a change in work windows shall be accounted for in the contractor's expenses for the Project.
 - E.** The plans and specifications for the Project must be in compliance with the Bridge Requirements set forth on Exhibit F.



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15) Agency must advise the appropriate BNSF Manager of Public Projects, in writing, of the completion date of the Project within thirty (30) days after such completion date. Additionally, Agency must notify BNSF's Manager 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 LAW, AGENCY HEREBY RELEASES, INDEMNIFIES, DEFENDS AND HOLDS HARMLESS BNSF, ITS AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO) OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART) (I) THE USE, OCCUPANCY OR PRESENCE OF AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (II) THE PERFORMANCE, OR FAILURE TO PERFORM BY THE AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS, ITS WORK OR ANY OBLIGATION UNDER THIS AGREEMENT, (III) THE SOLE OR CONTRIBUTING ACTS OR OMISSIONS OF AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (IV) AGENCY'S BREACH OF THE TEMPORARY CONSTRUCTION LICENSE OR EASEMENT GRANTED TO AGENCY PURSUANT TO ARTICLE II OF THIS AGREEMENT, (V) ANY RIGHTS OR INTERESTS GRANTED TO AGENCY PURSUANT TO THE TEMPORARY CONSTRUCTION LICENSE OR EASEMENT DISCUSSED IN ARTICLE II OF THIS AGREEMENT, (VI) AGENCY'S OCCUPATION AND USE OF BNSF'S PROPERTY OR RIGHT-OF-WAY, INCLUDING, WITHOUT LIMITATION, SUBSEQUENT MAINTENANCE OF THE STRUCTURE BY AGENCY, OR (VII) AN ACT OR OMISSION OF AGENCY OR ITS OFFICERS, AGENTS, INVITEES, EMPLOYEES OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER. THE LIABILITY ASSUMED BY AGENCY WILL 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



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PROXIMATELY CAUSED BY THE WILLFUL MISCONDUCT OR SOLE NEGLIGENCE OF BNSF.

- ~~17) Agency must give BNSF's Manager of Public Projects written 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 – JOINT OBLIGATIONS

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

- 1)** All work contemplated in this Agreement must be performed in a good and workmanlike manner and each portion must be promptly commenced by the party obligated hereunder to perform the same and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications during construction which affect BNSF will be subject to BNSF's approval prior to the commencement of any such changes or modifications.
- 2)** The work hereunder must be done in accordance with the 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.



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

Sweta Patel, P.E.
City of Riverside Public Works Department, Engineering
3900 Main Street, Riverside, CA 92522
(951)826-5341

- 5) 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 Sweta Patel for appropriate corrective action.

~~BNSF will contribute Three Million Seven Hundred Fifty Thousand Four Hundred Eighty-two and no/100 (\$3,750,482) (hereinafter referred to as "BNSF's Share") towards the total actual costs of the Project. BNSF's Share will be based on the costs for preliminary engineering, right-of-way and construction within the following limits;~~



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- A. Where a grade crossing is eliminated by grade separation, the structure and approaches required to transition to a theoretical highway profile which would have been constructed if there were no railroad present, for the number of lanes on the existing highway and in accordance with the current design standards of the appropriate state highway agency; and
- B. Where another facility, such as a highway or waterway, requiring a bridge structure is located within the limits of a grade separation project, the estimated cost of a theoretical structure and approaches as described in 23 CFR 646.210(c)(1) to eliminate the railroad-highway grade crossing without considering the presence of the waterway or other highway.

Additionally, local, state, and federal funds will be used in the construction of the Project. The total actual cost of construction for the Project is presently estimated to be \$93,551,186 more particularly described on Exhibit G attached hereto and incorporated herein.

- 6) Pursuant to this section and Article II, Section 6 herein, Agency must, reimburse BNSF in full for the actual costs of all work performed by BNSF under this Agreement, less BNSF's Share as set forth in Article IV, Section 6 herein. BNSF's Share must be paid upon completion of the Project.

In any action brought under this Agreement, the prevailing Party shall be entitled to recover its actual costs and attorneys fees pursuant to California Civil Code Section 1717, as well as other litigation costs, including expert witness fees. The prevailing Party shall also be entitled to recover all actual attorneys fees and litigation costs incurred in connection with the enforcement of a judgment arising from such action or proceeding.

- 7) All expenses detailed in statements sent to Agency pursuant to Article II, Section 6 herein will comply with the terms and provisions of the Federal Aid Highway Program Manual, U.S. Department of Transportation, as amended from time to time, which manual is hereby incorporated into and made a part of this Agreement by reference. The parties mutually agree that BNSF's preliminary engineering, design, and contract preparation costs described in Article II, Section 2 herein are part of the costs of the Project even though such work may have preceded the date of this Agreement.
- 8) The parties mutually agree that no construction activities for the Project, nor future maintenance of the Structure once completed, 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).



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The parties hereto mutually understand and agree that trains cannot be subjected to delay during this time period.

- 9) Subject to the restrictions imposed by Article IV, 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 BNSF's file number BF-20227098 and D.O.T. Crossing No. 980865H and must state the time that construction activities will begin.
- 10) 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 its roadbed, track, any access gates installed pursuant to the Project, railroad drainage, and all other railroad facilities.
 - B. Agency will own and maintain, at its sole cost and expense, the Sub-Structure, the highway approaches, and appurtenances thereto, lighting, drainage and any access roadways to BNSF gates installed pursuant to this Agreement. BNSF may, at its option, perform maintenance on the Sub-Structure in order to avoid conflicts with train operations. BNSF will notify Agency prior to performing any such maintenance on the Structure. In the event such maintenance involves emergency repairs, BNSF will notify Agency at its earliest opportunity. Agency must fully reimburse BNSF for the costs of maintenance performed by BNSF pursuant to this subsection (b) Additionally, Agency and BNSF shall perform the necessary work to obtain the permanent closure of 3rd Street. Such closure shall be completed by January 1st, 2027.
 - C. Agency must, at Agency's sole cost and expense, keep the Sub-Structure painted and free from graffiti.
 - D. Agency must apply and maintain vertical clearance signs which consistently and accurately describe the minimum actual vertical clearance from the bottom of the Structure to the top of any pavement.
 - E. Agency agrees to reimburse BNSF for the cost of track surfacing due to settlement caused by the construction of the Structure for a period not to exceed two (2) years from the date of final inspection pursuant to Article III, Section 15.



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- F. Agency must provide BNSF with any and all necessary permits and maintain roadway traffic controls, at no cost to BNSF, whenever requested by BNSF to allow BNSF to inspect the Structure or to make emergency repairs thereto.
- 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. Agency must keep the Structure and surrounding areas clean and free from birds, pigeons, scavengers, vermin, creatures and other animals.
- 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 to the superstructure of the Structure, then Agency or its contractors and/or agents must procure and maintain the following insurance coverage:
 - i) 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:
 - (1) Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
 - (2) Endorsed to include the Limited Seepage and Pollution Endorsement.
 - (3) Endorsed to remove any exclusion for punitive damages.
 - (4) No other endorsements restricting coverage may be added.
 - (5) 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 Corporation", "BNSF RAILWAY COMPANY" and the subsidiaries, successors, assigns and affiliates of each.



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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.

- ~~11) Agency hereby grants to BNSF, at no cost or expense to BNSF, a permanent right of access from Agency property to BNSF tracks for maintenance purposes.~~
- 12)** Agency must provide one set of as built plans (prepared in **English Units**) to BNSF, as well as one set of computer diskettes containing as built CAD drawings of the Structure and identifying the software used for the CAD drawings. The "as built plans" must comply with the Bridge Requirements set forth on Exhibit F and depict all information in BNSF engineering stationing and mile post pluses. The "as built plans" must also include plan and profile, structural bridge drawings and specifications, and drainage plans. All improvements and facilities must be shown.
- 13)** Subject to the restrictions imposed by Article IV, Section 9 above, Agency must notify and obtain prior authorization from BNSF's Manager of Public Projects before entering BNSF's right-of-way for **Inspection or Maintenance** purposes, and the BNSF Manager of Public Projects will determine if flagging is required. If the construction work hereunder is contracted, Agency must require its prime contractor(s) to comply with the obligations set forth in Exhibit C and Exhibit C-1, as the same may be revised from time to time. Agency will be responsible for its contractor(s) compliance with such obligations.
- 14)** 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. Such changes or additions must not change or alter the highway components of the Structure. If it becomes necessary or desirable in the future to change, alter, widen or reconstruct the highway components of the Structure to accommodate railroad projects, the cost of such work, including any cost incidental to alteration of railroad or highway facilities made necessary by any such changes to the Structure, will be divided between BNSF and Agency in such shares as may be mutually agreed to by the parties hereto.
- 15)** Agency may, at Agency's sole expense, alter or reconstruct the highway components of the Structure if necessary or desirable, due to traffic conditions or pedestrian or other recreational traffic; provided, however, that any such alteration or reconstruction must not encroach further upon or occupy the surface of BNSF's right-



Contract Number: BF-20227098

of-way to a greater extent than is contemplated by the plans and specifications to be approved by BNSF pursuant to Article III, Section 1 herein, without obtaining BNSF's prior written consent and the execution of a supplement to this Agreement or the completion of a separate agreement.

- 16)** 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 California and the Federal Highway Administration, for a period of three (3) years from the date of final BNSF invoice under this Agreement.
- 17)** 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.
- 18)** In the event construction of the Project does not commence within twenty-four months [two years] of the Effective Date, this Agreement will become null and void.
- 19)** 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.
- 20)** 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.
- 21)** 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.
- 22)** 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:



Contract Number: BF-20227098

SIGNATURE PAGE FOLLOWS



Contract Number: BF-20227098

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

Signature: _____

Printed Name: _____

Title: _____

Date: _____

City of Riverside Signatures Follow.



Contract Number: BF-20227098

AGENCY

CITY OF RIVERSIDE

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Attest: _____
City Clerk

Certified as to Availability of Funds:

By: *[Signature]*
Asst Chief Financial Officer

Approved as to Form:

By: *[Signature]*
Deputy City Attorney



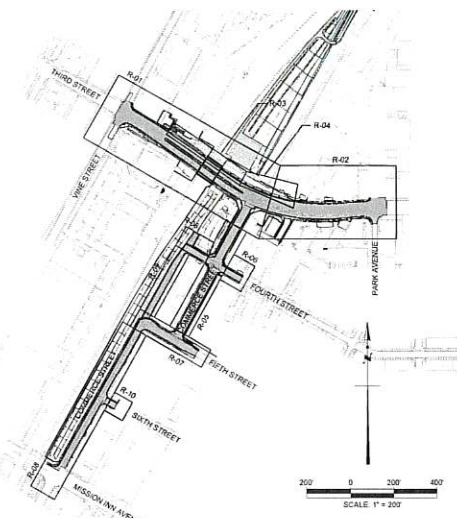
Contract Number: BF-20227098

Exhibit A

CITY OF RIVERSIDE THIRD STREET GRADE SEPARATION STREET IMPROVEMENT PLANS

GENERAL NOTES:

1. NO PERSON SHALL PERFORM ANY CONSTRUCTION ACTIVITY OR INSTALL ANY OBJECTS WITHIN THE PUBLIC RIGHTS-OF-WAY OR EASEMENTS OF THE CITY OF RIVERSIDE WITHOUT A VALID CONSTRUCTION PERMIT OR A STREET OPENING PERMIT OR AN ENCROACHMENT PERMIT ISSUED BY THE CITY PUBLIC WORKS DEPARTMENT.
2. IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO CLEAR THE RIGHT OF WAY IN ACCORDANCE WITH THE PROVISIONS OF LAW AS IT AFFECTS EACH UTILITY INCLUDING IRRIGATION LINES AND APPLICANCES AND AT NO COST TO THE CITY.
3. CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF RIVERSIDE DEPARTMENT OF PUBLIC WORKS STANDARD DRAWINGS, ITS SUPPLEMENTAL NOTES AND THE STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION, CURRENT EDITION.
4. THE PRIVATE ENGINEER DRAWING THESE PLANS IS RESPONSIBLE FOR ASSURING THE ACCURACY AND ACCEPTANCE OF THE WORK HEREON. IN THE EVENT OF DISCREPANCIES ARISING DURING CONSTRUCTION THE PRIVATE ENGINEER SHALL BE RESPONSIBLE FOR DETERMINING AN ACCEPTABLE SOLUTION AND REVISIONS TO THE PLANS FOR APPROVAL BY THE CITY.
5. QUANTITIES SHOWN ARE FOR INFORMATION ONLY AND THE CITY OF RIVERSIDE IS NOT RESPONSIBLE FOR THEIR ACCURACY.
6. THE DEVELOPER SHALL BE RESPONSIBLE FOR PRESERVING OR RE-ESTABLISHING AND REFERENCING SURVEY MONUMENTS IDENTIFIED, OBTAINED OR BUILT AS A RESULT OF CONSTRUCTION SHOWN HEREON.
7. ALL FINISHED ELEVATIONS SHALL BE STATED IN THE FIELD BY THE PRIVATE ENGINEER.
8. WHERE NEW PAVEMENT IS TO GO ON EXISTING PAVEMENT, THE EDGE OF THE EXISTING PAVEMENT SHALL BE TRIMMED IN A SMOOTH AND STRAIGHT LINE. CONSTRUCT MATCH-UP PAVERS AS SHOWN ON THE PLANS AND OVERLAY PAVING AS DIRECTED IN THE FIELD TO PRODUCE A SMOOTH SECTION.
9. CONDUIT/DRAINWAY APPROACHES PER STANDARD DRAWING 302, EXACT SIZE AND LOCATION TO BE SET BY THE PRIVATE ENGINEER PRIOR TO CONSTRUCTION OF THE CURB AND GUTTER.
10. CONSTRUCT BLOCK WALL PER RIVERSIDE CITY STANDARD 704 OR APPROVED DESIGN (SEE PLAN FOR HEIGHT(S)), TYPE/COLOR OF BLOCK _____, OTHER _____, FINISH/COLOR CAP _____.
11. ON ALL NEW WORK WITHIN PUBLIC RIGHT OF WAY WHERE THE FILL IS ONE (1) FOOT OR GREATER, A LETTER WILL BE PROVIDED FROM THE SOILS ENGINEER, CERTIFYING THE COMPACTION OF THE FILL. SUBMIT PRIOR TO ASSURANCE OF THE CONSTRUCTION PERMIT/LOT SHEET.
12. STREET OPENING PERMIT FOR CONSTRUCTION AND/OR MODIFICATION OF TRAFFIC SIGNAL FACILITIES IS REQUIRED.
13. ALL TRAFFIC SIGNS SHALL BE INSTALLED PRIOR TO OPENING THE STREETS TO TRAFFIC.
14. SEE TRAFFIC SIGNAL PLAN # _____ FOR TRAFFIC SIGNAL FACILITIES AND STRIPING.
15. ANY TRAFFIC CONTROL STRIPING OBLITERATED AND/OR SAVED WORK DURING CONSTRUCTION SHALL BE RESTORED BY THE CONTRACTOR AT THE CITY'S DISCRETION PRIOR TO THE CITY INSPECTOR'S APPROVAL.
16. STREET IMPROVEMENT WORK THAT WILL CAUSE OBSTRUCTION TO THE OPERATOR LOCATED SHALL NOT BE PERMITTED UNTIL TRAFFIC SIGNAL MAINTENANCE PERSONNEL HAVE BEEN NOTIFIED AND THE NECESSARY TRAFFIC SIGNAL ADJUSTMENTS ARE MADE TO MAINTAIN SIGNAL OPERATION.
17. FINAL STRIPING FOR TRAFFIC CONTROL AND/OR PAVEMENT MARKING TO BE THE RESPONSIBILITY OF THE DEVELOPER.
18. THE CONTRACTOR SHALL CALL IN A LOCATION REQUEST TO UNDERGROUND SERVICE ALERT (USA) PRIOR TO 11:59P-12:59A. THIS WORKING DAY BEFORE DIGGING. NO CONSTRUCTION PERMIT WILL BE ISSUED BY THE PUBLIC WORKS DEPARTMENT INVOLVING EXCAVATION FOR UNDERGROUND FACILITIES UNLESS THE APPLICANT HAS BEEN PROVIDED AN INDUSTRY ADMINISTRATION NUMBER BY USA.
19. CONTRACTOR IS TO VERIFY EXISTING SEWER ELEVATION PRIOR TO CONSTRUCTION.
20. LOCATION OF LATERALS TO BE DETERMINED IN THE FIELD AT THE DIRECTION OF THE OWNER. RIGID CONNECT WITH PROPOSED AND/OR EXISTING FACILITIES.
21. NO FINISHED FLOOR ELEVATION SHALL BE LESS THAN 6" ABOVE THE HIGHEST MANHOLE OR ELEVATION OF THE SEWER LINE. SEWER LINE SHALL BE CONNECTED TO, WITHOUT HAVING A DROPPED SLOPE, UNLESS NOTED IN THE LATERAL.
22. A RIGID SHALL BE INSTALLED AND WILL REMAIN IN PLACE WHERE THE NEW SEWER CONNECTS WITH THE EXISTING SEWER UNLESS THE NEW SEWER IS ACCEPTED BY THE CITY.
23. THE SEWER CONTRACTOR SHALL ADJUST MANHOLES TO FINAL GRADE AFTER PAVING IS COMPLETED.
24. PIPES JOINTS FOR VITRIFIED CLAY PIPE SHALL BE TYPE 'G' AS SPECIFIED IN SECTION 208-2.3 OF THE STANDARD SPECIFICATIONS FOR PUBLIC WORKS PROJECTS. IF PLASTIC PIPE IS ALLOWED AS AN ALTERNATE, ALL PIPE JOINTS SHALL BE GASKETED. GASKETS SHALL NOT BE ALLOWED.
25. THE DEVELOPER AND/OR CONTRACTOR IS RESPONSIBLE FOR PERFORMING A VIDEO INSPECTION OF ALL NEW SEWER AND STORM DRAIN FACILITIES TO BE FINISHED UNDER THE MANHOLES PRIOR TO FINAL ACCEPTANCE OF THE WORK. THE VIDEO INSPECTION MUST BE PERFORMED IN THE PRESENCE OF THE PUBLIC WORKS INSPECTOR. A RECORDING OF THE VIDEO INSPECTION MUST BE SUBMITTED TO THE CITY FOR REVIEW AND ACCEPTANCE.
26. DEVELOPER AND/OR CONTRACTOR TO GIVE RIGID 5-DAYS WRITTEN NOTICE PRIOR TO STARTING WORK ON STORM DRAIN (OR SOAKAWAY WORK AREA WORK) (SABMENS). "NOT" ENCROACHMENT PERMIT" NO.
27. IN PAVEMENT OUTLAY AREAS, ANY DISTRESSED EXISTING PAVEMENT SHALL BE REMOVED AND REPLACED AS DIRECTED BY THE INSPECTOR PRIOR TO OVERLAYING WITH A.C. PAVING.



FOR REMOVALS NOTES, SEE DRAWING KM-02

CONSTRUCTION NOTES:

1. CONSTRUCT 0.55 HMA TYPE 'A' OVER 0.5' CLASS II AGGREGATE BASE (TH-11.9 - THIRD ST)
2. CONSTRUCT 0.55 HMA TYPE 'A' OVER 0.5' CLASS II AGGREGATE BASE (TH-4.5 - COMMERCE ST)
3. CONSTRUCT 0.55 HMA TYPE 'A' OVER 0.75' CLASS II AGGREGATE BASE (TH-8.0 - FOURTH ST)
4. CONSTRUCT 0.33 HMA TYPE 'A' OVER 0.5' CLASS II AGGREGATE BASE (PARKING LOT)
5. CONSTRUCT 0.33 PCC OVER 0.5' CLASS II AGGREGATE BASE
6. COLD MILL 2" EXISTING PAVEMENT
7. CONSTRUCT 2" HMA OVERLAY
8. CONSTRUCT 8" TYPE I P.C.C. CURB AND GUTTER PER CITY OF RIVERSIDE STD. DWG. NO. 200
9. CONSTRUCT 8" TYPE II P.C.C. CURB PER CITY OF RIVERSIDE STD. DWG. NO. 200
10. CONSTRUCT P.C.C. SIDEWALK PER CITY OF RIVERSIDE STD. DWG. NO. 325, WIDTH PER PLAN
11. CONSTRUCT P.C.C. CROSS GUTTER PER CITY OF RIVERSIDE STD. DWG. NO. 226, R PER PLAN
12. CONSTRUCT TYPE I P.C.C. CURB RAMP PER CITY OF RIVERSIDE STD. DWG. NO. 304
13. CONSTRUCT TYPE II P.C.C. CURB RAMP PER CITY OF RIVERSIDE STD. DWG. NO. 304
14. CONSTRUCT TYPE III P.C.C. CURB RAMP PER CITY OF RIVERSIDE STD. DWG. NO. 304
15. CONSTRUCT COMMERCIAL DRIVEWAY APPROACH PER CITY OF RIVERSIDE STD. DWG. NO. 302, R PER PLAN
16. CONSTRUCT MEDIAN HARDSCAPE PER LANDSCAPING PLANS
17. CONSTRUCT PARKWAY LANDSCAPING PER LANDSCAPING PLANS
18. CONSTRUCT CATCH BASIN AND LOCAL DEPRESSION PER CITY OF RIVERSIDE STD. DWG. NO. 405
19. CONSTRUCT RETAINING WALL PER STRUCTURAL PLANS
20. CONSTRUCT DECORATIVE BLOCK WALL PER DETAIL ON SHEET R-04, H=30"
21. CONSTRUCT CONCRETE BLOCK WALL PER CITY OF RIVERSIDE STD. DWG. NO. 704, H=30"
22. CONSTRUCT TYPE 7 RC RETAINING WALL PER SPWVC STD. PLAN 616-3
23. CONSTRUCT TUBULAR STEEL FENCE PER DETAIL ON DWG. NO. RD-01
24. INSTALL STANDARD PIPE GATE PER SPWVC STD. PLAN 600-3, WIDTH PER PLAN
25. INSTALL METAL HAND RAILINGS PER SPWVC STD. PLAN 600-3
26. CONSTRUCT REINFORCED CONCRETE STAIRS PER SPWVC STD. PLAN 640-4 PER PLAN
27. CONSTRUCT P.C.C. WHEELSTOP PER DETAIL ON SHEET RD-01
28. PAINT 4" SOLID WHITE STRIPE
29. PAINT 4" SOLID BLUE STRIPE
30. INSTALL ADA DECAL
31. CONSTRUCT CALTRANS TYPE 04 INLET
32. CONSTRUCT CURB RAMP AND DETECTABLE WARNING SURFACE PER SPWVC STD. PLAN NO. 111-5, CASE B, TYPE I
33. INSTALL 2 - 3" PVC DRAIN PIPES (S=0.020 MIN.) PER SPWVC STD. PLAN 150-4
34. CONSTRUCT 2" X 2" P.C.C. INLET (JENSON PRECAST - BROCKS 2424 CATCH BASIN WITH TRAFFIC RATED STEEL GRATE - OR APPROVED EQUAL)
35. CONSTRUCT 6" TYPE I P.C.C. CURB AND GUTTER PER CITY OF RIVERSIDE STD. DWG. NO. 200
36. CONSTRUCT 6" TYPE I P.C.C. CURB PER CITY OF RIVERSIDE STD. DWG. NO. 200
37. MODIFY EXISTING ELECTRICAL ENCLOSURE
38. CONSTRUCT DRIVEWAY APPROACH PER CITY OF RIVERSIDE STD. DWG. NO. 302
39. CONSTRUCT 2" P.C.C. RIBBON GUTTER PER DETAIL ON DWG NO. C-03.2
40. CONSTRUCT 8" P.C.C. OVER COMPACTED NATIVE
41. INSTALL STREET LIGHT PER STREET LIGHTING PLANS
42. CONSTRUCT 8" HIGH CHAIN LINK FENCE PER SPWVC STD. NO. 600-4
43. CONSTRUCT 16" WIDE SLIDING GATE PER DETAIL ON DWG. NO. RD-01
44. CONSTRUCT 24" WIDE SLIDING GATE PER DETAIL ON DWG. NO. RD-01
45. CONSTRUCT CONCRETE DROP INLET PER RCFCAWCD STD. DWG. CB110, ALL 4 SIDES OPEN
46. CONSTRUCT CHAIN LINK VEHICLE GATE PER SPWVC STD. NO. 600-4, WIDTH PER PLAN

IMPORTANT NOTICE
 THE CITY OF RIVERSIDE IS NOT RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED IN THIS DOCUMENT. THE USER OF THIS DOCUMENT SHALL BE RESPONSIBLE FOR VERIFYING THE ACCURACY OF THE INFORMATION PROVIDED IN THIS DOCUMENT.
 UNDEVELOPED SERVICE ALERT
 1-800-227-2600

FOR
 CIVIL ENGINEER
 2000 University Ave., Suite 100
 Riverside, CA 92507-1114
 Phone: (951) 514-1114
 Fax: (951) 514-1115

ENGINEER IN RESPONSIBLE CHARGE
 [Signature Line]
 DATE: _____

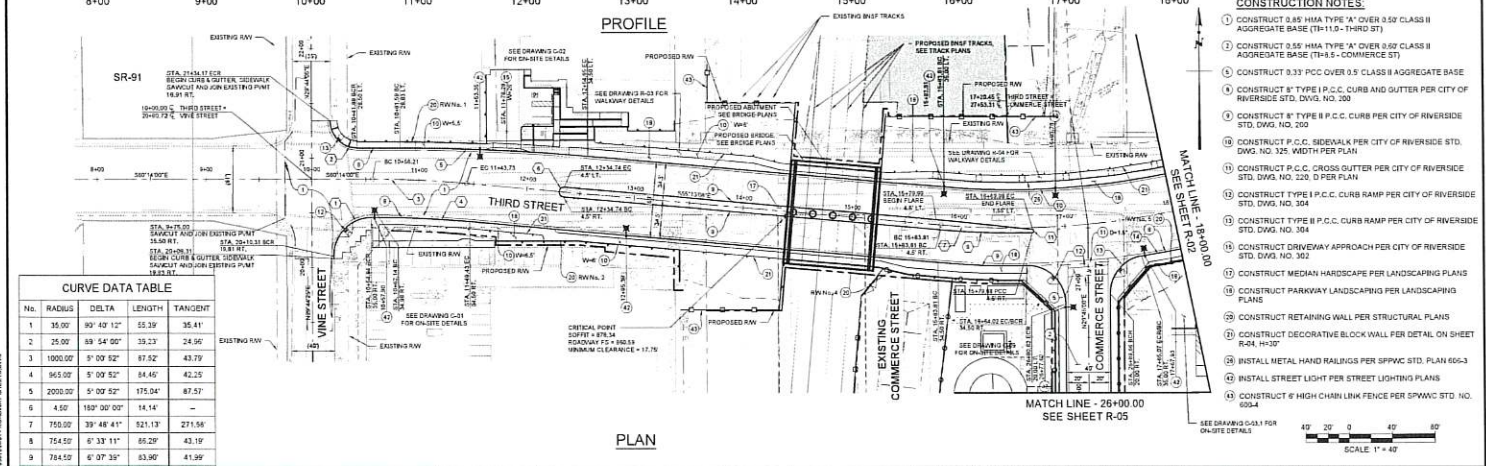
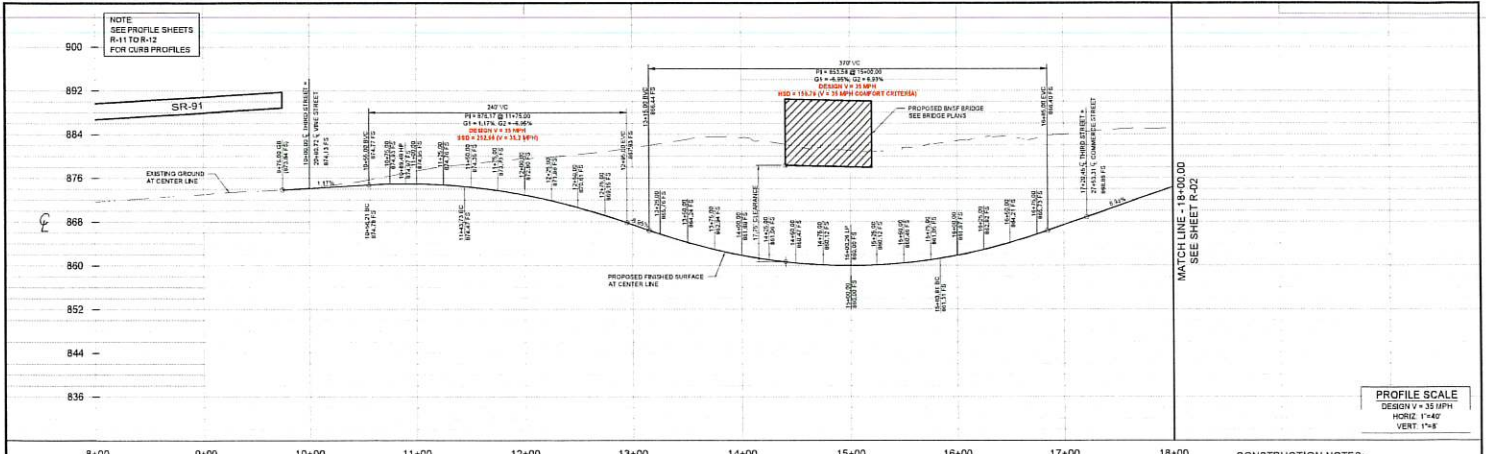
CITY OF RIVERSIDE, CALIFORNIA
 PUBLIC WORKS DEPARTMENT
 PROJECT NO. _____
 SHEET NO. _____
 DATE: 12/20/2024

THIRD STREET GRADE SEPARATION PROJECT
 STREET IMPROVEMENT PLANS
 KEYMAP AND GENERAL NOTES
 PRELIMINARY
 DATE: 12/20/2024

SCALE: 1" = 200'
 HORIZONTAL SCALE: 1" = 100'
 VERTICAL SCALE: 1" = 5'

PROJECT NO. _____
 SHEET 4 OF 225
 KM-01

90% SUBMITTAL - 12/20/2024



CURVE DATA TABLE

No.	RADIUS	DELTA	LENGTH	TANGENT
1	35.00'	39° 43' 12"	53.39'	35.41'
2	35.00'	33° 54' 06"	33.23'	24.96'
3	1000.00'	5° 09' 52"	87.52'	43.79'
4	965.00'	5° 09' 52"	84.65'	42.25'
5	2000.00'	5° 09' 52"	175.04'	87.57'
6	4.50'	159° 00' 00"	14.14'	-
7	750.00'	39° 48' 41"	521.13'	271.56'
8	754.50'	6° 33' 11"	65.29'	43.19'
9	784.50'	6° 07' 35"	63.90'	41.99'
10	715.00'	39° 48' 41"	495.81'	258.91'
11	1.50'	164° 48' 38"	4.31'	19.20'
12	35.00'	91° 05' 45"	55.65'	35.58'
13	35.00'	81° 11' 02"	49.59'	29.39'
14	785.00'	25° 57' 50"	355.73'	183.97'

- CONSTRUCTION NOTES:**
- CONSTRUCT 0.85 HMA TYPE 'A' OVER 0.52 CLASS II AGGREGATE BASE (TH-11.0 - THIRD ST)
 - CONSTRUCT 0.85 HMA TYPE 'A' OVER 0.67 CLASS II AGGREGATE BASE (TH-8.5 - COMMERCE ST)
 - CONSTRUCT 0.33 PCC OVER 0.5 CLASS II AGGREGATE BASE
 - CONSTRUCT TYPE I P.C.C. CURB AND GUTTER PER CITY OF RIVERSIDE STD. DWG. NO. 300
 - CONSTRUCT TYPE I P.C.C. CURB PER CITY OF RIVERSIDE STD. DWG. NO. 200
 - CONSTRUCT P.C.C. SIDEWALK PER CITY OF RIVERSIDE STD. DWG. NO. 325 WIDTH PER PLAN
 - CONSTRUCT P.C.C. CROSS GUTTER PER CITY OF RIVERSIDE STD. DWG. NO. 225 D PER PLAN
 - CONSTRUCT TYPE I P.C.C. CURB RAMP PER CITY OF RIVERSIDE STD. DWG. NO. 304
 - CONSTRUCT TYPE II P.C.C. CURB RAMP PER CITY OF RIVERSIDE STD. DWG. NO. 304
 - CONSTRUCT DRIVEWAY APPROACH PER CITY OF RIVERSIDE STD. DWG. NO. 302
 - CONSTRUCT MEDIAN HARDSCAPE PER LANDSCAPING PLANS
 - CONSTRUCT PARKWAY LANDSCAPING PER LANDSCAPING PLANS
 - CONSTRUCT RETAINING WALL PER STRUCTURAL PLANS
 - CONSTRUCT DECORATIVE BLOCK WALL PER DETAIL ON SHEET R-4, H307
 - INSTALL METAL HAND RAILINGS PER SPWVC STD. PLAN 605-3
 - INSTALL STREET LIGHT PER STREET LIGHTING PLANS
 - CONSTRUCT 6' HIGH CHAIN LINK FENCE PER SPWVC STD. NO. 600-4

IMPORTANT NOTICE

THIS DRAWING IS THE PROPERTY OF HOK. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. IT IS NOT TO BE REPRODUCED, COPIED, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF HOK. HOK SHALL NOT BE RESPONSIBLE FOR ANY ERRORS OR OMISSIONS IN THIS DRAWING. HOK SHALL NOT BE RESPONSIBLE FOR ANY CONSTRUCTION DEFECTS OR DAMAGES RESULTING FROM THE USE OF THIS DRAWING. HOK SHALL NOT BE RESPONSIBLE FOR ANY DELAYS OR DAMAGES RESULTING FROM THE USE OF THIS DRAWING. HOK SHALL NOT BE RESPONSIBLE FOR ANY COSTS OR DAMAGES RESULTING FROM THE USE OF THIS DRAWING.

1-800-227-2600

ENGINEER IN RESPONSIBLE CHARGE

CITY OF RIVERSIDE, CALIFORNIA
PUBLIC WORKS DEPARTMENT

PRELIMINARY

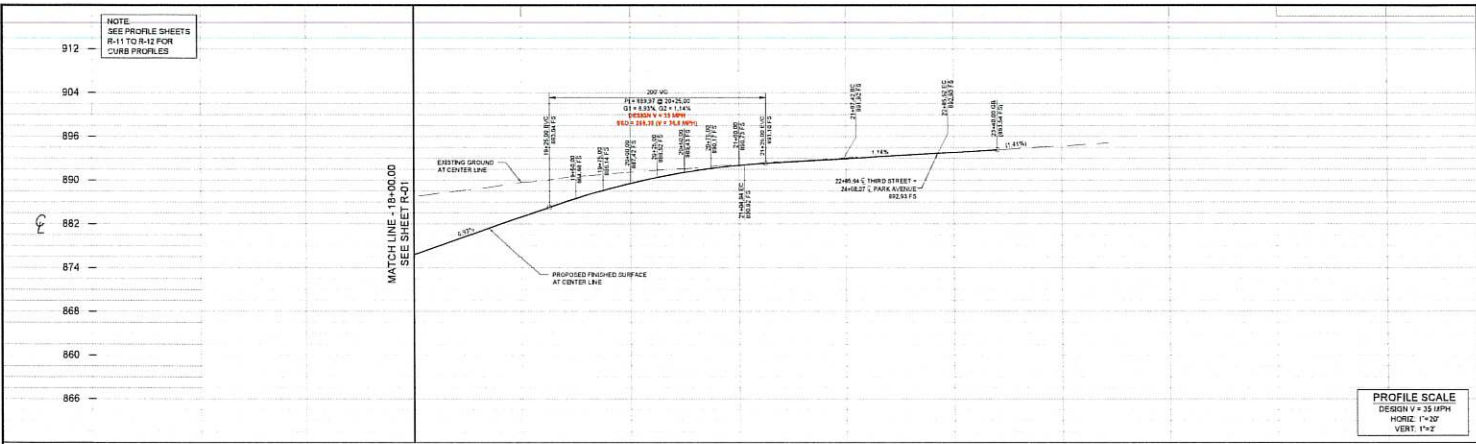
DATE: 12/20/2024

THIRD STREET GRADE SEPARATION PROJECT
STREET IMPROVEMENT PLANS
THIRD STREET PLAN & PROFILE
STA. 7+00 TO STA. 18+00

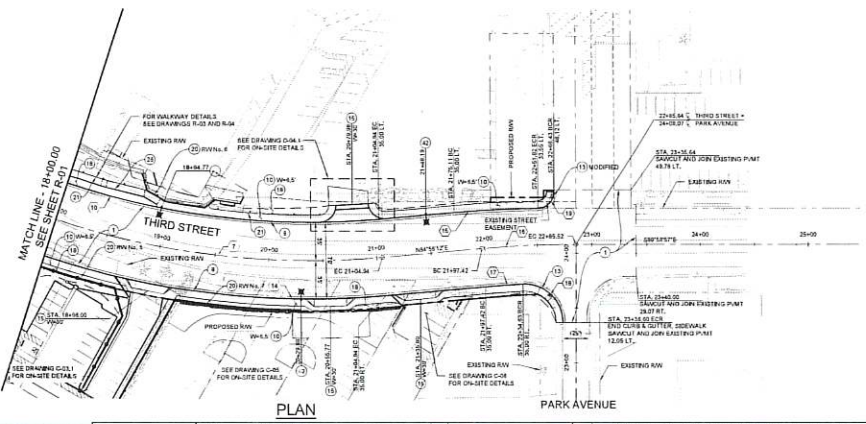
R-01

SHEET 9 OF 225

90% SUBMITTAL - 12/20/2024

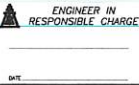
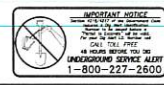


- CONSTRUCTION NOTES:**
- CONSTRUCT 0.85 HMA TYPE 'A' OVER 0.50' CLASS II AGGREGATE BASE (TH-11.0 - THIRD ST)
 - CONSTRUCT 'B' TYPE P.C.C. CURB AND GUTTER PER CITY OF RIVERSIDE STD. DWG. NO. 320
 - CONSTRUCT P.C.C. SIDEWALK PER CITY OF RIVERSIDE STD. DWG. NO. 323, WIDTH PER PLAN
 - CONSTRUCT TYPE B P.C.C. CURB RAMP PER CITY OF RIVERSIDE STD. DWG. NO. 304
 - CONSTRUCT DRIVEWAY APPROACH PER CITY OF RIVERSIDE STD. DWG. NO. 302
 - CONSTRUCT PARKWAY LANDSCAPING PER LANDSCAPING PLANS
 - CONSTRUCT RETAINING WALL PER STRUCTURAL PLANS
 - CONSTRUCT DECORATIVE BLOCK WALL PER DETAIL ON SHEET R-04, H=30"
 - INSTALL METAL HAND RAILINGS PER SPWVC STD. PLAN 605-3
 - INSTALL STREET LIGHT PER STREET LIGHTING PLANS



CURVE DATA TABLE

NO.	RADIUS	DELTA	LENGTH	TANGENT
7	750.00	39° 48' 41"	521.13	271.58
10	715.00	39° 48' 41"	496.81	258.91
14	785.00	25° 57' 50"	355.73	180.97
15	1035.00	4° 21' 00"	78.56	38.31
16	1000.00	5° 02' 51"	88.10	44.04
17	965.00	2° 07' 54"	35.90	17.95
18	35.00	83° 14' 45"	56.80	37.04
19	15.00	89° 11' 05"	23.30	14.79



CITY OF RIVERSIDE, CALIFORNIA PUBLIC WORKS DEPARTMENT

THIRD STREET GRADE SEPARATION PROJECT
STREET IMPROVEMENT PLANS
THIRD STREET PLAN & PROFILE
STA. 18+00 TO STA. 25+00

DATE: 12/20/2024

APPROVED BY: [Signature] DATE: []
CITY ENGINEER

DESIGNED BY: [] CHECKED BY: []



Contract Number: BF-20227098

EXHIBIT A-1

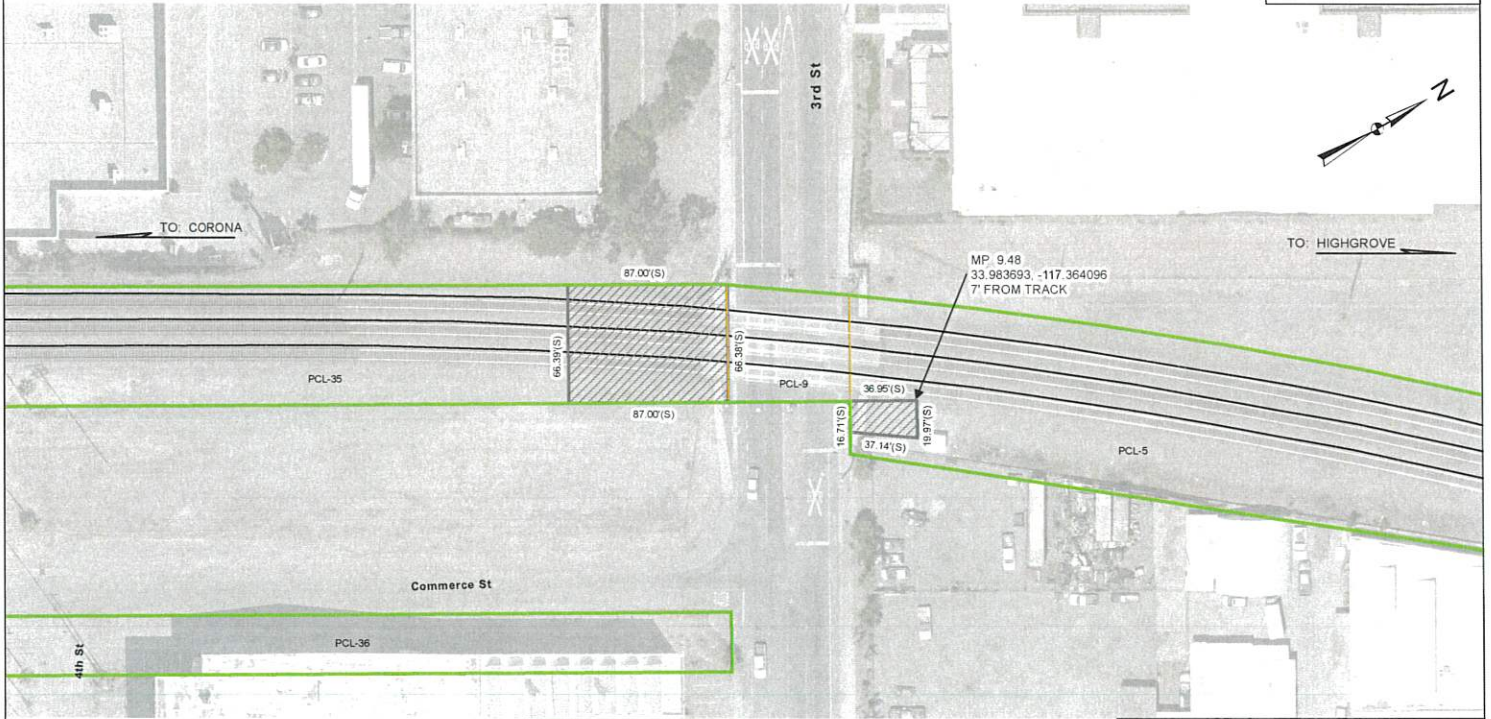
COORDINATE SYSTEM: CA 6

EXHIBIT "A"

SCALE: 1 IN = 50 FT

JLL TI #:
BW Proj. No.: 12196.003
MAP REFERENCE:
STA. = 508580
R/W =

This map was 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 of the BNSF. BNSF makes no representations, warranties or omissions relating to this map.



TO: CITY OF RIVERSIDE, CA - 3RD ST
AT: RIVERSIDE
RIVERSIDE COUNTY,
CA

- LEGEND:**
- EASEMENT AREA
 - RIGHT OF WAY LINE
 - PARCEL LINES
 - TRACK



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

CALIFORNIA DIVISION
SAN BERNARDINO SUBDIVISION - L.S. 7602
VAL SEC. 48060
THE AT&SF RY CO CA-11, MAP 3
SEC. 24, T2S, R5W SBM
DATE: 9/26/2023
MP 9.48

DRAWN BY: NAF DRAWING NO. 88977



Contract Number: BF-20227098

EASEMENT AGREEMENT

FOR _____
(C&M Agreement)

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

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

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

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

D. Grantor has agreed to grant Grantee such easement, subject to the terms and conditions set forth in this Easement and in the C&M Agreement 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 C&M Agreement is, for whatever reason, no longer in effect.

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

Section 1 Granting of Easement.

1.1 Easement Purpose. The "**Easement Purpose**" shall be for the purposes set forth in the C&M Agreement. Any improvements to be constructed in connection with the Easement Purpose are referred to herein as "**Improvements**" and shall be constructed, located, configured and maintained by Grantee in strict accordance with the terms of this Easement Agreement and the C&M Agreement.

1.2 Grant. Grantor does hereby grant unto Grantee a non-exclusive easement ("**Easement**") over the Premises for the Easement Purpose and for no other purpose. The Easement is granted subject to



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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"). Grantee may not make any alterations or improvements or perform any maintenance or repair activities within the Premises except in accordance with the terms and conditions of the C&M Agreement.

1.3 Reservations by Grantor. Grantor excepts and reserves the right, to be exercised by Grantor and any other parties who may obtain written permission or authority from Grantor:

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

Section 2 Term of Easement. The term of the Easement, unless sooner terminated under provisions of this Easement Agreement, shall be perpetual.

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



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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



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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



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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.



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

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

Section 9 Surrender of Premises.

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

- (a) remove all or such portion of Grantee's Improvements and all
- (b) appurtenances thereto from the Premises, as Grantor directs at Grantor's sole discretion;
- (c) repair and restore any damage to the Premises arising from, growing out of, or connected with Grantee's use of the Premises;
- (d) remedy any unsafe conditions on the Premises created or aggravated by Grantee; and
- (e) 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,



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the date when Grantee's Improvements are removed and the Premises are restored to the condition that existed as of the Effective Date. If Grantee fails to surrender the Premises to Grantor upon any termination of the Easement, all liabilities and obligations of Grantee hereunder shall continue in effect until the Premises are surrendered.

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

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

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

Section 13 Recordation. It is understood and agreed that this Easement Agreement shall not be in recordable form and shall not be placed on public record and any such recording shall be a breach of this Easement Agreement. Grantor and Grantee shall execute a Memorandum of Easement in the form attached hereto as Exhibit "B" (the "**Memorandum of Easement**") subject to changes required, if any, to conform such form to local recording requirements. The Memorandum of Easement shall be



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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 California 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 and the C&M Agreement, which is incorporated herein, 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.



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Section 15. Administrative Fee. Grantee acknowledges that a material consideration for this agreement, without which it would not be made, is the agreement between Grantee and Grantor, that the Grantee shall pay upon return of this Easement Agreement signed by Grantee to Grantor's Broker a processing fee in the amount of \$_____ over and above the agreed upon acquisition price. Said fee shall be made payable to BNSF Railway Company by a separate check.

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

GRANTOR:

BNSF RAILWAY COMPANY, a Delaware corporation

By: _____
Name: _____
Title: _____

GRANTEE:

_____,
a _____

By: _____
Name: _____
Title: _____



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EXHIBIT "A"

Premises



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EXHIBIT "B"

MEMORANDUM OF EASEMENT

THIS MEMORANDUM OF EASEMENT is hereby executed this _____ day of _____, 201_, 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"** attached hereto and incorporated herein by reference (the "**Premises**");

WHEREAS, Grantor and Grantee entered into an Easement Agreement, dated _____, 201_ (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.

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,



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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.

END OF PAGE – SIGNATURE PAGE FOLLOWS



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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: _____

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

This instrument was acknowledged before me on the _____ day of _____, 20____,
by _____ (name) as
_____ (title) of **BNSF RAILWAY COMPANY**, a Delaware
corporation.

Notary Public

My appointment expires: _____

(Seal)



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GRANTEE:

By: _____
Name: _____
Title: _____

STATE OF _____

§
§
§

COUNTY OF _____

This instrument was acknowledged before me on the _____ day of _____, 20__, by _____ (name) as _____ (title) of _____, a _____.

Notary Public

My appointment expires: _____

(Seal)



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EXHIBIT "C"

CONTRACTOR REQUIREMENTS

1) General

A. 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

_____.

B. 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.

C. The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.

D. 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:



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- E. 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.

- F. The Contractor must notify **(Agency)** at (_____) and Railway's Manager Public Projects, telephone number (_____) at least thirty (30) calendar days before commencing any work on Railway Property. Contractor's notification to Railway must refer to Railway's file _____.

- G. 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



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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.

- H. 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.

2) Contractor Safety Orientation

- A. No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site www.BNSFContractor.com. 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.

3) Railway Requirements

- A. 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.
- B. The Contractor must notify the Railway's Division Engineer 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.
- C. 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



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- 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts
- D. Upon completion of construction, the following clearances shall be maintained:
- 25' Horizontally from centerline of nearest track
 - 23' 6" Vertically above top of rail
- E. 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.
- F. 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.
- G. 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.
- H. 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.
- I. 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.
- J. 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.



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4) Contractor Roadway Worker on Track Safety Program and Safety Action Plan

- A. Each Contractor that will perform work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway Project Representative to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site www.BNSFContractor.com, 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.
- B. 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.
- i) The required background screening shall at a minimum meet the rail industry background screening criteria defined by the e-RAILSAFE Program as outlined at www.eVerifile.com, in addition to any other applicable regulatory requirements.
 - ii) 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.
 - iii) 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



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unreasonable, may pose a threat to the safety or security of Railroad's operations, assets or personnel.

- iv) 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.

5) Railway Flagger Services

- A. The Contractor must give Railway's **Roadmaster** 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.
- B. 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:
 - i) When, upon inspection by Railway's Representative, other conditions warrant.
 - ii) 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.
 - iii) When work in any way interferes with the safe operation of trains at timetable speeds.
 - iv) 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.
 - v) Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.
- C. Flagging services will be performed by qualified Railway flaggers.
 - i) 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.



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- ii) Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.
- iii) 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.**
- iv) The average train traffic on this route is _____ freight trains per 24-hour period at a timetable speed _____ MPH and _____ passenger trains at a timetable speed of _____ MPH.

6) Contractor General Safety Requirements

- A. 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.
- B. 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).
- C. 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



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flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.

- D. 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.
- E. 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.
- F. 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.
- G. 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.
- H. All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, www.BNSFContractor.com, 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.)**
- I. **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**



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CROSSING. PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE AREA WITH CONCURRENCE OF THE RAILWAY'S REPRESENTATIVE.

- J. 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)
- K. 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.
- L. 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.

7) Excavation

- A. Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor must determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact **BNSF's Field Engineering Representative**. All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. **It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.**
- B. 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.



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- C. 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.
- D. 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.

8) Hazardous Waste, Substances and Material Reporting:

- A. 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.

9) Personal Injury Reporting

- A. 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.



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NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

Please complete this form and provide to the BNSF supervisor, who will input this information into the EHS Star system. For questions, call (817) 352-1267 or email Safety.IncidentReporting@BNSF.com.

Accident City/State: _____ Date: _____ Time: _____

County: _____ Temperature: _____ Weather: _____
(if non-BNSF location)

Name (Last/First/MI): _____

Age: _____ Gender (if available): _____

Company: _____

eRailsafe Badge Number: _____ Expiration Date: _____

BNSF Contractor Badge Number: _____ Expiration Date: _____

Injury: _____ Body Part: _____
(e.g., laceration) (e.g., hand)

Description of accident (including how accident occurred, potential cause, etc.):

Work activity in progress at time of accident: _____

Tools, machinery, or hazardous materials involved in accident: _____

Treatment:

- First Aid Only
- Required Medical Treatment
- Other Medical Treatment: _____

Dr. Name: _____ Date: _____

Dr. Street Address: _____ City: _____ State: _____ Zip: _____

Hospital Name: _____

Hospital Street Address: _____ City: _____ State: _____ Zip: _____

Diagnosis: _____

THIS REPORT IS PART OF BNSF'S ACCIDENT REPORT PURSUANT TO THE ACCIDENT REPORTS STATUTE AND, AS SUCH SHALL NOT "BE ADMITTED AS EVIDENCE OR USED FOR ANY PURPOSE IN ANY SUIT OR ACTION FOR DAMAGES GROWING OUT OF ANY MATTER MENTIONED IN SAID REPORT...." 49 U.S.C. § 20903. See 49 C.F.R. § 225.7(b).



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EXHIBIT "C-1"

Agreement Between

BNSF RAILWAY COMPANY

and the

CONTRACTOR

Railway File: _____

Agency Project: _____

CITY OF RIVERSIDE, a/an (hereinafter called "Contractor"), has entered into an agreement (hereinafter called "Agreement") dated _____, 20__, with **AGENCY** for the performance of certain work in connection with the following project:_____. Performance of such work will necessarily require Contractor to enter **BNSF RAILWAY COMPANY** (hereinafter called "Railway") right of way and property (hereinafter called "Railway Property"). The Agreement provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for **Agency** (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Agreement, has agreed and does hereby agree with Railway as follows:

1) RELEASE OF LIABILITY AND INDEMNITY

- A.** 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



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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 WILLFULL MISCONDUCT OR SOLE NEGLIGENCE OF RAILWAY.**

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



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INTEND FOR CONTRACTOR TO INDEMNIFY RAILWAY FOR RAILWAY'S ACTS OF NEGLIGENCE.

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

2) TERM

- A. This Agreement is effective from the date of the Agreement until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

3) INSURANCE

Contractor shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. Commercial General Liability "CGL" Insurance

- i) The policy will provide 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 provider. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:
- (1) Bodily Injury and Property Damage
 - (2) Personal Injury and Advertising Injury
 - (3) Fire legal liability
 - (4) Products and completed operations
- ii) This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:
- (1) definition of "Insured Contract" will be amended to remove any exclusion or other limitation for any work being done within 50 feet of RAILWAY's property.
 - (2) Waiver of subrogation in favor of and acceptable to RAILWAY; and
 - (3) Additional insured endorsement in favor of and acceptable to RAILWAY and



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include coverage for ongoing operations and completed operations; and

(4) Separation of insureds; and

(5) The policy will be primary and non-contributing with respect to any insurance carried by RAILWAY.

iii) 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.

iv) 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

i) The insurance will provide minimum coverage with a combined single limit of at least \$1,000,000 per accident, and include coverage for, but not limited to the following:

(1) Bodily injury and property damage

(2) Any and all vehicles owned, used or hired

ii) The policy will include the following endorsements or language, which will be indicated on or attached to the certificate of insurance:

(1) Waiver of subrogation in favor of and acceptable to RAILWAY;

(2) Additional insured endorsement in favor of and acceptable to RAILWAY;

(3) Separation of insureds;

(4) The policy shall be primary and non-contributing with respect to any insurance carried by RAILWAY.

C. Workers Compensation and Employers Liability Insurance

i) Workers Compensation and Employers Liability insurance including coverage for,



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but not limited to:

- (1) 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.
 - (2) 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.
- ii) This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:
- (1) Waiver of subrogation in favor of and acceptable to Railway.

D. Railroad Protective Liability insurance

- i) 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:
 - (1) Endorsed to include the Pollution Exclusion Amendment
 - (2) Endorsed to include the Limited Seepage and Pollution Endorsement.
 - (3) Endorsed to remove any exclusion for punitive damages.
 - (4) No other endorsements restricting coverage may be added.
 - (5) The original policy must be provided to the **Railway** prior to performing any work or services under this Agreement.
 - (6) 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.

E. Other Requirements:



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- i) Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.
- ii) 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.
- iii) Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.
- iv) Contractor is not allowed to self-insure without the prior written consent of **Railway**. If granted by **Railway**, any self-insured retention or other financial responsibility for claims shall be covered directly by Contractor in lieu of insurance. Any and all **Railway** liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.
- v) Prior to commencing services, Contractor shall furnish to **Railway** an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments. The certificate should be directed to the following address:

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

- vi) Contractor shall notify Railway in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration.
- vii) Any insurance policy shall be written by a reputable insurance company acceptable to Railway or with a current Best's Guide Rating of A- and Class VII or



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better, and authorized to do business in the state(s) in which the service is to be provided.

- viii) If coverage is purchased on a "claims made" basis, Contractor hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this Agreement. Annually Contractor agrees to provide evidence of such coverage as required hereunder.
- ix) 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.
- x) 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.
- xi) If any portion of the operation is to be subcontracted by Contractor, Contractor shall require that the subcontractor shall provide and maintain insurance coverage(s) as set forth herein, naming Railway as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Railway to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify Railway herein.
- xii) 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.
- xiii) 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.
- xiv) 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.
- xv) 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.



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

4) SALES AND OTHER TAXES

- A.** In the event applicable sales taxes of a state or political subdivision of a state of the United States are levied or assessed in connection with and directly related to any amounts invoiced by Contractor to Railway ("Sales Taxes"), Railway shall be responsible for paying only the Sales Taxes that Contractor separately states on the invoice or other billing documents provided to Railway; *provided, however*, that (i) nothing herein shall preclude Railway from claiming whatever Sales Tax exemptions are applicable to amounts Contractor bills Railway, (ii) Contractor shall be responsible for all sales, use, excise, consumption, services and other taxes which may accrue on all services, materials, equipment, supplies or fixtures that Contractor and its subcontractors use or consume in the performance of this Agreement, (iii) Contractor shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) that Contractor fails to separately state on the invoice or other billing documents provided to Railway or fails to collect at the time of payment by Railway of invoiced amounts (except where Railway claims a Sales Tax exemption), and (iv) Contractor shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) if Contractor fails to issue separate invoices for each state in which Contractor delivers goods, provides services or, if applicable, transfers intangible rights to Railway.
- B.** Upon request, Contractor shall provide Railway satisfactory evidence that all taxes (together with any penalties, fines or interest thereon) that Contractor is responsible to pay under this Agreement have been paid. If a written claim is made against Contractor for Sales Taxes with respect to which Railway may be liable for under this Agreement, Contractor shall promptly notify Railway of such claim and provide Railway copies of all correspondence received from the taxing authority. Railway shall have the right to contest, protest, or claim a refund, in Railway's own name, any Sales Taxes paid by Railway to Contractor or for which Railway might otherwise be responsible for under this Agreement; *provided, however*, that if Railway is not permitted by law to contest any such Sales Tax in its own name, Contractor shall, if requested by Railway at Railway's sole cost and expense, contest in Contractor's own name the validity, applicability or amount of such Sales Tax and allow Railway to control and conduct such contest.



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

5) EXHIBIT "C" CONTRACTOR REQUIREMENTS

- A. The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Agreement, and the Contractor Requirements set forth on Exhibit "C" attached to the Agreement and this Agreement, including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site. Contractor shall execute a Temporary Construction Crossing Agreement or Private Crossing Agreement (<http://www.bnsf.com/communities/faqs/permits-real-estate/>), for any temporary crossing requested to aid in the construction of this Project, if approved by BNSF.

6) TRAIN DELAY

- A. 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.
- B. 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.



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- C. 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.
- D. The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. The rate then in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of train delay pursuant to this agreement.
- E. Contractor and its subcontractors must give Railway's representative four (4) 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.
- F. Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.

SIGNATURE PAGE FOLLOWS



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

BNSF RAILWAY COMPANY

CITY OF RIVERSIDE

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Accepted and effective _____.

Contact Person: _____

Address: _____

City: _____

State: _____

Zip: _____

Fax: _____

Phone: _____

E-mail: _____



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EXHIBIT D

BNSF COST ESTIMATE

**City of Riverside
Third Street Grade Separation Project**

Third Street – At Grade
LS 7602 MP 9.491
San Bernardino Sub
DOT# 026480N – At Grade
DOT# 980865H – New Overhead

Inspection/Coordination/Cutover	\$ 1,000,000
Track Work	\$ 5,800,000
Signal/Telecom Work	\$ 1,700,000
Sub Total	\$ 8,500,000
Administration @ 10%	\$ 850,000
Contingency @ 10%	\$ 800,000
TOTAL	\$ 10,200,000

Note: This is an estimate only. BNSF will bill on an actual cost basis.



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EXHIBIT F

Grade Separations

(FOR USE IN ANY C&M AGREEMENT FOR CONSTRUCTION OF AN OVERPASS OR AN UNDERPASS INITIATED BY A PUBLIC AGENCY)

BNSF PROCESS REQUIREMENTS FOR DESIGN & CONSTRUCTION OF GRADE SEPARATION PROJECTS BY A PUBLIC AGENCY ON BNSF RIGHT OF WAY, WHICH IMPACT BNSF PROPERTY OR OPERATIONS

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

- 1.01.02 Definitions:
 - **Operationally Critical, (OC):** defined as Work that requires a submittal and acceptance by BNSF, which impacts, or could impact BNSF operations, on BNSF right-of-way or adjacent to it.
 - **Acceptance:** BNSF's response to plan submittals indicating a notice to proceed with work in the field; **Disclaimer for Acceptance:** ***BNSF has reviewed these submittals and no exceptions are taken with regard to BNSF's ability to use or accommodate the project as intended. BNSF has not reviewed the design details or calculations for structural integrity or engineering accuracy. BNSF accepts no responsibility for errors or omissions in the design or execution of the project.**
 - **Inspector/Coordinator, (I/C):** A third party consultant which BNSF hires to assist in the coordination of the project on BNSF's behalf. When referenced, "I/C" refers to the I/C team consisting of I/C-I, I/C-II, and the Resident Engineer (RE). The I/C team's role is to ensure the project is constructed per accepted* plans and specifications for that portion of the project on BNSF right of way, as it affects BNSF. The I/C will monitor construction activities



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to ensure that improvements used by BNSF meet all requirements of BNSF, and accommodate railroad operations.

- 1.01.03 The following submittals and actions are required by BNSF prior to Operationally Critical, (OC) Work being performed on BNSF property or above tracks being operated by BNSF Railway:

2.01 Submittals and Actions Required During the Project Design Phase:

- 2.01.01 The Agency shall be the main contact for BNSF throughout the project. Agency shall be included on all correspondence relating to BNSF.
- 2.01.02 Required Design Submittals: (Allow for 4 weeks for BNSF to review design submittals)

Agency shall refer to the requirements of the UP/BNSF Guidelines on Grade Separation Projects when designing a grade separation which will impact BNSF Railway. Agency will be required to submit plans for BNSF review and comment. Plans shall not be labeled "final" until all comments have been addressed and BNSF has accepted* the plans.

Examples of required design submittals may be, but are not limited to:

Concept, vertical profile of Top of Rail, 30% plans and final plans

The following submittals will require a Professional Engineer, (PE) stamp:

Overpass design

Underpass design

Hydraulic study



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Any non-standard design of a structure which will carry train loading

Work covered by a submittal shall not be performed in field without receiving Acceptance from BNSF.

Work windows will not exceed 6 hours, so project should be designed accordingly.

The following Disclaimer applies to BNSF acceptance of Agency design plans:

**BNSF has reviewed these submittals and no exceptions are taken with regard to BNSF's ability to use or accommodate the project as intended. BNSF has not reviewed the design details or calculations for structural integrity or engineering accuracy. BNSF accepts no responsibility for errors or omissions in the design or execution of the project.*

3.01 Submittals and Actions Required During the Construction Phase:

- 3.01.01 The Agency shall be the main contact for BNSF throughout the project. Agency shall be included on all correspondence relating to BNSF. **BNSF will NOT accept submittals directly from the Agency's Contractor.**
- 3.01.02 BNSF will hire a consultant team to perform the duties of an Inspector/Coordinator, (I/C) on behalf of BNSF for the duration of the field construction of the project. The cost of the I/C will be reimbursable to BNSF by the Agency or their Contractor.

BNSF requires the I/C team be involved in the project throughout the construction phase to represent BNSF.

The I/C has authority to remove a contractor's employee from BNSF property if that employee fails to comply with the BNSF safety policy, does not have proper PPE or otherwise ignores instructions regarding work on BNSF right-of-way. The I/C has authority



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to shut down work on BNSF right-of-way if the contractor works in a manner that is in violation of BNSF's safety policy or FRA regulations.

Anytime instructions to the contractor by BNSF or the I/C are not complied with, the project may be shut down. All equipment and personnel will be removed from BNSF property until issues causing the shutdown are resolved to BNSF's satisfaction.

- 3.01.03 Agency must hold a pre-construction meeting with contractor and BNSF prior to work beginning on BNSF property.

The Pre-Construction meeting shall not be held until 30 days after I/C has been selected – this allows time for the I/C to become familiar with the project.

Recommend scheduling two weeks prior to construction commencing to allow for adjustment to work plans, if needed.

- 3.01.04 Required Construction Submittals: : (Allow for 4 weeks for BNSF to review submittals)

All submittals should flow from the Contractor to the Agency, to the I/C Consultant, to the BNSF Project Engineer, (PE), and to BNSF Structures with responses back through the same communication chain. **BNSF will not accept submittals directly from the Contractor.**

Any changes to the work governed by a submittal requires that the submittal be re-accepted* by BNSF before the work commences.

Examples of construction submittals required include but are not limited to:

Contractors Safety Action Plan, Fire Prevention Plan, Proposed Project Schedule, Demolition, Shoring, Falsework and Lifting of Materials.



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The following submittals will require a Professional Engineer, (PE) stamp:

Critical Pick Plan (75% of capacity of crane, or multi-crane pick)

Lifted Material Plan (Placement or Removal) – When lift is within temporary construction clearances and when lift is within 25' of the centerline of the nearest track

Demolition Plan

Temporary Shoring Plan

Bracing Design Plan (non-standard only per DOT)

For overpasses, Agency shall submit as-built plans of the structure, including final clearance dimensions to the I/C. Vertical clearance must be measured from the Top of Rail, horizontal clearance must be measured from the nearest track centerline.

OPERATIONALLY CRITICAL WORK AND SUBMITTALS: (4 to 6 weeks review timeline) All OC work requires a submittal and acceptance* by BNSF.

- Operationally Critical (OC) submittals are those that have the potential to affect the safe operation of trains and will need to be reviewed carefully. Work must be monitored to ensure it conforms to the submitted/accepted* plan.
- In-person safety review meetings will be required with BNSF representative, I/C, Contractor and Agency representative for all OC work and must be documented. The purpose of the meeting is to ensure all parties understand BNSF requirements and are following the applicable submittals. When a track work window is required the meeting shall occur at least 48 hours in advance of work starting.
- **Submittals must meet the requirements of the UP Railroad - BNSF Railway Guidelines for Railroad Grade Separation Projects. Submittals must also follow the requirements outlined in BNSF Review Comment Sheets, Use of Cranes & Lifting of Materials Submittal Schedule, BNSF Guidelines for Preparation of Bridge Demolition & Removal Plan and the BNSF-UPRR Guidelines for Temporary Shoring. Some submittals are required to be sealed by a licensed professional engineer.**
 - a. See Table 3-1 for Overhead Structures in UP Railroad - BNSF Railway Guidelines for Railroad Grade Separation Projects



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- b. See Table 3-2 for Underpass Structures UP Railroad - BNSF Railway Guidelines for Railroad Grade Separation Projects
- c. Examples of OC submittals included in the above are:
 - i. Shoring (Follow BNSF-UPRR Guidelines for Temporary Shoring)
 - ii. Falsework
 - iii. Demolition (Need plans for substructure and superstructure. Follow BNSF Guidelines for Preparation of Bridge Demolition & Removal Plan)
 - iv. Erection (overhead and underpass structures)
 - v. Construction Phasing Plans
- d. Additional OC submittals required, but not included in the Guidelines are:
 - i. All work plans that remove tracks from service (track outage windows require a detailed Gantt chart when greater than 2 hours)
 - ii. Contingency plans
 - iii. Additional OC submittals may be required on a project by project basis.

For underpasses and other railroad bridges, as required in Sections 4.11 and 4.12 of the UP Railroad - BNSF Railway Guidelines for Railroad Grade Separation Projects, a RE will be on site full-time during construction, at the cost of the project. At the discretion of the RE, as accepted by BNSF, an I/C-I or I/C-II maybe assigned for field duties where the work is not critical to ensuring the bridge is built to accepted project plans and specification.

- BNSF requires temporary and new track and railroad bridges be inspected by an FRA qualified BNSF employee prior to being placed into service. Two week advanced notice to BNSF structures department is required. For underpasses, all pile driving records are to be provided within 3-days of driving to the BNSF PE.
- Agency shall submit an as-built survey of shoo-fly final alignments. Alignments must conform to BNSF Shoo-fly procedures.



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- 3.01.05 Prior to any work commencing on BNSF right of way:

Contractors C/C-1 or Right of Entry must be fully executed and their insurance must be approved before they can perform work on BNSF property.

Proof of Contractors insurance approval must be produced to the BNSF PE and the I/C.

- 3.01.06 Contractor must adhere to all other BNSF policies and procedures not specifically mentioned in this agreement.



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EXHIBIT G

Third Street Grade Separation Project
Estimated Total Project Cost

Item No.	Construction Note	Description	Unit	Quantity	Unit Cost	Total Cost
		STRUCTURAL CONCRETE	CY	292	\$ 1,200.00	\$ 350,400
		ARCHITECTURAL TREATMENT	SF	2,198	\$ 30.00	\$ 65,940
		DRILL AND BOND DOWEL	LF	168	\$ 100.00	\$ 16,800
		BAR REINFORCING STREEL	LB	23,129	\$ 2.00	\$ 46,258
		MINOR CONCRETE (GUTTER)	LF	198	\$ 70.00	\$ 13,860
		CABLE RAILING	LF	198	\$ 100.00	\$ 19,800
		RETAINING WALL NO. 2 Subtotal				\$ 802,518
		RETAINING WALL NO. 4				
		VERTICAL GROUND ANCHOR	EA	30	\$ 6,000.00	\$ 180,000
		STRUCTURE EXCAVATION	CY	4,133	\$ 150.00	\$ 619,950
		STRUCTURE BACKFILL	CY	830	\$ 170.00	\$ 141,100
		PERVIOUS BACKFILL MATERIAL	CY	155	\$ 200.00	\$ 31,000
		STRUCTURAL CONCRETE	CY	1,017	\$ 1,200.00	\$ 1,220,400
		ARCHITECTURAL TREATMENT	SF	6,238	\$ 30.00	\$ 187,140
		BAR REINFORCING STREEL	LB	81,916	\$ 2.00	\$ 163,832
		MINOR CONCRETE (GUTTER)	LF	447	\$ 70.00	\$ 31,290
		CABLE RAILING	LF	445	\$ 100.00	\$ 44,500
		RETAINING WALL NO. 4 Subtotal				\$ 2,619,212
		RETAINING WALL NO. 5				
		VERTICAL GROUND ANCHOR	EA	4	\$ 6,000.00	\$ 24,000
		STRUCTURE EXCAVATION	CY	2,146	\$ 150.00	\$ 321,900
		STRUCTURE BACKFILL	CY	419	\$ 170.00	\$ 71,230
		PERVIOUS BACKFILL MATERIAL	CY	62	\$ 200.00	\$ 12,400
		36" CIDH PILING	LF	1,620	\$ 600.00	\$ 972,000
		STRUCTURAL CONCRETE	CY	556	\$ 1,200.00	\$ 667,200
		ARCHITECTURAL TREATMENT	SF	5,220	\$ 30.00	\$ 156,600
		DRILL AND BOND DOWEL	LF	882	\$ 100.00	\$ 88,200
		BAR REINFORCING STREEL	LB	49,310	\$ 2.00	\$ 98,620
		MINOR CONCRETE (GUTTER)	LF	431	\$ 70.00	\$ 30,170
		CABLE RAILING	LF	429	\$ 100.00	\$ 42,900
		RETAINING WALL NO. 5 Subtotal				\$ 2,485,220
		RETAINING WALL NO. 6				
		STRUCTURE EXCAVATION	CY	70	\$ 150.00	\$ 10,500
		STRUCTURE BACKFILL	CY	15	\$ 170.00	\$ 2,550
		24" CIDH PILING	LF	490	\$ 180.00	\$ 88,200
		STRUCTURAL CONCRETE	CY	39	\$ 1,200.00	\$ 46,800
		ARCHITECTURAL TREATMENT	SF	588	\$ 30.00	\$ 17,640
		DRILL AND BOND DOWEL	LF	110	\$ 100.00	\$ 11,000
		BAR REINFORCING STREEL	LB	4,857	\$ 2.00	\$ 9,714
		MINOR CONCRETE (GUTTER)	LF	83	\$ 70.00	\$ 5,810
		CABLE RAILING	LF	81	\$ 100.00	\$ 8,100
		RETAINING WALL NO. 6 Subtotal				\$ 199,914
		RETAINING WALL NO. 7				
		STRUCTURE EXCAVATION	CY	1,940	\$ 150.00	\$ 291,000
		STRUCTURE BACKFILL	CY	186	\$ 170.00	\$ 31,620
		PERVIOUS BACKFILL MATERIAL	CY	15	\$ 200.00	\$ 3,000
		STRUCTURAL CONCRETE	CY	148	\$ 1,200.00	\$ 177,600
		ARCHITECTURAL TREATMENT	SF	1,332	\$ 30.00	\$ 39,960
		BAR REINFORCING STREEL	LB	13,886	\$ 2.00	\$ 27,772
		MINOR CONCRETE (GUTTER)	LF	210	\$ 70.00	\$ 14,700
		CABLE RAILING	LF	208	\$ 100.00	\$ 20,800
		RETAINING WALL NO. 7 Subtotal				\$ 606,452
		RETAINING WALLS COMBINED Subtotal				\$ 7,068,394
		TRAFFIC				
		TEMPORARY TRAFFIC CONTROLS/DETOURS (SIGNAGE, CHANNELIZATION DEVICES)	LS	1	\$ 300,000.00	\$ 300,000
		SIGNAGE AND STRIPING	LS	1	\$ 40,000.00	\$ 40,000
		TRAFFIC SIGNALS				\$ -
		THIRD ST AND VINE ST	LS	1	\$ 225,000.00	\$ 225,000
		MISSION INN AVENUE AND COMMERCE ST (TEMPORARY)	LS	1	\$ 200,000.00	\$ 200,000
		TRAFFIC Subtotal				\$ 765,000
		LANDSCAPING				
		IRRIGATION	LS	1	\$ 150,000.00	\$ 150,000
		PLANTING	LS	1	\$ 150,000.00	\$ 150,000
		LANDSCAPING Subtotal				\$ 300,000
		UTILITIES				
		CONSTRUCT RIVERSIDE CANAL SYPHON AND 4'x6' RCB	LS	1	\$ 3,045,000.00	\$ 3,045,000
		REMOVE EXISTING 4'x6' RCB (RIVERSIDE CANAL)	CY	1	\$ 290,000.00	\$ 290,000
		CONSTRUCT SEWER MAIN IMPROVEMENTS (TO BE PROVIDED BY PUBLIC WORKS)	LS	1	\$ 2,000,000.00	\$ 2,000,000
		CONSTRUCT WATER MAIN IMPROVEMENTS (TO BE PROVIDED BY RPU - WATER)	LS	1	\$ 2,122,000.00	\$ 2,122,000
		POWERLINE RELOCATIONS (TO BE PROVIDED BY RPU - ELECTRIC)	LS	1	\$ 3,845,500.00	\$ 3,845,500
		STREET LIGHTING IMPROVEMENTS (TO BE PROVIDED BY RPU - ELECTRIC)	LS	1	\$ 671,025.00	\$ 671,025
		RPU FIBER OPTIC RELOCATION	LS	1	\$ 244,950.00	\$ 244,950
		SPRINT FIBER OPTICS LINE RELOCATION	LS	1	\$ 2,000,000.00	\$ 2,000,000
		RIVERSIDE CANAL RELOCATION	LS	1	\$ 2,000,000.00	\$ 2,000,000
		UTILITIES Subtotal				\$ 16,018,475
		BASIC CONSTRUCTION SUBTOTAL (WITHOUT MOBILIZATION / DEMOBILIZATION) =				\$55,896,065
		MOBILIZATION / DEMOBILIZATION				
		MOBILIZATION / DEMOBILIZATION @ 5% OF BASIC CONSTRUCTION SUBTOTAL	LS	1	\$ 2,790,303.23	\$ 2,790,303
		SUBTOTAL, WORK PERFORMED BY CONTRACTOR =				\$58,596,368
		OTHER PROJECT COSTS				
		ROW ACQUISITION & RELOCATION	LS	1	\$ 23,000,000.00	\$ 23,000,000
		Subtotal				\$23,000,000
		SUBTOTAL, OTHER PROJECT COSTS =				\$23,000,000
		PROJECT PRELIMINARY AND FINAL ENGINEERING DESIGN				
		CONSTRUCTION MANAGEMENT SERVICES	LS	1	\$ 3,500,000.00	\$ 3,500,000
			LS	1	\$ 4,000,000.00	\$ 4,000,000
		Subtotal				\$7,500,000
		ENGINEER'S ESTIMATE OF PROBABLE TOTAL PROJECT COST, WITHOUT CONTINGENCY =				\$89,096,368
				5% CONTINGENCY		\$4,454,818
		TOTAL ESTIMATED PROJECT COST				\$93,551,186

Quantity	Unit Cost	Total Cost (Theoretical)
292	\$ 1,200.00	\$ 350,400
2,198	\$ 30.00	\$ 65,940
168	\$ 100.00	\$ 16,800
23,129	\$ 2.00	\$ 46,258
198	\$ 70.00	\$ 13,860
198	\$ 100.00	\$ 19,800
		\$ 802,518
30	\$ 6,000.00	\$ 180,000
4,133	\$ 150.00	\$ 619,950
830	\$ 170.00	\$ 141,100
155	\$ 200.00	\$ 31,000
1,017	\$ 1,200.00	\$ 1,220,400
6,238	\$ 30.00	\$ 187,140
81,916	\$ 2.00	\$ 163,832
447	\$ 70.00	\$ 31,290
445	\$ 100.00	\$ 44,500
		\$ 2,619,212
4	\$ 6,000.00	\$ 24,000
2,146	\$ 150.00	\$ 321,900
419	\$ 170.00	\$ 71,230
62	\$ 200.00	\$ 12,400
1,620	\$ 600.00	\$ 972,000
556	\$ 1,200.00	\$ 667,200
5,220	\$ 30.00	\$ 156,600
882	\$ 100.00	\$ 88,200
49,310	\$ 2.00	\$ 98,620
431	\$ 70.00	\$ 30,170
429	\$ 100.00	\$ 42,900
		\$ 2,485,220
70	\$ 150.00	\$ 10,500
15	\$ 170.00	\$ 2,550
490	\$ 180.00	\$ 88,200
39	\$ 1,200.00	\$ 46,800
588	\$ 30.00	\$ 17,640
110	\$ 100.00	\$ 11,000
4,857	\$ 2.00	\$ 9,714
83	\$ 70.00	\$ 5,810
81	\$ 100.00	\$ 8,100
		\$ 199,914
1,940	\$ 150.00	\$ 291,000
186	\$ 170.00	\$ 31,620
15	\$ 200.00	\$ 3,000
148	\$ 1,200.00	\$ 177,600
1,332	\$ 30.00	\$ 39,960
13,886	\$ 2.00	\$ 27,772
210	\$ 70.00	\$ 14,700
208	\$ 100.00	\$ 20,800
		\$ 606,452
		\$ 7,068,394
1	\$ 300,000.00	\$ 300,000
1	\$ 40,000.00	\$ 40,000
		\$ -
1	\$ 225,000.00	\$ 225,000
1	\$ 200,000.00	\$ 200,000
		\$ 765,000
1	\$ 150,000.00	\$ 150,000
1	\$ 150,000.00	\$ 150,000
		\$ 300,000
1	\$ 3,045,000.00	\$ 3,045,000
1	\$ 290,000.00	\$ 290,000
1	\$ -	\$ -
1	\$ -	\$ -
1	\$ -	\$ -
1	\$ -	\$ -
1	\$ 2,000,000.00	\$ 2,000,000
1	\$ 2,000,000.00	\$ 2,000,000
		\$ 16,018,475
		\$ 55,896,065
1	\$ 2,790,303.23	\$ 2,790,303
		\$ 58,596,368
1	\$ 23,000,000.00	\$ 23,000,000
		\$ 23,000,000
		\$ 23,000,000
1	\$ 3,500,000.00	\$ 3,500,000
1	\$ 4,000,000.00	\$ 4,000,000
		\$ 7,500,000
		\$ 89,096,368
		\$ 4,454,818
		\$ 93,551,186

* Estimated costs shown are in current dollars. No cost escalation factors for inflation have been applied.
 ** Estimate assumes no hazardous materials, either in buildings or underground.

Estimated ENSF Contribution @ 5% = \$ 3,750,482



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EXHIBIT H

FORM OF PURCHASE AND SALE CONTRACT

THIS PURCHASE AND SALE CONTRACT ("Contract") is entered into as of the Effective Date (defined below) by and between **CITY OF RIVERSIDE**, a California Charter City and Municipal Corporation ("Seller"), and **BNSF RAILWAY COMPANY**, a Delaware corporation ("Purchaser").

In consideration of the mutual covenants set forth in this Contract and for other valuable consideration, which the parties acknowledge receiving, Seller and Purchaser agree as follows:

Section 1. Sale and Purchase.

(a) Subject to the terms and conditions set forth in this Contract, Seller agrees to sell and convey to Purchaser (or its designee), and Purchaser (or its designee) agrees to purchase and accept from Seller, for the Purchase Price (defined below):

(1) That certain tract of land (the "Land") in Riverside County, California commonly known consisting of approximately 4.25 acres more particularly described in the attached **Exhibit "A"** and to be more particularly described as provided in Section 3, together with all strips and gores, easements, rights-of-way, licenses, interests, rights, and appurtenances appertaining to the Land, if any.

(2) All rights, titles, and interests of Seller in and to any easements, rights-of-way, or other interests in, on, or to any alley, highway, or street in, on, across or adjoining the Land.

(3) All site plans, surveys, soil and substrata studies, environmental assessments, plans and specifications, engineering plans and studies, landscape plans, and other plans, studies or reports of any kind in Seller's or its contractors' or agents' possession that relate to the Property ("Plans and Studies").

(4) Any and all other rights, titles, interests, privileges, and appurtenances owned by Seller and in any way related to, or used in connection with, the ownership of the Land; provided that Purchaser desires to receive assignment of the same.



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(b) The above listed items are collectively called the "Property." The Property must be conveyed, assigned, and transferred to Purchaser (or its designee) at the Closing (defined below) free and clear of all liens, claims, easements, covenants, conditions, rights-of-way, reservations, restrictions, encroachments, tenancies, mineral interests, royalty interests, oil, gas or mineral leases, and any other type of encumbrance (collectively, the "Encumbrances"), except the Encumbrances appearing in the Title Commitment (defined below) that either are not objected to, or, if objected to, are not cured and that are subsequently waived in accordance with Section 3 ("Permitted Encumbrances").

Section 2. Purchase Price.

(a) The purchase price ("Purchase Price") for the Property is Ten Dollars (\$10.00) and other valuable consideration as described in the Underpass Agreement dated _____.

(b) The Purchase Price is payable in cash at the Closing (defined below).

Section 3. Title Commitment and Survey.

(a) As soon as practicable, after the Effective Date, Seller, at its expense, will deliver or cause to be delivered to Purchaser the following:

(1) An ALTA Owner's Commitment for Title Insurance (or other comparable form if the Land is located in a jurisdiction which does not employ ALTA standards) ("Title Commitment") from _____ ("Title Company"). The Title Commitment will set forth the status of title to the Property and will show all Encumbrances and other matters, if any, relating to the Property.

(2) Legible copies of all documents referred to in the Title Commitment, including but not limited to lien instruments, plats, reservations, restrictions, and easements.

(3) Copies of the tax statements covering the Property.

(b) Seller, at its expense, will deliver to Purchaser a survey ("Survey") consisting of a plat and to the extent available, field notes describing the Property. The Survey must be a current, on-the-ground, staked survey performed by a registered public surveyor or engineer satisfactory to Purchaser and Title Company. The Survey must comply with the standards of an ALTA survey and must (i) reflect the actual dimensions of the Land and the number of gross square feet and net square feet contained in it; (ii) identify any rights-of-way, easements, or other Encumbrances by applicable recording reference; and (iii) include the surveyor's registered number and seal, the date of the Survey, and a narrative certificate acceptable to Purchaser in favor of Purchaser, Title Company and if Purchaser requests, Purchaser's lender. Subject to the provisions of Sections 3(c) and 3(d), the description of the Land shown on the Survey shall be used in all transaction documents requiring a legal description of the



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Land and Purchaser and Seller shall execute a supplement to this Contract inserting the legal description in Exhibit A.

(c) Purchaser must give Seller written notice of any objections ("Objections") to the Title Commitment or the Survey (including, but not limited, to the legal description) within fifteen (15) business days after receiving the Title Commitment, the Survey, and all documents referred to in the Title Commitment and the Survey. At the Closing, Seller will provide releases for any deed-of-trust liens, judgment liens, mechanic's liens, delinquent taxes, or any other monetary liens encumbering the Property; provided, however, that if any such liens also encumber other property owned by Seller, Seller will not be required to obtain releases as to such other property, so long as Seller appropriately subdivides such other property from the Property.

(d) If Purchaser gives notice of the Objections, then Seller may (i) cure the Objections; (ii) cause the Title Commitment and the Survey to be amended to reflect cured matters; and (iii) give Purchaser a written response concerning the Objections within five (5) business days after receiving the notice from Purchaser. If Seller does not respond as described, then Purchaser is entitled either:

(1) To terminate this Contract by written notice to Seller and Title Company at any time within ten (10) business days after receipt of written notice from Seller stating that Seller will not or cannot cure the Objections.

(2) To waive the Objections that Seller will not or cannot cure and consummate the purchase of the Property subject to those Objections, which will be deemed to be Permitted Encumbrances.

(3) Notwithstanding the foregoing Sections, if Seller has commenced curing the Objections and is diligently prosecuting the same, as determined by Purchaser in Purchaser's sole discretion, then Purchaser in Purchaser's sole discretion may extend the Feasibility Period for an amount of time Purchaser deems necessary for Seller to cure the Objections.

(e) In the event the Title Commitment and/or Survey are revised after Purchaser's initial receipt of the same so as to include any additional exemptions or Encumbrances not shown on the initial Title Commitment and Survey ("New Encumbrances"), the provisions above shall be applicable to any such New Encumbrance and Purchaser shall have the right to deliver Objections with respect thereto in the same manner as Objections to the initial Title Commitment and Survey except that (i) the Objection Period with respect to any such New Encumbrance shall terminate ten (10) days after Purchaser's receipt of the revised Title Commitment or Survey which first refers to or discloses such New Encumbrance and (ii) the Cure Period with respect to such New Encumbrance shall terminate five (5) days after Seller's receipt of Purchaser's Objections with respect thereto.



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Section 4. Feasibility Period.

(a) As used in this Contract, "Feasibility Period" means the period beginning on the Effective Date and ending at 6:00 p.m. Central Time, on _____, 20___. **Purchaser may, at Purchaser's sole discretion, wave, terminate, or extend the Feasibility Period up to three (3) times for 30 days each by providing Seller written notification on or before the expiration date of the Feasibility Period, as it may be extended.**

(b) At the commencement of the Feasibility Period, Seller will deliver to Purchaser copies of all Plans and Studies.

(c) Purchaser may terminate its obligation to purchase the Property at any time during the Feasibility Period in its sole discretion. Purchaser must exercise its termination rights under this Section 4 by delivering written notice to Seller at any time during the Feasibility Period. If Purchaser does not send such a notice during the Feasibility Period, it will be deemed to have elected to proceed with purchasing the Property.

(d) During the Feasibility Period, Purchaser may apply with the appropriate governmental authorities to obtain necessary governmental approvals, variances, or permits for Purchaser's contemplated use. Seller will cooperate with Purchaser's efforts to obtain these approvals.

(e) During the Feasibility Period, Seller will permit Purchaser and its contractors and agents to enter the Property to inspect and test the Property (including systems and structural inspections, soil borings, and environmental tests) as Purchaser deems necessary or desirable. Seller will cooperate with Purchaser in arranging the inspections and tests. Purchaser must repair any damages to the Property resulting from any inspection or testing conducted by it or at its direction, and will hold Seller harmless from any and all activities of Purchaser, its agents or contractors for such inspections or testing.

(f) Notwithstanding anything herein to the contrary, in the event that Seller does not obtain and deliver either the Survey or the Title Commitment within the time periods specified above, the Feasibility Period shall be automatically extended (unless Purchaser gives notice otherwise) for the number of days that Seller is so delayed in delivering the Survey or the Title Commitment.

Section 5. Termination, Default and Remedies.

(a) Purchaser will be in default under this Contract if (i) it fails or refuses to purchase the Property at the Closing, or (ii) it fails to perform any of its other obligations either before or at the Closing, and such failure is not cured within five (5) business days after written notice of default from Seller. Purchaser will not be in default, however, if it terminates this Contract when it has an express right to terminate or when Seller fails to perform its obligations under this Contract. If Purchaser is in default, then Seller, as its exclusive remedy, is entitled to terminate this Contract by giving written



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notice to Purchaser before or at the Closing. Following the termination notice, neither party will have any further rights or obligations under this Contract.

(b) Seller will be in default under this Contract if (i) it fails or refuses to sell the Property at the Closing, or (ii) it fails to perform any of its other obligations either before or at the Closing and such failure is not cured within five (5) business days after written notice from Purchaser. Seller will not be in default, however, if it terminates this Contract when it has an express right to terminate or when Purchaser fails to perform its obligations under this Contract, and such failure is not cured within the cure period described above. If Seller is in default, then Purchaser is entitled either (i) to enforce specific performance of Seller's obligations under this Contract with respect to the Property; or (ii) to terminate this Contract by giving written notice to Seller before or at the Closing, whereupon neither party will have any further rights or obligations under this Contract. Nothing herein shall limit any remedy at law, in equity or otherwise that Purchaser may have against Seller in the event of a breach by Seller of (a) any warranty of Seller set forth herein that is first discovered by Purchaser after the Closing, or (b) an obligation to be performed by Seller after Closing.

Section 6. Closing.

(a) The closing ("Closing") of the sale of the Property by Seller to Purchaser will occur in the Title Company's office located at _____ on or before a date that is 30 days or less after the expiration of the Feasibility Period or notice from Purchaser of its intent to waive the Feasibility Period and notification of a specific closing date ("Closing Date"). **Purchaser may, at Purchaser's sole discretion, extend the Closing Date up to three (3) times for 30 days each by providing Seller written notification on or before the then-scheduled Closing Date.**

(b) At the Closing, all of the following must occur, all of which are concurrent conditions:

(1) Seller, at its expense, shall deliver or cause to be delivered to Purchaser the following:

(i) A Special Warranty Deed ("Deed") in the form attached hereto as Exhibit "D" and incorporated herein by reference.

(ii) An ALTA Owner's Extended Coverage Policy of Title Insurance with all endorsements required by Purchaser ("Owner Policy") issued by Title Company to Purchaser for the Purchase Price insuring that, upon Closing, Purchaser is the owner of good and marketable fee simple title to the Property subject only to the Permitted Encumbrances, and to the lien of current, non-delinquent real property taxes and assessments for the year in which the Closing occurs. Seller agrees to pay for one half of the ALTA Owner's Extended Coverage portion of the Owner Policy; Purchaser agrees to pay for any additional endorsements or amendments.



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(iii) Evidence satisfactory to Purchaser and the Title Company that the person executing the Closing documents on behalf of Seller has full right, power, and authority to do so.

(iv) Seller's affidavit setting forth its U.S. Taxpayer Identification Number, its office address, and its statement that it is not a "foreign person" as defined in Internal Revenue Code §1445, as amended.

(v) The original of each statement for current real estate and personal property taxes that Seller possesses, together with proof of payment of taxes.

(vi) Any other document or instrument that may be necessary or reasonably required by Purchaser or the Title Company to consummate the transaction.

(vii) Individual Access Easements from Blue Banner, Office Depot, Realty Income Corporation, and Riverside County Transportation Commission ("Access Easements") in the form attached hereto as Exhibit "C" and incorporated herein by reference.

(viii) An Easement for railroad bridge and operations over 3rd Street ("Railroad Easement") in the form attached hereto as Exhibit "D" and incorporated herein by reference.

(ix) An Easement from Riverside County Transportation Commission for drainage ("Drainage Easement") in the form attached hereto as Exhibit "E" and incorporated herein by reference.

(2) Purchaser, at its expense, shall deliver or cause to be delivered to Seller the following:

(i) Immediately available funds via wire transfer in an amount equal to the Purchase Price.

(ii) Evidence reasonably satisfactory to Seller and the Title Company that the person executing the Closing documents on behalf of Purchaser has full right, power, and authority to do so.

(3) Seller and Purchaser shall each pay their respective attorneys' fees, and all escrow and recording fees must be paid according to the custom for commercial real estate closings in the jurisdiction of the Property. If no custom predominates, then Seller and Purchaser shall each pay one-half (1/2) of all escrow and recording fees.



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(c) Ad valorem and similar taxes and assessments relating to the Property will be prorated between Seller and Purchaser as of the Closing Date, based on estimates of the amount of taxes and assessments that will be due and payable for the Property during the year in which the Closing Date occurs. As soon as the amount of taxes and assessments on the Property for such year is known, Seller and Purchaser will readjust the amount of taxes and assessments due from each party with the result that Seller is responsible for those taxes and assessments applicable to the Property before the Closing Date and Purchaser is responsible for those taxes and assessments applicable to the Property on and after the Closing Date. All prior years' taxes and assessments will be Seller's obligations. This Section 7(c) will survive the Closing.

(d) Intentionally deleted.

(e) All utility charges and the charges under any service contracts or insurance premiums that Purchaser elects to assume will be prorated between the parties as of the Closing Date.

(f) Upon completion of the Closing, Seller shall deliver to Purchaser possession of the Property free and clear of all tenancies and parties in possession.

(g) The provisions of Sections 6(c) above shall survive Closing.

Section 7. Seller's Covenants, Representations and Warranties.

(a) Seller covenants and agrees with Purchaser that:

(1) At all times before Closing, Seller shall maintain in force property and liability insurance with respect to damage or injury to person or property occurring on the Property.

(2) At all times before Closing, Seller shall maintain the Property in as good a condition and repair as exists on the Effective Date, except for normal wear and tear. Seller shall advise Purchaser of any significant repair or improvement it makes to keep the Property in such condition.

(3) Before Closing, Seller may not create -- or voluntarily permit to be created -- any liens, easements or other conditions affecting all or part of the Property without Purchaser's prior written consent, which Purchaser may withhold in its sole discretion.

(b) Seller represents and warrants to Purchaser that:

(1) Seller is a municipal corporation duly organized, validly existing, and in good standing under California law.



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(2) Seller has all requisite power and authority to own the Property, enter into this Contract, and consummate the transaction contemplated in this Contract. Seller has duly authorized the execution and delivery of this Contract such that all documents to be executed by Seller are its valid, legally binding obligations and are enforceable against it in accordance with their terms.

(3) The persons executing this Contract and any and all documents on behalf of Seller have the legal power, right, and actual authority to bind Seller.

(4) Seller has the full right to sell the Property in accordance with this Contract.

(5) Seller has no notice and to the best of Seller's knowledge, there are no actions, suits, or proceedings pending, threatened or asserted against Seller or the Property, before or by any federal, state, municipal, or other governmental department, court, commission, board, bureau, agency, or instrumentality.

(6) Seller has no notice and to the best of Seller's knowledge, there are no pending or threatened condemnation actions, special assessments, or increases in assessed valuation with respect to the Property.

(7) Seller has not received any notice that, and to the best of its knowledge there are no, ordinances, regulations, laws, or statutes of any governmental agency pertaining to the Property which the Property violates.

(8) At Closing, there will be no unpaid bills or claims in connection with any work performed or material purchased in connection with the Property.

(9) No person, firm, corporation or other entity has or at the Closing shall have (i) any right or option to acquire the Property, or any part thereof, from Seller, or (ii) have any leasehold, tenancy, or other possessory rights or interests in the Property, or any part thereof.

(10) Seller has not, and at the Closing will not have, entered into any agreement affecting the Property, other than this Contract.

(11) Seller's execution of this Contract and its consummation of the transaction do not, and at the Closing Date will not, breach any agreement or constitute a default or a condition that would ripen into a default under any agreement to which Seller is a party or by which all or part of the Property is bound. Furthermore, Seller's execution of this Contract and its consummation of the transaction do not, and at the Closing will not, violate any order, rule, or regulation applicable to Seller or the Property of any court or any federal, state, or municipal regulatory body or administrative agency or other governmental body.



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(12) No permission, approval, or consent by third parties or governmental authorities is required for Seller to consummate this transaction.

(13) No representation, warranty, or statement of Seller in this Contract or in any document or Information to be furnished to Purchaser misstates or omits any material fact necessary to make the statements or facts contained therein not materially misleading. Seller knows of no situation on or about the Property not disclosed to Purchaser in writing which Seller reasonably should know would affect Purchaser's consideration of the Property.

(14) (A) Seller has no notice and to the best of Seller's knowledge, no material amount of Hazardous Substances has been disposed of, released, or identified on, under, in the vicinity of, or at the Property.

(B) Seller has no notice and to the best of Seller's knowledge, neither the Property nor any occupant using it is in violation of any Environmental Laws relating to the Property, including, but not limited to, soil and surface and ground water conditions or the manufacture, generation, or storage of Hazardous Substances on the Property.

(C) Seller has no notice and to the best of Seller's knowledge, there are no asbestos-containing materials, underground storage tanks, above-ground storage tanks, or other containers of Hazardous Substances located on the Property. The Property is not now--and has not been--used as a landfill.

(D) Seller has no notice and to the best of Seller's knowledge, no actions, suits, proceedings, orders, inquiries, or investigations are pending or are threatened against, involving, or affecting the Property, at law or in equity, or before or by any federal, state, municipal, or other governmental department, court commission, board, bureau, agency, or instrumentality, alleging the violation of any federal, state, or local law, statute, ordinance, rule, regulation, decree, order, and/or permit relating to Environmental Matters or the release of any Hazardous Substances.

(E) (i) "Environmental Laws" means all applicable laws (including regulations, by-laws, codes, international treaties, and agreements) with respect to the Property, now or hereafter in existence, relating to the environment, health and safety matters, Hazardous Substances, pollution, or protection of the environment.

(ii) "Environmental Matters" means matters relating to the generation, manufacture, use, storage, handling, transportation, and/or disposal of Hazardous Substances, or conditions with respect to the atmosphere, soil,



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surface and ground waters, wetlands, stream sediments, vegetation, endangered species, and stormwater runoff or discharge.

(iii) "Hazardous Substances" means any substance that is -- or is deemed under Environmental Laws to be, alone or in any combination -- hazardous, hazardous waste, toxic, radioactive, a pollutant, a deleterious substance, a contaminant, a dangerous good, or a source of pollution or contamination, or which, when released into the environment, is likely to cause, at some immediate or future time, material harm or degradation to the environment or material risk to human health, whether or not such substance is defined as "hazardous" under Environmental Laws.

(c) Seller's representations, warranties, and covenants in this Contract are subject to the following terms and conditions:

(1) Seller's representations, warranties, and covenants are (i) material and being relied upon, and (ii) continuing, made both as of the Effective Date and as of the Closing Date, except to the extent that Seller otherwise notifies Purchaser in writing at or before Closing. If Seller so notifies Purchaser in writing at or prior to Closing -- or if Purchaser independently discovers on or prior to the Closing -- that any material representation, warranty, or covenant is no longer true, Purchaser may either (i) terminate this Contract by written notice to Seller, and neither party will have any further rights or obligations under it; or (ii) waive the representation, warranty, or covenant and close the purchase of the Property. If Purchaser discovers after the Closing that any representation or warranty was not true when made then Purchaser shall be entitled to any remedy available at law or in equity.

(2) Seller's representations, warranties, and covenants will survive the Closing for a period of two (2) years.

Section 8. Conditions to Closing.

(a) Notwithstanding anything to the contrary in this Contract, until Closing the following matters are conditions precedent to Purchaser's obligations under this Contract.

(1) All of Seller's representations and warranties must be true and correct as of Closing in all material respects.

(2) Seller must deliver, perform, observe, and comply with all of the items, instruments, documents, covenants, agreements, and conditions required of it by this Contract.

(3) Seller must not be in receivership or dissolution, nor have made any assignment for the benefit of creditors, nor admitted in writing its inability to pay its debts as they mature,



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nor have been adjudicated a bankrupt, nor have filed a petition in voluntary bankruptcy, or a petition or answer seeking reorganization or an arrangement with creditors under state or federal bankruptcy law or any other similar law or statute, nor may any such petition have been filed against it.

(b) Purchaser may waive any of the conditions set forth in Section 9(a) in its sole discretion, at or before Closing. If any of the conditions are not satisfied or waived, Purchaser may terminate this Contract by giving written notice to Seller at or before Closing, and neither party will have any further rights or obligations under this Contract.

Section 9. Brokers. Each Party represents and warrants to the other that it has not engaged, or become liable to, any agent, broker, or other similar party in connection with this transaction. **EACH PARTY AGREES TO INDEMNIFY AND HOLD THE OTHER HARMLESS FROM AND AGAINST THE CLAIMS, DEMANDS, CAUSES OF ACTION, OR OTHER LIABILITY OF ANY AGENT, BROKER, OR OTHER SIMILAR PARTY ARISING FROM OR RELATED TO ANY BREACH OF SUCH PARTY'S REPRESENTATIONS IN THIS SECTION 9.** The provisions of this **Section 9** shall survive Closing and any termination of this Agreement.

Section 10. Notices.

(a) Any notice under this Contract must be written. Notices must be either (i) hand-delivered to the address set forth below for the recipient; or (ii) placed in the United States certified mail, return receipt requested, addressed to the recipient as specified below; (iii) deposited with an overnight delivery service, addressed to the recipient as specified below; or (iv) telecopied by facsimile transmission to the party at the telecopy number listed below, provided that the transmission is followed with a copy sent by overnight delivery or regular mail to the address specified below. Any notice is effective upon deposit with the U.S. Postal Service or with the overnight delivery service, as applicable; all other notices are effective when received.

(b) Seller's address for all purposes under this Contract is:

Sweta Patel, P.E.
City of Riverside Public Works Department, Engineering
3900 Main Steet, Riverside, CA 92522
Phone: (951)826-5341
Email: SCPatel@riversideca.gov

with a copy to:



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Attention: _____
Telephone: _____
Telecopy: _____

(c) Purchaser's address for all purposes under this Contract is:

BNSF RAILWAY COMPANY
2650 Lou Menk Drive, MOB-2
Fort Worth, Texas 76131-2830
Attention: Jennifer Fitzgerald
Telephone: (817) 593-4916
Telecopy: (817) 352-7101
Email: Jennifer.fitzgerald@bnsf.com

(d) Either party may designate another address for this Contract by giving the other party at least five (5) business days' advance notice of its address change. A party's attorney may send notices on behalf of that party, but a notice is not effective against a party if sent only to that party's attorney.

Section 11. Entire Agreement. This Contract (including its exhibits) contains the entire agreement between Seller and Purchaser. Oral statements or prior written matter not specifically incorporated into this Contract has no force or effect. No variation, modification, or change to this Contract binds either party unless set forth in a document signed by the parties or their duly authorized agents, officers, or representatives.

Section 12. Assigns. This Contract inures to the benefit of and binds the parties and their respective legal representatives, successors, and permitted assigns. Purchaser may assign its rights or obligations under this Contract without Seller's consent, but with notice to Seller. Purchaser may assign its rights or obligations under this Contract to its 1031 Tax Exchange Entity without the consent of Seller.

Section 13. Effective Date. The date on which the last of Seller and Purchaser signs this Contract is the "Effective Date" of this Contract.

Section 14. Time of the Essence. Time is of the essence in this Contract. Whenever a date specified in this Contract falls on a Saturday, Sunday, or federal holiday, the date will be extended to the next business day.



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Section 15. Destruction, Damage, or Taking Before Closing. If, before the Closing, the Property or any substantial portion of it is damaged or destroyed or becomes subject to a taking by eminent domain, Purchaser may either (i) terminate this Contract and neither party will have any further rights or obligations under this Contract; or (ii) proceed with the Closing of the Property, and Seller will assign to Purchaser all condemnation or insurance proceeds available as a result of such damage, destruction, or taking.

Section 16. Intentionally deleted.

Section 17. Terminology. The captions beside the section numbers of this Contract are for reference only and do not modify or affect this Contract. Whenever required by the context, any gender includes any other gender, the singular includes the plural, and the plural includes the singular.

Section 18. Governing Law. This Contract is governed by and must be construed in accordance with California law.

Section 19. Severability. If any provision in this Contract is found to be invalid, illegal, or unenforceable, its invalidity, illegality, or unenforceability will not affect any other provision, and this Contract must be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.

Section 20. Rule of Construction. Each party and its counsel have reviewed and revised this Contract. The parties agree that the rule of construction that any ambiguities are to be resolved against the drafting party must not be employed to interpret this Contract or its amendments or exhibits.

Section 21. Attorneys' Fees. If any action at law or in equity is necessary to enforce or interpret this Contract, the prevailing party will be entitled to reasonable attorneys' fees, costs, and necessary disbursements in addition to any other relief to which that party may be entitled.

Section 22. Counterparts. To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature or acknowledgement of, or on behalf of, each part, or that the signature of all persons required to bind any party or the acknowledgment of such party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, and the respective acknowledgments of, each of the parties hereto. Any signature or acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures or acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature or acknowledgment pages.



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EXECUTED as of the Effective Date.

SELLER

CITY OF RIVERSIDE,
a California Charter City and Municipal Corporation

By: _____

Name: _____

Title: _____

Date: _____

PURCHASER

BNSF RAILWAY COMPANY,
a Delaware corporation

By: _____

Name: _____

Title: _____

Date: _____



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EXHIBIT "A"

Legal Description of Property

Legal Description to be added by Supplement pursuant to Section 3.



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EXHIBIT "B"

Special Warranty Deed

THE STATE OF _____ §
COUNTY OF _____ § § KNOW ALL PERSONS BY THESE PRESENTS:

_____, a(n) _____ ("**Grantor**"), for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) cash and other good and valuable consideration to it paid by BNSF RAILWAY COMPANY, a Delaware corporation ("**Grantee**"), whose mailing address is 2650 Lou Menk Drive, MOB-2, Fort Worth, Texas 76131, the receipt and sufficiency of which are hereby acknowledged and confessed, has GRANTED, BARGAINED, SOLD, and CONVEYED, and by these presents does GRANT, BARGAIN, SELL, and CONVEY unto the Grantee that certain tract of land ("**Land**") described on Exhibit "A" hereto, together with all improvements thereon and all rights and appurtenances appertaining thereto, and all of Seller's rights and interest, if any, in and to all easements and alleys, highways, or streets in, on, across or adjoining the Land (herein collectively called the "**Property**").

This Deed is executed by Grantor and accepted by Grantee subject to validly existing and enforceable rights, interests, and estates, if any do in fact exist, but only to the extent that the same do in fact exist, of third parties in connection with those items set out and listed on Exhibit "B" hereto (herein called the "**Permitted Encumbrances**").

TO HAVE AND TO HOLD the Property together with all and singular the rights and appurtenances thereto in anywise belonging unto Grantee, its legal representatives, successors, and assigns forever; and Grantor does hereby bind itself, its legal representatives, successors, and assigns to WARRANT AND FOREVER DEFEND all and singular the Property, subject to the Permitted Encumbrances, unto Grantee, its legal representatives, successors, and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof by, through, or under Grantor, but not otherwise.

WITNESS THE EXECUTION HEREOF as of the ____ day of _____, 20__.

GRANTOR:

By: _____
Name: _____
Title: _____

[insert notary block]

Deed Exhibits:

- Exhibit A: Legal Description
- Exhibit B: Permitted Encumbrances

EXHIBIT "C"

Access Easement

KNOW ALL MEN BY THESE PRESENTS, that [legal owner name], Grantor, for Ten and No/100 Dollars (\$10.00) to it paid by **BNSF RAILWAY COMPANY**, a Delaware corporation, whose address for purposes of this instrument is 2650 Lou Menk Drive, MOB-2 Fort Worth, Texas 76131, Grantee, and the promises of the Grantee hereinafter specified, does hereby grant, bargain, sell and convey unto the Grantee, subject to the terms and conditions hereinafter set forth, an **EASEMENT** for access and construction-related activities, including but not limited to surface grading, removal of surface vegetation and staging of construction materials and equipment, over, upon and across the following described premises, situated in [project County], State of _____ to-wit:

See Exhibit "A", attached hereto and made a part hereof.

The foregoing easement is made subject to and upon the following express conditions:

1. The Grantor on behalf of itself, its successors and assigns, covenants and agrees not to construct any additional structures or grant any additional uses within the easement area.
2. This easement shall be binding upon and inure to the benefit of the heirs, executors, administrators, assigns and successors of Grantor and Grantee.
3. Grantee shall have the right, but not the obligation, to remove all trees, brush and other vegetation from the above-described easement.

TO HAVE AND TO HOLD THE SAME, together with all the hereditaments and appurtenances thereunto belonging to Grantee for its use and enjoyment for the purposes aforesaid and for no other purpose whatsoever subject to the terms and conditions hereinbefore stated.

EXECUTED this ____ day of _____, 20__.

GRANTOR:

[legal owner name]

[insert notary block]

Exhibits:
Exhibit A: Legal Description



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EXHIBIT "D"

RAILROAD EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that [legal owner name], Grantor, for Ten and No/100 Dollars (\$10.00) to it paid by **BNSF RAILWAY COMPANY**, a Delaware corporation, whose address for purposes of this instrument is 2650 Lou Menk Drive, MOB-2 Fort Worth, Texas 76131, Grantee, and the promises of the Grantee hereinafter specified, does hereby grant, bargain, sell and convey unto the Grantee, subject to the terms and conditions hereinafter set forth, an **EASEMENT** for railroad purposes including construction, replacement, repair and maintenance and operations of a railroad track and associated appurtenant equipment and facilities, hereinafter called track, over, upon and across the following described premises, situated in [project County], State of _____ to-wit:

See Exhibit "A", attached hereto and made a part hereof.

The foregoing easement is made subject to and upon the following express conditions:

1. The Grantor on behalf of itself, its successors and assigns, covenants and agrees not to construct any additional structures or grant any additional uses within the easement area.
2. This easement shall be binding upon and inure to the benefit of the heirs, executors, administrators, assigns and successors of Grantor and Grantee.
3. Grantee shall have the right, but not the obligation, to remove all trees, brush and other vegetation from the above-described easement.

TO HAVE AND TO HOLD THE SAME, together with all the hereditaments and appurtenances thereunto belonging to Grantee for its use and enjoyment for the purposes aforesaid and for no other purpose whatsoever subject to the terms and conditions hereinbefore stated.

EXECUTED this ____ day of _____, 20__.

GRANTOR:

[legal owner name]

[insert notary block]

Exhibits:
 Exhibit A: Legal Description



Contract Number: BF-20227098

EXHIBIT "E"

DRAINAGE EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that _____, **GRANTOR**, for Ten and No/100 Dollars (\$10.00), and other valuable considerations, to it paid by **BNSF RAILWAY COMPANY**, a Delaware corporation, whose address for purposes of this instrument is 2650 Lou Menk Drive, MOB-2, Fort Worth, Texas 76131, **GRANTEE**, and the promises of the Grantee hereinafter specified, does hereby grant, convey and warrant unto the Grantee, a perpetual **DRAINAGE EASEMENT** for construction, replacement, repair and maintenance and operations of an underground storm water culvert and associated appurtenant equipment and facilities, and access over, upon, under and across the following described premises situate in _____, State of _____, to-wit:

Easement Description: See Exhibit "A" attached hereto and made a part hereof.

The foregoing easement is made subject to and upon the following express conditions:

1. The Grantor, on behalf of itself, or its successors and assigns, may grant additional uses within the easement area provided they do not materially interfere with the uses of the property by the Grantee.
2. Grantee shall have the right, but not the obligation, to remove all trees, brush and other vegetation from the above-described easement.
3. This easement shall be binding upon and inure to the benefit of the heirs, executors, administrators, assigns and successors of Grantor and Grantee.

TO HAVE AND TO HOLD THE SAME, together with all the hereditaments and appurtenances thereunto belonging to Grantee for its use and enjoyment for the purposes aforesaid and for no other purpose whatsoever subject to the terms and conditions hereinbefore stated.

WITNESS THE EXECUTION HEREOF as of the ____ day of _____, 20__.

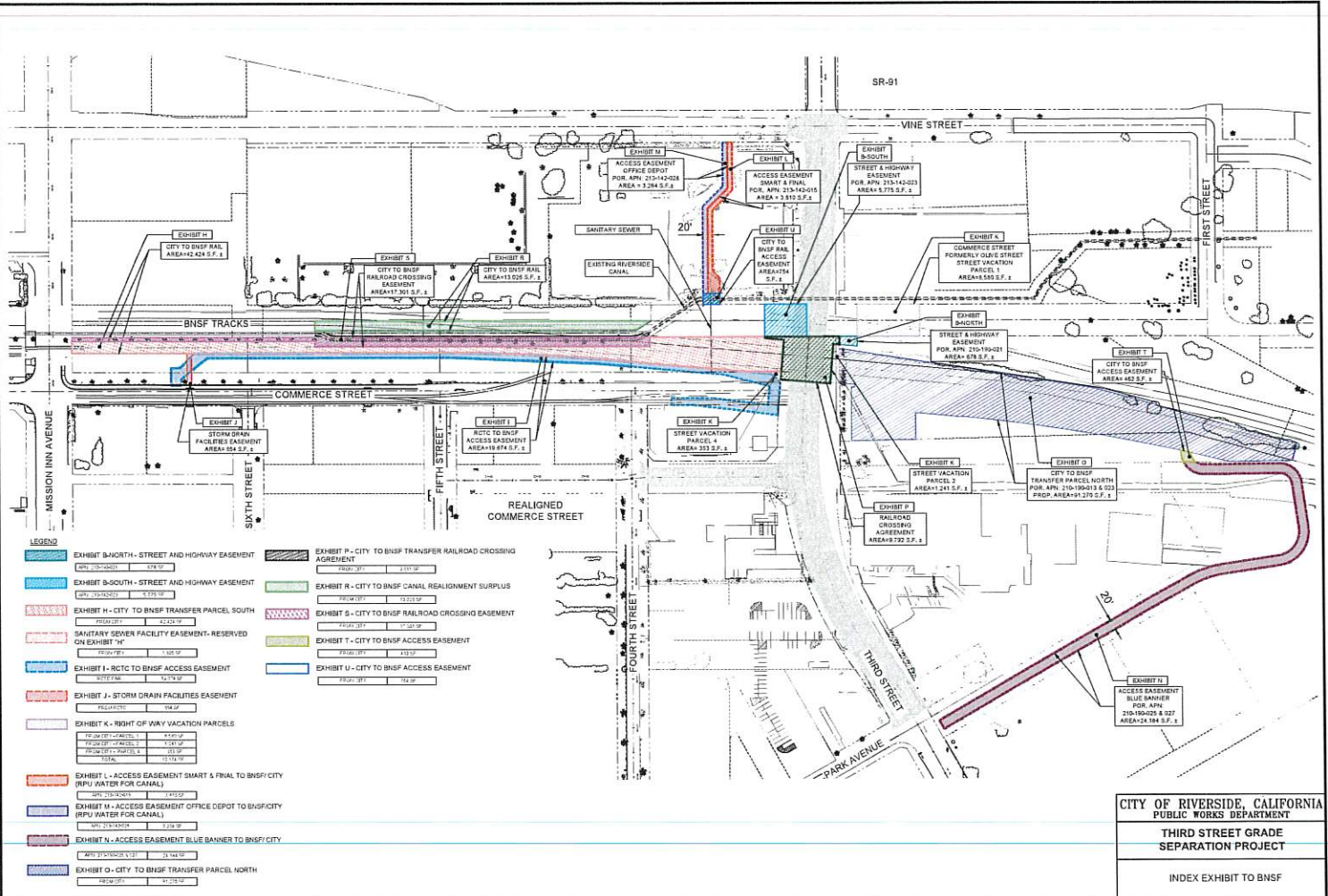
GRANTOR:

[legal owner name]

[insert notary block]

Exhibits:
 Exhibit A: Legal Description

SR-91



- LEGEND**
- EXHIBIT B-NORTH - STREET AND HIGHWAY EASEMENT
AREA= 1,000 S.F. ±
 - EXHIBIT B-SOUTH - STREET AND HIGHWAY EASEMENT
AREA= 2,175 S.F. ±
 - EXHIBIT H - CITY TO BNSF TRANSFER PARCEL SOUTH
AREA= 424 S.F. ±
 - SANITARY SEWER FACILITY EASEMENT- RESERVED ON EXHIBIT "H"
 - EXHIBIT I - RTG TO BNSF ACCESS EASEMENT
AREA= 1,212 S.F. ±
 - EXHIBIT J - STORM DRAIN FACILITIES EASEMENT
AREA= 194 S.F. ±
 - EXHIBIT K - RIGHT OF WAY VACATION PARCELS
TRANSFER OF PARCELS: 1,100 S.F. ±
TRANSFER OF PARCELS: 1,100 S.F. ±
PARKED PARCELS: 100 S.F. ±
TOTAL: 1,300 S.F. ±
 - EXHIBIT L - ACCESS EASEMENT SMART & FINAL TO BNSF/CITY (RPU WATER FOR CANAL)
AREA= 1,000 S.F. ±
 - EXHIBIT M - ACCESS EASEMENT OFFICE DEPOT TO BNSF/CITY (RPU WATER FOR CANAL)
AREA= 3,284 S.F. ±
 - EXHIBIT N - ACCESS EASEMENT BLUE BANNER TO BNSF/CITY
AREA= 1,144 S.F. ±
 - EXHIBIT O - CITY TO BNSF TRANSFER PARCEL NORTH
AREA= 1,000 S.F. ±
 - EXHIBIT P - CITY TO BNSF RAILROAD CROSSING AGREEMENT
AREA= 2,141 S.F. ±
 - EXHIBIT R - CITY TO BNSF CANAL REALIGNMENT SURPLUS
AREA= 13,223 S.F. ±
 - EXHIBIT S - CITY TO BNSF RAILROAD CROSSING EASEMENT
AREA= 901 S.F. ±
 - EXHIBIT T - CITY TO BNSF ACCESS EASEMENT
AREA= 1,000 S.F. ±
 - EXHIBIT U - CITY TO BNSF ACCESS EASEMENT
AREA= 1,000 S.F. ±
 - EXHIBIT P - CITY TO BNSF RAILROAD CROSSING AGREEMENT
AREA= 9,792 S.F. ±
 - EXHIBIT Q - CITY TO BNSF TRANSFER PARCEL NORTH
FOR APN: 210-190-013 & 023
PROP. AREA= 93,279 S.F. ±
 - EXHIBIT H - ACCESS EASEMENT BLUE BANNER
FOR APN: 210-190-025 & 027
AREA= 28,184 S.F. ±

CITY OF RIVERSIDE, CALIFORNIA
PUBLIC WORKS DEPARTMENT
THIRD STREET GRADE SEPARATION PROJECT
INDEX EXHIBIT TO BNSF