

FORM APPROVED COUNTY COUNSEL  
DATE 5/28/13  
BY MARSHALL VICTOR

SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

702A



FROM: TLMA - Transportation Department

SUBMITTAL DATE:  
April 25, 2013

SUBJECT: Highway-Rail Signal Interface Agreement between the County of Riverside (County) and BNSF Railway Company (BNSF) for improvements and maintenance of the Magnolia Avenue railroad grade crossing between Lincoln Street and Buchanan Street in the Home Gardens area of the county and the City of Riverside (City).

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the attached Highway-Rail Signal Interface Agreement between the County and BNSF for improvements and maintenance at the Magnolia Avenue railroad grade crossing; and

Juan C. Perez  
Director of Transportation and Land Management

Dt:dt  
(Continued On Attached Pages)

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 104,501	In Current Year Budget:	No
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	Yes
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2012/2013

SOURCE OF FUNDS: Gas Tax (ABX8-9 Mar 2010 New HUTA) (100%)

Positions To Be  
Deleted Per A-30

☐

There are no General Funds used in this project.

Requires 4/5 Vote

☒

C.E.O. RECOMMENDATION:

APPROVE

BY

Tina Grande

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Ashley, seconded by Supervisor Stone and duly carried, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Stone, Benoit and Ashley

Nays: None

Absent: Tavaglione

Date: June 4, 2013

xc: [unclear] Auditor, EO

Kecia Harper-Ihem

Clerk of the Board

By: [Signature]

Deputy

Prev. Agn. Ref.

District: 2/2

Agenda Number:

3-52

ATTACHMENTS FILED  
WITH THE CLERK OF THE BOARD

The Honorable Board of Supervisors

RE: Highway-Rail Signal Interface Agreement between the County of Riverside (County) and BNSF Railway Company (BNSF) for improvements and maintenance of the Magnolia Avenue railroad grade crossing between Lincoln Street and Buchanan Street in the Home Gardens area of the county and the City of Riverside (City).

April 25, 2013

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2. Authorize the Chairman of the Board of Supervisors to execute the same; and
3. Approve and direct the Auditor-Controller to make the budget adjustment as shown on Schedule A.

**BACKGROUND:** The County is proposing to construct a traffic signal for the eastbound Magnolia Avenue traffic at the railroad grade crossing between Lincoln Street and Buchanan Street in the Home Gardens area. The signal will mitigate eastbound traffic queuing at the intersection of Magnolia Avenue and Buchanan Street that is backing up through the Magnolia Avenue railroad grade crossing when the traffic signal at Buchanan Street is red for the eastbound direction. It is necessary for the traffic signal to be interconnected with the railroad grade crossing signal to provide railroad preemption operation to stop vehicles from entering the grade crossing and to prevent vehicles from stopping on the railroad tracks.

The Signal Interface Agreement provides for the construction of the proposed traffic signal for eastbound vehicular traffic on Magnolia Avenue and the connection to the existing railroad gates on Magnolia Avenue. The agreement also provides for the modification of train detection equipment along the BNSF railroad tracks (which will provide an advance railroad warning signal of oncoming trains), upgrades to the railroad crossing gate equipment, and maintenance of these improvements.

BNSF estimates the improvements to cost \$209,002 to construct. The construction cost will be split 50/50 with the City. The County and the City will each contribute \$104,501. These improvements will benefit the upcoming Magnolia Avenue grade separation and benefit the City's Quiet Zone project at the Buchanan Street railroad grade crossing just south of Magnolia Avenue. BNSF will be responsible for the operation and maintenance of the equipment within the railroad right-of-way.

This agreement will terminate when the traffic signal is removed, after the Magnolia Avenue grade separation project is complete. Traffic on Magnolia Avenue will be shifted onto the overcrossing, and the at-grade railroad crossing will be eliminated. The Magnolia Avenue grade separation project is anticipated to be completed in 2016.

The County will enter into a separate agreement with the City for their funding participation. The cost sharing agreement with the City will be submitted for approval prior to award of the contract to construct the traffic signal. Gas Tax will be used to fund the County's share of the cost.

County Counsel has approved the Agreement as to form.

Project Number: B7-0788

The Honorable Board of Supervisors

RE: Highway-Rail Signal Interface Agreement between the County of Riverside (County) and BNSF Railway Company (BNSF) for improvements and maintenance of the Magnolia Avenue railroad grade crossing between Lincoln Street and Buchanan Street in the Home Gardens area of the county and the City of Riverside (City).

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#### SCHEDULE A

Increase Appropriations:

20000-3130500000-527980	Contracts	\$104,501
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Anticipated Decrease in Fund Balance:

20013-3130500000-321101	Restricted Program Money	\$104,501
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## HIGHWAY-RAIL SIGNAL INTERFACE AGREEMENT

WHEN DOCUMENT IS FULLY EXECUTED RETURN

**CLERK'S COPY**

to Riverside County Clerk of the Board, Stop 1010  
Post Office Box 1147, Riverside, Ca 92502-1147  
Thank you.

BNSF File No.: BF10001568  
Mile Post 20.30  
Line Segment 7602  
U.S. DOT Number 026517B  
San Bernardino Subdivision

THIS HIGHWAY-RAIL SIGNAL INTERFACE AGREEMENT (hereinafter called "Agreement"), is entered into effective as of 8/13/2013, by and between BNSF Railway Company, a Delaware Corporation (hereinafter called, "BNSF"), and the County of Riverside (hereinafter called "Agency").

### WITNESSETH

WHEREAS, BNSF has grade crossing warning devices located on Magnolia Avenue between Buchanan Street and Lincoln Street, DOT # 026517B, Line Segment 7602, Mile Post 20.30, as indicated on Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, Agency desires to preempt the highway traffic control signals with the grade crossing warning devices shown on Exhibit "A"; and

WHEREAS, BNSF will allow the Agency to preempt the highway traffic control signals with the grade crossing warning devices shown on Exhibit "A" subject to the mutual covenants contained in this Agreement;

NOW, THEREFORE, in consideration of the premises and 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:

### AGREEMENT

#### 1. PURPOSE

The purpose of this Agreement is as follows: provide for the installation and maintenance of the improvements described below at the Magnolia Avenue at-grade crossing.

#### 2. SCOPE OF WORK

- a. The Agency must provide BNSF in writing, using the BNSF Preemption Worksheet attached hereto and made part of this Agreement as Exhibit "D", with the total preempt cycle time required from the start of the preempt cycle of highway traffic control signals until the arrival of the train at the highway-rail crossing.
- b. BNSF will provide an interface box with contact terminals, at Agency's expense on the side of the railroad instrument cabin.
- c. Agency or its contractor will place all necessary cable and conduit on Railroad property, as approved by BNSF and in compliance with the BNSF Utility Accommodation Manual <http://www.bnsf.com/communities/faqs/pdf/utility.pdf> , at the locations shown on Exhibit "A", attached to and made a part of this Agreement.
- d. The Agency or its contractor will connect the highway traffic control signals to the contact terminals in the interface box including all necessary cable and conduit.
- e. BNSF will provide flagging services, at Agency's sole expense as set forth in more detail on Exhibit "C" attached to and made a part of this Agreement.
- f. The Agency or its contractor must install the new highway traffic control signals.
- g. An estimate of the actual costs for BNSF work is shown on Exhibit "B" attached to and made a part of this Agreement. In the event installation of the improvements has not commenced within six (6) months following the effective date of this Agreement, BNSF may, in its sole and absolute discretion, revise the cost estimates set forth on Exhibit B. If the cost estimates are revised, 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 B not specifically mentioned therein may be included as a part of this Agreement upon written approval of the Agency, which approval will not be unreasonably withheld.
- h. The Agency must pay BNSF for the actual costs of any work performed by BNSF under this Agreement within thirty (30) days of the date of the invoice for such work. During the construction of the improvements, BNSF may send Agency progressive invoices detailing the costs of the railroad work performed by BNSF under this Agreement. Upon completion of the improvements and all associated work, 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 B. 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 from the date of the final invoice.

### **3. CONSTRUCTION AND MAINTENANCE**

- a. BNSF will operate and maintain, at its expense, the necessary relays and the other materials required to preempt the highway traffic control signals with the grade crossing warning devices.
- b. BNSF will operate and maintain, at its expense, the railroad crossing warning devices up to the contact terminals in the interface box.
- c. The Agency or its contractor must, at the Agency's expense, install the highway traffic control signals up to and including connection to the contact terminals in the interface box including all necessary cable and conduit.
- d. Following installation of the traffic control signals, the Agency will own, operate and maintain, at its expense, the highway traffic control signals up to and including connection to the contact terminals in the interface box including all necessary cable and conduit.
- e. For any future inspections or maintenance, routine or otherwise, performed by subcontractors on behalf of the Agency, Agency shall require the subcontractors to comply with the provisions of the attached Exhibit C and execute the letter agreement attached hereto as Exhibit C-1. 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, a Railroad Protective Liability insurance.

#### **4. PROTECTION OF UNDERGROUND SYSTEMS**

- a. Agency and its contractor is placed on notice that fiber optic, communication and other cable lines and systems (collectively, the "Lines") owned by various telecommunications or utility companies may be buried on BNSF's property or right-of-way. The Agency or its contractor must contact appropriate personnel to have the Lines located and make arrangements with the owner of the Lines regarding protective measures that must be followed prior to the commencement of any work on BNSF's property. The Agency or its contractor will be responsible for contacting BNSF's Engineering Representative (Greg, Rousseau, 909-386-4079), BNSF's Signal Representative (Dennis Skeels, 909-386-4053), and the telecommunications or utility companies and notifying them of any work that may damage these Lines or facilities and/or interfere with their service. The Agency or its contractor must also mark all Lines in order to verify their locations. Agency or its 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. Agency or its contractor will be responsible for the rearrangement of any facilities or Lines determined to interfere with the installation or construction of the improvements. Agency and/or its Contractor must cooperate fully with any telecommunications or utility company(ies) in performing such rearrangements.
- c. Failure to mark or identify Lines will be sufficient cause for BNSF' to stop construction at no cost to BNSF until these items are completed.
- d. In addition to the liability terms contained elsewhere in this Agreement, Agency and its contractor hereby indemnify, defend and hold 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 Agency or its contractor, subcontractors, agents and/or employees that cause or in any way or degree contribute to (1) any damage to or destruction of any Lines 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 (a) any telecommunications or utility company, (b) Agency's contractor or subcontractors, or (c) Agency, and (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 telecommunications or utility company(ies). **THE LIABILITY ASSUMED BY AGENCY OR ITS 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 BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE WILLFULL MISCONDUCT OR SOLE NEGLIGENCE OF BNSF.**

**5. INDEMNIFICATION**

- a. Agency hereby indemnifies, defends and holds harmless BNSF for, from and against any and all claims, suits, losses, damages, costs and expenses for injury to or death to third parties or BNSF's officers and employees, and for loss and damage to property belonging to any third parties (including damage to the property of BNSF officers and employees), to the extent caused by the negligence of the Agency or any of its employees, agents or contractors. The Agency also releases BNSF from and waives any claims for injury or damage to the Agency's highway traffic control signals or other equipment which may occur as a result of any of the work provided for in this Agreement or the operation or the maintenance thereafter of any of the Agency's highway traffic control signals, cables, connections at and about the grade crossing.
- b. To the fullest extent permitted by law, Agency hereby releases, indemnifies, defends and holds harmless BNSF and BNSF's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, employees and agents for, from and against any and all claims, suits, liabilities, losses, damages, costs and expenses (including, without limitation, attorneys fees and court costs) for injury to or death to Agency employees, agents or representatives arising out of, resulting from or related to any act or omission of Agency or any work performed on or about BNSF's property or right-of-way. **THE LIABILITY ASSUMED BY THE AGENCY IN THIS PROVISION 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 RAILROAD, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF BNSF.**



- c. The Agency further agrees, at its expense, in the name and on behalf of BNSF, that it will adjust and settle any claims made against BNSF and will appear and defend any suits or actions at law or in equity brought against BNSF on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by the Agency under this Agreement for which BNSF is alleged to be liable. BNSF will give notice to the Agency in writing of the receipt of pendency of such claims and thereupon the Agency must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against BNSF, BNSF may forward the summons and complaint or process in connection therewith to the Agency, and the Agency must defend, adjust or settle such suits and protect, indemnify, and save harmless BNSF 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.

## 6. AGENCY CONTRACTOR REQUIREMENTS

- a. While on or about BNSF property, Agency and its contractors must fully comply with BNSF's "Contractor Requirements" set forth in Exhibit "C" attached to and made a part of this Agreement. The "Contractor Requirements" include clearance requirements and personal protective equipment requirements. Agency and its contractors will be responsible for becoming familiar with BNSF's "Contractor Requirements". **Prior to entering BNSF property, Agency's Contractor must execute Exhibit C-1 attached to and made a part of this Agreement."**
- b. Prior to entering BNSF property, each person providing labor, material, supervision or services connected with the work to be performed on or about BNSF property must complete the safety training program (hereinafter called "BNSF Contractor Safety Orientation") at the following internet website: "[contractororientation.com](http://contractororientation.com)". Agency must ensure that each of its contractors, employees, subcontractors, agents or invitees completes the BNSF Contractor Safety Orientation before any work is performed under this Agreement. Additionally, Agency must ensure that each and every contractor, employee, subcontractor, agent or invitee possesses a card certifying completion of the BNSF Contractor Safety Orientation prior to entering BNSF property. Agency must renew the BNSF Contractor Safety Orientation annually.
- c. Prior to entering BNSF property, Agency or its contractors must prepare and implement a safety action plan acceptable to BNSF. Agency must audit compliance with the plan during the course of Agency's work. A

copy of the plan and audit results must be kept at the work site and will be available for inspection by BNSF at all reasonable times.

## 7. INSURANCE

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

- A. Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$6,000,000 but in no event less than the amount otherwise carried by the Contractor. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limit to the following:

- ◆ Bodily Injury and Property Damage
- ◆ Personal Injury and Advertising Injury
- ◆ Fire legal liability
- ◆ Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- ◆ The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Waiver of subrogation in favor of and acceptable to Railway.
- ◆ Additional insured endorsement in favor of and acceptable to Railway.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to ***Railway*** employees.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy with regard to the work being performed under this agreement.

- B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ◆ Bodily injury and property damage

- ◆ Any and all vehicles owned, used or hired

The policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- ◆ Waiver of subrogation in favor of and acceptable to Railway.
- ◆ Additional insured endorsement in favor of and acceptable to Railway.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

C. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

- ◆ Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- ◆ Waiver of subrogation in favor of and acceptable to Railway.

a. Railroad Protective Liability insurance naming only the **Railway** as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 12 04 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment
- ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
- ◆ Endorsed to remove any exclusion for punitive damages.
- ◆ No other endorsements restricting coverage may be added.
- ◆ The original policy must be provided to the **Railway** prior to performing any work or services under this Agreement
- ◆ Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured' care, custody, and control arising out of the acts or omissions of the contractor named on the Declarations.

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate (if available) in Railway's Blanket Railroad Protective Liability Insurance Policy.

**Other Requirements:**

Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.

Contractor agrees to waive its right of recovery against **Railway** for all claims and suits against **Railway**. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against **Railway** for all claims and suits. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against **Railway** for loss of its owned or leased property or property under Contractor's care, custody, or control.

Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

Contractor is not allowed to self-insure without the prior written consent of **Railway**. If granted by **Railway**, self-insured retention or other financial responsibility for claims shall be covered directly by Contractor in lieu of insurance. Any and all **Railway** liabilities that would otherwise, in accordance with the provisions of this **Agreement**, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the Work, Contractor shall furnish to **Railway** an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments. The certificate should be directed to the following addresses:

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

Contractor shall notify **Railway** in writing at least 30 days prior to any cancellation, non-renewal, substitution, or material alteration.

Any insurance policy must be written by a reputable insurance company acceptable to **Railway** or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provide.

**If coverage is purchased on a "claims made" basis, Contractor hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or**

**termination of this contract. Annually, Contractor agrees to provide evidence of such coverage as required hereunder.**

Contractor represents that this *Agreement* has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this *Agreement*.

Not more frequently than once every five years, *Railway* may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by Contractor, Contractor shall require that the subcontractor shall provide and maintain the insurance coverage(s) set forth herein, naming *Railway* as an additional insured, and shall require that the subcontractor shall release, defend, and indemnify *Railway* to the same extent and under the same terms and conditions as Contractor is required to release, defend, and indemnify *Railway* herein.

Failure to provide evidence as required by this section shall entitle, but not require, *Railway* to terminate this *Agreement* immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this *Agreement*. Damages recoverable by *Railway* shall not be limited by the amount of the required insurance coverage.

In the event of a claim or lawsuit involving *Railway* arising out of this agreement, Contractor will make available any required policy covering such claim or lawsuit.

These insurance provisions are intended to be a separate and distinct obligation on the part of the Contractor. Therefore, these provisions shall be enforceable and Contractor shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work covered hereunder is performed.


For purposes of this section, *Railway* means "Burlington Northern Santa Fe LLC", "BNSF RAILWAY COMPANY" and the subsidiaries, successors, assigns and affiliates of each.

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

## APPROVALS

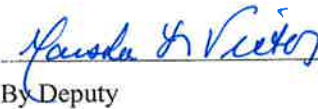
### COUNTY Approvals

RECOMMENDED FOR APPROVAL:


 Dated: 5/9/13

JUAN C. PEREZ  
Director of Transportation and Land Management


APPROVED AS TO FORM:  
PAMELA J. WALLS, COUNTY COUNSEL

 Dated: 5/14/13  
By Deputy

APPROVAL BY THE BOARD OF SUPERVISORS

 Dated: JUN 04 2013  
**JOHN J. BENOIT**  
PRINTED NAME  
Chairman, Riverside County Board of Supervisors

ATTEST:

 Dated: JUN 04 2013  
KECIA HARPER-JHEM  
Clerk of the Board

### BNSF RAILWAY COMPANY Approvals

APPROVED BY:

 Dated: 8/6/13

John Cech  
PRINTED NAME

AVP - Engineering Services  
TITLE

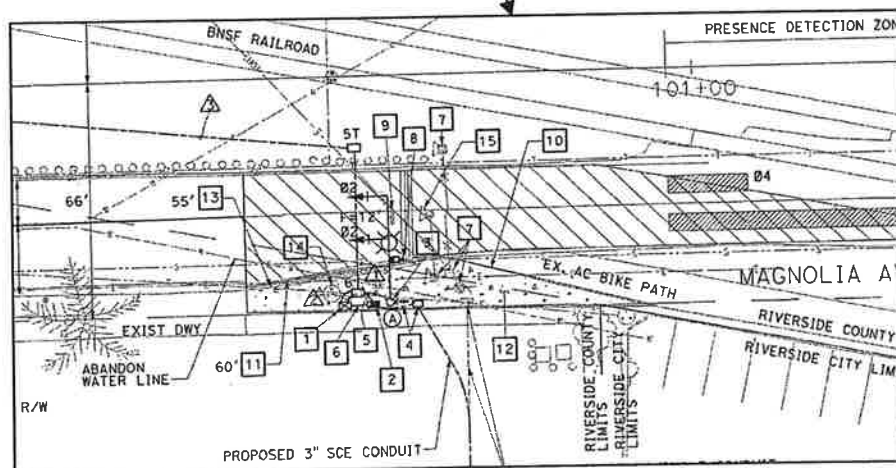
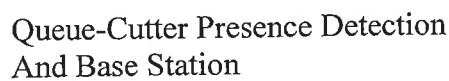
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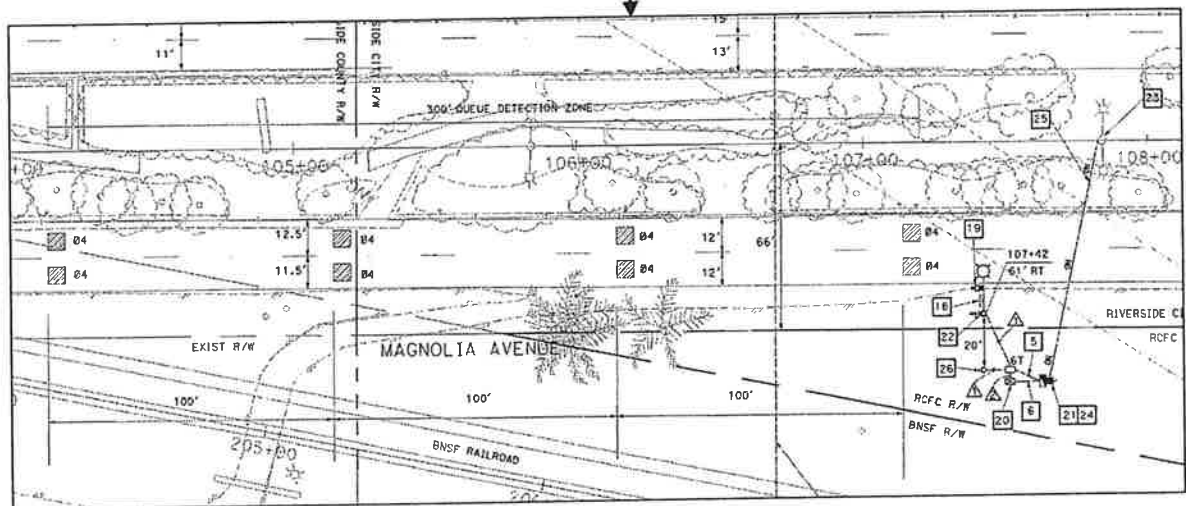
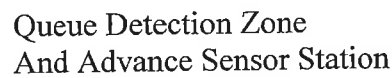
\_\_\_\_\_ Dated: \_\_\_\_\_

\_\_\_\_\_ PRINTED NAME

\_\_\_\_\_ TITLE

**Proposed Queue-Cutter Signal**  
Magnolia Avenue South of 91 Freeway in  
Riverside, CA, U.S. DOT Number 026517B







**EXHIBIT "B"**

**BNSF Cost Estimate**

BNSF RAILWAY COMPANY  
FHPM ESTIMATE FOR  
COUNTY OF RIVERSIDE

LOCATION RIVERSIDE

DETAILS OF ESTIMATE

PLAN ITEM : 000213874

VERSION : 1

## PURPOSE, JUSTIFICATION AND DESCRIPTION

ESTIMATE REVIEWED AND VERIFIED TO MEET FHWA BUY AMERICA REQUIREMENT. QUEUE CUTTER SIGNAL UPGRADE CIRCUITRY AT MAGNOLIA AVE. IN RIVERSIDE, CA. CALIFORNIA DIV., SAN BERNARDINO SUBDIV., L/S 7602, M.P. 20.25, DOT # 026517B.  
SEQ# 47387  
MONTHLY POWER UTILITY COST CENTER : 61692

THE MATERIAL LIST BELOW REFLECTS TYPICAL REPRESENTATIVE PACKAGES USED FOR ESTIMATING PURPOSES ONLY. THEY CAN BE EXPECTED TO CHANGE AFTER THE ENGINEERING PROCESS. DETAILED AND ACCURATE MATERIAL LISTS WILL BE FURNISHED WHEN ENGINEERING IS COMPLETED.  
CONTINUING CONTRACTS HAVE BEEN ESTABLISHED FOR PORTIONS OF SIGNAL WORK ON THE BNSF RAILROAD.  
THIS ESTIMATE IS GOOD FOR 90 DAYS. THEREAFTER THE ESTIMATE IS SUBJECT TO CHANGE IN COST FOR LABOR, MATERIAL, AND OVERHEAD.

\*\*\*\*\* SIGNAL WORK ONLY \*\*\*\*\*

THE COUNTY OF RIVERSIDE, CA. IS FUNDING THIS PROJECT APPROXIMATELY 100%

MAINTAIN PROPRIETARY CONFIDENTIALITY.

REVISED TO NEW PRICING LIST 03/01/05 (THERE WAS NO APPROVED MATERIAL LIST AT THIS TIME.)

DESCRIPTION	QUANTITY U/M	COST	TOTAL \$
***** LABOR *****			
SIGNAL FIELD LABOR - CAP	896.0 MH	28,149	
PAYROLL ASSOCIATED COSTS		17,032	
DA OVERHEADS		27,121	
EQUIPMENT EXPENSES		9,308	
INSURANCE EXPENSES		4,430	
TOTAL LABOR COST		86,040	86,040
***** MATERIAL *****			
BATTERY	1.0 LS N	5,482	
CABLE	1.0 LS N	3,800	
CHARGERS	1.0 LS N	1,020	
CHARGERS, EAST BIKE LANE	1.0 LS N	1,020	
CHARGERS, WEST BIKE LANE	1.0 LS N	1,020	
CONDUIT, PVC 4", SCH 80	20.0 FT N	70	
CONVERTER, 10-10	8.0 EA N	1,584	
CPU, 80214 MCKINLEY ST.	4.0 EA N	9,008	
FIELD MATERIAL	1.0 LS N	2,500	
GENERATOR, ACG-3	4.0 EA N	1,332	
HAWK 48 DIM	1.0 EA N	1,360	
IPI, BIKE PATHS	4.0 EA N	10,000	
LED LIGHT ADJUSTMENT	24.0 EA N	24,480	
LIGHT OUT DETECTOR	2.0 LS N	1,892	
MODULE, VIO 44R	1.0 EA N	1,907	
PRE-EMPT RELAYS	2.0 EA N	4,990	
RECORDER	1.0 EA N	3,748	
RELAY, CONTROL	6.0 EA N	3,000	
RELAY, EAST BIKE LANE	4.0 EA N	2,000	
RELAY, FLASHERS	4.0 EA N	2,000	
RELAY, WEST BIKE LANE	4.0 EA N	2,000	
SHUNT, NBS	2.0 EA N	1,890	
USE TAX		7,404	
OFFLINE TRANSPORTATION		1,073	
TOTAL MATERIAL COST		94,580	94,580
***** OTHER *****			
DIRECTIONAL BORE	1.0 LS N	7,000	

FILL DIRT	10.0 CY N	250	
SURFACE ROCK	10.0 CY N	250	
TOTAL OTHER ITEMS COST		7,500	7,500
PROJECT SUBTOTAL			188,120
CONTINGENCIES			18,812
BILL PREPARATION FEE			2,070
GROSS PROJECT COST			209,002
LESS COST PAID BY BNSF			0
TOTAL BILLABLE COST			209,002

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

BNSF RAILWAY COMPANY  
FHPM ESTIMATE FOR  
CITY OF RIVERSIDE

LOCATION RIVERSIDE

DETAILS OF ESTIMATE

PLAN ITEM : 000213875

VERSION : 1

PURPOSE, JUSTIFICATION AND DESCRIPTION

ESTIMATE REVIEWED AND VERIFIED TO MEET FHWA BUY AMERICA REQUIREMENT. QUIT ZONE UPGRADE CIRCUITRY AT MAGNOLIA AVE. IN RIVERSIDE, CA. CALIFORNIA DIV., SAN BERNARDINO SUBDIV., L/S 7602, M.P. 20.25, DOT # 026517B.  
SEQ# 47387  
MONTHLY POWER UTILITY COST CENTER : 61692

THE MATERIAL LIST BELOW REFLECTS TYPICAL REPRESENTATIVE PACKAGES USED FOR ESTIMATING PURPOSES ONLY. THEY CAN BE EXPECTED TO CHANGE AFTER THE ENGINEERING PROCESS. DETAILED AND ACCURATE MATERIAL LISTS WILL BE FURNISHED WHEN ENGINEERING IS COMPLETED.  
CONTINUING CONTRACTS HAVE BEEN ESTABLISHED FOR PORTIONS OF SIGNAL WORK ON THE BNSF RAILROAD.  
THIS ESTIMATE IS GOOD FOR 90 DAYS. THEREAFTER THE ESTIMATE IS SUBJECT TO CHANGE IN COST FOR LABOR, MATERIAL, AND OVERHEAD.

\*\*\*\*\* SIGNAL WORK ONLY \*\*\*\*\*

THE CITY OF RIVERSIDE, CA. IS FUNDING THIS PROJECT APPROXIMATELY 100%

MAINTAIN PROPRIETARY CONFIDENTIALITY.

REVISED TO NEW PRICING LIST 03/01/05 (THERE WAS NO APPROVED MATERIAL LIST AT THIS TIME.)

DESCRIPTION	QUANTITY U/M	COST	TOTAL \$
***** LABOR *****			
SIGNAL FIELD LABOR - CAP	392.0 MH	12,315	
PAYROLL ASSOCIATED COSTS		7,451	
DA OVERHEADS		11,865	
EQUIPMENT EXPENSES		4,072	
INSURANCE EXPENSES		1,938	
TOTAL LABOR COST		37,641	37,641
***** MATERIAL *****			
BATTERY	1.0 LS N	9,197	
CABLE, TRACK WIRE	1000.0 FT N	1,430	
CONSTANT WARNING	2.0 EA N	57,056	
MODULE, VIO 44R	1.0 EA N	1,907	
RELAY, DAX	2.0 EA N	1,000	
SHUNT, NBS	4.0 EA N	3,780	
USE TAX		6,401	
OFFLINE TRANSPORTATION		934	
TOTAL MATERIAL COST		81,705	81,705
***** OTHER *****			
DIRECTIONAL BORE	1.0 LS N	4,000	
TOTAL OTHER ITEMS COST		4,000	4,000
PROJECT SUBTOTAL			123,346
CONTINGENCIES			12,334
BILL PREPARATION FEE			1,357
GROSS PROJECT COST			137,037
LESS COST PAID BY BNSF			0
TOTAL BILLABLE COST			137,037

# **EXHIBIT "C"**

## **To Construction and Maintenance Agreement**

### **CONTRACTOR REQUIREMENTS**

#### **Magnolia Ave Signal Interconnect**

##### **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 County of Riverside's ("County") **Signal Intertie with BNSF tracks for installation of queue cutters at Magnolia Ave in Riverside County, CA 026517B on BNSF's San Bernardino Subdivision.**
- **1.01.02** The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit C-1 Agreement, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit C-1. Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to Rosa Martinez at Marsh, USA, 214-303-8519.
- **1.01.03** The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.
- **1.01.04** The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations. Railway will have the right to stop construction work on the Project if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the Project work in a manner which is hazardous to Railway property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) COUNTY 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) the Exhibit C-1 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:

**Patricia Romo, P.E.**

Deputy Director Transportation  
County of Riverside  
Transportation Department  
4080 Lemon Street, 8th floor  
Riverside, CA 92501  
Phone: (951)955-6740  
Fax: (951)955-3198  
E-mail: [PROMO@rctlma.org](mailto:PROMO@rctlma.org)

- **1.01.05** The Contractor is responsible for determining and complying with all Federal, State and Local Governmental laws and regulations, including, but not limited to environmental laws and regulations (including but not limited to the Resource Conservation and Recovery Act, as amended; the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA), and health and safety laws and regulations. The Contractor hereby indemnifies, defends and holds harmless Railway for, from and against all fines or penalties imposed or assessed by Federal, State and Local Governmental Agencies against the Railway which arise out of Contractor's work under the Exhibit C-1 Agreement.
- **1.01.06** The Contractor must notify Patricia Romo, hereinafter referred to as ("**County**") and Railway's Manager Public Projects, telephone number 909-386-4472 at least thirty (30) calendar days before commencing any work on Railway Property. Contractor's notification to Railway must refer to Railway's file **BF10004339**.
- **1.01.07** For any bridge demolition and/or falsework above any tracks or any excavations located with any part of the excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin work until notified by the Railway that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.
- **1.01.08** Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The

Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

## **1.02 Contractor Safety Orientation**

- **1.02.01** No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site [www.contractororientation.com](http://www.contractororientation.com). The Contractor must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any work is performed on the Project. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway Contractor Safety Orientation. The Contractor must renew the Railway Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Representative.

## **1.03 Railway Requirements**

- **1.03.01** The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by County.
- **1.03.02** The Contractor must notify the Railway's Division Engineer at 909-386-4504 and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.
- **1.03.03** The Contractor must abide by the following temporary clearances during construction:
  - 15'-0" Horizontally from centerline of nearest track
  - 21'-6" Vertically above top of rail
  - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
  - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
  - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
  - 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts
- **1.03.04** Upon completion of construction, the following clearances shall be maintained:
  - 25' Horizontally from centerline of nearest track
  - 24.5' Vertically above top of rail
- **1.03.05** Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to County and must not be undertaken until approved in writing by the Railway, and until the County has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be

allowed in the event the Contractor's work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.

- **1.03.06** In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by County.
- **1.03.07** The details of construction affecting the Railway's Property and tracks not included in the contract plans must be submitted to the Railway by COUNTY for approval before work is undertaken and this work must not be undertaken until approved by the Railway.
- **1.03.08** At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across the Railways tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed and, at the completion of the project, removed at the expense of the Contractor.
- **1.03.09** Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor must immediately notify the Railway's Resource Operations Center at 1(800) 832-5452, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.
- **1.03.10** The Contractor upon completion of the work covered by this contract, must promptly remove from the Railway's Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said property by said Contractor or any Subcontractor, employee or agent of Contractor or of any Subcontractor, and must cause Railway's Property to be left in a condition acceptable to the Railway's representative.

#### **1.04 Contractor Roadway Worker on Track Safety Program and Safety Action Plan**

- **1.04.01** Each Contractor that will perform work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway Project Representative to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site [www.contractororientation.com](http://www.contractororientation.com), which will be made available to Railway prior to commencement of any work on Railway Property. During the performance of work, the Contractor must audit its work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.



## **1.05 Railway Flagger Services:**

- **1.05.01** The Contractor must give Railway's **Roadmaster (telephone 909-386-4061)** a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.
- **1.05.02** Unless determined otherwise by Railway's Project Representative, Railway flagger will be required and furnished when Contractor's work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:
  - **1.05.02a** When, upon inspection by Railway's Representative, other conditions warrant.
  - **1.05.02b** When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.
  - **1.05.02c** When work in any way interferes with the safe operation of trains at timetable speeds.
  - **1.05.02d** When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.
  - **1.05.02e** Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.
- **1.05.03** Flagging services will be performed by qualified Railway flaggers.
  - **1.05.03a** Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railways Representative.
  - **1.05.03b** Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.
  - **1.05.03c** The cost of flagger services provided by the Railway will be borne by **COUNTY**. The estimated cost for one (1) flagger is approximately between \$800.00-\$1,600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health

and welfare benefits, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. **THE FLAGGING RATE IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF FLAGGING PURSUANT TO THIS PARAGRAPH.**

- **1.05.03d** The current average train traffic on this route is 66 freight trains at 60 MPH and 22 passenger trains at 60 MPH.

#### **1.06 Contractor General Safety Requirements**

- **1.06.01** Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations.
- **1.06.02** Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).
- **1.06.03** Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by the Railway's Project Representative. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.
- **1.06.04** When Contractor employees are required to work on the Railway Property after normal working hours or on weekends, the Railway's representative in charge of the project must be notified. A minimum of two employees must be present at all times.
- **1.06.05** Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway's Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway's Property by that employee will be denied.
- **1.06.06** Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's representative in charge of the project. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway representative in charge of the project and to the Railway's Resource Operations Center at 1(800) 832-5452.

Local emergency numbers are to be obtained from the Railway representative in charge of the project prior to the start of any work and must be posted at the job site.

- **1.06.07** For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway's Property.
- **1.06.08** All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, [www.contractororientation.com](http://www.contractororientation.com), however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railway's representative in charge of the project is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **(NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**
- **1.06.09 THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF THE SAME WILL OBSTRUCT THE VIEW OF A TRAIN APPROACHING THE CROSSING. PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE AREA WITH CONCURRENCE OF THE RAILWAY'S REPRESENTATIVE.**
- **1.06.10** Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway's Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)
- **1.06.11** Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any work performed over water must meet all Federal, State and Local regulations.
- **1.06.12** All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

## **1.07 Excavation:**

- **1.07.01** Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor must determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact **BNSF's Field Engineering Representative (909-386-4079)**. All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line.

**It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.**

- **1.07.02** The Contractor must cease all work and notify the Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.
- **1.07.03** All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.
- **1.07.04** Any excavations, holes or trenches on the Railway's Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

## **1.08 Hazardous Waste, Substances and Material Reporting:**

- **1.08.01** If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to Railway's Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under the Exhibit C-1 Agreement, Contractor must immediately: (a) notify the Railway's Resource Operations Center at 1(800) 832-5452, of such discovery; (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties; and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

## **1.09 Personal Injury Reporting**

- **1.09.01** The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invitees while on the Railway's Property must be reported immediately (by phone mail if unable to contact in person) to the Railway's representative in charge of the project. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1(817) 352-7595 and to the Railway's Project Representative no later than the close of shift on the date of the injury.



## NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

(If injuries are in connection with rail equipment accident/incident, highway rail grade crossing accident or automobile accident, ensure that appropriate information is obtained, forms completed and that data entry personnel are aware that injuries relate to that specific event.)

Injured Person Type:

- ☐ Passenger on train (C)      ☐ Non-employee (N)  
*(i.e., emp of another railroad, or, non-BNSF emp involved in vehicle accident, including company vehicles)*
- ☐ Contractor/safety sensitive (F)      ☐ Contractor/non-safety sensitive (G)
- ☐ Volunteer/safety sensitive (H)      ☐ Volunteer/other non-safety sensitive (I)
- ☐ Non-trespasser (D) - to include highway users involved in highway rail grade crossing accidents who did not go around or through gates
- ☐ Trespasser (E) - to include highway users involved in highway rail grade crossing accidents who went around or through gates
- ☐ Non-trespasser (J) - Off Railway Property

If train involved, Train ID:

\_\_\_\_\_

Transmit attached information to Accident/Incident Reporting Center by:

Fax 1-817-352-7595

or by Phone 1-800-697-6736

or email to: [Accident-Reporting.Center@BNSF.com](mailto:Accident-Reporting.Center@BNSF.com)

Officer Providing Information:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Employee No.)

\_\_\_\_\_  
(Phone #)

**REPORT PREPARED TO COMPLY WITH FEDERAL ACCIDENT REPORTING REQUIREMENTS AND PROTECTED FROM  
DISCLOSURE PURSUANT TO 49 U.S.C. 20903 AND 83 U.S.C. 490**

## NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

INFORMATION REQUIRED TO BE COLLECTED PURSUANT TO FEDERAL REGULATION. IT SHOULD BE USED FOR COMPLIANCE WITH FEDERAL REGULATIONS ONLY AND IT IS NOT INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY

1. Accident City/St: \_\_\_\_\_ 2. Date: \_\_\_\_\_ Time: \_\_\_\_\_

County: \_\_\_\_\_ 3. Temperature: \_\_\_\_\_ 4. Weather: \_\_\_\_\_  
(if non BNSF location)

Mile Post / Line Segment \_\_\_\_\_

5. Driver's License No. (and state) or other ID: \_\_\_\_\_ SSN(required): \_\_\_\_\_

6. Name (last, first, mi): \_\_\_\_\_

7. Address: \_\_\_\_\_ City: \_\_\_\_\_ St: \_\_\_\_\_ Zip: \_\_\_\_\_

8 Date of Birth: \_\_\_\_\_ and/or Age: \_\_\_\_\_ Gender: \_\_\_\_\_  
(If available)

Phone Number: \_\_\_\_\_ Employer: \_\_\_\_\_

9. Injury: \_\_\_\_\_ 10. Body Part: \_\_\_\_\_  
(i.e. laceration, etc.) (i.e. Hand, etc.)

11. Description of Accident (To include location, action, result, etc.) \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12. Treatment:

☐ First Aid Only \_\_\_\_\_

☐ Required Medical Treatment \_\_\_\_\_

☐ Other Medical Treatment \_\_\_\_\_

13. Dr. Name: \_\_\_\_\_ Date: \_\_\_\_\_

14. Dr. Address: \_\_\_\_\_  
Street: \_\_\_\_\_ City: \_\_\_\_\_ St: \_\_\_\_\_ Zip: \_\_\_\_\_

15. Hospital Name: \_\_\_\_\_

16. Hospital Address: \_\_\_\_\_  
Street: \_\_\_\_\_ City: \_\_\_\_\_ St: \_\_\_\_\_ Zip: \_\_\_\_\_

17. Diagnosis: \_\_\_\_\_

REPORT PREPARED TO COMPLY WITH FEDERAL ACCIDENT REPORTING REQUIREMENTS  
AND PROTECTED FROM DISCLOSURE PURSUANT TO 49 U.S.C. 20903 AND 83 U.S.C. 490

## **EXHIBIT "C-1"**

### **Agreement Between BNSF RAILWAY COMPANY and the CONTRACTOR**

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

**Railway File: BF10004339**

**Agency Project: Magnolia Ave Signal Interconnect – Riverside County – 026517B**

The undersigned (hereinafter called, the "Contractor"), has entered into a contract (the "Contract") dated \_\_\_\_\_, 2013, with the **COUNTY of RIVERSIDE ("County")** for the performance of certain work in connection with the following project: **Signal Intertie with BNSF tracks for installation of queue cutters at Magnolia Ave in Riverside County, CA 026517B on BNSF's San Bernardino Subdivision.**

Performance of such work will necessarily require Contractor to enter **BNSF RAILWAY COMPANY** ("Railway") right of way and property ("Railway Property"). The Contract provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for **COUNTY** (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

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

#### **Section 1. RELEASE OF LIABILITY AND INDEMNITY**

Contractor hereby waives, releases, indemnifies, defends and holds harmless Railway for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about Railway's Property. **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 WILLFUL MISCONDUCT OR SOLE NEGLIGENCE OF RAILWAY.**



**THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE LOCOMOTIVE INSPECTION ACT, WHENEVER SO CLAIMED.**

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all claims made against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify Railway to the fullest extent permitted by applicable law. **THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILWAY FOR RAILWAY'S ACTS OF NEGLIGENCE.**

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

## **Section 2. TERM**

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

## **Section 3. INSURANCE**

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

- A. Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$6,000,000 but in no event less than the amount otherwise carried by the Contractor. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limit to the following:

- ◆ Bodily Injury and Property Damage
- ◆ Personal Injury and Advertising Injury
- ◆ Fire legal liability
- ◆ Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- ◆ The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Waiver of subrogation in favor of and acceptable to Railway.
- ◆ Additional insured endorsement in favor of and acceptable to Railway.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to ***Railway*** employees.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy with regard to the work being performed under this agreement.

B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ◆ Bodily injury and property damage
- ◆ Any and all vehicles owned, used or hired

The policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- ◆ Waiver of subrogation in favor of and acceptable to Railway.
- ◆ Additional insured endorsement in favor of and acceptable to Railway.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

C. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

- ◆ Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.

- ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- ◆ Waiver of subrogation in favor of and acceptable to Railway.

D. Railroad Protective Liability insurance naming only the **Railway** as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 12 04 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment
- ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
- ◆ Endorsed to remove any exclusion for punitive damages.
- ◆ No other endorsements restricting coverage may be added.
- ◆ The original policy must be provided to the **Railway** prior to performing any work or services under this Agreement
- ◆ Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured' care, custody, and control arising out of the acts or omissions of the contractor named on the Declarations.

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate (if available) in Railway's Blanket Railroad Protective Liability Insurance Policy.

### **Other Requirements:**

Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.

Contractor agrees to waive its right of recovery against **Railway** for all claims and suits against **Railway**. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against **Railway** for all claims and suits. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against **Railway** for loss of its owned or leased property or property under Contractor's care, custody, or control.

Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

Contractor is not allowed to self-insure without the prior written consent of **Railway**. If granted by **Railway**, self-insured retention or other financial responsibility for claims shall be covered directly by Contractor in lieu of insurance. Any and all **Railway** liabilities that would otherwise, in accordance with the provisions of this **Agreement**, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the Work, Contractor shall furnish to **Railway** an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments. The certificate should be directed to the following addresses:

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

Contractor shall notify **Railway** in writing at least 30 days prior to any cancellation, non-renewal, substitution, or material alteration.

Any insurance policy must be written by a reputable insurance company acceptable to **Railway** or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provide.

If coverage is purchased on a "claims made" basis, Contractor hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this contract. Annually, Contractor agrees to provide evidence of such coverage as required hereunder.

Contractor represents that this **Agreement** has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this **Agreement**.

Not more frequently than once every five years, **Railway** may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by Contractor, Contractor shall require that the subcontractor shall provide and maintain the insurance coverage(s) set forth herein, naming **Railway** as an additional insured, and shall require that the subcontractor shall release, defend, and indemnify **Railway** to the same extent and under the same terms and conditions as Contractor is required to release, defend, and indemnify **Railway** herein.

Failure to provide evidence as required by this section shall entitle, but not require, **Railway** to terminate this **Agreement** immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this **Agreement**. Damages recoverable by **Railway** shall not be limited by the amount of the required insurance coverage.

In the event of a claim or lawsuit involving **Railway** arising out of this agreement, Contractor will make available any required policy covering such claim or lawsuit.

These insurance provisions are intended to be a separate and distinct obligation on the part of the Contractor. Therefore, these provisions shall be enforceable and Contractor shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work covered hereunder is performed.

For purposes of this section, **Railway** means "Burlington Northern Santa Fe LLC", "BNSF RAILWAY COMPANY" and the subsidiaries, successors, assigns and affiliates of each.

#### **Section 4. EXHIBIT "C" CONTRACTOR REQUIREMENTS**

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Contract, and the Contractor Requirements set forth on Exhibit "C" attached to the Contract and this Agreement, , including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site.

#### **Section 5. TRAIN DELAY**

Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality

obligations. Damages for train delay are currently \$382.20 per hour per incident. **THE RATE THEN IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF TRAIN DELAY PURSUANT TO THIS AGREEMENT.**

**Contractor and its subcontractors must give Railway's representative (BNSF Project Engineer, 909-386-4079) 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.**

**Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.**

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

**Contractor**

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

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

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

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

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

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

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

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

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

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

**BNSF Railway Company**

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

Name: \_\_\_\_\_  
Manager Public Projects

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