

**SUBMITTAL TO THE FLOOD CONTROL AND  
WATER CONSERVATION DISTRICT  
BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



ITEM  
11.2  
(ID # 4492)

**MEETING DATE:**

Tuesday, June 20, 2017

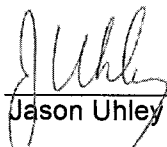
**FROM :** FLOOD CONTROL DISTRICT:

**SUBJECT:** FLOOD CONTROL DISTRICT: Santa Ana River Mainstem – Below Prado BNSF Railroad Bridge Protection Project, Project No. 2-0-00105, Resolution No. F2017-13 Consideration and Acceptance of CEQA Addenda as a Responsible Agency; Authorization of the Purchase of Temporary Construction License and Easement Interests in Property located in the City of Corona, County of Riverside, Assessor's Parcel Number 101-130-080; Approval of Construction and Maintenance Agreement and Easement Agreement; District 2 [\$3,318,766]

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Find that the environmental effects of the purchase of easement interests in real property will not have a significant impact on the environment and nothing further is required because any potential significant effects have been adequately analyzed and addressed in previously adopted environmental documents, as such environmental documents further described and defined as the "Documents" in Resolution No. F2017-13, prepared by the County of Orange, as lead agency for CEQA, and the US Army Corps of Engineers for NEPA; and
2. Adopt Resolution No. F2017-13 Consideration and Acceptance of CEQA Addenda as a Responsible Agency and Issuing Certain Limited Approvals for the Santa Ana River Mainstem Project by Authorizing the Purchase of a Temporary Construction License and Easement Interests in Real Property located in the City of Corona, County of Riverside, Assessor's Parcel Number 101-130-080; and

**ACTION:** Policy

  
Jason Uhley

6/7/2017

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**MINUTES OF THE BOARD OF SUPERVISORS**

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

**Ayes:** Jeffries, Tavaglione, Washington, Perez and Ashley  
**Nays:** None  
**Absent:** None  
**Date:** June 20, 2017  
**xc:** Flood, Recorder

Kecia Harper-Ihem  
Clerk of the Board

By   
Deputy

**SUBMITTAL TO THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD  
OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

3. Approve the attached Construction and Maintenance Agreement and Easement Agreement between the District and the BNSF Railway Company which includes the terms for construction, maintenance of bridge pier and abutment improvements, monitoring, access and acquisition of temporary construction license and easement interest; and
4. Authorize the Chairman of the District to execute both the Construction and Maintenance Agreement and Easement Agreement on behalf of the District; and
5. Authorize the General Manager-Chief Engineer, or his designee, to execute any other related documents and to administer all actions necessary to complete this transaction; and
6. Direct the Clerk of the Board to file the Notice of Determination with the County Clerk and the State Office of Planning and Research for filing within five (5) days of the approval of this acquisition.

<b>FINANCIAL DATA</b>	<b>Current Fiscal Year:</b>	<b>Next Fiscal Year:</b>	<b>Total Cost:</b>	<b>Ongoing Cost</b>
<b>COST</b>	\$242,722	\$3,076,044	\$3,318,766	\$0
<b>NET DISTRICT COST</b>	\$242,722	\$3,076,044	\$3,318,766	\$0
<b>SOURCE OF FUNDS:</b> Santa Ana Mainstem Project 540040 25120 947420 Land, 536200-25120-947420 Contribution to Non-County Agency			<b>Budget Adjustment:</b> No <b>For Fiscal Year:</b> 16/17, 17/18-20/21	

**C.E.O. RECOMMENDATION:** APPROVE

**BACKGROUND:**

**Summary**

The District, in conjunction with the U.S. Army Corps of Engineers ("USACE"), has been constructing flood control improvements downstream of the Prado Dam which was raised to protect the Green River area of Corona, thereby preventing flooding and damage to homes, and State Highway 91. In addition to the levee improvements which have been contracted, BNSF currently has a bridge with pier structures located in the Santa Ana River which need additional protection.

USACE has designed the proposed improvements and designated the real property necessary for the project. The District has reviewed and approved the improvement plans, the maintenance plans and the right of way for acquisition. The acquisition of the subject properties consists of the purchase of temporary construction license and easement interests in real property within Assessor's Parcel Number 101-130-080 owned by BNSF Railway Company. The owners are willing sellers and are in agreement to grant the right of way interest to the District for the fair market value of \$242,722 to construct and implement a certain limited part of the SARM.

The District, as a CEQA responsible agency, and pursuant to certain cooperative agreements with the USACE would acquire real property interests over time to implement portions of the SARM. CEQA Guidelines Section 15096, requires the District, as a responsible agency, to

**SUBMITTAL TO THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD  
OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

consider the environmental documents prepared by the lead agency. As indicated in Resolution No. F2017-13, the District in its limited role as a responsible agency under CEQA has received, reviewed, and considered the information contained in the 2015 Addendum and 2017 Addendum to the 2001 Prado Basin and Vicinity, Including Reach 9 and Stabilization of the Bluff Toe at Norco Bluffs Supplemental Final Environmental Impact Statement/Environmental Impact Report as prepared by the Army Corps of Engineers and County of Orange. The Acquisition Project is within the scope of the 2015 Addendum and 2017 Addendum, and taken together, the environmental effects of the Acquisition Project have been adequately addressed and none of the conditions described in Section 15162 of the CEQA Guidelines calling for the preparation of a subsequent EIR have occurred.

District staff is recommending the adoption of Resolution No. F2017-13 to consider CEQA Addenda as a responsible agency and authorize the purchase of a temporary construction license and easement interests in real property. It is further recommended to approve both the Construction and Maintenance Agreement and the Easement Agreement between the District and BNSF Railway Company which includes the terms of construction, maintenance of bridge pier and abutment improvements, monitoring access and acquisition of real property interests, in order for the District to implement this portion of the Santa Ana River Mainstem Project ("SARM").

The attached Resolution No. F2017-13, the Construction and Maintenance Agreement and the Easement Agreement have been approved as to form by County Counsel.

**Impact on Residents and Businesses**

No impact.

**SUPPLEMENTAL:**

**Additional Fiscal Information**

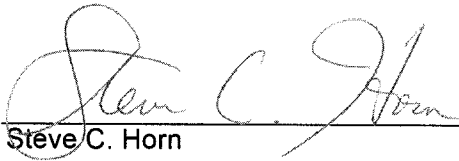
Pursuant to the terms of the Construction and Maintenance Agreement, while construction is taking place on BNSF's property, BNSF will require staff onsite to inspect all construction and protect BNSF's interest. These services include railroad flagging and engineering inspection/plan review for the anticipated 4 years of construction. BNSF shall provide all the necessary labor, materials, tool and equipment required. BNSF has provided an estimate of the cost for these service to be \$3,076,044 detailed in Exhibit D of the CMA. BNSF will send the District progressive invoices detailing the costs during construction period.

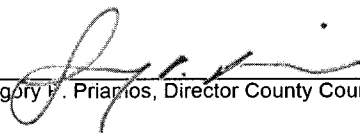
**ATTACHMENTS:**

1. 2001 Prado Basin and Vicinity, Including Reach 9 and Stabilization of the Bluff Toe at Norco Bluffs Supplemental Final Environmental Impact Statement/Environmental Impact Report
2. 2015 CEQA Addenda to the 2001 Prado Basin and Vicinity, Including Reach 9 and Stabilization of the Bluff Toe at Norco Bluffs Supplemental

**SUBMITTAL TO THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD  
OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

3. 2017 CEQA Addenda to the 2001 Prado Basin and Vicinity, Including Reach 9 and Stabilization of the Bluff Toe at Norco Bluffs Supplemental Final Environmental Impact Statement/Environmental Impact Report
4. Resolution No. F2017-13
5. Vicinity Map
6. Construction and Maintenance Agreement and Easement Agreement between District and BNSF Railway Company
7. Authorization to Bill, OCFCD NOD, CDFW Filing Receipt, RCFC NOD, Attachment

  
Steve C. Horn 6/12/2017

  
Gregory V. Priarios, Director County Counsel 6/7/2017

**BOARD OF SUPERVISORS**

**RIVERSIDE COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT**

**RESOLUTION NO. F2017-13**

CONSIDERATION AND ACCEPTANCE OF CEQA ADDENDA AS A RESPONSIBLE AGENCY AND ISSUING CERTAIN LIMITED APPROVALS FOR THE SANTA ANA RIVER MAINSTEM PROJECT BY AUTHORIZING THE PURCHASE OF A TEMPORARY CONSTRUCTION LICENSE AND EASEMENT INTERESTS IN REAL PROPERTY LOCATED IN THE CITY OF CORONA, COUNTY OF RIVERSIDE, WEST OF PRADO DAM

PROJECT NO. 2-0-00105  
ASSESSOR'S PARCEL NUMBER 101-130-080

WHEREAS, the Riverside County Flood Control and Water Conservation District ("District"), pursuant to certain cooperative agreements with the U.S. Army Corps of Engineers ("USACE"), is responsible for acquiring right of way and property interests for the Santa Ana River Mainstem – Below Prado BNSF Railroad Bridge Protection Project ("SARM Project") for the purpose of constructing, maintaining and operating flood control facility improvements to prevent flooding and damage to homes and property; and

WHEREAS, the District desires to purchase from the BNSF Railway Company ("BNSF") and the BNSF desires to sell to the District a temporary construction license and easement interests over certain real property owned by BNSF located in the City of Corona, County of Riverside, within the Santa Ana River Mainstem, State of California, consisting of approximately 8.53 acres of land with Assessor's Parcel Number 101-130-080, also referenced as Parcel No. 2105-24, ("Acquisition Project") more particularly described in Attachment "1" attached hereto and by this reference incorporated herein; and

WHEREAS, the District has been asked to issue certain limited approvals for the SARM Project, specifically including authorizing the purchase of the aforementioned easement interests in real property located in the City of Corona, County of Riverside, within the Santa Ana River Mainstem for construction, maintenance of bridge pier and abutment improvements, monitoring and access; and

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FORM APPROVED COUNTY COUNSEL  
BY: *Synthia M. Gunzel* 6-7-17  
SYNTHIA M. GUNZEL DATE

1           WHEREAS, the District has more limited approval and implementing authority over the  
2 SARM Project and, thus, serves only as a responsible agency for the SARM Project pursuant to  
3 the requirements of the California Environmental Quality Act (CEQA); and

4           WHEREAS, the USACE, acting as the federal lead agency, and the County of Orange,  
5 acting as the lead agency under the CEQA, in 2001 prepared a Supplemental Final Environmental  
6 Impact Statement/Environmental Impact Report ("SFEIS/EIR") to the FSEIS entitled "Prado Basin  
7 and Vicinity, Including the Reach 9 and Stabilization of the Bluff Toe and Norco Bluffs  
8 Supplemental Final Environmental Impact Statement-Environmental Impact Report" (SCH#  
9 1997071087); and

10           WHEREAS, on June 14, 2011, the Board of Supervisors of the Riverside County Flood  
11 Control and Water Conservation District ("Board"), acting as a responsible agency under CEQA,  
12 concurred with the County of Orange, certified the SFEIS/EIR, and adopted mitigation measures  
13 and a statement of overriding considerations (Resolution No. F2011-18); and

14           WHEREAS, the USACE, acting as the federal lead agency, and the County of Orange,  
15 acting as the lead agency under the CEQA, have prepared a Supplemental Environmental  
16 Assessment/CEQA Addendum ("2015 Addendum") to the SFEIS/EIR dated July 2015 to address  
17 minor technical project changes specifically for the aforementioned SARM Project; and

18           WHEREAS, the USACE, acting as the federal lead agency, and the County of Orange,  
19 acting as the lead agency under the CEQA, have subsequently prepared a second Supplemental  
20 Environmental Assessment/CEQA Addendum ("2017 Addendum") to the SFEIS/EIR dated April  
21 2017 to update the information in the 2015 Addendum and address minor technical project changes  
22 specifically for the aforementioned SARM Project; and

23           WHEREAS, all the aforementioned federal and state environmental documents and  
24 associated materials, including the SFEIS/EIR, 2015 Addendum and 2017 Addendum, will  
25 hereinafter collectively be referred to as the "Documents", and the Documents taken together  
26 thoroughly address the environmental effects of the Acquisition Project; and;

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WHEREAS, pursuant to the CEQA, the County of Orange is the lead agency and is responsible for assuring that an adequate environmental analysis of the entire Project has been conducted; and

WHEREAS, pursuant to the CEQA, the District is acting as a responsible agency for considering the Documents prepared by the County of Orange; and

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred; and

NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED by the Board of Supervisors of the Riverside County Flood Control and Water Conservation District assembled in regular session on June 20, 2017 in the meeting room of the Board of Supervisors located on the 1<sup>st</sup> Floor of the County Administrative Center, 4080 Lemon Street, Riverside, California, based upon the evidence and testimony presented on the matter, both written and oral, including the Documents, as it relates to the Acquisition Project, that:

1. Incorporation of Recitals. The above recitations constitute findings of the Board with respect to the Acquisition Project and are incorporated herein.

2. Consideration of the 2015 Addendum and 2017 Addendum. As the decision-making body for the District, and in the District's limited role as a responsible agency under CEQA, the District has received, reviewed, and considered the information contained in the Documents as prepared by the USACE and County of Orange: The Acquisition Project is within the scope of the Documents and, taken together, the environmental effects of the Acquisition Project have been adequately addressed and none of the conditions described in Section 15162 of the CEQA Guidelines calling for the preparation of a subsequent EIR have occurred. Based on this review, the Board finds that as to those potential environmental impacts within the District powers and authorities as responsible agency, the Documents for the Acquisition Project contain a complete, objective, and accurate reporting of those potential impacts and reflects the independent judgment and analysis of the District.

1 BE IT FURTHER RESOLVED that, as required by State CEQA Guidelines section 15096  
2 and in its limited role as responsible agency under CEQA, the Board hereby accepts the Documents  
3 and approves the Acquisition Project.

4 BE IT FURTHER RESOLVED by vote of the Board of Supervisors of the Riverside  
5 County Flood Control and Water Conservation District (District) in regular session assembled on  
6 June 20, 2017, in the meeting room of the Board of Supervisors of the District located on the 1<sup>st</sup>  
7 Floor of the County Administrative Center, 4080 Lemon Street, Riverside, California, at or after  
8 9:00 a.m., that this Board authorizes the purchase of a temporary construction license and  
9 easement interests over certain real property in the City of Corona, County of Riverside, within  
10 the Santa Ana River Mainstem, State of California, consisting of approximately 8.53 acres with  
11 Assessor's Parcel Number 101-130-080, also referenced as Parcel No. 2105-24, described in  
12 Attachment "1" for a purchase price of \$242,722, from the owner, the BNSF Railway Company.

13 BE IT FURTHER RESOLVED that the Construction and Maintenance Agreement and the  
14 Easement Agreement between the District and BNSF Railway Company is hereby approved, and  
15 authorizes the Chairman of the Board of Supervisors of the District to execute both Agreements  
16 on behalf of the District.

17 BE IT FURTHER RESOLVED that the General Manager-Chief Engineer or his designee  
18 is authorized to execute any other documents and administer all actions necessary to complete the  
19 purchase of the land.

20 BE IT FURTHER RESOLVED that the Board hereby directs the Clerk of the Board to file  
21 a Notice of Determination with the Riverside County Clerk and also with the Governor's Office of  
22 Planning and Research within five (5) working days of the approval of the Acquisition Project.

23 BE IT FURTHER RESOLVED that the documents and materials that constitute the record  
24 of proceedings on which these findings are based are located at the offices of the Clerk of the  
25 Board of Supervisors for the District at 4080 Lemon St., 1<sup>st</sup> Floor, Riverside, CA 92501 and the  
26 District Office at 1995 Market Street, Riverside, CA 92501.



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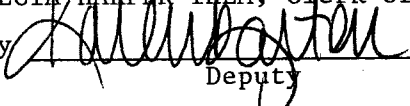
BE IT FURTHER RESOLVED that the Clerk of the Board shall sign this Resolution to attest and certify to the passage and adoption thereof.

AU:JS:rlp

ROLL CALL:

Ayes: Jeffries, Tavaglione, Washington, Perez and Ashley  
Nays: None  
Absent: None

The foregoing is certified to be a true copy of a resolution duly adopted by said Board of Supervisors on the date therein set forth.

KECIA HARPER-IHEM, Clerk of said Board  
By   
Deputy

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 Railway**

**ENGINEERING SERVICES DEPARTMENT**

**CONSTRUCTION AND MAINTENACE AGREEMENT**

Between

**THE BNSF RAILWAY**

and

**RIVERSIDE COUNTY FLOOD CONTROL AND WATER  
CONSERVATION DISTRICT**

*May 31, 2017*

BNSF File No. BF10009759  
LOCATION: City of Corona, CA  
Railroad LS 7602 MP 30.2

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## CONSTRUCTION AND MAINTENANCE AGREEMENT

**BNSF File No. BF10009759  
Pier and Abutment Protection Project  
Line Segment 7602  
Bridge MP 30.2  
San Bernardino Subdivision**

This Agreement ("**Agreement**"), is executed to be effective as of \_\_\_\_\_, 201\_ ("**Effective Date**"), by and between BNSF RAILWAY COMPANY, a Delaware corporation ("**BNSF**"), and the Riverside County Flood Control and Water Conservation District, a special district created by act of the California legislature ("**Agency**").

### RECITALS:

WHEREAS, BNSF owns and operates a line of railroad in and through Riverside County, State of California; and

WHEREAS, The U. S. Army Corps of Engineers (USACE) desires to increase the peak outflow capability of Prado Dam in Riverside County by raising the embankment of the dam and constructing new outlet works; and

WHEREAS, as the result of the increased peak outflow, pier and abutment protection is required at BNSF's Bridge 30.2 on the San Bernardino Subdivision ("**Project**"); and

WHEREAS, pursuant to the Local Cooperation Agreement (LCA) entered into by the Agency and the Department of the Army, acting by and through the District Engineer, Los Angeles District, United States Army Corps of Engineers, (USACE), among others, dated December 14, 1989, whereby the Agency is partnered with the USACE to provide protection for Santa Ana Canyon Below Prado Dam within Riverside County; and

WHEREAS, the 1989 LCA prescribes the roles and responsibilities between Agency and USACE. Agency, as local sponsor for this Project, shall be responsible for securing all lands, easements, and rights of way and for operation and maintenance of the completed project as pursuant to the terms and conditions of the LCA. USACE is responsible for design and construction of the BNSF Railroad bridge pier and abutment protection and for providing the Operation and Maintenance Manual; and

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 AND PARTIES**

1. The term "**Project**" as used herein includes any and all work related to the construction of the proposed BNSF railroad bridge pier and abutment protection (hereinafter referred to as the "**Structure**"), more particularly described on the Exhibit A – General Plan View of Pier and Abutment Protection 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.

2. The parties agree that the design and construction of the Structure for the Project pursuant to federal laws, regulations and policies is the responsibility of the USACE and that the Agency is responsible for operating, repairing, maintaining, replacing and rehabilitating the Structure, all in accordance with the terms and conditions of the Exhibit H - Local Cooperation Agreement (LCA) Among the Department of the Army, Orange County Flood Control District, San Bernardino County Flood Control District and Riverside County Flood Control and Water Conservation District for Construction of the Santa Ana Mainstem, Including Santiago Creek, California Flood Control Project). Both parties further agree that it is their joint desire to create this two-party agreement for their own respective convenience purposes and has therefore with full knowledge and intent agreed to use this revised template/form agreement from BNSF to serve as their primary binding agreement for the Project.

## **ARTICLE II)      BNSF OBLIGATIONS**

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

1. Upon Agency's payment to BNSF of an administrative fee in the sum of Two Thousand and No/100 Dollars (\$2,000), together with the Temporary Construction License Fee in the sum of Five Thousand Eight Hundred Seventy Two and NO/100 Dollars (\$5,872.00), 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-1 – Temporary Construction License, 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; and
- (d) Require the Agency or its contractor to execute a Temporary Construction Crossing Agreement, for any at-grade temporary crossing requested to aid in the construction of this Project.
- (e) The right of ingress/egress, the right to move, store and remove equipment and supplies; erect and remove temporary structures on the land; and to perform any other work necessary and incident to the construction of the Structure; together with the right to trim, cut and remove therefrom all trees, underbrush, obstructions and any other vegetation, structures, or obstacles within the limits of the right-of-way.

The Temporary Construction License granted by this agreement to Agency may be used by USACE, including its contractors after Exhibit C/C1 – Contractor Requirements and Agreement between BNSF and Contractor is fully executed by BNSF and Contractor.

The term of the Temporary Construction License begins on the Effective Date and ends upon the recordation of the permanent easement to Agency. The Temporary Construction License and related rights given by BNSF to Agency in this provision are without warranty of title of any kind, express or implied, and no covenant of warranty of title will be implied from the use of any word or words herein contained. The Temporary Construction License and related rights given by BNSF to Agency in this provision are without warranty of title of any kind, express or implied, and no covenant of warranty of title will be implied from the use of any word or words herein contained. The Temporary Construction License is 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 for any other purpose than construction. 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 Agency's payment to BNSF of the additional sum of Two Hundred Thirty Four Thousand Eight Hundred Fifty and No/100 Dollars (\$234,850.00), such payment to be made within thirty (30) days of issuing the Notice to Proceed pursuant to Article III, Section 16 of this Agreement, and provided further that Agency is in compliance with the term 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 – Easement Agreement attached to 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 Flagging and Engineering Inspection required for the construction of the Project, such railroad work and the estimated cost thereof being as shown on Exhibit D – Cost Estimate for Railroad Work 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 of flagging services during construction of the Project as required and set forth in further detail on Exhibit C;
- (d) Furnishing engineering and inspection as required in connection with the construction of the Project;
- (e) Providing a contract project coordinator, at Agency's expense, to serve as a project manager for the Project;
- (f) Provide Plan Reviews during the construction of the Project.

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, per Exhibit D, 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, not covered by Exhibit D, caused by Agency or Agency's contractor in connection with the construction of the Project which BNSF deems is reasonably necessary for the immediate restoration of railroad operations to the classification of track as specified within the current BNSF timetable, 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. BNSF may charge Agency for insurance expenses, including self-insurance expenses, when such expenses cover the cost of Employer's Liability (including, without limitation, liability under the Federal Employer's Liability Act) in connection with the construction of the Project. Such charges will be considered part of the actual cost of the Project, regardless of the nature or amount of ultimate liability for injury, loss or death to BNSF's employees, if any.

6. During the construction of the Project, BNSF will send Agency progressive invoices detailing the costs of the railroad work performed by BNSF under this Agreement. Agency must reimburse BNSF for completed force-account work within thirty (30) days of the date of the invoice for such work. Upon completion of the Project, BNSF will send Agency a detailed invoice of final costs, segregated as to labor and materials for each item in the recapitulation shown on Exhibit D. Pursuant to this section 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 – Final Approval of Plans and Specifications, 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.

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

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

5. Agency must make any and all arrangements, in compliance with BNSF's Utility Accommodation Manual (<http://www.bnsf.com/communities/faqs/pdf/utility.pdf>), for the installation or relocation of wire lines, pipe lines and other facilities owned by private persons, companies, corporations, political subdivisions or public utilities other than BNSF which may be necessary for the construction of the Project, including, but not limited to, the cost associated with relocation or protection of any fiber optic conduit/cables or other utility within BNSF's right-of-way, if such costs are not the responsibility of the utility owner.

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 Pier and Abutment protection;
- (b) All necessary grading and paving, including backfill of excavations and restoration of disturbed vegetation on BNSF's right-of-way;
- (c) Provide suitable drainage, both temporary and permanent;



- (d) 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 furnish to the BNSF an emergency action plan, as a precaution, for rapidly removing equipment and materials with potential to cause damage to the BNSF railroad bridge stemming from streambank erosion or scour near the bridge foundations in advance of imminent runoff with the potential to exceed the capacity of temporary diversion structures. The emergency action plan shall designate an Agency representative who will be onsite throughout most of the construction project with the authority to order that work be halted and equipment and materials with the potential to cause damage to the BNSF railroad bridge be moved to high ground outside of the active channel. The emergency action plan shall identify where equipment and materials removed from the channel will be stored temporarily during a runoff event that is expected to exceed temporary diversion capacity. The Orange County ALERT System data reports, warnings of the potential for severe weather issued by the National Weather Service – San Diego Office, and planned Prado Dam releases by the United States Army Corps of Engineers – LA District should be reviewed daily during construction.
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 contractor or subcontractors on behalf of the Agency, Agency shall require the contractor or subcontractors to comply with the provisions of the attached Exhibit C and execute the 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 "[www.BNSFContractor.com](http://www.BNSFContractor.com)"; notify BNSF when, pursuant to the requirements of Exhibit C, a flagger is required when Agency or Agency's Contractors are working within 25 feet of the outside face of any bridge deck ballast curb. A flagger may be required when Agency or Agency's Contractors are working more than 25 feet away from the ballast curb if (i) The work could potentially foul a track (example: Cranes, concrete truck, man-lift, etc.). (ii) Excavation activities could undermine the track, Structure or Railroad Bridge; procure, and have approved by BNSF's Risk Management Department, Railroad Protective Liability insurance. A flagger will not be required for inspections or minor work underneath the low chord of the railroad bridges, provided that the minor work does not have the potential to foul the track or undermine the track, Structure or Railroad Bridge.
10. Agency must require its contractor(s) to notify BNSF's Structures Supervisor at least thirty (30) calendar days prior to requesting a BNSF flagman in accordance with the requirements of Exhibit C attached hereto. Additionally, Agency must require its

contractor(s) to notify BNSF's Manager of Public Projects thirty (30) calendar days prior to commencing work on BNSF property or near BNSF tracks.

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

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 as directed by the Agency. 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 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 and IV; and (ii) the provisions set forth in Exhibit C, Exhibit C-1, and Exhibit F, as applicable, attached hereto and by reference made a part hereof.

14. Except as otherwise provided below in this Section 13, 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 must be subject to BNSF's approval;
- (c) No work will be commenced within BNSF's right-of-way until each of the prime contractors employed in connection with said work must have (i) executed and delivered to BNSF an 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 Project Engineer four (4) weeks advance notice of the proposed

times and dates for any work that may disturb the track structure that will require BNSF to stop all train movements at the Structure, hereinafter referred to as "**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, as applicable, attached to this Agreement and incorporated herein.

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

17. Agency must give BNSF's Manager Public Projects written notice to proceed ("**Notice to Proceed**") with the railroad work after receipt of necessary funds for the Project. BNSF will not begin the railroad work (including, without limitation, procurement of supplies, equipment or materials) until written notice to proceed is received from Agency.

#### **ARTICLE IV) JOINT OBLIGATIONS**

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

1. All work contemplated in this Agreement must be performed in a good and workmanlike manner and each portion must be promptly commenced by the party obligated hereunder to perform the same and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications during construction which affect BNSF will be subject to BNSF's written approval prior to the commencement of any such changes or modifications from the BNSF's General Director Structures Ron Berry.
2. The work hereunder must be done in accordance with the Bridge Requirements set forth on Exhibit F, as applicable, 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 of either (BNSF or its related railroads) or to protect persons or property on or near any BNSF owned property. BNSF will not be liable for any additional costs or expenses resulting from any such reallocation of its labor forces. The parties mutually agree that any reallocation of labor forces by BNSF pursuant to this provision and any direct or indirect consequences or costs resulting from any such reallocation will not constitute a breach of this Agreement by BNSF.

4. BNSF will have the right to stop construction work on the Project if any of the following events take place: (i) Agency (or any of its contractors), in BNSF's opinion, prosecutes the Project work in a manner that is hazardous to BNSF property, facilities or the safe and expeditious movement of railroad traffic (ii) 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. 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. Pursuant to Federal Acquisition Regulation (FAR) 28.302 and 28.306, USACE shall include in the construction contract a provision which states that policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or material change adversely affecting the Government's interest shall not be effective until at least 30 days after the Government receives a notice of cancellation. The insurance required in Exhibit C-1 shall be required in the contract. Upon receipt of a written notice cancellation or material change adversely affecting the Government's interest, USACE shall direct the Contractor to stop work unless the cancellation or material change is rescinded prior to the effective date. The work stoppage will continue in effect until the Contractor provides proof it has obtained the required insurance to USACE and BNSF. In the event that BNSF desires to stop construction work on the Project, BNSF agrees to immediately notify the following individual in writing:

Pete Gauer, RE  
U. S. Army Corps of Engineers  
2493 Pomona-Rincon Road  
Corona, CA 92880  
Phone: 951-898-6153  
Cell: 949-212-7480  
[Peter.A.Gauer@usace.army.mil](mailto:Peter.A.Gauer@usace.army.mil)

Alberto Martinez  
Riverside County Flood Control and Water  
Conservation District  
1995 Market Street  
Riverside, CA 92501  
Phone: 951-955-1200  
Fax: 951-684-8409  
[bmartine@RIVCO.ORG](mailto:bmartine@RIVCO.ORG)

5. If BNSF determines that proper supervision and inspection are not being performed to ensure compliance with the plans and specifications approved by BNSF,

the terms of this Agreement and all safety requirements of BNSF at any time during construction of the Project, BNSF shall give notice to Agency and USACE asking USACE to stop construction (within or adjacent to its operating right-of-way) and not to permit construction of the Project to proceed until Agency corrects the situation to BNSF's reasonable satisfaction. Agency and USACE will respond to any such notice within two working days. Any such work stoppage under this provision will not give rise to any liability on the part of BNSF. All notices under this paragraph shall be sent to the following personnel or their successors for appropriate corrective action:

Pete Gauer, RE  
U. S. Army Corps of Engineers  
2493 Pomona-Rincon Road  
Corona, CA 92880  
Phone: 951-898-6153  
Cell: 949-212-7480  
[Peter.A.Gauer@usace.army.mil](mailto:Peter.A.Gauer@usace.army.mil)

Alberto Martinez  
1995 Market Street  
Riverside, CA 92501  
Phone: 951-955-1200  
Fax: 951-684-8409  
[bmartine@RIVCO.ORG](mailto:bmartine@RIVCO.ORG)

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 (including taxes, such as applicable sales and use taxes, business and occupation taxes, and similar taxes), 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 attorney's 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 attorney's 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 Title 23 U.S. Code, Title 23 Code of Federal Regulations, and the Federal-Aid Policy Guide, 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 agree, the railroad embankment referenced in this Agreement is not engineered, maintained, or operated in accordance with the provisions of 44 CFR 65.10 and therefore should not be considered part of the levee system.

9. The parties mutually agree that neither construction activities for the Project, nor future maintenance of the Structure once completed, will be permitted inside the track clearance envelope as defined in Exhibit C during the fourth quarter of each calendar year. BNSF will work with Agency and USACE to allow efficient progress of maintenance or construction activities to avoid encroachment into the fourth quarter. Emergency work will be permitted only upon prior notification to BNSF's Network Operations Center (telephone number: 800 832-5452). The parties hereto mutually understand and agree that trains cannot be subjected to delay during this time period.

10. Subject to the restrictions imposed by Article 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 BF10009759 and must state the time that construction activities will begin.

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

- (a) Agency will own and maintain, at its sole cost and expense, the Structure, and appurtenances thereto, lighting, drainage and any access roadways to BNSF property. BNSF may, at its option, perform maintenance on the Structure in order to avoid conflicts with train operations. BNSF will notify Agency prior to performing any such maintenance on the Structure to confirm scope of repair. 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 (a).
- (b) BNSF is not responsible for removal of graffiti on the Structure as identified in Exhibit A.
- (c) 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.
- (d) 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.



- (e) Agency responsible for maintenance of Structure in accordance with local, state and federal laws, and BNSF standards and specifications in accordance with the Operations and Maintenance Manual. In case of any conflict between local, state and federal laws, and BNSF standards and specifications, precedence will be accorded to local, state and federal laws. BNSF is not responsible for maintaining the Structure.
- (f) Agency acknowledges that the Structure was designed with the specific purpose to limit streambed scour to an elevation no lower than 381.0 feet NGVD 29 ("Design Elevation"). Agency shall perform a visual inspection as part of the spring semi-annual report and provide a supplement to that report in the event that the discharge measured at USGS streamflow gage 11074000 SANTA ANA R BL PRADO DAM" (USGS 11074000) exceeds 10,000 cubic feet per second (cfs). If a visual inspection indicates the formation of local scour adjacent to BNSF bridge abutment or pier locations a survey of the channel cross-section is required for comparison to the As-built Condition and Design Elevation, which shall be conducted when access to the river is both feasible and safe. The cross section shall include the BNSF bridge substructure elements and invert elevations at the left and right toe of slope and at intervals not to exceed 3 meters (10 feet) and at any significant grade break. If any portion of the streambed elevation within the bridge section lowers to within 5 feet (386.0 feet NGVD 29) of the Design Elevation, the Agency shall notify BNSF and USACE and determine the likelihood of additional scour. If additional scour is expected to reach or exceed the Design Elevation and it is determined by BNSF and USACE that the additional scour would pose an immediate risk to bridge stability, the Agency shall proceed with emergency repairs and inspection in accordance with the Operation and Maintenance Manual and BNSF Design Standards. In addition, the selection of emergency repairs approved by the USACE shall consider at a minimum (i) operational impacts to BNSF, (ii) inspection frequencies and access necessary within BNSF ROW, and (iii) limitations associated with construction within BNSF ROW. Once emergency repairs are placed, Agency shall coordinate with USACE to evaluate permanent repairs in accordance with USACE policies and BNSF Design Standards, subject to availability of funds for USACE.
- (g) Agency shall document the west streambank condition and location relative to the As-built conditions in the spring semi-annual report. In addition, Agency shall prepare a Special Report in the event that the discharge measured at USGS streamflow gage 11074000 SANTA ANA R BL PRADO DAM" (USGS 11074000) exceeds 10,000 cfs. The Special Report shall include two (2) survey transects taken upstream of the bridge opening, in accordance with the Operations and Maintenance Manual in order to determine lateral migration extent, which shall be conducted when access to the river is both feasible and safe. If the streambank location migrates more than 200 feet from the location of the 2016 survey as shown in the

“Estimated Channel West Bank Lateral Migration” exhibit contained in the Operational and Maintenance Manual, the Agency shall notify BNSF and USACE. Agency will coordinate with USACE and BNSF to evaluate if additional lateral stream migration will pose any significant risk to the BNSF Bridge. If additional lateral stream migration is expected to exceed the 300 foot migration design threshold and poses risk to bridge stability, the Agency shall proceed with emergency repairs in accordance with the Operation and Maintenance Manual. In addition, the selection of emergency repairs approved by the USACE shall consider at a minimum (i) operational impacts to BNSF, (ii) inspection frequencies and access necessary within BNSF ROW, and (iii) limitations associated with construction within BNSF ROW. Once emergency repairs are placed, Agency shall coordinate with USACE to evaluate permanent repairs in accordance with USACE policies and approved by BNSF, subject to availability of funds for USACE.

- (h) Agency shall perform inspections of the pier nose extension structures as prescribed in the Operations and Maintenance Manual for the Structure to identify debris accumulation, waste materials, building of unauthorized structures, or other encroachments. Steps shall be taken by the Agency to remedy any adverse conditions disclosed by such inspections in accordance with the Operation and Maintenance Manual.
- (i) If Agency (including its contractors and agents) or BNSF, on behalf of Agency, performs (i) alterations or modifications to the Structure, or (ii) any maintenance or other work on the Structure with heavy tools, equipment or machinery at ground surface level horizontally within 25'-0" of the centerline of the nearest track, or (iii) any maintenance or other work outside the limits of the deck of the Structure vertically above the top of the rail, then Agency or its contractors and/or agents must procure and maintain the following insurance coverage, which may be changed from time to time:

Railroad Protective Liability insurance naming only **BNSF** as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The policy shall 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.
- Endorsed to include Evacuation Expense Coverage Endorsement.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to **BNSF** 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.

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

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

For purposes of insurance under this agreement, a subcontractor does not need to provide separate insurance if the subcontractor is covered under the prime contractor's insurance. Provided the subcontractor is named insured under the prime contractor's policies. The indemnification obligations from the subcontractor are not affected by the insurance procurement hearing.

12. Agency shall grant to BNSF, at no cost or expense to BNSF, a permanent right of access from off-site property owner, described further on Exhibit A-2, to BNSF tracks for maintenance purposes.

13. Agency must provide one set of as built plans (prepared in **English Units**) to BNSF, as well as one set of electronic plans 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, as applicable, 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.

14. Subject to the restrictions imposed by Article IV, Section 9 above and in accordance with the requirements of Article III, 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.

15. In the event that BNSF shall deem it necessary or desirable in the future, in the performance of its duty as a common carrier, to raise or lower the grade or change the alignment of its tracks or to lay additional track or tracks or to build other facilities in connection with the operation of its railroad, BNSF shall, at its expense, have full right to

make such changes or additions, provided such changes or additions do not change or alter the Structure herein proposed to be constructed and provided further.

However, that should it become necessary or desirable in the future to change, alter, widen or reconstruct 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 the alteration of the Structure shall be the sole financial responsibility of Agency at a cost mutually agreeable to Agency and BNSF. These costs could include, but may not be limited to; (i) the cost associated to perform an engineering evaluation sufficient to develop a differential cost estimate for construction and materials between the pre-Project condition and the post-Project condition, (ii) the differential cost of steel associated with longer bridge spans necessary to span the Project sheet pile tiebacks at both abutments, (iii) the differential cost of piers and foundations associated with longer bridge spans, and (iv) the cost associated to core through the pier nose protection concrete slab and replace or repair the slab in accordance with USACE criteria.

BNSF shall use its best efforts to notify Agency as soon as BNSF identifies a project for which Agency may be required to provide funding under this section. BNSF shall also use its best efforts to provide information to Agency regarding the timeline for such a project. Both parties shall maintain continuous communication regarding the project progress. In addition, BNSF shall include Agency as part of the project development to help identify low cost options related to Agency's financial responsibility. USACE will not be responsible for the cost of any modifications of the Structure to accommodate future railroad projects.

16. Agency may, at Agency's sole expense, alter or reconstruct the Structure components if necessary or desirable, however, that any such alteration or reconstruction must receive BNSF's prior written approval as evidenced by either a supplement to this Agreement, or execution of a new agreement that provides for the termination of this Agreement.

17. Any books, papers, records and accounts of the parties, BNSF and Agency, 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, for a period of three (3) year from the date of the final BNSF invoice under this Agreement.

18. The covenants and provisions of this Agreement are binding upon and inure to the benefit of the successors and assigns of the parties hereto. Notwithstanding the preceding sentence, neither party hereto may assign any of its rights or obligations hereunder without the prior written consent of the other party.

19. In the event construction of the Project does not commence within 3 years of the Effective Date, this Agreement will become null and void.

20. Neither termination nor expiration of this Agreement will release either party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration.

21. To the maximum extent possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Agreement is prohibited by, or held to be invalid under, applicable law, such provision will be ineffective solely to the extent of such prohibition or invalidity and the remainder of the provision will be enforceable.

22. This Agreement (including exhibits and other documents, manuals, etc. incorporated herein) is the full and complete agreement between BNSF and Agency with respect to the subject matter herein and supersedes any and all other prior agreements between the parties hereto.

23. Any notice provided for herein or concerning this Agreement must be in writing and will be deemed sufficiently given when sent by certified mail, return receipt requested, to the parties at the following addresses:

**BNSF:**

Manager of Public Projects  
Jason L. Sanchez  
740 Carnegie Drive  
San Bernardino, CA 92408  
(909) 386-4474  
[Jason.Sanchez@BNSF.com](mailto:Jason.Sanchez@BNSF.com)

General Director Structures  
Ron Berry  
4515 Kansas Avenue  
Kansas City, KS  
(913) 551-4164  
[Ronald.Berry@BNSF.com](mailto:Ronald.Berry@BNSF.com)

Project Engineer  
Greg Rousseau  
740 Carnegie Drive  
San Bernardino, CA 92408  
(909) 386-4079  
[Greg.Rosseau@BNSF.com](mailto:Greg.Rosseau@BNSF.com)

**Agency:**

Alberto Martinez  
1995 Market Street  
Riverside, CA 92501  
Phone: 951-955-1200

Fax: 951-684-8409  
[AMart@rcflood.org](mailto:AMart@rcflood.org)

**USACE:**

Pete Gauer, RE  
U. S. Army Corps of Engineers  
2493 Pomona-Rincon Road  
Corona, CA 92880  
Phone: 951-898-6153  
Cell: 949-212-7480  
[Peter.A.Gauer@usace.army.mil](mailto:Peter.A.Gauer@usace.army.mil)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by its duly qualified and authorized officials as of the day and year first above written.

**BNSF RAILWAY COMPANY**

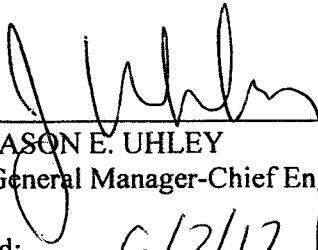
By: \_\_\_\_\_

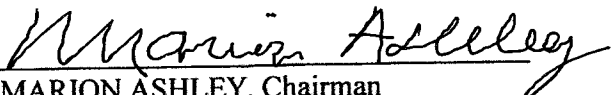
Printed Name: \_\_\_\_\_

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

**RIVERSIDE COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT**

**RECOMMENDED FOR APPROVAL:**

By   
\_\_\_\_\_  
JASON E. UHLEY  
General Manager-Chief Engineer  
Dated: 6/2/17


By   
\_\_\_\_\_  
MARION ASHLEY, Chairman  
Riverside County Flood Control and Water  
Conservation District Board of Supervisors

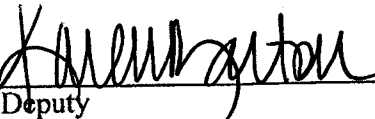
**APPROVED AS TO FORM:**

GREGORY P. PRIAMOS  
County Counsel

**ATTEST:**

KECIA HARPER-IHEM  
Clerk of the Board

By   
\_\_\_\_\_  
NEAL R. KIPNIS  
Deputy County Counsel  
Dated: 6/6/17

By   
\_\_\_\_\_  
Deputy

(SEAL)



**CONSTRUCTION AND MAINTENANCE AGREEMENT  
FOR  
THE PIER AND ABUTMENT PROTECTION PROJECT**

**EXHIBITS A & A-1**

PROJECT DESCRIPTION  
&  
TEMPORARY CONSTRUCTION  
LICENSE AREA

**GREEN RIVER HOUSING ESTATES**

CHADWICK ROAD

H.O.A. ACCESS ROAD

EXIST. MAINT. ROAD

EXIST. GROUDED STONE BANK PROTECTION

EXIST. CONC. CUTOFF WALL TO REMAIN

TEMPORARY CONSTRUCTION EASEMENT

PERMANENT EASEMENT

PERMANENT EASEMENT

PERMANENT EASEMENT

PERMANENT EASEMENT

PERMANENT EASEMENT

PERMANENT EASEMENT

PERMANENT EASEMENT

PERMANENT EASEMENT

PERMANENT EASEMENT

24 IN. SIDE DRAIN

24-IN. GROUDED STONE BANK PROTECTION

1V-2H

PROTECTION ON EAST SIDE, SEE SHEETS C-E1 THRU C-E12, C-S01, C-S02, C-S03 AND STRUCTURAL SHEETS FOR DETAILS.

ON FOR EXISTING UPS, SEE SHEETS C-P7 AND C-P8 AND C-S01, C-S02, C-S03 AND STRUCTURAL SHEETS FOR DETAILS.

TEMPORARY CONSTRUCTION EASEMENT

PERMANENT EASEMENT

PERMANENT EASEMENT

PERMANENT EASEMENT

PERMANENT EASEMENT

PERMANENT EASEMENT

PERMANENT EASEMENT

FLOW  
SANTA ANA RIVER

FLOW  
SANTA ANA RIVER




FLOW  
SANTA ANA RIVER

FLOW  
SANTA ANA RIVER

FLOW  
SANTA ANA RIVER

FLOW  
SANTA ANA RIVER

**LEGEND:**

-  GROUDED STONE
-  CONCRETE
-  ASPHALT

**NOTE:**

1. SEE SHEET T-6 FOR LOCATION OF EXISTING UTILITIES.
2. SEE STRUCTURAL SHEETS FOR DIAPHRAGM WALL TIEBACKS.
3. SEE M-SHEETS FOR MISC. DETAILS.
4. SEE L SHEETS FOR LANDSCAPING DETAILS.

FINAL DRAFT		DATE	APPROVAL
BNSF BACKCHECK		DESCRIPTIONS	REVISIONS
XX MAY 2017		SYMBOL	

SANTA ANA RIVER MAINSTEM  
LOWER SANTA ANA RIVER CHANNEL BEACH 9  
BNSF RAILROAD BRIDGE PROTECTION  
RIVERSIDE COUNTY, CALIFORNIA

**OVERALL PLAN**

DESIGNED BY:	DA / W/ DIEP
DRAWN BY:	DA / W/ DIEP
CHECKED BY:	R. KIMAN
FILE NAME:	BNSF_C-1.DGN

U.S. ARMY ENGINEER DISTRICT LOS ANGELES CORPS OF ENGINEERS	PAUL J. UNDERWOOD, PE CHIEF, DESIGN BRANCH
DISTRICT FILE NO. 239/9742	SPEC. NO. W912PL

Scale: AS SHOWN

C-1 SHEET C-1

**CONSTRUCTION AND MAINTENANCE AGREEMENT  
FOR  
THE PIER AND ABUTMENT PROTECTION PROJECT**

**EXHIBIT B**

**EASEMENT AGREEMENT**

**EASEMENT AGREEMENT  
FOR THE PIER AND ABUTMENT PROTECTION PROJECT  
(C&M Agreement)**

**THIS EASEMENT AGREEMENT FOR THE PIER AND ABUTMENT PROTECTION PROJECT ("Easement Agreement")** is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_ 2017 ("**Effective Date**"), by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Grantor**"), and the **RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT**, a special district created by act of the California legislature ("**Grantee**").

A. Grantor owns or controls certain real property situated at or near the vicinity of Corona, County of Riverside, State of California, at Mile Post 30.17, BF10009759, as described or depicted on **Attachment "1"**, 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 any and all restrictions, covenants, easements, licenses, permits, leases and other encumbrances of whatsoever nature whether or not of record, if any, relating to the Premises and subject to all with all applicable federal, state and local laws, regulations, ordinances, restrictions, covenants and court or administrative decisions and orders, including Environmental Laws (defined below) and zoning laws (collectively, "**Laws**"),. Grantor may not make any alterations or improvements or perform any maintenance or repair activities within the Premises except in accordance with the terms and conditions of the 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 THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTEE ACCEPTS ALL RIGHTS GRANTED UNDER THIS EASEMENT AGREEMENT IN THE PREMISES IN AN "AS IS, WHERE IS" AND "WITH ALL FAULTS" CONDITION, AND SUBJECT TO ALL LIMITATIONS ON GRANTOR'S RIGHTS, INTERESTS AND TITLE TO THE PREMISES. Grantee has inspected or will inspect the Premises, and enters upon Grantor's rail corridor and property with knowledge of its physical condition and the danger inherent in Grantor's rail operations on or near the Premises. Grantee acknowledges that this Easement Agreement does not contain any implied warranties that Grantee or Grantee's Contractors (as hereinafter defined) can successfully construct or operate the Improvements.

**Section 4** Nature of Grantor's Interest in the Premises. GRANTOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND GRANTEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE. In case of the eviction of Grantee by anyone owning or claiming title to or any interest in the Premises, or by the abandonment by Grantor of the affected rail corridor, Grantor shall not be liable to refund Grantee any compensation paid hereunder.

**Section 5** Improvements. Grantee shall take, in a timely manner, all actions necessary and proper to the lawful establishment, construction, operation, and maintenance of the Improvements, including such actions as may be necessary to obtain any required permits, approvals or authorizations from applicable governmental authorities. Any and all cuts and fills, excavations or embankments necessary in the construction, maintenance, or future alteration of the Improvements shall be made and maintained in such manner, form and extent as will provide adequate drainage of and from the adjoining lands and premises of the Grantor; and wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from such lands and premises of the Grantor, the Grantee shall construct and maintain such culverts or drains as may be requisite to preserve such natural and pre-existing drainage, and shall also wherever necessary, construct extensions of existing drains, culverts or ditches through or along the premises of the Grantor, such extensions to be of adequate sectional dimensions to preserve the present flowage of drainage or other waters, and of materials and workmanship equally as good as those now existing. In the event any construction, repair, maintenance, work or other use of the Premises by Grantee will affect any Lines, fences, buildings, improvements or other facilities (collectively, "Other Improvements"), Grantee will be responsible at Grantee's sole risk to locate and make any adjustments necessary to such Other Improvements. Grantee must contact the owner(s) of the Other Improvements notifying them of any work that may damage these Other Improvements and/or interfere with their service and obtain the owner's written approval prior to so affecting the Other Improvements. Grantee must mark all Other Improvements on the Plans and Specifications and mark such Other Improvements in the field in order to verify their locations. Grantee must also use all reasonable methods when working on or near Grantor property to determine if any Other Improvements (fiber optic, cable, communication or otherwise) may exist. The Grantee agrees to keep the above-described premises free and clear from combustible materials and to cut and remove or cause to be cut and removed at its sole expense all weeds and vegetation on said

premises, said work of cutting and removal to be done at such times and with such frequency as to comply with Grantee and local laws and regulations and abate any and all hazard of fire.

**Section 6**      **Taxes and Recording Fees.** Grantee is a tax exempt public agency. 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 if applicable. Grantee agrees to purchase, affix and cancel any and all documentary stamps in the amount prescribed by statute, and to pay any and all required transfer taxes, excise taxes and any and all fees incidental to recordation of the Memorandum of Easement. In the event of Grantee's failure to do so, if Grantor shall become obligated to do so, Grantee shall be liable for all costs, expenses and judgments to or against Grantor, including all of Grantor's legal fees and expenses.

**Section 7**      **Environmental.**

7.1      **Compliance with Environmental Laws.** Grantee shall strictly comply with all federal, state and local environmental Laws in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Toxic Substances Control Act (collectively referred to as the "**Environmental Laws**"). Grantee shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on the Premises. Grantee shall not handle, transport, release or suffer the release of "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any Environmental Laws.

7.2      **Notice of Release.** Grantee shall give Grantor immediate notice to Grantor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Grantee's use of the Premises. Grantee shall use its best efforts to promptly respond to any release on or from the Premises. Grantee also shall give Grantor immediate notice of all measures undertaken on behalf of Grantee to investigate, remediate, respond to or otherwise cure such release or violation.

7.3      **Remediation of Release.** In the event that Grantor has notice from Grantee or otherwise of a release or violation of Environmental Laws which occurred or may occur during the term of this Easement Agreement, Grantor may require Grantee, at Grantee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises. If during the construction or subsequent maintenance of the Improvements, soils or other materials considered to be environmentally contaminated are exposed, Grantee will remove and safely dispose of said contaminated soils. Determination of soils contamination and applicable disposal procedures thereof, will be made only by an agency having the capacity and authority to make such a determination.

7.4      **Preventative Measures.** Grantee shall promptly report to Grantor in writing any conditions or activities upon the Premises known to Grantee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Grantee's reporting to Grantor shall not relieve Grantee of any obligation whatsoever imposed on it by this Easement Agreement. Grantee shall promptly respond to Grantor's request for information regarding said conditions or activities.

7.5      **Evidence of Compliance.** Grantee agrees periodically to furnish Grantor with proof satisfactory to Grantor that Grantee is in compliance with this **Section 7**. Should Grantee not comply fully with the above-stated obligations of this **Section 7**, notwithstanding anything contained in any other provision hereof, Grantor may, at its option, terminate this Easement Agreement by serving five (5) days' notice of termination upon Grantee. Upon termination, Grantee shall remove the Improvements and restore the Premises as provided in **Section 9**.

**Section 8 Default and Termination.**

8.1 Grantor's Performance Rights. If at any time Grantee, or Grantee's Contractors, fails to properly perform its obligations under this Easement Agreement, Grantor, in its sole discretion, may: (i) seek specific performance of the unperformed obligations, or (ii) at Grantee's sole cost, may arrange for the performance of such work as Grantor deems necessary for the safety of its rail operations, activities and property, or to avoid or remove any interference with the activities or property of Grantor, or anyone or anything present on the rail corridor or property with the authority or permission of Grantor. Grantee shall promptly reimburse Grantor for all costs of work performed on Grantee's behalf upon receipt of an invoice for such costs. Grantor's failure to perform any obligations of Grantee or Grantee's Contractors shall not alter the liability allocation set forth in this Easement Agreement.

8.2 Abandonment. Grantor may, at its option, terminate this Easement Agreement by serving five (5) days' notice in writing upon Grantee if Grantee should abandon or cease to use the Premises for the Easement Purpose. Any waiver by Grantor of any default or defaults shall not constitute a waiver of the right to terminate this Easement Agreement for any subsequent default or defaults, nor shall any such waiver in any way affect Grantor's ability to enforce any section of this Easement Agreement.

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

8.4 Non-exclusive Remedies. The remedies set forth in this **Section 8** shall be in addition to, and not in limitation of, any other remedies that Grantor may have under the 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 appurtenances thereto from the Premises, as Grantor directs at Grantor's sole discretion;
- (b) repair and restore any damage to the Premises arising from, growing out of, or connected with Grantee's use of the Premises;
- (c) remedy any unsafe conditions on the Premises created or aggravated by Grantee; and
- (d) leave the Premises in the condition which existed as of the Effective Date.

9.2 Limited License for Entry. If this Easement Agreement is terminated, Grantor may direct Grantee to undertake one or more of the actions set forth above, at Grantee's sole cost, in which case Grantee shall have a limited license to enter upon the Premises to the extent necessary to undertake the actions directed by Grantor. The terms of this limited license include all of Grantee's obligations under this Easement Agreement. Termination will not release Grantee from any liability or obligation under this Easement Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Grantee's Improvements are removed and the Premises are restored to the condition that existed as of the Effective Date. If Grantee fails to surrender the Premises to Grantor upon any termination of the Easement, all liabilities and obligations of Grantee hereunder shall continue in effect until the Premises are surrendered.

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

**Section 11 Tax Exchange.** Grantor 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 Attachment "2" (the "**Memorandum of Easement**") subject to changes required, if any, to conform such form to local recording requirements. The Memorandum of Easement shall be recorded in the real estate records in the county where the Premises are located. If a Memorandum of Easement is not executed by the parties and recorded as described above within 10 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 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.

**ADMINISTRATIVE FEE**

15. 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 Agreement signed by Grantee to Grantor's Broker a processing fee in the amount of **\$2,000.00** 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: Kurt Geringer  
Title: General Director Real Estate

**GRANTEE:**

**RIVERSIDE COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT**

By: Marion Ashley  
Name: Marion Ashley  
Title: Chairman Board of Supervisors

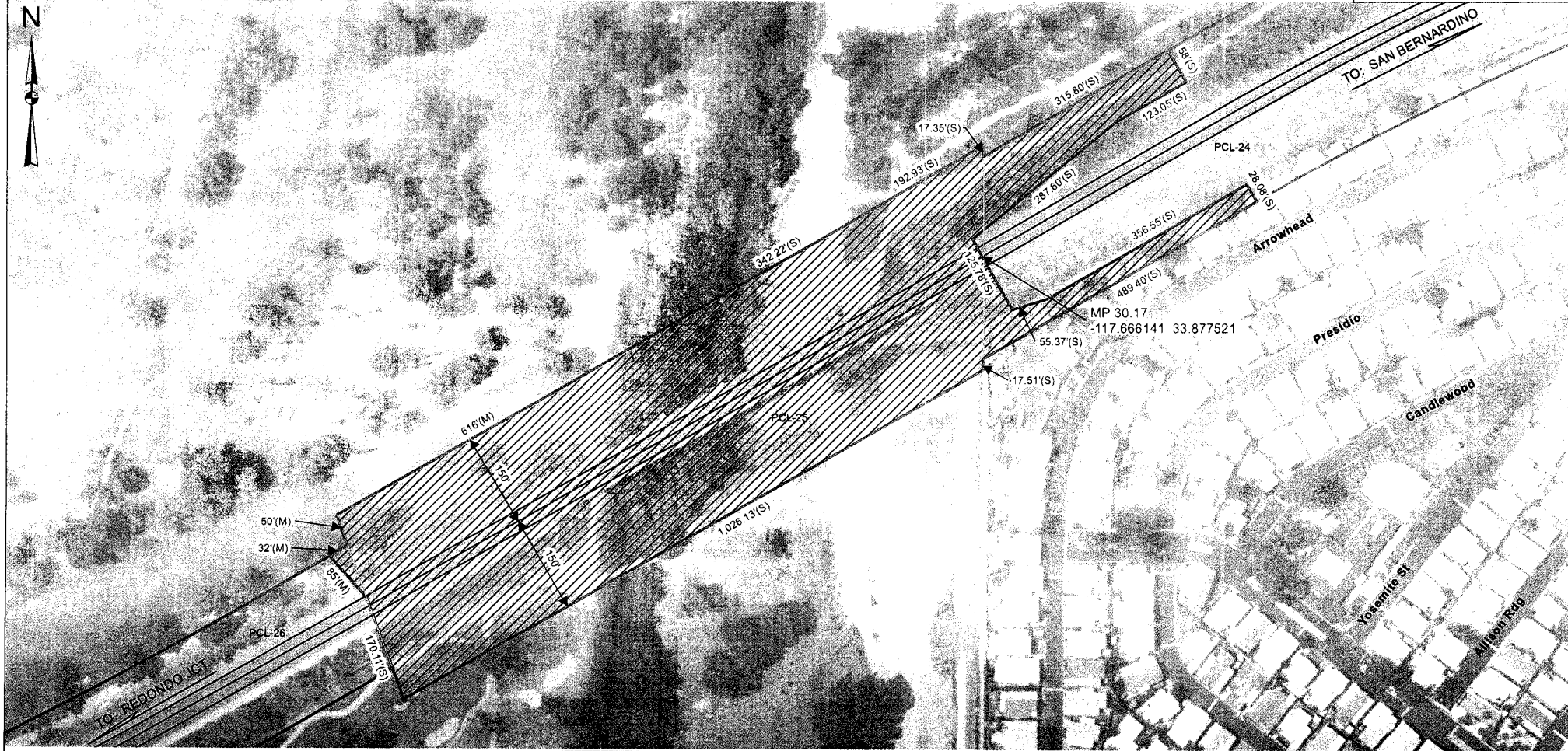
ATTEST:  
KEOIA HARPER-JHEM, Clerk  
By: [Signature]  
DEPUTY

FORM APPROVED COUNTY COUNSEL  
BY: Synthia M. Gunzel 6-7-17  
SYNTHIA M. GUNZEL DATE

SCALE: 1 IN = 150 FT

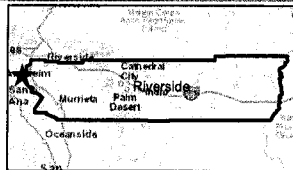
JLL Title -  
 BW Proj. No.: 12196.003  
 MAP REFERENCE:  
 STA. = N/A  
 RJW = 141211

This map used by BNSF RAILWAY COMPANY in the ordinary course of business, but it is subject to audit and should be used only with the expressed understanding of the BNSF. We make no representations whatsoever about the quality, accuracy, errors or omissions relating to this map.



TO: RIVERSIDE COUNTY FLOOD CONTROL  
 AND WATER CONSERVATION DISTRICT  
 AT: CORONA  
 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 - L.S. 7602-1  
 SAN BERNARDINO SUBDIVISION  
 VAL. SEC. 48060  
 AT&SF RY CA-11, MAP 08  
 SEC. -, T-, R- SBM  
 DATE: 5/26/2017  
 MP 30.17

**ATTACHMENT "2"**

**MEMORANDUM OF EASEMENT**

**MEMORANDUM OF EASEMENT**

**THIS MEMORANDUM OF EASEMENT** is hereby executed this \_\_\_\_\_ day of \_\_\_\_\_, 2017, 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 **RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT**, a special district created by act of the California legislature ("**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 Riverside, County, California, as described in **Exhibit "A"** and shown on **Exhibit "B"**, attached hereto and incorporated herein by reference (the "**Premises**");

**WHEREAS**, Grantor and Grantee entered into an Easement Agreement, dated \_\_\_\_\_, 2017 (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, 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.

**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: Kurt Geringer  
Title: General Director Real Estate

**STATE OF TEXAS**           §  
  §  
**COUNTY OF TARRANT**   §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 201\_,  
by \_\_\_\_\_ (name) as  
\_\_\_\_\_ (title) of **BNSF RAILWAY COMPANY**, a Delaware  
corporation.

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

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

(Seal)

GRANTEE:  
RIVERSIDE COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT

By: Marion Ashley  
Name: Marion Ashley  
Title: Chairman Board of Supervisors

STATE OF CALIFORNIA )  
  )ss  
COUNTY OF RIVERSIDE )

On June 20, 2017, before me, Karen Barton, Board Assistant, personally appeared **Marion Ashley**, Chairman of the Board of Supervisors of the Riverside County Flood Control and Water Conservation District, State of California, who provided to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument; and that a copy of this paper, document or instrument has been delivered to the chairperson.

I certify under the penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct

WITNESS my hand and official seal

KECIA HARPER-IHEM  
Clerk of the Board of Supervisors

By: Karen Barton  
Deputy

(Seal)

Exhibit "A"

**Mainstem Project BNSF Bridge  
2105-24**

In the City of Corona, County of Riverside, State of California, being portions of lands described in the Deed recorded October 20, 1942 as Parcel 5 and Parcel 6 in Book 559 of Official Records, Page 226, et. seq., records of said County described as follows:

Beginning at the most easterly corner of the land described as Parcel 2105-1A in Deed recorded June 13, 2012 as Document No. 2012-0272723 of Official Records of said county;

Thence North  $59^{\circ} 59' 20''$  East 315.80 feet along the northerly line of said Parcel 5;

Thence South  $30^{\circ} 19' 58''$  East 58.00 feet;

Thence South  $60^{\circ} 10' 12''$  West 123.05 feet;

Thence South  $50^{\circ} 55' 14''$  West 287.60 feet;

Thence South  $29^{\circ} 30' 09''$  East 125.78 feet;

Thence North  $73^{\circ} 22' 07''$  East 55.37 feet;

Thence North  $60^{\circ} 02' 23''$  East 356.55 feet;

Thence South  $30^{\circ} 00' 38''$  East 28.08 feet to the southerly line of said Parcel 5;

Thence South  $59^{\circ} 59' 20''$  West 489.40 feet along said southerly line of Parcel 5 to the easterly line of said Parcel 6;

Thence South  $00^{\circ} 08' 40''$  West 17.51 feet along said easterly line of Parcel 6 to the southeasterly corner of said Parcel 6;

Thence South  $59^{\circ} 57' 16''$  West 1026.13 feet along the southeasterly line of Parcel 6 to the most southerly corner of said Parcel 6;

Thence along the westerly line of said Parcel 6, the following two courses:

1. North  $20^{\circ} 29' 15''$  West 170.11 feet;

2. North  $42^{\circ} 03' 18''$  West 135.17 feet to the northwesterly corner of said Parcel 6;

Thence North  $59^{\circ} 57' 16''$  East 1200.52 feet along the northerly line of said Parcel 6 to the most northerly corner said Parcel 6;

Thence South 00° 08' 40" West 17.35 feet along the easterly line of said Parcel 6 to northerly line of said Parcel 5;

Thence North 59° 59' 20" East 14.21 feet along said northerly line of Parcel 5 to the Point of Beginning.

Containing 8.54 acres.



  
\_\_\_\_\_  
JAMES R. McNEILL

Land Surveyor No. 7752

Signed on Behalf of:

Riverside County Flood Control  
and Water Conservation District

Date: 5-23-17

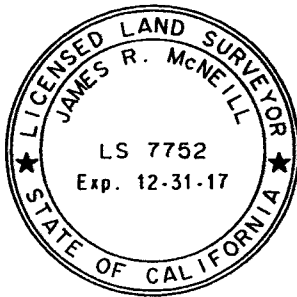
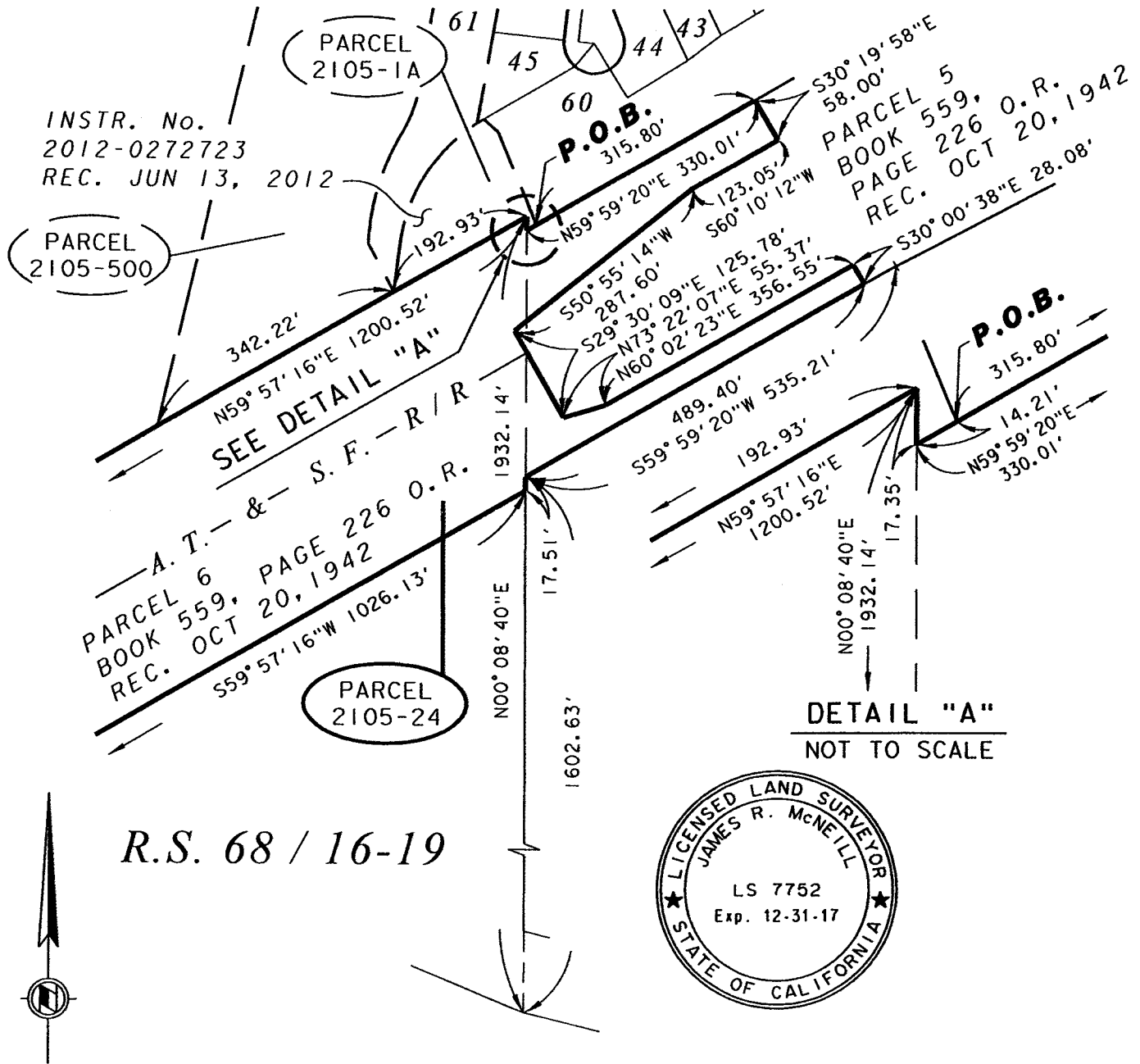


Exhibit "B"

IN THE CITY OF CORONA, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, BEING A PORTION OF THE LANDS DESCRIBED AS PARCELS 5 & 6 IN THE DEED RECORDED ON OCTOBER 20, 1942 IN BOOK 559 OF OFFICIAL RECORDS, PAGE 226, ET. SEQ., RECORDS OF RIVERSIDE COUNTY.

R.S. 145 / 39-45

M.B. 172 / 73-80



*[Signature]*  
DATE: 5-23-17

**RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT**

1995 MARKET ST. RIVERSIDE, CA. 92501

PROJECT NAME:

MAINSTEM PROJECT BNSF BRIDGE

THIS PLAT IS SOLELY AN AID IN LOCATING THE PARCEL(S) DESCRIBED IN THE ATTACHED DOCUMENT. IT IS NOT A PART OF THE WRITTEN DESCRIPTION THEREIN.

RCFC PARCEL NUMBER(S):

PARCEL 2105-24

SCALE:

1" = 60'

MAY-16-2017

PREPARED BY:

DAB

SHEET NO.

1 OF 2

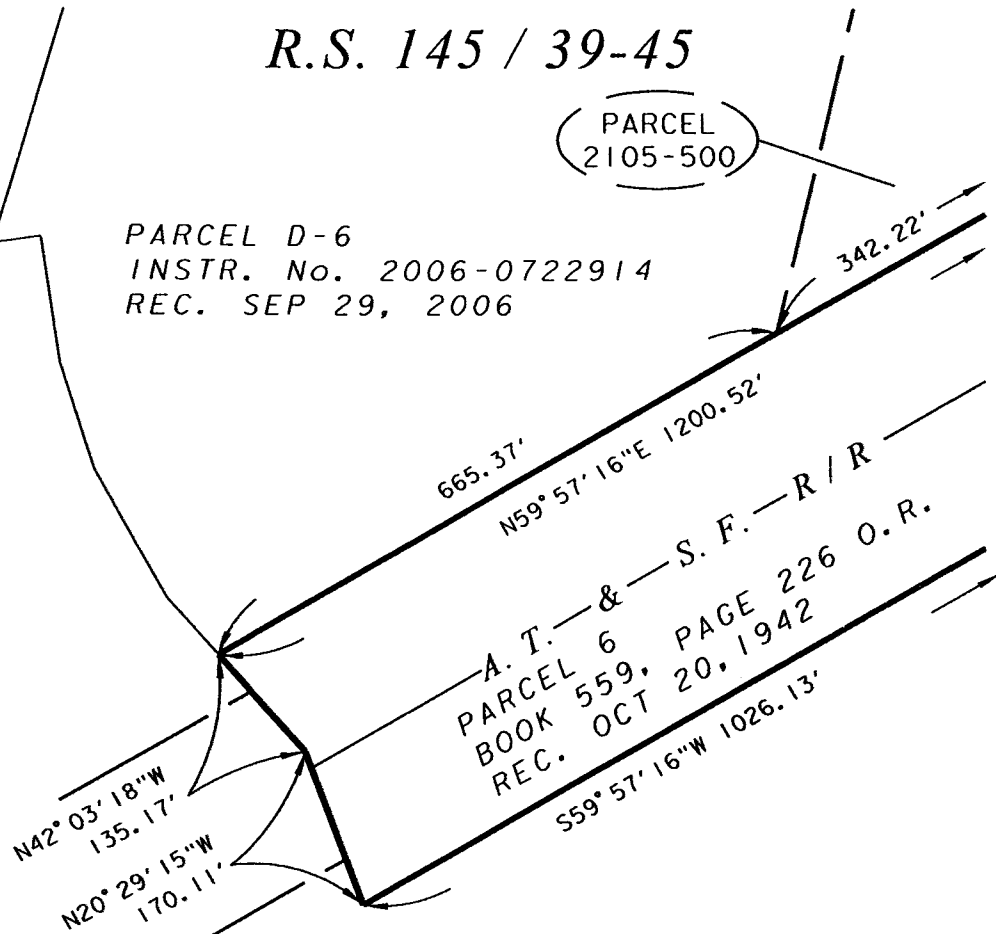
Exhibit "B"

IN THE CITY OF CORONA, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, BEING A PORTION OF THE LANDS DESCRIBED AS PARCELS 5 & 6 IN THE DEED RECORDED ON OCTOBER 20, 1942 IN BOOK 559 OF OFFICIAL RECORDS, PAGE 226, ET. SEQ. , RECORDS OF RIVERSIDE COUNTY.

R.S. 145 / 39-45

PARCEL 2105-500

PARCEL D-6  
INSTR. No. 2006-0722914  
REC. SEP 29, 2006



PARCEL D-3  
INSTR. No. 2006-0722914  
REC. SEP 6, 2006

R.S. 68 / 16-19



*[Signature]*  
DATE: 5-23-17

**RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT**  
1995 MARKET ST. RIVERSIDE, CA. 92501

PROJECT NAME: MAINSTEM PROJECT BNSF BRIDGE			
THIS PLAT IS SOLELY AN AID IN LOCATING THE PARCEL(S) DESCRIBED IN THE ATTACHED DOCUMENT. IT IS NOT A PART OF THE WRITTEN DESCRIPTION THEREIN.	RCFC PARCEL NUMBER(S):	SCALE:	PREPARED BY:
	PARCEL 2105-24	1" = 60'	DAB
		MAY-16-2017	SHEET NO. 2 OF 2

**CONSTRUCTION AND MAINTENANCE AGREEMENT  
FOR  
THE PIER AND ABUTMENT PROTECTION PROJECT**

**EXHIBIT C/C1**

CONTRACTOR REQUIREMENTS

AND

AGREEMENT BETWEEN BNSF RAILWAY AND CONTRACTOR

## EXHIBIT "C"

### CONTRACTOR REQUIREMENTS

#### 1.01 General:

- **1.01.01** The Contractor must cooperate with **BNSF RAILWAY COMPANY**, hereinafter referred to as "**Railway**" where work is over or under on or adjacent to Railway property and/or right-of-way, hereafter referred to as "**Railway Property**", during the construction of pier and abutment protection on BNSF Bridge 30.2 on the San Bernardino Subdivision in Corona, CA.
- **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. 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), in BNSF's opinion, prosecutes the Project work in a manner that is hazardous to BNSF property, facilities or the safe and expeditious movement of railroad traffic or (ii) Agency fails to pay BNSF for the Temporary Construction License or the Easement pursuant to the Construction and Maintenance Agreement, BNSF's file BF10009759. 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. 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. Pursuant to Federal Acquisition Regulation (FAR) 28.302 and 28.306, USACE shall include in the construction contract a provision which states that policies evidencing required insurance shall contain an endorsement to the effect



that any cancellation or material change adversely affecting the Government's interest shall not be effective until at least 30 days after the Government receives a notice of cancellation. The insurance required in Exhibit C-1 shall be required in the contract. Upon receipt of a written notice cancellation or material change adversely affecting the Government's interest, USACE shall direct the Contractor to stop work unless the cancellation or material change is rescinded prior to the effective date. The work stoppage will continue in effect until the Contractor provides proof it has obtained the required insurance to USACE and BNSF. In the event that BNSF desires to stop construction work on the Project, BNSF agrees to immediately notify the following individual in writing:

Pete Gauer, RE  
U. S. Army Corps of Engineers  
2493 Pomona-Rincon Road  
Corona, CA 92880  
Phone: 951-898-6153  
Cell: 949-212-7480  
[Peter.A.Gauer@usace.army.mil](mailto:Peter.A.Gauer@usace.army.mil)

Alberto Martinez  
Riverside County Flood Control and Water  
Conservation District  
1995 Market Street  
Riverside, CA 92501  
Phone: 951-955-1200  
Fax: 951-684-8409  
[bmartine@RIVCO.ORG](mailto:bmartine@RIVCO.ORG)

- **1.01.05** If BNSF determines that proper supervision and inspection are not being performed to ensure compliance with the plans and specifications approved by BNSF, the terms of this Agreement and all safety requirements of BNSF at any time during construction of the Project, BNSF shall give notice to Agency and USACE asking USACE to stop construction (within or adjacent to its operating right-of-way) and not to permit construction of the Project to proceed until Agency corrects the situation to BNSF's reasonable satisfaction. Agency and USACE will respond to any such notice within two working days. Any such work stoppage under this provision will not give rise to any liability on the part of BNSF. All notices under this paragraph shall be sent to the following personnel or their successors for appropriate corrective action:

Pete Gauer, RE  
U. S. Army Corps of Engineers  
2493 Pomona-Rincon Road  
Corona, CA 92880



Phone: 951-898-6153  
Cell: 949-212-7480  
Peter.A.Gauer@usace.army.mil

Alberto Martinez  
1995 Market Street  
Riverside, CA 92501  
Phone: 951-955-1200  
Fax: 951-684-8409  
bmartine@RIVCO.ORG

- **1.01.06** The Contractor is responsible for determining and complying with all Federal, State and Local Governmental laws and regulations, including, but not limited to environmental laws and regulations (including but not limited to the Resource Conservation and Recovery Act, as amended; the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA), and health and safety laws and regulations. The Contractor hereby indemnifies, defends and holds harmless Railway for, from and against all fines or penalties imposed or assessed by Federal, State and Local Governmental Agencies against the Railway which arise out of Contractor's work under this Agreement.
- **1.01.07** The Contractor must notify USACE and Railway's Manager Public Projects, telephone number (909) 386-4474 at least thirty (30) calendar days before commencing any work on Railway Property. Contractor's notification to Railway must refer to Railway's file: BF-10011356.
- **1.01.08** 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 from the outside face of any bridge deck ballast curb as shown on the attached drawing "BNSF BRIDGE 30.2 CONSTRUCTION ENVELOPE" 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 submit 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.

- **1.01.09** 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.
- **1.01.10** Pursuant to FAR 28.302 and 28.306, USACE shall include in the construction contract a provision which states:

"(a) The contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in the specifications in the contract.

(b) Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or material change adversely affecting the Government's interest shall not be effective –

(1) For such period as the laws of the State in which this Contract is to be performed prescribe; or

(2) Until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever is longer.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract and shall require subcontractors to provide and maintain the insurance required in the specifications in the contract. The Contractor shall maintain a copy of all subcontractors' proof of required insurance and shall make copies available to the Contracting Officer upon request."

## **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.BNSFContractor.com](http://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.

### **1.03 Railway Requirements**

- **1.03.01** The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Contractor. Nothing in this paragraph 1.03.01 is intended as a release of USACE from any responsibility it may have for damages to railway facilities resulting from Contractor's operations.
- **1.03.02** The Contractor must notify the Railway's Division Engineer Jimmy Capps 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:
  - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
  - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
  - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
  - 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts
- **1.03.04** Upon completion of construction, the following clearances shall be maintained:





- 25'           Horizontally from centerline of nearest track
  - 23' 6"       Vertically above top of rail
- 
- **1.03.05** Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to the USACE and must not be undertaken until approved in writing by the Railway, and until the USACE has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.
  
  - **1.03.06** In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Agency.
  
  - **1.03.07** The details of construction affecting the Railway's Property and tracks not included in the contract plans must be submitted to the Railway by USACE 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 outside face of any bridge deck ballast curb 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](http://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.
- **1.04.02** Contractor shall have a background investigation performed on all of its employees, subcontractors and agents who will be performing any services for Railroad under this Agreement which are determined by Railroad in its sole discretion a) to be on Railroad's property, or b) that require access to Railroad Critical Infrastructure, Railroad Critical Information Systems, Railroad's Employees, Hazardous Materials on Railroad's property or is being transported by or otherwise in the custody of Railroad, or Freight in Transit involving Railroad.

The required background screening shall at a minimum meet the rail industry background screening criteria defined by the e-RAILSAFE Program as outlined at [www.everifile.com](http://www.everifile.com), in addition to any other applicable regulatory requirements.

Contractor shall obtain written consent from all its employees, subcontractors or agents screened in compliance with the e-RAILSAFE Program to participate in the Program on their behalf and to release completed background information to Railroad's designee. Contractor shall be subject to periodic audit to ensure compliance.

Contractor subject to the e-RAILSAFE Program hereunder shall not permit any of its employees, subcontractors or agents to perform services hereunder who are not first approved under e-RAILSAFE Program standards. Railroad shall have the right to



deny entry onto its premises or access as described in this section above to any of Contractor's employees, subcontractors or agents who do not display the authorized identification badge issued by a background screening service meeting the standards set forth in the e-RAILSAFE Program, or who in Railroad's opinion, which may not be unreasonable, may pose a threat to the safety or security of Railroad's operations, assets or personnel.

Contractors shall be responsible for ensuring that its employees, subcontractors and agents are United States citizens or legally working in the United States under a lawful and appropriate work VISA or other work authorization.

### **1.05 Railway Flagger Services:**

- **1.05.01** The Contractor must give Railway's Structures Supervisor (909) 386-4727 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 the outside face of any bridge deck ballast curb and when cranes or similar equipment positioned beyond 25-feet from the bridge deck ballast curb 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 Riverside County Flood Control and Water Conservation District. The estimated cost for one (1) flagger is approximately between \$800.00-\$1,600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. **THE FLAGGING RATE IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF FLAGGING PURSUANT TO THIS PARAGRAPH.**
- **1.05.03d** The average train traffic on this route is 81 freight trains per 24-hour period at a timetable speed 60 MPH and 29 passenger trains at a timetable speed of 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 the outside face



of any bridge deck ballast curb, 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 outside face of any bridge deck ballast curb 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 outside face of any bridge deck ballast curb.
- **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.BNSFContractor.com](http://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.)**

- **1.06.09 THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE OUTSIDE FACE OF THE NEAREST RAILWAY BRIDGE DECK BALLAST CURB AT TRACK LEVEL, AS APPLICABLE. 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 Field 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 the project plans and specifications. Regardless of depth, excavations must be shored where there is any danger to tracks, structures or personnel.
- **1.07.04** Any excavations, holes or trenches on the Railway's Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

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

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



## **1.09 Personal Injury Reporting**

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





## 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 railroad 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: \_\_\_\_\_

## EXHIBIT "C-1"

### Agreement Between BNSF RAILWAY COMPANY and the CONTRACTOR

Railway File: BF-10011356

Agency Project: Construction of Pier and Abutment Protection - BNSF Bridge 30.2

\_\_\_\_\_ (hereinafter called "Contractor"), has entered into an agreement (hereinafter called "Agreement") dated \_\_\_\_\_, 201\_, with the United State Army Corps of Engineers (USACE) for the performance of certain work in connection with the following project: Construction of Pier and Abutment Protection at BNSF's Bridge located at milepost 30.2 on the San Bernardino Subdivision. 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 USACE (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**

Contractor hereby waives, releases, indemnifies, defends and holds harmless Railway for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about Railway's property or right-of-way. **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT,**

**THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE 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.

## **2) TERM**

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 insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$5,000,000 each occurrence and an aggregate limit of at least \$10,000,000 but in no event less than the amount otherwise carried by the Contractor. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limit to the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

D. Railroad Protective Liability insurance naming only the Railway as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 12 04 and include the following:

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

custody, and control arising out of the acts or omissions of the contractor named on the Declarations.

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

**Other Requirements:**

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

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

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

Contractor is not allowed to self-insure without the prior written consent of Railway. If granted by Railway, 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.

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

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.

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 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.

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 shall mean "Burlington Northern Santa Fe LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

#### **4) SALES AND OTHER TAXES**

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.

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.

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**

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**

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. 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 (909) 386-4474 four (4) weeks advance notice of the times and dates for any work that may disturb the track structure that will require BNSF to stop all train movements at the Structure. Railway and Contractor will establish mutually agreeable dates and times for any stoppage of train movements 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.

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**

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

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

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

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

**Manager Public Projects**

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

Accepted and effective this \_\_\_\_\_ day of 20\_\_.

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

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

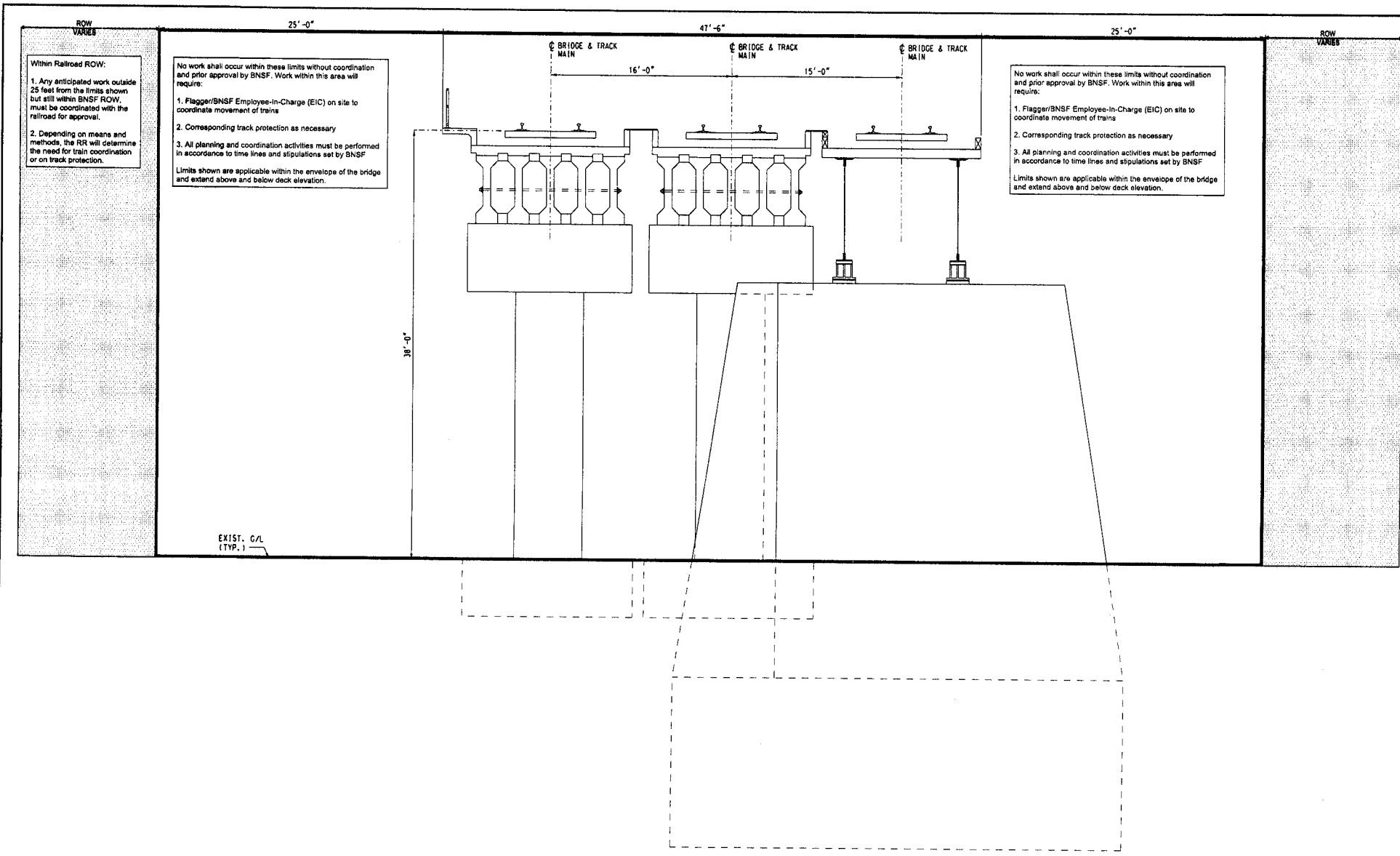
City: \_\_\_\_\_

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

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

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

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



ROW VARIES

Within Railroad ROW:

- Any anticipated work outside 25 feet from the limits shown but still within BNSF ROW, must be coordinated with the railroad for approval.
- Depending on means and methods, the RRR will determine the need for train coordination or on track protection.

No work shall occur within these limits without coordination and prior approval by BNSF. Work within this area will require:

- Flagger/BNSF Employee-In-Charge (EIC) on site to coordinate movement of trains
- Corresponding track protection as necessary
- All planning and coordination activities must be performed in accordance to time lines and stipulations set by BNSF

Limits shown are applicable within the envelope of the bridge and extend above and below deck elevation.

ROW VARIES

No work shall occur within these limits without coordination and prior approval by BNSF. Work within this area will require:

- Flagger/BNSF Employee-In-Charge (EIC) on site to coordinate movement of trains
- Corresponding track protection as necessary
- All planning and coordination activities must be performed in accordance to time lines and stipulations set by BNSF

Limits shown are applicable within the envelope of the bridge and extend above and below deck elevation.

EXIST. C/L (TYP.)

TYPICAL SECTION  
LOOKING WEST

DES:	JRW
DRAWN:	HM
CHECK:	
DATE:	DEC. 2016
AUTH:	A17-
LINE SEC:	7602

**BNSF**  
RAILWAY

BRIDGE ENGINEERING KANSAS CITY, KS

APPROVED:  
ASST. DIRECTOR STRUCTURES DESIGN

SAN BERNARDINO TO REDONDO JCT.	
BRIDGE NUMBER 30.2	
OVER SANTA ANA RIVER NEAR LOS ANGELES, CA	
SECTION	
PLAN NO:	7602-0030-200-001
SHEET:	1 OF 1

File Location: L:\000\Drawings\Bridges\7602\0030\200\7602-0030-200-001.dwg

**CONSTRUCTION AND MAINTENACE AGREEMENT  
FOR  
THE PIER AND ABUTMENT PROTECTION PROJECT**

**EXHIBIT D**

**COST ESTIMATES FOR RAILROAD WORK**

## **COST ESTIMATE FOR RAILROAD WORK**

### **Summary**

Railroad Flagging	\$1,742,844
Engineering Inspection / Plan Review	\$1,333,200
<b>Total</b>	<b>\$3,076,044</b>

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

BNSF RAILWAY COMPANY  
FHPM ESTIMATE FOR  
RIVERSIDE COUNTY

LOCATION PRADO DAM

DETAILS OF ESTIMATE

PLAN ITEM : 230090000

VERSION : 3

PURPOSE, JUSTIFICATION AND DESCRIPTION

PIP - CAS DIV SAN BERNARDINO SUB LS 7602 MP 30.1 - 100% BILLABLE TO RIVERSIDE COUNTY FLOOD CONTROL

BNSF TO PROVIDE 3.5 YEARS +/- FLAGGING FOR RIVERSIDE COUNTY FLOOD CONTROL/ARMY CORP.OF ENGINEERS BRIDGE & PIER  
MODIFICATIONS ON 2 BNSF OWNED BRIDGES

REQUESTED BY GREG J. ROUSSEAU 12/13/16

REVISION REQUESTED BY GREG J. ROUSSEAU 4/24/17

DESCRIPTION	QUANTITY U/M	COST	TOTAL \$
***** LABOR *****			
FLAGGING - BRIDGE - CAP	17472.0 MH	497,428	
PAYROLL ASSOCIATED COSTS		299,501	
DA OVERHEADS		455,246	
EQUIPMENT EXPENSES		268,014	
INSURANCE EXPENSES		83,518	
TOTAL LABOR COST		1,603,707	1,603,707
***** MATERIAL *****			
TOTAL MATERIAL COST		0	0
***** OTHER *****			
TOTAL OTHER ITEMS COST		0	0
PROJECT SUBTOTAL			1,603,707
CONTINGENCIES			121,881
BILL PREPARATION FEE			17,256
GROSS PROJECT COST			1,742,844
LESS COST PAID BY BNSF			0
TOTAL BILLABLE COST			1,742,844





**CONSTRUCTION AND MAINTENACE AGREEMENT  
FOR  
THE PIER AND ABUTMENT PROTECTION PROJECT**

**EXHIBIT E**

**BNSF FINAL APPROVAL OF PLANS AND SPECIFICATIONS**

**Exhibit E**

Jason L. Sanchez  
740 Carnegie Drive  
San Bernardino, CA 92408  
909-386-4474  
Jason.Sanchez@BNSF.com

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

Mr. Alberto Martinez  
1995 Market Street  
Riverside, CA 92501  
Phone: 951-955-1200  
Fax: 951-684-8409

Re: Final Approval of Plans and Specifications dated \_\_\_\_\_, 20\_\_, drafted by \_\_\_\_\_ (hereinafter called, the "Plans and Specifications")

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

This letter serves as BNSF RAILWAY COMPANY's ("BNSF") final written approval of the Plans and Specifications covering the construction of pier and abutment protection on BNSF Bridge 30.2. This final written approval is given to Riverside County Flood Control and Water Conservation District ("AGENCY") pursuant to Article III, Section 1 of that certain Underpass Agreement between BNSF and Agency, dated \_\_\_\_\_, 20\_\_, which this Exhibit E is attached to and made a part thereof.

If the Plans and Specifications are revised by Agency subsequent to the date set forth above, this letter shall no longer serve as final written approval of the Plans and Specifications and Agency must resubmit said Plans and Specifications to BNSF for final written approval.

It is understood that the approvals contained in this letter do not cover, the approvals of plans and specifications for any falsework, shoring, and demolition that may be subsequently submitted to BNSF by AGENCY or its contractor for approval.

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 of the project.

Regards,

\_\_\_\_\_  
Jason L. Sanchez

**CONSTRUCTION AND MAINTENACE AGREEMENT  
FOR  
THE PIER AND ABUTMENT PROTECTION PROJECT**

**EXHIBIT F**

**BNSF BRIDGE REQUIREMENTS**

## Exhibit F

### BNSF Bridge Requirements

#### BRIDGE DESIGN, PLANS & SPECIFICATIONS:

Except for the design of temporary falsework and shoring, BNSF review of the Structure plans will be limited to the vertical and horizontal clearances, sight distance for existing train signals, foundation dimensions and drainage characteristics as they relate to existing and future tracks. BNSF will not review structural design calculations for the permanent Structure unless a member or members are influenced by railroad live loads.

Temporary falsework and shoring plans and calculations must be reviewed and approved by BNSF prior to beginning construction. The Agency shall perform an independent review of the design calculations for temporary falsework and shoring prior to submitting them to BNSF for approval. Temporary construction clearances must be no less than 15 feet measured horizontally from the centerline of the nearest track and 21 feet-6 inches measured vertically from the top of rail of the most elevated track to the bottom of lowest temporary falsework member. State regulatory agencies may have more restrictive requirements for temporary railroad clearances.

For the permanent Structure, the Agency will submit plans showing the least horizontal distance from the centerline of existing and future tracks to the face of the nearest member of the proposed Structure. The location of the least horizontal distance must be accurately described such that BNSF can determine where it will occur in both the horizontal and vertical plane. If the permanent member is within 25 feet of the nearest track (or future track), collision walls shall be incorporated into the permanent Structure design according to American Railway Engineering and Maintenance Association Manual of Recommended Practice - Chapter 8 - Article 2.1.5.

For the permanent Structure, the Agency will submit plans showing the least vertical clearance from top of the most elevated rail of existing and future tracks to the lowest point of the proposed Structure. A profile of the existing top of rail elevation shall be plotted on the bridge plans. The profile shall extend for 500 feet in each direction of the proposed overpass and a separate profile shall be plotted for each track. If the existing top of rail profile(s) is not uniform such that a sag exists in the vicinity of the proposed Structure, the permanent Structure vertical clearance shall be increased sufficiently to accommodate a raise in the track profile to remove the sag. Prior to beginning construction of the permanent Structure, the top of rail elevations should be checked and verified that they have not changed from the assumed elevations utilized for the design of the bridge.

Prior to issuing any invitation to bid on construction of the Structure, the Agency should conduct a pre-bid meeting where prospective Providers have the opportunity to communicate with BNSF personnel regarding site specific train speeds, train density, and general safety requirements for men and equipment working near live tracks. Any invitation to bid and

specifications for the Structure must be submitted to BNSF for review and approval prior to letting of bids for the Project.

#### BRIDGE CONSTRUCTION:

After awarding the bid, but prior to the Provider entering BNSF's right-of-way or property, the Agency should conduct a pre-construction meeting with BNSF personnel in attendance to reiterate the safety requirements of construction activity adjacent to live tracks.

During construction, BNSF may require an independent engineering inspector to be present during certain critical activities of the Project, including but not limited to: driving foundation piles, erecting falsework, construction of shoring and retaining walls, placing concrete, placing soil backfill and compaction processes. The Agency shall reimburse BNSF for all costs of supplemental inspection services.

Within 90 days of the conclusion of the Project and final acceptance by BNSF, the Agency will provide BNSF with a complete electronic set of the bridge plans labeled "As Built". Those plans will reflect any and all deviations from the original plans that occurred during construction. The "As Built" plans will be submitted in Micro Station \*.dgn electronic format (preferred) or AutoCAD \*.dwg format. Electronic plans are to be submitted in the original format used for CAD plan preparation and not converted to another format prior to submission. Actual measured "as constructed" clearances shall be shown as well as depth, size and location of all foundation components. The plans shall show dimensioned locations of existing and relocated utilities.

#### BRIDGE MAINTENANCE:

The Agency will be responsible for maintenance and repair of the Structure including the earth retention components, embankment slopes, erosion control, surface drainage, fencing, deck drains, landscaping, paint, walkways, handrails, lighting, and other improvements associated with the Project.

Fencing and other pedestrian access controls within BNSF's right-of-way and incorporated into the Project shall be designed and maintained by the Agency. Trespasser control shall be the responsibility of the Agency. Graffiti removal will be the responsibility of the Agency.

#### BRIDGE INSPECTION:

The Agency will conduct annual routine structural inspections. In the event of an earthquake, fire, flood, damage from vehicular impacts or other emergent situations, the Agency will provide an immediate inspection by qualified personnel and notify BNSF of damage that may affect safe passage of trains. If necessary the Agency will embargo weights or provide lane closures or

other such measures to protect the structural integrity of the Structure such that there can be continuous safe passage of trains until repairs are made.

**BRIDGE ALTERATIONS:**

Except as provided otherwise by this Agreement, there will be no alterations made to the Structure that will alter the railroad vertical or horizontal clearances provided by the original design. Pipelines will not be added or attached to the Structure without first submitting plans and calculations to BNSF for review and approval.

**CONSTRUCTION AND MAINTENANCE AGREEMENT  
FOR  
THE PIER AND ABUTMENT PROTECTION PROJECT**

**EXHIBIT G**

**GUIDELINES FOR PREPARATION OF BRIDGE DEMOLITION  
AND  
REMOVAL PLAN OVER THE BNSF RAILWAY**



# **BNSF RAILWAY COMPANY**



**GUIDELINES FOR PREPARATION OF**  
**BRIDGE DEMOLITION & REMOVAL PLAN**  
**OVER THE BNSF RAILWAY**

**OFFICE OF DIRECTOR BRIDGE ENGINEERING**  
**KANSAS CITY, KANSAS**  
**August 21, 2008**

**INDEX**

	<b>ITEM</b>	<b>PAGE</b>
I.	<b>General</b>	<b>1</b>
II.	<b>Bridge Removal Plan</b>	<b>2</b>
III.	<b>Procedure</b>	<b>4</b>
IV.	<b>Track Protection</b>	<b>5</b>
V.	<b>Cranes</b>	<b>6</b>
VI.	<b>Cutting Torches</b>	<b>7</b>
VII.	<b>Utilities</b>	<b>8</b>
VIII.	<b>Hazardous Material</b>	<b>8</b>
	<b>Appendix</b>	<b>9</b>

## **I. GENERAL**

### **A. The Contractor's work shall in no way impede the train operations.**

1. The words "demolition" and "removal" will be used interchangeably in this Guideline.
2. The term "Railroad" refers to the Railroad's Engineers or designated representative.

### **B. Safety takes precedence over productivity. The Contractor shall be responsible for planning and executing all procedures necessary to remove the structure in a safe, predictable manner.**

1. All employees of the Contractor and Subcontractors must be Safety Trained. Refer to <http://www.railroadsafetytraining.com>

### **C. The Contractor shall develop a demolition plan ONLY AFTER CONSULTING WITH THE RAILROAD TO GET AN ESTIMATE OF THE RANGE OF TRACK WINDOWS THAT MIGHT NORMALLY BE AVAILABLE FOR THE JOB SITE.**

1. A Track Window is the elapsed time between approaching trains.
2. An estimate of the availability of Track Windows can be used by the Contractor to design a demolition plan. The estimated Track Window is a guideline and not to be considered as a guarantee for available working time.
3. A Track Window is highly variable, depending on the location. Low speed - low train density tracks have predictable Track Windows. The opposite is true for high density- high speed main tracks. The Railroad can furnish a range of Track Windows that might be expected at a specific location under normal train traffic conditions.
4. Plan the demolition procedures based upon the smallest ESTIMATED Track Window. Do not assume the longest Track Window will be available on any given day. Do not assume the same Track Windows will be available from one day to the next.

### **D. The Railroad's tracks and property shall be protected at all times.**

1. Removal procedures shall take into account SEVER WEATHER CONDITIONS, including high winds, heavy rains and snowfall accumulation.
2. The contractor shall ensure that all areas adjacent to active tracks shall remain free from hazards.
  - a) Trainmen must have an unobstructed walkway available parallel to all active tracks.
  - b) All open excavations shall be protected with fencing.
  - c) Do not store materials or equipment within 25 feet of the centerline of an active track.
3. Protect the project area from vandalism.
  - a) Do not leave debris where vandals could place it on the tracks to drop it onto the tracks from an overhead structure.

## Guidelines for Preparation of Bridge Demolition and Removal Plan over the BNSF Railway

- b) Secure all heavy equipment from potential movement by vandals.
- c) Do not store flammable materials on railroad right of way. Remove combustible waste materials daily. Do not store fuel or other flammable liquids on railroad right of way.

**E. All demolition materials and scrap shall be disposed of outside the Railroad right-of-way at no expense to the railroad. At the conclusion of the project, the area must be left in a clean and graded condition to the exclusive satisfaction of the Railroad.**

**F. No work is allowed within 25 feet of the nearest track unless protected by a Railroad Flagman. When trains approach the work site, all demolition activity within 50 feet of the track shall stop until the entire length of the train has passed the work site.**

**G. The staged demolition of any portion of a structure over or adjacent to operational tracks will not jeopardize the stability of other parts of the structure awaiting demolition.**

- 1. Where multiple tracks are involved, the demolition plan should be engineered as much as practical such that no more than one track is rendered impassable at any given moment.

**H. No blasting will be permitted on Railroad's right-of-way.**

## **II. BRIDGE REMOVAL PLAN**

**A. The Contractor shall submit a detailed Bridge Removal Plan to the Railroad. The Bridge Removal Plan shall encompass the following:**

- 1) Provide a scale drawing showing the plan view, elevation and location of the structure and locations of any access roads needed on railroad right of way to access the job site. The as-built drawings may be used for the submittal provided the removal steps are clearly marked and legible.
- 2) Indicate the position of all railroad tracks below the bridge. Identify each track as mainline, siding, spur, etc. Identify locations where temporary crossings will be installed to cross equipment over each track.
- 3) List in sequential order, all procedures necessary to remove the bridge in a safe and controlled manner. Include step by step details of each sequence and the elapsed time required to execute the sequence. The removal plan must specify which, if any, sequences will render a track impassable to trains during execution of the sequence. If more than one track is adjacent to the work area, specify which tracks will be impassable during execution of each sequence.
- 4) Include text, drawings or photos to communicate the types of equipment that will be utilized. Include diagrams showing the position of the equipment in relation to the tracks. Where cranes are to be used, furnish the lifting capacities of the crane at the anticipated radius and the weights of components to be removed.

## Guidelines for Preparation of Bridge Demolition and Removal Plan over the BNSF Railway

- 5) For every sequence, specify the minimum horizontal clearance from centerline of track and the minimum vertical clearance above top of rail for equipment, falsework, rubble shields and temporary supports. If a crane is to be utilized, include clearances for the backswing radius of the crane counterweight and the position of the outriggers. (Refer to the attached frame protection diagram for the minimum allowable vertical and horizontal clearances.)
- 6) If the removal plan includes concrete demolition, include the details of rubble control such as maximum anticipated size of rubble, drop distance, shield size and shield position.
- 7) The Bridge Removal Plan will indicate locations and types of temporary supports, shoring, cables or bracing required. Refer to current standard drawing 106613 "General Shoring Requirements" "Guidelines for Design and Construction of Falsework for Structures" and "Guidelines for Design and Construction of Shoring Adjacent to Active Railroad Tracks", and the appropriate Federal, State and local regulations and building codes.
- 8) If any temporary supports interfere with the natural drainage along the Railroad right-of-way, a temporary drainage diversion plan shall be included in the Bridge Removal Plan. The drainage plan shall route all surface water away from the railroad tracks.
  - a) Do not block drainage in side ditches with debris.
  - b) Do not place footing blocks in drainage ditches.
  - c) Surface runoff must be diverted away from the footing block excavations to avoid saturation of the underlying supporting soils.
- 9) The Demolition Plan shall include details, limits, and locations of protective shields or other measures designed to protect the rails, ties and ballast from falling debris. Include details of catchment apparatus necessary to protect the tracks from rolling debris that may fall onto side slopes. Include the design load for the shields for both the maximum static load and the maximum anticipated impact loads from falling debris. Specify the type of equipment that will be utilized to remove the debris and shields from operational tracks.
- 10) Protection of the track ballast section must be provided to avoid contamination of the rock with fine dust and mud produced during demolition activities. Filter fabric or some other effective means of prevent ballast contamination should be incorporated into the Demolition Plan.
- 11) All overhead and underground utilities in the area affected by removal of the bridge shall be located on the drawings, including any fiber optic, railroad signal, and communication lines.
- 11) Indicate the limits of demolition of substructures, including depths and dimensions of excavations that might be necessary to demolish buried footings.
- 12) The Demolition Plan should include details of planned on-site fire suppression.

**B. The Contractor shall submit to the Railroad: three (3) complete sets of the Bridge Removal Plan for review and comments.**

## Guidelines for Preparation of Bridge Demolition and Removal Plan over the BNSF Railway

1. The Plan shall be sealed by a Civil or Structural Engineer registered in the state where the proposed demolition will take place.
2. A minimum of four (4) weeks shall be expected for the Railroad's review after the complete submittal is received.
3. No removal operations will be permitted over the Railroad right of way until the submitted material has been reviewed and approved.

**C. Approval and/or comments furnished by the Railroad in the course of review of the Contractor's Removal Plan will not relieve the Contractor of the ultimate responsibility for the safe and secure demolition of the structure.**

### **III. PROCEDURE**

**A. The Bridge Removal Plan must be executed such that stability is continuously maintained for the standing portions of the structure over all tracks.**

- 1) All members of the structure being demolished must be continuously supported to resist high winds, including wind buffets and suction forces generated by high speed trains.

**B. Prior to proceeding with bridge removal, the sealing Civil or Structural Engineer, or his authorized representative, shall inspect all components of the temporary support shoring, including temporary bracing and protective coverings, insuring conformity with the working drawings.**

- 1) The sealing Engineer shall certify in writing to the Railroad that the work is in conformance with the drawings and that the materials and workmanship are satisfactory.
- 2) A copy of this certification shall be available at the job site at all times.

**C. Well in advance of planned work, coordinate the removal schedule with the Railroad.**

- 1) No work is allowed within 25 feet of the nearest active track unless protected by a Railroad Flagman.
- 2) All the removal work within 25 feet of the nearest active track shall be performed during the Track Windows granted by the Railroad Flagman.
- 3) When trains pass the work site, all demolition activity within 50 feet of the track shall stop until the entire length of the train has passed the work site.

**D. All substructures shall be removed to at least 3 feet below the final finished grade or at least 3 feet below base of rail whichever is lower, unless otherwise specified by the Railroad.**

**E. All debris and refuse shall be removed from the railroad right of way by the Contractor. The premises shall be left in a neat and presentable condition to the exclusive satisfaction of the Railroad. Soils contaminated by fuel spills, hydraulic oil leaks, etc. will be removed from railroad right of way and replaced to the exclusive satisfaction of the Railroad.**

**F. The work progress shall be reviewed and logged by the Contractor's Engineer. Should an unplanned event occur, the Contractor shall inform the Railroad and submit a procedure to correct or remedy the occurrence.**

**G. Beam removal and all other demolition procedures shall take place as much as practicable with equipment positioned above the track. In the rare case that beams require removal from below the structure, the following steps shall be taken before beams are allowed to straddle the tracks:**

- 1) Certain territories with high density train traffic, especially where multiple main tracks are affected, may not grant Track Windows on all tracks simultaneously. Beam removal from the underside of structures may not be possible unless the procedure can be accomplished in very short Track Windows or be engineered such that only one track is affected.
- 2) The work shall be scheduled well in advance with the Railroad's Service Unit Superintendent subject to the Railroad's operational requirements for continuous train operations. The beam removal plan must be engineered to minimize the Track Window time.
- 3) The rails, ties and ballast shall be protected. No equipment will be crossed over or placed on the tracks unless pre-approved by the Railroad.
- 4) The beams shall be blocked to prevent the beams from coming into contact with the rails. Blocking shall not be placed on the rails or ties.
- 5) Upon approach of a train, the beams and all personnel and equipment will be moved a position to provide a minimum of 15 feet horizontal clearance and 21 ft. vertical clearance from the nearest rail. Care must be exercised to insure that crane booms are rotated to a position parallel with the track.

#### **IV. TRACK PROTECTION**

**A. The track protective cover shall be constructed before beginning bridge removal work and may be supported by falsework or members of the existing structure. See the attached "Track Shield Detail and Frame Protection Detail" for additional requirements. The following are examples of protective covers that may be acceptable:**

- 1) A decking supported by the bridge or a suspended cover from the bridge above the track clearance envelope.
- 2) A track shield cover over the tracks per the attached detail.

## Guidelines for Preparation of Bridge Demolition and Removal Plan over the BNSF Railway

- 3) A framed cover outside the track clearance envelope.
- 4) A catcher box or loader bucket under decking and parapets overhanging the exterior girders.
- 5) Protection of the track ballast section must be provided to avoid contamination of the rock with fine dust and mud produced during demolition activities. Filter fabric or some other effective means of prevent ballast contamination should be incorporated into the Demolition Plan.

### **B. Construction equipment shall not be crossed over or placed on the tracks unless the rails, ties and ballast are protected against damage.**

- 1) Track protection is required for all equipment including rubber tired equipment.
- 2) A list of equipment to be crossed over or positioned on the tracks along with the intended method of protection shall be submitted to the railroad for approval prior to use at the job site.

### **C. Temporary haul road crossings shall be either Timbers or Precast Concrete Panels. The type of crossing shall be determined by the Railroad.**

- 1) Solid timbers or ballast with timber headers shall be used between multiple tracks.
- 2) If the job site is accessible to the public, all temporary haul road crossings shall be protected with barricades or locked gates when the Contractor is not actively working at the site.
- 3) Installation and removal of temporary track crossings for equipment shall be scheduled well in advance with the Railroad.

## **V. CRANES**

### **A. When cranes are operated over or adjacent to the tracks the following is required:**

- 1) The Contractor shall verify that the foundations and soil conditions under the crane and crane outriggers can support the loads induced by the crane under an assumed maximum capacity lift. The size and material type of crane mats shall be rigid and of sufficient capacity to safely distribute the crane loads.
- 2) Front end loaders and backhoes cannot be used in place of a crane to lift materials over the tracks. These types of equipment do not have the necessary safety features built into the machines to circumvent overloading and tipping. Only cranes with the rated capacity to handle the loads may be used.
- 3) Additional track protection may be required for a crane when crossing over the track. The protection methods shall be submitted to the Railroad for review and comment well in advance of intended use.



## Guidelines for Preparation of Bridge Demolition and Removal Plan over the BNSF Railway

- 6) Cranes and other equipment utilizing outriggers shall not place outriggers on the tracks or ballast.
- 7) Cranes or crane booms shall not be positioned within the track clearance envelope without Railroad Flagman protection. Cranes operating from a position farther than 25 ft. from the nearest track will need a Railroad Flagman present if the boom length is such that it could fall onto a track.
- 8) During passage of a train, the Crane Operator must stop all movements. Crane Operators shall remain in the cab with motor at idle with the load lines, boom, rotation and travel controls locked and stationary until the full length of the train has passed the job site.

### **VI. CUTTING TORCHES**

#### **A. When a cutting torch or welding equipment is used in the demolition process, the following steps shall be taken:**

- 1) Fire suppression equipment is required on-site.
- 2) Do not use a torch over, between, or adjacent to the tracks unless a steel plate protective cover is used to shield against sparks and slag coming into contact with timber ties. Care shall be taken to make certain the use of a steel plate does not come in contact with the rails. See "Track Shield Details" for other requirements. Details of the shield shall be submitted to the Railroad for approval.
- 3) Wet the ties below the steel plate and wet other timbers and flammable demolition debris located near cutting areas.
- 4) Monitor the work site for at least three hours after cutting has ceased to detect a smoldering fire.

#### **B. Extensive overhead cutting may require more robust fire suppression equipment and precautions than what would normally be required for routine cuts.**

- 1) On days when extensive torch cutting is planned, the Contractor shall have a larger water supply on hand or take other measures as needed to effectively suppress fires.
- 2) Overhead torch cutting and welding must cease upon approach and passage of a train.
- 3) Extensive torch cutting shall not take place during high winds.
- 4) Contractor will clear vegetation and other combustible debris from the surrounding work areas prior to engaging in extensive torch cutting.

## **VII. UTILITIES**

**A. The demolition operations shall be planned such that the utility lines are operating safely at all times. The utility lines shall be protected if affected by demolition operations. All the work associated with utility lines should be coordinated by the contractor with the respective utility companies.**

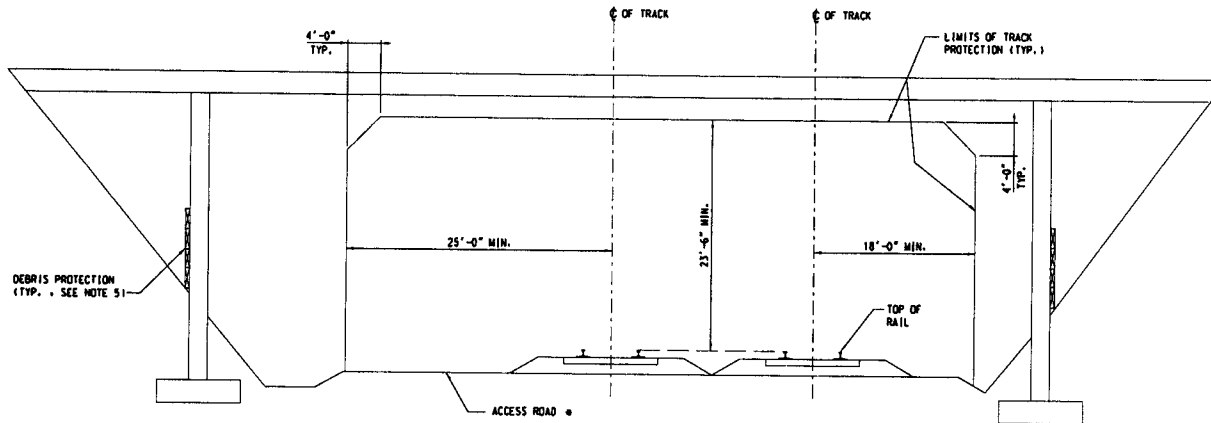
## **VIII. HAZARDOUS MATERIALS**

**A. If any hazardous materials are discovered, provide material protection as specified in local hazardous material codes and immediately contact the Railroad.**

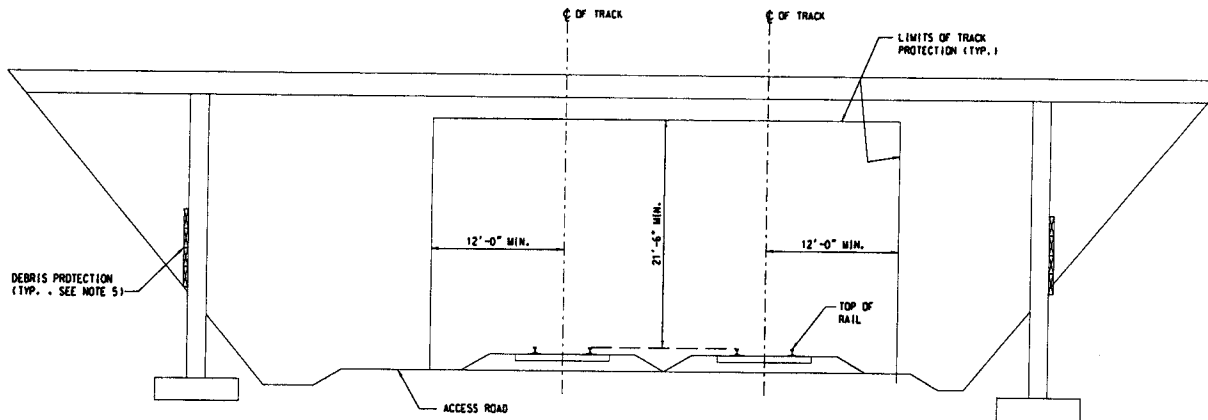
- 1) If pipelines are attached to the structure, pipes must be purged of flammable or hazardous materials prior to beginning demolition.
- 2) Fuel spills, hydraulic fluid releases, equipment oil leaks or any other release of contaminants must be reported to the Railroad. Contaminated soils must be removed and replaced to the satisfaction of the Railroad.

## **APPENDIX – BNSF-UP Demolition Drawings**

- Demolition Frame Protection Details (Sheets 1 of 3 & 2 of 3)
- Demolition Track Shield Details (Sheet 3 of 3)



**BRIDGE ELEVATIONS  
STANDARD LIMITS OF PROTECTION FOR FRAME PROTECTION**



**BRIDGE ELEVATION  
MINIMUM LIMITS OF PROTECTION FOR FRAME PROTECTION  
(SPECIAL PERMISSION REQUIRED, SEE NOTE 1)**

1. THE STANDARD LIMITS OF PROTECTION NOTED ARE THE MIN. CLEARANCES ALLOWED WITHOUT SPECIAL PERMISSION FROM THE RAILROAD. THE REDUCED CLEARANCES NOTED MAY BE ALLOWED BY THE RAILROAD. SPECIAL PERMISSION FOR THE REDUCED CLEARANCES IS REQUIRED FROM THE RAILROAD AND PUBLIC AGENCY.
2. THE PROTECTION FRAME SHALL AS A MINIMUM MATCH THE DEMOLITION LIMITS SHOWN AND EXTEND PAST THE BRIDGE WIDTH AS SHOWN ON THE ATTACHED DEMOLITION PLAN SHEET.
3. FOR ADDITIONAL CLEARANCE AND PROTECTION INFORMATION REFER TO CONTRACT EXHIBITS.
4. THE PROTECTION FRAME SHALL PREVENT DEMOLITION DEBRIS, DUST AND FINE MATERIAL FROM FALLING INTO THE RAILROAD TRACKS, ACCESS ROAD OR TRAINS. THE FRAME SHALL BE DESIGNED BY THE CONTRACTOR TO SUPPORT THE ANTICIPATED DEMOLITION LOADS, AND IN ACCORDANCE WITH CALTRANS FALSEWORK MANUAL FOR STRUCTURES OVER THE RAILROAD.
5. DEBRIS PROTECTION IS REQUIRED NEAR THE BASE OF THE SIDE SLOPES AND ADJACENT TO ROADS USED BY DEMOLITION EQUIPMENT TO PREVENT DEBRIS FROM ROLLING ONTO TRACK, ACCESS ROAD OR DITCH. USE TIMBERS AS REQUIRED TO STOP LARGE PIECES OF ROLLING DEBRIS.
6. ANY ACTIVITY WITHIN 25 FEET OF THE NEAREST RAIL OF A TRACK REQUIRES A FLAGMAN.

\* IF NO ACCESS ROAD USE MIN. DIMENSION FROM OTHER SIDE OF DETAIL