

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: Engineering Department

AGENDA DATE: September 15, 2009

CONTACT PERSON/PHONE: R. Alan Shubert, P.E. - ext. 4423

DISTRICT(S) AFFECTED: 1

SUBJECT:

That the City Manager be authorized to sign two Grade Crossing Construction and Maintenance Agreements for Mulberry and Redd Road streets between the City of El Paso and the BNSF Railway Company.

BACKGROUND / DISCUSSION:

This agreement is to reconstruct the roadway and install railroad crossing signals and activation equipment and adjacent drainage channel improvements within the existing roadway easement crossing the BNSF right-of-way existing at Mulberry and Redd Road streets. The improvements are part of the Upper Valley Drainage Improvements Phase 3, a priority 1 project. The project is currently under construction and this is required to complete the roadway work.

PRIOR COUNCIL ACTION:

City council has not previously considered this item.

AMOUNT AND SOURCE OF FUNDING:

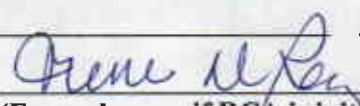
Storm 2006: Mulberry \$335,375.00 Acct: PSTM06PW26-0A
Redd Road: \$487,468.00 Acct: PSTM06PW26-0A

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: 
(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____

DATE: _____

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF EL PASO:

That the City Manager be authorized to sign two Grade Crossing Construction and Maintenance Agreements between the **CITY OF EL PASO** and the **BNSF RAILWAY COMPANY** as follows:

- 1. Mulberry Street:** To reconstruct the roadway and install railroad crossing signals and activation equipment and adjacent drainage channel improvements within the existing roadway easement crossing the BNSF right-of-way existing at Mulberry Street. In addition to the construction work to be performed by the City's Contractor for the improvements to Mulberry Street, the BNSF RR shall perform work required by the City that is associated with the railroad and equipment thereon including crossing signals and crossing surface work. City will pay to BNSF RR for its work on the crossing surface in the amount of \$67,573.00 and on the railroad crossing signal in the amount of \$267,802.00 for a total amount of THREE HUNDRED THIRTY FIVE THOUSAND THREE HUNDRED SEVENTY FIVE AND NO/100 DOLLARS (335,375.00).
- 2. Redd Road:** To reconstruct the roadway and install railroad crossing signals and activation equipment within the existing roadway easement crossing the BNSF right-of-way existing at Redd Road. In addition to the construction work to be performed by the City's Contractor for the improvements to Redd Road, the BNSF RR shall perform work required by the City that is associated with the railroad and equipment thereon including crossing signals and crossing surface work. City will pay to BNSF RR for its work on the crossing surface in the amount of \$142,924.00 and on the railroad crossing signal in the amount of \$344,544.00 for a total amount of FOUR HUNDRED EIGHTY SEVEN THOUSAND FOUR HUNDRED SIXTY EIGHT AND NO/100 DOLLARS (\$487,468.00).

Passed and approved this _____ day of _____ 2009.


CITY OF EL PASO

John F. Cook, Mayor

ATTEST:


Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Mark Shoesmith
Assistant City Attorney

APPROVED AS TO CONTENT:



R. Alan Shubert, P.E.
City Engineer

GRADE CROSSING CONSTRUCTION AND MAINTENANCE AGREEMENT

BNSF File No. 019778
Mulberry Street
U.S. D.O.T. No. 019778J
Railroad Line Segment 7300
Railroad Milepost 1146.52

This Agreement ("**Agreement**"), is executed to be effective as of this 1st day of September, 2009 ("**Effective Date**"), by and between BNSF RAILWAY COMPANY, a Delaware corporation ("**BNSF**"), and the CITY OF EL PASO, a political subdivision of the State of Texas ("**Agency**").

RECITALS:

WHEREAS, BNSF owns and operates a line of railroad in and through the City of El Paso, State of Texas;

WHEREAS, in the interest of aiding vehicular travel and public safety, the Agency is undertaking a project to improve the existing Mulberry Street at-grade crossing, located at BNSF Line Segment 7300 and Milepost 1146.52, and designated by D.O.T. No. 019778J, by reconstructing the roadway, installing railroad crossing signals and activation equipment, and adjacent drainage channel improvements within the existing roadway easement across the BNSF right-of-way as indicated on the Exhibit A, attached hereto and incorporated herein; and

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

WHEREAS, "BNSF" agrees to allow the Agency to preempt the highway traffic control signals with the grade crossing warning devices indicated on Exhibit A.

WHEREAS, the parties agree that the RAILROAD will receive no ascertainable benefit from the installation of advance warning signs, pavement marking stop bars or crossing signal equipment (hereinafter collectively called, "Crossing Signal Equipment"); and

WHEREAS, the Agency also desires BNSF to install a new crossing surface at Mulberry Street with a new concrete and rubber crossing surface;

WHEREAS, the Agency is paying for the acquisition and installation of crossing signal equipment and the new crossing surface at Mulberry Street;

WHEREAS, the BNSF agrees to purchase and install, at AGENCY'S sole expense, the crossing signal equipment and the new crossing surface described in the scope of work herein, and upon the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I – SCOPE OF WORK

1. The term "**Project**" as used herein includes any and all work related to the reconstruction of Mulberry Street and adjacent drainage channel improvements by Agency and installation of crossing signals, activation equipment, and new crossing surfaces at U.S. D.O.T. No. 019778J, (hereinafter referred to as the "**Crossing**") by BNSF, more particularly described on the Exhibit A, including, but not limited to, any and all changes to telephone, telegraph, signal and electrical lines and appurtenances,

temporary and permanent track work, fencing, grading, alterations to or new construction of drainage facilities, preliminary and construction engineering and contract preparation.

ARTICLE II – BNSF OBLIGATIONS

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

1. In consideration of the faithful performance of the Agency's covenants contained herein, BNSF hereby grants to Agency, its successors and assigns, upon and subject to the terms and conditions set forth in this Agreement, permission and license to enter upon and use the portion of BNSF's right-of-way as is necessary to reconstruct and thereafter maintain, the Crossing and the adjacent drainage channel as described further on Exhibit A, excepting and reserving BNSF's rights, and the rights of any others who have obtained, or may obtain, permission or authority from BNSF, to do the following:

- (a) Operate, maintain, renew and/or relocate any and all existing railroad track or tracks, wires, pipelines and other facilities of like character upon, over or under the surface of said right-of-way;
- (b) Construct, operate, maintain, renew and/or relocate upon said right-of-way, without limitation, such facilities as the BNSF may from time to time deem appropriate;
- (c) Otherwise use or operate the right-of-way as BNSF may from time to time deem appropriate.

This right is given by BNSF without warranty of title of any kind, expressed or implied, and no covenant on warranty of title shall be implied from the use of any word or words herein contained. In the event Agency is evicted by anyone owning, or claiming title to or any interest in said right-of-way, BNSF will not be liable to Agency for any damages, losses or any expenses of any nature whatsoever. The granting of similar rights to others, subsequent to the date of this Agreement, will not impair or interfere with the rights granted to Agency herein.

2. BNSF will furnish all labor, materials, tools, and equipment for railroad work required for the construction of the Project, such railroad work and the estimated cost thereof being as shown on Exhibit D attached hereto and made a part hereof. In the event construction on the Project has not commenced within six (6) months following the Effective Date, BNSF may, in its sole and absolute discretion, revise the cost estimates set forth in said Exhibit D. In such event, the revised cost estimates will 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, attached to this Agreement and made a part hereof;
- (d) Furnishing engineering and inspection as required in connection with the construction of the Project;
- (e) Installation of one 48-foot concrete crossing surface for the one track complete with new rail, ties, ballast, fasteners, along with appropriate surfacing, to carry the improved roadway and sidewalks;
- (d) Installation of Crossing Signal Equipment and Crossing Signal Control House as shown on Exhibit A;

- (e) Provide an interface box, with contact terminals, mounted on side of Crossing Signal Control House;
 - (f) Make such changes in the alignment, location and elevation of its telephone, telegraph, signal and/or wire lines and appurtenances along, over or under the tracks, both temporary and permanent, as may become necessary by reason of 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, determines it is required by its labor agreements to perform such work with its own employees working under applicable collective bargaining agreements.
4. Agency agrees to reimburse BNSF for work of an emergency nature caused by Agency or Agency's contractor in connection with the Project which BNSF deems is reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons or BNSF property. Such work may be performed by BNSF without prior approval of Agency and Agency agrees to fully reimburse BNSF for all such emergency work.
5. 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.

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. Said plans (reduced size 11" x 17"), showing the plan and profile of the roadway work on BNSF right-of-way and marked as Exhibit A, attached hereto and made a part hereof, must be submitted to BNSF for the development of railroad cost estimates.
- 2. Agency must make any required application and obtain all required permits and approvals for the construction of the Project.
- 3. Agency must acquire all rights of way necessary for the construction of the Project.
- 4. Agency must make any and all arrangements for the installation or relocation of wire lines, pipe lines and other facilities owned by private persons, companies, corporations, political subdivisions or public utilities other than BNSF which may be necessary for the construction of the Project.

5. 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) Design and Reconstruction of Mulberry Street;
- (b) Installation of a pavement marking stop bar in accordance with the Manual on Uniform Traffic Control Devices (hereinafter called, "MUTCD");
- (c) Installation of advance warning signs in accordance with the MUTCD
- (d) Perform all necessary grading and paving, including backfill of excavations and restoration of disturbed vegetation on BNSF's right-of-way;
- (e) Provide suitable drainage, both temporary and permanent;
- (f) Provide all barricades, lights, flagmen or traffic control devices necessary for preventing vehicular traffic from using a portion of the Crossing, during the installation of the concrete crossing surfaces, and also during the installation of the Crossing Signal Equipment;
- (g) Construct asphalt roadway surface on approaches to each track;
- (h) Re-grade and install concrete riprap in drainage channel on north side of crossing on west side of track at railroad bridge 1146.50;
- (i) 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;
- (j) Provide BNSF in writing with the total time required from start of preempt cycle of highway traffic control signals until arrival of the train at the highway-rail crossing.
- (k) Connect the highway traffic control signals to the contact terminals in the interface box including all necessary cable and conduit.
- (l) Install the new highway traffic control signals.

6. The Agency will approve the location of the signals and signal bungalow prior to the installation by BNSF.

7. The Agency must have advanced railroad crossing signs and standard pavement markings in place at the crossing shown on Exhibit A (if the same are required by the MUTCD) prior to the acceptance of this Project by the Agency.

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

9. The 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.

10. For any future inspection or maintenance, either routine or otherwise, performed by subcontractors on behalf of the Agency, Agency shall require the subcontractors to execute the C documents. Prior to performing any future maintenance with its own personnel, Agency shall: comply

with all of BNSF's applicable safety rules and regulations; require any Agency employee performing maintenance to complete the safety training program at the BNSF's Internet Website "contractororientation.com"; notify BNSF when, pursuant to the requirements of exhibit C, a flagger is required to be present; procure, and have approved by BNSF's Risk Management Department, Railroad Protective Liability insurance.

11. Agency must require its contractor(s) to notify BNSF's Roadmaster at least thirty (30) calendar days prior to requesting a BNSF flagman in accordance with the requirements of Exhibit C attached hereto. Additionally, Agency must require its contractor(s) to notify BNSF's Manager of Public Projects thirty (30) calendar days prior to commencing work on BNSF property or near BNSF tracks.

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 Communications Network Control Center at 800-533-2891, BNSF's Signal Representative (Supervisor Signals-Construction) at 505-767-6843, 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) 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.

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 INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF BNSF.**

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

13. Agency must require compliance with the obligations set forth in this agreement, including Exhibit C and Exhibit C-1, and incorporate in each prime contract for construction of the Project, or the specifications therefor (i) the provisions set forth in Article III; (ii) the provisions set forth in Article IV; and (iii) the provisions set forth in Exhibit C and Exhibit C-1, attached hereto and by reference made a part hereof.

14. Except as otherwise provided below in this Section 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 a letter agreement in the form of Exhibit C-1, and (ii) delivered to and secured BNSF's approval of the required insurance; and
- (d) If it is in Agency's best interest, Agency may direct that the construction of the Project be done by day labor under the direction and control of Agency, or if at any time, in the opinion of Agency, the contractor has failed to prosecute with diligence the work specified in and by the terms of said contract, Agency may terminate its contract with the contractor and take control over the work and proceed to complete the same by day labor or by employing another contractor(s) provided; however, that any contractor(s) replacing the original contractor(s) must comply with the obligations in favor of BNSF set forth above and, provided further, that if such construction is performed by day labor, Agency will, at its expense, procure and maintain on behalf of BNSF the insurance required by Exhibit C-1.
- (e) To facilitate scheduling for the Project, Agency shall have its contractor give BNSF's Roadmaster 90 days advance notice of the proposed times and dates for work windows. BNSF and Agency's contractor will establish mutually agreeable work windows for the Project. BNSF has the right at any time to revise or change the work windows, due to train operations or service obligations. BNSF will not be responsible for any additional costs and expenses resulting from a change in work windows. Additional costs and expenses resulting from a change in work windows shall be accounted for in the contractor's expenses for the Project.

15. Agency must advise the appropriate BNSF Manager 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 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 INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF BNSF.

ARTICLE IV – JOINT OBLIGATIONS

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

1. All work contemplated in this Agreement must be performed in a good and workmanlike manner and each portion must be promptly commenced by the party obligated hereunder to perform the same and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications during construction which affect BNSF will be subject to BNSF's approval prior to the commencement of any such changes or modifications.
2. The work hereunder must be done in accordance with the Exhibit A and the detailed plans and specifications approved by BNSF.
3. Agency must require its contractor(s) to reasonably adhere to the Project's construction schedule for all Project work. The parties hereto mutually agree that BNSF's failure to complete the railroad work in accordance with the construction schedule due to inclement weather or unforeseen railroad emergencies will not constitute a breach of this Agreement by BNSF and will not subject BNSF to any liability. Regardless of the requirements of the construction schedule, BNSF reserves the right to reallocate the labor forces assigned to complete the railroad work in the event of an emergency to provide for the immediate restoration of railroad operations (BNSF or its related railroads) or to protect persons or property on or near any BNSF owned property. BNSF will not be liable for any additional costs or expenses resulting from any such reallocation of its labor forces. The parties mutually agree that any reallocation of labor forces by BNSF pursuant to this provision and any direct or indirect consequences or costs resulting from any such reallocation will not constitute a breach of this Agreement by BNSF.
4. BNSF will have the right to stop construction work on the Project if any of the following events take place: (i) Agency (or any of its contractors) performs the Project work in a manner contrary to the plans and specifications approved by BNSF; (ii) Agency (or any of its contractors), in BNSF's opinion, prosecutes the Project work in a manner which is hazardous to BNSF property, facilities or the safe and expeditious movement of railroad traffic; or (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project. The work stoppage will continue until all necessary actions are taken by Agency or its contractor to rectify the situation to the satisfaction of BNSF's Division Engineer or until additional insurance has been delivered to and accepted by BNSF. Any such work stoppage under this provision will not give rise to any liability on the part of BNSF. BNSF's right to stop the work is in addition to any other rights BNSF may have including, but not limited to, actions or suits for damages or lost profits. In the event that BNSF desires to stop construction work on the Project, BNSF agrees to immediately notify the following individual in writing:

R. Alan Shubert, P.E.
City Engineer
2 Civic Center, 4th Floor
El Paso, TX 79901
(915) 541-4200

5. Agency must supervise and inspect the operations of all Agency contractors to assure compliance with the plans and specifications approved by BNSF, the terms of this Agreement and all safety requirements of the BNSF railroad. If BNSF determines that proper supervision and inspection is not being performed by Agency personnel at any time during construction of the Project, BNSF has the right to stop construction (within or adjacent to its operating right-of-way). Construction of the Project will not proceed until Agency corrects the situation to BNSF's reasonable satisfaction. If BNSF feels the situation is not being corrected in an expeditious manner, BNSF will immediately notify Agency's Project Representative R. Alan Shubert for appropriate corrective action.

6. Pursuant to this section and Article II, Section 6 herein, Agency must, out of funds made available to it for the construction of the Project, reimburse BNSF in full for the **actual costs** of all work performed by BNSF under this Agreement.

7. All expenses detailed in statements sent to Agency pursuant to Article II, Section 6 herein will comply with the terms and provisions of the Federal Aid Highway Program Manual, U.S. Department of Transportation, as amended from time to time, which manual is hereby incorporated into and made a part of this Agreement by reference. The parties mutually agree that BNSF's preliminary engineering, design, and contract preparation costs described in Article II, Section 2 herein are part of the costs of the Project even though such work may have preceded the date of this Agreement.

8. The construction of the Project will not commence until Agency gives BNSF's Manager Public Projects thirty (30) days prior written notice of such commencement. The commencement notice will reference BNSF's file number 019778 and D.O.T. Crossing No. 01977J and must state the time that construction activities will begin.

9. In addition to the terms and conditions set forth elsewhere in this Agreement, BNSF and the Agency agree to the following terms upon completion of construction of the Project:

- (a) Agency will own and be fully responsible for repairs, maintenance, future construction or reconstruction of the Mulberry Street roadway.
- (b) Agency will maintain the elevation of the Mulberry Street roadway approaches to match the elevation on the railroad track crossing surfaces and to be no more than three (3) inches above or six (6) inches below top-of-rail elevation at a distance measured thirty (30) feet from the nearest rail.
- (c) Agency will maintain the advanced railroad crossing warning signs and pavement markings and agrees to hold harmless and indemnify BNSF for any claims, damages or losses, in whole or in part, caused by or due to the Agency's failure to maintain the advanced warning signs and markings or other requirements of the MUTCD.
- (d) Agency will do nothing and permit nothing to be done in the maintenance of the Mulberry Street roadway, which will interfere with or endanger facilities of BNSF.
- (e) 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.
- (f) BNSF will, at its sole cost and expense, operate and maintain the Crossing Signal Equipment, Crossing Signal Control House, and the new crossing surfaces, from end-of-tie to end-of-tie, in proper condition.
- (g) Notwithstanding the preceding provision, if any regulations, ordinances, acts, rules or other laws subsequently passed or amended by the Agency or any other governmental or legislative authority increase the Agency's portion of maintenance cost under this Agreement, BNSF will receive the benefit of any such regulations, ordinances, acts, rules or other laws and the Agency's increased portion of maintenance costs will be incorporated into and made a part of this Agreement.

- (h) If a railway or highway improvement project necessitates rearrangement, relocation, or alteration of the Crossing Signal Equipment, Crossing Signal House, or the new crossing surface installed hereunder, the costs for such rearrangement, relocation or alteration will be the responsibility of the party requesting such changes.
- (i) INTENTIONALLY LEFT BLANK.
- (j) If the Crossing Signal Equipment and/or Crossing Signal House installed hereunder cannot, through age, be maintained, or by virtue of its obsolescence, requires replacement, the cost of installation of the new crossing signal equipment and/or new crossing signal house will be negotiated by the parties hereto on the basis of the current Federal Aid Railroad Signal Program participation and applicable Agency at the time of such replacement is warranted.
- (k) BNSF will operate and maintain, at its expense, the necessary relays and other materials required to preempt the highway traffic control signals with the grade crossing warning devices.
- (l) BNSF will operate and maintain, at its expense, the railroad crossing warning devices up to the contact terminals in the interface box.
- (m) Agency will own, operate and maintain, at its expense, the highway traffic control signals up to and including connection to the contact terminals in the interface box including all necessary cable and conduit.

10. Agency must notify and obtain prior authorization from BNSF's Manager of Public Projects before entering BNSF's right-of-way for **Inspection and 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.

11. Any books, papers, records and accounts of the parties hereto relating to the work hereunder or the costs or expenses for labor and material connected with the construction will at all reasonable times be open to inspection and audit by the agents and authorized representatives of the parties hereto, as well as the State of Texas and the Federal Highway Administration, for a period of one (1) year from the date of the final BNSF invoice under this Agreement.

12. 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.

13. In the event construction of the Project does not commence within twelve (12) months of the Effective Date, this Agreement will become null and void.

14. 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.

15. 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.

16. 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.

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

BNSF Railway Company:

BNSF's Manager Public Projects
5800 North Main Street
Saginaw, Texas 76179

Agency:

City Manager
2 Civic Center, 4th Floor
El Paso, TX 79901

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: Lyn Hartley

Title: Director Public Projects

AGENCY

CITY OF EL PASO, TEXAS

By: _____

Printed Name: Joyce Wilson

Title: City Manager

WITNESS:

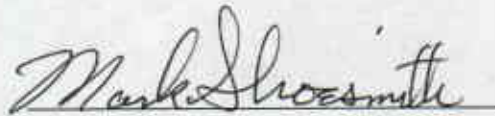
CITY OF EL PASO

Joyce Wilson, City Manager

ATTEST:

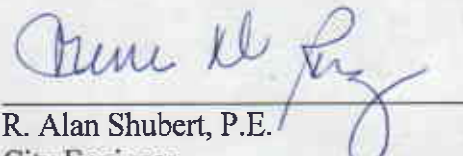
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Mark Shoesmith
Assistant City Attorney

APPROVED AS TO CONTENT:

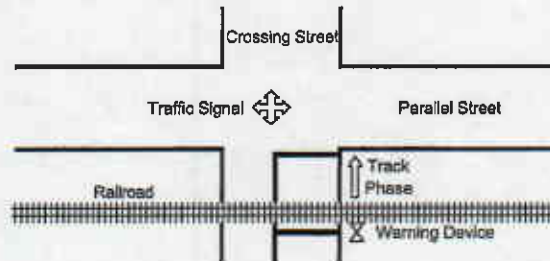

for _____
R. Alan Shubert, P.E.
City Engineer



Texas Department of Transportation
GUIDE FOR DETERMINING TIME REQUIREMENTS FOR
TRAFFIC SIGNAL PREEMPTION AT HIGHWAY-RAIL GRADE CROSSINGS

City El Paso
 County El Paso
 District _____

Date 07/08/09
 Completed by Ted Marquez, P.E. *(Signature)*
 District Approval _____



Parallel Street Name
Doniphan

Crossing Street Name
Mulberry

Railroad _____
 Crossing DOT# _____

Railroad Contact Tim Huya
 Phone (817) 352-2902

SECTION 1: RIGHT-OF-WAY TRANSFER TIME CALCULATION

Preempt verification and response time

- | | | | |
|--|----|--|--|
| 1. Preempt delay time (seconds) | 1. | <div style="border: 1px solid black; width: 40px; height: 20px;"></div> | Remarks

Controller type: <u>170</u> |
| 2. Controller response time to preempt (seconds) | 2. | <div style="border: 1px solid black; width: 40px; height: 20px;"></div> | |
| 3. Preempt verification and response time (seconds): add lines 1 and 2 | 3. | <div style="border: 1px solid black; width: 40px; height: 20px; text-align: center;">0.0</div> | |

Worst-case conflicting vehicle time

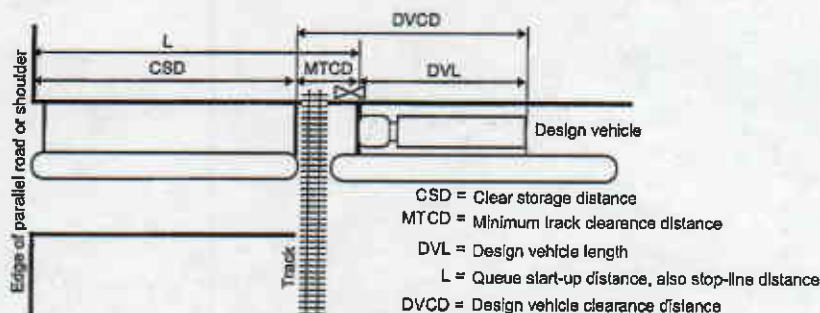
- | | | | |
|---|----|--|---|
| 4. Worst-case conflicting vehicle phase number | 4. | <div style="border: 1px solid black; width: 40px; height: 20px; text-align: center;">2</div> | Remarks
<u>green terminates at pre-</u>
<u>emption.</u> |
| 5. Minimum green time during right-of-way transfer (seconds) | 5. | <div style="border: 1px solid black; width: 40px; height: 20px; text-align: center;">0.0</div> | |
| 6. Other green time during right-of-way transfer (seconds) | 6. | <div style="border: 1px solid black; width: 40px; height: 20px; text-align: center;">0.0</div> | |
| 7. Yellow change time (seconds) | 7. | <div style="border: 1px solid black; width: 40px; height: 20px; text-align: center;">4.0</div> | |
| 8. Red clearance time (seconds) | 8. | <div style="border: 1px solid black; width: 40px; height: 20px; text-align: center;">2.0</div> | |
| 9. Worst-case conflicting vehicle time (seconds): add lines 5 through 8 | 9. | <div style="border: 1px solid black; width: 40px; height: 20px; text-align: center;">6.0</div> | |

Worst-case conflicting pedestrian time

- | | | | |
|---|-----|--|------------------------|
| 10. Worst-case conflicting pedestrian phase number | 10. | <div style="border: 1px solid black; width: 40px; height: 20px;"></div> | Remarks
<u>none</u> |
| 11. Minimum walk time during right-of-way transfer (seconds) | 11. | <div style="border: 1px solid black; width: 40px; height: 20px;"></div> | |
| 12. Pedestrian clearance time during right-of-way transfer (seconds) | 12. | <div style="border: 1px solid black; width: 40px; height: 20px;"></div> | |
| 13. Vehicle yellow change time, if not included on line 12 (seconds) | 13. | <div style="border: 1px solid black; width: 40px; height: 20px;"></div> | |
| 14. Vehicle red clearance time, if not included on line 12 (seconds) | 14. | <div style="border: 1px solid black; width: 40px; height: 20px;"></div> | |
| 15. Worst-case conflicting pedestrian time (seconds): add lines 11 through 14 | 15. | <div style="border: 1px solid black; width: 40px; height: 20px; text-align: center;">0.0</div> | |

Worst-case conflicting vehicle or pedestrian time

- | | | |
|--|-----|--|
| 16. Worst-case conflicting vehicle or pedestrian time (seconds): maximum of lines 9 and 15 | 16. | <div style="border: 1px solid black; width: 40px; height: 20px; text-align: center;">6.0</div> |
| 17. Right-of-way transfer time (seconds): add lines 3 and 16 | 17. | <div style="border: 1px solid black; width: 40px; height: 20px; text-align: center;">6.0</div> |

SECTION 2: QUEUE CLEARANCE TIME CALCULATION**Remarks**

- | | | | |
|---|-----|---|---|
| 18. Clear storage distance (CSD, feet) | 18. | <div style="border: 1px solid black; padding: 2px 10px;">45</div> | <div style="border-bottom: 1px solid black; height: 15px; width: 100%;"></div> <div style="border-bottom: 1px solid black; height: 15px; width: 100%;"></div> |
| 19. Minimum track clearance distance (MTCD, feet) | 19. | <div style="border: 1px solid black; padding: 2px 10px;">37</div> | |
| 20. Design vehicle length (DVL, feet) | 20. | <div style="border: 1px solid black; padding: 2px 10px;">45</div> | |
- Design vehicle type: Large School Bus
- | | | | |
|---|-----|--|--|
| 21. Queue start-up distance, L (feet): add lines 18 and 19 | 21. | <div style="border: 1px solid black; padding: 2px 10px;">82</div> | Remarks
<div style="border-bottom: 1px solid black; height: 15px; width: 100%;"></div> |
| 22. Time required for design vehicle to start moving (seconds): calculate as $2 + (L/20)$ | 22. | <div style="border: 1px solid black; padding: 2px 10px;">6.1</div> | |
| 23. Design vehicle clearance distance, DVCD (feet): add lines 19 and 20 | 23. | <div style="border: 1px solid black; padding: 2px 10px;">82</div> | |
| 24. Time for design vehicle to accelerate through the DVCD (seconds) | 24. | <div style="border: 1px solid black; padding: 2px 10px;">7.9</div> Read from Figure 2 in Instructions. | |
- | | | |
|---|-----|---|
| 25. Queue clearance time (seconds): add lines 22 and 24 | 25. | <div style="border: 1px solid black; padding: 2px 10px;">14.0</div> |
|---|-----|---|

SECTION 3: MAXIMUM PREEMPTION TIME CALCULATION**Remarks**

- | | | | |
|---|-----|---|---|
| 26. Right-of-way transfer time (seconds): line 17 | 26. | <div style="border: 1px solid black; padding: 2px 10px;">6.0</div> | <div style="border-bottom: 1px solid black; height: 15px; width: 100%;"></div> <div style="border-bottom: 1px solid black; height: 15px; width: 100%;"></div> |
| 27. Queue clearance time (seconds): line 25 | 27. | <div style="border: 1px solid black; padding: 2px 10px;">14.0</div> | |
| 28. Desired minimum separation time (seconds) | 28. | <div style="border: 1px solid black; padding: 2px 10px;">4.0</div> | |
- | | | |
|--|-----|---|
| 29. Maximum preemption time (seconds): add lines 26 through 28 | 29. | <div style="border: 1px solid black; padding: 2px 10px;">24.0</div> |
|--|-----|---|

SECTION 4: SUFFICIENT WARNING TIME CHECK**Remarks**

- | | | | |
|--|-----|---|---|
| 30. Required minimum time, MT (seconds): per regulations | 30. | <div style="border: 1px solid black; padding: 2px 10px;">20.0</div> | <div style="border-bottom: 1px solid black; height: 15px; width: 100%;"></div> <div style="border-bottom: 1px solid black; height: 15px; width: 100%;"></div> |
| 31. Clearance time, CT (seconds): get from railroad | 31. | <div style="border: 1px solid black; padding: 2px 10px;">0.0</div> | |
| 32. Minimum warning time, MWT (seconds): add lines 30 and 31 | 32. | <div style="border: 1px solid black; padding: 2px 10px;">20.0</div> | |
- Excludes buffer time (BT)
- | | | | |
|--|-----|---|---|
| 33. Advance preemption time, APT, if provided (seconds): get from railroad .. | 33. | <div style="border: 1px solid black; padding: 2px 10px;">0.0</div> | <div style="border-bottom: 1px solid black; height: 15px; width: 100%;"></div> <div style="border-bottom: 1px solid black; height: 15px; width: 100%;"></div> |
| 34. Warning time provided by the railroad (seconds): add lines 32 and 33 | 34. | <div style="border: 1px solid black; padding: 2px 10px;">20.0</div> | |
- | | | |
|--|-----|--|
| 35. Additional warning time required from railroad (seconds): subtract line 34 from line 29, round up to nearest full second, enter 0 if less than 0 | 35. | <div style="border: 1px solid black; padding: 2px 10px;">4</div> |
|--|-----|--|

If the additional warning time required (line 35) is greater than zero, additional warning time has to be requested from the railroad. Alternatively, the maximum preemption time (line 29) may be decreased after performing an engineering study to investigate the possibility of reducing the values on lines 1, 5, 6, 7, 8, 11, 12, 13 and 14.

Remarks:



Has Form been revised for this request?

☒ YES, Revision Date: 7/08/09☐ NO

HIGHWAY-RAIL GRADE CROSSING TRAFFIC SIGNAL PREEMPTION REQUEST FORM

The Road Authority traffic controller circuitry requires railroad preemption contacts to initiate the preemption sequence. Per BNSF standard, we will provide normally closed "dry" preemption relay contacts to interconnect the railroad active warning system to the Road Authority traffic signal controller assembly. These contacts are rated at 4 amps. With no trains in the area, these contacts remain closed. The Road Authority Traffic Department will be responsible for installing the interconnection cable between the traffic signal controller and the crossing warning signal control housing. If exit gates are utilized, the Road Authority Traffic Department will be responsible for installing and maintaining the "in pavement" vehicle detection loops from the street to the cable junction box.

To estimate and or design the crossing warning system, BNSF needs to know certain timing parameters.

Definitions:

"Advance Preemption" – The system will be designed to open the preemption contacts for a predetermined amount of time (Advance Preemption Time) prior to activation of the warning devices (flashing lights).

"Simultaneous Preemption" – The system will be designed to open the preemption contact at the same time the warning devices (flashing lights) are activated.

"Gate Down Logic" – Per BNSF standard, we will provide normally open "dry" gate down relay contacts to interconnect the crossing warning system to the Road Authority traffic signal controller assembly. These contacts are rated at 4 amps. The system will be designed to close the gate down contacts upon the gates arrival in the down position. This logic is normally utilized to hold track clearance green until the gates are down since the time from preemption to gate down will vary depending upon the traffic signal cycle.

"Minimum Warning Time" – Per the MUTCD and FRA regulations, BNSF must provide at least 20 seconds of warning time for through trains (typically main track applications). However, per BNSF standards for constant warning time train detection equipment, the system will be designed to provide a "nominal" warning time of 30 seconds to ensure MUTCD/FRA minimums are met and to compensate for accelerating trains and ballast conditions.

"Minimum Track Clearance Distance" – For standard two-quadrant railroad warning devices, the minimum track clearance distance is the length along a highway at one or more railroad tracks, measured either from the railroad stop line, warning device or 12 ft. perpendicular to the far rail, along the centerline or edge line of the highway, as appropriate, to obtain the longer distance. For locations with exit gate warning devices, the minimum track clearance distance is the length along a highway at one or more railroad tracks, measured either from the railroad stop line or entrance warning device to the point clear of the exit gate. Note that in cases where the exit gate arm is parallel to the track(s) and/or not perpendicular to the roadway, clearance will be either along the centerline or edge line of the highway, as appropriate, to obtain the longer distance.

When (entrance) gates are used they are typically designed to start their decent within 3 to 5 seconds of the warning lights flashing, descend in an additional 10 to 15 seconds, and reach horizontal at least 5 seconds prior to train arrival per FRA regulations.

The length of the railroad's control circuit approach distance is directly related to the amount of requested "Advanced Preemption Time" (APT). Typically, the longer the APT requirement is, the longer the approach distance, and thus the more control equipment that will be required.

With the above items in mind, please provide the following information to help us process your request:

Date: 7/08/09

Request by (name/title): Ted Marquez, P.E.

Crossing Street Name: Mulberry

Parallel Street Name: Doniphan

City: El Paso

Traffic Engineer: Ted Marquez, P.E.

County: El Paso

Phone: 9155414050

DOT #: _____

District: _____

State: TX

E-mail: _____

- 1) Is this request for Simultaneous Preemption? ☐ YES ☒ NO
- 2) Is this request for Advanced Preemption? ☒ YES ☐ NO
If "Yes" what is your requested Advanced Preemption Time? 4 Seconds.
- 3) Will this location utilize exit gates? ☐ YES ☒ NO

The following questions should be completed if this location utilizes exit gates:

The exit gate arm(s) shall operate in one of the following modes of operation known as the EGOM (exit gate operating mode):

a. Dynamic EGOM – A mode of operation where exit gate operation is based on presence of vehicles within minimum track clearance distance (MTCD).

1) The exit gate arm(s) shall be designed to start downward motion after the vehicle detection system indicates no vehicles are located within the MTCD and any (optional) exit gate clearance time has completed timing. Note that the entrance gate arm(s) and the exit gate arm(s) may start downward motion almost simultaneously if no vehicles are located within the MTCD.

b. Timed EGOM – A mode of operation where exit gate operation is based on a predetermined time interval. This mode may be used if the vehicle detection system (Dynamic EGOM) is unhealthy.

1) The exit gate arm(s) shall be designed to start downward motion a predetermined number of seconds after the entrance gate arm(s) start downward motion. Note that the entrance gate arms(s) may or may not be fully horizontal at the time the exit gate arm(s) start downward motion. This timed value is known as the exit gate clearance time (EGCT).

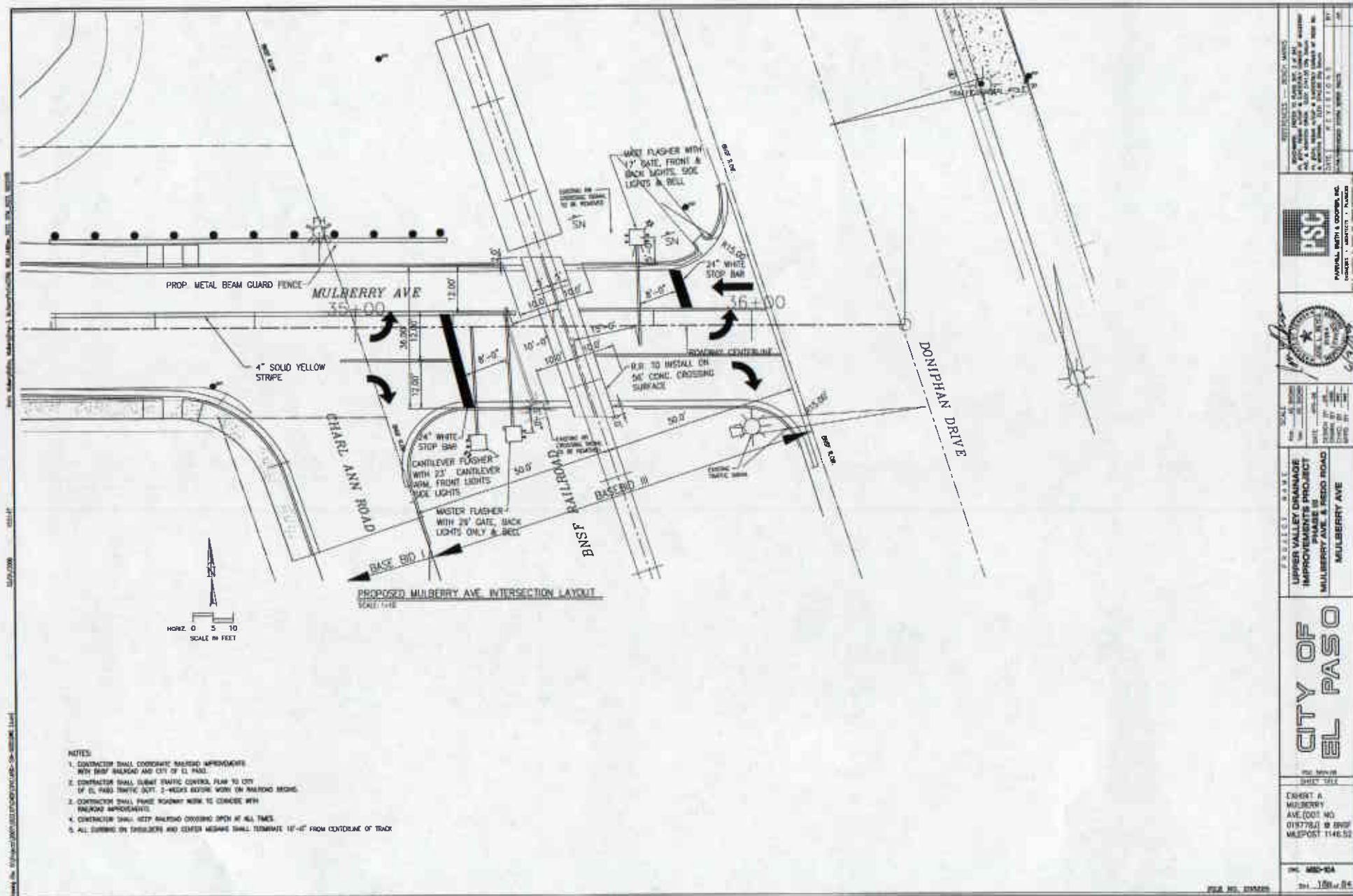
1) The BNSF standard is to use Dynamic EGOM and revert to Timed EGOM if the vehicle detection system is unhealthy. Is this operation acceptable? ☐ YES ☐ NO

2) When operating in "Dynamic" exit gate operating mode, how much exit gate clearance time (optional) do you request? _____ seconds.

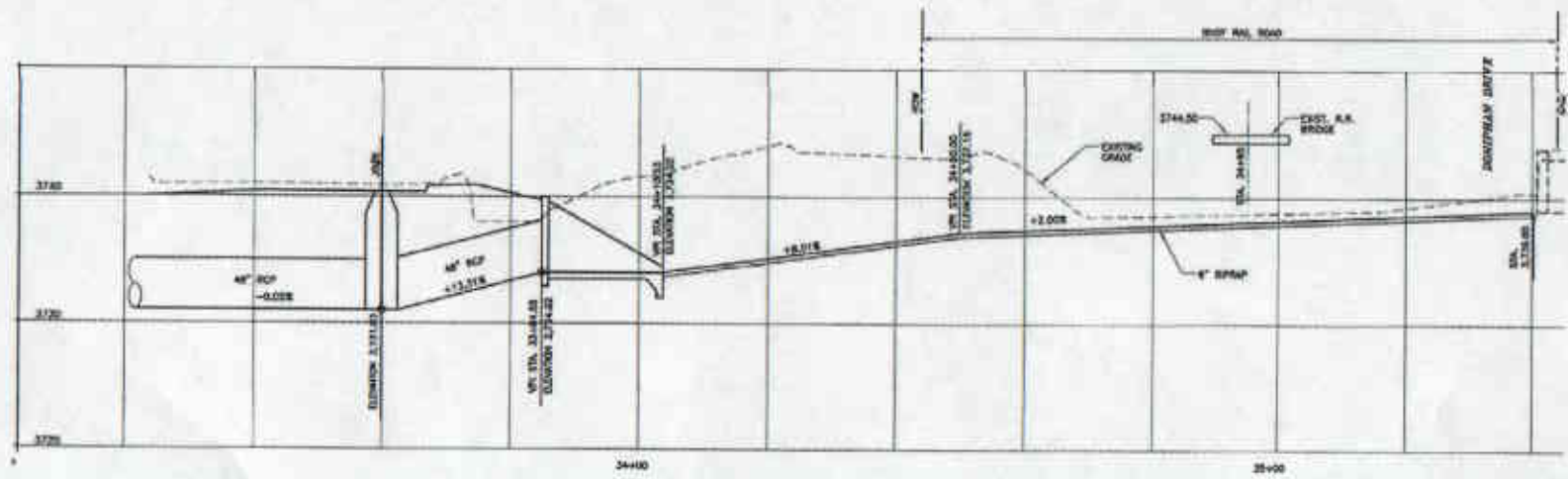
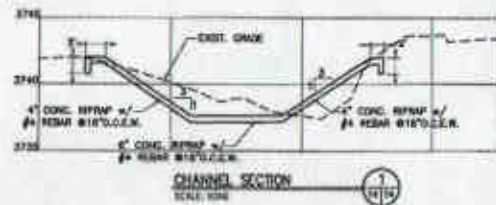
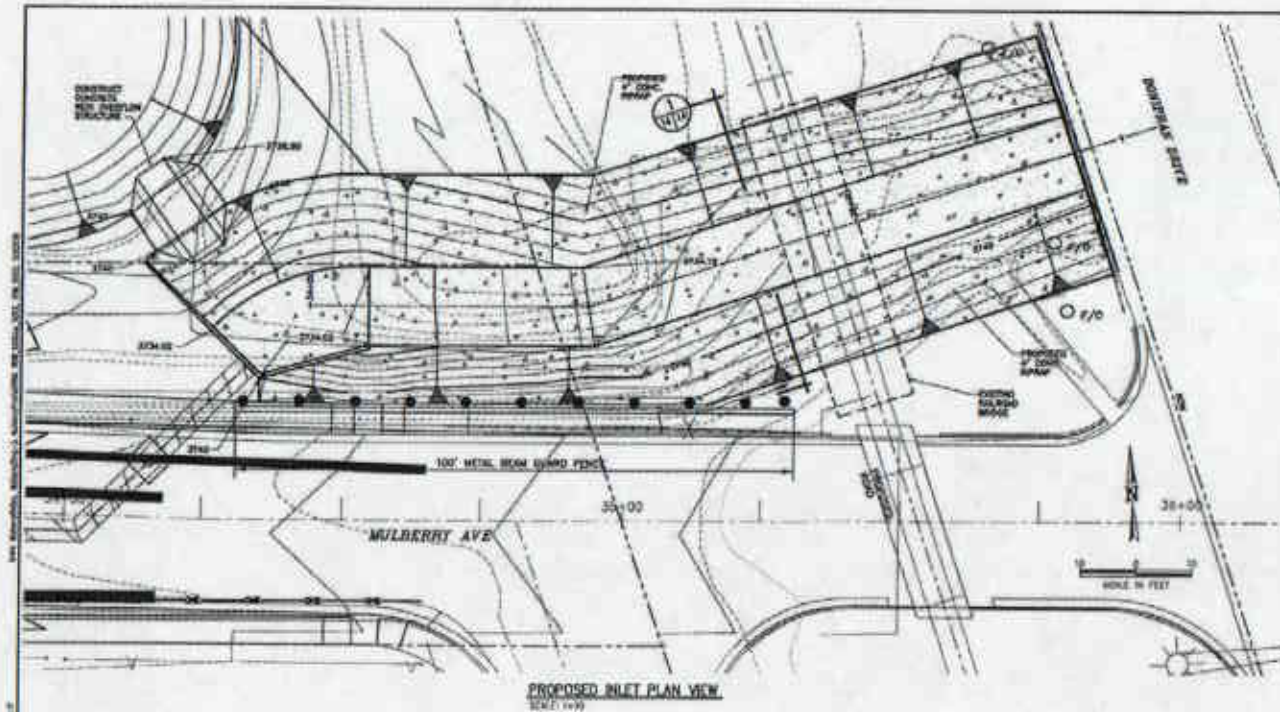
3) When operating in "Timed" exit gate operating mode how much exit gate clearance time do you request? _____ seconds.

Comments:

Please contact the BNSF Signal Engineering office at (913) 551- 4642 with any questions or possible changes to the above requirements.



CITY OF EL PASO PROJECT NAME: UPPER VALLEY DRAINAGE IMPROVEMENTS PROJECT PHASE II MULBERRY AVE. & REDD ROAD MULBERRY AVE		SCALE: 1"=40' DATE: 08/20/2018 DRAWN BY: JMD CHECKED BY: JMD	PROJECT NO.: 018778J SHEET NO.: 01
PROJECT NO.: 018778J SHEET NO.: 01 PROJECT NAME: UPPER VALLEY DRAINAGE IMPROVEMENTS PROJECT PHASE II MULBERRY AVE. & REDD ROAD MULBERRY AVE		SCALE: 1"=40' DATE: 08/20/2018 DRAWN BY: JMD CHECKED BY: JMD	PROJECT NO.: 018778J SHEET NO.: 01 PROJECT NAME: UPPER VALLEY DRAINAGE IMPROVEMENTS PROJECT PHASE II MULBERRY AVE. & REDD ROAD MULBERRY AVE



CITY OF EL PASO PUBLIC WORKS DEPARTMENT 1001 N. EL PASO STREET, EL PASO, TEXAS 79901 PHONE (915) 543-1234	
PROJECT NO. 100000-2 SHEET 101	DATE: 10/1/80 DRAWN BY: J. L. BROWN CHECKED BY: M. J. SMITH IN CHARGE: R. L. GARCIA
MULBERRY SPECIAL INLET-EXISTING & FINAL PLAN VIEWS	
PROJECT NO. 100000-2 SHEET 101	

EXHIBIT "C-1"

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

BNSF RAILWAY COMPANY
Attention: Manager Public Projects

Railway File: 019778
Agency Project: Mulberry Avenue (DOT No. 019778J) – reconstruct roadway approaches

Gentlemen:

The undersigned (hereinafter called, the "Contractor"), has entered into a contract (the "Contract") dated _____, 200_, with the **City of El Paso** for the performance of certain work in connection with the following project: Mulberry Avenue – reconstruct roadway approaches. Performance of such work will necessarily require contractor to enter BNSF RAILWAY COMPANY ("Railway") right of way and property ("Railway Property"). The Contract provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for the **City of El Paso** (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

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

Section 1. RELEASE OF LIABILITY AND INDEMNITY

Contractor hereby waives, releases, indemnifies, defends and holds harmless Railway for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about Railway's property or right-of-way. **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**

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

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all claims made against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or

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

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

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

Section 2. TERM

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

Section 3. INSURANCE

Contractor must, 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 must contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$4,000,000. Coverage must be purchased on a post 1998 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 must also contain the following endorsements, which must be indicated on the certificate of insurance:

- ◆ It is agreed that any workers' compensation exclusion does not apply to **Railroad** payments related to the Federal Employers Liability Act or a **Railroad** Wage Continuation Program or similar programs and any payments made are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law.
- ◆ The definition of insured contract must be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Any exclusions related to the explosion, collapse and underground hazards must be removed.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy.

B. Business Automobile Insurance. This insurance must 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

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.

D. Railroad Protective Liability insurance naming only the **Railroad** as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 10 93 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
- ◆ Endorsed to remove any exclusion for punitive damages.
- ◆ No other endorsements restricting coverage may be added.
- ◆ The original policy must be provided to the **Railroad** prior to performing any work or services under this Agreement

Other Requirements:

All policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

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

Contractor's insurance policies through policy endorsement, must include wording which states that the policy is primary and non-contributing with respect to any insurance carried by **Railroad**. The certificate of insurance must reflect that the above wording is included in evidenced policies.

All policy(ies) required above (excluding Workers Compensation and if applicable, Railroad Protective) must include a severability of interest endorsement and **Railroad** must be named as an additional insured with respect to work performed under this agreement. Severability of interest and naming **Railroad** as additional insured must be indicated on the certificate of insurance.

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

Prior to commencing the Work, contractor must furnish to **Railroad** an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify **Railroad** in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision must be indicated on the certificate of insurance. Upon request from **Railroad**, a certified duplicate original of any required policy must be furnished. Contractor should send the certificate(s) to the following address:

Ebix BPO
PO Box 12010-BN
Hemet, CA 92546-8010
Fax number: 951-766-2299

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

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**. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above. Not more frequently than once every five years, **Railroad** 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 must require that the subcontractor provide and maintain the insurance coverages set forth herein, naming **Railroad** as an additional insured, and requiring that the subcontractor release, defend and indemnify **Railroad** to the same extent and under the same terms and conditions as contractor is required to release, defend and indemnify **Railroad** herein.

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

The fact that insurance (including, without limitation, self-insurance) is obtained by contractor will 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 **Railroad** will not be limited by the amount of the required insurance coverage.

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

Section 4. EXHIBIT "C" CONTRACTOR REQUIREMENTS

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

Section 5. TRAIN DELAY

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

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

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

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. Damages for train delay are currently \$382.20 per hour per incident. **THE RATE THEN IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF TRAIN DELAY PURSUANT TO THIS AGREEMENT.**

Contractor and its subcontractors must give Railway's Roadmaster 4 weeks advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.

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

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

(Contractor)

BNSF Railway Company

By: _____

By: _____

Printed Name: _____

Name: _____

Manager Public Projects

Title: _____

Contact Person: _____

Accepted and effective this ____ day
of _____ 2009.

Address: _____

City: _____ State: _____ Zip: _____

Fax: _____

Phone: _____

E-mail: _____

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 reconstruction of Mulberry Avenue (DOT No. 019778J) at railroad milepost 1146.52 in El Paso, Texas.
- **1.01.02** The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit "C-1" Agreement, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit "C-1". Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to Rosa Martinez at Marsh, USA, 214-303-8519.
- **1.01.03** The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.
- **1.01.04** The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations. Railway will have the right to stop construction work on the Project if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the Project work in a manner which is hazardous to Railway property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Contractor fails to pay Railway for the Temporary Construction License or the Easement. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer or until additional insurance has been delivered to and accepted by Railway. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, Railway may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of Railway. Railway's right to stop the work is in addition to any other rights Railway may have including, but not limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop construction work on the Project, Railway agrees to immediately notify the following individual in writing:

R. Alan Shubert, P.E.
City Engineer
City of El Paso
2 Civic Center, 4th Floor
El Paso, Texas 79901
- **1.01.05** The Contractor is responsible for determining and complying with all Federal, State and Local Governmental laws and regulations, including, but not limited to environmental laws and regulations (including but not limited to the Resource Conservation and Recovery Act, as amended; the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA), and health and safety laws and regulations. The Contractor hereby indemnifies, defends and holds harmless Railway for, from and against all fines or penalties imposed or assessed by Federal, State and Local Governmental Agencies against the Railway which arise out of Contractor's work under this Agreement.

- **1.01.06** The Contractor must notify the City of El Paso at (915) 541-4200 and Railway's Manager Public Projects, telephone number 817-352-2902 at least thirty (30) calendar days before commencing any work on Railway Property. Contractor's notification to the Railway, must refer to Railroad's file 019778.
- **1.01.07** For any bridge demolition and/or falsework above any tracks or any excavations located with any part of the excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin work until notified by the Railway that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.
- **1.01.08** Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

1.02 Contractor Safety Orientation

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

1.03 Railway Requirements

- **1.03.01** The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Agency.
- **1.03.02** The Contractor must notify the Railway's Division General Manager at 505-864-4988 and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.
- **1.03.03** The Contractor must abide by the following temporary clearances during construction:
 - 15' Horizontally from centerline of nearest track

- 21'-6" Vertically above top of rail
 - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
 - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
 - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
 - 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts
- **1.03.04** Upon completion of construction, the following clearances shall be maintained:
 - 25' Horizontally from centerline of nearest track
 - 23'-3 1/2" 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 City of El Paso and must not be undertaken until approved in writing by the Railway, and until the City of El Paso 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 City of El Paso for approval before work is undertaken and this work must not be undertaken until approved by the Railway.
- **1.03.08** At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across the Railways tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed and, at the completion of the project, removed at the expense of the Contractor.
- **1.03.09** Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor must immediately notify the Railway's Resource Operations Center at 1(800) 832-5452, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.
- **1.03.10** The Contractor upon completion of the work covered by this contract, must promptly remove from the Railway's Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said property by said Contractor or any Subcontractor, employee or agent of Contractor or of any Subcontractor, and must cause Railway's Property to be left in a condition acceptable to the Railway's representative.

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

- **1.04.01** Each Contractor that will perform work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway Project Representative to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site www.contractororientation.com, 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.

- Contractor shall have a background investigation performed on all of its employees, subcontractors and agents who will be performing any services on railroad property under this Agreement.

The background screening shall at a minimum meet the criteria defined by the e-RAILSAFE program outlined at <http://www.e-railsafe.com> in addition to any other applicable regulatory requirements. The e-RAILSAFE program uses rail industry background screening standards.

Contractor shall obtain consent from all employees screened in compliance with the e-RAILSAFE program criteria to release completed background information to BNSF. Contractor shall be subject to periodic audit to ensure compliance.

Contractor shall not permit any of its employees, subcontractors or agents to perform services on property hereunder who are not approved under e-RAILSAFE program standards. Railroad shall have the right to deny entry onto its premises 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 for the e-RAILSAFE program or who pose a threat, in Railroad's reasonable opinion, to the safety or security of Railroad's operations.

Contractors shall ensure its employees, subcontractors and agents are United States citizens or legally working in this country under a work VISA.

1.05 Railway Flagger Services:

- **1.05.01** The Contractor must give Railway's Roadmaster at 915-534-2366 (office #) or 915-892-3400 (cell #) a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.
- **1.05.02** Unless determined otherwise by Railway's Project Representative, Railway flagger will be required and furnished when Contractor's work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:
 - **1.05.02a** When, upon inspection by Railway's Representative, other conditions warrant.
 - **1.05.02b** When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.
 - **1.05.02c** When work in any way interferes with the safe operation of trains at timetable speeds.
 - **1.05.02d** When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.
 - **1.05.02e** Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.
- **1.05.03** Flagging services will be performed by qualified Railway flaggers.
 - **1.05.03a** Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railways Representative.
 - **1.05.03b** Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.

- **1.05.03c** The cost of flagger services provided by the Railway will be borne by the CITY OF EL PASO. The estimated cost for one (1) flagger is approximately \$800.00 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 7 freight trains per 24-hour period at a timetable speed of 49 MPH and no passenger trains.

1.06 Contractor General Safety Requirements

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

ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, www.contractororientation.com, 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 Railroad's representative in charge of the project is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **(NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**

- **1.06.09 THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF THE SAME WILL OBSTRUCT THE VIEW OF A TRAIN APPROACHING THE CROSSING. PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE AREA WITH CONCURRENCE OF THE RAILROAD'S REPRESENTATIVE.**
- **1.06.10** Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway's Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)
- **1.06.11** Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any work performed over water must meet all Federal, State and Local regulations.
- **1.06.12** All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

1.07 Excavation

- **1.07.01** Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor must determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact **BNSF's Roadmaster at 915-534-2366 and BNSF's Signal-Construction Supervisor at 505-767-6828.** All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. **It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.**
- **1.07.02** The Contractor must cease all work and notify the Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.
- **1.07.03** All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.

- **1.07.04** Any excavations, holes or trenches on the Railway's Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

1.08 Hazardous Waste, Substances and Material Reporting

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

1.09 Personal Injury Reporting

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

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 IS NOT INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY.

1. Accident City/St _____
County: _____
(if non-Railway location)
2. Date: _____ Time: _____
3. Temperature: _____
4. Weather _____
5. Social Security # _____
6. Name (last, first, mi) _____
7. Address: Street: _____ City: _____ St: _____ Zip: _____
8. Date of Birth: _____ and/or Age _____ Gender: _____
(if available)
9. (a) Injury: _____ (b) Body Part: _____
(i.e. (a) Laceration (b) Hand)
11. Description of Accident (To include location, action, result, etc.): _____
12. Treatment:
 ? First Aid Only
 ? Required Medical Treatment
 ? Other Medical Treatment
13. Dr. Name _____ 30. Date: _____
14. Dr. Address:
 Street: _____ City: _____ St: _____ Zip: _____
15. Hospital Name: _____
16. Hospital Address:
 Street: _____ City: _____ St: _____ Zip: _____
17. Diagnosis: _____

FAX TO
RAILWAY AT (817) 352-7595
AND COPY TO
RAILWAY ROADMASTER FAX (915) 534-2316
RAILWAY MANAGER PUBLIC PROJECTS FAX (817) 352-2912

EXHIBIT D - CROSSING SURFACE COST ESTIMATE

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

BNSF RAILWAY COMPANY
FHPM ESTIMATE FOR
CITY OF EL PASO

LOCATION WEST MONTOYA

DETAILS OF ESTIMATE

PLAN ITEM : PTR019778J

VERSION : 1

PURPOSE, JUSTIFICATION AND DESCRIPTION

LS 7300 - MP 1146.52 - MAIN
PIP - RENEW EXISTING 40' GRADE CROSSING WITH A 48" 136# CONCRETE CROSSING
DESCRIPTION OF PROJECT AS PROVIDED BY PROJECT ENGINEER DTD
MULBERRY DRIVE
EL PASO SUBDIVISION
SOUTHWEST EAST DIVISION

BILLING FOR THIS PROJECT SHOULD BE DIRECTED TO:
100% BILLABLE TO THE CITY OF EL PASO, TX

MAINTAIN PROPRIETARY CONFIDENTIALITY

THE PHYSICAL LIMITS OF THIS PROJECT ARE DESCRIBED BY LINE SEGMENT, MILE POST RANGES, AND IN SOME CASES TRACK NUMBER. THIS IS THE PRIMARY AREA FOR THE PROJECT. THERE WILL BE CASES WHERE WORK MAY OCCUR BEYOND THE DEFINED LIMITS.

PROJECTS THAT INCLUDE SIGNAL, ELECTRICAL, OR TELECOMMUNICATION EQUIPMENT MAY REQUIRE ACTIVITY BEYOND THESE DEFINED TRACK LIMITS. ALL OR PORTIONS OF SOME PROJECTS MAY OCCUR IN AREAS WHERE NO MILEPOST SIGNS EXIST SUCH AS YARDS.

THIS ESTIMATE IS GOOD FOR 90 DAYS. THEREAFTER THE ESTIMATE IS SUBJECT TO CHANGE IN COST FOR LABOR, MATERIAL, AND OVERHEAD.

RDM MUNN - DE JACOBSON

CITY OF EL PASO WILL PROVIDE TRAFFIC CONTROL FOR FULL ROAD CLOSURE AND
DO ALL ROADWAY APPROACH WORK.

DESCRIPTION	QUANTITY U/M	COST	TOTAL \$

LABOR			

PLACE FIELD WELDS - CAP	80.0 MH	1,822	
REPLACE PUBLIC CROSSING - TOTAL REHAB	96.0 MH	2,085	
SIGNAL FIELD LABOR - CAP	13.0 MH	343	
SURFACE TRACK - REPLACEMENT - CAP	24.0 MH	565	
UNLOAD BALLAST - REPLACEMENT - CAP	6.0 MH	131	
UNLOAD CROSSING MATERIAL - PUBLIC - CAP	24.0 MH	522	
WORK TRAIN - BALLAST - REPLACEMENT - CAP	36.0 MH	1,596	
PAYROLL ASSOCIATED COSTS		4,862	
EQUIPMENT EXPENSES		4,088	
DA LABOR OVERHEADS		7,587	
INSURANCE EXPENSES		1,108	
TOTAL LABOR COST		24,709	24,709

MATERIAL			

ASPHALT IN PLACE PER TON	30.0 NT **	4,251	
BALLAST, PEDERNAL, NM (SWE, SWW)	100.0 NT **	737	
TRACK PANEL, 136 LB 40 FT- 10 FT TIES-PANDROL	2.0 EA **	9,746	
RAIL, TRANSN,BE,40 FT,136 - 1/4 WORN 132	4.0 EA	4,998	
WELDKIT, GENERIC FOR ALL RAIL WEIGHTS	10.0 KT	710	
CONC 136 08-SEC WITH FILLER FOR 10' WOOD TIES	48.0 FT	9,946	
CONCRETE XING RAMP AND PANEL RESTRAINT,	1.0 ST	257	
SIGNAL MATERIAL	1.7 DAY	255	
MATERIAL HANDLING		1,540	
ONLINE TRANSPORTATION		924	
OFFLINE TRANSPORTATION		298	
TOTAL MATERIAL COST		33,662	33,662

OTHER			

LEASED EQUIPMENT WITH OPERATOR	1.7 DAY	2,550	
TOTAL OTHER ITEMS COST		2,550	2,550
PROJECT SUBTOTAL			60,921
CONTINGENCIES			5,982
BILL PREPARATION FEE			670

GROSS PROJECT COST
LESS COST PAID BY BNSF
TOTAL BILLABLE COST

67,573
0

67,573

EXHIBIT D - RAILROAD CROSSING SIGNAL COST ESTIMATE

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

BNSF RAILWAY COMPANY
FHPM ESTIMATE FOR
EL PASO

LOCATION CANUTILLO TO WEST MONTOYA

DETAILS OF ESTIMATE

PLAN ITEM : 000154983

VERSION : 1

PURPOSE, JUSTIFICATION AND DESCRIPTION

REVISED TO NEW PRICING LIST 09/04/03

2009 PX INSTALL CONSTANT WARNING INSTALLING NEW GATES AND CANT AT MULBERRY STREET IN EL PASO, TX. SOUTHWEST DIV ,
EL PASO SUBDIV , L/S 7300, M.P. 1146.52, DOT # 019778J
MONTHLY POWER UTILITY COST CENTER:

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

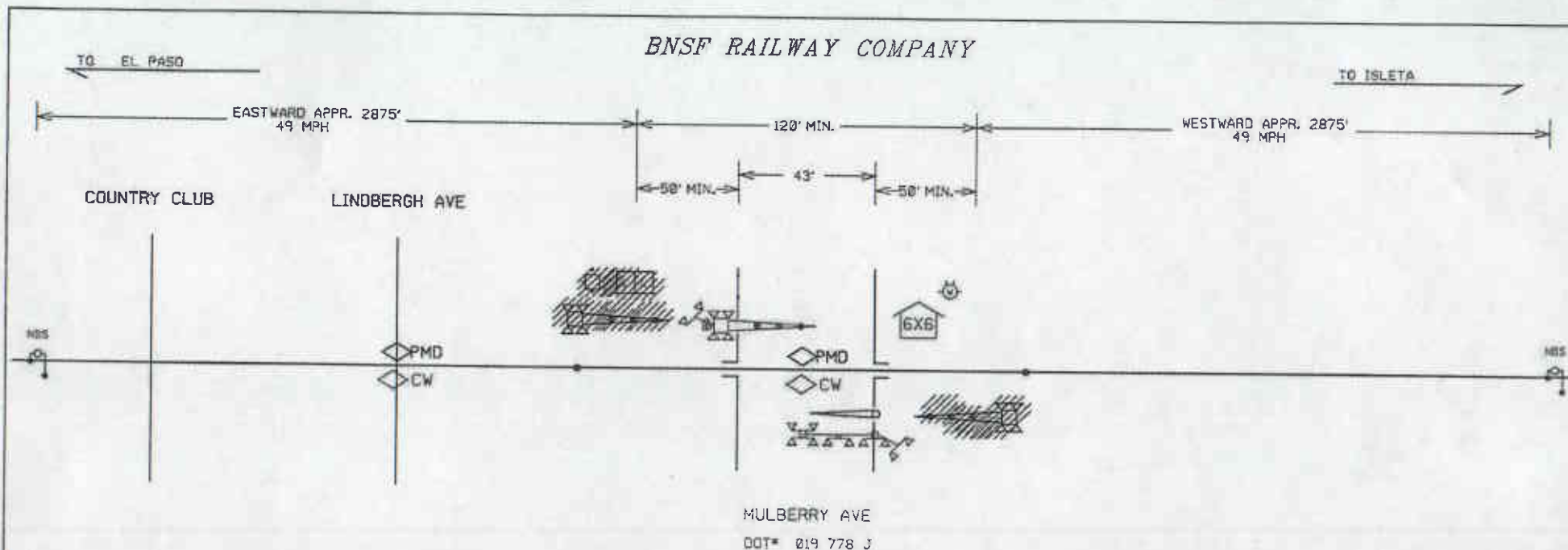
***** SIGNAL WORK ONLY *****

THE CITY OF EL PASO IS FUNDING THIS PROJECT 100%.

MAINTAIN PROPRIETARY CONFIDENTIALITY

DESCRIPTION	QUANTITY U/M	COST	TOTAL \$
***** LABOR *****			
SIGNAL FIELD LABOR - CAP	1600.0 MH	41,696	
SIGNAL SHOP LABOR - CAP	64.0 MH	1,684	
PAYROLL ASSOCIATED COSTS		29,875	
EQUIPMENT EXPENSES		13,512	
DA LABOR OVERHEADS		46,615	
INSURANCE EXPENSES		6,827	
TOTAL LABOR COST		140,209	140,209
***** MATERIAL *****			
ADVANCED PRE-EMPT PACKAGE	1.0 EA N	7,706	
BATTERY	1.0 EA N	4,892	
BELL	2.0 LS N	1,390	
BUNGALOW 6X6	1.0 EA N	8,612	
BUNGALOW MATERIAL	1.0 LS N	4,400	
CABLE	1.0 EA N	9,620	
CANT COMPLETE	1.0 LS N	16,695	
CHARGERS	1.0 LS N	810	
CONDUIT, PVC 4", SCH 80	60.0 FT N	234	
CONSTANT WARNING	1.0 EA N	18,890	
FIELD MATERIAL	1.0 LS N	3,177	
FOUNDATION	2.0 LS N	970	
GATE KEEPER	2.0 LS N	3,550	
GATE MECH.	2.0 LS N	14,486	
LED LIGHT GATE KIT	2.0 LS N	800	
LED LIGHTS	14.0 LS N	3,374	
LIGHT OUT DETECTOR	1.0 EA N	706	
MATERIAL FOR ELECTRICAL	1.0 EA	1,500	
RECORDER	1.0 EA N	2,220	
SHUNT, NBS	2.0 EA N	1,696	
SIDE LIGHT	2.0 LS N	1,550	
TELLULAR DEVICE	1.0 EA N	2,500	
MATERIAL HANDLING		75	
OFFLINE TRANSPORTATION		1,088	
TOTAL MATERIAL COST		110,941	110,941
***** OTHER *****			
AC POWER SERVICE	1.0 EA	5,000	
CONTRACT ENGR.	1.0 EA N	8,500	

FILL DIRT	10.0 CY N	250	
SURFACE ROCK	10.0 CY N	250	
TOTAL OTHER ITEMS COST		14,000	14,000
PROJECT SUBTOTAL			265,150
CONTINGENCIES			0
BILL PREPARATION FEE			2,652
GROSS PROJECT COST			267,802
LESS COST PAID BY BNSF			0
TOTAL BILLABLE COST			267,802



INSTALL: GATES, FLASHERS

CONTROL DEVICES: CONSTANT WARNING

BOLD - IN

||||| - OUT

SALVAGE: NONE

	INSTRUMENT HOUSE
	BELL
	METER
	CROSSING CONTROLL CONNECTIONS
	BIDIRECTIONAL CROSSING CONTROL
	UNIDIRECTIONAL CROSSING CONTROL
	COUPLER OR TERMINATION
	GUARD RAIL

Warning device placement:

Clearance to C.L. Track = Min. 12'

Edge of Road to C.L. Foundation:

Min. 4'3" with curb.

Min. 8'3" without curb.

Max. 12'

House Clearance:

25' Min. to Near Rail

30' Min. to Edge of Road

ALL LIGHTS TO BE LED



EXHIBIT A - RAILROAD
CROSSING SIGNAL SKETCH

BNSF RAILWAY CO.

LOCATION: EL PASO, TX.

STREET: MULBERRY AVE.

LS: 7300

M.P. 1146.52

DOT # 019778J

DIVISION: SOUTHWEST

SUBDIVISION: EL PASO

KANSAS CITY

NO SCALE

DATE: 9/01/89

FILE: 0035182.36.dgn

REC

GRADE CROSSING CONSTRUCTION AND MAINTENANCE AGREEMENT

BNSF File No. 019776
Redd Road
U.S. D.O.T. No. 019776V
Railroad Line Segment 7300
Railroad Milepost 1146.10

This Agreement ("**Agreement**"), is executed to be effective as of this 31st day of September, 2009 ("**Effective Date**"), by and between BNSF RAILWAY COMPANY, a Delaware corporation ("**BNSF**"), and the CITY OF EL PASO, a political subdivision of the State of Texas ("**Agency**").

RECITALS:

WHEREAS, BNSF owns and operates a line of railroad in and through the City of El Paso, State of Texas;

WHEREAS, in the interest of aiding vehicular travel and public safety, the Agency is undertaking a project to improve the existing Redd Road at-grade crossing, located at BNSF Line Segment 7300 and Milepost 1146.10, and designated by D.O.T. No. 019776V, by reconstructing the roadway and installing railroad crossing signals and activation equipment within the existing roadway easement across the BNSF right-of-way as indicated on the Exhibit A, attached hereto and incorporated herein; and

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

WHEREAS, "BNSF" agrees to allow the Agency to preempt the highway traffic control signals with the grade crossing warning devices indicated on Exhibit A.

WHEREAS, the parties agree that the RAILROAD will receive no ascertainable benefit from the installation of advance warning signs, pavement marking stop bars or crossing signal equipment (hereinafter collectively called, "Crossing Signal Equipment"); and

WHEREAS, the Agency also desires BNSF to install a new crossing surface at Redd Road with a new concrete and rubber crossing surface;

WHEREAS, the Agency is paying for the acquisition and installation of crossing signal equipment and the new crossing surface at Redd Road;

WHEREAS, the BNSF agrees to purchase and install, at AGENCY'S sole expense, the crossing signal equipment and the new crossing surface described in the scope of work herein, and upon the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I – SCOPE OF WORK

1. The term "**Project**" as used herein includes any and all work related to the reconstruction of Mulberry Street and adjacent drainage channel improvements by Agency and installation of crossing signals, activation equipment, and new crossing surfaces at U.S. D.O.T No. 019776V, (hereinafter referred to as the "**Crossing**") by BNSF, more particularly described on the Exhibit A, including, but not limited to, any and all changes to telephone, telegraph, signal and electrical lines and appurtenances, temporary and permanent track work, fencing, grading, alterations to or new construction of drainage facilities, preliminary and construction engineering and contract preparation.

ARTICLE II – BNSF OBLIGATIONS

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

1. In consideration of the faithful performance of the Agency's covenants contained herein, BNSF hereby grants to Agency, its successors and assigns, upon and subject to the terms and conditions set forth in this Agreement, permission and license to enter upon and use the portion of BNSF's right-of-way as is necessary to reconstruct and thereafter maintain, the Crossing and the adjacent drainage channel as described further on Exhibit A, excepting and reserving BNSF's rights, and the rights of any others who have obtained, or may obtain, permission or authority from BNSF, to do the following:

- (a) Operate, maintain, renew and/or relocate any and all existing railroad track or tracks, wires, pipelines and other facilities of like character upon, over or under the surface of said right-of-way;
- (b) Construct, operate, maintain, renew and/or relocate upon said right-of-way, without limitation, such facilities as the BNSF may from time to time deem appropriate;
- (c) Otherwise use or operate the right-of-way as BNSF may from time to time deem appropriate.

This right is given by BNSF without warranty of title of any kind, expressed or implied, and no covenant on warranty of title shall be implied from the use of any word or words herein contained. In the event Agency is evicted by anyone owning, or claiming title to or any interest in said right-of-way, BNSF will not be liable to Agency for any damages, losses or any expenses of any nature whatsoever. The granting of similar rights to others, subsequent to the date of this Agreement, will not impair or interfere with the rights granted to Agency herein.

2. BNSF will furnish all labor, materials, tools, and equipment for railroad work required for the construction of the Project, such railroad work and the estimated cost thereof being as shown on Exhibit D attached hereto and made a part hereof. In the event construction on the Project has not commenced within six (6) months following the Effective Date, BNSF may, in its sole and absolute discretion, revise the cost estimates set forth in said Exhibit D. In such event, the revised cost estimates will 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, attached to this Agreement and made a part hereof;
- (d) Furnishing engineering and inspection as required in connection with the construction of the Project;
- (d) Installation of one 128-foot concrete crossing surface for the one track complete with new rail, ties, ballast, fasteners, along with appropriate surfacing, to carry the improved roadway and sidewalks;
- (e) Installation of Crossing Signal Equipment and Crossing Signal Control House as shown on Exhibit A;

- (f) Provide an interface box, with contact terminals, mounted on side of Crossing Signal Control House;
 - (g) Make such changes in the alignment, location and elevation of its telephone, telegraph, signal and/or wire lines and appurtenances along, over or under the tracks, both temporary and permanent, as may become necessary by reason of 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, determines it is required by its labor agreements to perform such work with its own employees working under applicable collective bargaining agreements.
4. Agency agrees to reimburse BNSF for work of an emergency nature caused by Agency or Agency's contractor in connection with the Project which BNSF deems is reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons or BNSF property. Such work may be performed by BNSF without prior approval of Agency and Agency agrees to fully reimburse BNSF for all such emergency work.
5. 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.

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. Said plans (reduced size 11" x 17"), showing the plan and profile of the roadway work on BNSF right-of-way and marked as Exhibit A, attached hereto and made a part hereof, must be submitted to BNSF for the development of railroad cost estimates.
- 2. Agency must make any required application and obtain all required permits and approvals for the construction of the Project.
- 3. Agency must acquire all rights of way necessary for the construction of the Project.
- 4. Agency must make any and all arrangements for the installation or relocation of wire lines, pipe lines and other facilities owned by private persons, companies, corporations, political subdivisions or public utilities other than BNSF which may be necessary for the construction of the Project.

5. 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) Design and Reconstruction of Redd Road;
- (b) Installation of a pavement marking stop bar in accordance with the Manual on Uniform Traffic Control Devices (hereinafter called, "MUTCD");
- (c) Installation of advance warning signs in accordance with the MUTCD
- (d) Perform all necessary grading and paving, including backfill of excavations and restoration of disturbed vegetation on BNSF's right-of-way;
- (e) Provide suitable drainage, both temporary and permanent;
- (f) Provide all barricades, lights, flagmen or traffic control devices necessary for preventing vehicular traffic from using a portion of the Crossing, during the installation of the concrete crossing surfaces, and also during the installation of the Crossing Signal Equipment;
- (g) Construct asphalt roadway surface on approaches to each track;
- (h) Job site cleanup including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials to the satisfaction of BNSF;
- (i) Provide BNSF in writing with the total time required from start of preempt cycle of highway traffic control signals until arrival of the train at the highway-rail crossing.
- (j) Connect the highway traffic control signals to the contact terminals in the interface box including all necessary cable and conduit.
- (k) Install the new highway traffic control signals.

6. The Agency will approve the location of the signals and signal bungalow prior to the installation by BNSF.

7. The Agency must have advanced railroad crossing signs and standard pavement markings in place at the crossing shown on Exhibit A (if the same are required by the MUTCD) prior to the acceptance of this Project by the Agency.

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

9. The 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.

10. For any future inspection or maintenance, either routine or otherwise, performed by subcontractors on behalf of the Agency, Agency shall require the subcontractors to execute the C documents. Prior to performing any future maintenance with its own personnel, Agency shall: comply with all of BNSF's applicable safety rules and regulations; require any Agency employee performing maintenance to complete the safety training program at the BNSF's Internet Website "contractororientation.com"; notify BNSF when, pursuant to the requirements of exhibit C, a flagger is

required to be present; procure, and have approved by BNSF's Risk Management Department, Railroad Protective Liability insurance.

11. Agency must require its contractor(s) to notify BNSF's Roadmaster at least thirty (30) calendar days prior to requesting a BNSF flagman in accordance with the requirements of Exhibit C attached hereto. Additionally, Agency must require its contractor(s) to notify BNSF's Manager of Public Projects thirty (30) calendar days prior to commencing work on BNSF property or near BNSF tracks.

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 Communications Network Control Center at 800-533-2891, BNSF's Signal Representative (Supervisor Signals-Construction) at 505-767-6843, 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) 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.

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 INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF BNSF.**

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

13. Agency must require compliance with the obligations set forth in this agreement, including Exhibit C and Exhibit C-1, and incorporate in each prime contract for construction of the Project, or the specifications therefor (i) the provisions set forth in Article III; (ii) the provisions set forth in Article IV; and (iii) the provisions set forth in Exhibit C and Exhibit C-1, attached hereto and by reference made a part hereof.

14. Except as otherwise provided below in this Section 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 a letter agreement in the form of Exhibit C-1, and (ii) delivered to and secured BNSF's approval of the required insurance; and
- (d) If it is in Agency's best interest, Agency may direct that the construction of the Project be done by day labor under the direction and control of Agency, or if at any time, in the opinion of Agency, the contractor has failed to prosecute with diligence the work specified in and by the terms of said contract, Agency may terminate its contract with the contractor and take control over the work and proceed to complete the same by day labor or by employing another contractor(s) provided; however, that any contractor(s) replacing the original contractor(s) must comply with the obligations in favor of BNSF set forth above and, provided further, that if such construction is performed by day labor, Agency will, at its expense, procure and maintain on behalf of BNSF the insurance required by Exhibit C-1.
- (e) To facilitate scheduling for the Project, Agency shall have its contractor give BNSF's Roadmaster 90 days advance notice of the proposed times and dates for work windows. BNSF and Agency's contractor will establish mutually agreeable work windows for the Project. BNSF has the right at any time to revise or change the work windows, due to train operations or service obligations. BNSF will not be responsible for any additional costs and expenses resulting from a change in work windows. Additional costs and expenses resulting from a change in work windows shall be accounted for in the contractor's expenses for the Project.

15. Agency must advise the appropriate BNSF Manager 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 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 INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF BNSF.

ARTICLE IV – JOINT OBLIGATIONS

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

1. All work contemplated in this Agreement must be performed in a good and workmanlike manner and each portion must be promptly commenced by the party obligated hereunder to perform the same and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications during construction which affect BNSF will be subject to BNSF's approval prior to the commencement of any such changes or modifications.
2. The work hereunder must be done in accordance with the Exhibit A and the detailed plans and specifications approved by BNSF.
3. Agency must require its contractor(s) to reasonably adhere to the Project's construction schedule for all Project work. The parties hereto mutually agree that BNSF's failure to complete the railroad work in accordance with the construction schedule due to inclement weather or unforeseen railroad emergencies will not constitute a breach of this Agreement by BNSF and will not subject BNSF to any liability. Regardless of the requirements of the construction schedule, BNSF reserves the right to reallocate the labor forces assigned to complete the railroad work in the event of an emergency to provide for the immediate restoration of railroad operations (BNSF or its related railroads) or to protect persons or property on or near any BNSF owned property. BNSF will not be liable for any additional costs or expenses resulting from any such reallocation of its labor forces. The parties mutually agree that any reallocation of labor forces by BNSF pursuant to this provision and any direct or indirect consequences or costs resulting from any such reallocation will not constitute a breach of this Agreement by BNSF.
4. BNSF will have the right to stop construction work on the Project if any of the following events take place: (i) Agency (or any of its contractors) performs the Project work in a manner contrary to the plans and specifications approved by BNSF; (ii) Agency (or any of its contractors), in BNSF's opinion, prosecutes the Project work in a manner which is hazardous to BNSF property, facilities or the safe and expeditious movement of railroad traffic; or (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project. The work stoppage will continue until all necessary actions are taken by Agency or its contractor to rectify the situation to the satisfaction of BNSF's Division Engineer or until additional insurance has been delivered to and accepted by BNSF. Any such work stoppage under this provision will not give rise to any liability on the part of BNSF. BNSF's right to stop the work is in addition to any other rights BNSF may have including, but not limited to, actions or suits for damages or lost profits. In the event that BNSF desires to stop construction work on the Project, BNSF agrees to immediately notify the following individual in writing:

R. Alan Shubert, P.E.
City Engineer
2 Civic Center, 4th Floor
El Paso, TX 79901
(915) 541-4200

5. Agency must supervise and inspect the operations of all Agency contractors to assure compliance with the plans and specifications approved by BNSF, the terms of this Agreement and all safety requirements of the BNSF railroad. If BNSF determines that proper supervision and inspection is not being performed by Agency personnel at any time during construction of the Project, BNSF has the right to stop construction (within or adjacent to its operating right-of-way). Construction of the Project will not proceed until Agency corrects the situation to BNSF's reasonable satisfaction. If BNSF feels the situation is not being corrected in an expeditious manner, BNSF will immediately notify Agency's Project Representative R. Alan Shubert for appropriate corrective action.

6. Pursuant to this section and Article II, Section 6 herein, Agency must, out of funds made available to it for the construction of the Project", reimburse BNSF in full for the **actual costs** of all work performed by BNSF under this Agreement.

7. All expenses detailed in statements sent to Agency pursuant to Article II, Section 6 herein will comply with the terms and provisions of the Federal Aid Highway Program Manual, U.S. Department of Transportation, as amended from time to time, which manual is hereby incorporated into and made a part of this Agreement by reference. The parties mutually agree that BNSF's preliminary engineering, design, and contract preparation costs described in Article II, Section 2 herein are part of the costs of the Project even though such work may have preceded the date of this Agreement.

8. The construction of the Project will not commence until Agency gives BNSF's Manager Public Projects thirty (30) days prior written notice of such commencement. The commencement notice will reference BNSF's file number 019776 and D.O.T. Crossing No. 019776V and must state the time that construction activities will begin.

9. In addition to the terms and conditions set forth elsewhere in this Agreement, BNSF and the Agency agree to the following terms upon completion of construction of the Project:

- (a) Agency will own and be fully responsible for repairs, maintenance, future construction or reconstruction of the Mulberry Street roadway.
- (b) Agency will maintain the elevation of the Redd Road roadway approaches to match the elevation on the railroad track crossing surfaces and to be no more than three (3) inches above or six (6) inches below top-of-rail elevation at a distance measured thirty (30) feet from the nearest rail.
- (c) Agency will maintain the advanced railroad crossing warning signs and pavement markings and agrees to hold harmless and indemnify BNSF for any claims, damages or losses, in whole or in part, caused by or due to the Agency's failure to maintain the advanced warning signs and markings or other requirements of the MUTCD.
- (d) Agency will do nothing and permit nothing to be done in the maintenance of the Redd Road roadway, which will interfere with or endanger facilities of BNSF.
- (e) 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.
- (f) BNSF will, at its sole cost and expense, operate and maintain the Crossing Signal Equipment, Crossing Signal Control House, and the new crossing surfaces, from end-of-tie to end-of-tie, in proper condition.
- (g) Notwithstanding the preceding provision, if any regulations, ordinances, acts, rules or other laws subsequently passed or amended by the Agency or any other governmental or legislative authority increase the Agency's portion of maintenance cost under this Agreement, BNSF will receive the benefit of any such regulations, ordinances, acts, rules or other laws and the Agency's increased portion of maintenance costs will be incorporated into and made a part of this Agreement.

- (h) If a railway or highway improvement project necessitates rearrangement, relocation, or alteration of the Crossing Signal Equipment, Crossing Signal House, or the new crossing surface installed hereunder, the costs for such rearrangement, relocation or alteration will be the responsibility of the party requesting such changes.
- (i) INTENTIONALLY LEFT BLANK.
- (j) If the Crossing Signal Equipment and/or Crossing Signal House installed hereunder cannot, through age, be maintained, or by virtue of its obsolescence, requires replacement, the cost of installation of the new crossing signal equipment and/or new crossing signal house will be negotiated by the parties hereto on the basis of the current Federal Aid Railroad Signal Program participation and applicable Agency at the time of such replacement is warranted.
- (k) BNSF will operate and maintain, at its expense, the necessary relays and other materials required to preempt the highway traffic control signals with the grade crossing warning devices.
- (l) BNSF will operate and maintain, at its expense, the railroad crossing warning devices up to the contact terminals in the interface box.
- (m) Agency will own, operate and maintain, at its expense, the highway traffic control signals up to and including connection to the contact terminals in the interface box including all necessary cable and conduit.

10. Agency must notify and obtain prior authorization from BNSF's Manager of Public Projects before entering BNSF's right-of-way for **Inspection and 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.

11. Any books, papers, records and accounts of the parties hereto relating to the work hereunder or the costs or expenses for labor and material connected with the construction will at all reasonable times be open to inspection and audit by the agents and authorized representatives of the parties hereto, as well as the State of Texas and the Federal Highway Administration, for a period of one (1) year from the date of the final BNSF invoice under this Agreement.

12. 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.

13. In the event construction of the Project does not commence within twelve (12) months of the Effective Date, this Agreement will become null and void.

14. 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.

15. 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.

16. 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.

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

BNSF Railway Company:

Manager Public Projects
5800 North Main Street
Saginaw, Texas 76179

Agency:

City Manager
2 Civic Center, 4th Floor
El Paso, TX 79901

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: Robert Boileau

Title: AVP – Engineering Services

AGENCY

CITY OF EL PASO, TEXAS

By: _____

Printed Name: Joyce Wilson

Title: City Manager

WITNESS:

Grade Crossing Construction and Maintenance Agreement for Redd Road,
BNSF Railway Company and City of El Paso
Page 11

CITY OF EL PASO

Joyce Wilson, City Manager

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Mark Shoosmith
Mark Shoosmith
Assistant City Attorney

APPROVED AS TO CONTENT:

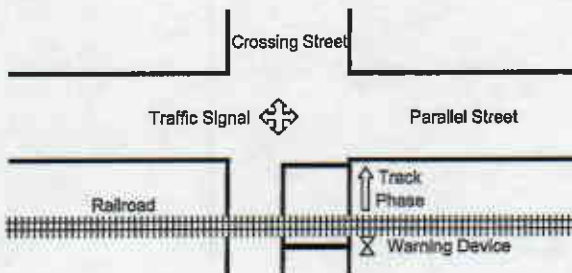
R. Alan Shubert, P.E.
for R. Alan Shubert, P.E.
City Engineer



Texas Department of Transportation
GUIDE FOR DETERMINING TIME REQUIREMENTS FOR
TRAFFIC SIGNAL PREEMPTION AT HIGHWAY-RAIL GRADE CROSSINGS

City EL PASO
 County EL PASO
 District _____

Date 07/08/09
 Completed by Ted Marquez, P.E. *CM*
 District Approval _____



Parallel Street Name

Doniphan

Crossing Street Name

Redd Rd.

Railroad _____
 Crossing DOT# _____

Railroad Contact Tim Huya
 Phone (817) 352-2902

SECTION 1: RIGHT-OF-WAY TRANSFER TIME CALCULATION**Preempt verification and response time**

1. Preempt delay time (seconds) 1.
2. Controller response time to preempt (seconds) 2.
3. Preempt verification and response time (seconds): add lines 1 and 2 3.

RemarksController type: 170**Worst-case conflicting vehicle time**

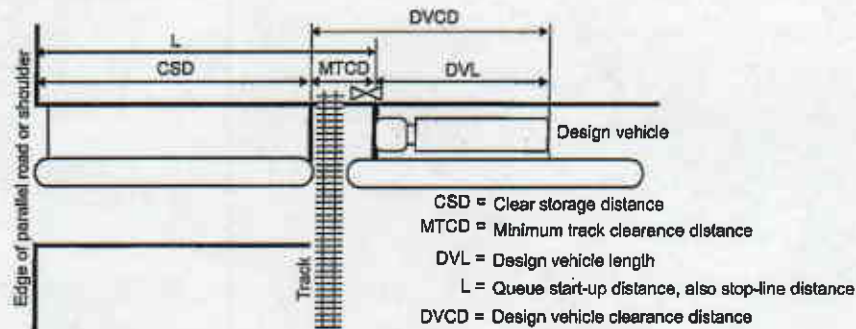
4. Worst-case conflicting vehicle phase number 4.
5. Minimum green time during right-of-way transfer (seconds) 5.
6. Other green time during right-of-way transfer (seconds) 6.
7. Yellow change time (seconds) 7.
8. Red clearance time (seconds) 8.
9. Worst-case conflicting vehicle time (seconds): add lines 5 through 8 9.

Remarksgreen terminates at pre-
emption.**Worst-case conflicting pedestrian time**

10. Worst-case conflicting pedestrian phase number 10.
11. Minimum walk time during right-of-way transfer (seconds) 11.
12. Pedestrian clearance time during right-of-way transfer (seconds) 12.
13. Vehicle yellow change time, if not included on line 12 (seconds) 13.
14. Vehicle red clearance time, if not included on line 12 (seconds) 14.
15. Worst-case conflicting pedestrian time (seconds): add lines 11 through 14 15.

Remarksnone**Worst-case conflicting vehicle or pedestrian time**

16. Worst-case conflicting vehicle or pedestrian time (seconds): maximum of lines 9 and 15 16.
17. Right-of-way transfer time (seconds): add lines 3 and 16 17.

SECTION 2: QUEUE CLEARANCE TIME CALCULATION

		Remarks	
18. Clear storage distance (CSD, feet)	18. <table border="1" style="display: inline-table;"><tr><td>45</td></tr></table>	45	
45			
19. Minimum track clearance distance (MTCD, feet)	19. <table border="1" style="display: inline-table;"><tr><td>34</td></tr></table>	34	
34			
20. Design vehicle length (DVL, feet)	20. <table border="1" style="display: inline-table;"><tr><td>45</td></tr></table>	45	Design vehicle type: <u>Large School Bus</u>
45			
21. Queue start-up distance, L (feet): add lines 18 and 19	21. <table border="1" style="display: inline-table;"><tr><td>79</td></tr></table>	79	
79			
22. Time required for design vehicle to start moving (seconds): calculate as $2+(L \div 20)$	22. <table border="1" style="display: inline-table;"><tr><td>6.0</td></tr></table>	6.0	Remarks
6.0			
23. Design vehicle clearance distance, DVCD (feet): add lines 19 and 20	23. <table border="1" style="display: inline-table;"><tr><td>79</td></tr></table>	79	
79			
24. Time for design vehicle to accelerate through the DVCD (seconds)	24. <table border="1" style="display: inline-table;"><tr><td>7.9</td></tr></table>	7.9	Read from Figure 2 in instructions.
7.9			
25. Queue clearance time (seconds): add lines 22 and 24	25. <table border="1" style="display: inline-table;"><tr><td>13.9</td></tr></table>	13.9	
13.9			

SECTION 3: MAXIMUM PREEMPTION TIME CALCULATION

		Remarks	
26. Right-of-way transfer time (seconds): line 17	26. <table border="1" style="display: inline-table;"><tr><td>6.0</td></tr></table>	6.0	
6.0			
27. Queue clearance time (seconds): line 25	27. <table border="1" style="display: inline-table;"><tr><td>13.9</td></tr></table>	13.9	
13.9			
28. Desired minimum separation time (seconds)	28. <table border="1" style="display: inline-table;"><tr><td>4.0</td></tr></table>	4.0	
4.0			
29. Maximum preemption time (seconds): add lines 26 through 28	29. <table border="1" style="display: inline-table;"><tr><td>23.9</td></tr></table>	23.9	
23.9			

SECTION 4: SUFFICIENT WARNING TIME CHECK

		Remarks	
30. Required minimum time, MT (seconds): per regulations	30. <table border="1" style="display: inline-table;"><tr><td>20.0</td></tr></table>	20.0	
20.0			
31. Clearance time, CT (seconds): get from railroad	31. <table border="1" style="display: inline-table;"><tr><td>0.0</td></tr></table>	0.0	
0.0			
32. Minimum warning time, MWT (seconds): add lines 30 and 31	32. <table border="1" style="display: inline-table;"><tr><td>20.0</td></tr></table>	20.0	Excludes buffer time (BT)
20.0			
33. Advance preemption time, APT, if provided (seconds): get from railroad ..	33. <table border="1" style="display: inline-table;"><tr><td>0.0</td></tr></table>	0.0	
0.0			
34. Warning time provided by the railroad (seconds): add lines 32 and 33	34. <table border="1" style="display: inline-table;"><tr><td>20.0</td></tr></table>	20.0	
20.0			
35. Additional warning time required from railroad (seconds): subtract line 34 from line 29, round up to nearest full second, enter 0 if less than 0	35. <table border="1" style="display: inline-table;"><tr><td>4</td></tr></table>	4	
4			

If the additional warning time required (line 35) is greater than zero, additional warning time has to be requested from the railroad. Alternatively, the maximum preemption time (line 29) may be decreased after performing an engineering study to investigate the possibility of reducing the values on lines 1, 5, 6, 7, 8, 11, 12, 13 and 14.

Remarks: _____



Has Form been revised for this request?

☒ YES, Revision Date: 7/08/09☐ NO

HIGHWAY-RAIL GRADE CROSSING TRAFFIC SIGNAL PREEMPTION REQUEST FORM

The Road Authority traffic controller circuitry requires railroad preemption contacts to initiate the preemption sequence. Per BNSF standard, we will provide normally closed "dry" preemption relay contacts to interconnect the railroad active warning system to the Road Authority traffic signal controller assembly. These contacts are rated at 4 amps. With no trains in the area, these contacts remain closed. The Road Authority Traffic Department will be responsible for installing the interconnection cable between the traffic signal controller and the crossing warning signal control housing. If exit gates are utilized, the Road Authority Traffic Department will be responsible for installing and maintaining the "in pavement" vehicle detection loops from the street to the cable junction box.

To estimate and or design the crossing warning system, BNSF needs to know certain timing parameters.

Definitions:

"Advance Preemption" – The system will be designed to open the preemption contacts for a predetermined amount of time (Advance Preemption Time) prior to activation of the warning devices (flashing lights).

"Simultaneous Preemption" – The system will be designed to open the preemption contact at the same time the warning devices (flashing lights) are activated.

"Gate Down Logic" – Per BNSF standard, we will provide normally open "dry" gate down relay contacts to interconnect the crossing warning system to the Road Authority traffic signal controller assembly. These contacts are rated at 4 amps. The system will be designed to close the gate down contacts upon the gates arrival in the down position. This logic is normally utilized to hold track clearance green until the gates are down since the time from preemption to gate down will vary depending upon the traffic signal cycle.

"Minimum Warning Time" – Per the MUTCD and FRA regulations, BNSF must provide at least 20 seconds of warning time for through trains (typically main track applications). However, per BNSF standards for constant warning time train detection equipment, the system will be designed to provide a "nominal" warning time of 30 seconds to ensure MUTCD/FRA minimums are met and to compensate for accelerating trains and ballast conditions.

"Minimum Track Clearance Distance" – For standard two-quadrant railroad warning devices, the minimum track clearance distance is the length along a highway at one or more railroad tracks, measured either from the railroad stop line, warning device or 12 ft. perpendicular to the far rail, along the centerline or edge line of the highway, as appropriate, to obtain the longer distance. For locations with exit gate warning devices, the minimum track clearance distance is the length along a highway at one or more railroad tracks, measured either from the railroad stop line or entrance warning device to the point clear of the exit gate. Note that in cases where the exit gate arm is parallel to the track(s) and/or not perpendicular to the roadway, clearance will be either along the centerline or edge line of the highway, as appropriate, to obtain the longer distance.

When (entrance) gates are used they are typically designed to start their decent within 3 to 5 seconds of the warning lights flashing, descend in an additional 10 to 15 seconds, and reach horizontal at least 5 seconds prior to train arrival per FRA regulations.

The length of the railroad's control circuit approach distance is directly related to the amount of requested "Advanced Preemption Time" (APT). Typically, the longer the APT requirement is, the longer the approach distance, and thus the more control equipment that will be required.

With the above items in mind, please provide the following information to help us process your request:

Date: 7/08/09

Request by (name/title): Ted Marquez, P.E.

Crossing Street Name: Redd

DOT #: _____

Parallel Street Name: Doniphan

District: _____

City: El Paso

County: El Paso

State: TX

Traffic Engineer: Ted Marquez, P.E.

Phone: 9155414050

E-mail: _____

- 1) Is this request for Simultaneous Preemption? ☐ YES ☒ NO
- 2) Is this request for Advanced Preemption? ☒ YES ☐ NO
If "Yes" what is your requested Advanced Preemption Time? 4 Seconds.
- 3) Will this location utilize exit gates? ☐ YES ☒ NO

The following questions should be completed if this location utilizes exit gates:

The exit gate arm(s) shall operate in one of the following modes of operation known as the EGOM (exit gate operating mode):

a. Dynamic EGOM – A mode of operation where exit gate operation is based on presence of vehicles within minimum track clearance distance (MTCD).

1) The exit gate arm(s) shall be designed to start downward motion after the vehicle detection system indicates no vehicles are located within the MTCD and any (optional) exit gate clearance time has completed timing. Note that the entrance gate arm(s) and the exit gate arm(s) may start downward motion almost simultaneously if no vehicles are located within the MTCD.

b. Timed EGOM – A mode of operation where exit gate operation is based on a predetermined time interval. This mode may be used if the vehicle detection system (Dynamic EGOM) is unhealthy.

1) The exit gate arm(s) shall be designed to start downward motion a predetermined number of seconds after the entrance gate arm(s) start downward motion. Note that the entrance gate arms(s) may or may not be fully horizontal at the time the exit gate arm(s) start downward motion. This timed value is known as the exit gate clearance time (EGCT).

- 1) The BNSF standard is to use Dynamic EGOM and revert to Timed EGOM if the vehicle detection system is unhealthy. Is this operation acceptable? ☐ YES ☐ NO
- 2) When operating in "Dynamic" exit gate operating mode, how much exit gate clearance time (optional) do you request?
_____ seconds.
- 3) When operating in "Timed" exit gate operating mode how much exit gate clearance time do you request?
_____ seconds.

Comments:

Please contact the BNSF Signal Engineering office at (913) 551- 4642 with any questions or possible changes to the above requirements.

EXHIBIT "C-1"

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

BNSF RAILWAY COMPANY
Attention: Manager Public Projects

Railway File: 019776
Agency Project: Redd Road (DOT No. 019776V) – reconstruct roadway approaches

Gentlemen:

The undersigned (hereinafter called, the "Contractor"), has entered into a contract (the "Contract") dated , 200 , with the **City of El Paso** for the performance of certain work in connection with the following project: **Redd Road – reconstruct roadway approaches**. Performance of such work will necessarily require contractor to enter BNSF RAILWAY COMPANY ("Railway") right of way and property ("Railway Property"). The Contract provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for the **City of El Paso** (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

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

Section 1. RELEASE OF LIABILITY AND INDEMNITY

Contractor hereby waives, releases, indemnifies, defends and holds harmless Railway for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about Railway's property or right-of-way. **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**

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

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all claims made against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or

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

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

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

Section 2. TERM

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

Section 3. INSURANCE

Contractor must, 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 must contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$4,000,000. Coverage must be purchased on a post 1998 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 must also contain the following endorsements, which must be indicated on the certificate of insurance:

- ◆ It is agreed that any workers' compensation exclusion does not apply to **Railroad** payments related to the Federal Employers Liability Act or a **Railroad** Wage Continuation Program or similar programs and any payments made are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law.
- ◆ The definition of insured contract must be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Any exclusions related to the explosion, collapse and underground hazards must be removed.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy.

B. Business Automobile Insurance. This insurance must 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

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.

D. Railroad Protective Liability insurance naming only the **Railroad** as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 10 93 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
- ◆ Endorsed to remove any exclusion for punitive damages.
- ◆ No other endorsements restricting coverage may be added.
- ◆ The original policy must be provided to the **Railroad** prior to performing any work or services under this Agreement

Other Requirements:

All policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

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

Contractor's insurance policies through policy endorsement, must include wording which states that the policy is primary and non-contributing with respect to any insurance carried by **Railroad**. The certificate of insurance must reflect that the above wording is included in evidenced policies.

All policy(ies) required above (excluding Workers Compensation and if applicable, Railroad Protective) must include a severability of interest endorsement and **Railroad** must be named as an additional insured with respect to work performed under this agreement. Severability of interest and naming **Railroad** as additional insured must be indicated on the certificate of insurance.

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

Prior to commencing the Work, contractor must furnish to **Railroad** an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify **Railroad** in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision must be indicated on the certificate of insurance. Upon request from **Railroad**, a certified duplicate original of any required policy must be furnished. Contractor should send the certificate(s) to the following address:

Ebix BPO
PO Box 12010-BN
Hemet, CA 92546-8010
Fax number: 951-766-2299

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

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

Not more frequently than once every five years, **Railroad** 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 must require that the subcontractor provide and maintain the insurance coverages set forth herein, naming **Railroad** as an additional insured, and requiring that the subcontractor release, defend and indemnify **Railroad** to the same extent and under the same terms and conditions as contractor is required to release, defend and indemnify **Railroad** herein.

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

The fact that insurance (including, without limitation, self-insurance) is obtained by contractor will 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 **Railroad** will not be limited by the amount of the required insurance coverage.

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

Section 4. EXHIBIT "C" CONTRACTOR REQUIREMENTS

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

Section 5. TRAIN DELAY

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

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

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

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. Damages for train delay are currently \$382.20 per hour per incident. **THE RATE THEN IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF TRAIN DELAY PURSUANT TO THIS AGREEMENT.**

Contractor and its subcontractors must give Railway's Roadmaster 4 weeks advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.

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

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

(Contractor)

BNSF Railway Company

By: _____

By: _____

Printed Name: _____

Name: _____

Manager Public Projects

Title: _____

Contact Person: _____

Accepted and effective this ____ day
of _____ 2009.

Address: _____

City: _____ State: ____ Zip: ____

Fax: _____

Phone: _____

E-mail: _____

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 reconstruction of Redd Road (DOT No. 019776V) at railroad milepost 1146.10 in El Paso, Texas.
- **1.01.02** The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit "C-1" Agreement, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit "C-1". Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to Rosa Martinez at Marsh, USA, 214-303-8519.
- **1.01.03** The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.
- **1.01.04** The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations. Railway will have the right to stop construction work on the Project if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the Project work in a manner which is hazardous to Railway property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Contractor fails to pay Railway for the Temporary Construction License or the Easement. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer or until additional insurance has been delivered to and accepted by Railway. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, Railway may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of Railway. Railway's right to stop the work is in addition to any other rights Railway may have including, but not limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop construction work on the Project, Railway agrees to immediately notify the following individual in writing:

R. Alan Shubert, P.E.
City Engineer
City of El Paso
2 Civic Center, 4th Floor
El Paso, Texas 79901
- **1.01.05** The Contractor is responsible for determining and complying with all Federal, State and Local Governmental laws and regulations, including, but not limited to environmental laws and regulations (including but not limited to the Resource Conservation and Recovery Act, as amended; the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA), and health and safety laws and regulations. The Contractor hereby indemnifies, defends and holds harmless Railway for, from and against all fines or penalties imposed or assessed by Federal, State and Local Governmental Agencies against the Railway which arise out of Contractor's work under this Agreement.

- **1.01.06** The Contractor must notify the City of El Paso at (915) 541-4200 and Railway's Manager Public Projects, telephone number **817-352-2902** at least thirty (30) calendar days before commencing any work on Railway Property. Contractor's notification to the Railway, must refer to Railroad's file 019776.
- **1.01.07** For any bridge demolition and/or falsework above any tracks or any excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin work until notified by the Railway that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.
- **1.01.08** Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

1.02 Contractor Safety Orientation

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

1.03 Railway Requirements

- **1.03.01** The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Agency.
- **1.03.02** The Contractor must notify the Railway's Division General Manager at 505-864-4988 and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.
- **1.03.03** The Contractor must abide by the following temporary clearances during construction:
 - 15' Horizontally from centerline of nearest track

- 21'-6" Vertically above top of rail
 - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
 - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
 - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
 - 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts
- **1.03.04** Upon completion of construction, the following clearances shall be maintained:
 - 25' Horizontally from centerline of nearest track
 - 23'-3 1/2" 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 City of El Paso and must not be undertaken until approved in writing by the Railway, and until the City of El Paso 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 City of El Paso for approval before work is undertaken and this work must not be undertaken until approved by the Railway.
 - **1.03.08** At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across the Railways tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed and, at the completion of the project, removed at the expense of the Contractor.
 - **1.03.09** Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor must immediately notify the Railway's Resource Operations Center at 1(800) 832-5452, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.
 - **1.03.10** The Contractor upon completion of the work covered by this contract, must promptly remove from the Railway's Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said property by said Contractor or any Subcontractor, employee or agent of Contractor or of any Subcontractor, and must cause Railway's Property to be left in a condition acceptable to the Railway's representative.

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

- **1.04.01** Each Contractor that will perform work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway Project Representative to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site www.contractororientation.com, 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.

- Contractor shall have a background investigation performed on all of its employees, subcontractors and agents who will be performing any services on railroad property under this Agreement.

The background screening shall at a minimum meet the criteria defined by the e-RAILSAFE program outlined at <http://www.e-railsafe.com> in addition to any other applicable regulatory requirements. The e-RAILSAFE program uses rail industry background screening standards.

Contractor shall obtain consent from all employees screened in compliance with the e-RAILSAFE program criteria to release completed background information to BNSF. Contractor shall be subject to periodic audit to ensure compliance.

Contractor shall not permit any of its employees, subcontractors or agents to perform services on property hereunder who are not approved under e-RAILSAFE program standards. Railroad shall have the right to deny entry onto its premises 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 for the e-RAILSAFE program or who pose a threat, in Railroad's reasonable opinion, to the safety or security of Railroad's operations.

Contractors shall ensure its employees, subcontractors and agents are United States citizens or legally working in this country under a work VISA.

1.05 Railway Flagger Services:

- **1.05.01** The Contractor must give Railway's Roadmaster at 915-534-2366 (office #) or 915-892-3400 (cell #) a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.
- **1.05.02** Unless determined otherwise by Railway's Project Representative, Railway flagger will be required and furnished when Contractor's work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:
 - **1.05.02a** When, upon inspection by Railway's Representative, other conditions warrant.
 - **1.05.02b** When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.
 - **1.05.02c** When work in any way interferes with the safe operation of trains at timetable speeds.
 - **1.05.02d** When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.
 - **1.05.02e** Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.
- **1.05.03** Flagging services will be performed by qualified Railway flaggers.
- **1.05.03a** Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railways Representative.

- **1.05.03b** Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.
- **1.05.03c** The cost of flagger services provided by the Railway will be borne by the CITY OF EL PASO. The estimated cost for one (1) flagger is approximately \$800.00 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 7 freight trains per 24-hour period at a timetable speed 49 MPH and no passenger trains.

1.06 Contractor General Safety Requirements

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

- **1.06.08** All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, www.contractororientation.com, 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 Railroad's representative in charge of the project is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **(NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**
- **1.06.09 THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF THE SAME WILL OBSTRUCT THE VIEW OF A TRAIN APPROACHING THE CROSSING. PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE AREA WITH CONCURRENCE OF THE RAILROAD'S REPRESENTATIVE.**
- **1.06.10** Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway's Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)
- **1.06.11** Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any work performed over water must meet all Federal, State and Local regulations.
- **1.06.12** All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

1.07 Excavation

- **1.07.01** Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor must determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact **BNSF's Roadmaster at 915-534-2366 and BNSF's Signal-Construction Supervisor at 505-767-6828**. All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. **It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.**
- **1.07.02** The Contractor must cease all work and notify the Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.
- **1.07.03** All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of

depth, must be shored where there is any danger to tracks, structures or personnel.

- **1.07.04** Any excavations, holes or trenches on the Railway's Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

1.08 Hazardous Waste, Substances and Material Reporting

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

1.09 Personal Injury Reporting

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

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 IS NOT INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY.

1. Accident City/St _____
County: _____
(if non-Railway location)
2. Date: _____ Time: _____
3. Temperature: _____
4. Weather _____
5. Social Security # _____
6. Name (last, first, mi) _____
7. Address: Street: _____ City: _____ St. _____ Zip: _____
8. Date of Birth: _____ and/or Age _____ Gender: _____
(if available)
9. (a) Injury: _____ (b) Body Part: _____
(i.e. (a) Laceration (b) Hand)
11. Description of Accident (To include location, action, result, etc.): _____
12. Treatment:
 ? First Aid Only
 ? Required Medical Treatment
 ? Other Medical Treatment
13. Dr. Name _____ 30. Date: _____
14. Dr. Address:
 Street: _____ City: _____ St: _____ Zip: _____
15. Hospital Name: _____
16. Hospital Address:
 Street: _____ City: _____ St: _____ Zip: _____
17. Diagnosis: _____

**FAX TO
RAILWAY AT (817) 352-7595
AND COPY TO
RAILWAY ROADMASTER FAX 915-534-2316
RAILWAY MANAGER PUBLIC PROJECTS FAX (817) 352-2912**

EXHIBIT D - CROSSING SURFACE COST ESTIMATE

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

BNSF RAILWAY COMPANY
FHPM ESTIMATE FOR
CITY OF EL PASO

LOCATION WEST MONTOYA	DETAILS OF ESTIMATE	PLAN ITEM : PTR019776V	VERSION : 1
PURPOSE, JUSTIFICATION AND DESCRIPTION			

PIP - REDD ROAD, ELPASO, TX - RENEW EXISTING 64'
DESCRIPTION OF PROJECT AS PROVIDED BY PROJECT ENGINEER DTD
GRADE CROSSING WITH A 128' - 136# CONCRETE CROSSING DUE TO ROAD WIDENING PROJECT
BY THE CITY OF EL PASO.
LS 7300 - MP 1146.1 - REDD ROAD
ELPASO SUBDIVISION - SOUTHWEST EAST DIVISION
BILLING FOR THIS PROJECT SHOULD BE DIRECTED TO:
RDM MUNN - DE JACOBSON
100% BILLABLE TO THE CITY OF EL PASO, TX
MAINTAIN PROPRIETARY CONFIDENTIALITY
THE PHYSICAL LIMITS OF THIS PROJECT ARE DESCRIBED BY LINE SEGMENT, MILE POST RANGES, AND IN SOME CASES TRACK
NUMBER. THIS IS THE PRIMARY AREA FOR THE PROJECT. THERE WILL BE CASES WHERE WORK MAY OCCUR BEYOND THE DEFINED
LIMITS.
PROJECTS THAT INCLUDE SIGNAL, ELECTRICAL, OR TELECOMMUNICATION EQUIPMENT MAY REQUIRE ACTIVITY BEYOND THESE
DEFINED TRACK LIMITS. ALL OR PORTIONS OF SOME PROJECTS MAY OCCUR IN AREAS WHERE NO MILEPOST SIGNS EXIST SUCH AS
YARDS.
THIS ESTIMATE IS GOOD FOR 90 DAYS. THEREAFTER THE ESTIMATE IS SUBJECT TO CHANGE IN COST FOR LABOR, MATERIAL, AND
OVERHEAD.

CITY OF EL PASO WILL PROVIDE TRAFFIC CONTROL FOR FULL ROAD
CLOSURE AND DO ALL ROADWAY APPROACH WORK

DESCRIPTION	QUANTITY U/M	COST	TOTAL \$
***** LABOR *****			
PLACE FIELD WELDS - CAP	120.0 MH	2,733	
REPLACE PUBLIC CROSSING - TOTAL REHAB	256.0 MH	5,211	
SIGNAL FIELD LABOR - CAP	40.0 MH	1,053	
SURFACE TRACK - REPLACEMENT - CAP	24.0 MH	565	
UNLOAD BALLAST - REPLACEMENT - CAP	18.0 MH	391	
UNLOAD CROSSING MATERIAL - PUBLIC - CAP	64.0 MH	1,303	
WORK TRAIN - BALLAST - REPLACEMENT - CAP	36.0 MH	1,596	
PAYROLL ASSOCIATED COSTS		8,849	
EQUIPMENT EXPENSES		3,670	
DA LABOR OVERHEADS		13,808	
INSURANCE EXPENSES		2,020	
TOTAL LABOR COST		41,199	41,199
***** MATERIAL *****			
ASPHALT IN PLACE PER TON	90.0 NT **	12,753	
BALLAST, PEDERNAL, NM (SWE, SWW)	300.0 NT **	2,211	
TRACK PANEL, 136 LB 40 FT- 10 FT TIES-PANDROL	5.0 EA **	24,365	
RAIL, TRANSN,BE,40 FT,136 - 1/4 WORN 132	4.0 EA	4,998	
WELDKIT, GENERIC FOR ALL RAIL WEIGHTS	16.0 KT	1,136	
CONC 136 08-SEC WITH FILLER FOR 10' WOOD TIES	128.0 FT	26,522	
CONCRETE XING RAMP AND PANEL RESTRAINT,	1.0 ST	257	
SIGNAL MATERIAL	5.0 DAY	750	
MATERIAL HANDLING		3,645	
ONLINE TRANSPORTATION		2,775	
OFFLINE TRANSPORTATION		704	
TOTAL MATERIAL COST		80,116	80,116
***** OTHER *****			
LEASED EQUIPMENT WITH OPERATOR	5.5 DAY	7,500	
TOTAL OTHER ITEMS COST		7,500	7,500
PROJECT SUBTOTAL			128,815
CONTINGENCIES			12,653
BILL PREPARATION FEE			1,456

GROSS PROJECT COST
LESS COST PAID BY BNSF
TOTAL BILLABLE COST

142,924
0

142,924

EXHIBIT D - RAILROAD CROSSING SIGNAL COST ESTIMATE

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

BNSF RAILWAY COMPANY
FHPM ESTIMATE FOR
CITY OF EL PASO

LOCATION	CANUTILLO TO WEST MONTOYA	DETAILS OF ESTIMATE	PLAN ITEM : 000155129	VERSION : 1
PURPOSE, JUSTIFICATION AND DESCRIPTION				

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

2009 PX INSTALL CONSTANT WARNING AND (1) CANTILEVER WITH (4) FLASHERS AND GATES AT REDD ROAD AND NEW CONSTANT WARNING SYSTEM AT W.GREEN AVE FOR ADVANCED PREEMPTION IN EL PASO, TX. SOUTHWEST DIV., EL PASO SUBDIV., L/S 7300, M.P. 1146.1, DOT # 019776V1
MONTHLY POWER UTILITY COST CENTER :

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

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

THE CITY OF EL PASO IS FUNDING THIS PROJECT 100%.

MAINTAIN PROPRIETARY CONFIDENTIALITY

DESCRIPTION	QUANTITY	U/M	COST	TOTAL \$

LABOR				

SIGNAL FIELD LABOR - CAP	1400.0	MH	36,484	
SIGNAL SHOP LABOR - CAP	160.0	MH	4,208	
PAYROLL ASSOCIATED COSTS			28,024	
EQUIPMENT EXPENSES			12,674	
DA LABOR OVERHEADS			43,726	
INSURANCE EXPENSES			6,404	
TOTAL LABOR COST			131,520	131,520

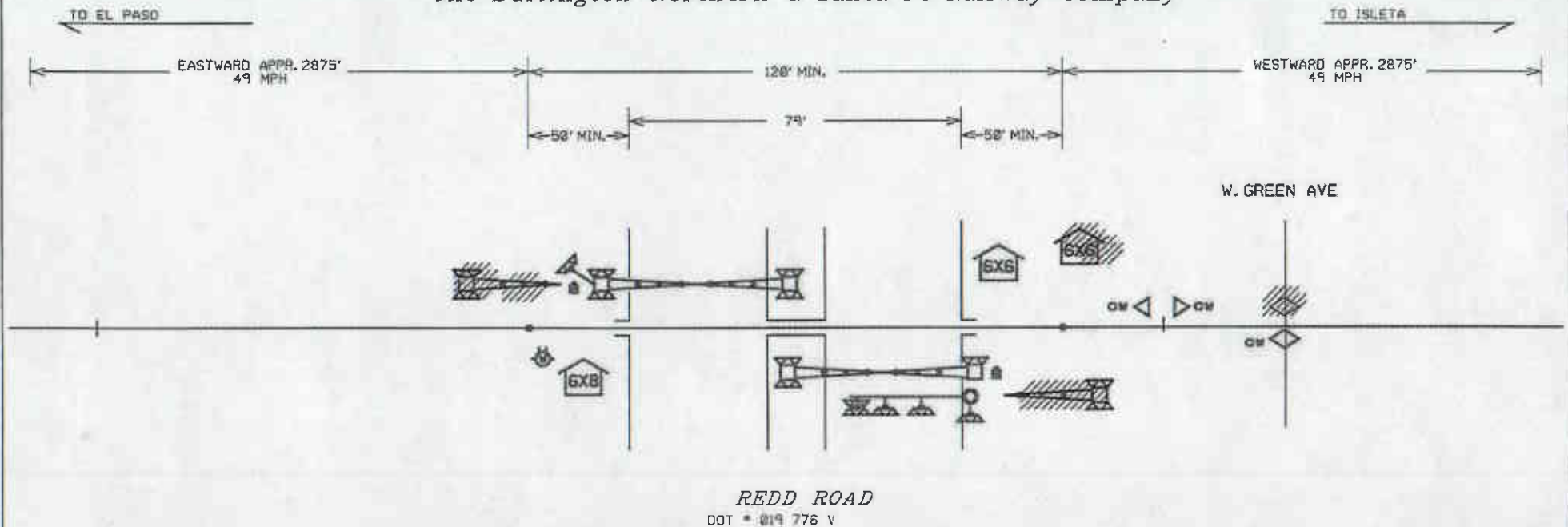
MATERIAL				

ADVANCED PRE-EMPTION PACKAGE	2.0	EA N	16,158	
BATTERY	1.0	EA N	9,597	
BUNGALOW 6X8	1.0	EA N	9,234	
BUNGALOW 6X8	1.0	EA N	9,234	
BUNGALOW MATERIAL	1.0	LS N	9,250	
CABLE	1.0	EA N	4,866	
CANTILEVER COMPLETE	1.0	EA N	17,000	
CHARGER	1.0	EA N	1,326	
CONDUIT, PVC 4", SCH 80	200.0	FT N	780	
CONSTANT WARNING	1.0	EA N	24,367	
CONSTANT WARNING FOR W. GREEN	1.0	EA N	18,980	
ELECTRICAL MTRL	1.0	EA	1,500	
FIELD MATERIAL	1.0	LS N	9,360	
FOUNDATION, STEEL	4.0	EA N	2,800	
GATE KEEPER	4.0	EA N	7,100	
GATE MECH	4.0	EA N	28,972	
LAMP RESISTOR	1.0	EA N	761	
LED LIGHT ADJUSTMENT	26.0	EA N	5,824	
LED LIGHT GATE KIT	4.0	EA N	1,464	
LIGHT OUT DETECTOR	2.0	EA N	1,412	
RECORDER	1.0	EA N	2,220	
SHUNT, NBS	2.0	EA N	1,696	
SIDELIGHT COMPLETE	1.0	EA N	775	
TELLULAR DEVICE	1.0	EA N	2,500	
MATERIAL HANDLING			75	
OFFLINE TRANSPORTATION			1,861	
TOTAL MATERIAL COST			189,112	189,112

OTHER				

AC SERVICE	1.0 EA N	5,000	
CONCRETE/FOUNDATION CANT.	1.0 LS N	2,000	
CONTRACT ENGR.	1.0 EA N	10,500	
CONTRACTED SIGNS	1.0 LS N	2,500	
SURFACE ROCK	20.0 CY N	500	
TOTAL OTHER ITEMS COST		20,500	20,500
PROJECT SUBTOTAL			341,132
CONTINGENCIES			0
BILL PREPARATION FEE			3,412
GROSS PROJECT COST			344,544
LESS COST PAID BY BNSF			0
TOTAL BILLABLE COST			344,544

The Burlington Northern & Santa Fe Railway Company











INSTALL: CANTILEVERS, GATES & FLASHERS

CONTROL DEVICES: CONSTANT WARNING

BOLD - IN

/// - OUT

SALVAGE: NONE

-  INSTRUMENT HOUSE
-  BELL
-  METER
-  CROSSING CONTROL CONNECTIONS
-  BIDIRECTIONAL CROSSING CONTROL
-  UNIDIRECTIONAL CROSSING CONTROL
-  COUPLER OR TERMINATION
-  GUARD RAIL

Warning device placement:

Clearance to C.L. Track = Min. 12'

Edge of Road to C.L. Foundation:

Min. 4'3" with curb.

Min. 8'3" without curb.

Max. 12'

House Clearance:

25' Min. to Near Rail

30' Min. to Edge of Road

ALL LIGHTS TO BE LED

EXHIBIT A - RAILROAD
CROSSING SIGNAL SKETCH

BNSF RAILWAY CO.

EL PASO, TX.

REDD ROAD.

LS: 7300

M.P. 1146.10

DOT # 019 776 V

DIVISION: SOUTHWEST

SUBDIVISION: EL PASO

KANSAS CITY

NO SCALE

DATE: 09/01/89

FILE: 7300b46 10.dgn

REC