Council Meeting of
July 7, 2009

Honorable Mayor and Members
of the City Council
City Hall
Torrance, California

Members of the Council:

SUBJECT: Public Works – Approve an Overpass Agreement for the Del Amo Blvd Extension, T-30. Expenditure: $1,132,913

RECOMMENDATION

Recommendation of the Public Works Director that City Council:

1. Approve an Overpass Agreement with the Burlington Northern and Santa Fe Railroad Company and the Los Angeles County Metropolitan Transportation Authority for the construction and maintenance of the Del Amo Blvd Extension, T-30; and

2. Authorize the Mayor and City Clerk to execute the Overpass Agreement and any and all other related documents for the Del Amo Blvd Extension, T-30, without further action by the City Council.

3. Authorize the expenditure of $1,132,913 for costs associated with the Overpass Agreement.

Funding

Funding is available from the Del Amo Boulevard Extension, T-30. It should be noted that over $812,000 (approximately 70%) will be paid using grant funds.

BACKGROUND AND ANALYSIS

The Los Angeles County Metropolitan Transportation Authority ("LACMTA") is the owner of right-of-way and track within the City of Torrance, currently known as the Harbor Subdivision of BNSF. A section of the Harbor Subdivision's right-of-way and track lies within the alignment of the proposed future section of Del Amo Boulevard between Maple Avenue and Crenshaw Boulevard.

Burlington Northern and Santa Fe Railroad Company ("BNSF") is also an owner of right-of-way and track that lies within the alignment of the proposed future section of Del Amo Boulevard. The BNSF right-of-way and track runs parallel to LACMTA's right-of-way and track.

The Del Amo Boulevard Extension, T-30 ("T-30 Project") includes construction of a bridge overpass (grade separation) that crosses over the rights-of-way and tracks for both LACMTA and BNSF. Accordingly, the City must acquire a temporary construction license

and permanent easements for construction. The Overpass Agreement provides for the acquisition of the temporary construction license and permanent easements for the City. The temporary construction license allows access to the rights-of-way for the construction and the associated cost is $99,241. The permanent easements will allow the bridge overpass to cross the respective rights-of-way and tracks after construction is completed and for any future maintenance. The cost for the permanent easements is $310,130. These costs are based on the value of the land and duration of construction.

Construction of the T-30 Project also requires BNSF to remove and relocate a portion of its Aluminum Spur track that currently lies parallel to the future roadway. BNSF will perform the work using their own forces. Their cost is $719,062 and includes flagging, inspection and all work associated with the relocation of the portion of the Aluminum Spur track. LACMTA's cost for inspection, plan review and supervision is estimated to be $4,480.

The combined total of all of BNSF's and LACMTA's costs is $1,132,913.

The proposed Overpass Agreement with LACMTA and BNSF establishes the terms and conditions of all parties for the granting of easements and relocation of a portion of the Aluminum Spur track. Staff and the City Attorney's office have reviewed the Overpass Agreement and recommend approval.

Staff is currently in progress of finalizing the last two agreements required for this project, as well as obtaining approval from the State of California for authorization to advertise the project for construction bids. Staff anticipates the T-30 Project will be advertised for bid in fall 2009.

Respectfully submitted,

ROBERT J. BESTE
Public Works Director

By Craig Bilezerian
Engineering Manager

Elizabeth Overstreet
Engineering Manager

CONCUR:

Robert J. Beste
Public Works Director

for LeRoy J. Jackson
City Manager

Attachments: A. Overpass Agreement

Attachment A

OVERPASS AGREEMENT

BNSF File No.924652S
Del Amo Boulevard Overpass
U.S. DOT No. 924652S
Harbor Subdivision, MP 20.16

This Agreement **("Agreement")**, is executed to be effective as of this _____ day of _____, 2009 **("Effective Date")**, by and between BNSF RAILWAY COMPANY, a Delaware corporation **("BNSF"), LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY** a body corporate and politic of the State of California, **("LACMTA")**, and the CITY OF Torrance, a political subdivision of the State of California **("Agency").**

RECITALS:

WHEREAS, LACMTA is the owner of a branch line railroad right of way, track and appurtenances known as the Harbor Subdivision in the City of Torrance, California over which BNSF has operating rights and maintenance obligations over that portion of said line between Mile Post 0.05 and Mile Post 26.36; and

WHEREAS, BNSF owns a right of way and track adjacent to LACMTA's ownership northwesterly and southeasterly of Mile Post 20.16; and

WHEREAS, Agency desires to construct a new crossing at separated grades to be known as the Del Amo Boulevard Overhead and designated as D.O.T. No. 924652S located at Harbor Subdivision M.P. 20.16 to carry Del Amo Boulevard over the Harbor Subdivision tracks of BNSF and LACMTA; and

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

ARTICLE I – SCOPE OF WORK

1. The term **"Project"** as used herein includes any and all work related to the construction of the proposed Del Amo Blvd Overpass (hereinafter referred to as the **"Structure"**), more particularly described on the Exhibit A attached hereto and incorporated herein, including, but not limited to, any and all changes to telephone, telegraph, signal and electrical lines and appurtenances, temporary and permanent track work, fencing, grading, alterations to or new construction of drainage facilities, preliminary and construction engineering and contract preparation. Additionally, temporary controls during construction must be in compliance with Section 8A-5, "Traffic Controls During Construction and Maintenance" of the Uniform Traffic Control Devices Manual, U.S. Department of Transportation.

ARTICLE II – BNSF OBLIGATIONS

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

1. BNSF hereby grants to Agency, its successors and assigns, upon and subject to the terms and conditions set forth in this Agreement, a temporary non-exclusive license (hereinafter called, "Temporary Construction License") to construct the Structure across or upon the portion of BNSF's right-of-way described further on Exhibit A, excepting and reserving BNSF's rights, and the rights of any others who have obtained, or may obtain, permission or authority from BNSF, to do the following:

(a) Operate, maintain, renew and/or relocate any and all existing railroad track or tracks, wires, pipelines and other facilities of like character upon, over or under the surface of said right-of-way;

(b) Construct, operate, maintain, renew and/or relocate upon said right-of-way, without limitation, such facilities as the BNSF may from time to time deem appropriate, provided such facilities do not materially interfere with the Agency's use of the Structure;

(c) Otherwise use or operate the right-of-way as BNSF may from time to time deem appropriate, provided such use or operations does not materially interfere with the Agency's use of the Structure.

(d) Require the Agency or its contractor to execute a Temporary Construction Crossing Agreement, for any temporary crossing requested to aid in the construction of this Project.

Prior to commencing any work on BNSF's property or right-of-way, Agency must pay BNSF the sum of ninety-nine thousand two-hundred forty-one and No/100 Dollars ($99,241.00) as compensation for the Temporary Construction License. The term of the Temporary Construction License begins thirty (30) calendar days following the Agency, or its contractor(s) notifying BNSF's Manager of Public Projects of its intent to commence work on BNSF property or near BNSF tracks, pursuant to Article III, Section 10 of this Agreement and ends on the earlier of (i) substantial completion of the Structure, or (ii) twenty-four (24) months following the Effective Date. The Temporary Construction License and related rights given by BNSF to Agency in this provision are without warranty of title of any kind, express or implied, and no covenant of warranty of title will be implied from the use of any word or words herein contained. The Temporary Construction License is for construction of the Structure only and shall not be used by Agency for any other purpose. Agency acknowledges and agrees that Agency shall not have the right, under the Temporary Construction License, to use the Structure. In the event Agency is evicted by anyone owning, or claiming title to or any interest in said right-of-way, BNSF will not be liable to Agency for any damages, losses or any expenses of any nature whatsoever. The granting of similar rights to others, subsequent to the date of this Agreement, will not impair or interfere with the rights granted to Agency herein.

Upon receiving the additional payment from Agency described in the subsequent sentence and provided Agency is in compliance with the terms and conditions of this Agreement, BNSF will grant to Agency, its successors and assigns, an easement (hereinafter called, the "Easement") to enter upon and use that portion of BNSF's right-of-way as is necessary to use and maintain the Structure, substantially in the form of Exhibit B attached to this Agreement. Agency must pay BNSF the sum of three-hundred ten thousand one-hundred thirty and No/100 Dollars ($310,130.00) as compensation for the Easement within thirty (30) days of issuing a Notice to Proceed pursuant to Article III, Section 19 of this Agreement. If Agency fails to pay BNSF within the thirty day time period set forth in the preceding sentence, BNSF may stop construction of the Project until full payment is received by BNSF.

2. BNSF will furnish all labor, materials, tools, and equipment for railroad work required for the construction of the Project, such railroad work and the estimated cost thereof being as shown on Exhibit D attached hereto and made a part hereof. In the event construction on the Project has not commenced within six (6) months following the Effective Date, BNSF may, in its sole and absolute discretion, revise the cost estimates set forth in said Exhibit D. In such event, the revised cost estimates will become a part of this Agreement as though originally set forth herein. Any item of work incidental to the items listed on Exhibit D not specifically mentioned therein may be included as a part of this Agreement upon written approval of Agency, which approval will not be unreasonably withheld. Construction of the Project must include the following railroad work by BNSF:

(a) Procurement of materials, equipment and supplies necessary for the railroad work;

(b) Preliminary engineering, design, and contract preparation;

(c) Furnishing 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) Construction of Aluminum Spur connection to the Harbor Subdivision within BNSF right-of-way and northern connection to the realigned Aluminum Spur;

(f) Providing a contract project coordinator, at Agency's expense, to serve as a project manager for the Project; and

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. 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.

5. 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 forty-five (45) days of the date of the invoice for such work. Upon completion of the Project, BNSF will send Agency a detailed invoice of final costs, segregated as to labor and materials for each item in the recapitulation shown on Exhibit D. Pursuant to this section and Article IV, Section 7 herein, Agency must pay the final invoice within ninety (90) days of the date of the final invoice. BNSF will assess a finance charge of .033% per day (12% per annum) on any unpaid sums or other charges due under this Agreement which are past its credit terms. The finance charge continues to accrue daily until the date payment is received by BNSF, not the date payment is made or the date postmarked on the payment. Finance charges will be assessed on delinquent sums and other charges as of the end of the month and will be reduced by amounts in dispute and any unposted payments received by the month's end. Finance charges will be noted on invoices sent to Agency under this section. **For purposes of computing the time limits prescribed by Section 911.2 of the California Government Code for the presentment of a claim against the Agency the cause of action for failure to reimburse BNSF for the costs of the Railroad work performed by it pursuant to this Agreement shall be deemed to have accrued one hundred and eighty (180) days of the date of the final invoice.**

ARTICLE III – AGENCY OBLIGATIONS

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

1. Agency must furnish to BNSF plans and specifications for the Project. Four sets of said plans (reduced size 11" x 17"), together with two copies of calculations, and two copies of specifications in **English Units**, must be submitted to BNSF for approval prior to commencement of any construction. BNSF will give Agency final written approval of the plans and specifications substantially in the form of Exhibit E, attached to this Agreement and made a part hereof. Upon BNSF's final written approval of the plans and specifications, said plans and specifications will become part of this Agreement and are hereby incorporated herein. Any approval of the plans and specifications by BNSF shall in no way obligate BNSF in any manner with respect to the finished product design and/or construction. Any approval by BNSF shall mean only that the plans and specifications meet the subjective standards of BNSF, and such approval by BNSF shall not be deemed to mean that the plans and specifications or construction is structurally sound and appropriate or that such plans and specifications meet applicable regulations, laws, statutes or local ordinances and/or building codes.

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

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

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

5. Agency must make any and all arrangements, in compliance with BNSF's Utility Accommodation Manual attached hereto as Exhibit H, for the installation or relocation of wire lines, pipe lines and other facilities owned by private persons, companies, corporations, political subdivisions or public utilities other than BNSF which may be necessary for the construction of the Project.

6. Agency must construct the Project as shown on the attached Exhibit A and do all work ("Agency's Work") provided for in the plans and specifications for the Project, except railroad work that will be performed by BNSF hereunder. Agency must furnish all labor, materials, tools and equipment for the performance of Agency's Work. The principal elements of Agency's Work are as follows:

(a) Construction of the Structure;

(b) All necessary grading and paving, including backfill of excavations and restoration of disturbed vegetation on BNSF's right-of-way;

(c) Provide suitable drainage, both temporary and permanent;

(d) Installation of a gate in the fence along the boundary of BNSF's right of way in order to provide BNSF with permanent access for maintenance purposes;

(e) Restrict pedestrian access during construction; Agency, or its contractors, must also install and maintain fencing which will prevent unauthorized access to the construction site.

(f) Installation and maintenance of an 8-ft. high fence and/or concrete combination (throw fence) on the outside barrier of the Structure;

(g) Job site cleanup including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials to the satisfaction of BNSF;

7. Agency must apply and maintain said D.O.T. Crossing number 924652S and Public Utility Commission Crossing number 002H-20.16-A in a conspicuous location on the Structure.

8. Agency's Work must be performed by Agency or Agency's contractor in a manner that will not endanger or interfere with the safe and timely operations of BNSF and its facilities.

9. For any future inspection or maintenance, either routine or otherwise, performed by subcontractors on behalf of the Agency, Agency shall require the subcontractors to execute the C documents. Prior to performing any future maintenance with its own personnel, Agency shall: comply with all of BNSF's applicable safety rules and regulations; require any Agency employee performing maintenance to complete the safety training program at the BNSF's Internet Website "contractororientation.com"; notify BNSF when, pursuant to the requirements of Exhibit C, a flagger is required to be present; procure, and have approved by BNSF's Risk Management Department, Railroad Protective Liability insurance.

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

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

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

(a) The Contractor is placed on notice that fiber optic, communication and other cable lines and systems (collectively, the "Lines") owned by various telecommunications companies may be buried on BNSF's property or right-of-way. The locations of these Lines have been included on the plans based on information from the telecommunications companies. The contractor will be responsible for contacting BNSF's Engineering Representative (Greg Rousseau 909-386-4079), BNSF's Signal Representative (Dennis Skeels 909-386-4053), and the telecommunications companies and notifying them of any work that may damage these Lines or facilities and/or interfere with their service. The contractor must also mark all Lines shown on the plans or marked in the field in order to verify their locations. The contractor must also use all reasonable methods when working in the BNSF right-of-way or on BNSF property to determine if any other Lines (fiber optic, cable, communication or otherwise) may exist.

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

(c) Failure to mark or identify these Lines will be sufficient cause for BNSF's engineering representative (Greg Rousseau 909-386-4079) to stop construction at no cost to the Agency or BNSF until these items are completed.

(d) In addition to the liability terms contained elsewhere in this Agreement, the contractor hereby indemnifies, defends and holds harmless BNSF for, from and against all cost, liability, and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of Contractor, its subcontractors, agents and/or employees that cause or in any way or degree contribute to (1) any damage to or destruction of any Lines by Contractor, and/or its subcontractors, agents and/or employees, on BNSF's property or within BNSF's right-of-way, (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on BNSF's property or within BNSF's right-of-way, and/or (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of such telecommunication company(ies).**THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY, DEATH, CAUSE OF ACTION OR CLAIM WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE WILLFUL MISCONDUCT OR SOLE NEGLIGENCE OF BNSF.**

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

14. Except as otherwise provided below in this Section 14, all construction work performed hereunder by Agency for the Project within the limits of BNSF's right of way 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-I, and (ii) delivered to and secured BNSF's approval of the required insurance; and

(d) To facilitate scheduling for the Project, Agency shall have its contractor give BNSF's representative (Greg Rousseau 909-386-4079) four (4) weeks advance notice of the proposed times and dates for work windows. BNSF and Agency's contractor will establish mutually agreeable work windows for the Project. BNSF has the right at any time to revise or change the work windows, due to train operations or service obligations. BNSF will not be responsible for any additional costs and expenses resulting from a change in work windows. Additional costs and expenses resulting from a change in work windows shall be accounted for in the contractor's expenses for the Project.

(e) The plans and specifications for the Project must be in compliance with the Bridge Requirements set forth on Exhibit F, attached to this Agreement and incorporated herein.

15. That, except as hereinafter otherwise provided, all work to be performed hereunder by AGENCY in the construction of the Project within the limits of BNSF's right of way will be performed pursuant to a contract or contracts to be let by AGENCY, and all such contracts shall provide:

(a) That all work performed thereunder, within the limits of LACMTA's right of way shall be performed in a good and workmanlike manner, and in accordance with plans and specifications approved by LACMTA. Those changes or modifications during construction that affect safety or railway operations shall also be subject to LACMTA's approval;

(b) That no work shall be commenced within LACMTA's right of way until each of the prime contractors employed in connection with said work shall have (i) executed and delivered to LACMTA a letter agreement in the form of Exhibit "I-1" and (ii) delivered to and secured LACMTA's separate approval of the required insurance by said Exhibit "I-1";

(c) That if, in AGENCY's opinion, it shall be for its 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, it may, in the manner provided by law, terminate the contractor's control over said work and take possession of all or any part thereof and proceed to complete the same by day labor or by employing another contractor(s), provided that all such contractor(s) shall be required to comply with the obligations in favor of LACMTA hereinabove set forth and, provided further, that if such construction is performed by day labor, AGENCY will, at its expense, procure and maintain on behalf of LACMTA the insurance required by Exhibit "I-1". Article 3, section 14

16. Agency must advise the appropriate BNSF Manager of Public Projects as well as LACMTA's Manager Third Party Coordination, in writing, of the completion date of the Project within thirty (30) days after such completion date. Additionally, Agency must notify BNSF's Manager of Public Projects as well

as LACMTA's Manager Third Party Coordination, in writing, of the date on which Agency and/or its Contractor will meet with BNSF and LACMTA for the purpose of making final inspection of the Project.

17. **TO THE FULLEST EXTENT PERMITTED BY LAW, AGENCY HEREBY RELEASES, INDEMNIFIES, DEFENDS AND HOLDS HARMLESS BNSF, ITS AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO) OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART) (I) THE USE, OCCUPANCY OR PRESENCE OF AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (II) THE PERFORMANCE, OR FAILURE TO PERFORM BY THE AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS, ITS WORK OR ANY OBLIGATION UNDER THIS AGREEMENT, (III) THE SOLE OR CONTRIBUTING ACTS OR OMISSIONS OF AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (IV) AGENCY'S BREACH OF THE TEMPORARY CONSTRUCTION LICENSE OR EASEMENT GRANTED TO AGENCY PURSUANT TO ARTICLE II OF THIS AGREEMENT, (V) ANY RIGHTS OR INTERESTS GRANTED TO AGENCY PURSUANT TO THE TEMPORARY CONSTRUCTION LICENSE OR EASEMENT DISCUSSED IN ARTICLE II OF THIS AGREEMENT, (VI) AGENCY'S OCCUPATION AND USE OF BNSF'S PROPERTY OR RIGHT-OF-WAY, INCLUDING, WITHOUT LIMITATION, SUBSEQUENT MAINTENANCE OF THE STRUCTURE BY AGENCY, OR (VII) AN ACT OR OMISSION OF AGENCY OR ITS OFFICERS, AGENTS, INVITEES, EMPLOYEES OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER. THE LIABILITY ASSUMED BY AGENCY WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY OR DEATH WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE WILLFUL MISCONDUCT OR SOLE NEGLIGENCE OF BNSF.**

18. **AGENCY SHALL INDEMNIFY AND SAVE HARMLESS LACMTA, THEIR AGENTS AND EMPLOYEES AGAINST ALL LIABILITY, CLAIMS, DEMANDS, DAMAGES, OR COSTS FOR (A) DEATH OR BODILY INJURY TO PERSONS INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO, (B) INJURY TO PROPERTY INCLUDING, WITHOUT LIMITATION, THE PROPERTY OF THE PARTIES HERETO, (C) DESIGN DEFECTS, OR (D) ANY OTHER LOSS, DAMAGE OR EXPENSE ARISING UNDER EITHER (A), (B), OR (C), AND ALL FINES OR PENALTIES IMPOSED UPON OR ASSESSED AGAINST LACMTA BY REASON OF THE PROJECT, AND ALL EXPENSES OF INVESTIGATING AND DEFENDING AGAINST SAME, ARISING IN ANY MANNER OUT OF (1) ACTIVITIES, USE, OR PRESENCE, OR NEGLIGENCE OF AGENCY, OR AGENCY'S EMPLOYEES, OR AGENCY'S CONTRACTORS, SUBCONTRACTORS, AGENTS, INVITEES OR ANY OF THEIR EMPLOYEES ON OR NEAR LACMTA'S RIGHT OF WAY, OR (2) THE PERFORMANCE, OR FAILURE TO PERFORM, BY THE AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, OR AGENTS, ITS WORK OR ANY OBLIGATION UNDER THIS AGREEMENT. NOTHING CONTAINED IN THIS PROVISION IS INTENDED TO, NOR SHALL BE DEEMED OR CONSTRUED TO, INDEMNIFY LACMTA FOR THEIR RESPECTIVE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT, OR THAT OF THEIR AGENTS, SERVANTS OR INDEPENDENT CONTRACTORS WHO ARE DIRECTLY RESPONSIBLE TO THEM, AS PROVIDED IN CALIFORNIA CIVIL CODE SECTION 2782.**

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

20. Agency agrees to provide BNSF with one of the following credit enhancements guaranteeing the **total** amount of Agency's financial obligations (including, without limitation, liquidated damages, indemnity obligations and other expenses) under this Agreement:

(a) Irrevocable Bank Letter of Credit drawn upon a bank satisfactory to BNSF;
(b) Surety Bond underwritten by an insurance company listed in the Department of Treasury Federal Register with terms acceptable to BNSF, in BNSF's sole discretion;
(c) A posted cash deposit via wire transfer to a BNSF deposit account; or
(d) An interest bearing account in the name of the Agency with BNSF listed as the beneficiary.

Any irrevocable letter of credit or surety bond provided to BNSF pursuant to this provision shall have a minimum term of eighteen (18) months. The bank issuing the letter of credit and the insurance company issuing the surety bond shall notify BNSF thirty (30) days prior to the expiration date of the letter of credit or the surety bond. Upon expiration of any surety bond or letter of credit, Agency must immediately provide BNSF with a substitute letter of credit, surety bond or cash deposit as set forth above until Agency's financial obligations to BNSF are fully and finally satisfied.

Any cash deposit provided under this provision will be held in a non-interest bearing account in the name of BNSF. If Agency's financial obligations at the end of the Project are less than the amount of the cash deposit, BNSF shall refund any remaining sum to Agency.

Agency should forward the letter of credit or the surety bond to BNSF Manager of Credit, 3001 Lou Menk Drive, Fort Worth, TX 76131 (phone: 817-352-4194). If posting a cash deposit pursuant to this provision, contact BNSF Manager of Credit to obtain the BNSF account information.

21. 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.

22. Agency agrees to reimburse LACMTA for work of an emergency nature caused by AGENCY or AGENCY's contractor, in connection with the Project which LACMTA deems is reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons or property. Such work may be performed by LACMTA without prior approval of AGENCY and AGENCY agrees to reimburse LACMTA for all such emergency work.

ARTICLE IV – LACMTA OBLIGATIONS

IN CONSIDERATION of the covenants of AGENCY and BNSF hereinafter contained, and the faithful performance thereof, LACMTA agrees:

1. To grant and hereby does grant to AGENCY, its successors and assigns, all upon and subject to the terms and conditions hereinafter set forth, the right to enter upon and use that portion of LACMTA's rail corridor necessary to construct the Project and to maintain the Structure as shown on said Exhibit "A", excepting and reserving the right to be exercised by LACMTA, and by any others who have obtained, or may obtain, permission or authority from LACMTA so to do:

   (a) To operate, maintain, renew and/or relocate any and all existing railroad track or tracks, wires, pipes and other facilities of like character upon, over or under the surface of LACMTA's rail corridor.

   (b) From time to time to construct, operate, maintain, renew and/or relocate upon LACMTA's rail corridor additional facilities of the character described in Clause (a) of this Section 1.

   This right is given without warranty of title of any kind, express or implied, and no covenant of warranty

of title shall be implied from the use of any word or words herein contained. In case of the eviction of AGENCY by anyone owning, or claiming title to or any interest *in* LACMTA's rail corridor, LACMTA shall not be liable to AGENCY for any damage of any nature whatsoever. The granting of similar rights to others, subsequent to the date of this Agreement, shall not significantly impair or interfere with the right granted to AGENCY pursuant to this Agreement.

2. To grant to AGENCY, as promptly as feasible following execution of this Agreement and in no case later than upon completion and acceptance of AGENCY's Work pursuant to Section 19, Article III, a permanent and exclusive easement across LACMTA's right of way as outlined in Exhibit "I", attached hereto and by reference made a part hereof.

3. To sign the agreement between AGENCY's contractor and LACMTA, Exhibit "I-1", attached hereto and by reference made a part hereof, and promptly approve the required insurance documents following submission by the contractor of documents that in the opinion of LACMTA satisfy the requirements."

4. To review plans and specifications and to furnish supervision of the construction as it might affect LACMTA's track and right of way at the expense of the AGENCY. The Estimate of cost of said work is set forth in Exhibit K.

5. To perform all work on an actual cost basis and to submit to AGENCY for payment a detailed statement for the cost of work performed by LACMTA.

ARTICLE V – JOINT OBLIGATIONS

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

1. All work contemplated in this Agreement must be performed in a good and workmanlike manner and each portion must be promptly commenced by the party obligated hereunder to perform the same and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications during construction which affect BNSF will be subject to BNSF's written approval prior to the commencement of any such changes or modifications from the BNSF Project Manager. Any changes or modifications during construction that affect LACMTA shall be subject to approval by LACMTA prior to commencement of such changes or modifications.

2. The work hereunder must be done in accordance with the Bridge Requirements set forth on Exhibit F and the detailed plans and specifications approved by BNSF.

3. Agency must require its contractor(s) to reasonably adhere to the Project's construction schedule for all Project work. The parties hereto mutually agree that BNSF's failure to complete the railroad work in accordance with the construction schedule due to inclement weather or unforeseen railroad emergencies will not constitute a breach of this Agreement by BNSF and will not subject BNSF to any liability. Regardless of the requirements of the construction schedule, BNSF reserves the right to reallocate the labor forces assigned to complete the railroad work in the event of an emergency to provide for the immediate restoration of railroad operations (BNSF or its related railroads) or to protect persons or property on or near any BNSF owned property. BNSF will not be liable for any additional costs or expenses resulting from any such reallocation of its labor forces. The parties mutually agree that any reallocation of labor forces by BNSF pursuant to this provision and any direct or indirect consequences or costs resulting from any such reallocation will not constitute a breach of this Agreement by BNSF.

4. BNSF will have the right to stop construction work on the Project if any of the following events take place: (i) Agency (or any of its contractors) performs the Project work in a manner contrary to the plans and specifications approved by BNSF; (ii) Agency (or any of its contractors), in BNSF's opinion, prosecutes the Project work in a manner which is hazardous to BNSF property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Agency fails to pay BNSF for the Temporary

Construction License or the Easement pursuant to Article II, Section 1 of this Agreement. The work stoppage will continue until all necessary actions are taken by Agency or its contractor to rectify the situation to the satisfaction of BNSF's Division Engineer or until additional insurance has been delivered to and accepted by BNSF. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, BNSF may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of BNSF. BNSF's right to stop the work is in addition to any other rights BNSF may have including, but not limited to, actions or suits for damages or lost profits. In the event that BNSF desires to stop construction work on the Project, BNSF agrees to immediately notify the following individual in writing:

Craig Bilezerian, P.E.
Engineering Manager | Public Works Department
City of Torrance
20500 Madrona Avenue
Torrance, CA 90503
310.618.3054 voice
310.781.6902 fax
cbilezerian@torrnet.com

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 City of Torrance Engineering Manager, Public Works Department for appropriate corrective action.

6. Pursuant to this section and Article II, Section 6 herein, Agency must reimburse BNSF in full for the actual costs of all work performed by BNSF under this Agreement.

That AGENCY will reimburse LACMTA in full for the actual costs for all work performed by LACMTA pursuant to this Agreement.

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

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

8. The parties mutually agree that no construction activities for the Project, nor future maintenance of the Structure once completed, will be permitted during the fourth quarter of each calendar year. Emergency work will be permitted only upon prior notification to BNSF's Network Operations Center (telephone number: 800 832-5452). The parties hereto mutually understand and agree that trains cannot be subjected to delay during this time period.

9. Subject to the restrictions imposed by Article IV, Section 9 above, the construction of the Project will not commence until Agency gives BNSF's Manager of Public Projects thirty (30) days prior written notice of such commencement. The commencement notice will reference BNSF's file number 924652S and D.O.T. Crossing No. 924652S and must state the time that construction activities will begin.

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

(a) Agency will own and maintain, at its sole cost and expense, the Structure, the highway approaches, and appurtenances thereto, lighting, drainage and any access roadways to BNSF gates installed pursuant to this Agreement. BNSF may, at its option, perform maintenance on the Structure in order to avoid conflicts with train operations. BNSF will notify Agency prior to performing any such maintenance on the Structure. In the event such maintenance involves emergency repairs, BNSF will notify Agency at its earliest opportunity. Agency must fully reimburse BNSF for the costs of maintenance performed by BNSF pursuant to this subsection (b).

(b) Agency must, at Agency's sole cost and expense, keep the Structure painted and free from graffiti.

(c) Agency must provide BNSF with any and all necessary permits and maintain roadway traffic controls, at no cost to BNSF, whenever requested by BNSF to allow BNSF to inspect the Structure or to make emergency repairs thereto.

(d) It is expressly understood by Agency and BNSF that any right to install utilities will be governed by a separate permit or license agreement between the parties hereto.

(e) Agency must keep the Structure and surrounding areas clean and free from birds, pigeons, scavengers, vermin, creatures and other animals.

(f) If Agency (including its contractors and agents) or BNSF, on behalf of Agency, performs (i) alterations or modifications to the Structure, or (ii) any maintenance or other work on the Structure with heavy tools, equipment or machinery at ground surface level horizontally within 25'-0" of the centerline of the nearest track, or (iii) any maintenance or other work outside the limits of the deck of the Structure vertically above the top of the rail, then Agency or its contractors and/or agents must procure and maintain the following insurance coverage:

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

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

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

11. Agency hereby grants to BNSF, at no cost or expense to BNSF, a permanent right of access from Agency property to BNSF tracks for maintenance purposes.

12. Agency must provide one set of as built plans (prepared in **English Units)** to BNSF, as well as one set of computer diskettes containing as built CAD drawings of the Structure and identifying the

software used for the CAD drawings. The "as built plans" must comply with the Bridge Requirements set forth on Exhibit F and depict all information in BNSF engineering stationing and mile post pluses. The "as built plans" must also include plan and profile, structural bridge drawings and specifications, and drainage plans. All improvements and facilities must be shown.

13. Subject to the restrictions imposed by Article IV, Section 9 above, Agency must notify and obtain prior authorization from BNSF's Manager of Public Projects before entering BNSF's right-of-way for **INSPECTION OR MAINTENANCE** purposes, and the BNSF Manager of Public Projects will determine if flagging is required. If the construction work hereunder is contracted, Agency must require its prime contractor(s) to comply with the obligations set forth in Exhibit C and Exhibit C-1, as the same may be revised from time to time. Agency will be responsible for its contractor(s) compliance with such obligations.

14. BNSF and LACMTA may, at its expense, make future changes or additions to the railroad components of the Structure if necessary or desirable, in BNSF's and/or LACMTA's sole discretion, including, without limitation the following: (i) the right to raise or lower the grade or change the alignment of its tracks, (ii) the right to lay additional track or tracks, or (iii) the right to build other facilities in connection with the operation of its railroad. Such changes or additions must not change or alter the highway components of the Structure. If it becomes necessary in the future to change, alter, widen or reconstruct the highway components of the Structure to accommodate railroad projects, the cost of such work, including any cost incidental to alteration of railroad or highway facilities made necessary by any such changes to the Structure, will be the sole responsibility of the Agency.

15. Agency may, at Agency's sole expense, alter or reconstruct the highway components of the Structure if necessary or desirable, due to traffic conditions or pedestrian or other recreational traffic, provided, however, that any such alteration or reconstruction must not encroach further upon or occupy the surface of BNSF's and/or LACMTA's right-of-way to a greater extent than is contemplated by the plans and specifications to be approved by BNSF pursuant to Article III, Section 1 herein, without obtaining BNSF's and/or LACMTA's prior written consent and the execution of a supplement to this Agreement or the completion of a separate agreement.

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

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

18. In the event construction of the Project does not commence within 36 months [three (3) years] of the Effective Date, this Agreement will become null and void.

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

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

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

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

Los Angeles County Metropolitan Transportation Authority:	Manager Third Party Coordination One Gateway Plaza Los Angeles, CA. 90012 P.O. Box 194 Los Angeles, CA. 90053 Telephone No.: (213) 922 7324 FAX No.: (213) 922 7136
The BNSF Railway Company:	Manager Public Projects 740 East Carnegie Drive San Bernardino, CA 92408-3571 Telephone No.: 909-386-4472 Fax No.: 909-386-4479
The BNSF Railway Company:	BNSF's Division Engineer 740 E. Carnegie Drive San Bernardino, CA. 92408-3571 Telephone No.: (909) 386 4504 Fax No.: (909) 386 4070
The BNSF Railway Company:	BNSF's Roadmaster 3790 East 26th. Street Los Angeles, CA. 90023 Telephone No.: (323) 307-5815 Fax No.: (323) 267-4049
CITY of Torrance:	CITY of Torrance City Clerk 3031 Torrance Blvd Torrance, CA 90509-2970 Fax No.: (310) 618-2931 cc: City of Torrance Public Works ATTN: Craig Bilezerian 20500 Madrona Ave Torrance, CA 90503 Telephone No.: (310) 618-3054 Fax No.: (310) 781-6902

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

BNSF RAILWAY COMPANY

By: _____
Printed Name: David L. Freeman
Title: Vice President Engineering

WITNESS:

_____

LOS ANGELES COUNTY METROPOLITAN

By: _____
Printed Name: _____
Title: _____

WITNESS:

_____

CITY OF TORRANCE
a Municipal Corporation

By:_____
Frank Scotto, Mayor

ATTEST:

_____
Sue Herbers, City Clerk

APPROVED AS TO FORM AND CONTENT

JOHN L. FELLOWS III
City Attorney

By_____
Deputy City Attorney

Exhibit A

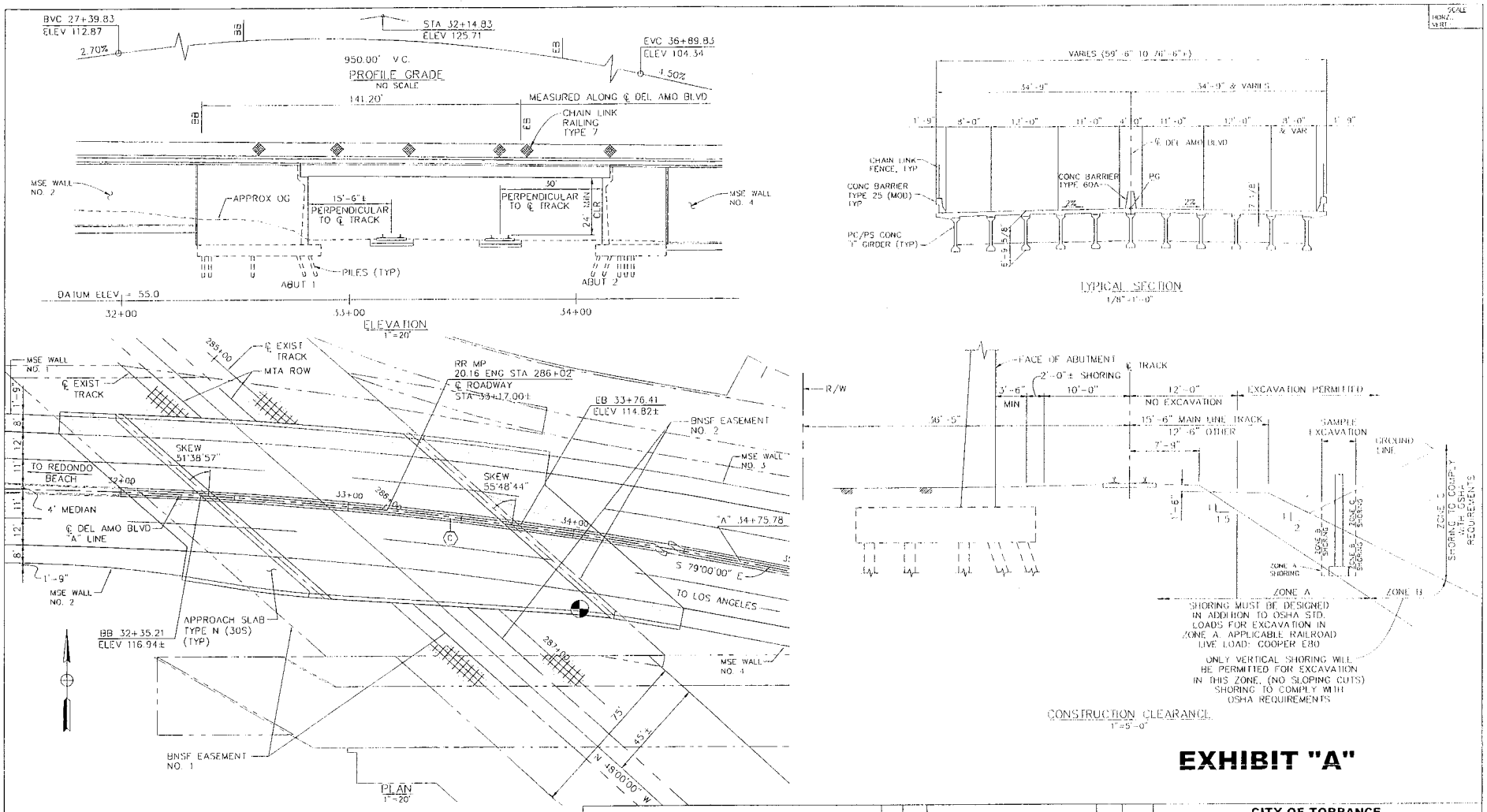


EXHIBIT "A"

INDICATES POINT OF MINIMUM VERTICAL CLEARANCE

DEL AMO BLVD "A" LINE CURVE DATA				
CURVE	△	L	R	T
C	11°02'29"	356.51'	1850.00'	178.81'

GENERAL PLAN
DOT CROSSING NO. 924 652 S
PUC NO. M.P.20.12A
DEL AMO BOULEVARD EXTENSION

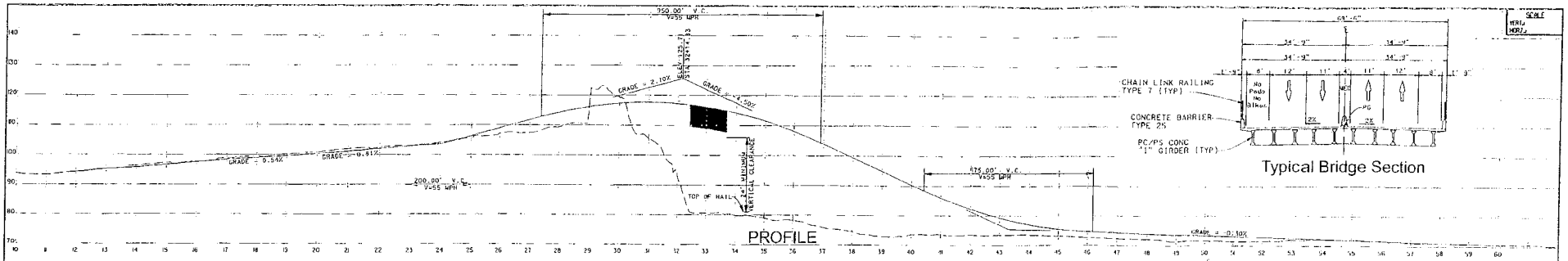
MOFFATT & NICHOL
3780 KILROY AIRPORT WAY, SUITE 600
LONG BEACH, CALIFORNIA, 90806
562-426-9551

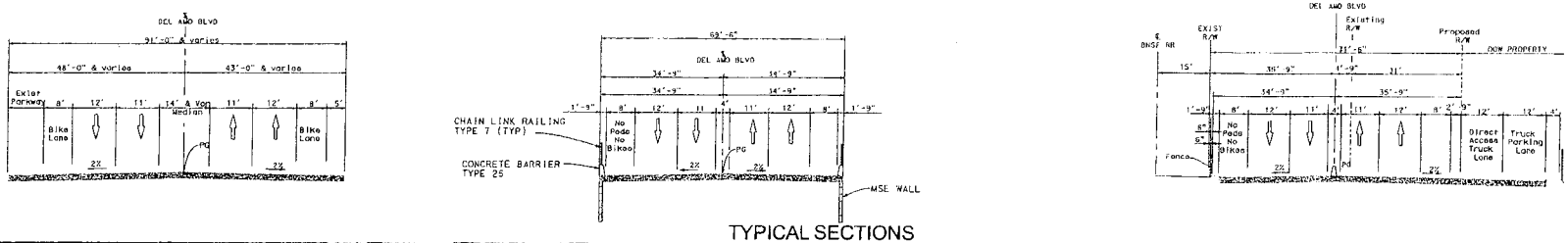
REV.	DATE	DESCRIPTION	BY	CHECKED

CITY OF TORRANCE
PUBLIC WORKS DEPARTMENT

DRAWN: F. SAMSON
DESIGNED: A. JAIN
PROJECT MANAGER: W. L. QUESADA
APPROVED:
CRAIG BELTZERMAN, CITY ENGINEER, R.C.E. NO. 55339, DATE EXP. 12/31/08
SCALE AS SHOWN SHEET 66 OF 134
PLAN NO. ST-1013

SHEET S-101





TYPICAL SECTIONS

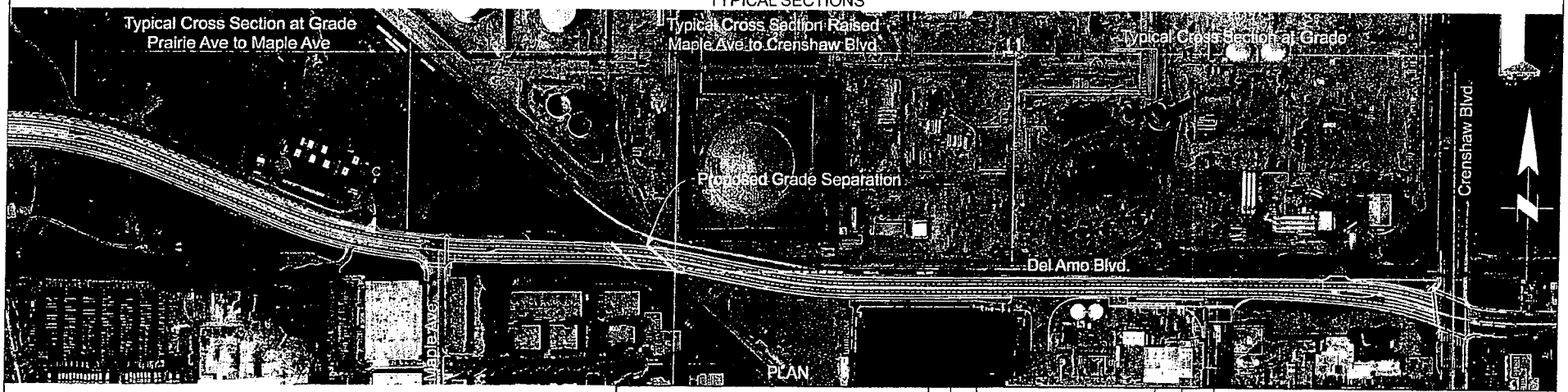


Exhibit A:
General Plan and Profile
Sheet 2 of 2

DEL AMO BOULEVARD EXTENSION

MOFFATT & NICHOL
3780 KILROY AIRPORT WAY, SUITE 600
LONG BEACH, CALIFORNIA 90806
(562) 426-9551

REV.	DATE	DESCRIPTION	BY	CHECKED

CITY OF TORRANCE
PUBLIC WORKS DEPARTMENT

DRAWN:
DESIGNED:
PROJECT MANAGER: CRAIG BILEZERIAN

APPROVED:
ROBERT J. BESTE
PUBLIC WORKS DIRECTOR
R.C.E. NO. 58737
DATE

SCALE: AS SHOWN | SHEET | OF

Exhibit B

Form Approved by VP-Law

EASEMENT AGREEMENT

FOR _____

(Overpass Agreement)

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

A. Grantor owns or controls certain real property situated at or near the vicinity of _____, County of Los Angeles, State of CA, at Mile Post _____, [Project # _____], as described or depicted on **Exhibit "A-1"** attached hereto and made a part hereof (the "**Premises**").

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

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

D. Grantor has agreed to grant Grantee such easement, subject to the terms and conditions set forth in this Easement Agreement.

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

Section 1 **Granting of Easement.**

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

1.2 Grant. Grantor does hereby grant unto Grantee a non-exclusive easement ("**Easement**") over the Premises for the Easement Purpose and for no other purpose. The Easement is granted subject to any and all restrictions, covenants, easements, licenses, permits, leases and other encumbrances of whatsoever nature whether or not of record, if any, relating to the Premises and subject to all with all applicable federal, state and local laws, regulations, ordinances, restrictions, covenants and court or administrative decisions and orders, including Environmental Laws (defined below) and zoning laws (collectively, "**Laws**"). Grantor may not make any alterations or improvements or perform any maintenance or repair activities within the Premises except in accordance with the terms and conditions of the OVERPASS Agreement.

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

(a) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any existing pipe, power, communication, cable, or utility lines and appurtenances and other facilities or structures of like character (collectively, "**Lines**") upon, over, under or across the Premises;

(b) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; and

(c) to use the Premises in any manner as the Grantor in its sole discretion deems appropriate, provided Grantor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Grantee for the Easement Purpose.

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

Section 3 **No Warranty of Any Conditions of the Premises.** Grantee acknowledges that Grantor has made no representation whatsoever to Grantee concerning the state or condition of the Premises, or any personal property located thereon, or the nature or extent of Grantor's ownership interest in the Premises. Grantee has not relied on any statement or declaration of Grantor, oral or in writing, as an inducement to entering into this Easement Agreement, other than as set forth herein. GRANTOR HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF ANY SUCH PROPERTY, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTOR SHALL NOT BE RESPONSIBLE TO GRANTEE OR ANY OF GRANTEE'S CONTRACTORS FOR ANY DAMAGES RELATING TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTEE ACCEPTS ALL RIGHTS GRANTED UNDER THIS EASEMENT AGREEMENT IN THE PREMISES IN AN "AS IS, WHERE IS" AND "WITH ALL FAULTS" CONDITION, AND SUBJECT TO ALL LIMITATIONS ON GRANTOR'S RIGHTS, INTERESTS AND TITLE TO THE PREMISES. Grantee has inspected or will inspect the Premises, and enters upon Grantor's rail corridor and property with knowledge of its physical condition and the danger inherent in Grantor's rail operations on or near the Premises. Grantee acknowledges that this Easement Agreement does not contain any implied warranties that Grantee or Grantee's Contractors (as hereinafter defined) can successfully construct or operate the Improvements.

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

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

property to determine if any Other Improvements (fiber optic, cable, communication or otherwise) may exist. The Grantee agrees to keep the above-described premises free and clear from combustible materials and to cut and remove or cause to be cut and removed at its sole expense all weeds and vegetation on said premises, said work of cutting and removal to be done at such times and with such frequency as to comply with Grantee and local laws and regulations and abate any and all hazard of fire.

Section 6 Taxes and Recording Fees. Grantee shall pay when due any taxes, assessments or other charges (collectively, "**Taxes**") levied or assessed upon the Improvements by any governmental or quasi-governmental body or any Taxes levied or assessed against Grantor or the Premises that are attributable to the Improvements. Grantee agrees to purchase, affix and cancel any and all documentary stamps in the amount prescribed by statute, and to pay any and all required transfer taxes, excise taxes and any and all fees incidental to recordation of the Memorandum of Easement. In the event of Grantee's failure to do so, if Grantor shall become obligated to do so, Grantee shall be liable for all costs, expenses and judgments to or against Grantor, including all of Grantor's legal fees and expenses.

Section 7 **Environmental.**

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

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

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

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

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

Section 8 **Default and Termination**.

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

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

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

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

Section 9 Surrender of Premises.

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

(a) remove all or such portion of Grantee's Improvements and all appurtenances thereto from the Premises, as Grantor directs at Grantor's sole discretion;

(b) repair and restore any damage to the Premises arising from, growing out of, or connected with Grantee's use of the Premises;

(c) remedy any unsafe conditions on the Premises created or aggravated by Grantee; and

(d) leave the Premises in the condition which existed as of the Effective Date.

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

Section 10 **Liens**. Grantee shall promptly pay and discharge any and all liens arising out of any

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

Section 11 **Tax Exchange**. Grantor reserves the right to assign this Easement Agreement to Apex Property & Track Exchange, Inc. ("**Apex**"). Apex is a qualified intermediary within the meaning of Section 1031 of the Internal Revenue Code of 1986, as amended, and Treas. Reg. § 1.1031(k)-1(g), for the purpose of completing a tax-deferred exchange under said Section 1031. Grantor shall bear all expenses associated with the use of Apex, or necessary to qualify this transaction as a tax-deferred exchange, and, except as otherwise provided herein, shall protect, reimburse, indemnify and hold harmless Grantee from and against any and all reasonable and necessary additional costs, expenses, including, attorneys fees, and liabilities which Grantee may incur as a result of Grantor's use of Apex or the qualification of this transaction as a tax-deferred transaction pursuant to Section 1031. Grantee shall cooperate with Grantor with respect to this tax-deferred exchange, and upon Grantor's request, shall execute such documents as may be required to effect this tax-deferred exchange.

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

Section 13 **Recordation**. It is understood and agreed that this Easement Agreement shall not be in recordable form and shall not be placed on public record and any such recording shall be a breach of this Easement Agreement. Grantor and Grantee shall execute a Memorandum of Easement in the form attached hereto as **Exhibit "B-1"** (the "**Memorandum of Easement**") subject to changes required, if any, to conform such form to local recording requirements. *[IF LEGAL DESCRIPTION IS NOT AVAILABLE USE THE FOLLOWING IN PLACE OF THE PRIOR SENTENCE: As of the Effective Date, a legal description of the Premises is not available. Grantee and Grantor shall work together in good faith to establish the legal description for the Premises. Once Grantor and Grantee have approved the legal description, Grantor and Grantee shall execute a Memorandum of Easement in the form attached hereto as **Exhibit "B-1"** (the "**Memorandum of Easement**").]* The Memorandum of Easement shall be recorded in the real estate records in the county where the Premises are located. If a Memorandum of Easement is not executed by the parties and recorded as described above within ____ days of the Effective Date, Grantor shall have the right to terminate this Easement Agreement upon notice to Grantee.

Section 14 **Miscellaneous**.

14.1 All questions concerning the interpretation or application of provisions of this Easement Agreement shall be decided according to the substantive Laws of the State of **[Texas]** without regard to conflicts of law provisions.

14.2 In the event that Grantee consists of two or more parties, all the covenants and agreements of Grantee herein contained shall be the joint and several covenants and agreements of such parties. This instrument and all of the terms, covenants and provisions hereof shall inure to the benefit of and be binding upon each of the parties hereto and their respective legal representatives, successors and assigns and shall run with and be binding upon the Premises.

14.3 If any action at law or in equity is necessary to enforce or interpret the terms of this Easement Agreement, the prevailing party or parties shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party or parties may be entitled.

14.4 If any provision of this Easement Agreement is held to be illegal, invalid or unenforceable under present or future Laws, such provision will be fully severable and this Easement Agreement will be construed

and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof will remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, there will be added automatically as a part of this Easement Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

14.5 This Easement Agreement is the full and complete agreement between Grantor and Grantee with respect to all matters relating to Grantee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Grantee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Grantee or Grantee's obligation to defend and hold Grantor harmless in any prior written agreement between the parties.

14.6 Time is of the essence for the performance of this Easement Agreement.

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

[Signature page follows]

Form Approved by VP-Law

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

GRANTOR:

BNSF RAILWAY COMPANY, a Delaware corporation

By: _____
Name: _____
Title: _____

GRANTEE:

City of Torrance, CA,
a municipal corporation

By: _____

Name: Frank Scotto

Title: Mayor

ATTEST:

_____
Sue Herbers, City Clerk

APPROVED AS TO FORM AND CONTENT

JOHN L. FELLOWS III
City Attorney

By_____

Deputy City Attorney

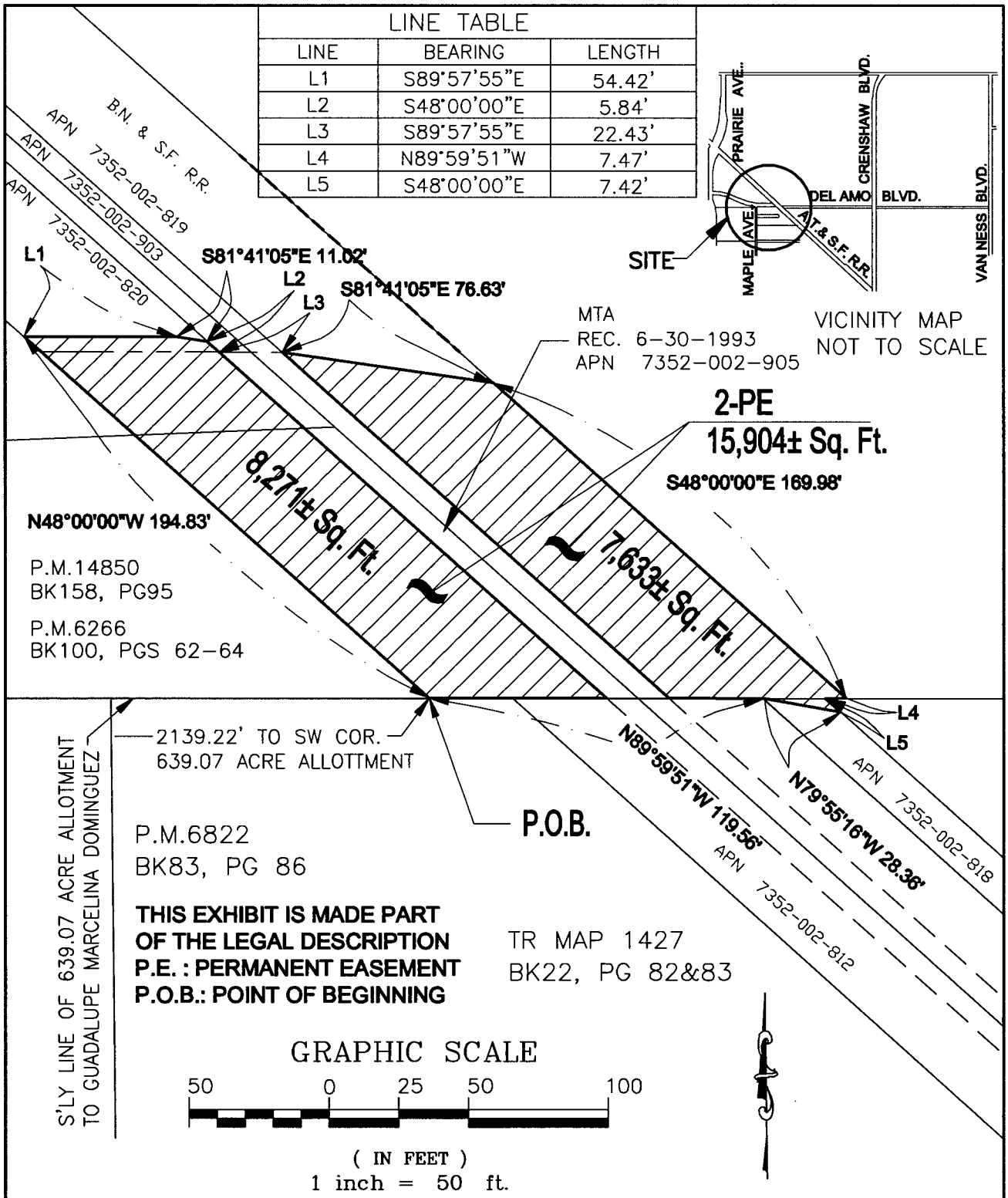
Form Approved by VP-Law

EXHIBIT "A-1"

Premises

EXHIBIT "A-1"

EXHIBIT "D-1" Map BNSF Easements



LINE	BEARING	LENGTH
L1	S89°57'55"E	54.42'
L2	S48°00'00"E	5.84'
L3	S89°57'55"E	22.43'
L4	N89°59'51"W	7.47'
L5	S48°00'00"E	7.42'

DEL AMO BOULEVARD EXTENSION CITY OF TORRANCE	OWNER NAME : B.N. & S.F. R.R. APN 7352-002-818,7302-052-819,7352-002-820	DATE: 02-03-09
Paragon Partners Ltd. 5762 Bolsa Avenue, Ste. 201 Huntington Beach, CA 92649	CITY OF TORRANCE POR. 639.07 ACRE ALLOTMENT MADE TO GUADALUPE MARCELINA DOMINGUEZ	SCALE: AS SHOWN DRAWN BY: MAT
CHECKED _____ DATE	COUNTY OF LOS ANGELES	REV. DATE:7/28/8 REV. No2

PORTION OF APN. 7352-002-818, 819, 820

PARCEL 2-P.E.
PERMANENT BRIDGE EASEMENT

THAT PORTION OF THE 639.07 ACRE ALLOTMENT MADE TO GUADALUPE MARCELINA DOMINGUEZ BY THE DECREE OF PARTITION OF A PORTION OF THE RANCHO SAN PEDRO, IN CASE No. 3284 OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES, DESCRIBED AS PARCEL No.16 OF THAT CERTAIN DEED TO SANTA FE AND LOS ANGELES HARBOR RAILWAY COMPANY, RECORDED DECEMBER 26, 1924 IN BOOK 3817, PAGE 164, OFFICIAL RECORDS, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHERLY LINE OF SAID ALLOTMENT, DISTANT 2139.22 FEET EASTERLY ALONG SAID SOUTHERLY LINE FROM THE SOUTHWEST CORNER THEREOF; THENCE NORTH 48°00'00" WEST 194.83 FEET ALONG A LINE PARALLEL WITH AND 50.00 FEET SOUTHWESTERLY FROM SAID CERTAIN LOCATED CENTER LINE OF SAID SANTA FE AND LOS ANGELES HARBOR RAILWAY COMPANY DESCRIBED IN SAID DEED; THENCE SOUTH 89°57'55" EAST, 54.42 FEET, THENCE SOUTH 81°41'05" EAST, 11.02 FEET TO A LINE PARALLEL WITH AND 7.50 FEET SOUTHWESTERLY FROM SAID LOCATED CENTER LINE; THENCE ALONG SAID PARALLEL LINE SOUTH 48°00'00" EAST, 5.84 FEET; THENCE SOUTH 89°57'55" EAST, 22.43 FEET; THENCE SOUTH 81°41'05" EAST 76.63 FEET TO A LINE PARALLEL WITH AND 50.00 FEET NORTHEASTERLY FROM SAID LOCATED CENTER LINE; THENCE ALONG SAID PARALLEL LINE SOUTH 48°00'00" EAST, 169.98 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID ALLOTMENT; THENCE ALONG SAID LINE NORTH 89°59'51" WEST, 7.47 FEET TO THE NORTHEASTERLY BOUNDARY OF THAT CERTAIN 15.00 FOOT WIDE PARCEL OF LAND DEEDED BY CHANSLOR-CANFIELD MIDWAY OIL COMPANY TO THE ATCHISON , TOPEKA AND SANTA FE RAIL COMPANY FOR RIGHT OF WAY PURPOSES BY DEED DATED AUGUST 2,1948 AND RECORDED IN BOOK 28452, PAGE 315 OF OFFICIAL RECORDS OF SAID COUNTY ; THENCE ALONG SAID LAST MENTIONED NORTHEASTERLY BOUNDARY SOUTH 48°00'00" EAST, 7.42 FEET; THENCE NORTH 79°55'16" WEST, 28.36 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID ALLOTMENT ; THENCE ALONG SAID LINE NORTH 89°59'51" WEST, 119.56 FEET TO THE **POINT OF BEGINNING.**

EXCEPTING THEREFROM THAT PORTION OF SAID 639.07 ACRE ALLOTMENT GRANTED TO LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY, BEING A 15 FOOT WIDE STRIP OF LAND, LYING 7.5 FEET ON EACH SIDE, MEASURED FROM SAID CENTERLINE OF THE SANTA FE AND LOS ANGELES HARBOR RAILWAY COMPANY'S MAIN TRACK REFERRED ABOVE

CONTAINING 15,904.0 SQUARE FEET OR 0.355 ACRES MORE OR LESS.

SEE EXHIBIT "D-1" MAP ATTACHED HERETO AND BY REFERENCE MADE A PART HEREOF.

Prepared by
Paragon Partners Ltd.
5762 Bolsa Ave., Suite 201
Huntington Beach, CA 92649
714-379-3376

James M. Rushing 2-03-09
James M. Rushing Date
R.C.E. 28219 Exp. 03/31/10

REGISTERED PROFESSIONAL ENGINEER
JAMES MACLYN RUSHING
No. C28219
Exp. 3-31-10
CIVIL
STATE OF CALIFORNIA

EXHIBIT "B-1"

Memorandum of Easement

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

WITNESSETH:

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

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

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

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

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

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

[Signature page follows]

Form Approved by VP-Law

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

GRANTOR:

BNSF RAILWAY COMPANY, a Delaware corporation

By: _____
Name: _____
Title: _____

GRANTEE:
City of Torrance, California,
a municipal corporation

By: _____
Name: Frank Scotto
Title: Mayor

ATTEST:

_____
Sue Herbers, City Clerk

APPROVED AS TO FORM AND CONTENT

JOHN L. FELLOWS III
City Attorney

By_____
Deputy City Attorney

STATE OF _____ §
§
COUNTY OF _____ §

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

_____
Notary Public

(Seal)

My appointment expires:_____

STATE OF _____ §
§
COUNTY OF _____ §

Form 0105 Rev. 06/01/05

Form Approved by VP-Law

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

_____
Notary Public

(Seal)

My appointment expires:_____

Exhibit "B-1"

Exhibit C

EXHIBIT "C"
CONTRACTOR REQUIREMENTS

1.01 General

- **1.01.01** The Contractor must cooperate with **BNSF RAILWAY COMPANY**, hereinafter referred to as "Railway" where work is over or under on or adjacent to Railway property and/or right-of-way, hereafter referred to as "Railway Property", during the construction of Del Amo Grade Separation Project in Torrance, CA off of BNSF Railway's Harbor Subdivision.

- **1.01.02** The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit "C-1" Agreement, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit "C-1". Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to Rosa Martinez at Marsh, USA, 214-303-8519.

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

- **1.01.04** The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations. Railway will have the right to stop construction work on the Project if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the Project work in a manner which is hazardous to Railway property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) 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:

  City of Torrance
  Public Works Department
  20500 Madrona Avenue
  Torrance, CA 90503
  Attn: Craig Bilezerian, Engineering Manager

- **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 Torrance at_____ and Railway's Manager Public Projects, telephone number (909) 386-4472 at least thirty (30) calendar days before commencing any work on Railway Property. Contractors notification to Railway, must refer to Railroad's file 924652S.

- **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 Superintendent _____ at (_____)_____ _____ 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: **[Note to Drafter: The vertical clearance should mirror the final negotiated design clearance]**

  - 25' Horizontally from centerline of nearest track
  - 23'-3 ½" 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 Torrance and must not be undertaken until approved in writing by the Railway, and until the City of Torrance 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 Torrance 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.

1.05 Railway Flagger Services:

- **1.05.01** The Contractor must give Railway's Roadmaster (telephone 323-307-5815) 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 (Agency). The estimated cost for one (1) flagger is approximately between $800.00-$1,600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. **THE FLAGGING RATE IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF FLAGGING PURSUANT TO THIS PARAGRAPH.**

- **1.05.03d** The average train traffic on this route is _____ freight trains per 24-hour period at a timetable speed _____ MPH and _____ passenger trains at a timetable speed of _____ MPH.

1.06 Contractor General Safety Requirements

- **1.06.01 Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations.**

- **1.06.02 Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).**

- **1.06.03 Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by the Railway's Project Representative. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.**

- **1.06.04 When Contractor employees are required to work on the Railway Property after normal working hours or on weekends, the 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-visability 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 Field Engineering Representative (Greg Rousseau – 909-386-4079).** All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. **It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.**

- **1.07.02** The Contractor must cease all work and notify the Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.

- **1.07.03** All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.

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

1.08 Hazardous Waste, Substances and Material Reporting

- **1.08.01** If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to Railway's Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under 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 _____ 2. Date: _____ Time:
County: _____ 3. Temperature: _____ 4. Weather
(if non-Railway location)

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

Exhibit C-1

LAW DEPARTMENT APPROVED

EXHIBIT "C-1"

Agreement
Between
BNSF RAILWAY COMPANY
and the
CONTRACTOR

BNSF RAILWAY COMPANY
Attention: Manager Public Projects

Railway File: 924652S
Agency Project: _____

Gentlemen:

The undersigned (hereinafter called, the "Contractor"), has entered into a contract (the "Contract") dated _____, 200_, the City of Torrance, CA for the performance of certain work in connection with the following project: Construction of the Del Amo Blvd Grade separation off of BNSF Railway's Harbor Subdivision. Performance of such work will necessarily require contractor to enter BNSF RAILWAY COMPANY ("Railway") right of way and property ("Railway Property"). The Contract provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for **City of Torrance** (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 WILLFUL MISCONDUCT OR SOLE NEGLIGENCE OF RAILWAY.**

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

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all claims made against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner

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

In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify 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 $5,000,000 each occurrence and an aggregate limit of at least $10,000,000. 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:
- California'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 $5,000,000 per occurrence and $10,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 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 for certain trains may be $382.20 per hour per incident. **THE RATE THEN IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF TRAIN DELAY PURSUANT TO THIS AGREEMENT.**

Contractor and its subcontractors must give Railway's representative (Greg Rousseau – 909-386-4079) four (4) weeks advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.

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

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

_____
(Contractor)

By:_____
Printed Name:_____
Title:_____

Contact Person: _____
Address: _____
_____
City:_____State:___Zip:____
Fax: _____
Phone: _____
E-mail:_____

BNSF Railway Company

By:_____
Name:_____
Manager Public Projects

Accepted and effective this _____day of 20__.

Form Approved by VP-Law

EXHIBIT D

Exhibit D

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

BNSF RAILWAY COMPANY
FHPM ESTIMATE FOR
CITY OF TORRANCE

LOCATION ALCOA | DETAILS OF ESTIMATE | PLAN ITEM : 000115794 | VERSION : 1

PURPOSE, JUSTIFICATION AND DESCRIPTION

100% BILLABLE TO CITY OF TORRANCE
1) 250 DAYS OF BNSF FLAGMAN AT 11HRS PER DAY.
2) 125 DAYS OF BNSF CONTRACTED INSPECTOR/COORDINATOR AT $700/DAY

FLAGGING AND INSPECTION FOR THE DEL AMO GRADE SEPARATION PROJECT

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

RFA NO. 96-056-09 AUTHORITY NO. 7-XXXX-09

DESCRIPTION	QUANTITY U/M	COST	TOTAL $
**********			
LABOR			
**********			
FLAGGING - OTHER R.O.W.- CAP	2750.0 MH	64,563	
PAYROLL ASSOCIATED COSTS		44,419	
EQUIPMENT EXPENSES		20,014	
DA LABOR OVERHEADS		69,082	
INSURANCE EXPENSES		10,330	
TOTAL LABOR COST		208,408	208,408
**********			
MATERIAL			
**********			
TOTAL MATERIAL COST		0	0
**********			
OTHER			
**********			
CONTRACTED INSPECTION/COORDINATION	125.0 DAY	87,500	
TOTAL OTHER ITEMS COST		87,500	87,500
PROJECT SUBTOTAL			295,908
CONTINGENCIES			29,590
BILL PREPARATION FEE			3,255
GROSS PROJECT COST			328,753
LESS COST PAID BY BNSF			0
TOTAL BILLABLE COST			328,753

Exhibit D

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

BNSF RAILWAY COMPANY
FHPM ESTIMATE FOR
CITY OF TORRANCE

LOCATION ALUMINUM SPUR TO ALCOA | DETAILS OF ESTIMATE | PLAN ITEM : 000116461 | VERSION : 1

PURPOSE, JUSTIFICATION AND DESCRIPTION

DESCRIPTION	QUANTITY	U/M	COST	TOTAL $
**********				
LABOR				
**********				
PLACE DERAIL(S)	96.0	MH	2,125	
PLACE FIELD WELDS - CAP	174.4	MH	4,136	
PLACE PRIVATE CROSSING - CAP	48.0	MH	1,043	
PLACE TRACK PANELS - ADDITION - CAP	240.0	MH	5,211	
PLACE TURNOUT	261.6	MH	5,915	
REMOVE TRACK	120.0	MH	2,606	
REMOVE/PICKUP TURNOUT	120.0	MH	2,606	
SURFACE TRACK - ADDITION - CAP	52.32	MH	1,282	
UNLOAD TRACK PANELS - ADDITION	48.0	MH	1,043	
UNLOAD TURNOUT - ADDITION - CAP	52.32	MH	1,183	
PAYROLL ASSOCIATED COSTS			18,673	
EQUIPMENT EXPENSES			15,741	
DA LABOR OVERHEADS			29,046	
INSURANCE EXPENSES			4,338	
TOTAL LABOR COST			94,948	94,948
**********				
MATERIAL				
**********				
CHIPS, NEWBERRY (NC, SC)	50.0	NT **	263	
DERAIL, SINGLE 115 LB LH NO TRACK TIES	1.0	EA **	4,300	
TRACK PANEL,115 LB 40 FT - 10 FT TIES-NEW STD	7.0	EA **	35,000	
TRACK PANEL, 115 LB 40 FT - 10 FT TIES-PANDROL	1.0	EA **	4,940	
RAIL, TRANSN,LH,25 FT, 136-1/4 WORN 115	2.0	EA **	2,728	
RAIL, TRANSN,RH,25 FT, 136-1/4 WORN 115	2.0	EA **	2,728	
TURNOUT, 136-11 LH MANUAL RBM FROG 19.6 PT	1.0	EA **	64,849	
WELDKIT, GENERIC FOR ALL RAIL WEIGHTS	20.0	KT	1,420	
CONC 115 08-SEC WITH FILLER FOR WOOD	32.0	FT	6,631	
BALLAST TRUCKED IN AT $40/TONE DELIVERED	300.0	NT	12,000	
MATERIAL HANDLING			6,741	
ONLINE TRANSPORTATION			3,500	
USE TAX			11,698	
OFFLINE TRANSPORTATION			1,224	
TOTAL MATERIAL COST			158,022	158,022
**********				
OTHER				
**********				
HEAVY EQUIPMENT W/ OPERATOR	20.0	LS **	100,000	
TOTAL OTHER ITEMS COST			100,000	100,000
PROJECT SUBTOTAL				352,970
CONTINGENCIES				33,474
BILL PREPARATION FEE				3,865
GROSS PROJECT COST				390,309
LESS COST PAID BY BNSF				0
TOTAL BILLABLE COST				390,309

Exhibit E

Form Approved by VP-Law

Exhibit E

[Public Projects Manager's letterhead]

Date: April 16, 2009

Mr. Craig Bilezerian
City of Torrance Public Works Department
20500 Madrona Avenue
Torrance, CA 90503

Re: Final Approval of Plans and Specifications dated December 30, 2008, drafted by Moffatt & Nichol Engineers **(hereinafter called, the "Plans and Specifications")**

Dear Mr. Bilezerian:

This letter serves as BNSF RAILWAY COMPANY's ("BNSF") final written approval of the Plans and Specifications covering the construction of the Del Amo Boulevard Extension/Grade Separation, T-30. This final written approval is given to the City of Torrance, CA ("Agency") pursuant to Article III, Section 1 of that certain Overpass Agreement between BNSF and Agency, dated _____, 2009. If the Plans and Specifications are revised by Agency subsequent to the date set forth above, this letter shall no longer serve as final written approval of the Plans and Specifications and Agency must resubmit said Plans and Specifications to BNSF for final written approval.

Regards,

Melvin Thomas
Manager Public Projects
BNSF Railway Company

Exhibit F

Form Approved by VP-Law

Exhibit F

BNSF Bridge Requirements

BRIDGE DESIGN, PLANS & SPECIFICATIONS:

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

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

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

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

Prior to issuing any invitation to bid on construction of the Structure, the Agency should conduct a pre-bid meeting where prospective Contractors have the opportunity to communicate with BNSF personnel regarding site specific train speeds, train density, and general safety requirements for men and equipment working near live tracks. Any invitation to bid and specifications for the Structure must be submitted to BNSF for review and approval prior to letting of bids for the Project.

BRIDGE CONSTRUCTION:

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

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

Form Approved by VP-Law

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

BRIDGE MAINTENANCE:

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

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

BRIDGE INSPECTION:

The Agency will conduct annual routine structural inspections. In the event of an earthquake, fire, flood, damage from vehicular impacts or other emergent situations, the Agency will provide an immediate inspection by qualified personnel and notify BNSF of damage that may affect safe passage of trains. If necessary the Agency will embargo weights or provide lane closures or other such measures to protect the structural integrity of the Structure such that there can be continuous safe passage of trains until repairs are made.

BRIDGE ALTERATIONS:

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

Form Approved by VP-Law

Exhibit G

Avenue Grade Separation Project
Estimated Total Project Cost

BIDDER'S PROPOSAL

CONTRACT NO. T-30

Project name : Del Amo Boulevard Extension

BID DATE: TBD

BID SCHEDULE

ENGINEER'S ESTIMATE

ITEM NO.	ITEM DESCRIPTION	SPEC	QTY.	UNIT OF MEASURE	UNIT PRICE	TOTAL BID	SECTION COST
SECTION 1 - GENERAL REQUIREMENTS							$ 1,002,500
1	Mobilization (5% Max)	9-3.4.1	1	LS	$ 800,000.00	$ 800,000	
2	Construction Schedule	6-1.5	16	EA	$ 625.00	$ 10,000	
3	Permits and Fees	7-5.2	1	ALW	$ 5,000.00	$ 5,000	
4	Stormwater Pollution Prevention	7-8.6.3	1	LS	$ 20,000.00	$ 20,000	
5	Contractor Required Survey/Potholing	2.9.3	1	LS	$ 50,000.00	$ 50,000	
6	Soil Contamination	3.4.1	1	ALW	$ 50,000.00	$ 50,000	
7	Railroad Flagging (Mainline Tracks)	7-16.2	1	LS	$ 67,500.00	$ 67,500	
SECTION 2 - LANDSCAPE - Planting, Irrigation and Hardscape							$ 119,320
8	HYDROSEEDING	308-4.11	73,350	SF	$ 0.12	$ 8,802	
9	1 GALLON SHRUBS	212-1.4.3, 308-4.5	155	EA	$ 9.75	$ 1,511	
10	15 GALLON TREES	212-1.4.2, 308-4.5	35	EA	$ 90.00	$ 3,150	
11	24" BOX TREES	212-1.4.2, 308-4.5	13	EA	$ 280.00	$ 3,640	
12	SODDED TURF	212-1.4.5, 308-4.8.3	2,900	SF	$ 2.00	$ 5,800	
13	3" MULCH	212-1.2.5	3,330	SF	$ 0.32	$ 1,066	
14	TOPSOIL (IMPORT) IN MEDIANS	212-1.1.1	120	CY	$ 50.00	$ 6,000	
15	SOIL PREP AND FINE GRADE (MEDIAN	212-1.1.1	17,390	SF	$ 0.15	$ 2,609	
16	MISCELLANEOUS LANDSCAPE	-	1	ALLOW	$ 6,000.00	$ 6,000	
17	60 DAY MAINTENANCE/WEED ABATEMENT	308-6	73,580	SF	$ 0.10	$ 7,358	
18	30 STATION IRRIGATION CONTROLLER AND ENCLOSURE	212-3.4, 308-5.5, 308-5.7	1	EA	$ 7,500.00	$ 7,500	
19	ELECTRICAL SERVICE (ONE LOCATION)	308-5.8	1	ALLOW	$ 5,000.00	$ 5,000	
20	CONTROL AND NEUTRAL CONDUCTORS	212-3.2.2	1	ALLOW	$ 5,000.00	$ 5,000	
21	INSTALL 2" WATER METER (Pg. 53 - Section 215)	215-6.1	1	ALLOW	$ 3,000.00	$ 3,000	
22	1 1/2" BACKFLOW PREVENTER AND ENCLOSURE ASSEMBLY	212-2.3, 308-5.3	1	ALLOW	$ 2,500.00	$ 2,500	
23	(4) 10" CHDPE CONDUIT	212-2.1.1, 308-5.2.1	160	LF	$ 50.00	$ 8,000	
24	2" PVC PIPE (SCH 315) MAINLINE	212-2.1.1, 308-5.2.1	1,800	LF	$ 3.30	$ 5,940	
25	1-1/2" PVC PIPE (SCH 315) MAINLINE	212-2.1.1, 308-5.2.1	2,300	LF	$ 3.10	$ 7,130	
26	1-1/2" PVC PIPE (CL200) LATERAL	212-2.1.1, 308-5.2.1	1,000	LF	$ 1.82	$ 1,820	
27	1-1/4" PVC PIPE (CL200) LATERAL	212-2.1.1, 308-5.2.1	1,200	LF	$ 1.70	$ 2,040	
28	1" PVC PIPE (CL200) LATERAL	212-2.1.1, 308-5.2.1	1,200	LF	$ 1.60	$ 1,920	
29	3/4" PVC PIPE (CL200) LATERAL	212-2.1.1, 308-5.2.1	1,200	LF	$ 1.57	$ 1,884	
30	1-1/2" ELECTRICAL REMOTE CONTROL VALVE	212-2.2.4, 308-5.3	26	EA	$ 220.00	$ 5,720	
31	3/4" ELECTRICAL REMOTE CONTROL VALVE	212-2.2.4, 308-5.3	2	EA	$ 190.00	$ 380	
32	3/4" QUICK COUPLER VALVE	212-2.2.6	1	EA	$ 90.00	$ 90	
33	BUBBLERS WITH PVC SLEEVE	212-2.4	45	EA	$ 25.00	$ 1,125	
34	POP UP ROTOR SPRINKLERS	212-2.4	86	EA	$ 16.00	$ 1,376	
35	POP UP SPRINKLERS	212-2.4	184	EA	$ 14.00	$ 2,576	

BIDDER'S PROPOSAL

CONTRACT NO. T-30

Project name : Del Amo Boulevard Extension

BID DATE: TBD

BID SCHEDULE

ENGINEER'S ESTIMATE

ITEM NO.	ITEM DESCRIPTION	SPEC	QTY.	UNIT OF MEASURE	UNIT PRICE	TOTAL BID	SECTION COST
36	VALVE BOXES	212-2.2.7, 308-5.3	36	EA	$ 45.00	$ 1,620	
37	2" GATE VALVE	212-2.2, 308-5.3	4	EA	$ 190.00	$ 760	
38	MISCELLANEOUS IRRIGATION	-	1	ALLOW	$ 8,000.00	$ 8,000	
SECTION 3A - ROADWAY - Earthwork							$ 392,620
39	Unclassified Excavation	300-2	17,068	CY	$ 15.00	$ 256,020	
40	Slope Fill (Paid under MSE Wall)	300-4.8	0	0	$ -	$ -	
41	Unclassified Fill (Contractor Supplied)	300-4	80	CY	$ 20.00	$ 1,600	
42	Roadway Fill (City Supplied)	300-5.2	300	CY	$ 10.00	$ 3,000	
43	Pervious Backfill Material (Paid under MSE Wall)	306-1.3	0	0	$ -	$ -	
44	Slope Protection	300-11	330	CY	$ 400.00	$ 132,000	
SECTION 3B - ROADWAY - DRAINAGE							$ 895,780
45	8" HDPE Drain Pipe	306-1.6.1	620	LF	$ 15.00	$ 9,300	
46	18" RCP	306-1.6.2	1,735	LF	$ 75.00	$ 130,125	
47	24" RCP	306-1.6.3	20	LF	$ 125.00	$ 2,500	
48	36" RCP	306-1.6.4	448	LF	$ 175.00	$ 78,400	
49	42" RCP	306-1.6.5	372	LF	$ 225.00	$ 83,700	
50	45" RCP	306-1.6.6	795	LF	$ 300.00	$ 238,500	
51	Storm Drain Manhole (320-1)	306-1.6.7	4	EA	$ 7,000.00	$ 28,000	
52	Storm Drain Manhole (321-1)	306-1.6.8	6	EA	$ 7,000.00	$ 42,000	
53	Concrete Collar Std. Plan (380-3)	306-1.6.9	4	EA	$ 2,000.00	$ 8,000	
54	8" x 4" Concrete Collar @ Joint	306-1.6.10	2	EA	$ 2,000.00	$ 4,000	
55	Curb Opening Catch Basin (300-2)	306-1.6.11	12	EA	$ 5,000.00	$ 60,000	
56	Curbside Grating Catch Basin (303-2)	306-1.6.12	2	EA	$ 5,000.00	$ 10,000	
57	Grated Inlet Catch Basin (304-2)	306-1.6.13	5	EA	$ 5,000.00	$ 25,000	
58	8" Spee-D Drains	306-1.6.14	3	EA	$ 1,000.00	$ 3,000	
59	Junction Structure (331-2)	306-1.6.15	7	EA	$ 3,000.00	$ 21,000	
60	Junction Structure (332-1)	306-1.6.16	2	EA	$ 3,000.00	$ 6,000	
61	Reinf. Conc. Triangular Open Channel	306-1.6.17	545	LF	$ 250.00	$ 136,250	
62	50 LB RIPRAP	306-1.6.18	1	LS	$ 5,000.00	$ 5,000	
63	Reinf. Conc. Headwall Inlet Structure	306-1.6.19	1	EA	$ 5,000.00	$ 5,000	
SECTION 3C - ROADWAY - General							$ 2,478,830
64	3.5" Portland Cement Concrete Sidewalk	201-1, 303-5	170	CY	$ 290.00	$ 49,300	
65	3.5" & 4" Respectively Asphalt Concrete (C2-PG-64-10)	203-6	7300	TON	$ 90.00	$ 657,000	
66	4.0" Asphalt Concrete (B-PG-64-10)	203-6	8010	TON	$ 90.00	$ 720,900	
67	Type A1-150 (6) Concrete Curb	201-1, 303-5	120	CY	$ 500.00	$ 60,000	
68	Type A2-200 (8) Concrete Curb and Gutter	201-1, 303-5	330	CY	$ 500.00	$ 165,000	

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BID SCHEDULE

ENGINEER'S ESTIMATE

ITEM NO.	ITEM DESCRIPTION	SPEC	QTY.	UNIT OF MEASURE	UNIT PRICE	TOTAL BID	SECTION COST
69	Concrete Curb Ramp (Case A)	201-1, 303-5	7	CY	$ 570.00	$ 3,990	
70	Concrete Barrier Caltrans Type 60 - Need to add concrete barrier Caltra	201-1, 303-1	1990	LF	$ 45.00	$ 89,550	
71	Sawcut & Join Existing Pavement		1050	LF	$ 2.00	$ 2,100	
72	Cross Gutter	201-1, 303-5.5.4	34	CY	$ 670.00	$ 22,780	
73	Curb Ramp (Detail A/C312)	201-1, 303-5	3	CY	$ 570.00	$ 1,710	
74	Chain Link Fence w/ Barb wire(G3)	304-3, 206-6	1770	LF	$ 28.00	$ 49,560	
75	Concrete Radius Driveway with Depressed Sidewalk Case II	201-1, 303-5	11	CY	$ 410.00	$ 4,510	
76	Chain Link Railing Caltrans Type 7 (Roadway Only)	218-1	105	LF	$ 30.00	$ 3,150	
77	Type A1-200(8) Concrete Curb	201-1, 303-5	0	CY	$ 500.00	$ -	
78	Case C Local Depression at Catch Basin	201-1, 303-5	6	CY	$ 480.00	$ 2,880	
79	Case E Local Depression at Catch Basin	201-1, 303-5	121	CY	$ 480.00	$ 58,080	
80	Metal Beam Guard Rail (Type 12A)	206-5.2, 304-2.3	25	LF	$ 35.00	$ 875	
81	Stamped Concrete	201-1, 303-6	5500	SF	$ 15.00	$ 82,500	
82	6" Concrete Driveway	201-1, 303-5	10	CY	$ 410.00	$ 4,100	
83	Type B2-4 Curb and Gutter	201-1, 303-5	4	CY	$ 500.00	$ 2,000	
84	6" PCC Pavement	201-1, 302-6.1	61	CY	$ 460.00	$ 28,060	
85	Retaining Wall Type 1	303A-10	735	SF	$ 68.00	$ 49,980	
86	Remove, Salvage, and Reconstruct Fence and Gate	300-1.3.2C	1	EA	$ 1,000.00	$ 1,000	
87	4' Walk Gate	304-3.3	1	EA	$ 1,000.00	$ 1,000	
88	14' Swing Gate	304-3.3	1	EA	$ 1,500.00	$ 1,500	
89	20' Wide Double Swing Gate	304-3.3	2	EA	$ 2,500.00	$ 5,000	
90	26' Wide Double Swing Gate.	304-3.3	1	EA	$ 3,000.00	$ 3,000	
91	Crushed Miscellaneous Base (CMB)	200-2.4	8729	CY	$ 45.00	$ 392,805	
92	Terminal System (Type ET)	304-2.3	2	EA	$ 3,400.00	$ 6,800	
93	Transistion Railing (Type WB)	304-2.3	2	EA	$ 3,800.00	$ 7,600	
94	Asphalt Concrete Dike (TYPE C)	39-7.01	150	LF	$ 10.00	$ 1,500	
95	Asphalt Concrete Dike (TYPE F)	39-7.01	75	LF	$ 8.00	$ 600	
SECTION 3D - ROADWAY - Removals							**$ 309,910**
94	Protect In Place	7-9, 300-1.2	1	LS	$ 20,000.00	$ 20,000	
95	Clearing & Grubbing (Remove Existing Vegetation)	300-1	229830	SF	$ 0.30	$ 68,949	
96	Remove Existing AC Dike	300-1	2980	LF	$ 2.50	$ 7,450	
97	Remove Existing Sidewalk	300-1.3.2c	23	CY	$ 165.00	$ 3,795	
98	Remove Existing Chain Link Fence	300-1.1	2780	LF	$ 5.60	$ 15,568	
99	Remove Existing Asphalt Paving and Subgrade	300-1.3.2a	3980	CY	$ 35.00	$ 139,300	
100	Remove Existing Curb & Gutter	300-1.3.2c	1300	LF	$ 10.50	$ 13,650	
101	Remove Existing Raised Median Island	300-1.3.2c	45	CY	$ 200.00	$ 9,000	
102	Existing Utility Pole To Be Relocated By Others	5-4	16	EA	$ -	$ -	
103	Remove Existing Guard Post	300-1.1	28	EA	$ 325.00	$ 9,100	

BIDDER'S PROPOSAL

CONTRACT NO. T-30

Project name : Del Amo Boulevard Extension

BID DATE: TBD

BID SCHEDULE

ENGINEER'S ESTIMATE

ITEM NO.	ITEM DESCRIPTION	SPEC	QTY.	UNIT OF MEASURE	UNIT PRICE	TOTAL BID	SECTION COST
104	Adjust to Grade	301-1.6	8	EA	$ 700.00	$ 5,600	
105	Remove Misc Signage	300-1.3.2C	30	EA	$ 170.00	$ 5,100	
106	Remove Misc Concrete	300-1.3.1	67	CY	$ 185.00	$ 12,395	
SECTION 3E - ROADWAY - Traffic							$ 1,006,010
107	Traffic Control	7-10.1	1	LS	$ 20,000.00	$ 20,000	
108	Portable Changeable Message Sign	7-15	2	EA	$ 10,000.00	$ 20,000	
109	Roadside Signs	315-1	1	LS	$ 150,000.00	$ 150,000	
110	Traffic Delineation	7-10	1	LS	$ 30,000.00	$ 30,000	
111	Traffic Signal Mod - Prairie	307	1	LS	$ 75,000.00	$ 75,000	
112	Traffic Signal Mod - Crenshaw	307	1	LS	$ 108,000.00	$ 108,000	
113	Traffic Signal - Del Amo @ Maple	307	1	LS	$ 180,000.00	$ 180,000	
114	(omitted)	307	0	LS	$ 150,000.00	$ -	
115	Traffic Signal - Del Amo @ Madrid	307	1	LS	$ 168,000.00	$ 168,000	
116	Traffic Signal - Del Amo @ Mariner	307	1	LS	$ 200,000.00	$ 200,000	
117	Traffic Delineation Items	7-10	1	LS	$ 25,841.00	$ 25,841	
118	Striping (Edge)	214, 312	13155	LF	$ 1.50	$ 19,733	
119	Striping (Lane)	214, 312	10216	LF	$ 0.75	$ 7,662	
120	Striping (Left Turn)	214, 312	1515	LF	$ 0.60	$ 909	
121	Striping (Crosswalk)	214, 312	955	LF	$ 0.90	$ 860	
SECTION 4 - STRUCTURES							$ 7,649,990
122	Concrete Barriers Type 25 (Mod) Bridge	303A-8, 218-2	407	LF	$ 50.00	$ 20,350	
123	Concrete Barriers Type 60 (A) Bridge	303A-8, 218-2	213	LF	$ 65.00	$ 13,845	
124	Chain Link Fence Type 7 (Bridge)	304-3	407	LF	$ 35.00	$ 14,245	
125	Chain Link Fence Type 7 (Wall)	304-3	2490	LF	$ 50.00	$ 124,500	
126	Concrete Barriers Type 25 (Mod) Wall	303A-8, 218-2	2490	LF	$ 90.00	$ 224,100	
127	Concrete Barrier Slab (Wall)	303A-8, 218-2	2490	LF	$ 250.00	$ 622,500	
128	Chain Link Railing (Type 7)	304-3	2897	LF	$ 35.00	$ 101,395	
129	Concrete Barriers Type 25 (Mod)	303A-8, 218-2	2897	LF	$ 75.00	$ 217,275	
130	Bridge Piling - Furnish	305-1	10687.14884	LF	$ 35.00	$ 374,050	
131	Bridge Piling - Install	305-1	221	EA	$ 1,250.00	$ 276,250	
132	Structural Concrete Bridge	303A-2	2028	CY	$ 630.00	$ 1,277,640	
133	Structural Concrete Bridge Footing	303A-2	930	CY	$ 460.00	$ 427,800	
134	Structural Approach Slab (Type N)	303A-3	200	CY	$ 650.00	$ 130,000	
135	Precast Girders - Furnish	303A-4	11	EA	$ 25,000.00	$ 275,000	
136	Precast Girders - Install	303A-4	11	EA	$ 3,000.00	$ 33,000	
137	Bar Reinforcing Steel	303A-7	480700	LB	$ 1.00	$ 480,700	
138	Mechanically Stabilized Earth (MSE) Wall	300-13	46728.29268	SF	$ 65.00	$ 3,037,339	

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ENGINEER'S ESTIMATE

ITEM NO.	ITEM DESCRIPTION	SPEC	QTY.	UNIT OF MEASURE	UNIT PRICE	TOTAL BID	SECTION COST
SECTION 5a - UTILITIES - Water							**$ 1,131,660**
139	24" Water (City)	306-1.2, 306-1.6.3	1,435	LF	$ 310.00	$ 444,850	
140	18" Water (Cal Wtr)	306-1.2, 306-1.6.3	1522	LF	$ 260.00	$ 395,720	
141	36" Casing (24" City)	306-2	1	EA	$ 105,000.00	$ 105,070	
142	30" Casing (18" Cal Wtr.)(Loc 1)	306-2	1	EA	$ 105,000.00	$ 105,070	
143	30" Casing (18" Cal Wtr.) (Loc 2)	306-2	1	EA	$ 59,700.00	$ 59,700	
144	Abandon Waterlines (Slurry Fill)	306-5	1	LS	$ 21,250.00	$ 21,250	
SECTION 5b - UTILITIES - Fire							**$ 31,550**
145	Elevated Hydrant (Structure)	215-2	4	EA	$ 4,100.00	$ 16,400	
146	Hydrants (Roadway)	215-2	5	EA	$ 2,200.00	$ 11,000	
147	6' Fire Line	215-6.3	50	LF	$ 83.00	$ 4,150	
SECTION 5c - UTILITIES - Lighting							**$ 461,000**
148	Light Pole Fixtures (SCE)	86-8.03	40	EA	$ 2,500.00	$ 100,000	
149	Electrical (SCE)	86-8.03	1	LS	$ 2,500.00	$ 2,500	
150	Pull Box (SCE)	86-2.06	42	EA	$ 750.00	$ 31,500	
151	Conduit, wire, trench & Backfill (SCE)	86-2.05	1	LS	$ 151,000.00	$ 151,000	
152	Pedestal, pad & grounding (SCE)	86-2.04	2	EA	$ 3,500.00	$ 7,000	
153	Light Pole Fixtures (City)	86-2.03	13	EA	$ 2,000.00	$ 26,000	
154	Electrical (City)	86-2.03	1	LS	$ 71,500.00	$ 71,500	
155	Pull Box (City)	86-2.06	18	EA	$ 750.00	$ 13,500	
156	Conduit, wire, trench & Backfill (City)	56-2.05	1	LS	$ 54,250.00	$ 54,250	
157	Pedestal, pad & grounding (City)	86-2.04	1	EA	$ 3,750.00	$ 3,750	

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ENGINEER'S ESTIMATE

ITEM NO.	ITEM DESCRIPTION	SPEC	QTY.	UNIT OF MEASURE	UNIT PRICE	TOTAL BID	SECTION COST
SECTION 5d - UTILITIES - Sewer							$ 471,210
158	24" Sewer (LACSD) Relocation	5-4, 306-1.2	620	LF	$ 400.00	$ 248,000	
159	24" Sewer (LACSD) Draindown & Tie In	306-1.2	1	LS	$ 15,000.00	$ 15,000	
160	12" Sewer (City of Torrance) Relocation	5-4, 306-1.2	88	LF	$ 250.00	$ 22,000	
161	12" Sewer (City of Torrance) Draindown &Tie In	306-1.2	1	LS	$ 7,500.00	$ 7,500	
162	10" Sewer (City of Torrance) Relocation	5-4, 306-1.2	142	LF	$ 165.00	$ 23,430	
163	10" Sewer (City of Torrance) Draindown & Tie In	306-1.2	1	LS	$ 5,000.00	$ 5,000	
164	24" Steel Casing (City of Torrance)	306-2	121	LF	$ 650.00	$ 78,650	
165	4" Sewer (City of Torrance) Relocation	5-4, 306-1.2	70	LF	$ 90.00	$ 6,300	
166	4" Sewer (City of Torrance) Draindown & Tie In	5-3	1	LS	$ 2,000.00	$ 2,000	
167	Abandon 24" Sewer (LACSD)	5-3	630	LF	$ 10.00	$ 6,300	
168	Abandon 12" Sewer (City of Torrance)	5-3	106	LF	$ 5.00	$ 530	
169	Abandon 10" Sewer (City of Torrance)	5-3	100	LF	$ 5.00	$ 500	
170	Sewer Manhole (5')	302-5.8	6	EA	$ 6,000.00	$ 36,000	
171	Sewer Manhole (8')	302-5.8	2	EA	$ 10,000.00	$ 20,000	
172	LACSD Costs (10%)		0	LS	$ 47,121.00	$ -	
173	CM & Inspection (10%)		0	LS	$ 47,121.00	$ -	

SUBTOTAL	$	15,950,380.00
CONTINGENCY @ 5%	$	-
TOTAL COST	$	15,950,380.00

Form Approved by VP-Law

Exhibit H

Utility Accommodation policy

EXHIBIT H

Burlington Northern Santa Fe

UTILITY ACCOMMODATION POLICY

Engineering Services
4515 Kansas Avenue
Kansas City, KS 66106

April 16, 2004
Revised May 5, 2007

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PART 1

GENERAL POLICY

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PART 1 - GENERAL POLICY

A. Policy Application

1. Purpose

This policy is to prescribe the accommodation, location and method of installation, adjustments, removal, relocation and maintenance of utility facilities within the property of Burlington Northern & Santa Fe Railway Company, referred to hereafter as BNSF. The policy was developed in the interest of safety, protection, utilization, and future development of BNSF with due consideration given to public and private service afforded by adequate and economical utility installations.

2. Application

The policy concerning utility accommodations shall apply to all:

a. New utility installations.

b. Additions to existing utility installations.

c. Adjustment and relocation of utilities.

d. Existing or planned utility installations for which agreements with BNSF were entered prior to the date of the adoption of this policy.

e. Existing utility installations that do not meet the license requirements may remain at the discretion of BNSF.

Various types of utility lines not specifically discussed herein shall be considered within the provisions of this policy. It shall be the general practice to consider all lines carrying caustic, flammable or explosive materials under the provisions for high-pressure gas and liquid fuel lines.

3. Scope

Utilities include lines, facilities and systems for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water and other similar commodities which are privately, publicly or cooperatively owned and which serve directly or indirectly the public or any part thereof.

A Utility Agreement License allowing a Utility Owner the privilege of placing its facilities in or on railroad property does not constitute permanent right for such usage. Any removal, remodeling, maintenance or relocation of the facilities, whether or not required by BNSF, will be accomplished promptly by the Utility Owner at no cost to BNSF.

4. Exceptions

Exceptions to any design, location or methods of installation provisions contained in this policy must be authorized by BNSF. Requests for exceptions will be considered only where it is shown that extreme hardship and/or unusual conditions provide justification and where alternate measures can be prescribed in keeping with the intent of this policy. All requests for exceptions shall be fully documented including design data, cost comparisons and other pertinent information.

5. Liability

The Utility Owner, it successor, or assigns shall assume all risk and liability for accidents and damages that may occur to persons or property on account of this work, and shall indemnify and hold BNSF harmless from any and all costs, liabilities, expenses, suits, judgments or damages to persons or property or claims of any nature whatsoever arising out of or in connection with the permit, or the operation and performance thereunder by the utility, its agents, employees or subcontractors. In this regard, it is further understood and agreed that the utility may be required to obtain insurance coverage as determined by BNSF.

The Utility Owner agrees that if liability insurance is required, it will file with the designated office, prior to granting of the license, "Certificates of Insurance" or other evidence to show that the appropriate insurance is carried.

Insurance as may be required shall be maintained in force until the final release of the Utility Owner by BNSF from all obligations under the terms of the license. The insurance contract shall cover claims for such length of time as law permits said claims. The insurance document shall include a clause requiring the insurer to notify BNSF ten (10) days in advance of any cancellation or change in insurance contacts.

The Utility Owner is responsible for any subcontractor to be knowledgeable of the policy and to require all work to be in compliance with this policy. Subcontractors must carry a liability insurance policy unless the subcontractor is covered by the Utility Owner's insurance.

6. Replacement of Facility

Replacement of existing facility with the same facilities or facilities of a different type, or design, is to be considered as a new utility installation and all work shall adhere to this policy.

7. Change in Ownership

It is the Utility Owner's responsibility to inform BNSF, in writing, of any name, ownership or address changes.

8. Noncompliance

Noncompliance with any terms of this Utility Accommodation Policy or Utility License Agreements may be considered as cause for discontinuance of construction or operations until compliance is assured. Continued noncompliance will result in the revocation of the license. The cost of any work required by BNSF in the removal of non-complying construction will be assessed against the Utility Owner.

9. Discharge of Waste Material

Applications for a Utility License Agreement for the installation of utility facilities which will discharge materials into the nation's waters, must comply with all applicable requirements of Corps of Engineers, and other federal, state or local environmental protection agencies. Identification of applicable requirements and administration of compliance procedures are the responsibility of the Utility Owner.

B. Utility License Agreement Requirements

1. General

Utility License Agreements are required when utility facilities are installed, relocated, removed or maintained along or across all BNSF property.

If liability insurance is required, then evidence of adequate liability insurance is to be on file with BNSF for each agreement.

2. Applications

Approved requests to install, maintain, relocate or remove a utility within the property of BNSF shall be authorized by a Utility License Agreement. The applications for utility license agreements along with plans for the proposed installation shall be submitted to BNSF and approved before construction has commenced.

3. Location

a. Utility lines shall be located to avoid or minimize the need for adjustments for future railroad improvements and to permit access to the utility lines for their maintenance with minimum interference to railroad traffic.

b. Pipelines shall be installed under tracks by boring, jacking, or in some cases, open-trenching. **WATER JETTING IS NOT PERMITTED.**

c. Where practical, pipelines carrying liquefied petroleum gas shall cross the railway where the tracks are carried on an embankment.

d. All high-pressure pipelines (greater than 60-psi internal pressure), except those in public roads, shall be prominently marked at the property line (on both sides of the track for under crossings) by signs which state the size of the line and its depth.

Example:

CAUTION: 30-inch diameter high-pressure Gas main 7 feet deep.

4. Design Considerations

a. The design of any utility installation will be the responsibility of the Utility Owner. An installation within the railroad property must be reviewed and approved by the railroad with regard to location and the manner of adjustment. This includes the measures to be taken to preserve the safety and flow of rail traffic, structural integrity of the roadway or structure, ease of maintenance and the integrity of the utility facility. Utility installations, on, over or under BNSF property shall conform with requirements contained herein and/or as a minimum, the appropriate requirements outlined in the following:

1) Safety Rules for the Installation and Maintenance of Electric Supply and Communication Lines-National Electric Safety Code.

2) Title 49 C.F.R. Part 192, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards and Amendments.

3) Title 49 C.F.R. Part 195, Transportation of Liquids by Pipelines and Amendments.

4) American Society for Testing and Materials (ASTM) Specifications - latest edition.

5) Manual on Uniform Traffic Control Devices - with revisions.

6) Rules and Regulations for Public Water Systems - latest edition, published by the appropriate State Health Department.

b. All utility installations on, over or under BNSF property shall be of durable materials designed for long service life and relatively free from routine servicing and maintenance. Conformance with current applicable material specifications and codes is mandatory.

c. References given to any manual, publication or specification are intended to be the most current edition. If a conflict occurs between any publication and this manual, the most restrictive specification will be used.

d. For all boring and jacking installations under main and passing tracks, greater than 26 inches in diameter, and at a depth of between 5.5 and 10.0 feet below top of tie, a geotechnical study will need to be performed to determine the presence of granular material and/or high water table elevation, at the sole expense of the Permittee. The study will include recommendations and a plan for a procedure to prevent failure and a collapse of the bore. Generally, core samples are to be taken near the ends of tie at the proposed location, at least as deep as the bottom of the proposed horizontal bore. Test results must be reviewed and approved by BNSF, or its agent, prior to boring activities commencing. BNSF reserves the rights, based on test results, to require the Permittee to select an alternate location, or to require additional engineering specifications be implemented, at the sole expense of the Permittee, in order to utilize existing location.

C. Safety

1. A safety orientation course should be completed by all workers prior to entering BNSF property. It is the contractor's responsibility to conduct the safety training and implementation of a safety program for its employees. Training materials are available on the web site: www.contractororientation.com. The contractor must comply with all federal, state and local safety regulations.

2. Flagging

   When work is performed within twenty-five (25) feet of the centerline of the track, railroad flagging will be required.

   a. Railroad flagging will be required:

      1) During the period of construction when it is necessary for the Contractor to operate equipment in the vicinity of, or over, BNSF property which may endanger railroad operations, or

      2) Two or more railroad flagmen may be required at other times that the Railway Company Roadmaster's sole discretion shall deem necessary.

   b. Flagging services shall be performed by BNSF employees and the total cost borne by the Utility Owner.

   c. The Utility Owner will be billed monthly at a rate to be determined by BNSF to include labor and payroll associated costs plus any expenses incurred by BNSF for flagging services.

   d. A written request for flagging services will be required at least 72 hours prior to the time when such services are needed. This request is made to the BNSF Roadmaster, as noted in agreement.

3. Material Storage

Storage of materials, parking of equipment and vehicles when not used in actual utility work will not be permitted on railroad property.

D. Maintenance and Servicing Utilities

1. Utility Owner's Responsibility

   a. Maintenance of the utility is the responsibility of the Utility Owner.

   b. Maintenance must be performed to keep the facility in an as-constructed condition, and in a good state of repair in accordance with the requirements of Federal, State and Local laws, regulatory standards and utility codes.

   c. It is the Utility Owner's responsibility to replace and stabilize all earth cover and vegetation when it has eroded over an underground utility facility where such erosion is due to, or caused by, the placement or existence of the underground utility facility.

   d. The Utility Owner shall be responsible for any settlement of backfill, fills, and embankments that may occur.

2. Emergency Maintenance

   a. Emergency maintenance of utilities located on railroad property is permissible without obtaining a Utility License Agreement if an emergency exists that is dangerous to the life, safety or welfare of the public and which requires immediate repair. The Utility Owner shall take all necessary and reasonable safety measures to protect the public and the railroad.

   b. The Utility Owner, in such and event, will advise the Railway Company's Roadmaster as soon as possible. Damage to the right-of-way and facilities will be restored to its original condition. A Utility License Agreement should be requested by the Utility Owner within the second working day provided the work is not covered under any previously granted license. Flagging requirements described earlier apply in all situations.

E. Preservation, Restoration and Cleanup

1. Disturbed Areas

   a. Areas of railroad property, disturbed by the installation, maintenance, removal and relocation of utilities shall be kept to a minimum.

   b. Disturbed areas shall be returned to normal grade and elevation, with compaction of backfill material, and all excess or undesirable material removed by the Utility Owner. The Utility Owner shall replace destroyed vegetation by sodding, or seeding, fertilizing and mulching, or a combination thereof.

   c. The Utility Owner shall provide protection against erosion in disturbed areas that are subject to erosion. Such protection may be in the form of rock riprap, wash checks, hay or straw cover, or other material that is approved and does not interfere with railroad maintenance.

2. Drainage Facilities

   Care shall be taken to avoid disturbing existing drainage facilities. Underground utility facilities shall be bedded with pervious material and outlets provided for entrapped water. Underdrains should be provided where necessary.

3. Cleanup

   Unused material or debris shall be removed from the work site area. At the end of every construction day, construction equipment and materials shall be removed as far from the operating railroad tracks as possible (minimum 25 feet from centerline).

F. Protection of Vegetation

1. Trimming, Clearing or Removal of Vegetation

   a. Consistent with the preservation of planted vegetation, consideration will be given to Utility Owners for the necessary trimming, clearing or removal of vegetation to provide adequate clearance of overhead wires. Such work will be done in accordance with established practices and standards; however, approval will not be granted for wasteful or wanton trimming, or removal in order to provide easy solutions to a difficult situation.

   b. No trees, shrubs, bushes, vines or ground cover on railroad property shall be sprayed, trimmed, cut down, rooted up, removed or mutilated in any manner unless a permit is granted by BNSF to do such work.

2. Chemical Brush Control

   a. Spraying brush and seedling tree growth to prevent re-sprouting may be permitted, and when permitted, shall be carried out with extreme caution and careful performance. The Utility Owner shall be responsible for the performance of their employees or contractors in the application of brush control and approved by BNSF Environmental Department.

   b. All spraying shall be done by a herbicide applicator that is licensed in the state where the work is to be performed.

   c. Permit applications for spraying shall list the kinds of chemical weed and brush killers that will be used. When liability insurance is required, it shall be provided by the herbicide applicator, or be insured under the liability insurance of the Utility Owner.

   d. Plants over five (5) feet in height should not be sprayed for control. Brush over five (5) feet in height, which is to be removed, should be cut and the stumps treated to prevent growth. Shrubbery type growth such as dogwood, sumac, redbud, plum, etc., should not be sprayed as a general rule. Steep slopes, where brushy growth is a major factor in preventing erosion, should not be sprayed.

3. Tree Pruning

   a. Tree pruning on railroad property for utility lines will utilize the best horticultural practices. All cut branches, dead limbs, etc., shall be removed. Such materials shall not be burned or disposed of on railroad property unless permission is granted by Utility License Agreement.

   b. Should burning be permitted, the Utility Owner will be held liable for any damage to grass, crops, native shrubs and trees arising from careless burning of such brush.

   c. Any and all limbs trimmed shall be removed with a clean cut and all limb scars over one (1) inch in diameter shall be treated with appropriate tree paint.

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PART 2

UTILITIES PARALLELING

RAILROAD PROPERTY

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PART 2 - UTILITIES PARALLELING RAILROAD PROPERTY

A. General Provisions

This section of the policy applies to all public and private utilities, including electric power, telephone (including fiber optics), telegraph, cable television, water, gas, oil, petroleum products, steam, chemicals, sewage, drainage, irrigation and similar lines that are located, adjusted or relocated within the property under the jurisdiction of BNSF. Such utilities may involve underground, surface or overhead facilities.

Any utility line greater than five hundred (500) feet in length will be considered a parallel line and is to be located on uniform alignment, within ten (10) feet or less of the property line so as to provide a safe environment and to preserve space for future railroad improvements or other utility installations. BNSF Engineering must approve any installation over one mile.

Utilities will be located so as to provide a safe environment and shall conform to the current "National Electrical Safety Code," "American Waterworks Association Specifications," Federal Pipeline Safety Regulations," and "The American Railway Engineering and Maintenance Association Specifications." Where laws or orders of public authority prescribe a higher degree of protection, then the higher degree of protection prescribed shall supersede the provisions of this manual.

B. Overhead Installations

1. Minimum four feet clearance required above signal and communication lines.

2. Poles must be located 50 feet out from the centerline of railroad main, branch and running tracks, CTC sidings, and heavy tonnage spurs. Pole location adjacent to industry tracks; must provide at least a 10-foot clearance from the centerline of track, when measured at right angles. If located adjacent to curved track, then said clearance must be increased at a rate of 1-½ inches per degree of curved track.

3. Regardless of the voltage, unguyed poles shall be located a minimum distance from the centerline of any track, equal to the height of the pole above the ground-line plus 10 feet. If guying is required, the guys shall be placed in such a manner as to keep the pole from leaning/falling in the direction of the tracks.

4. Poles (including steel poles) must be located a minimum distance from the railroad signal and communication line equal to the height of the pole above the ground-line or else be guyed at right angles to the lines. High voltage towers (34.5kV and higher) must be located off railroad right of way.

5. For proposed electrical lines paralleling tracks, BNSF may request that an inductive interference study be performed at the expense of the utility owner. Inductive interference from certain lines have the potential to disrupt the signal system in the track causing failures in the track signals and highway grade crossing warning devices. The General Director of Signals will determine the need for a study on a case-by-case basis.

C. Underground Installations

1. Underground utility installations should be located on top of the back slope at the outer limits of the railroad property.

2. If the pipeline is located forty (40) feet or less from centerline of track, the pipeline shall be encased in a steel pipe subject to approval from BNSF. No pipe may be placed closer than twenty-five (25) feet from centerline of track. Pipe must be buried with a minimum cover of three (3) feet.

   a. If less than minimum depth is necessary because of existing utilities, water table, ordinance or similar reasons, the line shall be rerouted.

   b. Locations where it will be difficult to attain minimum depth due to wet or rocky terrain shall be avoided. Any location change from plan must be approved by BNSF.

3. The use of plastic carrier pipe for sewer, water, natural gas and other liquids is acceptable under specific circumstances. The use of plastic pipe is satisfactory if the pipe is designed to meet AREMA and all applicable federal and state codes, and if the carrier pipe is properly encased with a steel casing pipe for the entire length on BNSF right of way.

4. Manholes shall be limited to those necessary for installation and maintenance of underground lines. Manholes vary as to size and shape depending on the type of utility they serve. To conserve space, their dimensions should be minimally acceptable by good engineering and safety standards. In general, the only equipment to be installed in manholes located on railroad property is that which is essential to the normal flow of the utility, such as circuit reclosers, cable splices, relays, valves and regulators. Other equipment should be located outside the limits of the railroad property. Manholes shall not protrude above the surrounding ground nor be located in the shoulder, shoulder slope, ditch, backslope, or within twenty-five (25) feet of the centerline of track without approval of BNSF.

5. Electric Power Lines

   a. A minimum depth of 3.0 feet below natural grade (BNG) will be maintained for 750 volts and less, and 4.0 feet BNG for greater than 750 volts.

   b. A 6-inch wide warning tape will be installed, 1.0 foot BNG directly over the underground power line where located on Railroad right-of-way outside the track ballast sections.

6. Fiber Optic Lines

   a. A minimum depth of 4.0 feet BNG for fiber optic cable wirelines.

   b. Whenever feasible, all cable should be laid within 5 feet from property lines.

   c. A 6-inch wide warning tape will be installed, 1.0 foot BNG directly over the underground fiber optic line where located on Railroad right-of-way outside the track ballast sections.

D. Attachment to Bridges and Other Structures

The Utility Owner will not be permitted to attach to BNSF bridges or route facilities through drainage structures or cattle passes. Utilities are not to be attached to other railroad structures without the written approval of BNSF Structures Department. As a general rule, overhead power, communication and cable television line crossings at bridges must be avoided. Pipelines laid longitudinally on railroad property shall be located as far as practical from any tracks or other important structures. If located within forty (40) feet of the centerline of any track, the carrier pipe shall be encased or be of special design as approved by BNSF Engineering.

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PART 3

UTILITIES CROSSING

RAILROAD PROPERTY

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PART 3 - UTILITIES CROSSING RAILROAD PROPERTY

A. General Provisions

This section of the policy applies to all public and private utilities, including electric power, telephone (including fiber optics), telegraph, cable television, water, gas, oil, petroleum products, steam, chemicals, sewage, drainage, irrigation and similar lines that are located, adjusted or relocated within the property under the jurisdiction of BNSF. Such utilities may involve underground, surface or overhead facilities.

Installations crossing the property of the railroad, to the extent feasible and practical, are to be perpendicular to the railroad alignment and preferably at not less than forty-five (45) degrees to the centerline of the track. Utilities shall not be placed within culverts or under railroad bridges, buildings or other important structures.

Utilities will be located so as to provide a safe environment and shall conform to the current "National Electrical Safety Code," "American Waterworks Association Specifications," Federal Pipeline Safety Regulations," and "The American Railway Engineering and Maintenance Association Specifications." Where laws or orders of public authority prescribe a higher degree of protection, then the higher degree of protection prescribed shall supersede the provisions of this manual.

B. Overhead Installations

1. Minimum four feet clearance required above signal and communication lines.

2. Poles must be located 50 feet out from the centerline of railroad main, branch and running tracks, CTC sidings, and heavy tonnage spurs. Pole location adjacent to industry tracks; must provide at least a 10-foot clearance from the centerline of track, when measured at right angles. If located adjacent to curved track, then said clearance must be increased at a rate of 1-½ inches per degree of curved track.

3. Regardless of the voltage, unguyed poles shall be located a minimum distance from the centerline of any track, equal to the height of the pole above the ground-line plus 10 feet. If guying is required, the guys shall be placed in such a manner as to keep the pole from leaning/falling in the direction of the tracks.

4. Poles (including steel poles) must be located a minimum distance from the railroad signal and communication line equal to the height of the pole above the ground-line or else be guyed at right angles to the lines. High voltage towers (34.5kV and higher) must be located off railroad right of way.

5. Crossings will not be installed under or within 500 feet of the end of any railroad bridge, or 300 feet from the centerline of any culvert or switch area.

6. Complete spanning of the property is encouraged with supportive structures and appurtenances located outside railroad property. For electric supply lines, normally the crossing span shall not exceed 150 feet with adjacent span not exceeding 1-1/2 times the crossing span length. For communication lines, the crossing span shall not exceed 100 feet in heavy loading districts, 125 feet in medium loading districts, and 150 feet in light loading districts; and the adjacent span shall not exceed 1-1/2 times the crossing span length. For heavier type construction, longer spans will be considered.

7. Joint-use construction is encouraged at locations where more than one utility or type of facility is involved. However, electricity and petroleum, natural gas or flammable materials shall not be combined. Pipe truss design and layout will need to be reviewed and approved by BNSF Engineering.

8. To ensure that overhead wire crossings are clear from contact with any equipment passing under such wires, communication lines shall be constructed with a minimum clearance above top of rail of twenty-four (24) feet, and electric lines with a minimum clearance of twenty-six and one-half (26 1/2) feet or greater above top of rail when required by the "National Electric Safety Code" or state and local regulations. Electric lines must have a florescent ball marker on low wire over centerline of track.

9. The utility owner will label the posts closest to the crossing with the owner's name and telephone number for emergency contact.

10. All overhead flammable and hazardous material lines will need BNSF Engineering approval, but should be avoided if possible.

11. For proposed electrical lines crossing tracks, BNSF may request that an inductive interference study be performed at the expense of the utility owner. Inductive interference from certain lines have the potential to disrupt the signal system in the track causing failures in the track signals and highway grade crossing warning devices. The General Director of Signals will determine the need for a study on a case-by-case basis.

C. Underground Installations

1. General

   a. All underground utility crossings of railroad trackage shall be designed to carry Cooper's E-80 Railroad live loading with diesel impact (AREMA Cooper's loading Section 8-2-8). This 80,000-lb. axle load may be distributed laterally a distance of three (3) feet, plus a distance equal to the depth from structure grade line to base of rail, on each side of centerline of single tracks, or centerline of outer track where multiple tracks are to be crossed. In no case shall railroad loading design extend less than ten (10) feet laterally from centerline of track. Longitudinally, the load may be distributed between the five-foot axle spacing of the Cooper configuration. Railroad loading criteria will also apply

where future tracks on BNSF are contemplated, to the extent this information is available.

b. All utility crossings under ditches and railroad trackage should have a minimum depth of cover of three (3) feet below the flow line of the ditch or ground surface and five and one-half (5-1/2) feet from base of rail. In fill sections, the natural ground line at the toe of slope will be considered as ditch grade. The depth of cover shall not be less than that meeting applicable industry standards.

c. For all boring and jacking installations under main and passing tracks, greater than 26 inches in diameter, and at a depth of between 5.5 and 10.0 feet below top of tie, a geotechnical study will need to be performed to determine the presence of granular material and/or high water table elevation, at the sole expense of the Permittee. The study will include recommendations and a plan for a procedure to prevent failure and a collapse of the bore. Generally, core samples are to be taken near the ends of tie at the proposed location, at least as deep as the bottom of the proposed horizontal bore. Test results must be reviewed and approved by BNSF, or its agent, prior to boring activities commencing. BNSF reserves the rights, based on test results, to require the Permittee to select an alternate location, or to require additional engineering specifications be implemented, at the sole expense of the Permittee, in order to utilize existing location.

d. The use of plastic carrier pipe for sewer, water, natural gas and other liquids is acceptable under specific circumstances. The use of plastic pipe is satisfactory if the pipe is designed to meet all applicable federal and state codes, and if the carrier pipe is properly encased within a steel casing pipe per AREMA standards. This casing must extend the full width of the right of way. Casing may be omitted only for gaseous products if the carrier pipe is steel and is placed ten (10) feet minimum below the base of rail per AREMA standards.

2. General Design and Construction Requirements

a. If the minimum depth is not attainable because of existing utilities, water table, ordinances, or similar reasons, the line shall be rerouted.

b. Locations that are considered unsuitable or undesirable are to be avoided. These include deep cuts and in wet or rocky terrain or where it will be difficult to obtain minimum depth.

c. Underground installations may be made by open-trenching from the property line to the toe of the fill slope in fill sections and to the toe of the shoulder slope in cut sections but to no closer than thirty (30) feet of the centerline of track. The remainder will be tunneled, augured, jacked or directional-bored through the roadbed. Refer to the following sections for required encasement of utilities and boring requirements.

d. Manholes should be located outside railroad property, when possible. No manhole will be located in the shoulder, shoulder slope, ditch or backslope, or within twenty-five (25)

feet of the centerline of track, and shall not protrude above the surrounding ground without approval of BNSF.

e. Utilities will not be attached to or routed through drainage structures or cattle passes. Utilities are not to be attached to other railroad structures without written approval of the BNSF Structures Department.

f. Jacking pits shall be located a minimum of thirty (30) feet from the centerline of track.

3. Pipeline Requirements

a. Pipeline designs are to specify the type and class of material, maximum working pressures and test and design pressure. Pipelines which are not constructed, operated and maintained under regulations established under US Department of Transportation Hazardous Materials Regulations Board, shall upon revisions in the class of material or an increase in the maximum operating pressure, must obtain BNSF Engineering approval.

b. Pipelines carrying oil, liquefied petroleum gas, natural or manufactured gas and other flammable products shall conform to the requirements of the current AREMA, ANSI/ASME B 31.4 Code for pressure piping - Liquid Petroleum Transportation Piping Systems; ANSI B 31.8 Code for pressure piping - Gas Transmission and Distribution Piping Systems; other applicable ANSI codes and 49 C.F.R. Part 192 or Part 195 - Transportation of Hazardous Liquids by Pipeline, except that the maximum allowable stress of design of steel pipe shall not exceed the following percentages of the specified minimum yield strength (multiplied by longitudinal joint factor) of the pipe as defined in the ANSI codes.

c. Pipelines under railroad tracks and across railroad property shall be encased in a larger pipe or conduit called "casings." Generally, casings shall extend from right-of-way line to right-of-way line, unless otherwise approved.

d. Pipelines and casing pipes shall be suitably insulated from underground conduits carrying electric wires on railroad property.

e. Reinforced concrete pipe will need to be encased for a distance as wide as the embankment at the utility crossing. This is to protect against track failure due to joint separation.

4. Encasement of Utilities

a. Casings are oversized load-bearing conduits or ducts through which a utility is inserted:

1) To protect the railroad from damages and to provide for repair, removal and replacement of the utility without interference to railway traffic.

2) To protect the carrier pipe from external loads or shock, either during or after construction.

3) To convey leaking fluids or gases away from the area directly beneath the railroad trackage to a point of venting at the railroad property line.

b. Casings may be omitted for **gaseous products only** under the following circumstances:

1) Carrier pipe must be steel and the wall thickness must conform to E-80 loading for casing pipe shown in the tables as included in the AREMA manual Chapter 1, Part 5 for Pipeline Crossings. The length of thicker-walled pipe shall extend from railroad right-of-way line to right-of-way line. This will generally result in thicker-walled pipe on railroad right-of-way.

2) All steel pipe shall be coated and cathodically protected.

3) The depth from base of rail to top of pipe shall not be less than ten (10) feet below base of rail. The depth from ditches or other low points on railroad right-of-way shall not be less than six (6) feet from ground line to top of pipe.

c. In circumstances where it is not feasible to install encasement from right-of-way line to right-of-way line, casing pipe under railroad tracks and across railroad property shall extend to the greater of the following distances, measured at right angles to the centerline of track:

1) Two (2) feet beyond toe of slope.

2) Three (3) feet beyond ditch line.

3) Twenty-five (25) feet from centerline of outside track when casing is sealed at both ends.

4) Forty-five (45) feet from centerline of outside track when casing is open at both ends.

5) If additional track is planned for future construction, casing must extend far enough to meet above distances given the additional track requirement.

d. Pipelines and casing pipe shall be suitably insulated from underground conduits carrying electric wires on railroad property.

e. Casing pipe and joints shall be made of metal, and of leakproof construction. Casings shall be capable of withstanding the railroad loadings and other loads superimposed upon them.

f. Wall thickness designations for steel casing pipe for E-80 loading (including impact) are:

Nominal Diameter, (Inches)	Min. Thickness for Coated (Inches)	Non Coated (Inches)
14 and Under	0.188	0.188
16	0.219	0.281
18	0.250	0.312
20 and 22	0.281	0.344
24	0.312	0.375
26	0.344	0.406
28	0.375	0.438
30	0.406	0.469
32	0.438	0.500
34 and 36	0.469	0.531
38, 40 and 42	0.500	0.563
44 and 46	0.531	0.594
48	0.563	0.625
50	0.594	0.656
52	0.625	0.688
54	0.656	0.719
56 and 58	0.688	0.750
60	0.719	0.781
62	0.750	0.813
64	0.718	0.844
66 and 68	0.813	0.875
70	0.844	0.906
72	0.875	0.938

1) Steel pipe shall have minimum yield strength of 35,000 pounds per square inch.

2) All metallic casing pipes are to be designed for effective corrosion control, long service life and relatively free from routine servicing and maintenance. Corrosion control measures must include cathodic protection.

3) Cast iron may be used for casing. It shall conform to ANSI A21. The pipe shall be connected with mechanical-type joints. Plain-end pipe shall be connected with compression-type couplings. The strength of the cast iron pipe to sustain external loads shall be computed in accordance with the most current ANSI A21.1 "Manual for the Computation of Strength and Thickness of Cast Iron Pipe."

g. The inside diameter of the casing pipe shall be such that the carrier pipe can be removed without disturbing the casing. All joints or couplings, supports, insulators or centering devices for the carrier pipe shall be considered in the selection of the casing diameter.

h. For flexible casing pipe, a minimum vertical deflection clearance of the casing pipe shall be three percent (3%) of its diameter plus one-half (1/2) inch so that no loads from the roadbed, track, railroad traffic or casing pipe are transmitted to the carrier pipe. When insulators are used on the carrier pipe, the relationship of the casing size to the size of the carrier pipe is:

Diameter of Carrier Pipe	Inside Dia. of Casing Pipe Equals Outside Dia. of Carrier Pipe Plus
0" - 8"	2"
10" - 16"	3-1/4"
Over 16"	4-1/2"

5. Casing and Pipeline Installation

a. Casing and pipeline installations should be accomplished by directional boring, jack-and-bore, tunneling or other approved methods. Tunneling construction under tracks will be permitted only under direct supervision of a BNSF Engineer. Tunneling procedures and equipment, as well as structural design, must have BNSF Structures Department approval prior to starting any work on BNSF property. Generally, tunneling shall not be considered where less than six (6) feet of cover exists, or where excessively sandy, loose or rocky soils are anticipated.

Rail elevations over the work must be monitored at intervals prescribed by BNSF to detect any track movement. Movements of over one-quarter (1/4) inch vertically shall be immediately reported to the BNSF Roadmaster. Due to the danger to rail traffic that is caused by only small amounts of track movement, BNSF forces may have to be called to surface the track several times.

The following requirements shall apply to these construction methods:

1) The use of water under pressure jetting or puddling will not be permitted to facilitate boring, pushing or jacking operations. Some boring may require water to lubricate cutter and pipe, and under such conditions, is considered dry boring.

2) Where unstable soil conditions exist, boring or tunneling operations shall be conducted in such a manner as not to be detrimental to the railroad being crossed.

3) If excessive voids or too large a bored hole is produced during casing or pipeline installations, or if it is necessary to abandon a bored or tunneled hole, prompt remedial action should be taken by the Utility Owner.

4) All voids or abandoned holes caused by boring or jacking are to be filled by pressure grouting. The grout material should be sand cement slurry with a minimum of two (2) sacks of cement per cubic yard and a minimum of water to assure satisfactory placement.

5) The hole diameter resulting from bored or tunneled installations shall not exceed the outside diameter of the utility pipe, cable or casing (including coating) by more than one and one-half (1-1/2) inches for pipes with an inside diameter of twelve (12) inches or less, or two (2) inches on pipes with an inside diameter greater than twelve (12) inches.

6) Pits for boring, tunneling or jacking will not be permitted within thirty (30) feet of the centerline of track; or closer to the track than the toe of fill slopes in fill sections, or toe of shoulder slopes in ditch sections when pipes are allowed on the railroad property.

c. Vents. In casing pipe installations, vents are appurtenances by which fluids or gases between carrier and casing may be inspected, sampled, exhausted or evacuated.

1) Vents shall be located at the high end of short casings and at both ends of casing longer than one hundred fifty (150) feet.

2) Vent standpipes shall be located and constructed so as not to interfere with maintenance of the railroad or to be concealed by vegetation. Where possible, they shall be marked and located at the property line. The markers shall give the name and address of the owner, and a phone number to contact in case of emergency.

3) Casing pipe, when sealed, shall be properly vented. Vent pipes shall be of sufficient diameter, but in no case less than two (2) inches in diameter and shall be attached near each end of casing, projecting through ground surface at property lines.

4) Vent pipes shall extend not less than four (4) feet above ground surface. Top of vent pipes shall be fitted with a down-turned elbow, properly screened; or a relief valve.

5) For pipelines carrying flammable materials, vent pipes on casings shall be at least 16 feet (vertically) from aerial electric wires. Casings shall be suitably insulated from underground conduits carrying electric wires on Railroad right-of-way.

d. Shut-Off Valves

1) The Utility Owner shall install accessible emergency shut-off valves within effective distances on each side of the railroad. Where pipelines are provided with automatic control stations, no additional valves will be required.

2) Locating a shut-off valve on railroad property should be avoided. If approval is acquired, a guardrail must protect the shut-off valve.

3) When a guardrail is required, its height shall be four (4) feet above the ground line. All four corner posts shall be driven to a minimum depth of four (4) feet below ground line. There shall be a minimum clearance of two (2) feet from the valve to the

guardrail. The steel pipes for the four corner posts and guardrail shall have a minimum diameter of four (4) inches. All joints will be welded with a one-quarter (1/4) inch fillet weld all around.

6. Water Lines

   a. Where casing pipe is used, venting is not required; however, sealing will be required if the ends of the casing are not above high water.

   b. Where non-metallic pipe is permitted and installed, steel casings are required from right of way line to right of way line.

   c. Manholes should be located outside the railroad property. Manholes shall not be located within twenty-five (25) feet of railroad trackage, in the shoulder, shoulder slope, ditch or backslope; and shall not protrude above the surrounding ground without the approval of BNSF Engineering.

   d. The Utility Owner shall place a readily identifiable and suitable marker at each railroad property line where it is crossed by a water line.

7. Sewer Lines

   a. New and relocated sewer lines shall be constructed with satisfactory joints, materials and designs which will provide protection and resistance to damage from sulfide gases and other corrosive elements to which they may be exposed.

   b. Where casing pipe is used, venting and sealing of casing will be required.

   c. Where non-metallic pipe is permitted and installed, a durable metal wire shall be concurrently installed; or other means shall be provided for detection purposes.

   d. Manholes should be located outside the railroad property. Manholes shall not be located within twenty-five (25) feet of railroad trackage, in the shoulder, shoulder slope, ditch or backslope; and shall not protrude above the surrounding ground without the approval of BNSF Engineering.

8. Electric Power Lines

   a. A minimum depth of 5.5 feet below the base of rail (BBR) will be maintained.

   b. A minimum depth of 3.0 feet below natural grade (BNG) will be maintained for 750 volts and less, and 4.0 feet BNG for greater than 750 volts.

   c. The wireline must be encased completely across the Railroad right-of-way with a rigid metallic conduit.

d. Crossings will not be installed under or within 50 feet of the end of any Railroad bridge, centerline of any culvert or switch area.

e. A BNSF signal representative must be present during installation if railroad signals are in the vicinity of wireline crossings unless signal representative authorizes otherwise.

f. Markers that identify the Utility Owner shall be placed at both property lines for utilities crossing the railroad property. For parallel lines markers shall be placed above the cable at intervals no less than 300' apart. The markers should identify the owner, type of cable and emergency telephone number. A 6-inch wide warning tape will be installed, 1.0 foot BNG directly over the underground power line where located on Railroad right-of-way outside the track ballast sections.

g. Above-ground utility appurtenances installed as a part of an underground installation shall be located at or near the railroad property line and shall not be any closer than twenty-five (25) feet to the centerline of track.

9. Fiber Optic Lines.

a. The same requirements for electric power line crossings will apply for fiber optic line crossings except for the following:

b. A minimum depth of 4.0 feet BNG for fiber optic cable wirelines.

c. BNSF Engineering must approve any specialized equipment used to install cable. No rail plow will be allowed for installation purposes.

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PART 4

PLANS, APPROVALS AND PROCEDURES

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PART 4 - PLANS, APPROVALS AND PROCEDURES

A. Plans and Approvals

1. Design

   a. The design of all utility installations will be the responsibility of the Utility Owner.

   b. The plans for the proposed installation shall be submitted to and meet the approval of BNSF Engineering before construction is initiated.

   c. Plans shall be drawn to scale showing the relationship of the proposed utility line to the railroad tracks, the angle of crossing, location of valves and vents, the railroad mile post and engineering station, railroad property lines and general layout of tracks and other railroad facilities. The plans should include a cross-section (or sections) from the field survey that will show utility placement in relation to actual profile of ground and tracks. If tunneling is proposed, method of supporting tracks or driving of tunnel shall be shown. The geotechnical study, when required, should be included.

   d. The plans should contain the following data for carrier pipe and casing pipe:

      Contents to be carried
      Inside diameter
      Pipe material
      Specifications and grade of material
      Wall thickness
      Actual working pressure
      Type of joints
      Longitudinal joint factor
      Coating
      Method of installation
      Vents-Number, Size, Height above ground
      Seals-Both ends, One end
      Cover (top of tie to top of pipe or casing)
      Cover (other than under tracks)
      Cover (at ditches)
      Cathodic protection
      Type, Size and Spacing of insulators or supports

   e. When a geotechnical study is required, the findings and protection plan shall be prepared by a licensed civil engineer and included with the plans. The geotechnical crew will need to be properly permitted to enter BNSF right-of-way and a BNSF flagman will be required when working within 25 feet of the track.

2. Approvals

a. Approval of plans and application forms is required for all installations of utilities prior to initiation of work on railroad property.

b. If surveying is necessary for the completion of an application, a "Right of Entry" or "Release of Claim and Indemnity" must be executed and referenced.

B. License Procedures

1. Applications should be submitted to:

   Staubach Global Services
   Permits Department
   3017 Lou Menk Drive, Suite 100
   Fort Worth, TX 76131-2800

2. Upon receipt of the application, a letter will be forwarded acknowledging receipt and advising of the Permit & Contract file reference number that has been assigned and the person who should be contacted for further inquiries.

3. Office Hours: 8:00 A.M. to 5:00 P.M. Monday through Friday, CT
   Phone Number: (toll free) 866-498-6647.

4. Agreements will be required for all encroachments on railroad property.

5. Generally, agreement-processing time will be thirty to sixty days. Please allow sufficient lead-time for document handling prior to desired construction date. Before construction begins, agreements must be executed by Utility Owner and returned. Verbal authorizations will not be granted or permitted. A minimum of seventy-two (72) hours advance notice after execution of an agreement will be required prior to initiation of construction.

6. License fees must be submitted at the time the agreement is executed and returned.

7. Applications are to be made on the standard application form including an Exhibit "A."

C. Construction

1. The execution of the work on railroad property shall be subject to the inspection and direction of the Roadmaster or his representative.

2. A representative of BNSF Signal Department must be present during installation if railroad signals are in the vicinity of the construction.

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PART 5

APPENDIX

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PART 5 - APPENDIX

REFERENCES

American National Standards Institute (ANSI) Codes, 1430 Broadway, NY, NY 10018.

American Railway Engineering and Maintenance of Way Association (AREMA) Specifications.

American Society for Testing and Materials (ASTM) Specifications.

American Water Works Association Standards and Specifications, AWWA, 2 Park Avenue, NY, NY 10016.

Manual on Uniform Traffic Control Devices - with revisions, US Department of Transportation, Federal Highway Administration.

National Electrical Safety Code, US Department of Commerce, National Bureau of Standards.

Pipeline Safety Regulations - Code of Federal Regulations, Tile 49 - Transportation, Parts 191-192-Natural Gas; Part 195-Liquid Petroleum Gas.

Rules and Regulations for Public Water Systems - latest edition, State Health Departments.

Rules and Regulations promulgated by the Hazardous Materials Regulation Board of the US Department of Transportation.

Statutory Provisions, 23 U.S.C. 109 and 111.

DEFINITION OF TERMS

The terminology used in this Policy strives for conventional meaning and to insure uniform interpretation. To this end, the following definitions apply:

ACCESS CONTROL: Restriction of access to and from abutting lands to railroad property.

AREMA: American Railroad Engineering and Maintenance of Way Association.

ANSI: American National Standard Institute.

ASTM: American Society for Testing and Materials.

BACKFILL: Replacement of soil around and over an underground utility facility.

BORING: Piercing a hole under the surface of the ground without disturbing the earth surrounding the hole. Boring may be accomplished by any approved manner. Water jetting or puddling will not be permitted. Holes may be mechanically bored and cased using a cutting head and continuous auger mounted inside of the casing. Small diameter holes may be augured and the casing or utility facility pushed in later.

BNSF: Burlington Northern and Santa Fe Railway Company.

BURY: Placement of the utility facility below grade of roadway, ditch or natural ground to a specified depth.

CARRIER: Pipe directly enclosing a transmitted fluid (liquid or gas).

CASING: A larger pipe enclosing a carrier.

CFR: Code of Federal Regulations.

COATING: Material applied to or wrapped around a pipe.

COMMUNICATION LINE: Fiber optic, telephone cable and similar lines, not exceeding four hundred (400) volts to ground or seven hundred fifty (750) volts between any two (2) points of the circuit, the transmittal power of which does not exceed one hundred fifty (150) watts.

CONDUIT OR DUCT: An enclosed tubular runway for protecting wires or cables.

COVER: The depth of material placed over a utility. Depth of cover is measured from top of utility casing or carrier pipe (if no casing is required) to the natural ground line or construction line above the utility.

DIRECT BURIAL: Installing a utility underground without encasement, by plowing or trenching. No rail plows will be permitted.

ELECTRIC SUPPLY: Electric light, power supply, and trolley lines, irrespective of voltage used for transmitting a supply of electrical energy.

ENCASEMENT: Structural element surrounding a pipe or cable.

FLEXIBLE PIPE: A plastic, fiberglass, or metallic pipe having a large ration of diameter to wall thickness that can be deformed without undue stress. Copper or aluminum pipe shall be considered as flexible pipe.

GROUNDED: Connected to the earth or to some extended conducting bodies which intentionally or accidentally is connected with the earth.

GROUT: A cement mortar or slurry of fine sand or clay as conditions govern.

JACK-AND-BORE: The installation method whereby the leading edge of the jacked pipe is well ahead of the cutting face of the auger bit. The auger is removing waste from inside the pipe as it is being jacked. This method greatly reduces the likelihood of subsidence of granular material during installation.

JACKING: The installation of small pipes by the use of hydraulic jacks or rams to push the pipe under the traveled surface of a road, railroad roadbed, or other facility.

LICENSE:

UTILITY LICENSE AGREEMENTS are executed for all utility facilities located on railroad property.

MANHOLE: An opening to an underground utility system which workmen or other may enter for the purpose of maintaining, inspecting, or making installations.

NATURAL GAS PIPELINES:

DISTRIBUTION SYSTEM - A pipeline other than a gathering or transmission line.

SERVICE LINE - A distribution line that transports gas from a common source of supply to a customer meter.

TRANSMISSION SYSTEM - A pipeline other than a gathering line that transports gas from a gathering line or storage facility to a distribution center or storage facility. It operates at a hoop stress of twenty percent (20%) or more of the Specified Minimum Yield Strength.

NORMAL: Crossing at a right angle.

PERMITS:

PERMIT TO BE ON BNSF PROPERTY FOR UTILITY SURVEY is to be executed prior to all survey work on railroad property.

PIPE: A tubular product made as a production item for sale as such. Cylinders formed from plate in the course of fabrication of auxiliary equipment are not pipes as defined here.

PRESSURE: Relative internal pressure in PSI (pounds per square inch) gauge.

PRIVATE LINES: Any privately owned facilities which convey or transmit the commodities outlined under the definition for Utilities but are devoted exclusively to private use.

PUBLIC LINES: Those facilities which convey or transmit the commodities outlined under the definition for Utilities and directly or indirectly serve the public or any part thereof.

RIGHT OF WAY: A general term denoting land, property of interest therein, usually in a strip, acquired for or devoted to railroad transportation purposes.

SEAL: A material placed between the carrier pipe and casing to prevent the intrusion of water, where ends of casing are below the ground surface.

SHOULDER: That portion of the roadbed outside the ballast.

TRENCHED: Installed in a narrow excavation.

TUNNELING: Excavating the earth ahead of a large diameter pipe by one or more of the following processes: 1) The earth ahead of the pipe will be excavated by men using hand tools while the pipe is pushed through the holes by means of jacks, rams or other mechanical devices, 2) The excavation is carried on simultaneously with the installation of tunnel liner plates, and/or 3) The tunnel liner plates are installed immediately behind the excavation as it progresses and are assembled completely away from the inside.

UTILITY OWNER: All privately, publicly or cooperatively owned lines, facilities and systems for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water and other similar commodities, including fire and police signal systems and street lighting systems which directly or indirectly serve the public.

APPLICANT'S PIPELINE CROSSING CHECKLIST

Installation must comply with Standard Specifications.

Installation is located at least fifty (50) feet from the end of any railroad bridge or centerline of any culvert.

Steel casing must extend completely across railroad property if carrier pipe is made of plastic.

Approval for installation may be given if pipeline is uncased and commodity is gaseous and the carrier pipe is made of steel, buried a minimum of ten (10) feet below base of rail and six (6) feet below ground line for its entire length across railroad property.

A BNSF Signal representative may be present during installation if railroad signals are in vicinity of installation, unless plans have been approved prior to installation.

Applications and Policy are available on-line at:

http://www.bnsf.com/tools/realestate/

Date: _____

APPLICATION FOR PIPE LINE CROSSING OR LONGITUDINAL

The Staubach Company
Permit Department
3017 Lou Menk Dr., Ste. 100
Fort Worth, TX 76131-2800

APPLICANT'S TAX I.D. NO./SS#_____

ATTN: Permit Specialist for _____(State)

We submit for your approval the following specifications for a pipe line we propose to build across **THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY** right-of-way, as shown on enclosed sketch.

Legal name of company or municipality who will own the pipeline _____
State in which incorporated _____
If not incorporated, correct name of owners or all partners: _____
Correct mailing address _____ Zip Code _____
Type of Encroachment: Crossing _____ Longitudinal _____ Telephone _____
Location of encroachment _____ 1/4 Sec _____ Twsp _____ Rng _____ MP _____ + _____
Name of nearest town on Railroad _____ County _____ State _____
Name of nearest roadway crossing Railroad _____
Within limits of public road or street ☐ Yes ☐ No **If yes, distance from center line of road or street** _____ **ft.**
Width of public road or street _____ **ft.**

	CARRIER	CASING
Contents to be handled through pipe	_____	_____
Emergency Contact: _____	**Emergency Telephone:** _____	
Length of pipe on Railroad Co. property (Plastic pipe must be encased full width of right of way)	_____ ft.	_____ ft.
Inside diameter of pipe	_____ in.	_____ in.
Pipe Material	_____	_____
Specification & grade (Min. yield strength casing 35,000 psi.)	_____	_____
Wall Thickness (Min. wall thickness of casing pipe under 14 in.-0.188 in. E-80 Loading)	_____ in.	_____ in.
Actual working pressure	_____ psi	
Type of joint - (mechanical or welded type)	_____	_____
Longitudinal Joint Factor	_____	
Coating	_____	_____
Distance Base of rail to top of pipe (Flammable, contents, steam, water or non-flammable - min. 5 1/2 ft. under main track.) (Uncased, gaseous products - min. 10' under track)	_____	_____
Minimum ground cover on Railroad Co. property (min. 3 ft.)	_____	_____
Cathodic protection casing-(flammable substance)	_____	_____

Type of insulators or supports _____ Size _____ Space _____
Number of vents _____ Size _____ Height above ground _____
(Flammable substances require 2 vents)
Method of crossing: Jacking _____ Trench _____ Dry Bore Only _____
(If trenched - Railroad furnish flagman at applicant's expense.)
(If bored or jacked - Jacking Pit location minimum 30 ft. from centerline of nearest track.) Pit must not be open more than 48 hours. Also, it must be protected when not in use.
Does pipeline support oil or gas well? ☐ Yes ☐ No
If yes, advise distance the well is from Railway property - _____ ft. Name of well _____
Was this service requested by BNSF? Yes or No (circle one) If yes, who requested _____
Telephone # of Requestor _____.

Attached to this sheet is location plan and detail sketch. Sketch shows tie-down measurement to centerline of nearest road crossing, bridge or other railroad structure. Please authorize us to proceed with this installation or advise what changes are necessary to meet your specifications.

Signed: _____
Print Name: _____
Title: _____
Telephone: _____

April 16, 2004

Date: _____

APPLICATION FOR WIRE LINE CROSSING OR LONGITUDINAL

The Staubach Company
Permit Department
3017 Lou Menk Dr., Ste. 100
Fort Worth, TX 76131-2800

TAX I.D. NO./SS# _____

ATTN: Permit Specialist for _____*(State)*

We submit for your approval the following specifications for a wire line we propose to build across **THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY** Right-of-way, as shown on enclosed drawing.

Legal name of company or municipality who will own the wireline _____
State in which incorporated _____
If not incorporated, correct name of owners or all partners: _____
Correct mailing address _____ Zip Code _____
Telephone _____
Location of crossing _____ 1/4 Sec _____ Twsp _____ Rng _____
Name of nearest town on Railroad _____ State _____
Type of Encroachment: Crossing ___ Longitudinal ___ Railroad Mile Post _____
Name of nearest public roadway crossing Railroad _____ County _____
Within limits of public road or street? ☐ Yes ☐ No **If yes, distance from center line of road or street** _____ **ft.**
Width of public road or street ____ **ft.**
Kind of encroachment: Electric _____ Telephone _____ Other _____
No. of wires/cables _____ Type of wires/cable _____ Volts _____ Phase _____ Cycles _____
No. of conduits _____ No. of occupied conduits _____ No. of vacant conduits _____
Length of encroachment _____ Adjacent spans _____ ft. _____ ft.
Appurtenances on Ry. Co. Property _____
Wire clearance over or under top of rail _____ ft. _____ ft.
If under track, size & kind of conduit _____
Wire clearance over Ry. Co. wire lines ft. ft.
Was this service requested by BNSF? Yes or No (circle one)
If yes, who requested? _____ Telephone: _____

Attached to this sheet is a pole head diagram (if required) and location plan. Location plan shows tie-down measurement to centerline of nearest road crossing, bridge or other railroad structure. Please authorize us to proceed with construction of this encroachment as proposed or advise what changes are necessary to meet your specifications.

Signed: _____

Print Name: _____

Title: _____

Telephone: _____

April 16, 2004

POLE HEAD AND DATA SHEET

This completed form to accompany application to construct a wire line on THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY right-of-way.

Name of Company _____

Location of encroachment _____ ft. Sec. _____ Twsp. _____ Rng. _____

Nearest Town _____ County _____

POLES
Kind _____ Size _____
Height _____
Class _____
Set-in Earth-Rock _____

GUY WIRES
Overhead _____ Down _____
Kind _____ Size _____

CROSS ARMS
Material _____
Size _____ X _____ X _____

FRONT ELEVATION

INSULATORS
Material _____
Type _____ Size _____

BRACKETS
Material _____
Type _____ Size _____

CONDUCTORS
Material _____
Kind _____ Size _____

LINE CHARACTERISTICS

Voltage _____
Phase _____ Cycle _____

SIDE ELEVATION

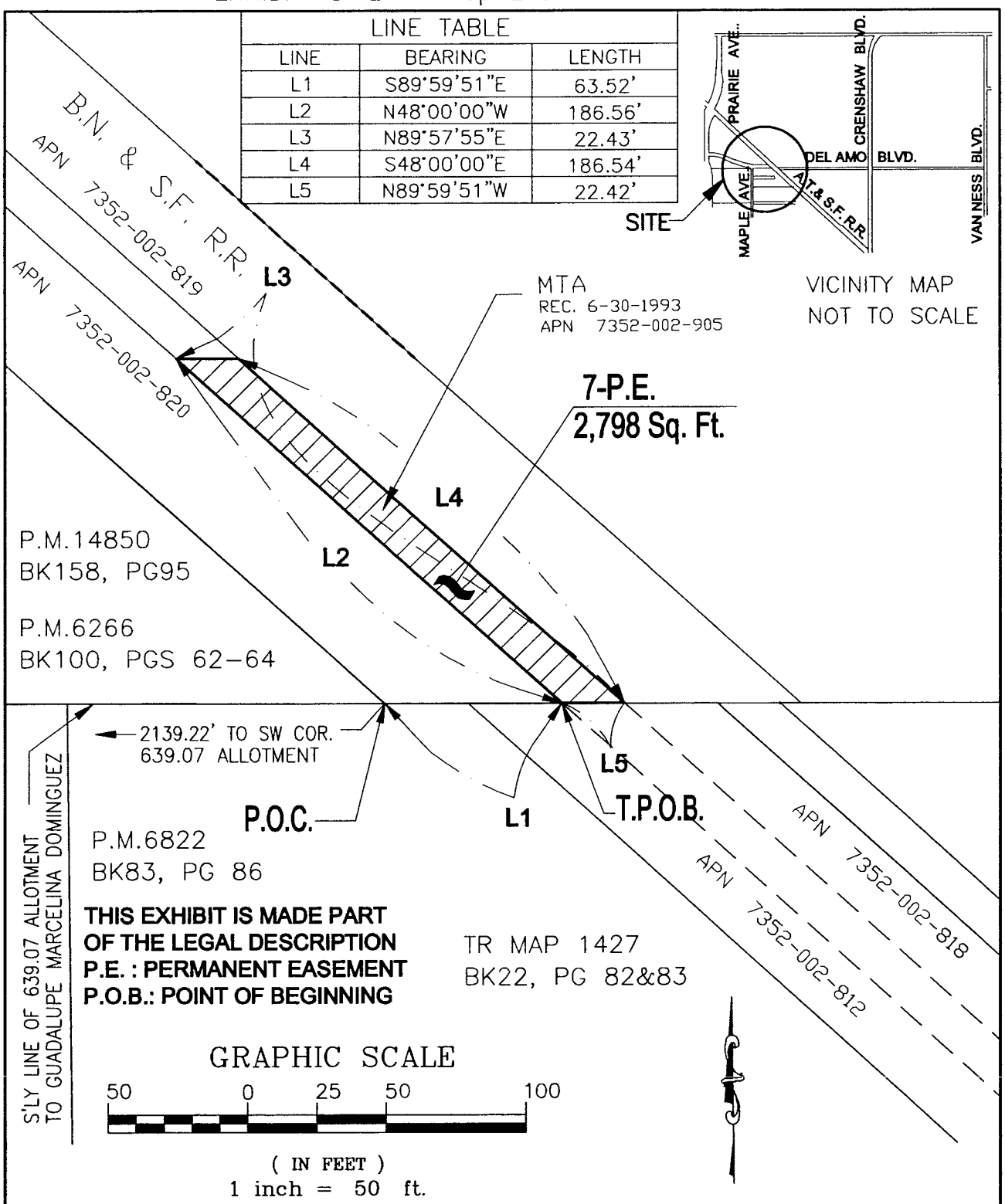
Form Approved by VP-Law

Exhibit I

LACMTA Easement Area

OVERPASS AGREEMENT EXHIBIT I

EXHIBIT "D-2" Map LACMTA Easement



LINE TABLE		
LINE	BEARING	LENGTH
L1	S89°59'51"E	63.52'
L2	N48°00'00"W	186.56'
L3	N89°57'55"E	22.43'
L4	S48°00'00"E	186.54'
L5	N89°59'51"W	22.42'

DEL AMO BOULEVARD EXTENSION CITY OF TORRANCE		OWNER NAME : M.T.A. APN 7302-002-904	DATE: 02-03-09
Paragon Partners Ltd. 5762 Bolsa Avenue, Ste. 201 Huntington Beach, CA 92649	CHECKED _____ DATE	CITY OF TORRANCE POR. 639.07 ACRE ALLOTMENT MADE TO GUADALUPE MARCELINA DOMINGUEZ COUNTY OF LOS ANGELES	SCALE: AS SHOWN DRAWN BY: MAT REV. DATE 5/24/6 REV. No1

PORTION OF APN. 7352-002-905

PARCEL 7-P.E.
PERMANENT DEL AMO BOULEVARD OVERHEAD EASEMENT

THAT PORTION OF THE 639.07 ACRE ALLOTMENT MADE TO GUADALUPE MARCELINA DOMINGUEZ BY THE DECREE OF PARTITION OF PORTION OF THE RANCHO SAN PEDRO, IN CASE No. 3284 OF THE SUPERIOR COURT OF THE COUNTY OF LOS ANGELES, DESCRIBED AS PARCEL No. 16 OF THAT CERTAIN DEED TO SANTA FE AND LOS ANGELES HARBOR RAILWAY COMPANY, RECORDED DECEMBER 26, 1924 IN BOOK 3817, PAGE 164 , OFFICIAL RECORDS, DESCRIBED IN SAID DEED AS A 15 FOOT STRIP OF LAND, LYING 7.5 FEET ON EACH SIDE, MEASURED FROM THE CENTERLINE OF SAID SANTA FE AND LOS ANGELES HARBOR RAILWAY COMPANY'S MAIN TRACK, BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING TO A POINT ON THE SOUTHERLY LINE OF SAID ALLOTMENT, DISTANT 2139.22 FEET EASTERLY ALONG SAID SOUTHERLY LINE FROM THE SOUTHWEST CORNER THEREOF; THENCE ALONG SAID SOUTHERLY LINE SOUTH 89°59'51" EAST 63.52 FEET TO A **TRUE POINT OF BEGINNING** IN A LINE PARALLEL WITH AND 7.50 FEET SOUTHWESTERLY FROM SAID CERTAIN LOCATED CENTER LINE OF SANTA FE AND LOS ANGELES HARBOR RAILWAY COMPANY DESCRIBED IN SAID DEED; THENCE ALONG SAID PARALLEL LINE NORTH 48°00'00" WEST 186.51 FEET; THENCE NORTH 89°57'55" EAST, 22.43 FEET TO A LINE PARALLEL WITH AND 7.50 FEET NORTHEASTERLY FROM THE LOCATED CENTER LINE OF SAID SANTA FE AND LOS ANGELES HARBOR RAILWAY COMPANY; THENCE ALONG SAID PARALLEL LINE SOUTH 48°00'00" EAST, 186.50 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID ALLOTMENT; THENCE ALONG SAID LINE NORTH 89°59'51" WEST, 22.42 FEET TO THE **TRUE POINT OF BEGINNING**.

CONTAINING 2,798 SQUARE FEET OR 0.069 ACRES MORE OR LESS.

SEE EXHIBIT "D-2" MAP ATTACHED HERETO AND BY REFERENCE MADE A PART HEREOF.

Prepared by
Paragon Partners Ltd.
5762 Bolsa Ave., Suite 201
Huntington Beach, CA 92649
714-379-3376

James M. Rushing — Date
R.C.E. 28219 — Exp. 03/31/10

REGISTERED PROFESSIONAL ENGINEER
JAMES MACLYN RUSHING
No. C28219
Exp. 3/31/10
CIVIL
STATE OF CALIFORNIA

Form Approved by VP-Law

Exhibit I-1

LACMTA Agreement with Contractor

OVERPASS AGREEMENT EXHIBIT I-1

EXHIBIT "C-2"

Agreement
Between
LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY
and the
CONTRACTOR

The Los Angeles County Metropolitan Transportation Authority
One Gateway Plaza
Los Angeles, California 90012
Attention: Manager Third Party Coordination

Gentlemen:

The undersigned, hereinafter referred to as Contractor, has entered into a Contract dated _____, 2009 with the City of Torrance for the performance of certain work in connection with the Del Amo Boulevard Grade Separation Project at M.P. 20.16 Harbor Subdivision in the performance of which work the Contractor will necessarily be required to conduct operations within the Los Angeles County Metropolitan Transportation Authority's (LACMTA) right of way and adjacent to LACMTA's track and appurtenances. The Contract provides that no work shall be commenced within LACMTA's right of way until the Contractor employed in connection with said work for City of Torrance shall have executed and delivered to LACMTA an Agreement, in the form hereof, and shall have provided insurance of the coverage and limits specified in said contract and Section 2 of this Agreement. If this Agreement is executed by other than the Owner, General Partner, President or Vice President of Contractor, evidence is furnished to you herewith certifying that the signatory is empowered to execute this Agreement for the Contractor.

Accordingly, as one of the inducements to and as part of the consideration for LACMTA granting permission to Contractor to enter upon LACMTA right of way, Contractor, effective on the date of said Contract, has agreed and does hereby agree with Railway as follows:

Section 1. RELEASE OF LIABILITY AND INDEMNITY

Contractor agrees to release LACMTA from any claims arising from the performance of this Agreement which Contractor or any of its employees, subcontractors, agents or invitees could otherwise assert against LACMTA, regardless of the negligence of LACMTA, except to the extent that such claims are proximately caused by the sole intentional misconduct or sole negligence of LACMTA.

Contractor shall indemnify and hold harmless LACMTA for all judgments, awards, claims, demands, and expenses (including attorney's fees, for injury or death to all persons, including LACMTA'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 failure to perform any obligation hereunder. THE LIABILITY ASSUMED BY CONTRACTOR SHALL 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 LACMTA. IT'S AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE SOLE INTENTIONAL MISCONDUCT OR SOLE NEGLIGENCE OF LACMTA.

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

Contractor further agrees, at its expense, in the name and on behalf of LACMTA, that it shall adjust and settle all claims made against LACMTA, and shall, at LACMTA's discretion, appear and defend any suits or actions of law or in equity brought against LACMTA 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 LACMTA is liable or is alleged to be liable. LACMTA shall give notice Contractor, writing, of the receipt or dependency of such claims and thereupon Contractor shall proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against LACMTA, LACMTA may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at LACMTA's discretion, shall defend, adjust, or settle suits and protect, indemnify, and save harmless LACMTA 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.

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

Section 2. INSURANCE

(a) Before commencing any work under this Agreement, Contractor must provide and maintain in effect throughout the term of this Agreement insurance, at contractor' expense, covering all of the work and services to be performed hereunder by Contractor and each of its subcontractors, as described below:

(1) Worker's Compensation coverage as is required by State law. **THE CERTIFICATE MUST CONTAIN A SPECIFIC WAIVER OF THE INSURANCE COMPANY SUBROGATION RIGHTS AGAINST THE LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY**

(2) Commercial General Liability insurance covering liability, including but not limited to, Public Liability, Personal Injury, Property Damage and Contractual Liability covering the obligations assumed by Contractor in Section 1, with coverage of at least $5,000,000 per occurrence and $10,000,000 in the aggregate. Where explosion, collapse, or underground hazards are involved, the X, C and U exclusions must be removed from the policy.

(3) Automobile Liability insurance, including bodily injury and property damage, with coverage of at least $1,000,000 combined single limit or the equivalent covering any and all vehicles owned or hired by the Contractor and used in performing any of the services under this agreement. *

(4) Railroad Protective Liability insurance stating the Burlington Northern and Santa Fe Railway Company is the named Insured and that the Los Angeles County Metropolitan Transportation Authority is named as additionally insured covering all of the liability assumed by the Contractor under the provisions of this Agreement with coverage of at least $5,000,000 per occurrence and $10,000,000 in the aggregate. Coverage shall be issued on a standard ISO form CG003050196 and endorsed to include ISO form CG28311093 and the Limited Seepage and Pollution Endorsement (see attached copy).

The average train traffic per 24-hour period on this route is 13 freight trains and 4 switch engine movements at a timetable speed of 20 MPH.

All insurance shall be placed with insurance companies licensed to do business in the States in which the work is to be performed, and with a current Best's Insurance Guide Rating of A- and Class VII, or better.

In all cases except Worker's Compensation coverage the certificate must specifically state that THE LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY IS AN ADDITIONAL INSURED.

Any coverage afforded LACMTA, the Certificate Holder, as an Additional Insured shall apply as primary and not excess to any coverage issued in the name of LACMTA.

(b) Such insurance shall be approved by the LACMTA before any work is performed on LACMTA's Property and shall be carried until all work required to be performed on or adjacent to LACMTA's Property under the terms of the contract is satisfactorily completed as determined by the City of Torrance and thereafter until all tools, equipment and materials not belonging to LACMTA, have been removed from LACMTA's right of way and LACMTA's right of way, track and appurtenances are left in a clean and presentable condition. The insurance herein required shall be obtained by the Contractor and Contractor shall furnish LACMTA with an original certificate of insurance, signed by the insurance company, or its authorized representative, evidencing the insurance of insurance coverage as prescribed in (a) 1, 2 and 3 above, plus the original Railroad Protective Liability insurance policy to:

Attention: Manager Third Party Coordination
The Los Angeles County Metropolitan Transportation Authority
One Gateway Plaza
Los Angeles, CA 90012

The certificate of insurance shall guarantee that the policies will not be amended, altered, modified or canceled insofar as the coverage contemplated hereunder is concerned, - without at least thirty (30) days notice mailed by registered mail to LACMTA.

Full compensation for all premiums which the Contract is required to pay on all the insurance described hereinafter shall be considered as included in the prices paid for the various items of work to be performed under the Contract, and no additional allowance will be made therefore or for additional premiums which may be required by extensions of the policies of insurance.

It is further distinctly understood and agreed by the Contractor that its liability to the LACMTA herein under Section 1 will not in any way be limited to or affected by the amount of insurance obtained and carried by the Contractor in connection with said Contract.

Section 3. The Contractor will observe and comply with all the provisions, obligations and limitations to be observed by Contractor which are contained in the subdivision of the specifications of said Contract, entitled EXHIBIT 'C", CONTRACTOR EQUIPMENTS, and shall include, but not be limited to, payment of all costs incurred for any damages to LACMTA's right of way, resulting from use, occupancy, or present of its employees, representatives, or agents or subcontractors on or about the construction site.

Contractor and subcontractors shall 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 undersigned two original copies of this letter, which, upon execution by Railway, shall constitute an Agreement between us.

Yours truly,

_____
(Contractor)

By_____

_____
(Title)

_____
Address

_____
City, State, Zip

The Los Angeles County Metropolitan Transportation Authority

By _____

_____
Manager Third Party Coordination

Accepted this____day of _____ , 2009

Exhibit I-2

Form Approved by VP-Law

Exhibit I-2

Los Angeles County Metropolitan Transportation Authority Estimate of Cost for Plan Review, Supervision and Inspection.

8 days @ $560 per day = $4,480.00