

AGREEMENT

AMONG

THE BNSF RAILWAY

AND

THE DEPARTMENT OF TRANSPORTATION OF THE STATE OF OKLAHOMA
(Acting for and on behalf of the State of Oklahoma)

AND

THE CITY OF NORMAN

Covering the installation of four (4) pedestal mounted railroad warning signals with gates and the installation of a 112-foot, full-depth railroad concrete crossing surface. Also included is an drainage easement within the right-of-way of The BNSF Railway Company, on Cedar Lane, located in Sections 9 and 16, Township 8 North, Range 2 West, in Norman, Cleveland County, Oklahoma, as shown on Exhibit "A" attached.

AAR DOT No. 012 213U, Railway Mile Post 405.4

Federal Aid Project No. STP-214C(021)AG
Job Piece No. 29261(05) Cleveland County

Within the limits of Federal Aid Project No. STP-214C(011)AG
Job Piece No. 29261(04) Cleveland County

This AGREEMENT, entered into in duplicate the day and year last below written, by and between The BNSF RAILWAY, hereinafter called the "RAILWAY", and the Department of Transportation of the State of Oklahoma, hereinafter called the "STATE" and the County of Norman, hereinafter called the "COUNTY".

RECITALS

The STATE proposes to widen Cedar Road in Cleveland County, which will cross and intersect the RAILWAY's right-of-way and tracks in the Section, Township and Range as shown on the cover sheet and on Exhibit "A" and attached hereto and made a part hereof. In the interest of public safety and convenience the RAILWAY and STATE desire the installation of four pedestal flashing light warning signals with gate arms and the installation of a 112 foot full depth railroad concrete crossing surface on Cedar Road, hereinafter the "AT GRADE CROSSING WORK"

(AAR DOT No. 012 213U, Railway Mile Post 405.4). In accordance with plans, estimates and specifications which, subsequent to the approval of the RAILWAY and the STATE, shall become a part of this AGREEMENT. The proposed roadway work will include grading, drainage and surfacing and is designated Project STP-214C(011)AG.

It is agreed that each of the parties hereto shall perform certain work in the installation of the RAILWAY pedestal warning signals and the installation and maintenance of said at-grade crossing surface and that the expenses of said installation and maintenance shall be borne as hereinafter provided

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, RAILWAY and STATE hereby agree as follows:

ARTICLE I

In consideration of the covenants of the STATE hereinafter contained and the faithful performance thereof, the RAILWAY agrees:

1. To license or permit solely to the extent of its right, title, and interest, without compensation other than the faithful performance by the STATE, of all the terms of this AGREEMENT by them required to be performed, the construction, reconstruction, maintenance and use of said roadway on its right-of-way at the location, in accordance with the plans for the proposed project and outlined on Exhibit "A" attached, as approved by the parties hereto; reserving, however, to the RAILWAY, its successors, assigns, tenants, or lessees, the right to construct, operate, rearrange, and maintain along or across said right-of-way such tracks and facilities under said roadway and such pipelines, communication, signal and electrical transmission lines, either over or under said roadway, as the RAILWAY, its successors, assigns, lessees or tenants may find necessary and convenient, provided that any such construction, reconstruction, rearrangement, etc. does not in any way endanger or impair the use of roadway. Further, the RAILWAY agrees that,

within the area to be jointly used and occupied by the RAILWAY and roadway, it will not permit (a) the installation of advertising signs visible from roadway or (b) the installation or storage of hazardous, flammable, or explosive materials or structures.

2. To prepare a detailed estimate, a copy of which is hereto attached, marked **Exhibit "B"** and hereby made a part hereof in the amount of **\$542,878.00 (Five-Hundred Forty Two Thousand and Eight-Hundred Seventy Eight Dollars)** for the approval of the State, and to furnish all labor and materials for the following items of work in connection with the AT GRADE CROSSING WORK.

- (A) Make temporary and permanent adjustments of its wire lines, its track, and other RAILWAY facilities.
- (B) Furnish RAILWAY flagging made necessary by performance of RAILWAY force account work.
- (C) Install four RAILWAY pedestal mounted warning signals.
- (D) Install a 112-foot, full-depth concrete crossing surface.
- (E) Any other RAILWAY work necessary to complete this project as planned and approved

3. To provide RAILWAY flagging service during performance of the contractor's operations in accordance with the Special Provisions for Flagging (**Exhibit "D"**) and the RAILWAY General Construction Agreement (**Exhibit C & C-1**) included in the construction contract, a copy of which is attached hereto, (marked **Exhibit "C"** and **Exhibit "D"**) and hereby made a part hereof.

4. To provide RAILWAY field engineering and inspection to the extent that such engineering and inspection is required to protect the RAILWAY's interest during the construction period.
5. To obtain all materials purchased for its portion of the work from the most economical sources consistent with quality and time of delivery.
6. To sample and test all materials used in its portion of the work, and to reject all materials which do not conform to the governing specifications.
7. To commence its portion of the work within ten (10) days after receipt of notice from the STATE to do so, and to prosecute such work diligently to the conclusion of its obligations hereunder. Ordering of material will be considered as the beginning of the work. This is with the understanding that the various portions of the work will have to be done in sequences to comply with the construction phases.
8. To grant the STATE's representatives and representatives access to all parts of the work at all times for inspection purposes.
9. To keep its accounts of work performed hereunder in such a manner that they may be readily audited by representatives of the STATE and actual costs of such work readily determined, and to grant said representatives free access to such accounts at all reasonable

times. Also, to furnish the STATE's Resident Engineer summary sheets showing labor and material used.

10. To maintain upon completion and acceptance of the project, at its own expense, the RAILWAY drainage and all other RAILWAY facilities rearranged under terms of this AGREEMENT including any installation to carry the RAILWAY drainage.
11. If any Contractor employed upon the RAILWAY's property, pursuant this Agreement, shall prosecute the work thereof contrary to STATE's Plan and Specifications, or contrary to the provisions of Article II, or if such Contractor shall prosecute the work on RAILWAY's property in a manner deemed hazardous by the RAILWAY to its property and facilities or the safe and expeditious movement of its traffic, or if the insurance in Exhibit "C" or Exhibit "E" hereof, shall be canceled during the process of the work, the RAILWAY shall have the right to stop the work on the RAILWAY property until the acts or omissions of such Contractor have been fully rectified to the satisfaction of the RAILWAY's Engineer or additional insurance has been delivered to and accepted by the RAILWAY. Such work stoppage shall not give rise to or impose upon the RAILWAY any liability to the STATE or any Contractor. In the event the RAILWAY shall stop work upon its property, RAILWAY agrees to give immediate notice thereof in writing to the STATE.
12. Upon written notification by the STATE's Contractor of the completion of the project, the RAILWAY shall provide the STATE and the Contractor with written notice of any claims against the Contractor within thirty (30) days of receipt of such notification.

ARTICLE II

In consideration of the covenants of the RAILWAY hereinbefore contained and the faithful performance thereof, the STATE agrees:

1. To prepare plans and specifications for Cedar Road grading, drainage, surfacing and widening, and to submit such plans and specifications to the RAILWAY and the STATE for their approval.
2. To construct the work in Section 1 above, in accordance with the approval plans and specifications, and to maintain same except as provided in Article I.
3. To secure all right-of-way necessary for this construction except as provided in Article I.
4. To sample and test all materials used in its portion of the work and to reject all materials which do not conform to the governing specifications.
5. To appoint and keep competent inspectors on the work under its supervision.
6. Contracts awarded for any construction provided for herein shall be subject to the approval by the Federal Highway Administration and when awarded, the contractor to whom the contract is awarded must sign **Exhibit "C" & "C-1"** - General Construction Agreement.

7. A pre-construction meeting will be held prior to the start of any work on RAILWAY property. The pre-construction meeting will include RAILWAY, STATE, and field supervisors for the Contractor and all Sub-contractors. The Contractor and all sub-contractors must complete the safety training program called "RAILWAY Contractor Safety Orientation" at the following website "contractororientation.com" as provided in section 5 of the contractors requirements appended to Exhibit "C"& "C-1"- General Construction Agreement.
8. Notwithstanding anything elsewhere contained herein, it is understood and agreed that the STATE will require that the contractor will not at any time cross the RAILWAY 's tracks with vehicles or equipment of any kind or character, except at existing public crossings unless the Contractor by separate agreement with the RAILWAY is permitted to open and operate a private crossing.
9. The STATE shall require its Contractor to be responsible to the RAILWAY and its tenants for all damages for delays which may be sustained by the RAILWAY or its tenants, its or their employees, or freight in its or their care caused by any interference which could have been avoided by proper handling of the project work.

ARTICLE III

1. The STATE shall reimburse the RAILWAY for expenses incurred by said RAILWAY in performance of work outlined under Sections 2 and 4 of Article I of this AGREEMENT, as set out in a Certified Statement which shall be presented to the STATE upon completion of the work and final inspection provided the charges in said statement are approved by the STATE, and further provided that the total of said expenses shall not exceed the amount of the RAILWAY's estimate as submitted and approved pursuant to Section 2 of Article I unless approval of overrun in cost is given by the STATE. Claims shall be supported by the RAILWAY's certified statements of expense incurred by such installation, which statements shall be prepared in accordance with rules and regulations of the STATE for such projects and shall include only such items of expenses as are allowable under such rules and regulations, which shall be submitted by the RAILWAY to the STATE on standard STATE estimate forms as follows:

- (A) Progressive claims showing total cost of the force account work to the RAILWAY, a total project cost based on the RAILWAY estimate, provided amount claimed on said progressive claims shall not exceed 90% of the amount reimbursable to the RAILWAY on the basis of the contract estimate.
- (B) Upon completion of the work in accordance with the approved plans and specifications and final inspection, a final claim showing total project cost based on

the RAILWAY estimate, amount reimbursable under terms of this AGREEMENT, amount claimed on progressive claims and balance due.

ARTICLE IV

Railroad hereby does give or grant to the CITY, their agents and contractors, the right to enter on, and a continuing easement to use, the premises shown by solid green shading on Exhibit "F" for construction and maintenance of drainage as shown in the approved plan submittal.

The drainage easements and related rights given by RAILROAD to CITY 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 drainage easement is for construction and maintenance of the project only and shall not be used by CITY for any other purpose. CITY acknowledges and agrees that CITY shall not have the right, under the drainage easements, to use any Structure owned solely by Railroad. In the event CITY is evicted by anyone owning, or claiming title to or any interest in said right-of-way, RAILROAD will not be liable to CITY 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 CITY herein.

City will own and maintain, at its sole cost and expense, the completed drainage improvements. If the City fails to timely respond to a request for necessary maintenance on the completed project and improvement, RAILROAD may, at its option, perform the necessary maintenance in order to avoid conflicts with train operations. RAILROAD will notify City prior to performing any such maintenance on the completed project and improvement. City must fully reimburse RAILROAD for the costs of maintenance performed by RAILROAD pursuant to this subsection

ARTICLE V

STATE and RAILWAY agree:

1. The STATE shall require its contractor or contractors to reimburse the RAILWAY for expenses incurred by said RAILWAY in performance of Work outlined under Section 3 of Article 1, of this agreement, as set out in Certified Statement which shall be presented to the STATE upon completion of the work and final acceptance of the project.

2. The Federal-Aid Policy Guide issued by the Federal Highway Administration on December 9, 1991 and contained in 23 CFR Part 646 & 140I, issued by the Federal Highway Administration, setting forth the principals governing reimbursement for the cost of changes to RAILWAY facilities, and hereby made a part hereof by reference, is hereby approved and accepted as governing in the project herein contemplated.

- A. In accordance of the aforesaid Federal-Aid Policy Guide the RAILWAY will not be required to participate in the cost of the project.
 - B. The STATE shall pay the entire amount due on the contract or contracts let by it for the construction of the work set forth on Section 2 of Article II.
 - C. The STATE shall pay all cost of engineering or supervision of the work performed under its portion of this Agreement.
3. The RAILWAY 'S engineer or designee may advise contractor or contractors work site supervisor that an agent, servant, or employee of a contractor or of a subcontractor is working in an unsafe manner, in which event, contractor's work site supervisor shall cause said agent, servant, or employee to leave the work site and RAILWAY's property. The STATE, as a part of its contract with any contractor, shall require the contractor to assume all responsibility for safe work methods and practices of its agents, servants, and employees.
4. The STATE will cooperate with the RAILWAY to ensure that the work is handled and performed in an efficient manner and in compliance with the Federal RAILWAY Administration's (FRA) Safety Rules for RAILWAY Worker protection, 49 CFR Part 214. No employee of the STATE, its Contractor, its Subcontractor, agents, or invitees shall enter RAILWAY's property without first having completed the RAILWAY Contractor

Safety Orientation and can demonstrate a clear understanding of RAILWAY 's application of the FRA's Safety Rules for Roadway protection as referenced above. The RAILWAY Contractor Safety Orientation will be valid within the year in which the safety program was completed and must be renewed annually.

5. The STATE, its contractor and agents are placed on notice that fiber optic, communications, control systems, and other types of cables may be buried on RAILWAY's property. Before beginning work, State's contractor shall telephone RAILWAY's **Communication Network Control Center at 1-800-533-2891** (24-hour number) to assist in determining if cable systems are buried on RAILWAY's property to be used by STATE. The State's contractor, shall contact the appropriate personnel to have cable located and make arrangements with the owner of the facility as to the protective measures that must be adhered to prior to the commencement of any work on RAILWAY's property.
6. The plans and specifications, as submitted by the STATE and approved by the parties to this AGREEMENT, shall govern in construction of said AT GRADE CROSSING WORK. No changes in the plans or specifications shall be made without the written consent of the respective Engineering Officers of the parties hereto. The general construction and workmanship shall be subject to the approval of the parties hereto.
7. That, in the performance of the work, no continuing contract with private concerns will be utilized by the RAILWAY except as is fully set forth in the RAILWAY's detailed

estimate; it being further understood that this does not apply to contracts with the RAILWAY's employees regarding rates of pay and work conditions.

8. That this AGREEMENT shall be binding upon and inure to the benefit of the successors or assigns of the parties hereto.

9. That a copy of this AGREEMENT shall be filed by the RAILWAY with the Corporation Commission of the State of Oklahoma with a request that an order be made affirming this AGREEMENT in strict accordance with the terms hereof.

EXECUTED by the BNSF RAILWAY on this _____ day of _____, 2014, and by the
STATE this _____ day of _____, 2014.

BNSF RAILWAY COMPANY

OKLAHOMA DEPARTMENT
OF TRANSPORTATION

By: _____

By: _____

Deputy Director

THE CITY OF NORMAN

Director of Capital Programs

By: _____

Rail Programs Division Manager

General Counsel

PLACEMENT OF PEDS & GATES IS TO BE AT THE RAILROADS ENGINEERS DETERMINATION

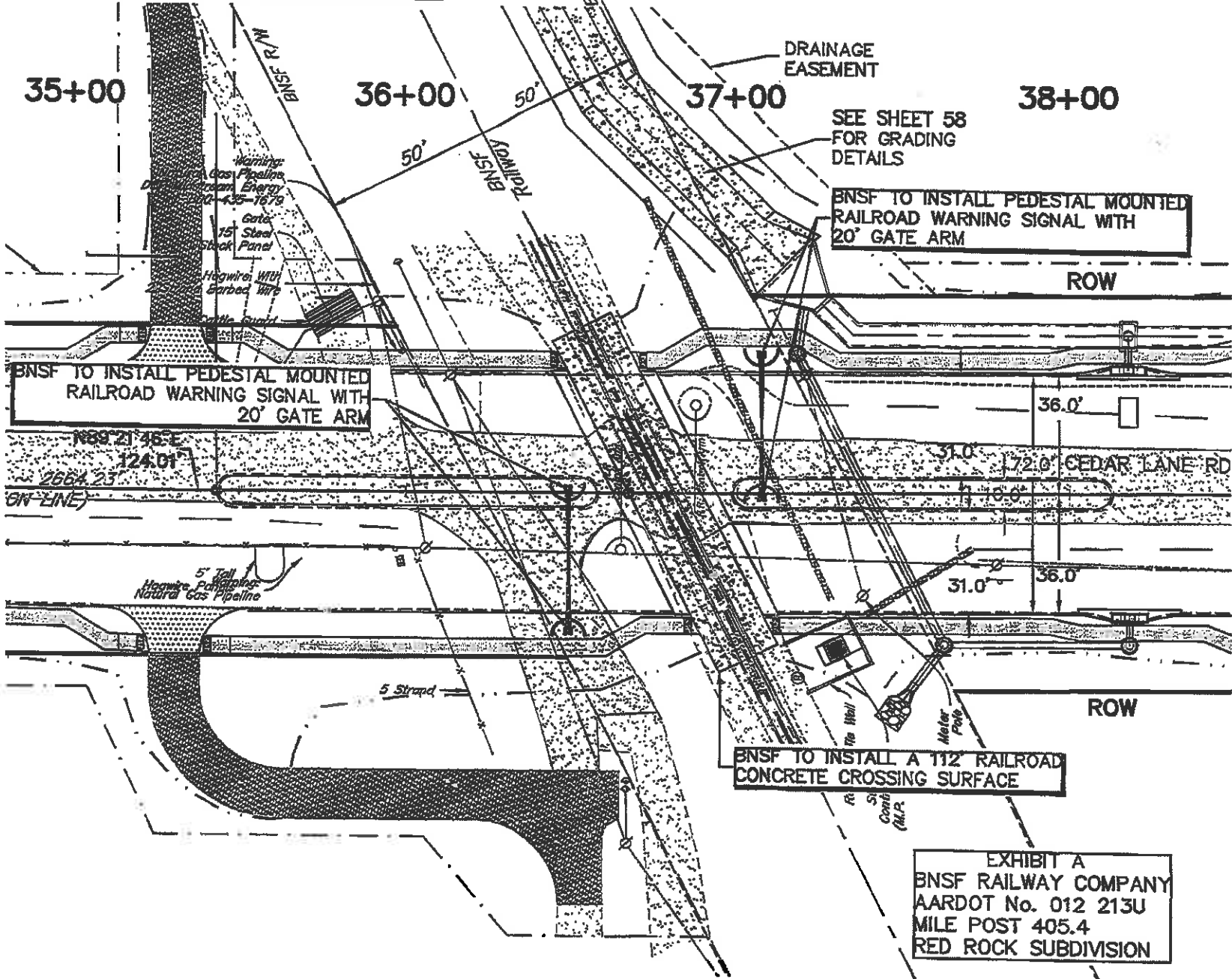
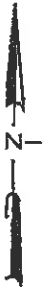


EXHIBIT A

EXHIBIT A
 BNSF RAILWAY COMPANY
 AARDOT No. 012 213U
 MILE POST 405.4
 RED ROCK SUBDIVISION

EXHIBIT B
BNSF COST ESTIMATES

EXHIBIT B
BNSF COST ESTIMATES

X-REMOTB HSE-CABLE	1.0 LS	2,954	
X-REMOTB HSE-CHARGER	1.0 LS	550	
X-REMOTB HSE-CONSTANT WARNING	1.0 EA	29,640	
X-REMOTE HSE-CONVERTER, 10-10	1.0 EA'	198	
X-REMOTB HSE-FIELD MATERIAL	1.0 LS	4,486	
X-REMOTB HSE-GENERATOR, ACG-3	1.0 EA	333	
X-REMOTB HSE-INDUCTOR, DUMMY LOAD	2.0 EA	982	
X-REMOTB HSE-MODULE, AX	1.0 EA	1,415	
X-REMOTB HSE-RELAY, DAX	1.0 EA	700	
X-REMOTB HSE-SHUNT, NBS	2.0 EA	1,890	
MATERIAL HANDLING		3,290	
OFFLINE TRANSPORTATION		2,576	
TOTAL MATERIAL COST		211,738	211,738

OTHER			

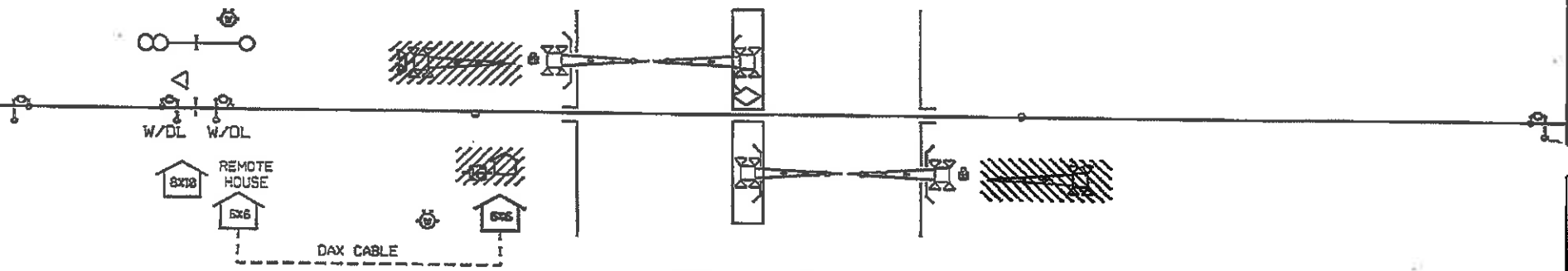
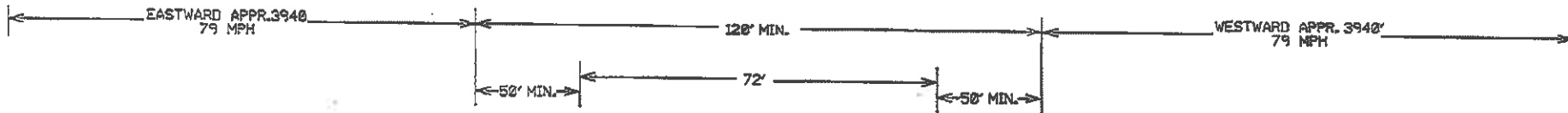
AC POWER SERVICE	2.0 EA	10,000	
CONTRACT CONES/SIGNS	1.0 EA N	2,000	
CONTRACT ENGR.	1.0 EA N	12,000	
CONTRACT FLAGGING	1.0 EA N	2,000	
DIRECTIONAL BORE	200.0 FT N	10,000	
FILL DIRT	50.0 CY N	1,250	
SURFACE ROCK	30.0 CY N	1,500	
TOTAL OTHER ITEMS COST		38,750	38,750
PROJECT SUBTOTAL			395,704
CONTINGENCIES			39,570
BILL PREPARATION FEE			4,353
GROSS PROJECT COST			439,627
LESS COST PAID BY BNSF			0
TOTAL BILLABLE COST			439,627

EXHIBIT B

The Burlington Northern & Santa Fe Railway Company

TO GAINESVILLE

TO ARKANSAS CITY



E. CEDAR LANE ROAD

DOT = 012 213 U

INSTALL: GATES, FLASHERS & REMOTE BUNGALOW

CONTROL DEVICES: CONSTANT WARNING

BOLD - IN

- OUT

SALVAGE: NONE

EXHIBIT B



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

Warning device placement:
 Clearance to C.L. Track = Min. 12'
 Edge of Road to C.L. Foundation:
 Min. 4'3" with curb.
 Min. 8'3" without curb.
 Max. 12'
 House Clearance:
 25' Min. to Near Rail
 30' Min. to Edge of Road
 ALL LIGHTS TO BE LED

BNSF RAILWAY CO.
 LOCATION: NORMAN, OK
 STREET: E. CEDAR LANE RD.
 LS: 7400
 M.P. 405.31
 DOT = 012 213 U
 DIVISION: TEXAS
 SUBDIVISION: RED ROCK
 KANSAS CITY
 NO SCALE
 DATE: 10/11/2013
 FILE: 7400405_31.dgn
 JWM

K-1314-117

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 _____
- 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:

Mr. Jim Hatt
Oklahoma Department of Transportation
Rail Programs Division
200 NE 21st Street
Oklahoma City, OK 73105
- 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 ODOT at 405-522-0287 and Railway's Manager Public Projects, telephone number (913) 551-4484 at least thirty (30) calendar days before commencing any work on Railway Property. Contractor's notification to Railway must refer to Railway's file _____.
- **1.01.07** For any bridge demolition and/or falsework above any tracks or any excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin work until notified by the Railway that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.
- **1.01.08** Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

1.02 Contractor Safety Orientation

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

1.03 Railway Requirements

- **1.03.01** The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Agency.
- **1.03.02** The Contractor must notify the Railway's Division Engineer at (817) 352-2540 and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.

- **1.03.03** The Contractor must abide by the following temporary clearances during construction:
 - 15'-0" Horizontally from centerline of nearest track
 - 21'-6" Vertically above top of rail
 - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
 - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
 - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
 - 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts
- 1.03.04 Upon completion of construction, the following clearances shall be maintained:
 - 25' Horizontally from centerline of nearest track
 - 23' 6" Vertically above top of rail
- **1.03.05** Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to ODOT and must not be undertaken until approved in writing by the Railway, and until ODOT 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 ODOT 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 Railway's 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)832-3452; 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 Plans

- **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 _____) 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 the 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** Flagger services will be performed by qualified Railway flaggers.
- **1.05.03a** Flagger 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 ODO's contractor. 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 of ___ MPH freight and ___ passenger trains per 24-hour period 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 PRA Roadway Worker Protection Regulations.
- 1.06.02 Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).
- 1.06.03 Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by the Railway's Project Representative. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.
- 1.06.04 When Contractor employees are required to work on the Railway Property after normal working hours or on weekends, the Railway's representative in charge of the project must be notified. A minimum of two employees must be present at all times.
- 1.06.05 Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway's Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway's Property by that employee will be denied.
- 1.06.06 Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's representative in charge of the project. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway representative in charge of the project and to the Railway's Resource Operations Center at 1(800) 832-5452. Local emergency numbers are to be obtained from the Railway representative in charge of the project prior to the start of any work and must be posted at the job site.
- 1.06.07 For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway's Property.
- 1.06.08 All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, www.contractororientation.com, however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats; c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railway's representative in charge of the project is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. (NOTE - Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)
- 1.06.09 THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF THE SAME WILL OBSTRUCT THE VIEW

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

- **1.06.10** Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway's Property must be left inoperable and secured against movement. (See Internet Engineering Contractor Safety Orientation program for more detailed specifications)
- **1.06.11** Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any work performed over water must meet all Federal, State and Local regulations.
- **1.06.12** All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

1.07 Excavation:

- **1.07.01** Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor must determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact BNSF's Field Engineering Representative (_____). 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 call if unable to contact in person) to the Railway's representative in charge of the project. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1(817) 352-7595 and to the Railway's Project Representative no later than the close of shift on the date of the injury.



NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

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

Injured Person Type:

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

If train involved, Train ID: _____

Transmit attached information to Accident/Incident Reporting Center by:
Fax 1-817-352-7595 or by Phone 1-800-697-8736 or email to: Accident-Reporting.Center@BNSF.com

Officer Providing Information:

(Name)	(Employee No.)	(Phone #)
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REPORT PREPARED TO COMPLY WITH FEDERAL ACCIDENT REPORTING REQUIREMENTS AND PROTECTED FROM DISCLOSURE PURSUANT TO 49 U.S.C. 20003 AND 83 U.S.C. 480

NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

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

1. Accident City/St: _____ 2. Date: _____ Time: _____
County: _____ 3. Temperature: _____ 4. Weather: _____
(if non BHSF location)

Mile Post / Line Segment: _____

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

6. Name (last, first, mi): _____

7. Address: _____ City: _____ St: _____ Zip: _____

8. Date of Birth: _____ and/or Age: _____ Gender: _____
(if available)

Phone Number: _____ Employer: _____

9. Injury: _____ (i.e., Location, etc.) (1). Body Part: _____ (i.e., Hand, etc.)

11. Description of Accident (To include location, action, result, etc.): _____

12. Treatment:
 First Aid Only
 Required Medical Treatment
 Other Medical Treatment

13. Dr. Name: _____ Date: _____

14. Dr. Address: _____
Street: _____ City: _____ St: _____ Zip: _____

15. Hospital Name: _____

16. Hospital Address: _____
Street: _____ City: _____ St: _____ Zip: _____

17. Diagnosis: _____

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

EXHIBIT C

EXHIBIT "C-1"

Agreement Between
BNSF RAILWAY COMPANY
and the
CONTRACTOR

Railway File: _____
Agency Project: _____

_____ (hereinafter called "Contractor"), has entered into an agreement (hereinafter called "Agreement") dated _____, 2012, with Oklahoma Department of Transportation for the performance of certain work in connection with the following project: _____
Performance of such work will necessarily require Contractor to enter BNSF RAILWAY COMPANY (hereinafter called "Railway") right of way and property (hereinafter called "Railway Property"). The Agreement provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for Oklahoma Department of Transportation (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

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

1) RELEASE OF LIABILITY AND INDEMNITY

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

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

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

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

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

2) **TERM**

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

3) **INSURANCE**

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

A. **Commercial General Liability Insurance.** This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$6,000,000 each occurrence and an aggregate limit of at least \$10,000,000 but in no event less than the amount otherwise carried by the Contractor. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limit to the following:

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

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

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

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

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

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

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

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

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

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

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

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

- ◆ Waiver of subrogation in favor of and acceptable to Railway.
- D. Railroad Protective Liability Insurance naming only the *Railway* as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 12 04 and include the following:
 - ◆ Endorsed to include the Pollution Exclusion Amendment
 - ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
 - ◆ Endorsed to remove any exclusion for punitive damages.
 - ◆ No other endorsements restricting coverage may be added.
 - ◆ The original policy must be provided to the *Railway* prior to performing any work or services under this Agreement
 - ◆ Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured' care, custody, and control arising out of the acts or omissions of the contractor named on the Declarations.

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

Other Requirements:

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

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

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

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

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

BNSF Railway Company
c/o CertFocus
P.O. Box 140628
Kansas City, MO 64114
Toll Free: 877-576-2378
Fax number: 817-840-7487
Email: BNSF@certfocus.com
www.certfocus.com

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

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

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

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

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

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

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

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

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

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

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

4) **EXHIBIT "C" CONTRACTOR REQUIREMENTS**

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

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

EXHIBIT C

passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

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

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

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. Damages for train delay are currently \$382.20 per hour per incident. The rate then in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of train delay pursuant to this agreement.

Contractor and its subcontractors must give Railway's representative (_____) _____ (8) 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.

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

BNSF Railway Company

By: _____

By: _____

Printed Name: _____

Name: _____

Title: _____

Manager Public Projects

Contact Person: _____

Address: _____

City: _____

State: _____ Zip: _____

Fax: _____

Phone: _____

E-mail: _____

**OKLAHOMA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISIONS
FOR
RAILROAD FLAGGING**

These Special Provisions revise, amend, and where in conflict, supersede applicable sections of the 2009 Standard Specifications for Highway Construction, English and Metric.

104.18 RAILROAD FLAGGING (*Add the following:*)

Execute and return the right of entry agreement (if required by the railroad) with the contract to the Department within the time period provided for contract execution. Reimburse BNSF Railway Company hereinafter referred to as the Railway Company, directly for the cost of all railroad flagging required by the Railway Company due to construction on their property.

The Railway Company's requirements for flagging and right of entry may vary significantly from those implied by other contract documents. Therefore be informed of the individual Railway Company's requirements for flagging and right of entry.

For the purpose of bidding, the following information is furnished by the Railway Company covering the estimated flagging schedule and the estimated cost thereof:

Flagging Services

Flagging Services will be required:

- (1) In the event it is necessary for the Contractor to operate his crane or other heavy machinery in the vicinity of the track, as defined by the Railway Company, which may endanger railroad operations.
- (2) At any time the Contractor is within 25 feet of the track.
- (3) As specified in the right of entry agreement (if required).
- (4) At any other time deemed appropriate by the Railway Company.

Flagmen

The total cost for one flagman, supervisory personnel, vacation allowances, and retirement and unemployment insurance is \$980 per eight-hour work day. This rate is based on current wage scales for an eight-hour basic day, including any additional pay for overtime, rest days and holidays, and is subject to any increases which may result from railroad employees -railroad management negotiations, or which may be authorized by Federal authorities. No additional payment will be made for increases in the above rate if such increases should occur.

EXHIBIT D

Furthermore, the Contractor's final estimate will not be paid until satisfactory evidence that the Railway Company has been fully reimbursed for their flagging services is provided.

Utilities

Fiber optic, communications, control systems, and other types of cables may be buried on Railway Company property. Contractor shall telephone the Railway Company's Communication Network Control Center at 1-800-533-2891 to assist in determining if cable systems are buried on Railway Company property to be used before beginning work. Contact the appropriate personnel to have cables located, and make arrangements with the owner of the facility to ascertain the protective measures that must be adhered to, prior to the commencement of any work on the Railway Company's property.

Railroad Operations

Normal train operations over the crossing consists of twenty-nine (29) trains daily. Details regarding train operations required or desired may be obtained by consulting the Railway Company's office located at 4515 Kansas Avenue, Kansas City, KS, 66106, (913)551-4484.

Payment for Railroad Flagging

There will be no separate payment for railroad flagging. Include such costs, and all related costs in the prices of other items.

**OKLAHOMA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISIONS
FOR
RAILROAD INSURANCE**

This special provision amends and where in conflict, supersedes applicable sections of the 2009 Standard Specifications for Highway Construction, English and Metric.

107.12 RESPONSIBILITY FOR DAMAGE CLAIMS

(E) Railroads' Protective Liability and Property Damage Insurance *(Add the following:)*

The amount of insurance to be provided for and on behalf of the BNSF Railroad/Railway company is \$ 5,000,000.00 for all damages arising out of bodily injury, death, and property damage for each occurrence with an aggregate limit of \$ 10,000,000.00 for the term of the policy.

Prior to issuance of the Notice to Proceed, submit the original copy of the insurance policy, along with one additional copy, to:

Oklahoma Department of Transportation
Construction Division
200 NE 21st Street
Oklahoma City, Oklahoma 73105-3204

**EXHIBIT F
BNSF/CITY OF NORMAN
DRAINAGE EASEMENT AGREEMENT**

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BNSF/CITY OF NORMAN
DRAINAGE EASEMENT AGREEMENT**

DATE	BY	CHKD	APP'D
01/15/10	MLA/MSR/ST	ST	ST

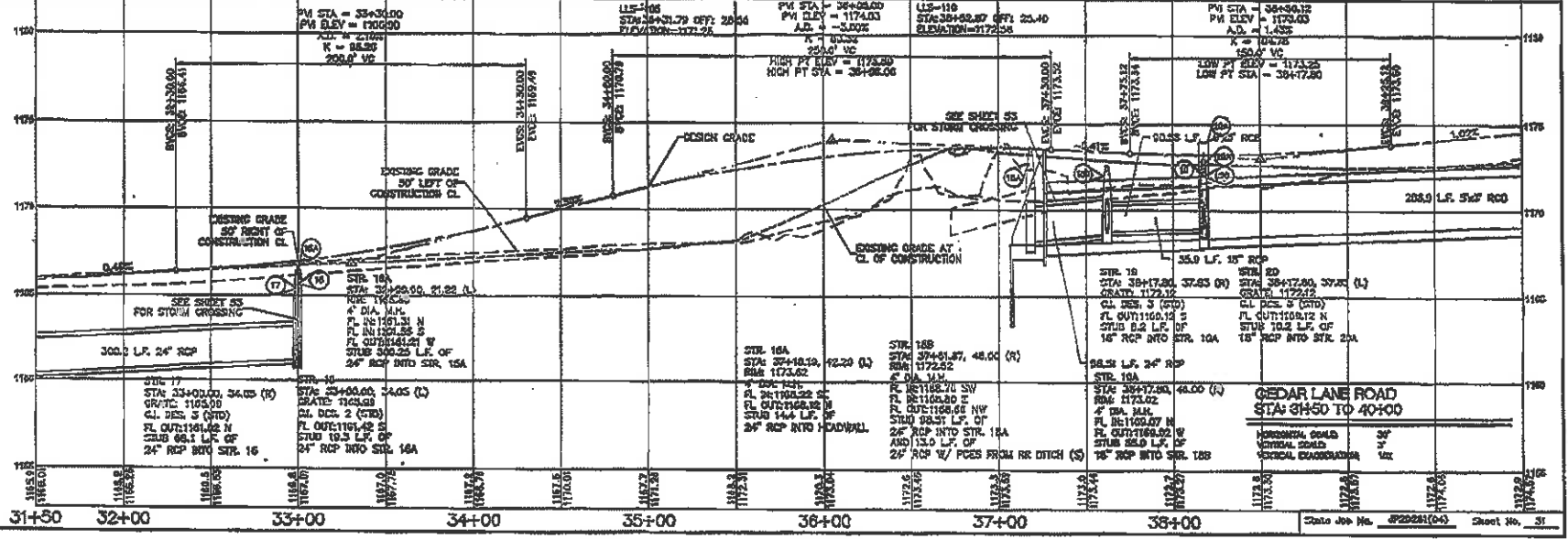
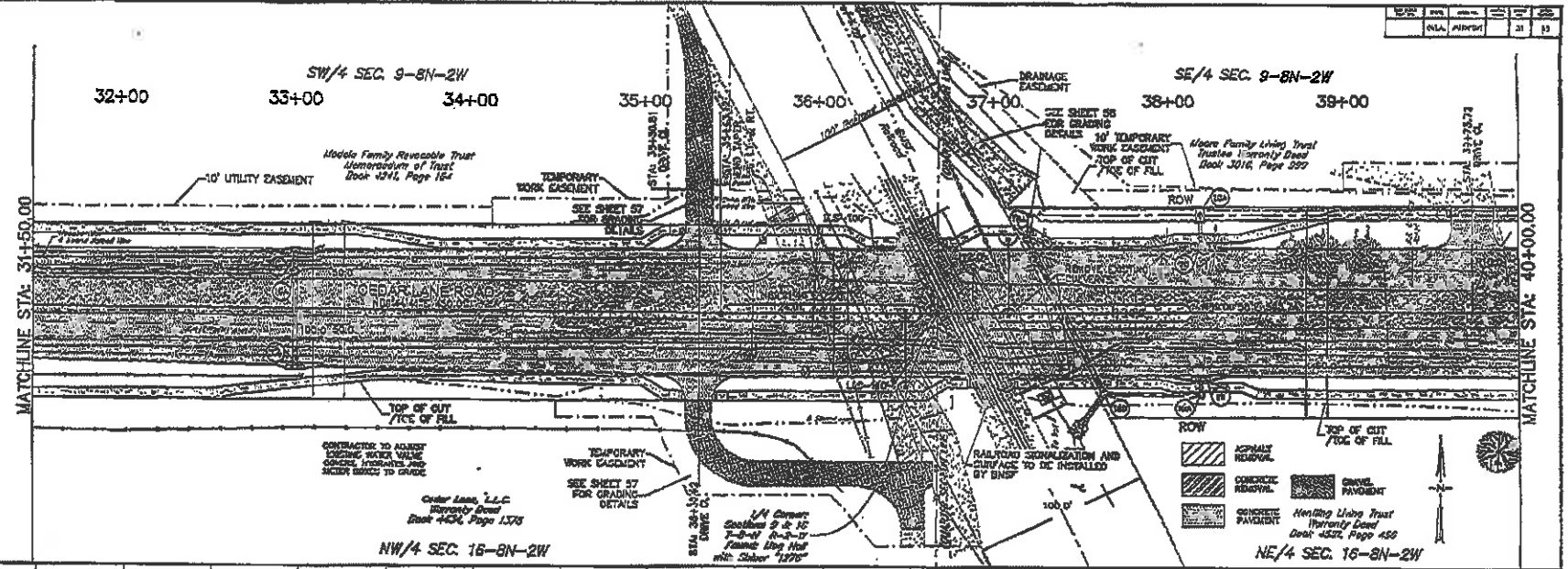


EXHIBIT F

