

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Public Works *mb*

BOARD AGENDA # *C-1

Urgent Routine

AGENDA DATE December 9, 2008

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Authorize the Director of Public Works to Sign a Grade Crossing Signal and Surface Installation Agreement with Burlington Northern Santa Fe Railroad for the Hatch Road at Santa Fe Avenue Intersection Improvement Project

STAFF RECOMMENDATIONS:

1. Authorize the Director of Public Works to sign a Grade Crossing Signal and Surface Installation Agreement with Burlington Northern Santa Fe Railroad for the Hatch Road at Santa Fe Avenue Intersection Improvement Project.
2. Direct the Auditor-Controller to make the necessary budget adjustments per the financial transaction sheet.

FISCAL IMPACT:

The total estimated cost for this project is \$2,247,697. The \$1,028,435 for the grade crossing signal and surface installation is funded 100% by the Regional Transportation Impact Fee Program (RTIF). The remaining costs, \$1,219,262, are for the improvements to the intersection, which will be brought back to the Board in the future when all necessary right-of-way is acquired. The intersection improvements will be funded by RTIF.

BOARD ACTION AS FOLLOWS:

No. 2008-828

On motion of Supervisor Monteith, Seconded by Supervisor Grover
 and approved by the following vote,
 Ayes: Supervisors: O'Brien, Grover, Monteith, and Vice Chairman DeMartini
 Noes: Supervisors: None
 Excused or Absent: Supervisors: Mayfield
 Abstaining: Supervisor: None

- 1) X Approved as recommended
- 2) _____ Denied
- 3) _____ Approved as amended
- 4) _____ Other:

MOTION:

Christine Ferraro

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval to Authorize the Director of Public Works to Sign a Grade Crossing Signal and Surface Installation Agreement with Burlington Northern Santa Fe Railroad for the Hatch Road at Santa Fe Avenue Intersection Improvement Project

DISCUSSION:

In January 2004, the Board of Supervisors approved the Public Works Department Traffic Congestion Relief Program. The Traffic Congestion Relief Program provides for the installation of traffic signals, left turn lanes and related improvements on selected roadways throughout the County, including the improvements to Hatch Road at Santa Fe Avenue.

In May 2004, the Board of Supervisors awarded a contract to BkF Engineers for environmental and engineering services for the Geer Road at Santa Fe Avenue and Hatch Road at Santa Fe Avenue intersection improvements.

The proposed new traffic signals and additional through and turn lanes will improve traffic safety and enhance the flow of traffic through these intersections. Installation of safety lighting, upgrade of railroad signals, and shoulder widening will also be completed.

On August 28, 2007, the Board of Supervisors approved the Initial Study/Mitigated Negative Declaration for the Stanislaus County intersection improvements at Geer Road at Santa Fe Avenue and Hatch Road at Santa Fe Avenue.

On July 22, 2008, the Board of Supervisors adopted plans and specifications for the Phase 2 - Santa Fe Avenue Bridge Widening and Retrofit Project. This project is a phase of the Hatch Road at Santa Fe Avenue Intersection Project that will allow the construction of improvements to the Santa Fe Avenue Bridge over the Ceres Main Canal during the non irrigation season from November 1, 2008 through March 15, 2009. This bridge is located south of the intersection of Hatch Road and Santa Fe Avenue.

On October 21, 2008, the Board of Supervisors awarded the contract for the Phase 2: Santa Fe Avenue Bridge Widening and Retrofit Project to Agee Construction.

Staff has been negotiating with Burlington Northern Santa Fe Railroad for improvements to the railroad signal and surface improvements. The improvements by Burlington Northern Santa Fe Railroad consist of new railroad signals that match with the traffic signal improvements proposed at the Hatch Road at Santa Fe Avenue intersection, new railroad signal controller, widening of existing track crossing and relocation of existing train communication and control system. Burlington Northern Santa Fe Railroad estimates that the railroad signal improvements and surface improvements will cost \$1, 028,435. The railroad signal work and grade crossing improvements must precede the County signal project. Once the railroad crossing project is complete, and after all the right-of-way has been acquired, the signalization project will begin at Hatch Road at Santa Fe Avenue.

Construction of the BNSF improvements will be concurrent with the intersection improvements.

Approval to Authorize the Director of Public Works to Sign a Grade Crossing Signal and Surface Installation Agreement with Burlington Northern Santa Fe Railroad for the Hatch Road at Santa Fe Avenue Intersection Improvement Project

POLICY ISSUES:

The Board should consider if the recommended actions are consistent with its priorities of providing a safe community, a healthy community and a well-planned infrastructure system.

STAFFING IMPACT:

There is no staffing impact associated with this item.

BR:sam

L:\pw03\engr\roads\9208 - hatch road at santa fe ave\design division\board items\newboardreporthiddenpages12-9-08

**AUDITOR-CONTROLLER
STANDARD JOURNAL VOUCHER**



BATCH SCREEN

Batch:
 Period:
 Description:

JOURNAL SCREEN

Journal:
 Category:
 Balance Type: A = Actual or E = Encumbrance
 Description:
 Control Total:

Line	Coding Structure							Debit	Credit	Description	
	Fund 4	Org 7	Account 5	G/L Proj 7	Loc 6	Misc 6					
1	2400	61270	85850	0	0	0	0.0	1,028,435.00			
2	1102	40310	46615	9208	0	0	0.0		1,028,435.00		
3							0.0				
4							0.0				
5							0.0				
6							0.0				
7							0.0				
8							0.0				
9							0.0				
10							0.0				
11							0.0				
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21							0.0				
22							0.0				
23							0.0				
24							0.0				
25							0.0				
26							0.0				
27							0.0				
Totals									1,028,435.00	1,028,435.00	

Explanation: Transfer funds from RTIF to the Hatch Rd @ Santa Fe Intersection Improvement Project

Departments Outside Auditors' Office		Auditors Office Only	
SHARON ANDREWS <i>[Signature]</i>	<i>[Signature]</i>		Jon Flores <i>[Signature]</i>
Prepared by	Supervisor's Approval	Prepared By	Admin Approval (\$75K+)
11/24/08	11/24/08		11/24/08
Date	Date	Date	Date

**AUDITOR-CONTROLLER
BUDGET JOURNAL**



Balance Type
Category
Source
Currency
Budget Name
Batch Name
Journal Name
Journal description
Period
Organization

Budget
Budget - Upload
USD
LEGAL BUDGET

BO#

Transfer budget to the Hatch Road at Santa Fe Avenue Intersection Improvement Project
JUL-08 to JUN-09
Stanislaus Budget Org

Line	Coding Structure						Debit		Credit		Description
	Fund 4	Org 7	Account 5	G/L Proj 7	Loc 6	Misc 6	incr appropriations decr est revenue	decr appropriations incr est revenue			
1	1102	40310	63280	9208	0	0.0	1,028,435.00				
2	1102	40310	63280	0	0	0.0		1,028,435.00			
3	1102	40310	46615	0	0	0.0	1,028,435.00				
4	1102	40310	46615	9208	0	0.0		1,028,435.00			
5						0					
6						.0					
7						.0					
8						.0					
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21						.0					
22						.0					
23						.0					
24						.0					
25						.0					
Totals							2,056,870.00	2,056,870.00			

Transfer budget to the Hatch Road at Santa Fe Avenue Intersection Improvement Project

Requesting Department

CEO

Auditors Office Only

Sharon Andrews

Signature

11/24/08

Date

Signature

11/26/08

Date

Prepared By

Date

Jan Flores
Admin Approval (\$75K+)

11/24/08

Date

Contact Person & Phone Number

2009 JUN 17 P 3: 27

Mile Post 1086.95
Line Segment 7200
U.S. DOT Number 028739S
SUB: Stockton

GRADE CROSSING SIGNAL AND SURFACE INSTALLATION AGREEMENT

THIS GRADE CROSSING SIGNAL AND SURFACE INSTALLATION AGREEMENT (hereinafter called, "Agreement"), is executed to be effective as of 6/9, 2009, by and between Stanislaus County, a Political Subdivision of the State of California, hereinafter acting through its Board of Supervisors called, "AGENCY"), and BNSF RAILWAY COMPANY, a Delaware Corporation (hereinafter called, "RAILROAD");

WITNESSETH:

WHEREAS, in the interest of aiding vehicular travel and public safety, the AGENCY is undertaking a project to install railroad crossing signals and activation equipment known as Hatch Road;

WHEREAS, the project Hatch Road is located at U.S. DOT crossing 028739S as indicated on Exhibit "A", attached hereto and incorporated herein;

WHEREAS, AGENCY also desires RAILROAD to replace the existing crossing surface at Hatch Road with a new concrete and rubber crossing surface;

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

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

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

ARTICLE I – SCOPE OF WORK

1. The term "Project" as used in this agreement includes any and all work related to the relocation / installation of the new crossing signals and activation equipment, widening of the concrete crossing surface material and relocation of the existing pole line at U.S. DOT crossing 028739S, more particularly described on 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, installation of advance warning signs and pavement marking stop bars, installation of any new crossing surface, temporary and permanent track work, fencing, grading, alterations to or new construction of drainage facilities, preliminary and construction engineering and contract preparation.

ARTICLE II – RAILROAD OBLIGATIONS

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

1. Upon receiving the 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 Crossing, substantially in the form of Exhibit "B" attached to this Agreement. Agency must pay BNSF the sum of _____ and No/100 Dollars (\$ _____) as compensation for the Easement within thirty (30) days of issuing a Notice to Proceed pursuant to Article III, Section 10 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. The RAILROAD will, using its own labor forces under applicable labor agreements, install the Crossing Signal Equipment; relocate the existing pole line and install the new crossing surface at Hatch Road. The work will be performed at AGENCY'S expense and in accordance with the MUTCD and the plans and specifications approved by AGENCY and the Federal Highway Administration. The plans and specifications are attached to this Agreement as Exhibit "A" and incorporated herein.

3. An estimate of RAILROAD'S construction engineering, installation labor (including the costs, if any, of electrical service from a public utility) and material costs required for the Project are attached hereto as Exhibit "D" and incorporated herein. In the event construction for the Project has not commenced within six (6) months following the effective date of this Agreement, RAILROAD 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.

4. RAILROAD will furnish all labor, materials, tools and equipment for the railroad portion of the work required for the construction of the Project.

5. The RAILROAD will, at AGENCY'S expense, dispose of all scrap from the RAILROAD'S work hereunder.

6. The RAILROAD will finalize and complete billing of all incurred costs under this Agreement no later than six (6) months following installation of the Crossing Signal Equipment and the new crossing surface.

7. The RAILROAD understands and agrees that the work required herein is part of a larger project by AGENCY and that RAILROAD'S failure to perform the work will delay AGENCY'S project. The RAILROAD shall complete the work required herein within six (7) months of receiving AGENCY'S notice required by Article III, paragraph 10.

ARTICLE III – AGENCY OBLIGATIONS

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

1. Agency must furnish to BNSF plans and specifications for the Project. Said plans (reduced size 11" x 17"), showing the plan and profile of the roadway work on BNSF right-of-way and marked as Exhibit "A", attached hereto and made a part hereof, must be submitted to BNSF for the development of railroad cost estimates.

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

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

4. Agency must make any and all arrangements for the installation or relocation of wire lines, pipe

lines and other facilities owned by private persons, companies, corporations, political subdivisions or public utilities other than BNSF which may be necessary for the construction of the Project.

5. If a railway or a highway improvement project necessitates rearrangement, relocation, or alteration of the Crossing Signal Equipment or the new crossing surface installed hereunder, the costs for such rearrangement, relocation or alteration will be the responsibility of the party requesting such changes.

6. If the Crossing Signal Equipment installed hereunder cannot, through age, be maintained, or, by virtue of its obsolescence, requires replacement, the cost of installation of new crossing signal equipment will be negotiated by the parties hereto on the basis of the current Federal Aid Railroad Signal Program participation and applicable AGENCY at the time of such replacement is warranted.

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

- (a) Design and Widening of Hatch Road;
- (b) Installation of a pavement marking stop bar in accordance with the Manual on Uniform Traffic Control Devices (hereinafter called, “MUTCD”);
- (c) Installation of advance warning signs in accordance with the MUTCD
- (d) Perform all necessary grading and paving, including backfill of excavations and restoration of disturbed vegetation on BNSF’s right-of-way;
- (e) Provide suitable drainage, both temporary and permanent;
- (f) Provide all barricades, lights, flagmen or traffic control devices necessary for preventing vehicular traffic from using a portion of the Crossing, during the installation of the concrete crossing surfaces, and also during the installation of the Crossing Signal Equipment.
- (g) Construct asphalt/concrete roadway surface on approaches to each track. Roadway surface will match elevation of the Main Track crossing surface and remain level to a point at least thirty (30) feet from nearest rail. Any concrete headers will be constructed no closer than 5’-6” (preferably 6’-0”) from centerline of each track to provide for a minimum of 11’-0” (preferably 12’-0”) opening for track and railroad crossing surface;
- (h) Job site cleanup including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials to the satisfaction of BNSF;

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

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

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

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

12. In order to prevent damage to BNSF trains and property, 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.

13. Actual costs for engineering, materials and labor (including third party charges for the installation of electrical service) associated with the installation of the Crossing Signal Equipment and the new crossing surface must be paid by the AGENCY.

14. In the event the services of a consultant are needed after execution of this Agreement due to any exigency of the RAILROAD and the Project, the AGENCY and the RAILROAD will mutually agree, in writing, as to the selection of a consultant and the applicable scope of work to be performed by such consultant. All work performed hereunder by any consultant and any resulting costs must be paid by AGENCY as a part of the costs for the Project.

15. During the installation of the Crossing Signal Equipment and the new crossing surface, RAILROAD will send AGENCY progressive invoices detailing the costs of the work performed by RAILROAD under this Agreement. AGENCY must reimburse RAILROAD for completed force-account work within thirty (60) days of the date of the invoice for such work. Upon completion of the Project, RAILROAD 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, AGENCY must pay the final invoice within one hundred twenty (120) days of the date of the final invoice.

16. 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 **Jason Sanchez (909) 386-4075** and/or the telecommunications companies and notifying them of any work that may damage these Lines or facilities and/or interfere with their service. The contractor must also mark all Lines shown on the plans or marked in the field in order to verify their locations. The contractor must also use all reasonable methods when working in the BNSF right-of-way or on BNSF property to determine if any other Lines (fiber optic, cable, communication or otherwise) may exist.
- (b) Failure to mark or identify these Lines will be sufficient cause for BNSF's engineering Representative **Jason Sanchez (909) 386-4075** to stop construction at no cost to The Agency or BNSF until these items are completed.
- (c) In addition to the liability terms contained elsewhere in this Agreement, the contractor hereby indemnifies, defends and holds harmless BNSF for, from and against all cost, liability, and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of Contractor, its subcontractors, agents and/or employees that cause or in any way or degree contribute to (1) any damage to or destruction of any Lines by Contractor, and/or its subcontractors, agents and/or employees, on BNSF's property or within BNSF's right-of-way, (2) any injury to or death of any

person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on BNSF's property or within BNSF's right-of-way, and/or (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of such telecommunication company(ies). **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY, DEATH, CAUSE OF ACTION OR CLAIM WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF BNSF**

- (d) 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.

17. Agency must incorporate in each prime contract for construction of the Project, or the specifications therefore the provisions set forth in Exhibit "C" and Exhibit "C-1", attached hereto and by reference made a part hereof.

18. All construction work performed hereunder by Agency for the Project will be pursuant to a contract or contracts to be let by Agency, and all such contracts must include the following:

- (a) All work performed under such contract or contracts within the limits of BNSF's right-of-way must be performed in a good and workmanlike manner in accordance with plans and specifications approved by BNSF;
- (b) Changes or modifications during construction that affect safety or BNSF operations must be subject to BNSF's approval;
- (c) No work will be commenced within BNSF's right-of-way until each of the prime contractors employed in connection with said work must have (i) executed and delivered to BNSF a letter agreement in the form of Exhibit "C-1", and (ii) delivered to and secured BNSF's approval of the required insurance; and
- (d) If it is in Agency's best interest, Agency may direct that the construction of the Project be done by day labor under the direction and control of Agency, or if at any time, in the opinion of Agency, the contractor has failed to prosecute with diligence the work specified in and by the terms of said contract, Agency may terminate its contract with the contractor and take control over the work and proceed to complete the same by day labor or by employing another contractor(s) provided; however, that any contractor(s) replacing the original contractor(s) must comply with the obligations in favor of BNSF set forth above and, provided further, that if such construction is performed by day labor, Agency will, at its expense, procure and maintain on behalf of BNSF the insurance required by Exhibit "C-1".
- (e) To facilitate scheduling for the Project, Agency shall have its contractor give BNSF's Roadmaster 90 days advance notice of the proposed times and dates for work windows. BNSF and Agency's contractor will establish mutually agreeable work windows for the Project. BNSF has the right at any time to revise or change the work windows, due to train operations or service obligations. BNSF will not be responsible for any additional costs and expenses resulting from a change in work windows. Additional costs and expenses resulting from a change in work windows shall be accounted for in the contractor's expenses for the Project.

19. Agency must advise the appropriate BNSF Manager Public Projects, in writing, of the completion date of the Project within thirty (30) days after such completion date. Additionally, Agency must notify BNSF's Manager Public Projects, in writing, of the date on which Agency and/or its Contractor will meet with BNSF for the purpose of making final inspection of the Project.

20. **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.**

ARTICLE IV- JOINT OBLIGATIONS

In consideration of the mutual covenants of the parties contained herein and the premises, the parties mutually agree as follows:

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

2. The work hereunder must be done in accordance with the Exhibit "A" and the detailed plans and specifications approved by BNSF.

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

any BNSF owned property. BNSF will not be liable for any additional costs or expenses resulting from any such reallocation of its labor forces. The parties mutually agree that any reallocation of labor forces by BNSF pursuant to this provision and any direct or indirect consequences or costs resulting from any such reallocation will not constitute a breach of this Agreement by BNSF.

4. BNSF will have the right to stop construction work on the Project if any of the following events take place: (i) Agency (or any of its contractors) performs the Project work in a manner contrary to the plans and specifications approved by BNSF; (ii) Agency (or any of its contractors), in BNSF's opinion, prosecutes the Project work in a manner which is hazardous to BNSF property, facilities or the safe and expeditious movement of railroad traffic; (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:

Robert C. Meleg, P.E.
Stanislaus County
Department of Public Works
1716 Morgan Road
Modesto, California
(P) 209-567-4883
(F) 209-525-4183

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 **Jason Sanchez (Field Engineering (909) 386-4075)** for appropriate corrective action.

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

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

8. The construction of the Project will not commence until Agency gives BNSF's Manager Public Projects thirty (30) days prior written notice of such commencement. The notice will reference BNSF's file number 028739S and D.O.T. Crossing No. 028739S and must state the time that construction activities will begin.

9. All cost records of the RAILROAD pertaining to the Project will be open to inspection and audit

at any reasonable time by representatives of the AGENCY (including the legislative auditor and fiscal analyst for the AGENCY) for a period of four (4) years from the date of the final RAILROAD invoice under this Agreement.

10. Upon completion of the installation of the Crossing Signal Equipment and the new crossing surface, the RAILROAD, will, at its sole cost and expense, operate and maintain the Crossing Signal Equipment and the new crossing surface in proper condition.

11. Notwithstanding the preceding provision, if any regulations, ordinances, acts, rules or other laws subsequently passed or amended by the AGENCY or any other appropriate governmental or legislative authority increase the AGENCY'S portion of maintenance costs under this Agreement, RAILROAD will receive the benefit of any such regulations, ordinances, acts, rules or other laws and the AGENCY'S increased portion of maintenance costs will be incorporated into and made a part of this Agreement.

12. If a railway or a highway improvement project necessitates rearrangement, relocation, or alteration of the Crossing Signal Equipment, Pole Line or the new crossing surface installed hereunder, the costs for such rearrangement, relocation or alteration will be the responsibility of the party requesting such changes.

13. If any of the Crossing Signal Equipment is partially or wholly destroyed, then such repair and/or replacement costs must be distributed among the parties as follows:

a) In the event the RAILROAD'S sole negligence destroys or damages the Crossing Signal Equipment, RAILROAD must reimburse AGENCY for the costs to replace or repair such Crossing Signal Equipment.

b) In the event the Crossing Signal Equipment is damaged or destroyed by any other cause, AGENCY must, at its sole cost and expense, replace or repair such Crossing Signal Equipment.

14. If the Crossing Signal Equipment installed hereunder cannot, through age, be maintained, or, by virtue of its obsolescence, requires replacement, the cost of installation of new crossing signal equipment will be negotiated by the parties hereto on the basis of the current Federal Aid Railroad Signal Program participation and applicable AGENCY at the time of such replacement is warranted.

15. Agency must notify and obtain prior authorization from BNSF's Manager of Public Projects before entering BNSF's right-of-way for maintenance purposes. 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.

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 one (1) year 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:

BNSF Railway Company:

BNSF's Manager Public Projects
John R. Stilley
740 East Carnegie Drive
San Bernardino, CA 92408

Agency:

Robert C. Meleg
Stanislaus County
Department of Public Woks
1716 Morgan Road
Modesto, California
(P) 209-567-4883
(F) 209-525-4183

23. This Agreement will inure to the benefit of and be binding on the parties hereto, their successors, and assigns.

24. In the event any paragraph contained in this Agreement or any item, part, or term within any particular paragraph is determined by a court of competent jurisdiction to be invalid or unenforceable, the validity of the remaining paragraphs or items will not be affected; and the rights and obligations of the parties will be construed and enforced as if this Agreement did not contain that particular paragraph or item held to be invalid or unenforceable.

25. This Agreement may be signed in counterparts, any one of which will be deemed to be an original. The parties further agree that any facsimile copy of a party's signature is valid and binding to the same extent as an original signature.

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

BNSF RAILWAY COMPANY

By: 

4/13/09

Printed Name: DAVID L. FREEMAN

Title: VP-ENGINEERING

STANISLAUS COUNTY

By: 

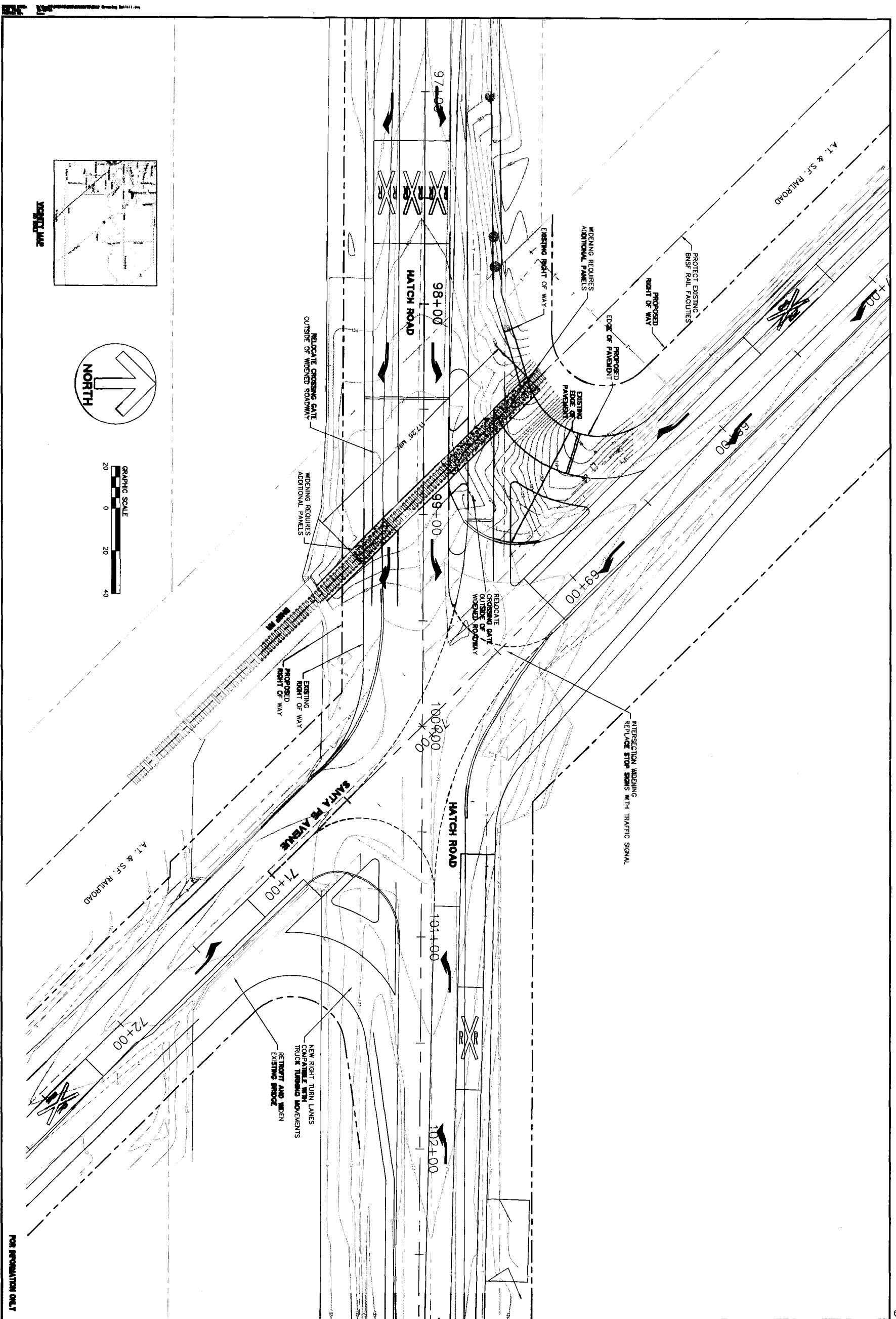
Printed Name: Matt Machado

Title: Director of Public Works

APPROVED AS TO FORM:
STANISLAUS COUNTY COUNSEL
BY



Exhibit "A"




FOR INFORMATION ONLY

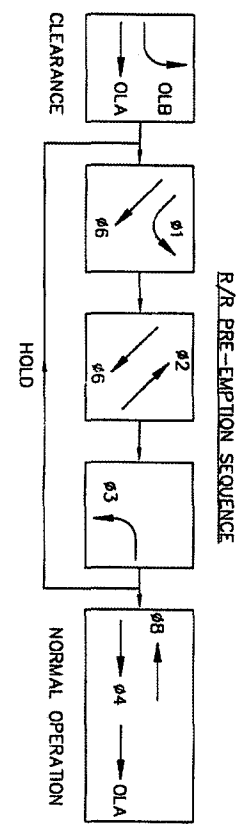
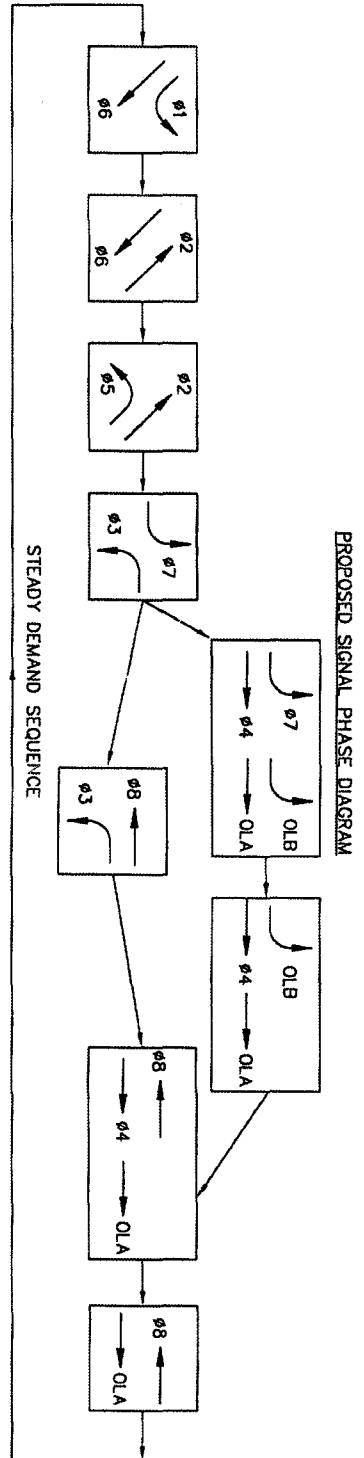
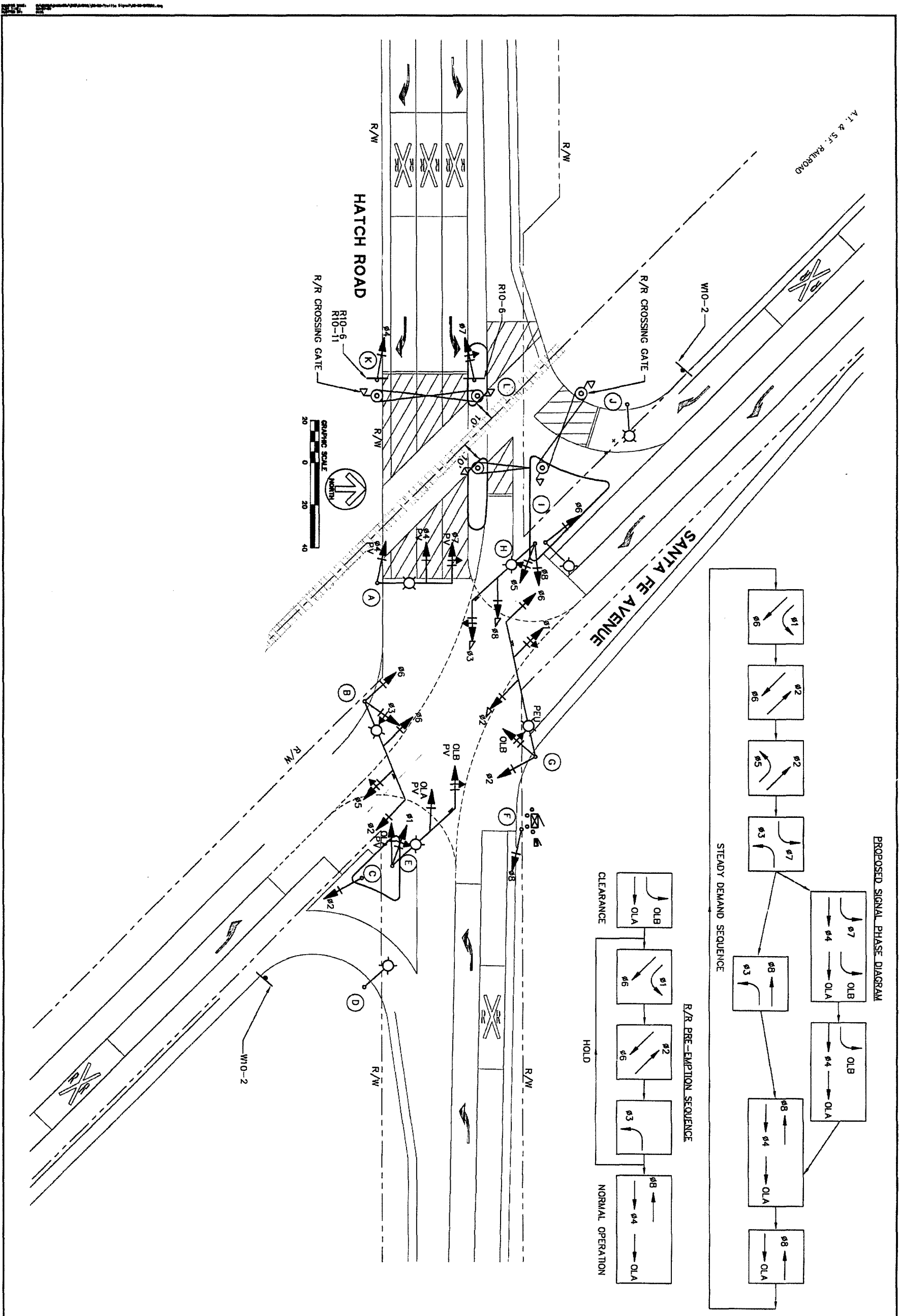
Revision	No.	Date
		10/19/2006

Drawing No. 20040910-10
 Job No. 20040910-10
 Approved: [Signature]
 Design: AH
 Checked: [Signature]
 Date: 10/19/2006
 Scale: 1"=20'
 Sheet: 1 of 1

HATCH ROAD-SANTA FE AVENUE
RAILROAD CROSSING WIDENING EXHIBIT
 STANISLAUS COUNTY CALIFORNIA


BKF
 ENGINEERS / ARCHITECTS / PLANNERS

2737 N. MAIN STREET, STE 200
 WALNUT CREEK, CA 94597
 PH: (925) 940-2200
 FAX: (925) 940-2299



Date:	No.	Revisions
9/01/06		
Scale: 1"=20'		
Design: W/EXT		
Drawn: AM		
Approved: J		
Job No: 20045040-10		

Drawing Number: **TS-03**
 Project Number:

**SANTA FE AVENUE AND HATCH ROAD
 TRAFFIC SIGNAL PLAN**

STANISLAUS COUNTY CALIFORNIA


BKF
 ENGINEERS | SURVEYORS | PLANNERS

2737 N. MAIN STREET, STE 200
 WALNUT CREEK, CA 94597
 PH: (925) 940-2200
 FAX: (925) 940-2299

© BKF ENGINEERS

Exhibit "B"

1"=80'



GRAPHIC SCALE



7-01

018-065-006

MASELLIS
86-047051 O.R.

LINE TABLE

NO.	BEARING	DISTANCE
L1	N 44°58'51" W	31.24'
L2	S 89°44'17" E	46.89'
L3	N 45°01'09" E	66.98'

PORTION SECTION 5,
T.4S., R.10E.,
M.D.B.& M.

7-01-1

SANTA FE AVENUE
R/W VARIES
S 44°58'51" E
98.79'

RIGHT OF WAY
DEDICATION
5,386 SF±

018-065-005
COUNTY OF
STANISLAUS
98-102682 O.R.

COUNTY OF STANISLAUS
CALIFORNIA

HATCH ROAD

CERES MAIN
CANAL

SANTA FE AVENUE

A.T. & S.F. RAILROAD
CENTER LINE RAILROAD

11-01

018-016-019

CALIFORNIA
WINELANDS LLC
99-016454 O.R.

PORTION SECTION 8,
T.4S., R.10E.,
M.D.B.& M.

8-02

CERES MAIN
CANAL

8-02-1

LEGEND:

O.R. OFFICIAL RECORDS
P.O.B. POINT OF BEGINNING
R/W RIGHT OF WAY

R/W PER 93-031069 O.R.

HATCH ROAD

R/W VARIES

SECTION LINE

EXHIBIT "B"



2737 NORTH MAIN STREET
SUITE 200
WALNUT CREEK, CA 94596
925-940-2200
925-940-2299 (FAX)

Subject PLAT TO ACCOMPANY
11-02-1 RIGHT OF WAY DEDICATION
Job No. 20045040-11
By MLM Date 08/15/08 Chkd. BTW
SHEET 1 OF 1



ENGINEERS
SURVEYORS
PLANNERS

August 15, 2008
BKF Job No.: 20045040-11

EXHIBIT "A"
PARCEL 11-01-1
RIGHT OF WAY DEDICATION

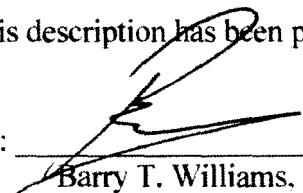
BEING a portion of that certain real property situate in the northeast quarter of Section 8, Township 4 South, Range 10 East, Mount Diablo Base and Meridian, County of Stanislaus, State of California, and described as follows:

BEGINNING on the southwesterly right of way line of Santa Fe Avenue (right of way varies) on the southerly right of way line of Hatch Road (right of way varies); THENCE southeasterly along said southwesterly right of way line South 44°58'51" East 14.20 feet to a point on a line parallel with and distant 10 feet southerly from said southerly right of way line of Hatch Road, when measured at right angles; THENCE westerly along said parallel line North 89°44'17" West 142.02 feet to the southwesterly line of the A. T. & S. F. Railroad right of way (100 feet in width); THENCE leaving said parallel line along the last mentioned southwesterly line North 44°58'51" West 14.20 feet to said southerly right of way line of Hatch Road; THENCE easterly along said southerly right of way line South 89°44'17" East 142.02 feet to the **POINT OF BEGINNING**.

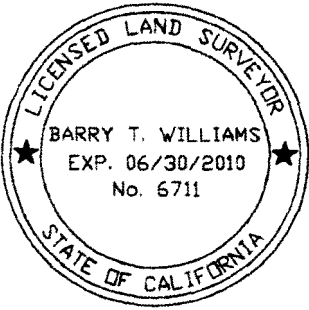
Containing an area of 1,420 square feet, more or less.

A plat showing the above described dedication is attached hereto and made a part hereof as Exhibit "B".

This description has been prepared from record data for BKF.

By: 
Barry T. Williams, P.L.S. No. 6711
License Expires: 06/30/10

Dated: 8/15/08



COYLE
2003-088827 O.R.

1"=80'

GRAPHIC SCALE



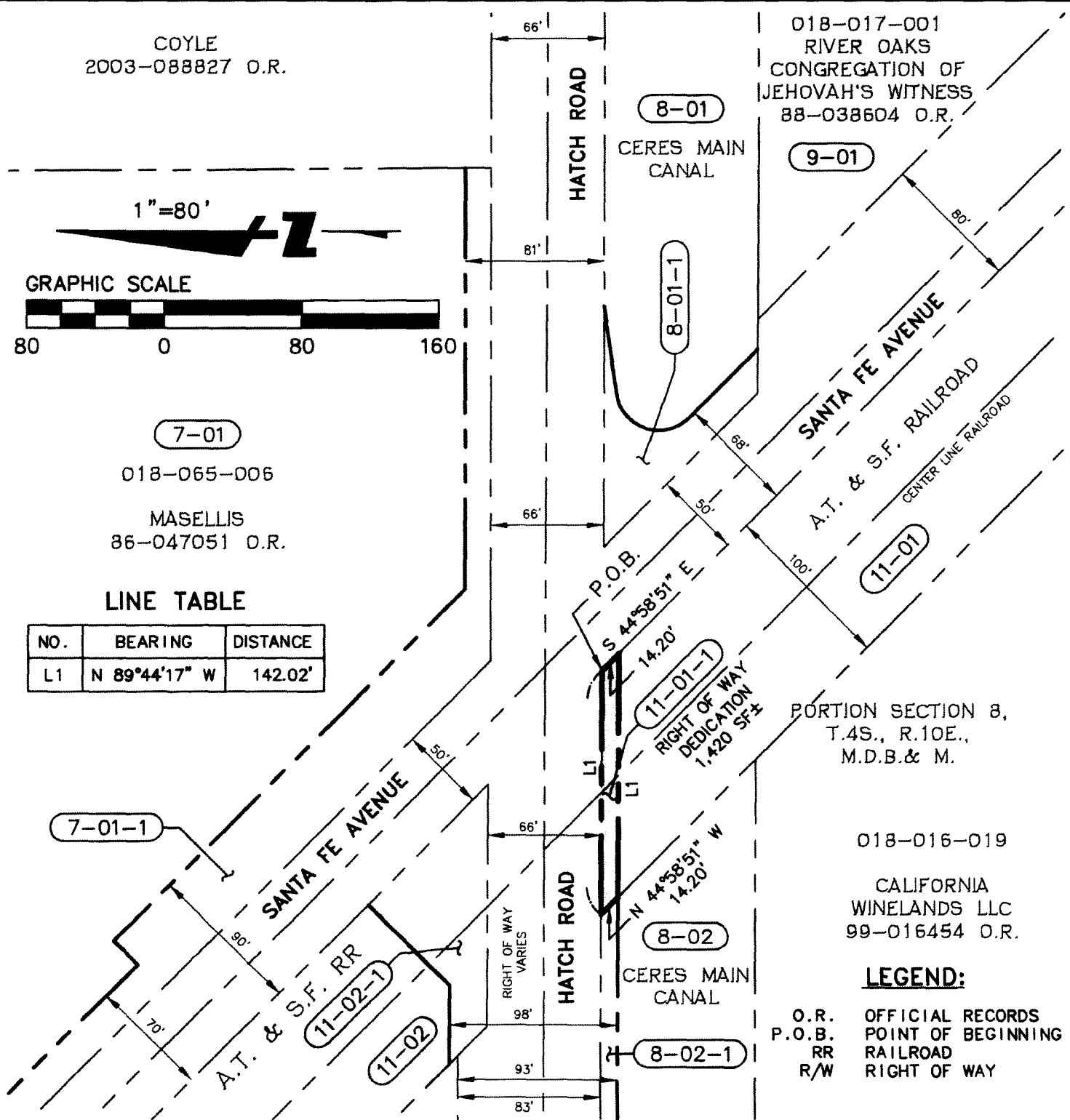
7-01

018-065-006

MASELLIS
86-047051 O.R.

LINE TABLE

NO.	BEARING	DISTANCE
L1	N 89°44'17" W	142.02'



018-017-001
RIVER OAKS
CONGREGATION OF
JEHOVAH'S WITNESS
88-038604 O.R.

9-01

8-01
CERES MAIN
CANAL

SANTA FE AVENUE

A.T. & S.F. RAILROAD
CENTER LINE RAILROAD

11-01

PORTION SECTION 8,
T.4S., R.10E.,
M.D.B.& M.

018-016-019

CALIFORNIA
WINELANDS LLC
99-016454 O.R.

LEGEND:

- O.R. OFFICIAL RECORDS
- P.O.B. POINT OF BEGINNING
- RR RAILROAD
- R/W RIGHT OF WAY

COUNTY OF STANISLAUS
CALIFORNIA

EXHIBIT "B"



2737 NORTH MAIN STREET
SUITE 200
WALNUT CREEK, CA 94596
925-940-2200
925-940-2299 (FAX)

Subject PLAT TO ACCOMPANY

11-01-1 RIGHT OF WAY DEDICATION

Job No. 20045040-11

By MLM Date 08/15/08 Chkd. BTW

SHEET 1 OF 1



ENGINEERS
SURVEYORS
PLANNERS

August 15, 2008
BKF Job No.: 20045040-11

EXHIBIT "A"
PARCEL 11-02-1
RIGHT OF WAY DEDICATION

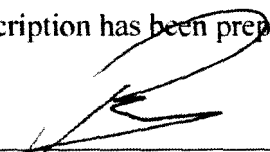
BEING a portion of that certain real property situate in the southeast quarter of Section 5, Township 4 South, Range 10 East, Mount Diablo Base and Meridian, County of Stanislaus, State of California, and described as follows:

BEGINNING on the northerly right of way line of Hatch Road (right of way varies) on the southwesterly right of way line of Santa Fe Avenue (right of way varies); THENCE westerly along said northerly right of way line North $89^{\circ}44'17''$ West 142.02 feet to the southwesterly line of the A. T. & S. F. Railroad right of way (100 feet in width); THENCE along the last mentioned line North $44^{\circ}58'51''$ West 31.24 feet; THENCE leaving said line South $89^{\circ}44'17''$ East 46.89 feet; THENCE North $45^{\circ}01'09''$ East 66.98 feet to said southwesterly right of way line of Santa Fe Avenue; THENCE along said southwesterly right of way line South $44^{\circ}58'51''$ East 98.79 feet to the **POINT OF BEGINNING**.

Containing an area of 5,386 square feet, more or less.

A plat showing the above described dedication is attached hereto and made a part hereof as Exhibit "B".

This description has been prepared from record data for BKF.

By: 
Barry T. Williams, P.L.S. No. 6711
License Expires: 06/30/10

Dated: 8/15/08

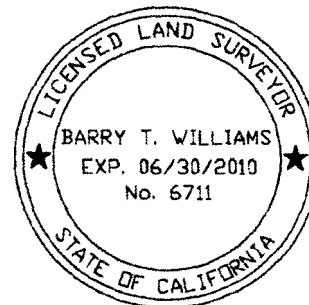


Exhibit "C"

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 Hatch Road.
- **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 affect 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:

Robert C. Meleg, P.E.
Stanislaus County
Department of Public Works
1716 Morgan Road
Modesto, California
(P) 209-567-4883
(F) 209-525-4183

- **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 County of Stanislaus at 209-567-4883 and Railway's Manager Public Projects, telephone number (909) 386-4474 at least thirty (30) calendar days before commencing any work on Railway Property. Contractor's notification to Railway must refer to Railroad's file 028739S.

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

1.02 Contractor Safety Orientation

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

1.03 Railway Requirements

- **1.03.01** The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Agency.
- **1.03.02** The Contractor must notify the Railway's Division General Manager Mark Kirschinger at 909-386-4150 and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.
- **1.03.03** The Contractor must abide by the following temporary clearances during construction:
 - 15' Horizontally from centerline of nearest track
 - 21'-6" Vertically above top of rail
 - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
 - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
 - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts

- 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts
- **1.03.04** Upon completion of construction, the following clearances shall be maintained:
 - 25' Horizontally from centerline of nearest track
 - 23'-3 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 County of Stanislaus and must not be undertaken until approved in writing by the Railway, and until the County of Stanislaus 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 the County of Stanislaus 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 the General Signal Construction Supervisor Clay McDonald at 559-457-7633 a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Construction Supervisor 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 Construction Supervisor 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 26 freight trains per 24-hour period at a timetable speed 55 MPH and 12 passenger trains at a timetable speed of 79 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-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **(NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**
- **1.06.09** **THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF THE SAME WILL OBSTRUCT THE VIEW OF A TRAIN APPROACHING THE CROSSING. PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE AREA WITH CONCURRENCE OF THE RAILROAD'S REPRESENTATIVE.**
- **1.06.10** Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway's Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed

specifications)

- **1.06.11** Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any work performed over water must meet all Federal, State and Local regulations.
- **1.06.12** All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

1.07 Excavation

- **1.07.01** Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor must determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact **BNSF's Field Engineering Representative Jason Sanchez at (909) 386-4075**. 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"

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

BNSF RAILWAY COMPANY
Attention: Manager Public Projects

Railway File: 028739S
Agency Project: Hatch Road Widening Project

Gentlemen:

The undersigned (hereinafter called, the "Contractor"), has entered into a contract (the "Contract") dated _____, 200_, with _____ for the performance of certain work in connection with the following project: Hatch Road Widening. Performance of such work will necessarily require contractor to enter BNSF RAILWAY COMPANY ("Railway") right of way and property ("Railway Property"). The Contract provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for **the County of Stanislaus** (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 WILLFULL 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 \$2,000,000 each occurrence and an aggregate limit of at least \$4,000,000. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limit to the following:

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

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

- ◆ It is agreed that any workers' compensation exclusion does not apply to **Railroad** payments related to the Federal Employers Liability Act or a **Railroad** Wage Continuation Program or similar programs and any payments made are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law.
- ◆ The definition of insured contract must be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Any exclusion 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 \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 10 93 and include the following:

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

Other Requirements:

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

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

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

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

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

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

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

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

Contractor represents that this **Agreement** has been thoroughly reviewed by contractor's insurance agent(s)/broker(s), who have been instructed by contractor to procure the insurance coverage required by this **Agreement**. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above.

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

If any portion of the operation is to be subcontracted by contractor, contractor must require that the subcontractor provide and maintain the insurance coverages set forth herein, naming **Railroad** as an additional insured, and requiring that the subcontractor release, defend and indemnify **Railroad** to the same extent and under the same terms and conditions as contractor is required to release, defend and indemnify **Railroad** herein.

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

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

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

Section 4. EXHIBIT "C" CONTRACTOR REQUIREMENTS

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

Section 5. TRAIN DELAY

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

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

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

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. Damages for train delay 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 Jason Sanchez 909-386-4075 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)

BNSF Railway Company

By: _____
Printed Name: _____
Title: _____

By: _____
Name: _____
Manager Public Projects

Contact Person: _____
Address: _____

Accepted and effective this ____ day of 20__.

City: _____ State: ___ Zip: _____
Fax: _____
Phone: _____
E-mail: _____

Exhibit "D"

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
FHPM ESTIMATE FOR
STANISLAUS COUNTY

LOCATION EAST EMPIRE

DETAILS OF ESTIMATE

PLAN ITEM : 000124970

VERSION : 1

PURPOSE, JUSTIFICATION AND DESCRIPTION

DESCRIPTION OF PROJECT AS PROVIDED BY PROJECT ENGINEER DTD
BNSF PUBLIC PROJECTS IS ENTERING INTO AN AGREEMENT WITH STANISLAUS COUNTY TO EXTEND CROSSING FROM 47 FT. TO 136 FT.
CROSSING SURFACE UPGRADED TO CONCRETE.

BILLING FOR THIS PROJECT SHOULD BE DIRECTED TO: STANISLAUS COUNTY

MAINTAIN PROPRIETARY CONFIDENTIALITY

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

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

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

DESCRIPTION	QUANTITY U/M	COST	TOTAL \$

LABOR			

PLACE FIELD WELDS - CAP	128.64 MH	3,159	
REPLACE PUBLIC CROSSING - TOTAL REHAB	364.48 MH	8,534	
SIGNAL FIELD LABOR - CAP	60.3 MH	1,699	
SURFACE TRACK - REPLACEMENT - CAP	32.16 MH	816	
UNLOAD BALLAST - REPLACEMENT - CAP	24.12 MH	565	
UNLOAD CROSSING MATERIAL - PUBLIC - CAP	91.12 MH	2,134	
PAYROLL ASSOCIATED COSTS		13,691	
EQUIPMENT EXPENSES		8,959	
DA LABOR OVERHEADS		16,907	
INSURANCE EXPENSES		2,702	
TOTAL LABOR COST		59,166	59,166

MATERIAL			

ASPHALT IN PLACE PER TON	41.0 NT **	4,350	
BALLAST, FROM NEWBERRY, CA. (NC, SC)	300.0 NT **	4,254	
TRACK PANEL, 136 LB 39 FT PNDRL, 10FT TIES	5.0 EA **	21,727	
WELDKIT, GENERIC FOR ALL RAIL WEIGHTS	12.0 KT	675	
CONC 136 08-SEC WITH FILLER FOR WOOD	136.0 FT	22,345	
CONCRETE XING RAMP AND PANEL RESTRAINT,	1.0 ST	204	
SIGNAL MATERIAL	5.7 DAY	855	
MATERIAL HANDLING		2,717	
ONLINE TRANSPORTATION		2,775	
USE TAX		4,719	
OFFLINE TRANSPORTATION		628	
TOTAL MATERIAL COST		65,249	65,249

OTHER			

LEASED EQUIPMENT WITH OPERATOR	5.7 DAY	8,550	
TOTAL OTHER ITEMS COST		8,550	8,550
PROJECT SUBTOTAL			132,965
CONTINGENCIES			12,848
BILL PREPARATION FEE			730
GROSS PROJECT COST			146,543
LESS COST PAID BY BNSF			0

TOTAL BILLABLE COST

146,543

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

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
FHPM ESTIMATE FOR
CALIFORNIA

LOCATION HUGHSON TO EAST EMPIRE	DETAILS OF ESTIMATE	PLAN ITEM : PSI028739S2	VERSION : 1
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PURPOSE, JUSTIFICATION AND DESCRIPTION

REVISED TO NEW PRICING LIST 03/01/05 (THERE WAS NO APPROVED MATERIAL LIST AT THIS TIME.)
2008 PX HUGHSON INSTALL CONSTANT WARNING AND QUAD FLASHERS WITH GATES AND REMOTE BUNGALOWS AT HATCH ROAD IN
HUGHSON, CA. CALIFORNIA DIV., STOCKTON SUBDIV., L/S 7200, M.P. 1086.95, DOT # 028739S

MONTHLY POWER UTILITY COST CENTER : 61692
THE MATERIAL LIST BELOW REFLECTS TYPICAL REPRESENTATIVE PACKAGES USED FOR ESTIMATING PURPOSE ONLY.
THEY CAN BE EXPECTED TO CHANGE AFTER THE ENGINEERING PROCESS. DETAILED AND ACCURATE MATERIAL LISTS WILL BE
FURNISHED WHEN ENGINEERING IS COMPLETED.
CONTINUING CONTRACTS HAVE BEEN ESTABLISHED FOR PORTIONS OF SIGNAL WORK ON THE BNSF RAILROAD.
THIS ESTIMATE IS GOOD FOR 90 DAYS. THEREAFTER THE ESTIMATE IS SUBJECT TO CHANGE IN COST FOR LABOR, MATERIAL, AND
OVERHEAD.

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

THE STATE OF CALIFORNIA IS FUNDING THIS PROJECT 100%.

MAINTAIN PROPRIETARY CONFIDENTIALITY

DESCRIPTION	QUANTITY U/M	COST	TOTAL \$

LABOR			

PLACE FIELD WELDS - CAP	74.24 MH	1,730	
PLACE RAIL/OTM - CAP	34.88 MH	760	
SIGNAL FIELD LABOR - CAP	3960.0 MH	98,214	
SIGNAL SHOP LABOR - CAP	208.0 MH	4,795	
PAYROLL ASSOCIATED COSTS		85,452	
EQUIPMENT EXPENSES		27,427	
DA LABOR OVERHEADS		105,499	
INSURANCE EXPENSES		16,878	
TOTAL LABOR COST		340,755	340,755

MATERIAL			

PLUG RAIL,GENERIC,INSULATED,BONDED, 40 FT,FOR	4.0 EA **	4,548	
WELDKIT, GENERIC FOR ALL RAIL WEIGHTS	8.0 KT **	450	
1TK REMOTE MP 1087.8	1.0 LS N	46,628	
2TK REMOTE MP 1086.4	1.0 LS N	58,968	
4TK REMOTE MP 1087.3	1.0 LS N	61,798	
BATTERY	1.0 LS N	9,250	
BUNGALOW 6X8	1.0 EA N	10,612	
BUNGALOW MATERIAL	1.0 LS N	6,957	
CABLE	1.0 LS N	9,054	
CANTILEVER COMPLETE	1.0 LS N	17,000	
CHARGERS	1.0 LS N	898	
CONDUIT, PVC 4", SCH 80	60.0 EA N	234	
CONSTANT WARNING	1.0 EA N	18,163	
DAX CABLE 12C14	11300.0 FT N	27,346	
DAX CABLE 7C14	8100.0 FT N	12,636	
FIELD MATERIAL	1.0 LS N	5,311	
FOUNDATION, STEEL	5.0 EA N	2,685	
GATE KEEPER	5.0 EA N	8,875	
GATE MECH	5.0 EA N	36,215	
LAMP RESISTOR	2.0 EA N	1,470	
LED LIGHT ADJUSTMENT	16.0 EA N	3,584	
LED LIGHT GATE KIT	5.0 EA N	1,825	
MATERIAL FOR ELECTRICAL	3.0 EA N	4,500	
RECORDER, SEA/R, W/(2) LOD	1.0 EA N	4,935	
RELAY W/BASE	9.0 LS N	4,500	
SHUNT, NBS	2.0 EA N	1,696	
SIDELIGHT COMPLETE	1.0 LS N	775	
SPLICE KIT	24.0 EA N	2,400	
TELLULAR DEVICE	1.0 EA N	2,500	
TIMER RELAY	1.0 LS N	2,250	
TULLY ROAD	1.0 LS N	4,200	
MATERIAL HANDLING		249	

USE TAX		32,291	
OFFLINE TRANSPORTATION		4,673	
		<hr/>	
TOTAL MATERIAL COST		409,476	409,476

OTHER			

AC POWER SERVICE	3.0 EA N	15,000	
CONTRACT ENGINEERING	1.0 LS N	28,000	
FILL DIRT	90.0 CY N	2,250	
SURFACE ROCK	90.0 CY N	2,250	
		<hr/>	
TOTAL OTHER ITEMS COST		47,500	47,500
			<hr/>
PROJECT SUBTOTAL			797,731
CONTINGENCIES			79,773
BILL PREPARATION FEE			4,388
			<hr/>
GROSS PROJECT COST			881,892
LESS COST PAID BY BNSF			0
			<hr/>
TOTAL BILLABLE COST			881,892