

**GRADE CROSSING SIGNAL INSTALLATION AGREEMENT**

**BNSF File No.: BF10010331  
Mile Post 1057.701  
Line Segment 7200  
U.S. DOT Number 028682T  
Stockton Subdivision**

THIS GRADE CROSSING SIGNAL INSTALLATION AGREEMENT (hereinafter called, "Agreement"), is executed to be effective as of \_\_\_\_\_, by and between the **CITY OF MERCED**, , a California Charter Municipal Corporation, herein represented and acting through its City Council (hereinafter 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, activation equipment, and crossing surface known as Merced Snelling Hwy 59 Roadway Widening;

WHEREAS, the project Merced Snelling Hwy 59 Roadway Widening is located at U.S. DOT crossing 028682T as indicated on Exhibit "A", attached hereto and incorporated herein;

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

WHEREAS, AGENCY also desires RAILROAD to extend the existing crossing surface at Snelling Hwy with a new concrete and rubber crossing surface;

WHEREAS, the AGENCY is paying for the acquisition and installation of crossing signal equipment at Snelling Hwy with a Federal Grant administered by the State of California;

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

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

## **ARTICLE I – SCOPE OF WORK**

1. The term “Project” as used in this agreement includes any and all work related to the installation of crossing signals, activation equipment, and crossing surface at U.S. DOT crossing 028682T, more particularly described on Exhibit “A” and Exhibit “B” which are 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. The RAILROAD will, using its own labor forces under applicable labor agreements, install the Crossing Signal Equipment and the new crossing surface at Snelling Hwy. The work will be performed at AGENCY’S expense and in accordance with the Manual on Uniform Traffic Control Devices (hereinafter called “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 “B” and incorporated herein.

2. A detailed 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 “C” 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 “C”. 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 “C” 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.

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

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

5. The RAILROAD will finalize and complete billing of all incurred costs under this Agreement no later than one (1) year following installation of the Crossing Signal Equipment and the new crossing surface.

### **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 perform, at AGENCY'S expense, the following work:
  - a) Installation of a pavement marking stop bar in accordance with the MUTCD.
  - b) Installation of advance warning signs in accordance with the MUTCD.
2. The AGENCY will approve the location of the signals and signal bungalow prior to installation by RAILROAD.
3. 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 (including taxes, such as applicable sales and use taxes, business and occupation taxes, and similar taxes).
4. 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.
5. 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 (30) 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 "C". Pursuant to this section, AGENCY must pay the final invoice within ninety (90) days of the date of the final invoice. RAILROAD will assess a finance charge of .033% per day (12% per annum) on any unpaid sums or other charges due under this Agreement which are past its credit terms. The finance charge continues to accrue daily until the date payment is received by RAILROAD, not the date payment is made or the date postmarked on the payment. Finance charges will be assessed on delinquent sums and other charges as of the end of the month and will be reduced by amounts in dispute and any un-posted payments received by the month's end. Finance charges will be noted on invoices sent to AGENCY under this section. For purposes of computing the time limits prescribed by Section 911.2 of the California Government Code for the presentment of a claim against the Agency the cause of action for failure to reimburse BNSF for the costs of the Railroad work performed by it pursuant to this Agreement shall be deemed to have accrued one hundred and eighty (180) days of the date of the final invoice.]
6. INTENTIONALLY LEFT BLANK

7. The AGENCY must have advance railroad crossing warning 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. The AGENCY assumes full responsibility for the maintenance of advance warning signs and pavement markings and agrees to hold harmless and indemnify the RAILROAD for any claims, damages or losses, in whole or in part, caused by or due to the AGENCY'S failure to maintain the advance warning signs and markings or other requirements of the MUTCD.

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

9. The AGENCY agrees to provide, to the BNSF Manager of Evidence Preservation, such Project documentation and records as are agreed to between the parties including: any Project applications; any letters of approval and/or authorization forms (eg. PR-1240 or the equivalent); any and all payment Voucher forms requesting FHWA reimbursement (eg. PR-20 or the equivalent) or any other such Project authorizations or funding records as BNSF may request from time to time. Such records will be provided by the Agency to BNSF on a mutually agreeable schedule or within two (2) months after such records are generated or received by the AGENCY. Section 130 Documentation shall be provided to BNSF if one of the following manners:

Manager Evidence Preservation  
2600 Lou Menk Drive, AOB-3  
Fort Worth, Texas 76131

Or Electronically to:

Manager Evidence Preservation

[Section130@bnsf.com](mailto:Section130@bnsf.com)

#### **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 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) and the Federal Highway Administration for a period of not less than three (3) years from the date of the final RAILROAD invoice under this Agreement.

2. 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.

3. 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.

4. 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.

5. 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.

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

8. 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.

9. 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: \_\_\_\_\_

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

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

**CITY OF MERCED**

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

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

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

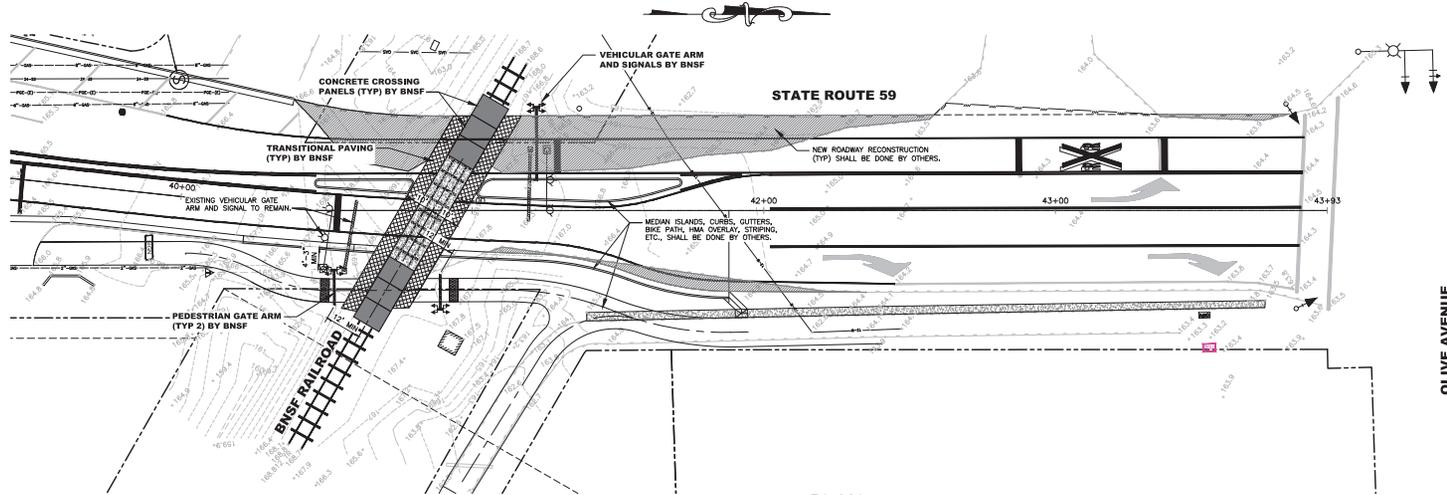
**APPROVED AS TO FORM:**

*Kelly C. Fincher*

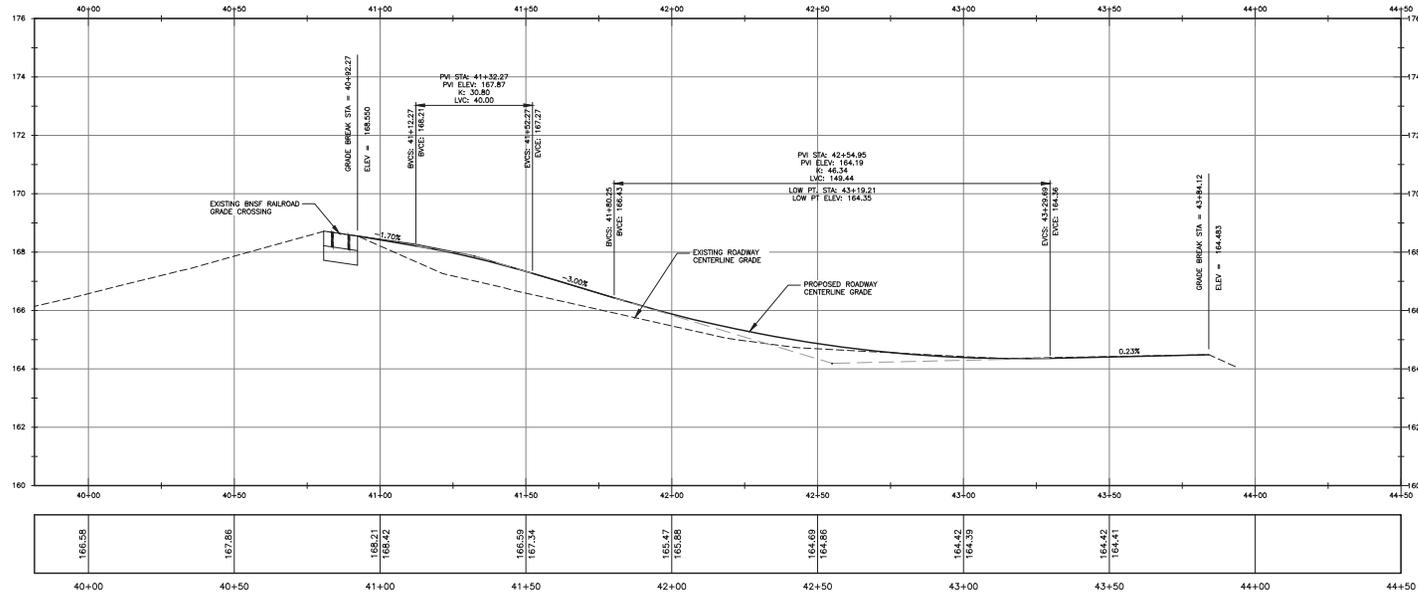
**KELLY C. FINCHER**

**Chief Deputy City Attorney**

**Exhibit "A"**



PLAN  
SCALE 1"=20'



PROFILE  
HORIZ: 1"=20'  
VERT: 1"=2'

NO.	DATE	BY	REVISION MADE

**Underground Service Alert**



**TWO DAYS BEFORE YOU DIG**

CALL TOLL FREE 1 (800) 227-2600

**NOTE:** ALL REFERENCES AND WRITTEN DIMENSIONS SHALL TAKE PRECEDENCE OVER SCALED DIMENSIONS AND SHALL BE VERIFIED ON THE SITE. ANY DISCREPANCY SHALL BE BROUGHT TO NOTICE OF THE ENGINEER PRIOR TO THE COMMENCEMENT OF ANY WORK.



**City of Merced**  
"Gateway to Yosemite"

DEVELOPMENT SERVICES  
ENGINEERING PROJECTS AND STANDARDS  
678 W. 18th Street (209) 385-6946

**PLAN AND PROFILE FOR BNSF RAILROAD**

PROJECT NO. 115047  
**MULTI-USE PATH CROSSING AT BNSF RAILROAD**

DR. BY: KGE	File No. 0907 - all
DATE: 3/11/16	Sheet
CH. BY: JS	<b>1</b>
DATE: 3/11/16	of 1
SCALE: AS SHOWN	

I:\Current Projects\115047 - all - 0303 State Route 59 Multi-Use Path Crossing\0907 - all.dwg

**Exhibit “B”**



**Exhibit “C”**



LIGHT OUT DETECTOR	1.0 EA N	1,023	
SHUNT, NBS	2.0 EA N	2,232	
SURFACE ROCK	10.0 CY N	500	
TELLULAR DEVICE, RTU	1.0 EA N	3,052	
USE TAX		12,245	
OFFLINE TRANSPORTATION		1,716	
		<hr/>	
TOTAL MATERIAL COST		151,364	151,364
*****			
OTHER			
*****			
AC POWER SERVICE	1.0 EA N	5,000	
CONTRACT ENGINEERING	1.0 LS N	8,000	
DIRECTIONAL BORING	200.0 FT N	10,000	
		<hr/>	
TOTAL OTHER ITEMS COST		23,000	23,000
PROJECT SUBTOTAL			299,570
CONTINGENCIES			29,957
BILL PREPARATION FEE			3,296
			<hr/>
GROSS PROJECT COST			332,823
LESS COST PAID BY BNSF			0
			<hr/>
TOTAL BILLABLE COST			332,823

AUTHORITY FOR EXPENDITURE

LOCATION : WEST MERCED	LINE SEGMENT : 7200	AFE NUMBER :
PLANITEM NUMBER : 228889000	MILEPOST : 1057.683	RFA NUMBER : 5903217
PROPERTY OF : BNSF RAILWAY COMPANY	DIVISION : CA	CPAR NUMBER : C0000009
OPERATED BY : BNSF RAILWAY COMPANY	SUBDIVISION : STOCKTON	BUDGET YEAR : 2017
JOINT FACILITY : CITY OF MERCED	TRACK TYPE : 1	BUDGET CLASS : 6
% BILLABLE (+/-) : 100.0	TAX STATE : CA	REPORTING OFFICE : 715
	SPONSOR : VP ENGINEERING	CENTER/ROLLUP : 29125

PURPOSE, JUSTIFICATION AND DESCRIPTION

PIP - NC DIV STOCKTON SUB LS 7200 MP 1057.683 - DOT #028682T - 100% BILLABLE TO CALTRANS/CITY OF MERCED - HWY 59 IN MERCED CA WIDEN EXISTING CROSSING WITH ADD'L ROAD LANES AND A BIKE PATH. SIGNAL LIGHTS AND GATES PROPOSED FOR THE BIKE XING.

PLAN ITEM	LINE SEG	BEG MP	END MP	TRK NBR	BEGIN STATION	END STATION	PROJECT TYPE	BUD YEAR
228889000	7200	1057.683	1057.683	1	WEST MERCED	WEST MERCED	PUBLIC IMPROVEMENT PROJECT	2017

	CASH CAPITAL	NONCASH CAPITAL	OPERATING EXP	REMOVAL COSTS	BILLABLE	TOTALS
LABOR COSTS	0	0	0	0	11,083	11,083
MATERIAL COSTS	0	0	0	0	12,824	12,824
OTHER COSTS	0	0	0	0	2,573	2,573
<b>TOTALS</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>26,480</b>	<b>26,480</b>

SYSTEM MAINTENANCE AND PLANNING

ESTIMATE REF. NUMBER: 5903217

COSTING DATE: 01/01/2017

PRINTED ON: 06/01/2016

ESTIMATED BY: Savard

PRINTED BY: Savard

