

CONSTRUCTION AND MAINTENANCE AGREEMENT

BETWEEN

THE ARKANSAS DEPARTMENT OF TRANSPORTATION,
THE CITY OF JONESBORO,
AND
THE BNSF RAILWAY

Job 100824

BNSF RAILROAD OVERPASS (JONESBORO) (S)

Watt Street
Craighead County

THIS AGREEMENT made and entered into this _____ day of _____, 20____, between the Arkansas Department of Transportation hereinafter designated "State", and the City of Jonesboro, hereinafter designated "City" and the BNSF Railway, hereinafter designated "Railroad".

WITNESSETH THAT:

WHEREAS, under State's Job No. 100824 hereinafter designated "Project", the State will construct an overpass structure that will cross over Railroad right of way and tracks, hereinafter designated as "Structure." The Structure will cross Railroad's tracks at Mile Post 423.63 on the Railroad's Thayer South Subdivision in Jonesboro, Craighead County, Arkansas. Attached as **Exhibit A** are the State's general type, size and location prints of the Structure. The existing signalized at-grade crossing, 672-528T at milepost 423.63 on the Thayer South Subdivision, will be closed at the onset of construction on the Structure.

WHEREAS, this Agreement is made to cover the construction, ownership, use, maintenance and repair of the Project.

WHEREAS, it is understood and agreed that the Project herein contemplated is to be financed in part from funds appropriated by the United States and expended under its regulations; that all plans, estimates of cost, specifications, awards of contracts, acceptance and procedure in general are subject at all times to all Federal laws, rules, regulations, orders and approval applying to it as a Federal project and that items entering into the improvement are reimbursable for such work and expense, and in such amounts and forms as are proper and eligible for payment from Federal funds.

WHEREAS, the State and the City will be working with the Railroad concerning the easement to be granted

to the City for the Structure and the amount of consideration to be paid to the Railroad for such easement.

NOW THEREFORE, in consideration of the faithful performance of each party of the mutual covenants and agreements hereinafter set forth, it is mutually agreed as follows:

Section 1. PLANS AND CONSTRUCTION REQUIREMENTS AND PROJECT SPECIAL PROVISIONS.

A. The State shall prepare, or cause to be prepared by others, adequate plans and specifications for construction of the Project including falsework, shoring plans and which plans and specifications shall be subject to approval by the Railroad as to clearance and to form and manner of construction on, over and adjacent to the Railroad's property and tracks (as approved or to be approved by the Railroad, the "Plans" which are made a part hereof).

B. This Agreement incorporates the following Exhibits and are hereby made a part hereof:

Exhibit A – The State's general type, size and location print(s) of the Structure

Exhibit B – The Railroad's Estimated Expenses

Exhibit C – The State's Special Provision with the Railroad's Contractor Requirements and C-1 Agreement Attachments

Exhibit D – Easement, Legal Description

Exhibit E – Railroad's 5% Share Estimate

Exhibit F – Bridge Requirements

All are attached hereto and hereby made a part hereof.

C. Neither the State, the City, nor the Contractor shall commence any work on the Project until the Railroad has provided written approval of the Plans to the State. No changes in the Plans shall be made unless the Railroad has consented to such changes in writing. The Railroad's review and approval of the plans in no way relieves the State, the City, or its Contractor's (For purposes of this Agreement, the term "Contractor" shall mean the contractor hired by the State to perform any Project work on any portion of Railroad's property and shall also include the Contractor's subcontractors and the Contractor's and subcontractor's respective employees, officers and agents and others acting under its or their authority) from their responsibilities, obligations and/or liabilities under this Agreement, and will be given with the understanding that the Railroad makes no representation or warranty as to the validity, accuracy, legal compliance or completeness of and assumes no risk of the Plans.

Section 2. FEDERAL AID POLICY GUIDE.

If the State or City will be receiving any federal highway funding for the Project, the current regulations of the Federal Aid Policy Guide as contained to Title 23 and 23 CFR 140, Subpart 1 and 23 CFR 646, Subparts A and B are incorporated into this Agreement by reference.

The existing signalized at-grade crossing, 672-528T at milepost 423.63 on the Thayer South Subdivision, will be closed at the onset of construction on the Structure. 23 CFR Part 646.210, requires railroads to provide 5% of the costs of preliminary engineering, right-of-way, and construction of the theoretical structure if the existing at-grade crossing to be closed is actively controlled. This cost is

estimated to be \$193,237.84. This is an estimate only. The State will bill the Railroad for the actual 5% share upon completion of the Structure and all associated costs are known. A breakdown of this estimate is included as Exhibit E.

Section 3. TERMINATION OF PROJECT BY STATE.

If the State or the City is unable to obtain funding for the Project prior to providing a notice to proceed to the Contractor, the State or the City may terminate this Agreement and cancel the Project. Upon any termination of this Agreement, the State and/or the City shall pay the Railroad for all actual costs incurred by the Railroad prior to such termination including, preliminary engineering costs and other eligible expenses incurred by the Railroad.

Section 4. CONSTRUCTION OF OVERPASS STRUCTURE.

A. The State or the Contractor, shall furnish all necessary labor, materials and equipment and construct the Structure in compliance with the Plans and attached Exhibits.

B. The State and City acknowledge that the Railroad's tracks at the Project site will be in constant use during the course of the Project and that the Railroad's train operations or maintenance activities may cause delays in the Project work. The State and City assume the risk of any such delays and agrees that no claims or damages on account of any such delays shall be made against the Railroad by the State, the City, or the Contractor. Details regarding train operations should be obtained from Mr. John Caufield, Manager of Public Projects, BNSF Railway Company, 4515 Kansas Ave, Kansas City, KS 66106, (817) 789-0879.

C. The State and City shall adequately supervise all work to be performed by their Contractor. The Railroad may, at their discretion, assign a representative to the Project and the suggestions and recommendations made by any such representative for the safety and protection of the Railroad's property and operations will be given due consideration. The State's or the City's supervisory responsibilities shall not be lessened or diminished as a result of any such representative being assigned or of any suggestions or recommendations of such representative being followed. Work on the Project shall be immediately suspended if at any time the State, City, or Railroad believes any work is being, or is about to be, performed without due regard for safety and security and such suspension of work shall continue until suitable, adequate and proper protective measures shall have been adopted and provided to Railroad for its approval to recommence Work.

Section 5. PROJECT WORK TO BE PERFORMED BY RAILROAD; RAILROAD'S ESTIMATE.

A. The Railroad shall perform and be reimbursed for performing the following with respect to the Project.

1. The Railroad's engineering review (including preliminary engineering review) and preparation or review of any plans, estimates or specifications required under the Project shall be reimbursed by the State.

2. The Railroad's inspection of Project work performed on the Railroad's property as the Railroad deems necessary to protect the Railroad's property and operations shall be reimbursed by the Contractor.

3. The Railroad's review of detailed falsework or shoring plans as prepared by the Contractor shall be reimbursed by the Contractor.

4. The Railroad will assign the number of flagmen as it deems necessary to safeguard the Railroad's property and operations due to the Project work. The Railroad's expenses associated with such flagging shall be reimbursed by the Contractor.

5. The Railroad's removal of railroad signal equipment and surface located at Milepost 423.63 on the Thayer South Subdivision, 672-528T.

The Project Work to be performed by the Railroad, at the expense of the State, the City, or the Contractor, as the case may be, is described in the Railroad's Material and Force Account Estimate and marked as **Exhibit B** attached hereto and hereby made a part hereof.

The Railroad, if it so elects, may recalculate and update the Material and Force Account Estimate in the event no Project work on the Railroad's property is commenced within six (6) months of the date of the Estimate.

Section 6. RAILROAD'S BILLING TO STATE, CITY OR CONTRACTOR; STATE'S, CITY'S, AND CONTRACTOR'S PAYMENT OF BILLINGS RECEIVED FROM RAILROAD.

A. The Railroad, in accordance with their current billing procedures, will send progressive billings to the State, the City, or the Contractor, as the case may be, for all costs incurred by the Railroad in performing the Railroad work described in Section 5 as well as for all other costs incurred by the Railroad under the Project, as well as for all direct costs and Railroad's standard additive rates applicable to such costs.

B. The Railroad shall send their final billing to the State, the City, or the Contractor, as the case may be, for all costs incurred by the Railroad in performing the Railroad Work or for all other costs incurred by the Railroad under the Project, as well as for all direct costs and Railroad standard additive rates applicable to such costs, within one hundred twenty (120) days after receiving written notice from the State, or City, that all Project Work involving the Railroad's property has been completed.

C. The Railroad's billings shall be due in full and payable within forty-five (45) days of receipt.

D. The State acknowledges that the Railroad has entered into this Agreement as an accommodation to the State's and the City's desire to construct the Project. In recognition of such accommodation, the State and City agree to assist the Railroad in such reasonable efforts as the Railroad may request to assure and to obtain full payment of all billings submitted to the Contractor for the Railroad work.

Section 7. MAINTENANCE OF OVERPASS STRUCTURE AND RAILROAD'S FACILITIES.

A. The City, at its expense, shall maintain, repair and renew, or cause to be maintained, repaired and

renewed, the Structure. The City shall not plow ice, snow or sleet over the sides of the Structure. In consideration of the preceding sentence, the Railroad waives its request for the State to attach splash boards to the sides of the Structure.

B. If the City no longer needs the Structure for public highway purposes, the City and the Railroad shall enter into an agreement covering the demolition and removal of the Structure at owner's expense. The City may transfer the Structure to another public entity (e.g., State or County) along with its Agreement obligations with the Railroad's written consent.

C. The Railroad, at its expense, will maintain, repair and renew, or cause to be maintained, repaired and renewed, the rails, ties, ballast and other railroad appurtenances owned by the Railroad.

Section 8. STATE'S AND CITY'S INDEMNITY.

As set forth in Section 1 of BNSF's Exhibit "C-1" Agreement, the State shall require its Contractor to indemnify, defend, and hold harmless the Railroad from and against any and all loss, damage, claims, demands, causes of action, costs, and expenses of whatsoever nature arising out of injury to or death of persons whomsoever, or out of damage to or destruction of property whatsoever (including, without limitation, damage to fiber optic, communication and other cable lines and systems), where such injury, death, damage, or destruction results from any cause arising out of work performed by the contractor pursuant to the agreement between Railroad and the Commission for the Project. The State's Contractor shall also release the Railroad from and shall waive any claims for injury or damage to equipment or other property, which may result from the construction, maintenance, and operation of railroad tracks, wire lines, fiber optic cable, pipe lines and other facilities on said right of way of the Railroad by the contractor. THE LIABILITY ASSUMED BY THE 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 RAILROAD, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROVEN BY ANY CLAIMANT TO HAVE BEEN PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR SOLE OR GROSS NEGLIGENCE OF RAILROAD. The Contractor's indemnity shall include loss of profits or revenue arising from damage or destruction to fiber optic, communication and other cable lines and systems.

TO THE FULLEST EXTENT PERMITTED BY LAW, the State 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 state, its contractors, subcontractors, employees or agents in, on, or about the construction site, (ii) the performance, or failure to perform by the state, its contractors, subcontractors, employees, or agents, its work or any obligation under this agreement, (iii) the sole or contributing acts or omissions of state, its contractors,

subcontractors, employees, or agents in, on, or about the construction site, (iv) state's breach of the temporary construction license or easement granted to state pursuant to article ii of this agreement, (v) any rights or interests granted to state pursuant to the temporary construction license or easement discussed in article ii of this agreement, (vi) state's occupation and use of BNSF's property or right-of-way, including, without limitation, subsequent maintenance of the structure by state, or (vii) an act or omission of state or its officers, agents, invitees, employees or contractors or anyone directly or indirectly employed by any of them, or anyone they control or exercise control over. The liability assumed by state will not be affected by the fact, if it is a fact, that the damage, destruction, injury or death was occasioned by or contributed to by the negligence of BNSF, its agents, servants, employees or otherwise, except to the extent that such claims are proximately caused by the intentional misconduct or gross negligence of BNSF.

TO THE FULLEST EXTENT PERMITTED BY LAW, the City 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 city, its contractors, subcontractors, employees or agents in, on, or about the construction site, (ii) the performance, or failure to perform by the city, its contractors, subcontractors, employees, or agents, its work or any obligation under this agreement, (iii) the sole or contributing acts or omissions of city, its contractors, subcontractors, employees, or agents in, on, or about the construction site, (iv) city's breach of the temporary construction license or easement granted to city pursuant to article ii of this agreement, (v) any rights or interests granted to city pursuant to the temporary construction license or easement discussed in article ii of this agreement, (vi) city's occupation and use of BNSF's property or right-of-way, including, without limitation, subsequent maintenance of the structure by city, or (vii) an act or omission of city or its officers, agents, invitees, employees or contractors or anyone directly or indirectly employed by any of them, or anyone they control or exercise control over. The liability assumed by city will not be affected by the fact, if it is a fact, that the damage, destruction, injury or death was occasioned by or contributed to by the negligence of BNSF, its agents, servants, employees or otherwise, except to the extent that such claims are proximately caused by the intentional misconduct or gross negligence of BNSF.

Section 9. OTHER CONTRACTOR OBLIGATIONS.

The State and the City also agrees to cause any Contractor employed by them to:

- A. Notify in writing Mr. John Caufield, Manager of Public Projects, BNSF Railway Company, 4515 Kansas Ave, Kansas City, KS 66106 and Mr. Chris Steele, Roadmaster, at chris.steele@BNSF.com at least thirty (30) days in advance of starting work on the Railroad's premises.
- B. Determine if fiber optic cable systems are buried on the Railroad's property by contacting Arkansas

One Call at 1-800-482-8998. If any fiber optics cable exists, the Contractor will telephone the telecommunications company involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad's premises. All work must be in compliance with BNSF Utility Accommodation Manual.

C. Refrain from placing or piling any temporary structure, materials, or equipment closer than twenty five (25) feet to the nearest rail of any existing tracks, from transporting material or equipment across existing tracks and from operating any equipment over and adjacent to the existing tracks within the space required for safe passage of trains without first having secured approval of Mr. Chris Steele, Roadmaster, (901) 433-7501 at chris.steele@BNSF.com, or his authorized representative.

D. Maintain during construction not less than the following temporary clearances over adjacent to the Railroad's existing track:

1. Overhead – At least 21'-0" above nearest rail.
2. Lateral – At least 15'-0" from the centerline of the nearest track.

E. Conduct work in such manner and at such times as not to delay, interfere with, or obstruct the safe passage of the Railroad's' trains, except for the speed of trains ordinarily incident to such work or the functioning of its signal and communication system, and so as not to damage any property of the Railroad, its tenants or licensees.

F. Upon completion of work, remove from the Railroad's premises all equipment, surplus material and debris, leaving premises in a condition satisfactory to the Railroad.

G. The Contractor shall confine its work activities on the Railroad's property to the easement or permanent rights area that was granted to the City.

H. The State shall include provisions in its construction contract with the Contractor that the Contractor shall cross only the Railroad tracks and property at existing public crossings and that temporary contractor haul road crossings will only be allowed if absolutely necessary for the Project. If the Contractor can prove that alternate public access cannot be utilized, then the Contractor shall submit design plans for a temporary crossing to Mr. Chris Steele, Roadmaster, (901) 433-7501 at chris.steele@BNSF.com and Mr. Blake W. Jung, Associate Manager Permits, Jones, Lang, Lasalle, Rail Practice Group, 4300 Amon Carte Blvd, Suite 100, Fort Worth, TX 76155, (817) 230-2600, at blake.jung@al.jll.com.

The Railroad will then review such design plans and the need for the temporary crossing.

If, in the sole discretion of the Railroad, a temporary crossing is needed for the Project, the Railroad will advise the Contractor if the design plans for the temporary crossing are acceptable, and shall provide to the Contractor the Railroad's cost estimate for the Railroad's installation and removal of the temporary crossing. If a temporary crossing is needed, the Contractor shall first execute the Railroad's Contractor's Road Crossing Agreement providing for the Contractor to be responsible for all costs and expenses involving the Railroad's installation and removal of the temporary crossing and any restoration costs involving the Railroad's ballast or other track structure material.

Section 10. NOTIFICATION OF PROJECT COMPLETION AND RAILROAD'S POINT OF CONTACT.

Upon completion of the Project, the State will notify in writing Mr. John Caufield, Manager of Public Projects, BNSF Railway Company, 4515 Kansas Ave, Kansas City, KS 66106.

Section 11. TERM OF AGREEMENT.

The term of this Agreement shall commence as of the date first herein written and shall continue in effect for as long as the Structure remains on the property of the Railroad.

Section 12. ASSIGNMENT OF AGREEMENT.

The State or the City shall not assign this Agreement without the prior written consent of the Railroad.

Section 13. SUCCESSORS AND ASSIGNS.

Subject to the provisions of Section 12, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns.

Section 14. EASEMENT

This Agreement is intended to be read in conjunction with the permanent easement granted by the Railroad, and is not intended to supersede such easement agreement.

Section 15. SPECIAL PROVISIONS PERTAINING TO NONDISCRIMINATION AND THE CIVIL RIGHTS ACT OF 1964

A. Compliance with Regulations: The Railroad shall comply with the Regulations relative to Title VI (Nondiscrimination in Federally-assisted programs of the Department of Transportation and its operating elements, especially Title 49, Code of Federal Regulations, Part 21 and 23 Code of Federal Regulations, as amended, and hereinafter referred to as the Regulations). These regulations are herein incorporated by reference and made a part of this Agreement. Title VI provides that the recipients of Federal financial assistance will maintain and implement a policy of nondiscrimination in which no person in the state of Arkansas shall, on the basis of race, color, national origin, sex, age, disability, be excluded from participation in, denied the benefits of, or subject to discrimination under any program or activity by recipients of Federal financial assistance or their assignees and successors in interest.

B. Nondiscrimination: The Railroad, with regard to any work performed by it during the Project, shall not discriminate on the grounds of race, color, national origin, sex, age, disability, in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the USDOT Regulations.

C. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Railroad or work to be performed

under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.

D. Information and Reports: The Railroad shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities at all reasonable times for inspection and audit by the agents and authorized representatives of the parties hereto as well as by the State or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives for a period of three (3) years from the date of the final BNSF invoice under this Agreement. Where any information required of the Railroad is in the exclusive possession of another who fails or refuses to furnish this information, the Railroad shall so certify to the State, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

E. Sanctions for Noncompliance: In the event of the Railroad's noncompliance with the nondiscrimination provisions of this contract, the State shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

- (1) Withholding of payments to the Railroad under this Agreement until the Railroad complies, and/or
- (2) Cancellation, termination or suspension of the Agreement, in whole or in part.

F. Incorporation of Provisions: The Railroad shall include the provisions of paragraphs A through E in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Railroad shall take such action with respect to any subcontract or procurement as the State or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance. Provided, however, that, in the event the Railroad becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Railroad may request the State to enter into such litigation to protect the interests of the State, and, the Federal Highway Administration to protect the interest of the United States.

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(Signature page follows on page 10)

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

(State) **ARKANSAS STATE HIGHWAY AND TRANSPORTATION
DEPARTMENT**

By: _____
Kevin Thornton
Assistant Chief Engineer - Planning

Approved: By: _____
Emanuel Banks
Deputy Director and Chief Engineer

(City) **CITY OF JONESBORO**

By: _____
Donna Jackson
City Clerk

By: _____
The Honorable Harold Perrin
Mayor

(Railroad) **BNSF Railway**

By: _____
Steve Anderson
Vice President of BNSF Engineering

CONSTRUCTION & MAINTENANCE AGREEMENT

STATE JOB 100824

BNSF RAILROAD OVERPASS (HWY. 18) (JONESBORO) (S)

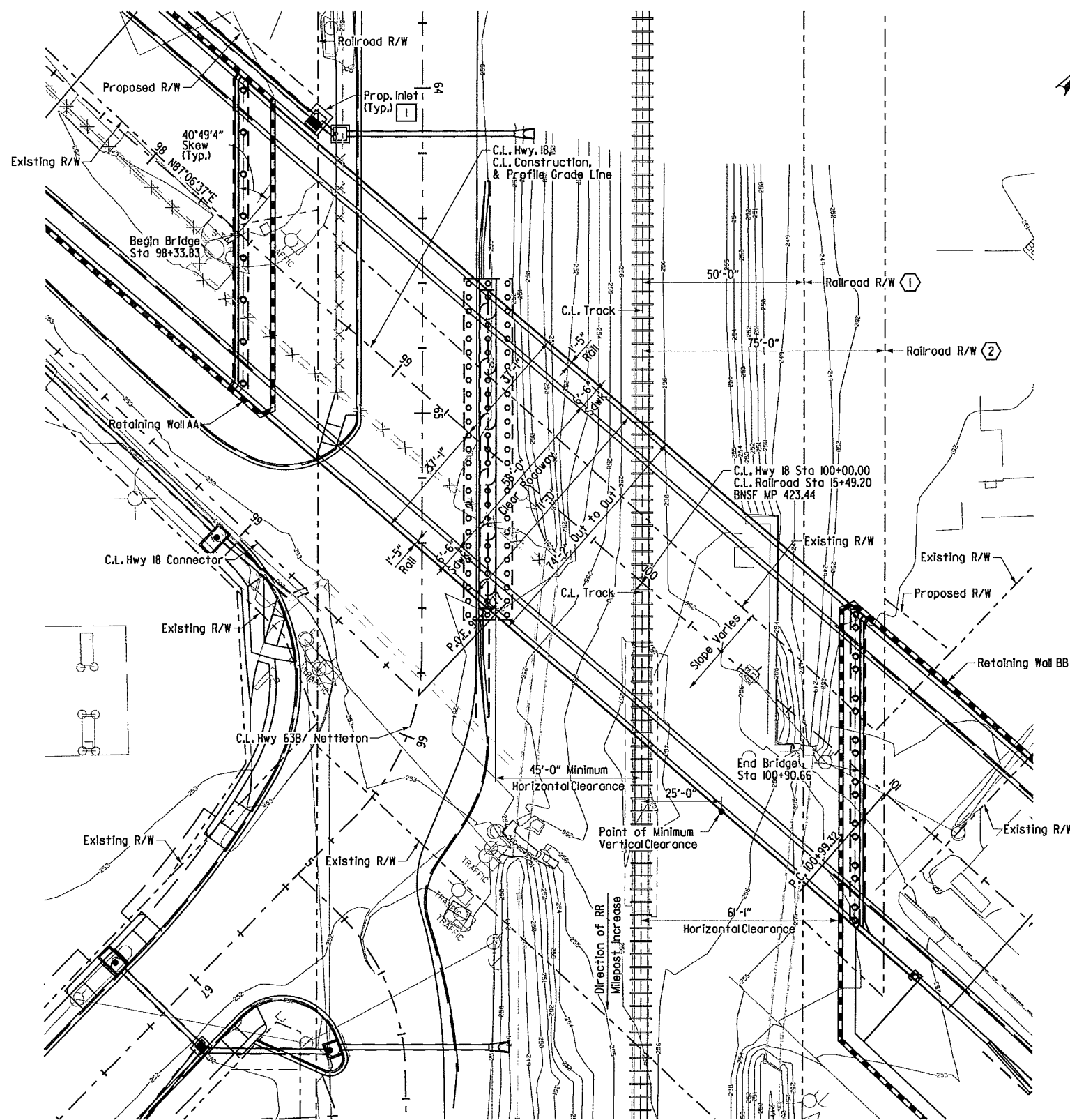
HIGHWAY 18 OVERPASS

Exhibit A – The State’s general type, size and location print(s) of the Structure

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30% SUBMITTAL
 PRELIMINARY FOR REVIEW ONLY
 STEPHEN T. SMILEY, P.E., 13072
 MARCH 2016

DATE REVISED	DATE FILMED	DATE REVISED	DATE FILMED	FED. RD. DIST. NO.	STATE	FED. AD PROJ. NO.	SHEET NO.	TOTAL SHEETS
				6	ARK.			
				JOB NO.	100824	XXXX	XXX	
				[Brdg#]	(EXHIBIT A)	[Dwg#]		

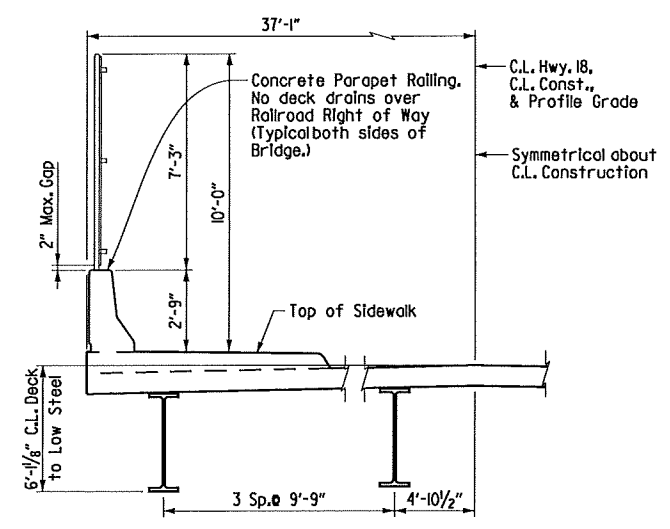


PLAN

1 See Roadway Plans

- 1 BNSF Railroad R/W map segment 1001 Craighead County
- 2 The plot of lrbv resubdivision, recorded in the Craighead County circuit clerks office plat book J page 52 and plat book A page 152.

Horizontal Curve
 C.L. Hwy. 18
 PISta = 102+80.65
 Delta = 2°0'0"
 Degree = 7'14'37"
 Tangent = 181.33'
 Length = 362.17'
 Radius = 2864.79'
 PC Sta = 100+99.32
 PT Sta = 104+61.49
 PC Brg = N 87°06'37"E
 PT Brg = S 85°38'46"E



TYPICAL HALF SECTION
 No Scale

Only one track exists as shown and no continuous access road is apparent. However, supports for proposed overhead structure are spaced at sufficient horizontal clearance either side of existing track to provide room for future track or access road without need of crashwall.

GENERAL NOTES:

All demolitions within the Railroad's right-of-way and/or demolitions that may impact the Railroad's tracks or operations shall comply with the Railroad's demolition requirements.

Erection over the Railroad's right-of-way shall be designed to cause no interruption to the Railroad's operation. Erection over the Railroad's track shall be developed such that it enables the track(s) to remain open to traffic per the Railroad's requirements.

The Contractor must submit a proposed method of erosion and sediment control and have the method approved by the Railroad prior to beginning any grading on the project site.

Railroad requirements do not allow work within 50 feet of track centerline when a train passes the work site and all personnel must clear the area within 25 feet of the track centerline and secure all equipment when trains are present.

The following statement is in the "State Rail Agreement": The State shall not plow ice, snow, or sleet over the sides of the structure. In consideration of this practice, the Carrier waives its request for the State to attach splash boards to sides of the structure.

Shoring shall comply with the BNSF Railroad requirements. Construction shall comply with the requirements of SP Job 100824 "Insurance, Construction, and Flagging requirements on Railroad property (Burlington Northern Santa Fe Railroad)." Railroad review and approval of Shoring, Erection, and False work is required. Allow a minimum of four weeks for the review and approval of each submittal.

Currently there are no known utilities on the railroad right-of-way other than shown.

A Chain Link Fence is required on both sides of the Bridge. The Fence is to be mounted on top of the concrete parapet railing and shall extend the full length of the Bridge. For details of fence, see Dwg. No. XXXXI

The proposed bridge construction will not change the quantity and/or characteristics of the flow within the Railroad right-of-way.

Closed Parapet Railing (No Deck Drains). Typical both sides of bridge.

All permanent clearances shall be verified before project closing.

For Railroad coordination refer to the Railroad Minimum Requirements of SP Job 100824 "Insurance, Construction and Flagging Requirements on Railroad Property (Burlington Northern Santa Fe Railroad)".

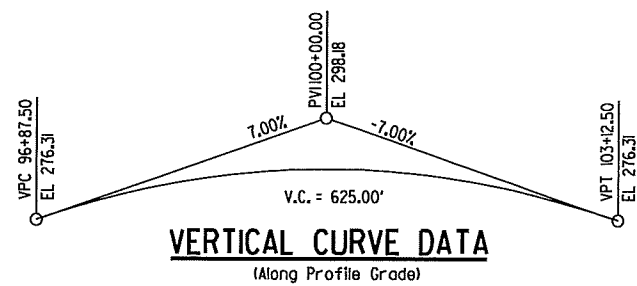
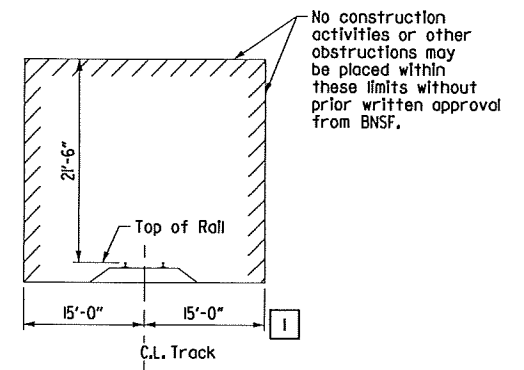
BRIDGEFARMER & ASSOCIATES, INC.
 CONSULTING ENGINEERS
 SHEET 1 OF 2
 (EXHIBIT A)
 LAYOUT OF HWY. 18 BRIDGE
 OVER BNSF RAILROAD
 BNSF RAILROAD OVERPASS (HWY 18) (JONESBORO) (PE)
 CRAIGHEAD COUNTY
 ROUTE 18 SECTION 4
ARKANSAS STATE HIGHWAY COMMISSION
 LITTLE ROCK, ARK.

DRAWN BY: **AKH** DATE: **MAR2016** FILENAME: **FileName**
 CHECKED BY: **JH** DATE: **MAR2016** SCALE: **1" = 20'**
 DESIGNED BY: **KH** DATE: **MAR2016**
 BRIDGE NO. XXXXX DRAWING NO. XXXXX

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 jhurrell
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30% SUBMITTAL
 PRELIMINARY
 FOR REVIEW ONLY
 STEPHEN T. SMILEY, P.E., 13072
 MARCH-2016

DATE REVISED	DATE FILMED	DATE REVISED	DATE FILMED	FED. RD. DIST. NO.	STATE	FED. AD PROJ. NO.	SHEET NO.	TOTAL SHEETS
				6	ARK.			
				JOB NO.	100824	XXXX	XXX	
				① [Brdg*] (EXHIBIT A)		[Dwg*]		



BNSF RAILWAY
TOP OF RAIL ELEVATIONS *

LEFT RAIL		RIGHT RAIL	
Station	Elevation	Station	Elevation
6+63.04	258.58	6+63.04	258.58
7+00.00	258.52	7+00.00	258.52
8+00.00	258.36	8+00.00	258.36
9+00.00	258.21	9+00.00	258.21
10+00.00	258.05	10+00.00	258.05
11+00.00	257.89	11+00.00	257.89
12+00.00	257.73	12+00.00	257.73
13+00.00	257.58	13+00.00	257.58
14+00.00	257.42	14+00.00	257.42
15+00.00	257.26	15+00.00	257.26
15+69.14	257.15	15+69.14	257.15
16+00.00	257.08	16+00.00	257.08
17+00.00	256.84	17+00.00	256.84
18+00.00	256.61	18+00.00	256.61
19+00.00	256.37	19+00.00	256.37
20+00.00	256.14	20+00.00	256.14
21+00.00	255.9	21+00.00	255.9
22+00.00	255.66	22+00.00	255.66
23+00.00	255.43	23+00.00	255.43
24+00.00	255.19	24+00.00	255.19
25+00.00	254.95	25+00.00	254.95
25+00.64	254.95	25+00.64	254.95
26+00.00	254.61	26+00.00	254.61
27+00.00	254.26	27+00.00	254.26
28+00.00	253.92	28+00.00	253.92
29+00.00	253.57	29+00.00	253.57
30+00.00	253.22	30+00.00	253.22
31+00.00	252.88	31+00.00	252.88
32+00.00	252.53	32+00.00	252.53
33+00.00	252.18	33+00.00	252.18
34+00.00	251.84	34+00.00	251.84
35+00.00	251.49	35+00.00	251.49

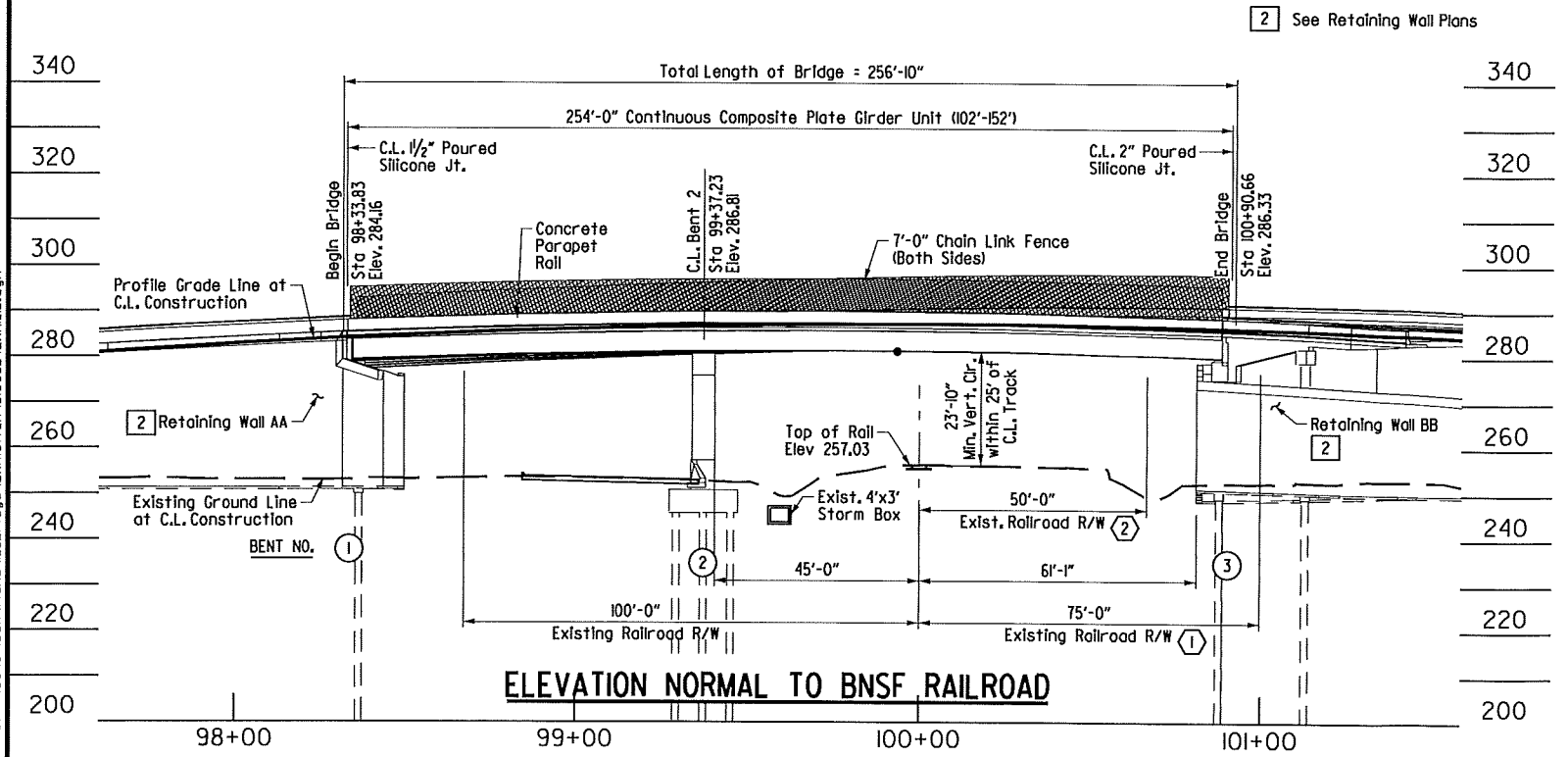
*Top of rail elevations based on interpolation of 4 survey shots. The elevations of the existing top of rail profile shall be verified by the contractor prior to the beginning of construction.

Only one track exists as shown and no continuous access road is apparent. However, supports for proposed overhead structure are spaced at sufficient horizontal clearance either side of existing track to provide room for future track or access road without need of crashwall.

- ① BNSF Railroad R/W map segment 1001 Craighead County
- ② The plat of Irby resubdivision, recorded in the Craighead County circuit clerks office plat book J page 52 and plat book A page 152.

BRIDGEMAN & ASSOCIATES, INC.
 CONSULTING ENGINEERS
SHEET 2 OF 2
 (EXHIBIT A)
LAYOUT OF HWY. 18 BRIDGE
OVER BNSF RAILROAD
 BNSF RAILROAD OVERPASS (HWY 18) (JONESBORO) (PE)
 CRAIGHEAD COUNTY
 ROUTE 18 SECTION 4
ARKANSAS STATE HIGHWAY COMMISSION
 LITTLE ROCK, ARK.

DRAWN BY: AKH DATE: MAR2016 FILENAME: FileName
 CHECKED BY: JH DATE: MAR2016 SCALE: 1" = 20'
 DESIGNED BY: KH DATE: MAR2016
 BRIDGE NO. XXXXX DRAWING NO. XXXXX



② See Retaining Wall Plans

CONSTRUCTION & MAINTENANCE AGREEMENT

STATE JOB 100824

BNSF RAILROAD OVERPASS (HWY. 18) (JONESBORO) (S)

HIGHWAY 18 OVERPASS

Exhibit B – The Railroad's Estimated Expenses

This estimate is to be prepared and inserted here by the BNSF Railway and cover the Railway's costs as described in Section 5.

CONSTRUCTION & MAINTENANCE AGREEMENT

STATE JOB 100824

BNSF RAILROAD OVERPASS (HWY. 18) (JONESBORO) (S)

HIGHWAY 18 OVERPASS

Exhibit C – The State's Special Provision with The Railroad's Contractor Requirements
and C-1 Agreement Attachments

ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT**SPECIAL PROVISION****JOB NO. 100824****HIGHWAY 18 OVERPASS STRUCTURE****INSURANCE, CONSTRUCTION, AND FLAGGING REQUIREMENTS ON RAILROAD PROPERTY
(BNSF)****GENERAL.**

The requirements of this Special Provision are intended to apply to construction operations at the Highway 18 Overpass Structure over the BNSF Railway's Thayer South Subdivision at Railroad Milepost 423.45 in Jonesboro, Craighead County, Arkansas. These requirements are in addition to construction details shown on the Plans or called for elsewhere in this Contract.

This Special Provision applies to a portion of the construction activities on this project and supplements the Plans. The terms and conditions contained in the Railroad's Contractor Requirements, included as Attachment 1, are hereby made a part of this Special Provision. The Contractor shall execute a C-1 Agreement, sample included as Exhibit C-1 to the Railroad's Contractor Requirements, with the BNSF Railway. Before beginning any work on the Railroad's right-of-way, the Contractor shall provide a copy of the executed C-1 Agreement to the Engineer. Contact Mr. John Caufield, Manager of Public Projects, BNSF Railway, 4515 Kansas Ave., Kansas City, KS 66106, (817) 789-0879 for information regarding execution of the C-1 Agreement.

The Contractor Requirements and the C-1 Agreement are intended to be complementary and to describe and provide for a complete work on the Railroad property. In case of discrepancy, the requirements in Contractor Requirements will govern over the requirements in these Special Provisions and the Contractor's C-1 Agreement.

INSURANCE.

Refer to Section 3 of the attached BNSF "C-1" Agreement

CONSTRUCTION.

In addition to the requirements in CONTRACTOR REQUIREMENTS, Attachment 1 and the C-1 Agreement, the Contractor shall:

1. Contact the Arkansas One Call Center (800) 482-8998 to determine if fiber optic cable or other utilities are buried anywhere on the Railroad's right-of-way within the project limits. If any are, the Contractor shall telephone the company(ies) involved, arrange for a locator, and make arrangements for protection of the fiber optic cable or other utilities prior to beginning any work on the Railroad's right-of-way.
2. Furnish to the Engineer for informational and record purposes a copy of all plans approved by the BNSF Railway. The Contractor shall perform all work in accordance with the approved plans.

ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT**SPECIAL PROVISION****JOB NO. 100824****HIGHWAY 18 OVERPASS STRUCTURE****INSURANCE, CONSTRUCTION, AND FLAGGING REQUIREMENTS ON RAILROAD PROPERTY
(BNSF)**

3. During the erection of the superstructure, provide permanent bents or sufficient falsework for support of the beams on the span over the railroad.
4. Immediately after erection of structural steel, construct a safety platform directly under the steel beams on the span over the railroad for the entire width of construction to protect rail traffic from falling objects. The Contractor shall devise a method of support for the safety platform used under the deck outside the exterior beams. The safety platform outside the exterior beams shall be below and independent of the overhang brackets. The safety platform between the exterior beams shall be plywood sheets adequately supported on top of the bottom beam flange, or other method as submitted by the Contractor.
5. Construct safety platforms in accordance with the details approved by the BNSF Railway. The Contractor shall be responsible for the results obtained by the use of the platform design.
6. Use permanent steel bridge deck forms between beams in the span over the railroad. Further requirements and details of permanent steel deck forms may be found in subsection 802.14(b) of the Standard Specifications and on Drawing No. 14991.
7. Notify in writing Mr. John Caufield, Manager of Public Projects, BNSF Railway Company, 4515 Kansas Avenue, Kansas City, KS 66106, (817) 789-0879 and Mr. Chris Steele, Roadmaster at (901) 433-7501, chris.steele@bnsf.com, at least ten (10) days in advance of starting work on the Railroad's premises.

RAILROAD SERVICES DURING CONSTRUCTION.

The BNSF Railway moves an average of 64 freight trains per day at 40 miles per hour through this job site. There will be no passenger trains through this site.

The BNSF Railway will be providing services which include: design review and approval of falsework, shoring, and other plans submitted by the Contractor; inspection services and other project oversight by the Railroad; and other work which the Railroad deems necessary for protection of Railroad property as a result of the Contractor's operations under this Contract.

The BNSF Railway will provide all flagging services and other work which the Railroad deems necessary for protection of Railroad's operations as a result of the Contractor's operations under this Contract.

The Contractor is obligated to reimburse the Railroad for the cost of these services within the time frame established between the BNSF Railway and the Contractor. These costs shall be billed directly by the Railroad to the Contractor.

ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT**SPECIAL PROVISION****JOB NO. 100824****HIGHWAY 18 OVERPASS STRUCTURE****INSURANCE, CONSTRUCTION, AND FLAGGING REQUIREMENTS ON RAILROAD PROPERTY
(BNSF)**

Railroad employee's wage rates are subject to change at any time, by the law or by agreement between the Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized Governmental Agency. Additional charges on labor are also subject to change. If the wage rates or additional charges are changed, the Contractor shall pay the new rates and charges.

The bidder shall make their own estimate of the costs associated with Railroad services.

Should the Contractor not pay the Railroad for their services, the Contractor's Payment Bond shall apply to this debt in addition to the other debts incurred by the Contractor associated with this Contract. **If the BNSF Railway elects to bar the Contractor from entering onto Railroad property due to overdue debts with the Railroad, the assessment of Contract Time will continue and no claim for an extension of Contract Time will be considered by the State.**

Any delay to the movement of the Railroad's trains through the job site, caused by the Contractor, will result in monetary delay charges to be determined by the Railroad.

The Contractor is responsible for scheduling work windows with the Railroad.

PAYMENT.

The cost of working on Railroad Property including, but not limited to, the cost of providing insurance, the cost of processing the C-1 Agreement, the cost of design review of plans for temporary work, the cost of flagging services, the cost of the site inspection by the railroad, and the cost to meet other requirements contained in this Special Provision, shall not constitute a separate pay item under this Contract or be paid for directly but shall be considered to be subsidiary work pertaining to the various items of the Contract.



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 State Job 100824, an overpass to carry Highway 18 Traffic traffic over BNSF's Thayer South Subdivision at Milepost 423.45 in Jonesboro, Craighead County, Arkansas.
- **1.01.02** The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit "C-1" Agreement, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit "C-1". Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to Rosa Martinez at Marsh, USA, 214-303-8519.
- **1.01.03** The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.
- **1.01.04** The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations. Railway will have the right to stop construction work on the Project if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the Project work in a manner which is hazardous to Railway property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Contractor fails to pay Railway for the Temporary Construction License or the Easement. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer or until additional insurance has been delivered to and accepted by Railway. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, Railway may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of Railway. Railway's right to stop the work is in addition to any other rights Railway may have including, but not limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop construction work



on the Project, Railway agrees to immediately notify the following individual in writing:

Mr. Kevin Thornton, P.E.
Assistant Chief Engineer – Planning
Arkansas Department of Transportation
100324 Interstate 30
Little Rock, AR 72209

- **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 State and the Railway's Manager of Public Projects, Mr. John Caufield at (817) 789-0879 at least thirty (30) calendar days before commencing any work on Railway Property. Contractor's notification to Railway must refer to Railway's file _____.
- **1.01.07** For any bridge demolition and/or falsework above any tracks or any excavations located with any part of the excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to



practice in the state the project is located. The Contractor must not begin work until notified by the Railway that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.

- **1.01.08** Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

1.02 Contractor Safety Orientation

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

1.03 Railway Requirements

- **1.03.01** The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Agency.
- **1.03.02** The Contractor must notify the Railway's Division Engineer, Mr. Howard Stuart at (901) 433-7400, and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.
- **1.03.03** The Contractor must abide by the following temporary clearances during construction:



- 15'-0" Horizontally from centerline of nearest track
 - 21'-6" Vertically above top of rail
 - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
 - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
 - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
 - 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts
- **1.03.04** Upon completion of construction, the following clearances shall be maintained:
 - 25' Horizontally from centerline of nearest track
 - 23' 6" Vertically above top of rail
 - **1.03.05** Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to the State and must not be undertaken until approved in writing by the Railway, and until the State 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 Contractor for approval before work is undertaken and this work must not be undertaken until approved by the Railway. The Railway's written approval shall be submitted to the State.
 - **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.BNSFContractor.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.
- **1.04.02** Contractor shall have a background investigation performed on all of its employees, subcontractors and agents who will be performing any services for Railroad under this Agreement which are determined by Railroad in its sole discretion **a)** to be on Railroad's property, or **b)** that require access to Railroad Critical Infrastructure, Railroad Critical Information Systems, Railroad's Employees, Hazardous Materials on Railroad's property or is being transported by or otherwise in the custody of Railroad, or Freight in Transit involving Railroad.

The required background screening shall at a minimum meet the rail industry background screening criteria defined by the e-RAILSAFE Program as outlined at www.eVerifile.com, in addition to any other applicable regulatory requirements.

Contractor shall obtain written consent from all its employees, subcontractors or



agents screened in compliance with the e-RAILSAFE Program to participate in the Program on their behalf and to release completed background information to Railroad's designee. Contractor shall be subject to periodic audit to ensure compliance.

Contractor subject to the e-RAILSAFE Program hereunder shall not permit any of its employees, subcontractors or agents to perform services hereunder who are not first approved under e-RAILSAFE Program standards. Railroad shall have the right to deny entry onto its premises or access as described in this section above to any of Contractor's employees, subcontractors or agents who do not display the authorized identification badge issued by a background screening service meeting the standards set forth in the e-RAILSAFE Program, or who in Railroad's opinion, which may not be unreasonable, may pose a threat to the safety or security of Railroad's operations, assets or personnel.

Contractors shall be responsible for ensuring that its employees, subcontractors and agents are United States citizens or legally working in the United States under a lawful and appropriate work VISA or other work authorization.

1.05 Railway Flagger Services:

- **1.05.01** The Contractor must give Railway's Roadmaster, Mr. Chris Steele, (901) 433-7501 a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.
- **1.05.02** Unless determined otherwise by Railway's Project Representative, Railway flagger will be required and furnished when Contractor's work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:
 - **1.05.02a** When, upon inspection by Railway's Representative, other conditions warrant.
 - **1.05.02b** When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.



- **1.05.02c** When work in any way interferes with the safe operation of trains at timetable speeds.
- **1.05.02d** When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.
- **1.05.02e** Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.
- **1.05.03** Flagging services will be performed by qualified Railway flaggers.
 - **1.05.03a** Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railways Representative.
 - **1.05.03b** Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.
 - **1.05.03c** The cost of flagger services provided by the Railway will be borne by the Contractor. The estimated cost for one (1) flagger is approximately between \$800.00-\$1,600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. **THE FLAGGING RATE IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF FLAGGING PURSUANT TO THIS PARAGRAPH.**
 - **1.05.03d** The average train traffic on this route is 64 freight trains per 24-hour period at a timetable speed of 40 MPH and 0 passenger trains.

1.06 Contractor General Safety Requirements

- **1.06.01** Work in the proximity of railway track(s) is potentially hazardous where



movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations.

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



protective equipment requirements are listed on the web site, www.BNSFContractor.com, however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats; c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railway's representative in charge of the project is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **(NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**

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

1.07 Excavation:

- **1.07.01** Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems



are present and located within the Project work area. The Contractor must determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact BNSF's Field Engineering Representative Lane Spence (817) 352-2910. 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

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

Injured Person Type:

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

If train involved, Train ID:

Transmit attached information to Accident/Incident Reporting Center by:
Fax 1-817-352-7595 or by Phone 1-800-697-6736 or email to: Accident-Reporting.Center@BNSF.com

Officer Providing Information:

(Name) (Employee No.) (Phone #)

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



NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

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

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

Mile Post / Line Segment: _____

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

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

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

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

Phone Number: _____ Employer: _____

9. Injury: _____ 10. Body Part: _____
(i.e., Laceration, etc.) (i.e., Hand, etc.)

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

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

13. Dr. Name: _____ Date: _____

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

15. Hospital Name: _____

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

17. Diagnosis: _____



EXHIBIT "C-1"

Agreement Between
BNSF RAILWAY COMPANY
and the
CONTRACTOR

Railway File: _____

Agency Project: **State Job 100824, BNSF Railroad Overpass (Hwy. 19) (Jonesboro) (S)
HIGHWAY 18 Overpass (Replaces 672527L at MP 423.45)**

_____ (hereinafter called "Contractor"), has entered into an agreement (hereinafter called "Agreement") dated _____, 201__, with **the Arkansas Department of Transportation** for the performance of certain work in connection with the following project: **State Job 100824, BNSF Railroad Overpass (Hwy. 19) (Jonesboro) (S), Highway 18 Overpass**. Performance of such work will necessarily require Contractor to enter **BNSF RAILWAY COMPANY** (hereinafter called "Railway") right of way and property (hereinafter called "Railway Property"). The Agreement provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for **the Arkansas Department of Transportation** (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

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

1) **RELEASE OF LIABILITY AND INDEMNITY**

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



THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE 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 Railway to the fullest extent permitted by applicable law. **THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILWAY FOR RAILWAY'S ACTS OF NEGLIGENCE.**

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

2) TERM

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

3) INSURANCE

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

A. Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$5,000,000 each occurrence and an aggregate limit of at least \$10,000,000 but in no event less than the amount otherwise carried by the Contractor. Coverage must be purchased on a post



2004 ISO occurrence form or equivalent and include coverage for, but not limit to the following:

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

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

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

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

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

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

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

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

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

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



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

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

- ◆ Waiver of subrogation in favor of and acceptable to Railway.

D. Railroad Protective Liability insurance naming only the **Railway** as the Insured with coverage of at least \$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 12 04 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment
- ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
- ◆ Endorsed to remove any exclusion for punitive damages.
- ◆ No other endorsements restricting coverage may be added.
- ◆ The original policy must be provided to the **Railway** prior to performing any work or services under this Agreement
- ◆ Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured' care, custody, and control arising out of the acts or omissions of the contractor named on the Declarations.

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

Other Requirements:

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

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

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

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



insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

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

BNSF Railway Company
c/o CertFocus
P.O. Box 140528
Kansas City, MO 64114
Toll Free: 877-576-2378
Fax number: 817-840-7487
Email: BNSF@certfocus.com
www.certfocus.com

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

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

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

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

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

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

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



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

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

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

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

4) SALES AND OTHER TAXES

In the event applicable sales taxes of a state or political subdivision of a state of the United States are levied or assessed in connection with and directly related to any amounts invoiced by Contractor to Railway ("Sales Taxes"), Railway shall be responsible for paying only the Sales Taxes that Contractor separately states on the invoice or other billing documents provided to Railway; *provided, however*, that (i) nothing herein shall preclude Railway from claiming whatever Sales Tax exemptions are applicable to amounts Contractor bills Railway, (ii) Contractor shall be responsible for all sales, use, excise, consumption, services and other taxes which may accrue on all services, materials, equipment, supplies or fixtures that Contractor and its subcontractors use or consume in the performance of this Agreement, (iii) Contractor shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) that Contractor fails to separately state on the invoice or other billing documents provided to Railway or fails to collect at the time of payment by Railway of invoiced amounts (except where Railway claims a Sales Tax exemption), and (iv) Contractor shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) if Contractor fails to issue separate invoices for each state in which Contractor delivers goods, provides services or, if applicable, transfers intangible rights to Railway.

Upon request, Contractor shall provide Railway satisfactory evidence that all taxes (together with any penalties, fines or interest thereon) that Contractor is responsible to pay under this Agreement have been paid. If a written claim is made against Contractor for Sales Taxes with respect to which Railway may be liable for under this Agreement, Contractor shall promptly notify Railway of such claim and provide Railway copies of all correspondence received from the taxing authority. Railway shall have the right to contest, protest, or claim a refund, in Railway's own name, any Sales Taxes paid by Railway to Contractor or for which Railway might otherwise be responsible for under this Agreement; *provided, however*, that if Railway is not permitted by law to contest any such Sales Tax in its own name, Contractor shall, if requested by Railway at Railway's sole cost and expense, contest in Contractor's own name the validity, applicability or amount of such Sales Tax and allow Railway to control and conduct such contest.

Railway retains the right to withhold from payments made under this Agreement amounts required to be withheld under tax laws of any jurisdiction. If Contractor is claiming a withholding exemption or a reduction in the withholding rate of any jurisdiction on any payments under this Agreement, before any payments are made (and in each succeeding period or year as required by law), Contractor agrees to furnish to Railway a properly completed exemption form prescribed by such jurisdiction. Contractor shall be responsible for any taxes, interest or penalties assessed against Railway with respect to withholding taxes that Railway does not withhold from payments to Contractor.

5) **EXHIBIT "C" CONTRACTOR REQUIREMENTS**

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Agreement, and the Contractor Requirements set forth on Exhibit "C" attached to the Agreement and this Agreement, including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site. Contractor shall execute a Temporary Construction Crossing Agreement or Private Crossing Agreement (<http://www.bnsf.com/communities/fags/permits-real-estate/>), for any temporary crossing requested to aid in the construction of this Project, if approved by BNSF.

6) **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. 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 Mr. Chris Steele, Roadmaster, (901) 433-7501 _____ weeks advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.

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



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

(Contractor)

BNSF Railway Company

By: _____

By: _____

Printed Name: _____

Name: _____
Manager Public Projects

Title: _____

Accepted and effective this _____ day of 20__.

Contact Person: _____

Address: _____

City: _____

State: _____ Zip: _____

Fax: _____

Phone: _____

E-mail: _____

CONSTRUCTION & MAINTENANCE AGREEMENT

STATE JOB 100824

BNSF RAILROAD OVERPASS (HWY. 18) (JONESBORO) (S)

HIGHWAY 18 OVERPASS

Exhibit D – Easement, Legal Description

JOB NO. 100824
TRACT NO. 59E-1

PERMANENT EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

THAT **PropertyOwnerName** for and in consideration of **ThisMany Dollars**, (\$000.00), and other valuable considerations, cash in hand paid, the receipt of which is hereby acknowledged, grant, bargain, sell, convey and warrant to the Arkansas State Highway Commission, its successors and assigns forever an exclusive and permanent right of way and easement for highway purposes on Job No. 100824 across, through and over the following lands situated in the County of **Craighead**, State of Arkansas:

LEGAL DESCRIPTION

Part of Lot 4 of Cobb and Lee Survey being a part of the Northwest Quarter of the Northeast Quarter of Section 27, Township 14 North, Range 4 East, Craighead County, Arkansas more particularly described as follows:

Commencing at a point being used as the Southwest Corner of Lot 2 of Cobb and Lee Survey; thence along the Northerly BNSF Railroad right of way line South 86°23'27" West distance of 103.66 feet to a point on the proposed right of way line as established by AHTD Job 100824; thence along said right of way line South 51°31'45" West a distance of 176.87 feet to the POINT OF BEGINNING; thence continuing along said right of way line South 21°17'55" West a distance of 62.99 feet; thence continuing along said right of way line South 02°36'53" West a distance of 29.45 feet; thence continuing along said right of way line South 44°12'55" East a distance of 117.65 feet to a point on the Northerly BNSF Railroad right of way line; thence along said right of way line South 43°42'28" East a distance of 65.87 feet; thence South 33°13'06" West a distance of 153.99 feet to a point on the Southerly BNSF Railroad right of way line; thence along said right of way line North 43°42'28" West a distance of 212.51 feet; thence North 33°13'06" East a distance of 233.40 feet to the POINT OF BEGINNING and containing 0.75 acres or 32615 square feet more or less as shown on plans prepared by the AHTD referenced as Job 100824.

DWB 05/12/2016

Together with the rights, easements and privileges in or to said lands which may be required for the full enjoyment of the right herein granted, said highway purposes being the construction of a road by the Arkansas State Highway & Transportation Department in connection with Job **100824** the maintenance of same to be the responsibility of others.

This instrument was prepared by the Engineering Section of the Right of Way Division under the direction of the Legal Division of the Arkansas State Highway & Transportation Department, Post Office Box 2261, Little Rock, Arkansas 72203.

TO HAVE AND TO HOLD the same unto the said Arkansas State Highway Commission and to its successors and assigns for and during the term aforesaid and for the purposes hereinabove set forth.

WITNESS my signature of this _____ day of _____, 20_____.

ACKNOWLEDGMENT

STATE OF)
) SS
COUNTY)

BE IT REMEMBERED, that on this day came before the undersigned, a Notary Public, acting within and for the aforesaid County, on this day personally appeared _____ well known to me to be the person(s) whose name(s) is subscribed to the foregoing instrument and stated to me that _____ executed the same for consideration and purposes therein mentioned and set forth.

WITNESS my hand and seal as such Notary Public ____ day of _____, 20____.

MY COMMISSION EXPIRES:

NOTARY PUBLIC

JOB NO. 100824
TRACT NO. 12E-1

PERMANENT EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

THAT **PropertyOwnerName** for and in consideration of **ThisMany Dollars, (\$000.00)**, and other valuable considerations, cash in hand paid, the receipt of which is hereby acknowledged, grant, bargain, sell, convey and warrant to the Arkansas State Highway Commission, its successors and assigns forever an exclusive and permanent right of way and easement for highway purposes on Job No. **100824** across, through and over the following lands situated in the County of **Craighead**, State of Arkansas:

LEGAL DESCRIPTION

Part of the Southeast Quarter of the Southwest Quarter of Section 22, Township 14 North, Range 4 East, Craighead County, Arkansas more particularly described as follows:

Commencing at a point being used as the Northeast Corner of Lot 18 of Cobb and Lee Survey; thence along the Southerly right of way line of BNSF Railroad South 43°42'28" East a distance of 128.37 feet to the POINT OF BEGINNING; thence North 87°06'37" East a distance of 231.24 feet to a point on the Northerly right of way line of the BNSF Railroad; thence along said right of way line South 43°42'28" East a distance of 54.68 feet; thence South 00°01'44" West a distance of 4.13 feet to a point on the North right of way line of Arkansas State Highway 18 (Highland Drive) as established by AHTD Job 10730; thence along said right of way line South 89°39'54" West a distance of 30.47 feet to a point on the North right of way line of Arkansas State Highway 18 (Highland Drive) as established by AHTD Job 100194; thence along said right of way South 88°35'13" West a distance of 202.79 feet to the Southerly right of way of BNSF Railroad; thence along said right of way line North 43°42'28" West a distance of 51.42 feet to the POINT OF BEGINNING and containing 0.22 acres or 9,707 square feet more or less as shown on plans prepared by the AHTD referenced as Job 100824.

DWB 05/12/2016

Together with the rights, easements and privileges in or to said lands which may be required for the full enjoyment of the right herein granted, said highway purposes being the construction of a road by the Arkansas State Highway & Transportation Department in connection with Job100824 the maintenance of same to be the responsibility of others.

This instrument was prepared by the Engineering Section of the Right of Way Division under the direction of the Legal Division of the Arkansas State Highway & Transportation Department, Post Office Box 2261, Little Rock, Arkansas 72203.

TO HAVE AND TO HOLD the same unto the said Arkansas State Highway Commission and to its successors and assigns for and during the term aforesaid and for the purposes hereinabove set forth.

WITNESS my signature of this _____ day of _____, 20____.

A C K N O W L E D G M E N T

STATE OF)
) SS
COUNTY)

BE IT REMEMBERED, that on this day came before the undersigned, a Notary Public, acting within and for the aforesaid County, on this day personally appeared _____ well known to me to be the person(s) whose name(s) is subscribed to the foregoing instrument and stated to me that _____ executed the same for consideration and purposes therein mentioned and set forth.

WITNESS my hand and seal as such Notary Public _____ day of _____, 20____.

MY COMMISSION EXPIRES:

NOTARY PUBLIC

CONSTRUCTION & MAINTENANCE AGREEMENT

STATE JOB 100824

BNSF RAILROAD OVERPASS (HWY. 18) (JONESBORO) (S)

HIGHWAY 18 OVERPASS

Exhibit E – Railroad's 5% Share Estimate

**BNSF 5% SHARE OF
CONSTRUCTION, PRELIMINARY ENGINEERING, AND RIGHT-OF-WAY COSTS
(THEORETICAL STRUCTURE ONLY)
HIGHWAY 18 OVERPASS**

Pay Item Number	Description	Quantity	Unit	Unit Price	Estimated Cost
403	COMPACTED EMBANKMENT	34,396	CUYD	\$9	\$ 309,564
404	SELECT GRANULAR BACKFILL	44,242	CUYD	\$53	\$ 2,344,826
405	A.B. (PG70-22) ACHM BASE (1.5")	79	TON	\$153	\$ 12,087
405	M.A. IN ACHM BASE COURSE (1.5")	2,054	TON	\$64	\$ 131,456
406	A.B. (PG70-22) ACHM BINDER (1")	60	TON	\$174	\$ 10,440
406	M.A. IN ACHM BINDER (1")	1,409	TON	\$66	\$ 92,994
407	A.B. (PG70-22) ACHM SURF (1/2")	98	TON	\$255	\$ 24,990
407	M.A. IN ACHM SURF (1/2")	1,861	TON	\$70	\$ 130,270
504	APPROACH SLABS	402	CUYD	\$446	\$ 179,292
605	CONCRETE DITCH PAVING (TYPE B)	415	SQYD	\$40	\$ 16,600
606	18" FES R.C. PIPE CLVT.	5	EA	\$1,249	\$ 6,245
606	18" R.C. PIPE CULVERTS (CL. 3)	843	LF	\$54	\$ 45,522
606	18" R.C. PIPE CULVERTS (CL. 4)	496	LF	\$67	\$ 33,232
606	18" R.C. PIPE CULVERTS (CL. 5)	443	LF	\$50	\$ 22,150
606	24" R.C. PIPE CULVERTS (CL. 3)	121	LF	\$51	\$ 6,171
606	24" R.C. PIPE CULVERTS (CL. 4)	75	LF	\$67	\$ 5,025
606	36" R.C. PIPE CULVERTS (CL. 3)	67	LF	\$83	\$ 5,561
606	36" R.C. PIPE CULVERTS (CL. 4)	225	LF	\$100	\$ 22,500
609	DROP INLET EXTENSIONS (4')	3	EA	\$775	\$ 2,325
609	DROP INLET EXTENSIONS (8')	1	EA	\$1,175	\$ 1,175
609	DROP INLETS (TYPE MO)	20	EA	\$3,476	\$ 69,520
609	DROP INLETS (TYPE RM)	6	EA	\$4,126	\$ 24,756
609	DROP INLETS (TYPE ST)	1	EA	\$5,547	\$ 5,547
609	JUNCT. BOXES (TYPE ST)	2	EA	\$5,411	\$ 10,822
631	CONC. BARR. WALL (PARAPET TYPE SPEC.)	255	LF	\$379	\$ 96,645
633	CONCRETE WALKS	1,673	SQYD	\$40	\$ 66,920
634	CC CURB & GUTTER-A (1'6")	2,596	LF	\$16	\$ 41,536
802	RETAINING WALL	51,159	SQFT	\$31	\$ 1,585,929

Subtotal Construction	\$ 5,304,100
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STRUCTURES (Bridges)		Qty.	Unit	Unit Cost	Cost
Bridge	Highway 18 (Highland Drive) Bridge	11,369	SQFT	\$ 110	\$ 1,250,540.82
SUBTOTAL STRUCTURES					\$ 1,250,541

Subtotal Construction	\$ 6,554,641
Mobilization (5% of subtotal construction)	\$ 327,732
Contingency (15% of subtotal construction- for MOT, striping, signage and other miscellaneous items)	\$ 983,196
TOTAL ESTIMATED HWY 18 OVERPASS COST	\$ 7,865,569
RAILROAD SHARE 5% OF OVERPASS COST	\$ 393,278

CONSTRUCTION & MAINTENANCE AGREEMENT

STATE JOB 100824

BNSF RAILROAD OVERPASS (HWY. 18) (JONESBORO) (S)

HIGHWAY 18 OVERPASS

Exhibit F – BNSF Bridge Requirements

BNSF Bridge Requirements

BRIDGE DESIGN, PLANS & SPECIFICATIONS:

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

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

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

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

Prior to issuing any invitation to bid on construction of the Structure, the Agency should conduct a pre-bid meeting where prospective Providers have the opportunity to communicate with BNSF personnel regarding site specific train speeds, train density, and general safety requirements for men and equipment working near live tracks. Any invitation to bid and

specifications for the Structure must be submitted to BNSF for review and approval prior to letting of bids for the Project.

BRIDGE CONSTRUCTION:

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

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

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

BRIDGE MAINTENANCE:

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

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

BRIDGE INSPECTION:

The Agency will conduct annual routine structural inspections. In the event of an earthquake, fire, flood, damage from vehicular impacts or other emergent situations, the Agency will provide an immediate inspection by qualified personnel and notify BNSF of damage that may affect safe passage of trains. If necessary the Agency will embargo weights or provide lane closures or

other such measures to protect the structural integrity of the Structure such that there can be continuous safe passage of trains until repairs are made.

BRIDGE ALTERATIONS:

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