

**GRADE CROSSING CONSTRUCTION AND MAINTENANCE AGREEMENT**  
**FORM PP-0118**

BNSF File No. BF10018000  
Mile Post 59.46  
Line Segment 7500  
U.S. DOT Number 022677B  
Galveston Subdivision

This Agreement ("**Agreement**"), is executed to be effective as of this 11<sup>th</sup> day of August, 2021 ("**Effective Date**"), by and between BNSF RAILWAY COMPANY, a Delaware corporation ("**BNSF**"), and FORT BEND COUNTY, a political subdivision of the State of Texas ("**Agency**").

**RECITALS:**

WHEREAS, BNSF owns and operates a line of railroad in and through the City of Rosenberg and Fort Bend County, State of Texas;

WHEREAS, in the interest of aiding vehicular travel and public safety, the Agency is undertaking a project to improve the existing Benton Road at-grade crossing, located at BNSF Line Segment 7500 and Milepost 59.46, and designated by D.O.T. No. 022677B, by constructing asphalt/concrete pavement on the roadway approaches and installing railroad crossing signals and activation equipment within a widened roadway easement across the BNSF right-of-way as indicated on the Exhibit A, attached hereto and incorporated herein; and

WHEREAS, the Agency desires to preempt the highway traffic control signals with the grade crossing warning devices shown on Exhibit A; and

WHEREAS, BNSF agrees to allow the Agency to preempt the highway traffic control signals with the grade crossing warning devices indicated on Exhibit A.

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

WHEREAS, the Agency also desires BNSF to install a new crossing surface at Benton Road with a new concrete and rubber crossing surface;

WHEREAS, the Agency is paying for the acquisition and installation of crossing signal equipment and the new crossing surface at Benton Road.

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

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

## **ARTICLE I - SCOPE OF WORK**

1. The term "**Project**" as used herein includes any and all work related to the construction of asphalt/concrete pavement and pavement markings on the roadway approaches at Benton Road by Agency and the installation of crossing signals and activation equipment and new crossing surface extension at U.S. D.O.T No. 022677B, (hereinafter referred to as the "**Crossing**") by BNSF, more particularly described on the Exhibit A, including, but not limited to, any and all changes to telephone, telegraph, signal and electrical lines and appurtenances, temporary and permanent track work, fencing, grading, alterations to or new construction of drainage facilities, preliminary and construction engineering and contract preparation.

## **ARTICLE II - BNSF OBLIGATIONS**

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

1. Upon Agency's payment to BNSF of an administrative fee in the sum of Two Thousand Five Hundred and No/100 Dollars (\$2,500), together with the Temporary Construction License Fee in the sum of Thirteen Thousand Four Hundred and No/100 Dollars (\$13,400) for 0.32034 acres, BNSF hereby grants to Agency, its successors and assigns, upon and subject to the terms and conditions set forth in this Agreement, a temporary non-exclusive license (hereinafter called, "Temporary Construction License") to enter upon and use the portion of BNSF's right-of-way as is necessary to construct concrete, asphalt/concrete pavement, and pavement markings on the roadway approaches and thereafter maintain, the Crossing as described further on Exhibit A, excepting and reserving BNSF's rights, and the rights of any others who have obtained, or may obtain, permission or authority from BNSF, to do the following:

- (a) Operate, maintain, renew and/or relocate any and all existing railroad track or tracks, wires, pipelines and other facilities of like character upon, over or under the surface of said right- of-way;
- (b) Construct, operate, maintain, renew and/or relocate upon said right-of-way, without limitation, such facilities as the BNSF may from time to time deem



appropriate;

- (c) Otherwise use or operate the right-of-way as BNSF may from time to time deem appropriate.

The term of the Temporary Construction License begins on the Effective Date and ends on the earlier of (i) substantial completion of the Structure, or (ii) twenty-four (24) months following the Effective Date. The Temporary Construction License and related rights given by BNSF to Agency in this provision are without warranty of title of any kind, express or implied, and no covenant of warranty of title will be implied from the use of any word or words herein contained. The Temporary Construction License is for construction of the Crossing only and shall not be used by Agency for any other purpose. Agency acknowledges and agrees that Agency shall not have the right, under the Temporary Construction License, to use the Structure for any other purpose than construction. In the event Agency is evicted by anyone owning, or claiming title to or any interest in said right-of-way, BNSF will not be liable to Agency for any damages, losses or any expenses of any nature whatsoever. The granting of similar rights to others, subsequent to the date of this Agreement, will not impair or interfere with the rights granted to Agency herein.

Upon Agency's payment to BNSF of the additional sum of Twenty Thousand Five Hundred and No/100 Dollars (\$20,500) for 0.18 acres, such payment to be made within thirty (30) days of issuing the Notice to Proceed pursuant to Article III, Section 16 of this Agreement, and provided further that Agency is in compliance with the term and conditions of this Agreement, BNSF will grant to Agency, its successors and assigns, an easement (hereinafter called, the "Easement") to enter upon and use that portion of BNSF's right-of-way as is necessary to use and maintain the Crossing, substantially in the form of Exhibit B attached to this Agreement. If Agency fails to pay BNSF within the thirty-day time period set forth in the preceding sentence, BNSF may stop construction of the Project until full payment is received by BNSF

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

- (a) Procurement of materials, equipment and supplies necessary for the railroad work;
- (b) Preliminary engineering, design, and contract preparation;

- (c) Furnishing of flagging services during construction of the Project as required and set forth in further detail on Exhibit C, attached to this Agreement and made a part hereof;
- (d) Furnishing engineering and inspection as required in connection with the construction of the Project;
- (e) Removal and disposal of the existing crossing surfaces from the Crossing;
- (f) Provide and place asphalt beneath the track(s) to provide further sub-grade stability prior to BNSF installing new concrete crossing surfaces for road crossings;
- (g) Installation of one 104-foot concrete crossing surfaces for the one track complete with new rail, timber crossties, ballast, fasteners, along with appropriate surfacing, to carry the improved roadway and proposed sidewalk;
- (h) Installation of Crossing Signal Equipment and Crossing Signal Control House upon completion of the roadway construction as shown on Exhibit A;
- (i) Provide an interface box, with contact terminals, mounted on side of Crossing Signal Control House; and
- (j) Make such changes in the alignment, location and elevation of its telephone, telegraph, signal and/or wire lines and appurtenances along, over or under the tracks, both temporary and permanent, as may become necessary by reason of the construction of the Project.

3. BNSF will do all railroad work set forth in Article II, Section 2 above on an actual cost basis, when BNSF, in its sole discretion, determines it is required by its labor agreements to perform such work with its own employees working under applicable collective bargaining agreements.

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

5. BNSF may charge Agency for insurance expenses, including self-insurance expenses, when such expenses cover the cost of Employer's Liability (including, without limitation, liability under the Federal Employer's Liability Act) in connection with the construction of the Project. Such charges will be considered part of the actual cost of the Project, regardless of the nature or amount of ultimate liability for injury, loss or death to BNSF's employees, if any.



6. During the construction of the Project, BNSF will send Agency progressive invoices detailing the costs of the railroad work performed by BNSF under this Agreement. Agency must reimburse BNSF for completed force-account work within thirty (30) days of the date of the invoice for such work. Upon completion of the Project, BNSF will send Agency a detailed invoice of final costs, segregated as to labor and materials for each item in the recapitulation shown on Exhibit B. Pursuant to this section and Article IV, Section 7 herein, Agency must pay the final invoice within ninety (90) days of the date of the final invoice. BNSF will assess a finance charge of .033% per day (12% per annum) on any unpaid sums or other charges due under this Agreement which are past its credit terms. The finance charge continues to accrue daily until the date payment is received by BNSF, not the date payment is made or the date postmarked on the payment. Finance charges will be assessed on delinquent sums and other charges as of the end of the month and will be reduced by amounts in dispute and any unposted payments received by the month's end. Finance charges will be noted on invoices sent to Agency under this section.

### **ARTICLE III - AGENCY OBLIGATIONS**

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

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

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

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

4. Agency must make any and all arrangements, in compliance with BNSF's Utility Accommodation Manual (<http://www.bnsf.com/communities/faqs/pdf/utility.pdf>), for the installation or relocation of wire lines, pipe lines and other facilities owned by private persons, companies, corporations, political subdivisions or public utilities other than BNSF which may be necessary for the construction of the Project.

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

- (a) Design and Reconstruction/Construction of Benton Road. Roadway to be temporarily closed during the installation of the 104-ft concrete crossing panels by BNSF;

- (b) Installation of pavement marking stop bars, double yellow center lines, and white edge lines in accordance with the Manual on Uniform Traffic Control Devices (hereinafter called, "MUTCD");
- (c) Installation of advance warning signs in accordance with the MUTCD;
- (d) Perform all necessary grading and paving, including backfill of excavations and restoration of disturbed vegetation on BNSF's right-of-way;
- (e) Provide suitable drainage, both temporary and permanent;
- (f) Provide all barricades, lights, flagmen or traffic control devices necessary for preventing vehicular traffic from using a portion of the Crossing during the installation of the concrete crossing panels;
- (g) Construct asphalt and/or concrete roadway surface on the approaches to each track. Roadway surface must match elevation of the track crossing surfaces and remain level to a point at least two (2) feet from the outside edge of the railroad concrete crossing panels. Any concrete pavement headers, as part of this Project or future project, must be constructed no closer than 7'-0" from the centerline of each track to provide for a minimum of 14'-0" opening for the track, timber crossties and railroad crossing surfaces;
- (h) Provide and place a 2'-0" minimum width section of asphalt (expansion joint) between any concrete pavement headers, as part of this Project or future project, and the track crossing surfaces, including the portion of roadway surface located between multiple tracks;
- (i) Job site cleanup including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials to the satisfaction of BNSF;
- (j) Provide BNSF in writing with the total time required from start of preempt cycle of highway traffic control signals until arrival of the train at the highway-rail crossing. See the Exhibit E – Preemption Timing Information documents;
- (k) Connect the highway traffic control signals to the contact terminals in the interface box including all necessary cable and conduit; and
- (l) Install the new highway traffic control signals.

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

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

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



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

10. For any future inspection or maintenance, either routine or otherwise, performed by subcontractors on behalf of the Agency, Agency shall require the subcontractors to comply with the provisions of the attached Exhibit C and execute the agreement attached hereto as Exhibit C-1. Prior to performing any future maintenance with its own personnel, Agency shall: comply with all of BNSF's applicable safety rules and regulations; require any Agency employee performing maintenance to complete the safety training program at the BNSF's Internet Website "[www.BNSFContractor.com](http://www.BNSFContractor.com)"; notify BNSF when, pursuant to the requirements of Exhibit C, a flagger is required to be present; procure, and have approved by BNSF's Risk Management Department, Railroad Protective Liability insurance.

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

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

- (a) The Contractor is placed on notice that fiber optic, communication and other cable lines and systems (collectively, the "Lines") owned by various telecommunications companies may be buried on BNSF's property or right-of-way. The locations of these Lines have been included on the plans based on information from the telecommunications companies. The contractor will be responsible for contacting BNSF's Roadmaster (John Reid at mobile # 254-447-1587 or [John.Reid@bnsf.com](mailto:John.Reid@bnsf.com)), BNSF's Signal Supervisor (Daniel Cardiff at mobile # 817-964-8741 or [Daniel.Cardiff@bnsf.com](mailto:Daniel.Cardiff@bnsf.com)) and the telecommunications companies and notifying them of any work that may damage these Lines or facilities and/or interfere with their service. The contractor must also mark all Lines shown on the plans or marked in the field in order to verify their locations. The contractor must also use all reasonable methods when working in the BNSF right-of-way or on BNSF property to determine if any other Lines (fiber optic, cable, communication or otherwise) may exist.
- (b) Failure to mark or identify these Lines will be sufficient cause for BNSF's engineering representative to stop construction at no cost to the Agency or BNSF until these items are completed.
- (c) The Contractor will be responsible for the rearrangement of any facilities or Lines determined to interfere with the construction. The Contractor must cooperate fully with any telecommunications company(ies) in performing such rearrangements.

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

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

14. Except as otherwise provided below in this Section 14, all construction work performed hereunder by Agency for the Project will be pursuant to a contract or contracts to be let by Agency, and all such contracts must include the following:

- (a) All work performed under such contract or contracts within the limits of BNSF's right- of-way must be performed in a good and workmanlike manner in accordance with plans and specifications approved by BNSF;
- (b) Changes or modifications during construction that affect safety or BNSF operations must be subject to BNSF's approval;
- (c) No work will be commenced within BNSF's right-of-way until each of the prime contractors employed in connection with said work must have (i) executed and delivered to BNSF an agreement in the form of Exhibit C-1, and (ii) delivered to and secured BNSF's approval of the required insurance; and
- (d) If it is in Agency's best interest, Agency may direct that the construction of the Project be done by day labor under the direction and control of Agency, or if at any time, in the opinion of Agency, the contractor has failed to prosecute with



diligence the work specified in and by the terms of said contract, Agency may terminate its contract with the contractor and take control over the work and proceed to complete the same by day labor or by employing another contractor(s) provided; however, that any contractor(s) replacing the original contractor(s) must comply with the obligations in favor of BNSF set forth above and, provided further, that if such construction is performed by day labor, Agency will, at its expense, procure and maintain on behalf of BNSF the insurance required by Exhibit C-1.

- (e) To facilitate scheduling for the Project, Agency shall have its contractor give BNSF's Roadmaster ninety (90) days advance notice of the proposed times and dates for work windows. BNSF and Agency's contractor will establish mutually agreeable work windows for the Project. BNSF has the right at any time to revise or change the work windows, due to train operations or service obligations. BNSF will not be responsible for any additional costs and expenses resulting from a change in work windows. Additional costs and expenses resulting from a change in work windows shall be accounted for in the contractor's expenses for the Project.

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

16. **TO THE FULLEST EXTENT PERMITTED BY LAW, AGENCY HEREBY RELEASES, INDEMNIFIES, DEFENDS AND HOLDS HARMLESS BNSF, ITS AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO) OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART) (I) THE USE, OCCUPANCY OR PRESENCE OF AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (II) THE PERFORMANCE, OR FAILURE TO PERFORM BY THE AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS, ITS WORK OR ANY OBLIGATION UNDER THIS AGREEMENT, (III) THE SOLE OR CONTRIBUTING ACTS OR OMISSIONS OF AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (IV) AGENCY'S BREACH OF THE TEMPORARY CONSTRUCTION LICENSE OR EASEMENT GRANTED TO AGENCY PURSUANT TO ARTICLE II OF THIS AGREEMENT, (V) ANY RIGHTS OR INTERESTS GRANTED TO**

AGENCY PURSUANT TO THE TEMPORARY CONSTRUCTION LICENSE OR EASEMENT DISCUSSED IN ARTICLE II OF THIS AGREEMENT, (VI) AGENCY'S OCCUPATION AND USE OF BNSF'S PROPERTY OR RIGHT-OF-WAY, INCLUDING, WITHOUT LIMITATION, SUBSEQUENT MAINTENANCE OF THE STRUCTURE BY AGENCY, OR (VII) AN ACT OR OMISSION OF AGENCY OR ITS OFFICERS, AGENTS, INVITEES, EMPLOYEES OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER. THE LIABILITY ASSUMED BY AGENCY WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY OR DEATH WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF BNSF.

#### **ARTICLE IV - JOINT OBLIGATIONS**

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

1. All work contemplated in this Agreement must be performed in a good and workmanlike manner and each portion must be promptly commenced by the party obligated hereunder to perform the same and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications during construction which affect BNSF will be subject to BNSF's approval prior to the commencement of any such changes or modifications.
2. The work hereunder must be done in accordance with the Exhibit A and the detailed plans and specifications approved by BNSF.
3. Agency must require its contractor(s) to reasonably adhere to the Project's construction schedule for all Project work. The parties hereto mutually agree that BNSF's failure to complete the railroad work in accordance with the construction schedule due to inclement weather or unforeseen railroad emergencies will not constitute a breach of this Agreement by BNSF and will not subject BNSF to any liability. Regardless of the requirements of the construction schedule, BNSF reserves the right to reallocate the labor forces assigned to complete the railroad work in the event of an emergency to provide for the immediate restoration of railroad operations of either BNSF or its related railroads, or to protect persons or property on or near any BNSF owned property. BNSF will not be liable for any additional costs or expenses resulting from any such reallocation of its labor forces. The parties mutually agree that any reallocation of labor forces by BNSF pursuant to this provision and any direct or indirect consequences or costs resulting from any such reallocation will not constitute a breach of this Agreement by BNSF.
4. BNSF will have the right to stop construction work on the Project if any of the following



events take place: (i) Agency (or any of its contractors) performs the Project work in a manner contrary to the plans and specifications approved by BNSF; (ii) Agency (or any of its contractors), in BNSF's opinion, prosecutes the Project work in a manner that is hazardous to BNSF property, facilities or the safe and expeditious movement of railroad traffic; or (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project. The work stoppage will continue until all necessary actions are taken by Agency or its contractor to rectify the situation to the satisfaction of BNSF's engineering representative or until proof of additional insurance has been delivered to and accepted by BNSF. In the event of a breach of (i) this Agreement or (ii) the Temporary Construction License, BNSF may immediately terminate the Temporary Construction License. Any such work stoppage under this provision will not give rise to any liability on the part of BNSF. BNSF's right to stop the work is in addition to any other rights BNSF may have including, but not limited to, actions or suits for damages or lost profits. In the event that BNSF desires to stop construction work on the Project, BNSF agrees to immediately notify the following individual in writing:

Ike Akinwande  
Assistant County Engineer  
Fort Bend County  
William B. Travis Building  
301 Jackson Street  
Richmond, TX 77469  
Office # 281-633-7506  
[ike.akinwande@fortbendcountytexas.gov](mailto:ike.akinwande@fortbendcountytexas.gov)

5. Agency must supervise and inspect the operations of all Agency contractors to ensure compliance with the plans and specifications approved by BNSF, the terms of this Agreement and all safety requirements of BNSF. If BNSF determines that proper supervision and inspection are not being performed by Agency personnel at any time during construction of the Project, BNSF has the right to stop construction (within or adjacent to its operating right-of-way). Construction of the Project will not proceed until Agency corrects the situation to BNSF's reasonable satisfaction. If BNSF feels the situation is not being corrected in an expeditious manner, BNSF will immediately notify Chris Dick for appropriate corrective action.

6. Pursuant to this section and Article II, Section 6 herein, Agency must, out of funds made available to it for the construction of the Project, reimburse BNSF in full for the **actual costs** of all work performed by BNSF under this Agreement (including taxes, such as applicable sales and use taxes, business and occupation taxes, and similar taxes).

7. All expenses detailed in statements sent to Agency pursuant to Article II, Section 6 herein will comply with the terms and provisions of the Title 23 U.S. Code, Title 23 Code of Federal Regulations, and the Federal-Aid Policy Guide, U.S. Department of Transportation, as amended from time to time, which manual is hereby incorporated into and made a part of this Agreement by reference. The parties mutually agree that BNSF's preliminary engineering, design, and contract preparation costs described in Article II, Section 2 herein are part of the costs of the Project even though such work may have preceded the date of this Agreement.

8. The construction of the Project will not commence until Agency gives BNSF's Manager Public Projects thirty (30) days prior written notice of such commencement. The commencement notice will reference BNSF's file number BF10018000 and D.O.T. Crossing No. 022677B and must state the time that construction activities will begin.

9. In addition to the terms and conditions set forth elsewhere in this Agreement, BNSF and the Agency agree to the following terms upon completion of construction of the Project:

- (a) Agency will own and be fully responsible for repairs, maintenance, future construction or reconstruction of the Benton Road roadway up to the end of the timber crossties.
- (b) Agency will maintain the elevation of the Benton Road roadway approaches to match the elevation on the railroad track crossing surfaces.
- (c) Agency will maintain the advanced railroad crossing warning signs and pavement markings and agrees to hold harmless and indemnify BNSF for any claims, damages or losses, in whole or in part, caused by or due to the Agency's failure to maintain the advanced warning signs and markings or other requirements of the MUTCD.
- (d) Agency will do nothing and permit nothing to be done in the maintenance of the Benton Road roadway, which will interfere with or endanger facilities of BNSF.
- (e) It is expressly understood by Agency and BNSF that any right to install utilities will be governed by a separate permit or license agreement between the parties hereto.
- (f) BNSF will, at its sole cost and expense, operate and maintain the Crossing Signal Equipment, Crossing Signal Control House, and the crossing surfaces, from end of timber crosstie to end of timber crosstie, in proper condition.
- (g) Notwithstanding the preceding provision, if any regulations, ordinances, acts, rules or other laws subsequently passed or amended by the Agency or any other governmental or legislative authority increase the Agency's portion of maintenance cost under this Agreement, BNSF will receive the benefit of any such regulations, ordinances, acts, rules or other laws and the Agency's increased portion of maintenance costs will be incorporated into and made a part of this Agreement.
- (h) If a railway or highway improvement project necessitates rearrangement,



relocation, or alteration of the Crossing Signal Equipment, Crossing Signal House, or the crossing surface installed hereunder, the costs for such rearrangement, relocation or alteration will be the responsibility of the party requesting such changes.

- (j) BNSF will operate and maintain, at its expense, the necessary relays and other materials required to preempt the highway traffic control signals with the grade crossing warning devices.
- (j) BNSF will operate and maintain, at its expense, the necessary relays and other materials required to preempt the highway traffic control signals with the grade crossing warning devices.
- (k) Agency will own, operate and maintain, at its expense, the highway traffic control signals up to and including connection to the contact terminals in the interface box including all necessary cable and conduit.

10. Agency must notify and obtain prior authorization from BNSF's Manager of Public Projects before entering BNSF's right-of-way for **Inspection and Maintenance** purposes and the BNSF Manager of Public Projects will determine if flagging is required. If the construction work hereunder is contracted, Agency must require its prime contractor(s) to comply with the obligations set forth in Exhibit C and Exhibit C-1, as the same may be revised from time to time. Agency will be responsible for its contractor(s) compliance with such obligations.

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

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

13. In the event construction of the Project does not commence within one (1) year of the Effective Date, this Agreement will become null and void.

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



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

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

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

BNSF:                      Manager Public Projects  
                                 4200 Deen Road  
                                 Fort Worth, Texas 76106-3099

Agency:                   County Judge  
                                 401 Jackson Street  
                                 Richmond, TX 77469





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

**AGENCY**

**FORT BEND COUNTY, TEXAS**

By: K. P. George

Printed Name: K. P. George

Title: County Judge

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(COUNTY Signature Page for Benton Road Agreement)

**BNSF RAILWAY COMPANY**



**BNSF RAILWAY COMPANY**

DocuSigned by:  
By: Craig Rasmussen  
56787F0EB73C4D8...

Printed Name: Craig Rasmussen

Title: AVP Engineering Services & Structures

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(BNSF Signature Page for Benton Road Agreement)



Parcel #6  
0.41 Acre

EXHIBIT A-1  
Property Description for  
Permanent Easement at  
Benton Road - DOT No. 022677B

Jane Long League, Abstract 55  
Joseph Kuykendall League, Abstract 49

STATE OF TEXAS                   §

COUNTY OF FORT BEND   §

A **METES & BOUNDS** description of a 0.41 acre tract of land in the Jane Long League, Abstract 55, and the Joseph Kuykendall League, Abstract 49, City of Rosenberg, Fort Bend County, Texas, being over, through and across a portion of the G. C. & S. F. Railroad right-of-way recorded in Volume M, Page 161, Deed Records, Fort Bend County, Texas, with all bearings based upon the Texas Coordinate System of 1983, South Central Zone, based upon GPS observations.

**Beginning** at a 5/8 inch iron rod found at the intersection of the existing westerly right-of-way line of Benton Road (100-feet wide this location) and the southerly line of said G. C. & S. F. Railroad right-of-way, being the northeast corner of Restricted Reserve "A" of the adjoining Rosenberg Self Storage Number One, according to map or plat thereof recorded under County Clerk's File Number 20090085, Plat Records, Fort Bend County, Texas, for a point in the southwest line and **Place of Beginning** of the herein described tract, from which point a 5/8 inch iron rod with cap marked "EHRA" found for the northwest corner of said adjoining Restricted Reserve "A" bears North 83 degrees 12 minutes 59 seconds West, 332.32 feet;

**Thence** North 83 degrees 12 minutes 59 seconds West along the southwest line of the herein described tract and the southwest line of said G. C. & S. F. Railroad right-of-way, same being the northeast line of said adjoining Restricted Reserve "A", 16.65 feet to a 5/8 inch iron rod with cap marked "Jones | Carter" set on said line for the west corner of the herein described tract;

**Thence** North 06 degrees 47 minutes 01 second East establishing the westerly line of the herein described tract, crossing said G. C. & S. F. Railroad right-of-way, 93.91 feet to an angle point;

**Thence** North 38 degrees 38 minutes 24 seconds West continuing along said line, 8.67 feet to a 5/8 inch iron rod with cap marked "Jones | Carter" set for the northwest corner of the herein described tract, said point being in the northerly line of said G. C. & S. F. Railroad right-of-way, same being the southerly right-of-way line of F. M. Highway 762 (100-feet wide);

**Thence** South 83 degrees 12 minutes 59 seconds East along the northerly line of said G. C. & S. F. Railroad right-of-way, same being the southerly right-of-way line of F. M. Highway 762, 208.59 feet to a 5/8 inch iron rod with cap marked "Jones | Carter" set for the northeast corner of the herein described tract;

**Thence** South 58 degrees 15 minutes 38 seconds West establishing the easterly line of the herein described tract, crossing said G. C. & S. F. Railroad right-of-way, 23.43 feet to an angle point;

**Thence** South 19 degrees 45 minutes 12 seconds West continuing along said line, 87.64 feet to a 5/8 inch iron rod with cap marked "Jones | Carter" set for the southeast corner of the herein described tract, said point being in the southerly line of said G. C. & S. F. Railroad right-of-way, same being the northeast line of Restricted Reserve "B-1" of the adjoining Benton Park Reserves "B" & "C" Replat, according to map or plat thereof recorded under Slide Numbers 2082B, 2083A&B, Plat Records, Fort Bend County, Texas, from which point a 5/8 inch iron rod with cap marked "Team" found for the northeast corner of said adjoining Restricted Reserve "B-1" bears South 83 degrees 12 minutes 59 seconds East, 726.32 feet;

Parcel #6  
0.41 Acre

Jane Long League, Abstract 55  
Joseph Kuykendall League, Abstract 49

**Thence** North 83 degrees 12 minutes 59 seconds West along the southerly line of said G. C. & S. F. Railroad right-of-way, crossing Benton Road, 147.76 feet to the **Place of Beginning** and containing 0.41 acre of land, with 0.23 acre within the existing right-of-way of Benton Road, for a net acreage of 0.18 acre of land, more or less.

For reference and further description see Drawing No. 13376 prepared by the undersigned on same date.

October 22, 2018  
Revised: March 26, 2020

Job Number R0090-0004-00

Jones | Carter  
1229 Corporate Drive, Suite 100  
Rosenberg, TX 77471  
(281) 342-2033  
Texas Board of Professional Land  
Surveying Registration No. 10046104



Acting By/Through Chris D. Kalkomey  
Registered Professional Land Surveyor  
No. 5869  
CDKalkomey@jonescarter.com