

HARRIS COUNTY

OFFICE OF THE COUNTY ENGINEER

1001 Preston, Suite 500
Houston, Texas 77002
(713) 755-5370

April 14, 2021

Honorable County Judge
& Commissioners

SUBJECT: Partnership Agreement – BNSF Railway Company

Recommendation for authorization to execute an agreement with BNSF Railway Company to widen the existing Hufsmith-Kohrville Road at grade crossings, UPIN 15104M23NP03, Precinct 4.

Sincerely,



John R. Blount, P.E.
County Engineer

Attachment

cc: Commissioner R. Jack Cagle.
Cheryl Guenther
Pamela Rocchi
Freddie Jebousek
Dennis Johnston
Kiley Holbrook



GRADE CROSSING CONSTRUCTION AND MAINTENANCE AGREEMENT
FORM PP-0118

BNSF File No. BF10014823
 Mile Post 81.60
 Line Segment 492
 U.S. DOT Number 597099M
 Houston Subdivision

This Agreement ("**Agreement**"), is executed to be effective upon execution by the Parties ("**Effective Date**"), by and between BNSF RAILWAY COMPANY, a Delaware corporation ("**BNSF**"), HARRIS COUNTY, TEXAS, a body corporate and politic under the laws of the State of Texas ("**Agency**"). BNSF and Agency may each be individually referred to herein as a "Party" or collectively as the "Parties."

RECITALS:

WHEREAS, BNSF owns and operates a line of railroad in and through Harris County, State of Texas;

WHEREAS, in the interest of aiding vehicular travel and public safety, the Agency is undertaking a project to widen the existing HUFSMITH-KOHRVILLE ROAD at-grade crossings, located at BNSF Line Segment 492 and Milepost 81.60, by constructing a 4-lane roadway and installing railroad crossing signals and activation equipment within a new, wider roadway easement across the BNSF right-of-way as indicated on the Exhibit A, attached hereto and incorporated herein; and

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 surfaces at Hufsmith-Kohrville Road with new concrete and rubber crossing surfaces; and

WHEREAS, the Agency is paying for the acquisition and installation of crossing signal equipment and the new crossing surfaces at Hufsmith-Kohrville Road; and

WHEREAS, the BNSF agrees to purchase and install 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 concrete curbing, asphalt/concrete pavement, and pavement markings on the roadway approaches to Hufsmith-Kohrville Road by the Agency and the installation of crossing signals and activation equipment and new crossing surfaces at U.S. D.O.T No. 597099M, (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 and No/100 Dollars (\$2,000.00), together with the Temporary Construction License Fee in the sum of Zero and No/100 Dollars (\$0.00, since the Construction Limits are the same as the Easement area), 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 construct and thereafter maintain the Crossing across or upon the portion of BNSF's right-of-way described further on Exhibit A-1, attached hereto and incorporated herein, 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) twelve (12) 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 Crossing 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-eight Thousand Six Hundred Thirty-six and No/100 Dollars (\$28,636.00), 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 D 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 D. In such event, the revised cost estimates will become a part of this Agreement upon written approval of Agency, which approval will not be unreasonably withheld. Any item of work incidental to the items listed on Exhibit D not specifically mentioned therein may be included as a part of this Agreement upon written approval of Agency, which approval will not be unreasonably withheld. 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) 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;
- (f) Installation of one 160-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;
- (g) Installation of Crossing Signal Equipment and Crossing Signal Control House at the east track crossing as shown on Exhibit A;
- (h) 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 with prior approval of Agency which approval will not be unreasonably withheld.

5. Agency is self-funded for Auto and General Liability exposures with maximum liability limits of \$100,000 per person and \$300,000 per occurrence as set forth in Title 5, Chapter 101 of the Texas Civil Practice and Remedies Code. Agency is also self-funded for statutory Workers Compensation exposures pursuant to Chapter 504 of the Texas Labor Code. If Agency's own employees will be performing any of construction and maintenance of the Crossing, Agency may self-insure all or a portion of the insurance coverage with the exception of Railroad Protective Liability insurance, subject to BNSF's prior review and approval. Should the liability limits increase in the Code listed above, BNSF will be entitled to those increased limits.

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 D. 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.

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 Construction of Hufsmith-Kohrville Road;
 - (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 surfaces;
 - (g) Construct asphalt and/or concrete roadway surface on the approaches to each track. Concrete pavement headers 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 1'-0" minimum width section of asphalt (expansion joint)

between concrete pavement headers and the track crossing surfaces;

- (i) Construct concrete shoulder curbing. Curbing must terminate between 10'-0" minimum and 12'-0" maximum from the centerline of the track and provide a curb-cut in the northwest corner for the 14-foot wide railroad access driveway to the Crossing Signal House;
- (j) Mark the centerline locations of the proposed road crossings prior to BNSF installing the concrete crossing panels on the track;
- (k) 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.

6. The Agency will approve the location of the signals and crossing signal control house 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"; 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 (Wyatt Mountain at mobile # 817-229-2593 or Wyatt.Mountain) and BNSF's Signal Supervisor (Joshua Youngblood at mobile # 936-230-6086 or Joshua.Youngblood@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 13, 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 ROADWAY 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.**

17. Notwithstanding anything to the contrary set forth in this Agreement, Agency is subject to statute(s) or constitutional provision(s) (1) limiting its insurance liability and/or limiting its ability to obtain insurance in compliance with this Agreement or any exhibit hereto; (2) limiting its ability to indemnify and hold harmless one or more parties under certain circumstances; or (3) limiting its ability to incur a debt or undertake an pecuniary obligation, those statute(s) and constitutional provision(s) shall apply, and to the extent that any provisions of this Agreement are judicially determined to violate any such limitations, the Agency shall not be bound by

such provisions, but only to the extent of such statutory and/or constitutional limitations. Notwithstanding anything to the contrary set forth in this Agreement, the Agency shall take any and all lawful steps within its power to ensure that the terms and conditions of this License related to unfunded or contingent liabilities (including, without limitation, indemnity obligations) do not create a "debt" in violation of the Texas Constitution, including without limitation, taking such steps to that end as are outlined in applicable case law (*See Brown v. Jefferson County*, 406 S.W2d 185 (Tex. 1966)) and/or obtaining a third-party indemnification in which the contractor provides the indemnification. Further, notwithstanding anything to the contrary set forth in this Agreement, Licensor may elect to terminate this Agreement in the event Agency fails to appropriate or allocate funds sufficient to meet its current or future obligations under this License (until all of the obligations and liability incurred by reason of this License shall have been discharged), and after Licensor has provided Agency notice of such failure and the Agency fails to fully cure such failure within sixty (60) days after such notice is given. In the event of a termination of the Agreement, then, at the election of Licensor, Agency, at its sole cost and expense, shall be obligated to remove the Crossing and return the Premises to the same condition as existed prior to the commencement of the Crossing.

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; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Agency fails to pay BNSF for the Temporary Construction License or the Easement pursuant to Article II, Section 1 of this Agreement. The work stoppage will continue until all necessary actions are taken by Agency or its contractor to rectify the situation to the satisfaction of BNSF's Division Engineer or until proof of additional insurance has been delivered to and accepted by BNSF. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, BNSF may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of BNSF. BNSF's right to stop the work is in addition to any other rights BNSF may have including, but not limited to, actions or suits for damages or lost profits. In the event that BNSF desires to stop construction work on the Project, BNSF agrees to immediately notify the following individual in writing:

Julie D. Bond, P.E.
Manager of Road and Bridge Group
Harris County
1310 Prairie Street, Suite 1100
Houston, TX 77002
Email: Julia.bond@eng.hctx.net

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 Julia Bond 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 BF10014823 and D.O.T. Crossing No. 597099M 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 will be fully responsible for repairs, maintenance, future construction or reconstruction of the Hufsmith-Kohrville Road roadway up to the end of the timber cross ties, including the portion of the roadway located between multiple tracks constructed by BNSF in the future.
- (b) Agency will own and will be fully responsible for repairs, maintenance, future construction or reconstruction of the 24-inch reinforced concrete storm-water drainage pipes located under the Hufsmith-Kohrville Road roadway that are located within BNSF's right of way. Should the construction of future track(s) or other facilities by BNSF necessitate the relocation or reconstruction of any storm-water drainage pipes, Agency will, at its sole cost and expense, complete that work within ninety (90) days of written notice from BNSF.
- (c) Agency will maintain the elevation of the Hufsmith-Kohrville Road roadway approaches to match the elevation on the railroad track crossing surfaces and to be no more than three (3) inches above or below top-of-rail elevation at a distance measured thirty (30) feet from the nearest rail.
- (d) Agency will maintain the advanced railroad crossing warning signs and pavement markings on the roadway 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, markings, and detectable warnings or other requirements of the MUTCD.
- (e) Agency will do nothing and permit nothing to be done in the maintenance of the Hufsmith-Kohrville Road roadway, which will interfere with or endanger facilities of BNSF.
- (f) 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.
- (g) BNSF will, at its sole cost and expense, operate and maintain the Crossing

Signal Equipment, Crossing Signal Control House, and the crossing surface, from end of timber crosstie to end of timber crosstie, in proper condition.

- (h) 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.
- (i) 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.

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:	<u>Manager Public Projects</u> <u>5800 North Main Street</u> <u>Saginaw, Texas 76179</u>
Agency:	<u>Division Manager</u> <u>Real Property Division</u> <u>Harris County Engineering Department</u> <u>1310 Prairie Street, Suite 1100</u> <u>Houston, Texas 77002</u>

18. Any invoices for BNSF work concerning this Agreement must be sent to the following address:

Agency:	<u>Chris Saldana</u> <u>Chief Utility Coordinator</u> <u>Harris County Engineering Department</u> 1001 Preston St., 7 th Floor <u>Houston, TX 77002</u> <u>christopher.saldana@hcpid.org</u>
---------	--



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
COUNTY OF HARRIS, TEXAS**

By: _____

Printed Name: Lina Hidalgo

Title: County Judge

APPROVED AS TO FORM:
Christian D. Menefee
County Attorney

By: Philip Berzins
Philip Berzins
Assistant County Attorney
C.A.O. File No.: 21GEN0235

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(AGENCY Signature Page for Hufsmith-Kohrville Road Agreement)



BNSF RAILWAY COMPANY

By: _____

Date: _____

Printed Name: Craig Rasmussen

Title: AVP Engineering Services & Structures

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Exhibit A

PHASE I-A - SEQUENCE OF CONSTRUCTION:

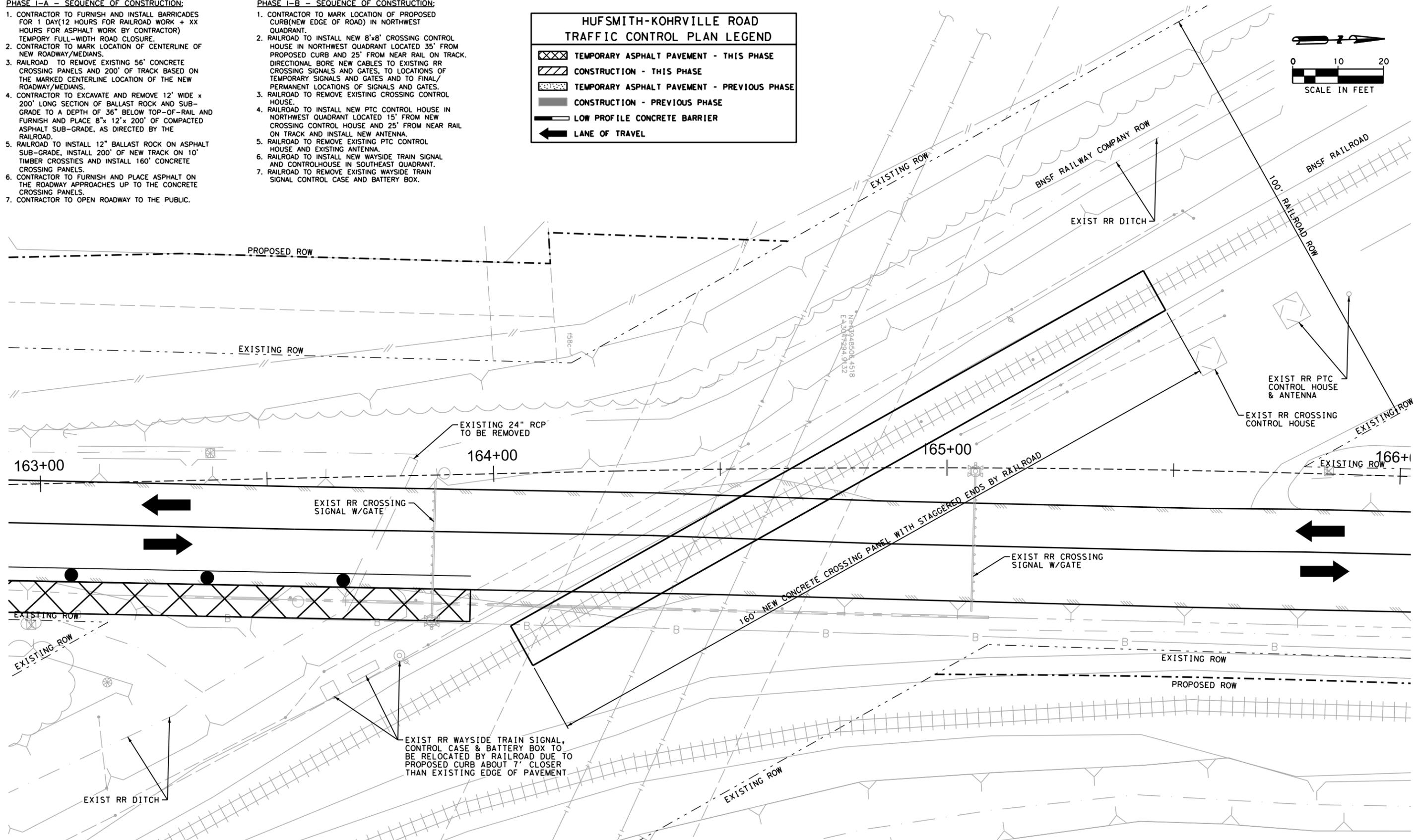
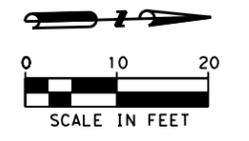
1. CONTRACTOR TO FURNISH AND INSTALL BARRICADES FOR 1 DAY(12 HOURS FOR RAILROAD WORK + XX HOURS FOR ASPHALT WORK BY CONTRACTOR) TEMPORARY FULL-WIDTH ROAD CLOSURE.
2. CONTRACTOR TO MARK LOCATION OF CENTERLINE OF NEW ROADWAY/MEDIANS.
3. RAILROAD TO REMOVE EXISTING 56' CONCRETE CROSSING PANELS AND 200' OF TRACK BASED ON THE MARKED CENTERLINE LOCATION OF THE NEW ROADWAY/MEDIANS.
4. CONTRACTOR TO EXCAVATE AND REMOVE 12' WIDE x 200' LONG SECTION OF BALLAST ROCK AND SUB-GRADE TO A DEPTH OF 36" BELOW TOP-OF-RAIL AND FURNISH AND PLACE 8"x 12"x 200' OF COMPACTED ASPHALT SUB-GRADE, AS DIRECTED BY THE RAILROAD.
5. RAILROAD TO INSTALL 12" BALLAST ROCK ON ASPHALT SUB-GRADE, INSTALL 200' OF NEW TRACK ON 10' TIMBER CROSSTIES AND INSTALL 160' CONCRETE CROSSING PANELS.
6. CONTRACTOR TO FURNISH AND PLACE ASPHALT ON THE ROADWAY APPROACHES UP TO THE CONCRETE CROSSING PANELS.
7. CONTRACTOR TO OPEN ROADWAY TO THE PUBLIC.

PHASE I-B - SEQUENCE OF CONSTRUCTION:

1. CONTRACTOR TO MARK LOCATION OF PROPOSED CURB(NEW EDGE OF ROAD) IN NORTHWEST QUADRANT.
2. RAILROAD TO INSTALL NEW 8'x8' CROSSING CONTROL HOUSE IN NORTHWEST QUADRANT LOCATED 35' FROM PROPOSED CURB AND 25' FROM NEAR RAIL ON TRACK. DIRECTIONAL BORE NEW CABLES TO EXISTING RR CROSSING SIGNALS AND GATES, TO LOCATIONS OF TEMPORARY SIGNALS AND GATES, TO FINAL/PERMANENT LOCATIONS OF SIGNALS AND GATES.
3. RAILROAD TO REMOVE EXISTING CROSSING CONTROL HOUSE.
4. RAILROAD TO INSTALL NEW PTC CONTROL HOUSE IN NORTHWEST QUADRANT LOCATED 15' FROM NEW CROSSING CONTROL HOUSE AND 25' FROM NEAR RAIL ON TRACK AND INSTALL NEW ANTENNA.
5. RAILROAD TO REMOVE EXISTING PTC CONTROL HOUSE AND EXISTING ANTENNA.
6. RAILROAD TO INSTALL NEW WAYSIDE TRAIN SIGNAL AND CONTROLHOUSE IN SOUTHEAST QUADRANT.
7. RAILROAD TO REMOVE EXISTING WAYSIDE TRAIN SIGNAL CONTROL CASE AND BATTERY BOX.

**HUFSMITH-KOHRVILLE ROAD
TRAFFIC CONTROL PLAN LEGEND**

	TEMPORARY ASPHALT PAVEMENT - THIS PHASE
	CONSTRUCTION - THIS PHASE
	TEMPORARY ASPHALT PAVEMENT - PREVIOUS PHASE
	CONSTRUCTION - PREVIOUS PHASE
	LOW PROFILE CONCRETE BARRIER
	LANE OF TRAVEL



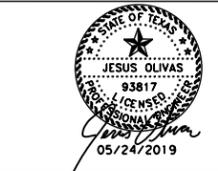
5/24/2019 \\HRGreen\Auto\85140028 - Pct 4 Hufsmith-Kohrville Rd\CADD MS\PLAN Railroad\RR EXHIBIT HUFF-KOHR PH 1.dgn Texas DOT

NO.	REVISIONS	DATE	NAME

**HARRIS COUNTY
ENGINEERING DEPARTMENT**



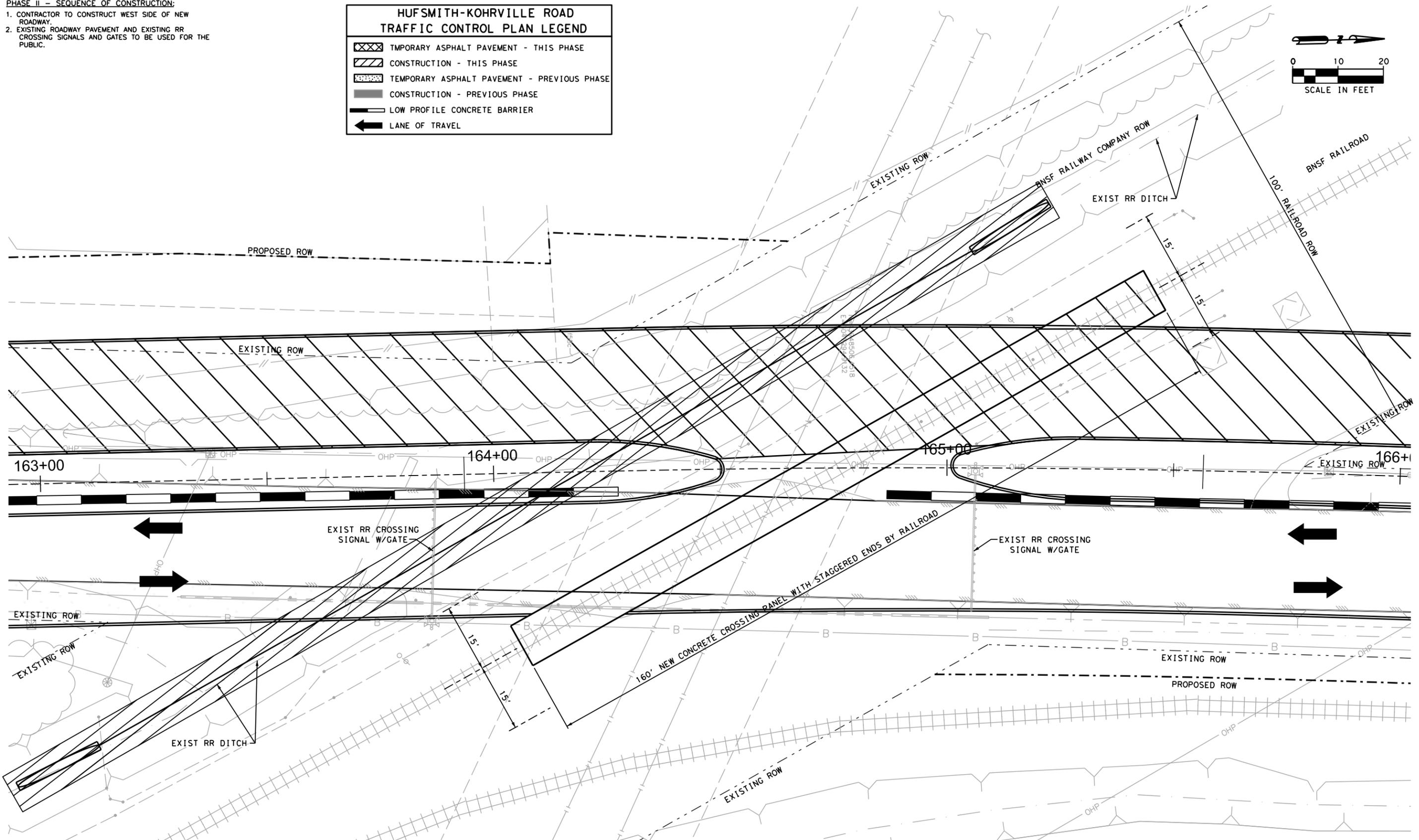
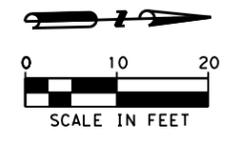
HRGreen
11011 Richmond Avenue, SUITE 200
HOUSTON, TX 77042
(713) 965-9996 FAX (713) 965-0044
TBPE REGISTRATION NO. F-11278



PROJECT TITLE: HUFSMITH-KOHRVILLE SEGMENT 3		FROM NORTH OF EZEKIEL RD TO NORTH OF HOLDERRIETH RD	
DRAWN BY: NA	SHEET DESCRIPTION: DOT NO. 597099M, RR MP 81.60	SHEET 1 OF 1	
CK'D BY: NA	BNSF RAILROAD EXHIBIT A	SHEET NO: 145 / 435	
SCALE: 1"=20'	PHASE I CONSTRUCTION	APPROVED BY:	
DATE: 5/24/2019			

PHASE II - SEQUENCE OF CONSTRUCTION:
 1. CONTRACTOR TO CONSTRUCT WEST SIDE OF NEW ROADWAY.
 2. EXISTING ROADWAY PAVEMENT AND EXISTING RR CROSSING SIGNALS AND GATES TO BE USED FOR THE PUBLIC.

HUFSMITH-KOHRVILLE ROAD TRAFFIC CONTROL PLAN LEGEND	
	TMPORARY ASPHALT PAVEMENT - THIS PHASE
	CONSTRUCTION - THIS PHASE
	TEMPORARY ASPHALT PAVEMENT - PREVIOUS PHASE
	CONSTRUCTION - PREVIOUS PHASE
	LOW PROFILE CONCRETE BARRIER
	LANE OF TRAVEL



5/24/2019 \\HRGreen\Auto\85140028 - Pct 4 Hufsmith-Kohrville Rd\CADD MS\PLAN Railroad\RR EXHIBIT HUFF-KOHR PH 2.dgn
 Texas DOT

NO.	REVISIONS	DATE	NAME
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**HARRIS COUNTY
 ENGINEERING DEPARTMENT**



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 11011 Richmond Avenue, SUITE 200
 HOUSTON, TX 77042
 (713) 965-9996 FAX (713) 965-0044
 TBPE REGISTRATION NO. F-11278

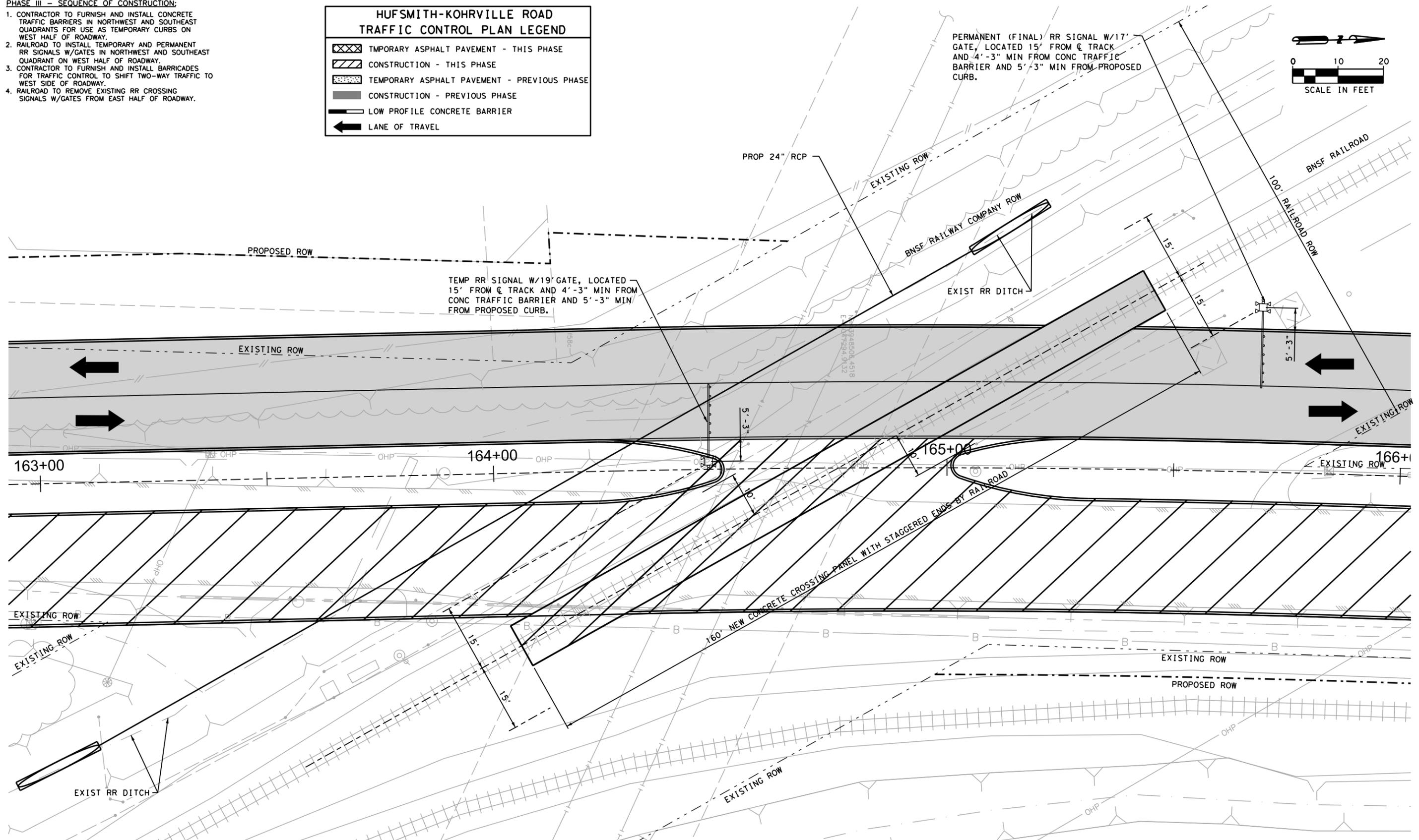
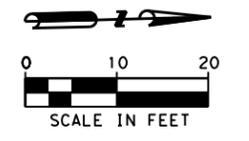


PROJECT TITLE:	HUFSMITH-KOHRVILLE SEGMENT 3 FROM NORTH OF EZEKIEL RD TO NORTH OF HOLDERRIETH RD	
DRAWN BY:	SHEET DESCRIPTION:	SHEET
CK'D BY:	DOT NO. 597099M, RR MP 81.60	1 OF 1
SCALE:	BNSF RAILROAD EXHIBIT A	
DATE:	PHASE II CONSTRUCTION	SHEET NO:
APPROVED BY:		146 / 435

PHASE III - SEQUENCE OF CONSTRUCTION:

1. CONTRACTOR TO FURNISH AND INSTALL CONCRETE TRAFFIC BARRIERS IN NORTHWEST AND SOUTHEAST QUADRANTS FOR USE AS TEMPORARY CURBS ON WEST HALF OF ROADWAY.
2. RAILROAD TO INSTALL TEMPORARY AND PERMANENT RR SIGNALS W/GATES IN NORTHWEST AND SOUTHEAST QUADRANT ON WEST HALF OF ROADWAY.
3. CONTRACTOR TO FURNISH AND INSTALL BARRICADES FOR TRAFFIC CONTROL TO SHIFT TWO-WAY TRAFFIC TO WEST SIDE OF ROADWAY.
4. RAILROAD TO REMOVE EXISTING RR CROSSING SIGNALS W/GATES FROM EAST HALF OF ROADWAY.

HUFSMITH-KOHRVILLE ROAD TRAFFIC CONTROL PLAN LEGEND	
	TEMPORARY ASPHALT PAVEMENT - THIS PHASE
	CONSTRUCTION - THIS PHASE
	TEMPORARY ASPHALT PAVEMENT - PREVIOUS PHASE
	CONSTRUCTION - PREVIOUS PHASE
	LOW PROFILE CONCRETE BARRIER
	LANE OF TRAVEL



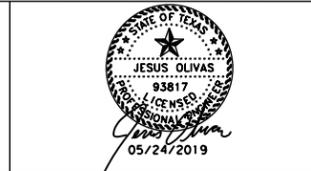
5/24/2019 \\HRGreen\Auto\85140028 - Pct 4 Hufsmith-Kohrville Rd\CADD MS\PLAN\Railroad\RR EXHIBIT HUFF-KOHR Ph 3.dgn
 Texas DOT

NO.	REVISIONS	DATE	NAME

**HARRIS COUNTY
ENGINEERING DEPARTMENT**



HRGreen
 11011 Richmond Avenue, SUITE 200
 HOUSTON, TX 77042
 (713) 965-9996 FAX (713) 965-0044
 TBPE REGISTRATION NO. F-11278



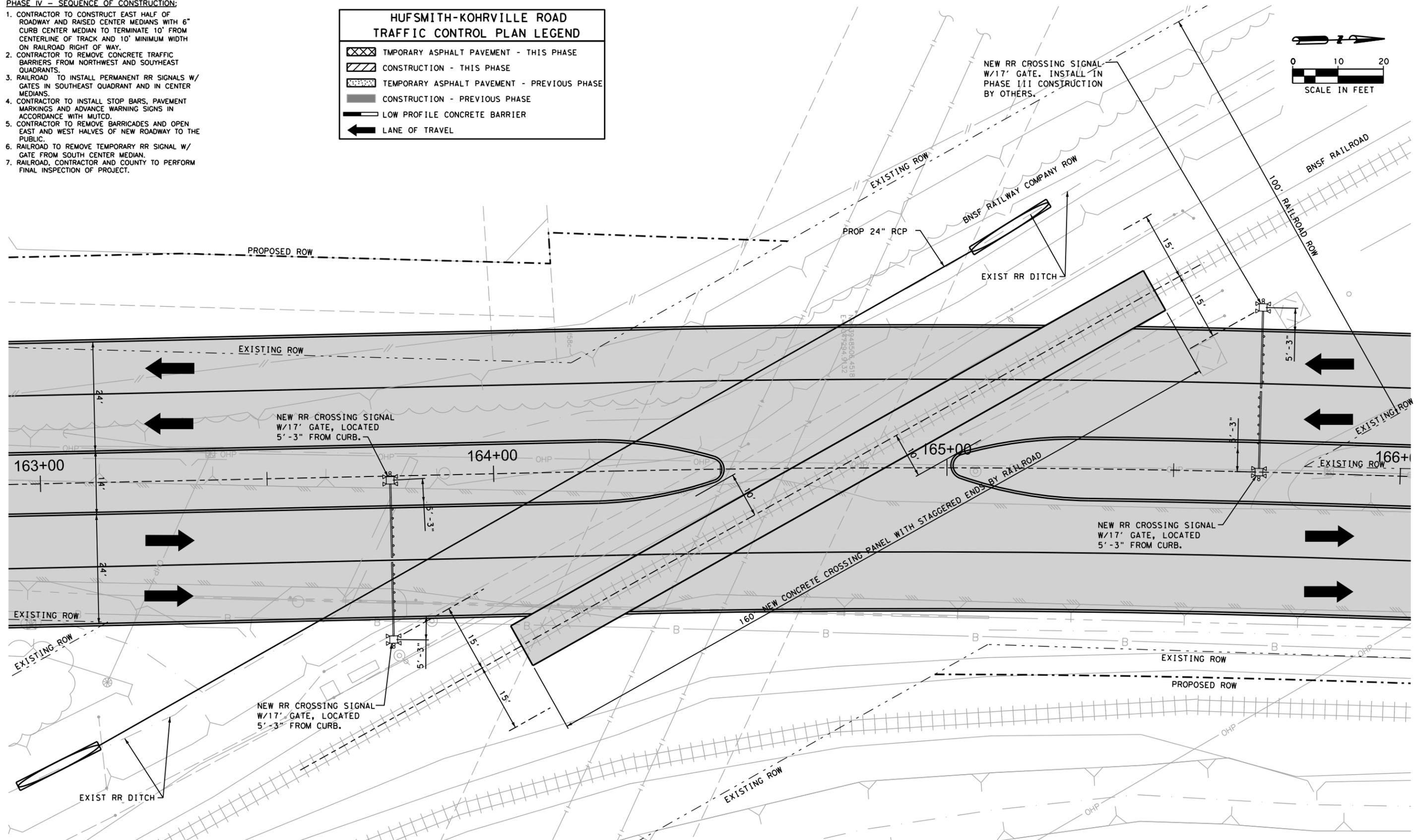
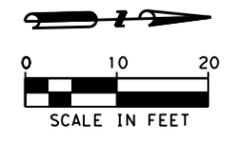
PROJECT TITLE:	HUFSMITH-KOHRVILLE SEGMENT 3	
DRAWN BY:	FROM NORTH OF EZEKIEL RD TO NORTH OF HOLDERRIETH RD	SHEET
CK'D BY:	SHEET DESCRIPTION:	1 OF 1
SCALE:	DOT NO. 597099M, RR MP 81.60	
DATE:	BNSF RAILROAD EXHIBIT A	
	PHASE III CONSTRUCTION	SHEET NO:
	APPROVED BY:	147 / 435

PHASE IV - SEQUENCE OF CONSTRUCTION:

1. CONTRACTOR TO CONSTRUCT EAST HALF OF ROADWAY AND RAISED CENTER MEDIANS WITH 6" CURB CENTER MEDIAN TO TERMINATE 10' FROM CENTERLINE OF TRACK AND 10' MINIMUM WIDTH ON RAILROAD RIGHT OF WAY.
2. CONTRACTOR TO REMOVE CONCRETE TRAFFIC BARRIERS FROM NORTHWEST AND SOUTHEAST QUADRANTS.
3. RAILROAD TO INSTALL PERMANENT RR SIGNALS W/ GATES IN SOUTHEAST QUADRANT AND IN CENTER MEDIANS.
4. CONTRACTOR TO INSTALL STOP BARS, PAVEMENT MARKINGS AND ADVANCE WARNING SIGNS IN ACCORDANCE WITH MUTCD.
5. CONTRACTOR TO REMOVE BARRICADES AND OPEN EAST AND WEST HALVES OF NEW ROADWAY TO THE PUBLIC.
6. RAILROAD TO REMOVE TEMPORARY RR SIGNAL W/ GATE FROM SOUTH CENTER MEDIAN.
7. RAILROAD, CONTRACTOR AND COUNTY TO PERFORM FINAL INSPECTION OF PROJECT.

**HUFSMITH-KOHRVILLE ROAD
TRAFFIC CONTROL PLAN LEGEND**

	TEMPORARY ASPHALT PAVEMENT - THIS PHASE
	CONSTRUCTION - THIS PHASE
	TEMPORARY ASPHALT PAVEMENT - PREVIOUS PHASE
	CONSTRUCTION - PREVIOUS PHASE
	LOW PROFILE CONCRETE BARRIER
	LANE OF TRAVEL



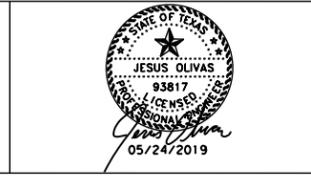
5/24/2019 \\HRGreen\Auto\85140028 - Pct 4 Hufsmith-Kohrville Rd\CADD MS\PLAN Railroad\RR EXHIBIT HUFF-KOHR PH 4.dgn
 Texas DOT

NO.	REVISIONS	DATE	NAME

**HARRIS COUNTY
ENGINEERING DEPARTMENT**



HRGreen
 11011 Richmond Avenue, SUITE 200
 HOUSTON, TX 77042
 (713) 965-9996 FAX (713) 965-0044
 TBPE REGISTRATION NO. F-11278



PROJECT TITLE: HUFSMITH-KOHRVILLE SEGMENT 3		FROM NORTH OF EZEKIEL RD TO NORTH OF HOLDERRIETH RD	
DRAWN BY: NA	SHEET DESCRIPTION: DOT NO. 597099M, RR MP 81.60	SHEET 1 OF 1	
CK'D BY: NA	BNSF RAILROAD EXHIBIT A		
SCALE: 1"=20'	PHASE IV CONSTRUCTION	SHEET NO: 148 / 435	
DATE: 5/24/2019	APPROVED BY:		

EXHIBIT "A-1" PROPERTY DESCRIPTION

PARCEL 20

DESCRIPTION OF A 0.4010-ACRE (17,466 SQ. FT.)
TRACT OF LAND SITUATED IN THE JOHN MITCHELL
SURVEY, A-570, HARRIS COUNTY, TEXAS

Being a description of a 0.4010-acre (17,466 Sq. Ft.) tract of land situated in the John Mitchell Survey, A-570, Harris County, Texas, out of a calculated 0.3343-acre tract of land conveyed to BNSF Railway Company, by deed recorded in Volume 180, Page 213 of the Harris County Deed Records (H.C.D.R.), under Harris County Clerk's File No. Y368095 (H.C.C.F.), Film Code No. 003-63-0831 of the Official Public Records of Real Property, Harris County, Texas (O.P.R.R.P.H.C.). Said 0.4010-acre tract of land being more particularly described by metes and bounds as follows with the basis of bearings being the Texas State Plane Coordinate System, South Central Zone No. 4204. Coordinates shown are grid coordinates and may be brought to surface by multiplying by the combined scale factor of 1.000069005:

COMMENCING (N=13,947,871.13, E=3,046,999.32) at a point in the existing northeast right-of-way line of BNSF Railway Company Right-of-Way, as recorded in Volume 180, Page 213 of the H.C.D.R., H.C.C.F. No. Y368095 Film Code No. 003-63-0831 of the O.P.R.R.P.H.C., for the southwest corner of a called 1.696-acre tract of land conveyed to Alfred Lerner, by deed recorded under H.C.C.F. No. M176873, Film Code No. 148-62-2055 of the O.P.R.R.P.H.C. and for the northwest corner of said calculated 0.3343-acre tract;

THENCE South 86 deg. 24 min. 45 sec. East, with the south line of said 1.696-acre tract and with the north line of said calculated 0.3343-acre tract, a distance of 85.78 feet, to 5/8-inch iron rod with cap stamped "WEISSER ENG HOUSTON, TX" set in the proposed west right-of-way line of Hufsmith-Kohrville Road and for the northwest corner and **POINT OF BEGINNING (N=13,947,865.76, E=3,047,084.93)** of said tract herein described;

THENCE South 86 deg. 24 min. 45 sec. East, with the south line of said 1.696-acre tract, with the north line of said calculated 0.3343-acre tract and with the north line of said tract herein described, a distance of 45.83 feet to a point in the existing west right-of-way line of Hufsmith-Kohrville Road (Right-of-Way Varies), as recorded in Volume M, Page 222 of the Harris County Commissioner's Court Minutes, (H.C.C.C.M), Film Code Nos. 622243 and 579096 of the H.C.M.R. for the southeast corner of said 1.696-acre tract, for the northeast corner of said calculated 0.3343-acre tract and for the northeast corner of said tract herein described;

THENCE South 02 deg. 24 min. 05 sec. West, with the existing west right-of-way line of said Hufsmith-Kohrville Road, the east line of said calculated 0.3343-acre tract and the east line of said tract herein described, a distance of 221.32 feet to an angle point in the northeast right-of-way line of said BNSF Railway Company;

THENCE South 03 deg. 22 min. 50 sec. West, with the existing west right-of-way line of said Hufsmith-Kohrville Road and the east line of said tract herein described, a distance of 190.11 feet to a point for the intersection of the west right-of-way line of said Hufsmith-Kohrville Road, the southwest right-of-way line of said BNSF Railway Company and the southeast corner of said tract herein described;

THENCE North 28 deg. 00 min. 42 sec. West, with the northeast line of a called 3.13-acre tract of land out of Restricted Reserve "A" conveyed to Stonepine Homeowners Association, Inc. by deed recorded under H.C.C.F. No. 20070744475, Film Code No. 052-75-1796 of the O.P.R.R.P.H.C., the southwest right-of-way line of said BNSF Railway Company and the southwest corner of said tract herein described, a distance of 87.13 feet to a 5/8-inch iron rod with cap stamped "WEISSER ENG HOUSTON, TX" set for the southwest corner of said tract herein described;

THENCE North 02 deg. 20 min. 29 sec. East, with the proposed west right-of-way line of said Hufsmith-Kohrville Road, and the west line of said tract herein described, a distance of 195.92 feet to a 5/8-inch iron rod with cap stamped "WEISSER ENG HOUSTON, TX" set for an angle point in the northeast right-of-way line of said BNSF Railway Company;

THENCE North 03 deg. 06 min. 22 sec. East, with the proposed west right-of-way line of said Hufsmith-Kohrville Road and the west line of said tract herein described, a distance of 141.30 feet to the **POINT OF BEGINNING** and containing 0.4010 acre (17,466 Sq. Ft.) of land.

Compiled by:
Weisser Engineering Company
19500 Park Row
Houston, Texas 77084
TBPLS Reg. No. 100518-00
TBPE Reg. No.: F-68
Job No. EJ401
Date: 08/09/2017



A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke, positioned below the professional seal.

EXHIBIT "A-1" PROPERTY DESCRIPTION

PARCEL 23

DESCRIPTION OF A 0.0714-ACRE (3,112 SQ. FT.)
TRACT OF LAND SITUATED IN THE JOHN MITCHELL
SURVEY, A-570, HARRIS COUNTY, TEXAS

Being a description of a 0.0714-acre (3,112 Sq. Ft.) tract of land situated in the John Mitchell Survey, A-570, Harris County, Texas, being out of BNSF Railway Company Right-of-Way, as recorded in Volume 180, Page 213 of the H.C.D.R., and under Harris County Clerk's File No. No. Y368095, (H.C.C.F.), Film Code No. 003-63-0831 of the Official Public Records of Real Property, Harris County, Texas (O.P.R.R.P.H.C.). Said 0.0714-acre tract of land being more particularly described by metes and bounds as follows with the basis of bearings being the Texas State Plane Coordinate System, South Central Zone No. 4204. Coordinates shown are grid coordinates and may be brought to surface by multiplying by the combined scale factor of 1.000069005:

COMMENCING (N=13,946,779.60, E=3,047,580.30) at a point for the intersection of the existing north right-of-way line of Boudreaux Road (Right-of-Way Varies), as recorded in Volume 648, Page 509 of the Harris County Deed Records (H.C.D.R.) and under H.C.C.F. Nos. Y112443 and Y276572 of the O.P.R.R.P.H.C. and the northeast right-of-way line of said BNSF Railway Company Right-of-Way;

THENCE North 28 deg. 01 min. 28 sec. West, with the southwest line of a called 13.5099-acre tract of land conveyed to James Staton Tompkins by deed recorded under H.C.C.F. No. S176624, Film Code No. 510-52-0656 of the O.P.R.R.P.H.C. and with the northeast right-of-way line of said BNSF Railway Company, a distance of 874.07 feet, to 5/8-inch iron rod with cap stamped "WEISSER ENG HOUSTON, TX" set for the northeast corner and for the beginning of a non-tangent curve to the left and **POINT OF BEGINNING (N=13,947,551.13, E=3,047,169.65)** of said tract herein described;

THENCE in a southerly direction, with a proposed east right-of-way line of Hufsmith-Kohrville Road, with an east line of said tract herein described and with the arc of said curve to the left having a radius of 2,982.97 feet, a central angle of 00 deg. 26 min. 58 sec. a chord bearing of South 00 deg. 57 min. 48 sec West, a chord distance of 23.40 feet and an arc length of 23.40 feet to 5/8-inch iron rod with cap stamped "WEISSER ENG HOUSTON, TX" set for a point in said BNSF Railway Company right-of-way;

THENCE South 00 deg. 08 min. 24 sec. West, with a proposed east right-of-way line of Hufsmith-Kohrville Road and the east line of said tract herein described, a distance of 97.26 feet to a 5/8-inch iron rod with cap stamped "WEISSER ENG HOUSTON, TX" set for an angle point in said BNSF Railway Company right-of-way;

THENCE South 00 deg. 00 min. 16 sec. East, continuing with said proposed east right-of-way line of Hufsmith-Kohrville Road and the east line of said tract herein described, a distance of 89.49 feet to a 5/8-inch iron rod with cap stamped "WEISSER ENG HOUSTON, TX" set in the northwest line out of a calculated 2.1519-acre tract of land being the same as that remainder of a called 2.4667-acre tract of land conveyed to Jimmie Schindewolf, by deed recorded under H.C.C.F. No. G975518, Film Code No. 185-81-1442 of the O.P.R.R.P.H.C. and the southeast corner of said tract herein described;

THENCE North 28 deg. 00 min. 20 sec. West, with the northwest line of said calculated 2.1519-acre tract, with the southeast line of said BNSF Railway Company right-of-way and with the south line of said tract herein described, a distance of 40.97 feet to a point at the intersection of the southeast right-of-way line of said BNSF Railway Company and the existing east right-of-way line of Hufsmith-Kohrville Road (Right-of-Way Varies), as recorded in Volume M, Page 222 of the Harris County Commissioner's Court Minutes, (H.C.C.C.M), Film Code Nos. 622243 and 579096 of the Harris County Map Records (H.C.M.R.) and for the southwest corner of said tract herein described;

THENCE North 02 deg. 43 min. 20 sec. East, with said existing east right-of-way line of said Hufsmith-Kohrville Road and with the west line of said tract herein described, a distance of 194.18 feet to a point for the southwest corner of said 13.5099-acre tract and for the northwest corner of said tract herein described;

THENCE South 28 deg. 01 min. 24 sec. East, with the southwest line of said 13.5099-acre tract and with the northeast line of said tract herein described, a distance of 22.65 feet to the **POINT OF BEGINNING** and containing 0.0714 acre (3,112 Sq. Ft.) of land.

Compiled by:
Weisser Engineering Company
19500 Park Row
Houston, Texas 77084
TBPLS Reg. No. 100518-00
TBPE Reg. No.: F-68
Job No. EJ401
Date: 08/09/2017



A handwritten signature in blue ink, appearing to read "Walter P. Sass", is written over a faint, circular watermark or ghosted version of the professional seal.

Exhibit B

EASEMENT AGREEMENT FOR HUFSMITH-KOHRVILLE ROAD, HARRIS COUNTY, TX (Exhibit "B" to BNSF GCCM Agreement)

THIS EASEMENT AGREEMENT FOR CONSTRUCTING A NEW AT GRADE CROSSING AT HUFSMITH-KOHRVILLE ROAD ("Easement Agreement") is made and entered into as of the _____ day of _____ 2021 ("**Effective Date**"), by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Grantor**"), and **HARRIS COUNTY**, a body corporate and politic under the laws of the State of Texas ("**Grantee**").

A. Grantor owns or controls certain real property situated at or near the vicinity of Tomball in Harris County, State of Texas, at Railroad Line Segment [492], Mile Post, [85.14], as described or depicted on Exhibit "A" attached hereto and made a part hereof (the "**Premises**").

B. Grantor and Grantee have entered into that certain Construction and Maintenance Agreement dated as of _____ concerning improvements on or near the Premises (the "**C&M Agreement**").

C. Grantee has requested that Grantor grant to Grantee an easement over the Premises for the Easement Purpose (as defined below).

D. Grantor has agreed to grant Grantee such easement, subject to the terms and conditions set forth in this Easement and in the C&M Agreement incorporated herein as if fully set forth in this instrument which terms shall be in full force and effect for purposes of this Easement even if the C&M Agreement is, for whatever reason, no longer in effect.

NOW, THEREFORE, for and in consideration of the foregoing recitals which are incorporated herein, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1 Granting of Easement.

1.1 Easement Purpose. The "**Easement Purpose**" shall be for the purposes set forth in the C&M Agreement. Any improvements to be constructed in connection with the Easement Purpose are referred to herein as "**Improvements**" and shall be constructed, located, configured and maintained by Grantee in strict accordance with the terms of this Easement Agreement and the C&M Agreement.

1.2 Grant. Grantor does hereby grant unto Grantee a non-exclusive easement ("**Easement**") over the Premises for the Easement Purpose and for no other purpose. The Easement is granted subject to any and all restrictions, covenants, easements and other encumbrances of record, if any, relating to the Premises, and subject to all with all applicable federal, state and local laws, regulations, ordinances, restrictions, covenants and court or administrative decisions and orders, including Environmental Laws (defined below) and zoning laws (collectively, "**Laws**"). Grantor shall provide to Grantee copies of any licenses, permits, and leases, if any, that affect the Premises as of the date of this Easement.. Grantor may not make any alterations or improvements or perform any maintenance or repair activities within the Premises except in accordance with the terms and conditions of the C&M Agreement.

1.3 Reservations by Grantor. Grantor excepts and reserves the right, to be exercised by Grantor and any other parties who may obtain written permission or authority from Grantor:

- (a) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any existing pipe, power, communication, cable, or utility lines and appurtenances and other facilities or structures of like character (collectively, "**Lines**") upon, over, under or across the Premises;

- (b) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; and
- (c) to use the Premises in any manner as the Grantor in its sole discretion deems appropriate, provided Grantor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Grantee for the Easement Purpose.

Section 2 **Term of Easement.** The term of the Permanent Easement, unless sooner terminated under provisions of this Easement Agreement, shall be perpetual.

Section 3 **No Warranty of Any Conditions of the Premises.** Grantee acknowledges that Grantor has made no representation whatsoever to Grantee concerning the state or condition of the Premises, or any personal property located thereon, or the nature or extent of Grantor's ownership interest in the Premises. Grantee has not relied on any statement or declaration of Grantor, oral or in writing, as an inducement to entering into this Easement Agreement, other than as set forth herein. GRANTOR HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF ANY SUCH PROPERTY, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTOR SHALL NOT BE RESPONSIBLE TO GRANTEE OR ANY OF GRANTEE'S CONTRACTORS FOR ANY DAMAGES RELATING TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTEE ACCEPTS ALL RIGHTS GRANTED UNDER THIS EASEMENT AGREEMENT IN THE PREMISES IN AN "AS IS, WHERE IS" AND "WITH ALL FAULTS" CONDITION, AND SUBJECT TO ALL LIMITATIONS ON GRANTOR'S RIGHTS, INTERESTS AND TITLE TO THE PREMISES. Grantee has inspected or will inspect the Premises, and enters upon Grantor's rail corridor and property with knowledge of its physical condition and the danger inherent in Grantor's rail operations on or near the Premises. Grantee acknowledges that this Easement Agreement does not contain any implied warranties that Grantee or Grantee's Contractors (as hereinafter defined) can successfully construct or operate the Improvements.

Section 4 **Nature of Grantor's Interest in the Premises.** GRANTOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND GRANTEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE. In case of the eviction of Grantee by anyone owning or claiming title to or any interest in the Premises, or by the abandonment by Grantor of the affected rail corridor, Grantor shall not be liable to refund Grantee any compensation paid hereunder.

Section 5 **Improvements.** Grantee shall take, in a timely manner, all actions necessary and proper to the lawful establishment, construction, operation, and maintenance of the Improvements, including such actions as may be necessary to obtain any required permits, approvals or authorizations from applicable governmental authorities. Any and all cuts and fills, excavations or embankments necessary in the construction, maintenance, or future alteration of the Improvements shall be made and maintained in such manner, form and extent as will provide adequate drainage of and from the adjoining lands and premises of the Grantor; and wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from such lands and premises of the Grantor, the Grantee shall construct and maintain such culverts or drains as may be requisite to preserve such natural and pre-existing drainage, and shall also wherever necessary, construct extensions of existing drains, culverts or ditches through or along the premises of the Grantor, such extensions to be of adequate sectional dimensions to preserve the present flowage of drainage or other waters, and of materials and workmanship equally as good as those now existing. In the event any construction, repair, maintenance, work or other use of the Premises by Grantee will affect any Lines, fences, buildings, improvements or other facilities (collectively, "**Other Improvements**"), Grantee will be responsible at Grantee's sole risk to locate and make any adjustments necessary to such Other Improvements. Grantee must contact the owner(s) of the Other Improvements notifying them of any work that may damage these Other Improvements and/or interfere with their service and obtain the owner's written approval prior to so affecting the Other Improvements. Grantee must mark all Other Improvements

on the Plans and Specifications and mark such Other Improvements in the field in order to verify their locations. Grantee must also use all reasonable methods when working on or near Grantor property to determine if any Other Improvements (fiber optic, cable, communication or otherwise) may exist. The Grantee agrees to keep the above-described premises free and clear from combustible materials and to cut and remove or cause to be cut and removed at its sole expense all weeds and vegetation on said premises, said work of cutting and removal to be done at such times and with such frequency as to comply with Grantee and local laws and regulations and abate any and all hazard of fire.

Section 6 **Taxes and Recording Fees.** So far as it may lawfully do so, Grantee shall pay when due any taxes, assessments or other charges (collectively, "**Taxes**") levied or assessed upon the Improvements by any governmental or quasi-governmental body or any Taxes levied or assessed against Grantor or the Premises that are attributable to the Improvements. Grantee agrees pay all fees incidental to recordation of the Memorandum of Easement

Section 7 **Environmental.**

7.1 Compliance with Environmental Laws. Grantee shall strictly comply with all federal, state and local environmental Laws in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Toxic Substances Control Act (collectively referred to as the "**Environmental Laws**"). Grantee shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on the Premises. Grantee shall not handle, transport, release or suffer the release of "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any Environmental Laws.

7.2 Notice of Release. Grantee shall give Grantor immediate notice to Grantor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Grantee's use of the Premises. Grantee shall use its best efforts to promptly respond to any release on or from the Premises. Grantee also shall give Grantor immediate notice of all measures undertaken on behalf of Grantee to investigate, remediate, respond to or otherwise cure such release or violation.

7.3 Remediation of Release. In the event that Grantor has notice from Grantee or otherwise of a release or violation of Environmental Laws which occurred or may occur during the term of this Easement Agreement, Grantor may require Grantee, at Grantee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises to the extent such release or violation is the result of Grantee's activities on the Premises. If during the construction or subsequent maintenance of the Improvements by Grantee, soils or other materials considered to be environmentally contaminated are exposed, Grantee will remove and safely dispose of said contaminated soils. Determination of soils contamination and applicable disposal procedures thereof, will be made only by an agency having the capacity and authority to make such a determination.

7.4 Preventative Measures. Grantee shall promptly report to Grantor in writing any conditions or activities upon the Premises known to Grantee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Grantee's reporting to Grantor shall not relieve Grantee of any obligation whatsoever imposed on it by this Easement Agreement. Grantee shall promptly respond to Grantor's request for information regarding said conditions or activities.

7.5 Evidence of Compliance. Grantee agrees periodically to furnish Grantor with proof satisfactory to Grantor that Grantee is in compliance with this **Section 7**. Should Grantee not comply fully with the above-stated obligations of this **Section 7**, notwithstanding anything contained in any other provision hereof, Grantor may, at its option, terminate this Easement Agreement by serving five (5) days' notice of termination upon Grantee. Upon termination, Grantee shall remove the Improvements and restore the Premises as provided in **Section 9**.

Section 8 **Default and Termination.**

8.2 **Abandonment.** Grantor may, at its option, terminate this Easement Agreement by serving five (5) days' notice in writing upon Grantee if Grantee should abandon or cease to use the Premises for the Easement Purpose for a period of one (1) year. Any waiver by Grantor of any default or defaults shall not constitute a waiver of the right to terminate this Easement Agreement for any subsequent default or defaults, nor shall any such waiver in any way affect Grantor's ability to enforce any section of this Easement Agreement.

8.3 **Effect of Termination or Expiration.** Neither termination nor expiration will release Grantee from any liability or obligation under this Easement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date the Premises are restored as required by **Section 9**.

8.4 **Non-exclusive Remedies.** The remedies set forth in this **Section 8** shall be in addition to, and not in limitation of, any other remedies that Grantor may have under the C&M Agreement, at law or in equity.

Section 9 **Surrender of Premises.**

9.1 **Removal of Improvements and Restoration.** Upon termination of this Easement Agreement, whether by abandonment of the Easement or by the exercise of Grantor's termination rights hereunder, Grantee shall, at its sole cost and expense, immediately perform the following:

- (a) remove all or such portion of Grantee's Improvements and all appurtenances thereto from the Premises, as Grantor directs at Grantor's sole discretion;
- (b) repair and restore any damage to the Premises arising from, growing out of, or connected with Grantee's use of the Premises;
- (c) remedy any unsafe conditions on the Premises created or aggravated by Grantee; and
- (d) leave the Premises in substantially the same condition which existed as of the Effective Date.

9.2 **Limited License for Entry.** If this Easement Agreement is terminated, Grantor may direct Grantee to undertake one or more of the actions set forth above, at Grantee's sole cost, in which case Grantee shall have a limited license to enter upon the Premises to the extent necessary to undertake the actions directed by Grantor. The terms of this limited license include all of Grantee's obligations under this Easement Agreement. Termination will not release Grantee from any liability or obligation under this Easement Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Grantee's Improvements are removed and the Premises are restored to the condition that existed as of the Effective Date. If Grantee fails to surrender the Premises to Grantor upon any termination of the Easement, all liabilities and obligations of Grantee hereunder shall continue in effect until the Premises are surrendered.

Section 10 **Liens.** Grantee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Grantee on the Premises or attributable to Taxes that are the responsibility of Grantee pursuant to **Section 6**. Grantor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by Law to prevent the attachment of any such liens to any portion of the Premises; provided, however, that failure of Grantor to take any such action shall not relieve Grantee of any obligation or liability under this **Section 10** or any other section of this Easement Agreement.

Section 11 **Tax Exchange.** Grantor may assign its rights (but not its obligations) under this Easement Agreement to Goldfinch Exchange Company LLC, an exchange intermediary, in order for Grantor to effect an

exchange under Section 1031 of the Internal Revenue Code. In such event, Grantor shall provide Grantee with a Notice of Assignment, attached as Exhibit C, and Grantee shall execute an acknowledgement of receipt of such notice.

Section 12 **Notices.** Any notice required or permitted to be given hereunder by one party to the other shall be delivered in the manner set forth in the C&M Agreement. Notices to Grantor under this Easement shall be delivered to the following address: BNSF Railway Company, Real Estate Department, 2501 Lou Menk Drive, Ft. Worth, TX 76131, Attn: Real Estate, or such other address as Grantor may from time to time direct by notice to Grantee.

Section 13 **Recordation.** It is understood and agreed that this Easement Agreement shall not be in recordable form and shall not be placed on public record and any such recording shall be a breach of this Easement Agreement. Grantor and Grantee shall execute a Memorandum of Easement in the form attached hereto as Exhibit "B" (the "**Memorandum of Easement**") subject to changes required, if any, to conform such form to local recording requirements. The Memorandum of Easement shall be recorded in the real estate records in the county where the Premises are located. If a Memorandum of Easement is not executed by the parties and recorded as described above within _120 days of the Effective Date, Grantor shall have the right to terminate this Easement Agreement upon notice to Grantee.

Section 14 **Miscellaneous.**

14.1 All questions concerning the interpretation or application of provisions of this Easement Agreement shall be decided according to the substantive Laws of the State of **[Texas]** without regard to conflicts of law provisions.

14.2 In the event that Grantee consists of two or more parties, all the covenants and agreements of Grantee herein contained shall be the joint and several covenants and agreements of such parties. This instrument and all of the terms, covenants and provisions hereof shall inure to the benefit of and be binding upon each of the parties hereto and their respective legal representatives, successors and assigns and shall run with and be binding upon the Premises.

14.3 

14.4 If any provision of this Easement Agreement is held to be illegal, invalid or unenforceable under present or future Laws, such provision will be fully severable and this Easement Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof will remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, there will be added automatically as a part of this Easement Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

14.5 This Easement Agreement is the full and complete agreement between Grantor and Grantee with respect to all matters relating to Grantee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Grantee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Grantee or Grantee's obligation to defend and hold Grantor harmless in any prior written agreement between the parties.

14.6 Time is of the essence for the performance of this Easement Agreement.

ADMINISTRATIVE FEE

15. Grantee acknowledges that a material consideration for this agreement, without which it would not be made, is the agreement between Grantee and Grantor, that the Grantee shall pay upon return of this Agreement signed by Grantee to Grantor's Broker a processing fee in the amount of **\$2,000.00** over and above

the agreed upon Acquisition Price. Said fee shall be made payable to BNSF Railway Company by a separate check.

Witness the execution of this Easement Agreement as of the date first set forth above.

GRANTOR:

BNSF RAILWAY COMPANY, a Delaware corporation

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

CHRISTIAN D. MENEFEE
County Attorney

By: _____
Katherine S. Callahan, Assistant County Attorney
CAO File No.:

GRANTEE:

HARRIS COUNTY _____,
a body corporate and politic under the laws of the State of Texas

By: _____
Name: LINA HIDALGO, County Judge
Title: _____

EXHIBIT "A"

Premises

EXHIBIT "B"

MEMORANDUM OF EASEMENT

MEMORANDUM OF EASEMENT

THIS MEMORANDUM OF EASEMENT is hereby executed this _____ day of _____, 2021, by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Grantor**"), whose address for purposes of this instrument is 2500 Lou Menk Drive, Fort Worth, Texas 76131, and **HARRIS COUNTY**, a body corporate and politic under the laws of the State of Texas ("**Grantee**"), whose address for purposes of this instrument is 10555 Northwest Freeway, Suite 210, Houston, Texas 77092, which terms "Grantor" and "Grantee" shall include, wherever the context permits or requires, singular or plural, and the heirs, legal representatives, successors and assigns of the respective parties:

WITNESSETH:

WHEREAS, Grantor owns or controls certain real property situated in Harris County, Texas as described on **Exhibit "A"** attached hereto and incorporated herein by reference (the "**Premises**");

WHEREAS, Grantor and Grantee entered into an Easement Agreement, dated _____, 2021 (the "**Easement Agreement**") which set forth, among other things, the terms of an easement granted by Grantor to Grantee over and across the Premises (the "**Easement**"); and

WHEREAS, Grantor and Grantee desire to memorialize the terms and conditions of the Easement Agreement of record.

For valuable consideration the receipt and sufficiency of which are hereby acknowledged, Grantor does grant unto Grantee and Grantee does hereby accept from Grantor the Easement over and across the Premises.

The term of the Easement, unless sooner terminated under provisions of the Easement Agreement, shall be perpetual.

All the terms, conditions, provisions and covenants of the Easement Agreement are incorporated herein by this reference for all purposes as though written out at length herein, and both the Easement Agreement and this Memorandum of Easement shall be deemed to constitute a single instrument or document. This Memorandum of Easement is not intended to amend, modify, supplement, or supersede any of the provisions of the Easement Agreement and, to the extent there may be any conflict or inconsistency between the Easement Agreement or this Memorandum of Easement, the Easement Agreement shall control.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Memorandum of Easement to as of the date and year first above written.

GRANTOR:

BNSF RAILWAY COMPANY, a Delaware corporation

By: _____
Name: _____
Title: _____

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

This instrument was acknowledged before me on the _____ day of _____, 2021, by _____ (name) as _____ (title) of **BNSF RAILWAY COMPANY**, a Delaware corporation.

Notary Public

My appointment expires: _____

(Seal)

GRANTEE:

HARRIS COUNTY, a body corporate and politic under the laws of the State of Texas

By: _____
LINA HIDALGO, County Judge

APPROVED AS TO FORM:

CHRISTIAN D. MENEFE
County Attorney

By: _____
Katherine S. Callahan, Assistant County Attorney
CAO File No.:

STATE OF TEXAS _____

§
§
§

COUNTY OF HARRIS _____

This instrument was acknowledged before me on _____, 2021, by Lina Hidalgo as County Judge of HARRIS COUNTY, TEXAS and the presiding officer of the Commissioners Court of Harris County, Texas, on behalf of Commissioners Court of Harris County, Texas, as governing body of Harris County, Texas.

Notary Public Signature

Notary Public

My appointment expires: _____

(Seal)

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 concrete curbing, roadway asphalt/concrete pavement, and pavement markings on the roadway approaches to Hufsmith-Kohrville Road – DOT No. 597099M, located at railroad milepost 81.60 on Railway's Red River (South) Division, Houston Subdivision, Line Segment 492 near Tomball, Texas in Harris County.
- **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) City of Sherman 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:

Julia D. Bond, P.E.
Harris County
Manager of Road and Bridge Group
1310 Prairie Street
Houston, TX 77002
Email: Julia.bond@eng.hctx.net

- **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 **Julia D. Bond (Harris County) at 713-274-1564** and Railway's Manager Public Projects, telephone number **817-352-2902** at least thirty (30) calendar days before commencing any work on Railway Property. Contractor's notification to Railway must refer to Railway's file: **597099M – Hufsmith-Kohrville Road.**
- **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 INTENTIONALL LEFT BLANK**

- **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 **Harris County** and must not be undertaken until approved in writing by the Railway, and until **Harris County** 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 **Harris County** for approval before work is undertaken and this work must not be undertaken until approved by the Railway.

- **1.03.08** At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across the Railways tracks. The temporary crossing must be gated and locked at all times when

not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed and, at the completion of the project, removed at the expense of the Contractor.

- **1.03.09** Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor must immediately notify the **Railway's Resource Operations Center at 1(800) 832-5452**, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.
- **1.03.10** The Contractor upon completion of the work covered by this contract, must promptly remove from the Railway's Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said property by said Contractor or any Subcontractor, employee or agent of Contractor or of any Subcontractor, and must cause Railway's Property to be left in a condition acceptable to the Railway's representative.

1.04 Contractor Roadway Worker on Track Safety Program and Safety Action Plan:

- **1.04.01** Each Contractor that will perform work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway Project Representative to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site **www.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** (Wyatt Mountain at mobile # 817-229-2593 or Wyatt.Mountain@bnsf.com) 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.
 - **FOR THIS PROJECT, RAILROAD FLAGGING SERVICES WILL BE PROVIDED BY RAILPROS (NOT A BNSF EMPLOYEE). The Contractor must**

contact Railpros directly at Office # 877-315-0513 or e-mail: BNSFinfo@railprosfs.com to enter into a reimbursement agreement for flagging services and to request and schedule a railroad flagger. The Railpros flagger(s), the Contractor, and the BNSF Roadmaster must participate in a job safety briefing PRIOR TO the start of any work on/over/under Railway's right of way. The Railway reserves the right to utilize its employees to provide railroad flagging services when those resources become available. In this event, the Railpros flagger and the Contractor will be notified by the Railway.

- **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 **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 **10** freight trains per 24-hour period at a timetable speed **40** MPH and **0** passenger trains at a timetable speed of **N/A** MPH.

1.06 Contractor General Safety Requirements

- **1.06.01** Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations.
- **1.06.02** Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).
- **1.06.03** Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by the Railway's Project Representative. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working

within 25 feet of the center line of track.

- **1.06.04** When Contractor employees are required to work on the Railway Property after normal working hours or on weekends, the 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 Roadmaster (Wyatt Mountain at mobile # 817-229-2593) and BNSF's Signal Supervisor (Joshua Youngblood at mobile # 936-230-6086).** 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 sensitive (F)
- Contractor/non-safety sensitive (G)
- Volunteer/safety sensitive (H)
- Volunteer/other non-safety sensitive (I)
- Non-trespasser (D) - to include highway users involved in highway rail grade crossing accidents who did not go around or through gates
- Trespasser (E) - to include highway users involved in highway rail grade crossing accidents who went around or through gates
- Non-trespasser (J) - Off railroad property

If train involved, Train ID:

Transmit attached information to Accident/Incident Reporting Center by:

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

AND COPY TO: ROADMASTER Wyatt.Mountain@BNSF.com & MANAGER PUBLIC PROJECTS Tim.Huya@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: _____

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



EXHIBIT "C-1"

Agreement Between BNSF RAILWAY COMPANY and the CONTRACTOR

Railway Files: DOT Nos. 597099M

Agency Project: Hufsmith-Kohrville Road construction near Tomball, TX – Harris County

_____ (hereinafter called "**Contractor**"), has entered into an agreement (hereinafter called "Agreement") with the Harris County, Texas (COUNTY) for the performance of certain work in connection with the following project: construction of concrete curbing, roadway asphalt/concrete pavement, and pavement markings on the roadway approaches to Hufsmith-Kohrville Road – DOT No. 597099M, located at railroad milepost 81.60 on Railway's Red River (South) Division, Houston Subdivision, Line Segment 492 near Tomball, Texas in Harris County.

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 **CITY** (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 INTENSIONAL 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 \$2,000,000 each occurrence and an aggregate limit of at least \$4,000,000 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

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/faqs/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 Roadmaster **Wyatt Mountain at mobile # 817-229-2593 or Wyatt.Mountain@BNSF.com** four (4) weeks advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows.



Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.

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



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: Timothy J. Huya
Manager Public Projects

Title: _____

Accepted and effective this _____ day
of _____, 2020.

Address: _____

Address: _____

City: _____

State: _____ Zip: _____

Phone: _____

Fax: _____

On-site Project

Contact Person: _____

Mobile: _____

E-mail: _____

Contact Person: _____

Mobile: _____

E-mail: _____

Exhibit D

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

EXHIBIT D - Railroad SIGNAL estimate for
 HUFSMITH-KOHRVILLE RD - DOT No. 597099M
 Revised on 1/18/2021

BNSF RAILWAY COMPANY
 FHPM ESTIMATE FOR
 HARRIS COUNTY, TX

LOCATION NSS PROSPER

DETAILS OF ESTIMATE

PLAN ITEM : 000314626

VERSION : 8

PURPOSE, JUSTIFICATION AND DESCRIPTION

HUFSMITH-KOHRVILLE RD - TOMBALL, TX; REPLACE CONSTANT WARNING / FLASHERS / GATES; RED RIVER DIV; HOUSTON SUBDIV;
 LS 0492; MP 0081.61; DOT# 597099M; SEQ# 76303.

MONTHLY POWER UTILITY COST CENTER : 61698.

THE MATERIAL LIST BELOW REFLECTS TYPICAL REPRESENTATIVE PACKAGES USED FOR ESTIMATING PURPOSES ONLY.

THIS ESTIMATE IS GOOD FOR 180 DAYS. THE ESTIMATE IS SUBJECT TO CHANGE IN COST FOR LABOR, MATERIAL, AND OVERHEAD.

CONTRACTS HAVE BEEN ESTABLISHED FOR PORTIONS OF SIGNAL WORK ON THE BNSF RAILROAD.

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

THE COUNTY OF HARRIS, TX IS FUNDING 100% OF THIS PROJECT.

MAINTAIN PROPRIETARY CONFIDENTIALITY.
 PRIMARY FUNDING SOURCE IS COUNTY FUNDS
 ** BUY AMERICA(N) APPLIES **

DESCRIPTION	QUANTITY	U/M	COST	TOTAL \$

LABOR				

ELECTRICAL LABOR F/SIGNAL EQUIPMENT	108.0	MH	3,402	
INSTALL INSULATED JOINT	19.04	MH	643	
PLACE FIELD WELDS - CAP	75.9	MH	2,592	
REMOVE RETIRED INSULATED JOINT	19.04	MH	643	
SIGNAL FIELD - REPLACE	2208.0	MH	68,073	
SIGNAL FIELD LABOR - OPER	112.0	MH	3,453	
SIGNAL SHOP LABOR - CAP	0.01	MH	1	
SIGNAL TECHNICIAN LABOR - CAP	32.0	MH	1,042	
PAYROLL ASSOCIATED COSTS			52,194	
DA OVERHEADS			86,656	
EQUIPMENT EXPENSES			17,755	
INSURANCE EXPENSES			13,970	
TOTAL LABOR COST			250,424	250,424

MATERIAL				

JOINT, GENERIC, POLY INSL : NEW, FOR SIGNAL	2.0	EA	537	
PLUG RAIL, GENERIC, INSULATED, BONDED, 40 FT, FOR	2.0	EA **	4,500	
WELDKIT, GENERIC FOR ALL RAIL WEIGHTS	8.0	KT **	543	
ARRESTOR, MDSA-2 XS	1.0	EA N	700	
BATTERY, VGL-255	10.0	EA N	2,114	
BATTERY, VGL-350	18.0	EA N	5,134	
BELLS	2.0	EA N	414	
BUNGALOW 8X8 W/ AC	1.0	LS N	10,204	
BUNGALOW MATERIAL	1.0	LS N	7,564	
CABLE, 2C/6 TW	700.0	FT N	946	
CABLE, 3C/2	250.0	FT N	1,608	
CABLE, 5C/10	140.0	FT N	283	
CABLE, 5C/6	1500.0	FT N	6,780	
CABLE, 7C/14	3000.0	FT N	5,640	
CHARGERS, 12/80 (20/40/60)	2.0	EA N	2,083	
CONSTANT WARNING, XP4, 2TK	1.0	EA N	27,964	
CONVERTER, 10-10	1.0	EA N	193	
ELECTRICAL MATERIAL	1.0	EA N	1,500	
EVENT RECORDER	1.0	EA N	3,265	
FIELD MATERIAL	1.0	LS N	7,372	
FILL DIRT	30.0	CY N	750	
FOUNDATION, STEEL	4.0	EA N	2,706	
GATE KEEPER	4.0	EA N	6,700	
GATE MECHANISM, S-60	4.0	EA N	21,491	
GENERATOR, ACG-3	1.0	EA N	324	

INDUCTOR, DUMMY LOAD	2.0 EA N	1,717	
LED LIGHT	16.0 EA N	2,935	
LIGHT OUT DETECTOR	1.0 EA N	918	
RELAY, DAX	1.0 EA N	750	
SHUNT, NBS	4.0 EA N	4,067	
SURFACE ROCK	10.0 CY N	500	
TEMP - CABLE, 5C/6	500.0 FT N	2,260	
TEMP - CABLE, 7C/14	500.0 FT N	940	
TEMP - FOUNDATION, STEEL	2.0 EA N	1,353	
TEMP - GATE KEEPER	2.0 EA N	3,350	
TEMP - GATE MECHANISM, S-60	2.0 EA N	10,746	
TEMP - LED LIGHT	8.0 EA N	1,468	
X MP 81.45- INDUCTOR, DUMMY LOAD	1.0 EA N	859	
X MP 81.45- RELAY, ER	1.0 EA N	750	
X MP 81.45- SHUNT, NBS	2.0 EA N	2,034	
Y MP 81.49- CONVERTER, 10-10	1.0 EA N	193	
Y MP 81.49- GENERATOR, ACG-3	1.0 EA N	324	
Y MP 81.49- SWCC	1.0 LS N	4,800	
Z MP 81.52 N ORR- CABLE, 7C/14	500.0 FT N	940	
Z MP 81.52 N ORR- ELECTRICAL MATERIAL	1.0 EA N	1,500	
Z MP 81.52 N ORR- INTERMEDIATE, ECS	1.0 LS N	41,109	
Z MP 81.52 N ORR- RELAY	2.0 EA N	1,500	
MATERIAL HANDLING		278	
USE TAX		16,890	
OFFLINE TRANSPORTATION		2,569	
		<hr/>	
TOTAL MATERIAL COST		226,065	226,065

OTHER			

AC POWER SERVICE	1.0 EA N	10,000	
BUNGALOW, WIRE AND TEST	1.0 LS N	4,972	
CONTRACT ENGINEERING	1.0 LS N	8,000	
DIRECTIONAL BORING	500.0 FT N	25,000	
X MP 81.45- CONTRACT ENGINEERING	1.0 LS N	3,000	
Y MP 81.49- DIRECTIONAL BORING	100.0 FT N	5,000	
Z MP 81.52 N ORR- BUNGALOW, WIRE AND TEST	1.0 LS N	4,972	
Z MP 81.52 N ORR- CONTRACT ENGINEERING	1.0 LS N	8,400	
Z MP 81.52 N ORR- DIRECTIONAL BORING	500.0 FT N	25,000	
		<hr/>	
TOTAL OTHER ITEMS COST		94,344	94,344
PROJECT SUBTOTAL			570,833
CONTINGENCIES			52,414
BILL PREPARATION FEE			6,233
			<hr/>
GROSS PROJECT COST			629,480
LESS COST PAID BY BNSF			0
			<hr/>
TOTAL BILLABLE COST			629,480

EXHIBIT D - Railroad SIGNAL estimate for HUFSMITH-KOHRVILLE RD - DOT No. 597099M Revised on 1/18/2021

TO TEAGUE

TO BELT JCT

EASTWARD APPR. 2347'
40 MPH

WESTWARD APPR. 2347'
40 MPH

124'

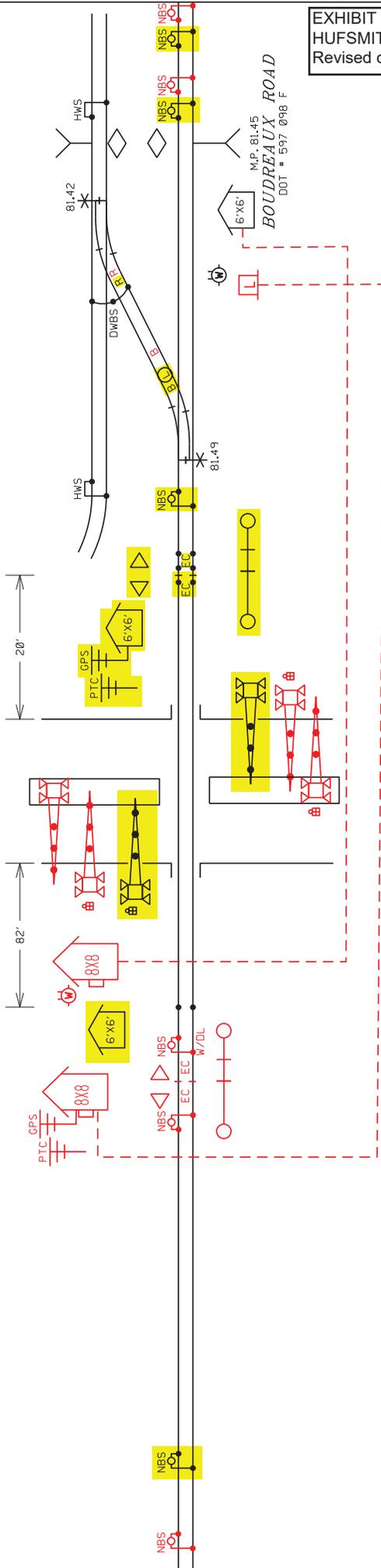


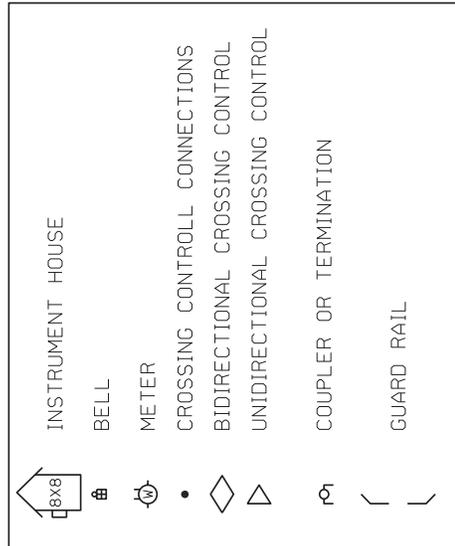
EXHIBIT D - Railroad SIGNAL estimate for
HUFSMITH-KOHRVILLE RD - DOT No. 597099M
Revised on 1/18/2021

M.P. 81.60
HUFSMITH-KOHRVILLE ROAD
DOT # 597099M

PROJECT# 76303

REPLACE: GATES, LEDS, FLASHERS
CONTROL DEVICES: CONSTANT WARNING
SALVAGE: NONE

RED = IN
YELLOW = OUT



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

BNSF RAILWAY CO.
LOCATION: TOMBALL TX
STREET: HUFSMITH-KOHRVILLE ROAD
LS: 492
M.P. 81.60
DOT # 597099M
DIVISION: RED RIVER
SUBDIVISION: HOUSTON
NO SCALE
DATE: 01/18/2021
FILE: 76303-StateSketch.dgn
JFK

ORDER OF COMMISSIONERS COURT
Authorizing execution of an Agreement

The Commissioners Court of Harris County, Texas, convened at a meeting of said Court at the Harris County Administration Building in the City of Houston, Texas, on the ____ day of _____, 2021 with all members present except _____.

A quorum was present. Among other business, the following was transacted:

**ORDER AUTHORIZING EXECUTION OF AN AGREEMENT WITH
BNSF RAILWAY COMPANY TO WIDEN THE EXISTING HUFSMITH-KOHRVILLE
ROAD AT-GRADE CROSSINGS**

Commissioner _____ introduced an order and made a motion that the same be adopted. Commissioner _____ seconded the motion for adoption of the order. The motion, carrying with it the adoption of the order, prevailed by the following vote:

Vote of the Court	<u>Yes</u>	<u>No</u>	<u>Abstain</u>
Judge Hidalgo	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Ellis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Garcia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Ramsey, P.E.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Cagle	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The County Judge thereupon announced that the motion had duly and lawfully carried and that the order had been duly and lawfully adopted. The order thus adopted follows:

IT IS ORDERED the Harris County Judge is authorized to execute for and on behalf of Harris County, an Agreement between Harris County and BNSF Railway Company to widen the existing Hufsmith-Kohrville Road at-grade crossings. The Agreement is incorporated herein as though fully set forth word for word.

All Harris County officials and employees are authorized to do any and all things necessary or convenient to accomplish the purpose of this Order.