

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

DEPT: Public Works

BOARD AGENDA # \*C-3

Urgent

Routine

AGENDA DATE September 30, 2014

CEO Concurs with Recommendation YES  NO   
(Information Attached)

4/5 Vote Required YES  NO

SUBJECT:

Approval of an Easement Agreement to Acquire an Easement for the Claribel Road Truck Turning Radius for the Claribel Road at Burlington Northern Santa Fe Railroad Crossing Project, Property Owner: BNSF Railway Company, a Delaware Corporation

STAFF RECOMMENDATIONS:

1. Approve the Easement Agreement for the acquisition of the easement for the Claribel Road Truck Turning Radius identified in Exhibit "A".
2. Authorize the Director of Public Works to execute the agreement with Burlington Northern Santa Fe (BNSF) and sign all necessary documents.

FISCAL IMPACT:

The \$4,500 for the purchase of this easement is funded 100% from the Public Facilities Fee-Regional Transportation Impact Fee program and consists of \$2,500 for compensation associated with the purchase of this easement, and \$2,000 for administrative fees. Funding is available in the Fiscal Year 2014-2015 Public Works Road Projects Budget.

BOARD ACTION AS FOLLOWS:

No. 2014-505

On motion of Supervisor Monteith \_\_\_\_\_, Seconded by Supervisor Withrow \_\_\_\_\_  
and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Withrow, Monteith, and Chairman De Martini

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) \_\_\_\_\_ Denied

3) \_\_\_\_\_ Approved as amended

4) \_\_\_\_\_ Other:

MOTION:

ATTEST:

Christine Ferraro  
CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval of an Easement Agreement to Acquire an Easement for the Claribel Road Truck Turning Radius for the Claribel Road at Burlington North Santa Fe Railroad Crossing Project, Property Owner: BNSF Railway Company, a Delaware Corporation

**DISCUSSION:**

The Claribel Road and Terminal Avenue intersection was the location of a six person fatal accident in 2007. Due to the severity of the accident, this project became eligible for Section 130 monies to mitigate safety hazards. A Service Contract for the purpose of eliminating hazards at Railroad-Highway intersections (crossings) with Federal funds provided through Caltrans under Section 130, Title 23 USC, was approved by the Board of Supervisors in January, 2013. The County is responsible for acquiring the Right-of-Way necessary for the construction of roadway improvements.

The purpose of the Claribel Road at BNSF Railroad Crossing Project is to provide safety improvements at the intersection of Claribel Road with the BNSF Railroad and the intersection of Claribel Road and Terminal Avenue, adjacent to and east of the railroad crossing to improve vehicular safety at the railroad crossing and the intersection. The proposed upgrades include:

- a) Installation of a traffic signal system at the intersection of Claribel Road and Terminal Avenue. Interconnection of the traffic signal with the railroad warning devices to provide advanced preemption and provide for limited service of the traffic signal after the preemption clear out phase.
- b) Installation of a pre-signal for eastbound traffic on Claribel Road. Interconnect the pre-signal with the traffic signal at the intersection of Claribel Road and Terminal Avenue, and interconnect the system with the train detection circuitry for advanced preemption.
- c) Installation of an active advance warning device for eastbound vehicular traffic on Claribel Road.
- d) Improvement of the intersection of Claribel Road and Terminal Avenue for vehicles traveling on Terminal Avenue making a right turn onto Claribel Road, east or west, by providing right turn lanes with the necessary truck turn radius and median island structures.

The County needs to acquire an easement for the Claribel Road Truck Turning Radius to accomplish this project. The property owner has agreed to grant the easement for turn lane roadway improvements, pursuant to the following terms as outlined in the Easement Agreement for the Claribel Road Truck Turning Radius in Attachment 1:

Property Owners: BNSF RAILWAY COMPANY, a Delaware corporation  
Amount of Compensation: \$4,500  
Easement Acquisition Area (Exhibit "A"): 0.0114 Acres (approximate)

The amount of compensation has been reviewed by Public Works Staff and found to be regular in all respects and within the range of just compensation.

The Public Works Department is requesting Board approval for this compensation and acquisition.

Approval of an Easement Agreement to Acquire an Easement for the Claribel Road Truck Turning Radius for the Claribel Road at Burlington North Santa Fe Railroad Crossing Project, Property Owner: BNSF Railway Company, a Delaware Corporation

**POLICY ISSUES:**

This action supports the Board's priorities of providing A Safe Community, A Healthy Community, and A Well Planned Infrastructure System by improving vehicular safety at the railroad crossing and this intersection on the County road system.

**STAFFING IMPACT:**

There is no staffing impact associated with this item.

**CONTACT PERSON:**

Matt Machado, Public Works Director. Telephone: (209) 525-4130.

**ATTACHMENT(S):**

Easement Agreement for the Claribel Road Truck Turning Radius (Exhibit "A")

DH:djd

L:\ROADS\9292-Claribel Road at Terminal Ave\Design\BOS\9292\_BNSF Board Item

**ATTACHMENTS AVAILABLE  
FROM CLERK**

**EASEMENT AGREEMENT  
FOR THE CLARIBEL ROAD TRUCK TURNING RADIUS**

THIS EASEMENT AGREEMENT FOR THE CLARIBEL ROAD TRUCK TURNING RADIUS ("**Easement Agreement**") is made and entered into as of the 19 day of March 2015 ("**Effective Date**"), by and between BNSF RAILWAY COMPANY, a Delaware corporation ("**Grantor**"), and the COUNTY OF STANISLAUS ("**Grantee**").

A. Grantor owns or controls certain real property situated at or near the vicinity of the County of Stanislaus, State of California, at Mile Post 1094.50, as described or depicted on **Exhibit "A"** attached hereto and made a part hereof (the "**Premises**").

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

C. Grantor has agreed to grant Grantee such easement, subject to the terms and conditions set forth in this Easement Agreement.

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 a truck turning radius. 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 Plans and Specifications (as hereinafter defined) approved as set forth in **Section 5**.

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, licenses, permits, leases and other encumbrances of whatsoever nature whether or not of record, if any, relating to the Premises and subject to all Laws (as hereinafter defined), including without limitation zoning laws, regulations, and ordinances of municipal and other governmental authorities, if any.

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.

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

**Section 2 Compensation.** Grantee shall pay Grantor, prior to the Effective Date, the sum of Two-Thousand Five-Hundred and No/100 Dollars (\$2,500.00) as compensation for the grant of this Easement.

**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 Plans and Specifications for Improvements.** If Grantee desires to construct any Improvements within the Premises, Grantee shall submit to Grantor for its review and approval detailed information concerning the design, location and configuration of such Improvements ("**Plans and Specifications**"). As soon as reasonably practicable after Grantor's receipt of the Plans and Specifications and other information required by Grantor about the proposed location of the Improvements, Grantor will notify Grantee in writing whether Grantor has approved or disapproved the design, location and configuration of the proposed Improvements or the Plans and Specifications, and shall include one or more reasons for any disapproval. Grantor may disapprove the Plans and Specifications only where, in Grantor's sole judgment, construction, maintenance, operation or removal of all or any part of the Improvements to be constructed in accordance with the Plans and Specifications would cause Grantee to violate any of the provisions of Section 6.3 hereof. Following any disapproval, Grantee shall have the right to modify the location, configuration or other aspects of the Plans and Specifications of the proposed Improvements and to resubmit such modified information to Grantor for its further review and approval. Grantor may approve or disapprove of the Plans and Specifications in Grantor's sole discretion. Any approval or consent by Grantor of any of such plans shall in no way obligate Grantor in any manner with respect to the finished product design and/or construction. Any such consent or approval shall mean only that such Plans and Specifications meet the subjective standards of Grantor, and such consent or approval by Grantor shall not be deemed to mean that such Plans and Specifications or construction are structurally sound and appropriate or that such Plans and Specifications or construction meet the applicable construction standards or codes. Any deficiency in design or construction, notwithstanding the prior approval of Grantor shall be solely the responsibility of Grantee.

**Section 6 Improvements.**

6.1 **Construction of Improvements.** If the construction of any Improvements on the Premises is approved by Grantor pursuant to **Section 5** above, Grantee, and Grantee's Contractors, at Grantee's sole cost and expense, shall locate, configure, construct and maintain the Improvements: (i) in a good and workmanlike manner and in strict accordance with the Plans and Specifications approved by Grantor pursuant to the

provisions of **Section 5** above, (ii) in conformance with applicable building uses and all applicable engineering, safety and other Laws, (iii) in accordance with the highest accepted industry standards of care, skill and diligence, and (iv) in such a manner as shall not adversely affect the structural integrity or maintenance of the Premises, any structures on or near the Premises, or any lateral support of structures adjacent to or in the proximity of the Premises. The construction of the Improvements within the Premises shall be completed by Grantee and Grantee's Contractors within one (1) year after the Effective Date. Grantee shall provide as built drawings of all Improvements to Grantor promptly upon completion of construction and shall use its best efforts to cause such as built drawings to be electronically accessible to Grantor.

6.2 Maintenance of Improvements. Grantee shall at all times during the term of this Easement Agreement, at Grantee's sole cost and expense, keep and maintain the Improvements located upon the Premises in a structurally safe and sound condition, in good repair and in compliance with the Plans and Specifications and this Easement Agreement. Grantee shall also promptly repair any damage to the Premises or the Improvements caused, either in whole or in part, by Grantee Parties (as hereinafter defined). Grantee shall not cause or permit another person to cause any damage to the Premises or the Improvements, and Grantee shall be responsible for any such damage which may occur as a result of any Grantee Party's action or inaction. Grantee shall not permit the existence of any nuisance or the accumulation of junk, debris or other unsightly materials on the Premises and shall keep the Premises in a clean and safe condition. Grantee shall, at its sole cost and expense, remove ice and snow from the Premises. Grantee shall keep the 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 the Premises, said work of cutting and removal to be done at such times and with such frequency as to comply with local Laws and regulations and abate any and all hazard of fire. Grantor shall have no obligation whatsoever, monetary or non-monetary, to maintain the Improvements in the Premises.

6.3 No Interference. During the construction of, and any subsequent maintenance performed on, operation of, or removal of, all or any portion of the Improvements, Grantee, at Grantee's sole cost, shall perform all activities and work on or near Grantor's rail corridor or property and/or the Premises in such a manner as to preclude injury to persons or damage to the property of Grantor, or any party on or with property on Grantor's rail corridor or property, and shall ensure that there is no interference with the railroad operations or other activities of Grantor, or anyone present on Grantor's rail corridor or property with the authority or permission of Grantor. Grantee shall not disturb any improvements of Grantor or Grantor's existing lessees, licensees, license beneficiaries or lien holders, if any, or interfere with the use of such improvements. Grantor may direct one of its field engineers to observe or inspect the construction, maintenance, operation or removal of the Improvements, or any portion thereof, at any time to ensure such safety and noninterference, and to ensure that the Improvements comply with the Plans and Specifications. If any Grantee Party is ordered at any time to leave the Premises or to halt any activity on the Premises, then the party conducting that activity immediately shall cease such activity and leave the Premises, if the order was issued by Grantor's personnel to promote safety, such noninterference with other activities or property, or because the improvements were not in compliance with this Easement Agreement. Notwithstanding the foregoing right of Grantor, Grantor has no duty or obligation to observe or inspect, or to halt work on, the Premises, it being solely Grantee's responsibility to ensure that the Improvements are constructed, maintained, operated and removed in strict accordance with all Laws, safety measures, such noninterference and the Plans and Specifications and in compliance with all terms hereof. Neither the exercise nor the failure by Grantor to exercise any right set forth in this **Section 6.3** shall alter the liability allocation set forth in this Easement Agreement.

6.4 No Alterations. Except as may be shown in the Plans and Specifications approved by Grantor for the Easement, Grantee may not make any alterations to the Premises, or permanently affix anything to the Premises, without Grantor's prior written consent. If Grantee desires to change either the location of any of the Improvements or any other aspect of the Plans and Specifications of any of the Improvements, Grantee shall submit such change and modified Plans and Specifications to Grantor in writing for its approval in the same manner as provided for in **Section 5**. Grantee shall have no right to commence any such change until after Grantee has received Grantor's approval of such change in writing.

6.5 Approvals; Compliance with Laws and Safety Rules.

- (a) 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 approvals or authorizations from applicable governmental authorities.

- (b) Prior to entering the Premises, and at all times during the term of this Easement Agreement, Grantee shall comply, and shall cause its contractor, any subcontractor, any assignee, and any contractor or subcontractor of any assignee performing work on the Premises or entering the Premises on behalf of Grantee (collectively, "**Grantee's Contractors**"), to comply, with all applicable federal, state and local laws, regulations, ordinances, restrictions, covenants and court or administrative decisions and orders, including Environmental Laws (defined below) (collectively, "**Laws**"), and all of Grantor's applicable safety rules and regulations including those found on the website noted below in **Section 6.5(c)**.
- (c) No Grantee Party may enter the Premises without first having completed Grantor's safety orientation found on the website: [www.contractororientation.com](http://www.contractororientation.com).

6.6 Other Improvements. 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.

6.7 Flagging and Other Costs. Grantee shall not conduct any activities on, or be present on, any portion of the Premises or Grantor's rail corridor or property that is within twenty-five (25) feet of any active railroad track, except in the presence of a flagman. In any case where a flagman or flagmen are required in connection with the presence of individuals on Grantor's rail corridor or the Premises, Grantee shall provide as much advance notice as possible prior to any entry upon the Premises. Grantor shall arrange for the presence of the flagman or flagmen as soon as practicable after receipt of such notice from Grantee. Grantee shall reimburse to Grantor, within thirty (30) days following Grantee's receipt of each bill therefor, Grantor's costs in arranging for and providing the flagman or flagmen, which shall be billed to Grantee at Grantor's then applicable standard rate. Grantee agrees to reimburse Grantor (within thirty (30) days after receipt of a bill therefore) for all other costs and expenses incurred by Grantor in connection with Grantee's use of the Premises or the presence, construction, maintenance, and use of any Improvements situated thereon.

6.8 No Unauthorized Tests or Digging. Grantee, and Grantee's Contractors, must not conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on Grantor's rail corridor or property (whether or not such centerline is located within the Premises), except after Grantee has obtained written approval from Grantor, and then only in strict accordance with the terms and any conditions of such approval.

6.9 Boring. Prior to conducting any boring work on or near Grantor's rail corridor or property (which shall only be permitted within the Premises), Grantee and Grantee's Contractors shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the ground to determine whether pipelines or other structures exist below the surface, provided, however, that in lieu of the foregoing, Grantee shall have the right to use suitable detection equipment or other generally accepted industry practice (e.g., consulting with the Underground Services Association) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Upon Grantee's written request, which shall be made thirty (30) business days in advance of Grantee's proposed construction or modification of any Improvements, Grantor will provide to Grantee any information that Grantor has in the possession of its Engineering Department concerning the existence and approximate location of Grantor's underground utilities and pipelines at or near the vicinity of any proposed Improvements. Prior to conducting any boring work, Grantee, and Grantee's Contractors, shall review all such material. Grantor does not

warrant the accuracy or completeness of information relating to subsurface conditions and Grantee's, and Grantee's Contractors', operations at all times shall be subject to the liability provisions set forth herein. For all bores greater than 20 inches in diameter and at a depth less than ten (10) feet below the bottom of a rail, Grantee, and Grantee's Contractors, shall perform a soil investigation which must be reviewed by Grantor prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Grantor's reasonable opinion that granular material is present, Grantor may select a new location for Grantee's use, or may require Grantee, and Grantee's Contractors, to furnish for Grantor's review and approval, in Grantor's sole discretion, a remedial plan to deal with the granular material. Once Grantor has approved any such remedial plan in writing, Grantee, and Grantee's Contractors, at Grantee's sole cost, shall carry out the approved plan in accordance with all terms thereof and hereof. Any open hole, boring or well constructed on the Premises by Grantee, or Grantee's Contractors, shall be safely covered and secured at all times when anyone who is not creating it, working in it or using it as permitted hereunder is present in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises shall be promptly filled in by Grantee and Grantee's Contractors to surrounding ground level with compacted bentonite grout, or otherwise secured or retired in accordance with any applicable Laws. No excavated materials may remain on Grantor's rail corridor or property for more than ten (10) days, and must be properly disposed of by Grantee and Grantee's Contractors in accordance with applicable Laws.

6.10 Drainage of Premises and Property. Any and all cuts and fills, excavations or embankments necessary in the construction, maintenance, or future alteration of the Premises shall be made and maintained by Grantee in such manner, form and to the extent as will provide adequate drainage of and from the Premises and Grantor's adjoining right of way; and wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from the Premises and Grantor's adjoining right of way, Grantee shall construct and maintain such culverts or drains within the Premises as may be requisite to preserve such natural and pre-existing drainage. Grantee shall wherever necessary, construct extensions of existing drains, culverts or ditches through or along the Property, such extensions to be of adequate sectional dimensions to preserve flowage of drainage or other waters, and/or material and workmanship equally as good as those now existing.

6.11 Taxes and Recording Fees. 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 to purchase, affix and cancel any and all documentary stamps in the amount prescribed by statute, and to pay any and all required transfer taxes, excise taxes and any and all fees incidental to recordation of the Memorandum of Easement. In the event of Grantee's failure to do so, if Grantor shall become obligated to do so, Grantee shall be liable for all costs, expenses and judgments to or against Grantor, including all of Grantor's legal fees and expenses.

6.12 Modification, Relocation or Removal of Improvements. If at any time, Grantor desires the use of its rail corridor in such a manner that, in Grantor's reasonable opinion, would be interfered with by any portion of any Improvements or the Easement, Grantee, at Grantee's sole cost, shall make such changes in the Improvements and/or Premises that, in the sole discretion of Grantor, are necessary to avoid interference with the proposed use of Grantor's property, including, without limitation, Grantee relocating or removing all or a portion of the Improvements from the Premises. Grantor acknowledges that, in some instances, Improvements will not need to be moved or removed from the Premises, but can be protected in place, subject to approval by Grantor's engineering department. Grantee hereby waives any rights that it may have to use condemnation Laws to keep Improvements in place and not relocate or remove the Improvements where relocation or removal is required by Grantor. Where it is practicable to do so, Grantor shall provide to Grantee at least one hundred twenty (120) days prior written notice that Improvements must be modified, removed or relocated, and in circumstances where one hundred twenty (120) days notice is not practicable, Grantor shall provide to Grantee as much notice as it reasonably can, and in no case less than twenty (20) days prior written notice. Grantee shall ensure that all Improvements are modified, removed or relocated as required on or before the date set forth in Grantor's written notice.



**Section 7 Indemnification.**

**7.1 TO THE FULLEST EXTENT PERMITTED BY LAW, GRANTEE SHALL, AND SHALL CAUSE GRANTEE'S CONTRACTORS, SUBCONTRACTORS, AGENTS, INVITEES, LESSEES, LICENSEES AND PERMITTEES TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS GRANTOR AND GRANTOR'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "INDEMNITEES") 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, ATTORNEYS' FEES AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION AND GOVERNMENTAL OVERSIGHT COSTS) ENVIRONMENTAL OR OTHERWISE (COLLECTIVELY, "LIABILITIES") OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):**

- (i) THIS EASEMENT AGREEMENT, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,**
- (ii) ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS EASEMENT AGREEMENT,**
- (iii) OCCUPATION AND USE OF THE PREMISES BY GRANTEE, OR GRANTEE'S CONTRACTORS, SUBCONTRACTORS, AGENTS, INVITEES, LESSEES, LICENSEES AND PERMITTEES, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER (INDIVIDUALLY, A "GRANTEE PARTY," AND COLLECTIVELY, "GRANTEE PARTIES"),**
- (iv) THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED TO BY GRANTEE PARTIES, OR**
- (v) ANY ACT OR OMISSION OF GRANTEE PARTIES,**

**EVEN IF SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED TO, IN WHOLE OR IN PART, ANY NEGLIGENCE OF ANY INDEMNITEE. THE ONLY LIABILITIES WITH RESPECT TO WHICH GRANTEE'S OBLIGATION TO INDEMNIFY THE INDEMNITEES DOES NOT APPLY ARE LIABILITIES TO THE EXTENT PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE.**

**7.2 TO THE FULLEST EXTENT PERMITTED BY LAW, NOTWITHSTANDING THE LIMITATION IN SECTION 7.1, GRANTEE SHALL, AND SHALL CAUSE GRANTEE'S CONTRACTORS, SUBCONTRACTORS, AGENTS, INVITEES, LESSEES, LICENSEES AND PERMITTEES TO, NOW AND FOREVER WAIVE ANY AND ALL CLAIMS, REGARDLESS WHETHER BASED ON STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, THAT GRANTOR IS AN "OWNER", "OPERATOR", "ARRANGER", OR "TRANSPORTER" WITH RESPECT TO THE IMPROVEMENTS FOR THE PURPOSES OF CERCLA OR OTHER ENVIRONMENTAL LAWS. GRANTEE WILL INDEMNIFY, DEFEND AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS REGARDLESS OF THE NEGLIGENCE OF THE INDEMNITEES. GRANTEE FURTHER AGREES THAT THE USE OF THE PREMISES AS CONTEMPLATED BY THIS EASEMENT AGREEMENT SHALL NOT IN ANY WAY SUBJECT GRANTOR TO CLAIMS THAT GRANTOR IS OTHER THAN A COMMON CARRIER FOR PURPOSES OF ENVIRONMENTAL LAWS AND EXPRESSLY AGREES TO INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FOR ANY AND ALL SUCH CLAIMS. IN NO EVENT SHALL GRANTOR BE RESPONSIBLE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.**

**7.3 TO THE FULLEST EXTENT PERMITTED BY LAW, GRANTEE SHALL AND SHALL CAUSE GRANTEE'S CONTRACTORS, SUBCONTRACTORS, AGENTS, INVITEES, LESSEES, LICENSEES AND**

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.

9.3 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. If during the construction or subsequent maintenance of the Improvements, 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.

9.4 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.

9.5 Evidence of Compliance. Grantee agrees periodically to furnish Grantor with proof satisfactory to Grantor that Grantee is in compliance with this **Section 9**. Should Grantee not comply fully with the above-stated obligations of this **Section 9**, 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 12**.

**Section 10 PERSONAL PROPERTY WAIVER. ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF GRANTEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.**

**Section 11 Default and Termination.**

11.1 Grantor's Performance Rights. If at any time Grantee, or Grantee's Contractors, fails to properly perform its obligations under this Easement Agreement, Grantor, in its sole discretion, may: (i) seek specific performance of the unperformed obligations, or (ii) at Grantee's sole cost, may arrange for the performance of such work as Grantor deems necessary for the safety of its rail operations, activities and property, or to avoid or remove any interference with the activities or property of Grantor, or anyone or anything present on the rail corridor or property with the authority or permission of Grantor. Grantee shall promptly reimburse Grantor for all costs of work performed on Grantee's behalf upon receipt of an invoice for such costs. Grantor's failure to perform any obligations of Grantee or Grantee's Contractors shall not alter the liability allocation set forth in this Easement Agreement.

11.2 Grantor's Termination Rights. Grantor may, at its option, terminate this Easement Agreement by serving five (5) days' notice in writing upon Grantee: (i) if default shall be made in any of the covenants or agreements of Grantee contained in this Easement Agreement, (ii) in case of any assignment or transfer of the Easement by operation of law, or (iii) if Grantee should abandon or cease to use the Premises for the Easement Purpose. 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.

11.3 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 12**.

11.4 **Non-exclusive Remedies.** The remedies set forth in this **Section 11** shall be in addition to, and not in limitation of, any other remedies that Grantor may have at law or in equity.

**Section 12**     **Surrender of Premises.**

12.1 **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 the condition which existed as of the Effective Date.

12.2 **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 13**     **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 13** or any other section of this Easement Agreement.

**Section 14**     **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 15**     **Notices.** Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Grantor: BNSF Railway Company  
2500 Lou Menk Dr. – AOB3  
Fort Worth, Texas 76131  
Attn: Director of Real Estate

With a copy to: BNSF Railway Company  
2500 Lou Menk Drive  
Fort Worth, Texas 76131  
Attention: \_\_\_\_\_

If to Grantee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Section 16 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 30 days of the Effective Date, Grantor shall have the right to terminate this Easement Agreement upon notice to Grantee.

**Section 17 Miscellaneous.**

17.1 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.

17.2 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.

17.3 If any action at law or in equity is necessary to enforce or interpret the terms of this Easement Agreement, the prevailing party or parties shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party or parties may be entitled.

17.4 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.

17.5 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.

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

**ADMINISTRATIVE FEE**

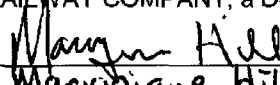
18. Grantee acknowledges that a material consideration for this agreement, without which it would not be made, is the agreement between Grantee and Grantor, that the Grantee shall pay upon return of this Agreement signed by Grantee to Grantor's Broker a processing fee in the amount of \$2,000.00 over and above the agreed upon Acquisition Price. Said fee shall be made payable to BNSF Railway Company by a separate check.

[Signature page follows]

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

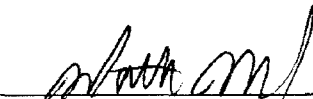
**GRANTOR:**

BNSF RAILWAY COMPANY, a Delaware corporation

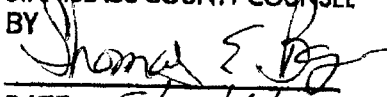
By:   
Name: Marvique Hill  
Title: Asst. Manager

**GRANTEE:**

COUNTY OF STANISLAUS

By:   
Name: Matthew Machado  
Title: Public Works Director

APPROVED AS TO FORM:  
STANISLAUS COUNTY COUNSEL  
BY

  
DATE: 9/22/14

**EXHIBIT "A"**

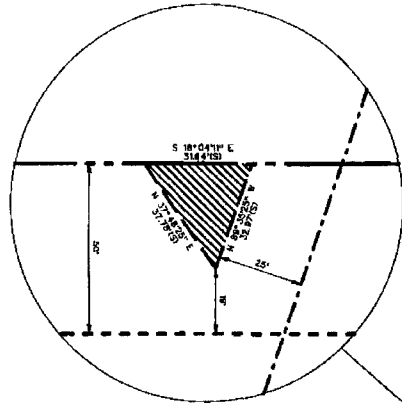
**Premises**

EXHIBIT A

Staubach Tracking II:  
 B&W Proj. No.: 012198.003  
 MAP REFERENCE:  
 Sta. - 508658  
 R/W - -

Scale: 1" = 100' +/-

This map used by BNSF RAILWAY COMPANY in the ordinary course of business, but it is subject to audit and should be used only with the expressed understanding the BNSF makes no representations whatsoever about the quality, accuracy, errors or omissions relating to this map.



1500 + 19.7 E.P.S. TH #12  
 1500 + 62.4 Fla. Av. Light #44 L  
 # Auto Coles

CLARIBEL RD

CANAL

1504 + 95.0 Private Road Xing

TERMINAL AVE

PROPERTY LINE

MDM

MDM

of Oakdale Irrigation District  
 S T O

inc 49 Lq 1504+76.7  
 c 303.42 1504+87.2

R/W Fence Retired per R 4179  
 On South Side 1796+00 to 141  
 Cattle Guard Retired at E S 1

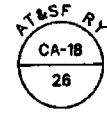
To: Calwa

To: Richmond

To: County of Stanislaus  
 At: Riverbank  
 Stanislaus County  
 California

Legend:  
 Permanent Easement

MEASUREMENTS BASED ON PROVIDED SURVEYS  
 (S) MEASUREMENTS TAKEN OFF SURVEY  
 (M) MEASUREMENT



California Division  
 Stockton Subdivision - L.S. 7200-8  
 Val. Sec. 48210  
 AT&SF RY CA-18, Map 26  
 Sec. 36, T2S, R9E MDM  
 July 16, 2014  
 M.P. 1094.50 JNC



**EXHIBIT "B"**

**Memorandum of Easement**

**THIS MEMORANDUM OF EASEMENT** is hereby executed this 19 day of March, 2015, 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 the COUNTY OF STANISLAUS ("**Grantee**"), whose address for purposes of this instrument is 1716 Morgan Rd., Modesto, CA, 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 Stanislaus County, California, as described on Exhibit "A" attached hereto and incorporated herein by reference (the "**Premises**");

**WHEREAS**, Grantor and Grantee entered into an Easement Agreement, dated March 19, 2015 (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. Provisions regulating the use and purposes to which the Easement shall be limited, are set forth in detail in the Easement Agreement and Grantor and Grantee agree to abide by the terms of the Easement Agreement.

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.

[Signature page follows]

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: Mary Hill  
Name: Mary Hill  
Title: Asst. Manager

GRANTEE:

COUNTY OF STANISLAUS

By: Matthew Machado  
Name: Matthew Machado  
Title: Public Works Director

STATE OF TEXAS §  
COUNTY OF TARRANT §

This instrument was acknowledged before me on the 19 day of MARCH, 2005, by Mary Hill (name) as Asst. Manager (title) of BNSF RAILWAY COMPANY, a Delaware corporation.



Cathy J. Benton  
Notary Public

(Seal)

My appointment expires: Feb 17, 2019

STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_ (name) as \_\_\_\_\_ (title) of \_\_\_\_\_, a \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

(Seal)

My appointment expires: \_\_\_\_\_

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT**

STATE OF CALIFORNIA )  
COUNTY OF Stanislaus )

On September 30, 2014 before me, Keimi Espinoza, Notary Public  
DATE INSERT NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC

personally appeared, Matthew Machado

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/hers/their authorized capacity(ies), and that by his/hers/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Keimi Espinoza (SEAL)  
NOTARY PUBLIC SIGNATURE

**OPTIONAL INFORMATION**

THIS OPTIONAL INFORMATION SECTION IS NOT REQUIRED BY LAW BUT MAY BE BENEFICIAL TO PERSONS RELYING ON THIS NOTARIZED DOCUMENT.

TITLE OR TYPE OF DOCUMENT Memorandum of Easement: BNSF Railway Company

DATE OF DOCUMENT \_\_\_\_\_ NUMBER OF PAGES \_\_\_\_\_

SIGNERS(S) OTHER THAN NAMED ABOVE \_\_\_\_\_

SIGNER'S NAME \_\_\_\_\_ SIGNER'S NAME \_\_\_\_\_

RIGHT THUMBPRINT  
[Empty box for right thumbprint]

RIGHT THUMBPRINT  
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