



## SIGNAL RELOCATION AGREEMENT

**BNSF File No.: BF20221162**  
**Mile Post 994.34**  
**Line Segment 7200**  
**Bakersfield Subdivision**

THIS SIGNAL RELOCATION AGREEMENT (hereinafter called, "Agreement"), is executed to be effective as of, by and between the CITY OF FRESNO, a Political Subdivision of the State of California, (hereinafter called, "AGENCY"), and **BNSF RAILWAY COMPANY**, a Delaware Corporation (hereinafter called, "RAILROAD");

### WITNESSETH:

WHEREAS, in the interest of enhancing the public utility sewer line, the AGENCY is undertaking a project to reimburse BNSF for the relocation of Signal Equipment;

WHEREAS, the project of the relocation of Signal Equipment is located adjacent to BNSF LS 7200 MP 994.34 and North Avenue as indicated on Exhibit "A", which depicts the signal conflict locations attached hereto and incorporated herein;

WHEREAS, the parties agree that the RAILROAD will receive no ascertainable benefit from the signal equipment relocation (hereinafter collectively called, "Signal Equipment");

WHEREAS, the AGENCY is paying for the acquisition and installation of signal equipment near BNSF LS 7200 MP 994.34 and North Avenue;

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

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



## **ARTICLE I – SCOPE OF WORK**

1. The term “Project” as used in this agreement includes any and all work related to the relocation of signal equipment near BNSF LS 7200 MP 994.34 and North Avenue, more particularly described on Exhibit “A” which are attached hereto and incorporated herein, including, but not limited to, any and all changes to signal and electrical lines and appurtenances, installation of new cables, inspection of all work, temporary and permanent track work, grading, alterations to or new construction of drainage facilities, preliminary and construction engineering and contract preparation.

## **ARTICLE II – RAILROAD OBLIGATIONS**

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

1. The RAILROAD will, using its own labor forces under applicable labor agreements, install the Signal Equipment in order to accommodate the AGENCY’S proposed utility replacement project. The work will be performed at AGENCY’S expense and in accordance with the plans and specifications approved by AGENCY and BNSF. The plans and specifications are attached to this Agreement as Exhibit “A” and incorporated herein.
2. A detailed estimate of RAILROAD’S construction engineering, installation labor (including the costs, if any, of electrical service from a public utility) and material costs required for the Project are attached hereto as Exhibit “B” and incorporated herein. In the event construction for the Project has not commenced within six (6) months following the effective date of this Agreement, RAILROAD may, in its sole and absolute discretion, revise the cost estimates set forth in said Exhibit “B”. In such event, the revised cost estimates will become a part of this Agreement as though originally set forth herein. Any item of work incidental to the items listed on Exhibit “B” not specifically mentioned therein may be included as a part of this Agreement upon written approval of AGENCY, which approval will not be unreasonably withheld.
3. RAILROAD will furnish all labor, materials, tools and equipment for the railroad portion of the work required for the construction of the Project.
4. The RAILROAD will, at AGENCY’S expense, dispose of all scrap from the RAILROAD’S work hereunder.
5. The RAILROAD will finalize and complete billing of all incurred costs under this Agreement no later than one (1) year following installation of the Signal Equipment.



### ARTICLE III – AGENCY OBLIGATIONS

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

1. AGENCY must perform, at AGENCY’S expense, the following work:
  - a) Installation of an 85-inch diameter casing and a 66-inch diameter carrier pipe in accordance with executed permit 19-64105 once the RAILROAD has completed the relocation of Signal Equipment.
  - b) Restoration of the Railroads ROW to original conditions.
2. The AGENCY will approve the location of the signals prior to installation by RAILROAD.
3. Actual costs for engineering, materials and labor (including third party charges for the installation of electrical service) associated with the installation of the Signal Equipment must be paid by the AGENCY (including taxes, such as applicable sales and use taxes, business and occupation taxes, and similar taxes).
4. In the event the services of a consultant are needed after execution of this Agreement due to any exigency of the RAILROAD and the Project, the AGENCY and the RAILROAD will mutually agree, in writing, as to the selection of a consultant and the applicable scope of work to be performed by such consultant. All work performed hereunder by any consultant and any resulting costs must be paid by AGENCY as a part of the costs for the Project.
5. During the installation of the Signal Equipment RAILROAD will send AGENCY progressive invoices detailing the costs of the work performed by RAILROAD under this Agreement. AGENCY must reimburse RAILROAD for completed force-account work within thirty (30) days of the date of the invoice for such work. Upon completion of the Project, RAILROAD will send AGENCY a detailed invoice of final costs, segregated as to labor and materials for each item in the recapitulation shown on Exhibit “B”. Pursuant to this section, AGENCY must pay the final invoice within ninety (90) days of the date of the final invoice. RAILROAD will assess a finance charge of .033% per day (12% per annum) on any unpaid sums or other charges due under this Agreement which are past its credit terms. The finance charge continues to accrue daily until the date payment is received by RAILROAD, not the date payment is made or the date postmarked on the payment. Finance charges will be assessed on delinquent sums and other charges as of the end of the month and will be reduced by amounts in dispute and any un-posted payments received by the month’s end. Finance charges will be noted on invoices sent to AGENCY under this section. **For purposes of computing the time limits prescribed by Section 911.2 of the California Government Code for the presentment of a claim against the Agency the cause of action for failure to reimburse BNSF for the costs of the Railroad work performed by it pursuant to this Agreement shall be deemed to have accrued one hundred and eighty (180) days of the date of the final invoice.**



**6. Intentionally left blank.**

7. The AGENCY must give RAILROAD's Director Engineering Services, Jeff Swanson ([Jeff.Swanson@BNSF.com](mailto:Jeff.Swanson@BNSF.com)) written Notice to Proceed with the railroad portion of the work after receipt of necessary funds for the Project. BNSF will not begin the railroad work (including, without limitation, procurement of supplies, equipment or materials) until written notice to proceed is received from Agency.

**ARTICLE IV- JOINT OBLIGATIONS**

In consideration of the mutual covenants of the parties contained herein and the premises, the parties mutually agree as follows:

1. All cost records of the RAILROAD pertaining to the Project will be open to inspection and audit at any reasonable time by representatives of the AGENCY (including the legislative auditor and fiscal analyst for the AGENCY) for a period of one (1) year from the date of the final RAILROAD invoice under this Agreement.
2. Upon completion of the installation of the Signal, the RAILROAD, will, at its sole cost and expense, operate and maintain the Signal Equipment in proper condition.
3. Notwithstanding the preceding provision, if any regulations, ordinances, acts, rules or other laws subsequently passed or amended by the AGENCY or any other appropriate governmental or legislative authority increase the AGENCY'S portion of maintenance costs under this Agreement, RAILROAD will receive the benefit of any such regulations, ordinances, acts, rules or other laws and the AGENCY'S increased portion of maintenance costs will be incorporated into and made a part of this Agreement.
4. If a railway or a highway improvement project necessitates rearrangement, relocation, or alteration of the Signal Equipment installed hereunder, the costs for such rearrangement, relocation or alteration will be the responsibility of the party requesting such changes.
5. This Agreement will inure to the benefit of and be binding on the parties hereto, their successors, and assigns.
6. In the event any paragraph contained in this Agreement or any item, part, or term within any particular paragraph is determined by a court of competent jurisdiction to be invalid or unenforceable, the validity of the remaining paragraphs or items will not be affected; and the rights and obligations of the parties will be construed and enforced as if this Agreement did not contain that particular paragraph or item held to be invalid or unenforceable.



7. This Agreement may be signed in counterparts, any one of which will be deemed to be an original. The parties further agree that any facsimile copy of a party's signature is valid and binding to the same extent as an original signature.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**BNSF RAILWAY COMPANY**

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

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

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

**CITY OF FRESNO**

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

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

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

### Exhibit "A"



Know what's below.  
Call before you dig.

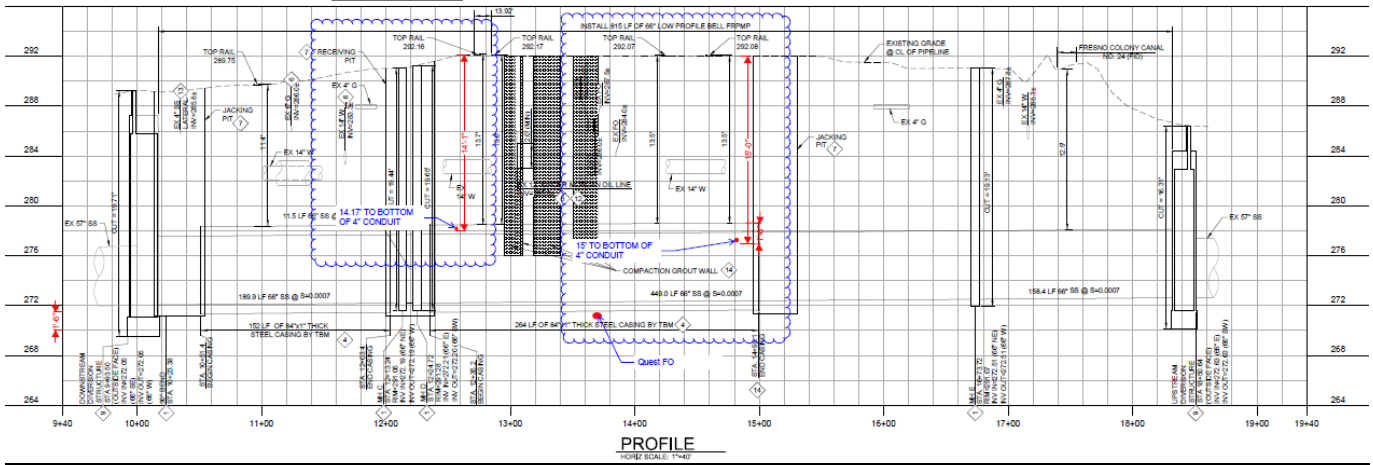
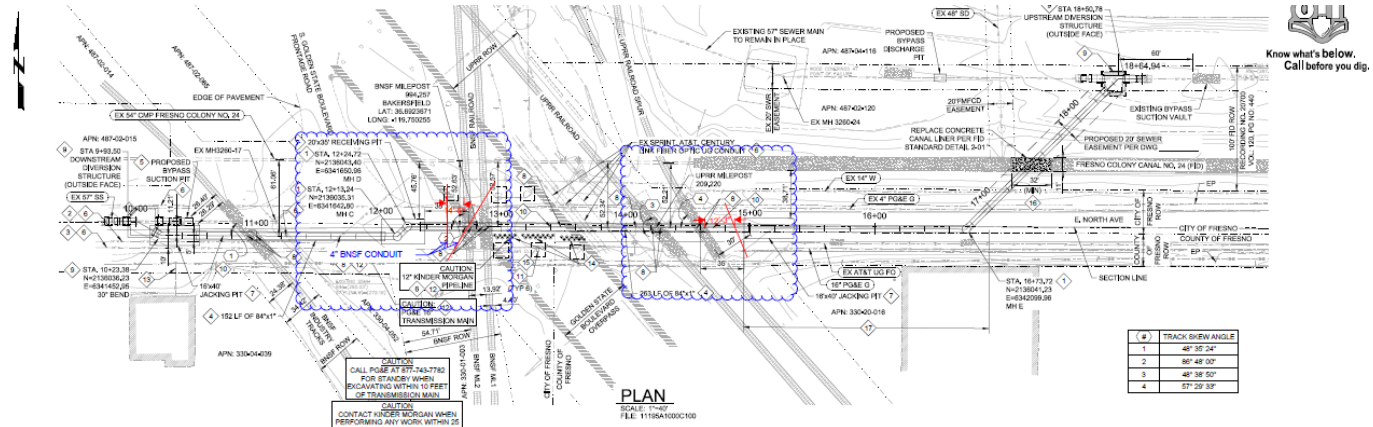




Exhibit "B"

# Estimate Summary

Sequence Number:	88653
Estimate Name:	Cable Relocate Calwa Diamonds
Estimate Cost Type:	Capital Expansion
Estimated By:	Rod E Burghart
Date:	6/17/2022 3:23:01 PM
Line Segment:	7200
MP From:	994.34
To MP:	994.34
Billable Party:	
Billable Party Description:	
Billable Percentage:	0.00 %
Raw Material Total:	\$9,918
Equipment Rental:	\$6,240
Boring:	\$0
Contract Engineering:	\$50,000
Contract Labor:	\$0
Signal Labor:	\$248,497
Electrical:	\$0
Signal Shop Labor:	\$0
Track:	\$0
Signal Technician Labor:	\$0
Install Joints:	\$0
<b>Sub Total:</b>	<b>\$316,588</b>
Contingencies:	\$63,318
Project Net Cost Capital:	\$379,906
Signal Labor Operating:	\$0
Welder Operating:	\$0
Remove Joints:	\$0
Project Net Cost Operating:	\$0
<b>Project Total Cost:</b>	<b>\$379,906</b>