



Contract Number: BF-20518889

GRADE CROSSING CONSTRUCTION AND MAINTENANCE AGREEMENT

BNSF File No.: BF-20518889

Mile Post 1.45

Line Segment 477

U.S. DOT Number 245260W Walnut Street

Pikes Peak Subdivision

This Agreement ("**Agreement**"), is executed to be effective as of [_____, ____] ("**Effective Date**"), by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**BNSF**") and the **City and County of Denver**, a political subdivision of the State of ("**Agency**").

RECITALS

WHEREAS, BNSF owns and operates a line of railroad in and through the City and County of Denver; State of Colorado;

WHEREAS, in the interest of aiding vehicular travel and public safety, the Agency is undertaking a project to improve the existing Walnut Street at-grade crossing, located at BNSF Line Segment **477** and Milepost **1.45**, and designated by D.O.T. No. **245260W**, by reconstructing and widening the roadway, installing railroad crossing signals and activation equipment, roadway modifications, sidewalk / bike pathways, updated pavement markings and advance warning signage 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 and traffic signal equipment (hereinafter collectively called, "Crossing Equipment"); and

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

WHEREAS, the Agency is paying for the acquisition and installation of Crossing Equipment and the new crossing surface at Walnut Street.



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WHEREAS, the BNSF agrees to purchase and install, at AGENCY'S sole expense, the Crossing 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 reconstructing and widening the roadway, installing railroad crossing signals and activation equipment, roadway modifications, sidewalk / bike pathways, updated pavement markings and advance warning signage and associated modifications and updates of the Walnut Street by Agency and installation of crossing surfaces at U.S. D.O.T No. **245260W**, (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 – RAILROAD OBLIGATIONS

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

- 1) Upon Agency's payment to BNSF of an administrative fee in the sum of Two Thousand Five Hundred and No/100 Dollars (\$2,500), BNSF hereby grants to Agency, its successors and assigns, upon and subject to the terms and conditions set forth in this Agreement, as is necessary to reconstruct, widen, and install railroad crossing signals and activation equipment, roadway modifications, sidewalk / bike pathways, updated pavement markings and advance warning signage and associated modifications and updates and thereafter maintain, the Crossing as described further on Exhibit A-1, 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;



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- 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 Project begins on the Effective Date and ends on the earlier of (i) substantial completion of the Project, or (ii) 12 months following the Effective Date. Agency acknowledges and agrees that Agency shall not have the right to use the Project 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.

- 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 as though originally set forth herein. 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;



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- E. Reserved.
 - F. Removal and disposal of the existing crossing surfaces from the Crossing;
 - G. Installation of Two 48 foot concrete crossing surface for the one track complete with new rail, ties, ballast, fasteners, along with appropriate surfacing, to carry the improved roadway and sidewalks;
 - H. Installation of Crossing Equipment as shown on Exhibit A;
 - I. Make such changes in the alignment, location and elevation of its telephone, telegraph, signal and/or wire lines and appurtenances along, over or under the tracks, both temporary and permanent, as may become necessary by reason of the construction of the Project.
- 3) BNSF will do all railroad work set forth in Article II, Section 2 above on an actual cost basis, when BNSF, in its sole discretion, determines it is required by its labor agreements to perform such work with its own employees working under applicable collective bargaining agreements.
- 4) Agency agrees to reimburse BNSF for work of an emergency nature caused by Agency or Agency's contractor in connection with the Project which BNSF deems is reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons or BNSF property. Such work may be performed by BNSF without prior approval of Agency and Agency agrees to fully reimburse BNSF for all such emergency work.
- 5) BNSF may charge Agency for insurance expenses, including self-insurance expenses, when such expenses cover the cost of Employer's Liability (including, without limitation, liability under the Federal Employer's Liability Act) in connection with the construction of the Project. Such charges will be considered part of the actual cost of the Project, regardless of the nature or amount of ultimate liability for injury, loss or death to BNSF's employees, if any.
- 6) During the construction of the Project, BNSF will send Agency progressive invoices detailing the costs of the railroad work performed by BNSF under this Agreement. Agency must reimburse BNSF for completed force-account work within thirty (30) days of the date of the invoice for such work. Upon completion of the Project, BNSF will send Agency a detailed invoice of final costs, segregated as to labor and materials for each item in the recapitulation shown on Exhibit D. Pursuant to this section and Article IV, Section 7 herein, Agency must pay the final invoice within ninety (90) days of the



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date of the final invoice. BNSF will assess a finance charge of .033% per day (12% per annum) on any unpaid sums or other charges due under this Agreement which are past its credit terms. The finance charge continues to accrue daily until the date payment is received by BNSF, not the date payment is made or the date postmarked on the payment. Finance charges will be assessed on delinquent sums and other charges as of the end of the month and will be reduced by amounts in dispute and any unposted payments received by the month's end. Finance charges will be noted on invoices sent to Agency under this section.

ARTICLE III – AGENCY OBLIGATIONS

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

- 1) Agency must furnish to BNSF plans and specifications for the Project. Said plans (reduced size 11" x 17"), showing the plan and profile of the roadway work on BNSF right-of-way and marked as Exhibit A, attached hereto and made a part hereof, must be submitted to BNSF for the development of railroad cost estimates.
- 2) Agency must make any required application and obtain all required permits and approvals for the construction of the Project.
- 3) Agency must acquire all rights of way necessary for the construction of the Project.
- 4) Agency must make any and all arrangements, in compliance with BNSF's Utility Accommodation Manual (<http://www.bnsf.com/communities/faqs/pdf/utility.pdf>), for the installation or relocation of wire lines, pipe lines and other facilities owned by private persons, companies, corporations, political subdivisions or public utilities other than BNSF which may be necessary for the construction of the Project.
- 5) Agency must construct the Project as shown on the attached Exhibit A and do all work ("Agency's Work") provided for in the plans and specifications for the Project, except railroad work that will be performed by BNSF hereunder. Agency must furnish all labor, materials, tools and equipment for the performance of Agency's Work. The principal elements of Agency's Work are as follows:
 - A. Design and Reconstruction/Construction of Walnut Street;
 - B. Installation of a pavement marking stop bar in accordance with the Manual on Uniform Traffic Control Devices (hereinafter called, "MUTCD");



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- 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, and also during the installation of the Crossing Equipment.
 - G. Construct asphalt/concrete roadway surface on approaches to each track. Roadway surface will match elevation of the Main (and Siding) Track crossing surface(s) and remain level to a point at least thirty (30) feet from nearest rail. Any concrete headers will be constructed no closer than 5'-6" (preferably 6'-0") from centerline of each track to provide for a minimum of 11'-0" (preferably 12'-0") opening for track and railroad crossing surface;
 - H. Provide and place six (6) to twelve (12) inch wide section of asphalt between roadway concrete headers (and sidewalks) and the new concrete crossing surfaces, including that portion of Walnut Street located between the Main Tracks.;
 - I. Job site cleanup including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials to the satisfaction of BNSF;
- 6) The Agency will approve the location of the signals and signal bungalow prior to the installation by BNSF.
- 7) The Agency must have advanced railroad crossing signs and standard pavement markings in place at the crossing shown on Exhibit A (if the same are required by the MUTCD) prior to the acceptance of this Project by the Agency.
- 8) The Agency must give BNSF's Manager Public Projects written notice to proceed ("**Notice to Proceed**") with the railroad portion of the work after receipt of necessary funds for the Project. BNSF will not begin the railroad work (including, without limitation, procurement of supplies, equipment or materials) until written Notice to Proceed is received from Agency.



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- 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.contractororientation.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 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 BNSF Engineering Contact to stop construction at no cost to the Agency or BNSF until these items are completed.



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- 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;



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- 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 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 THAT THE AGENCY MAY BE HELD LIABLE, 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,**



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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 OCCUPATION AND USE OF BNSF'S PROPERTY OR RIGHT-OF-WAY, INCLUDING, WITHOUT LIMITATION, SUBSEQUENT MAINTENANCE OF THE CROSSING BY AGENCY, OR (V) 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) Agency does not intend to waive or release, and hereby reserves, any legal basis or defenses relating to the legality or enforceability of indemnification by Agency, including, but not limited to, arguments that indemnification violates Agency's Charter and Ordinances, Colorado Statutes, the Colorado Constitution, and any other applicable federal, state, or local laws.

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.



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- 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 administrative fee 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 this Agreement, BNSF may immediately terminate this Agreement. 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:

Kenneth Kochevar
Project Management City and County of Denver
kenneth.kochevar@denvergov.org
720-913-4593

- 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



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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 Kenneth Kochevar for appropriate corrective action.

- 6) Pursuant to this section and Article II, Section 6 herein, Agency must, 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), less BNSF's Share as set forth in Article IV, Section 6 herein. BNSF's Share must be paid upon completion of the Project. , less BNSF's Share as set forth in Article IV, Section 6 herein. BNSF's Share must be paid upon completion of the Project.
- 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 and D.O.T. Crossing No. 245260W and must state the time that construction activities will begin.
- 9) In addition to the terms and conditions set forth elsewhere in this Agreement, BNSF and the Agency agree to the following terms upon completion of construction of the Project:
 - A. Agency will own and be fully responsible for repairs, maintenance, future construction or reconstruction of the Walnut Street roadway. including the portion of roadway located between the tracks.
 - B. will maintain the elevation of the Walnut Street roadway approaches to match the elevation on the railroad track crossing surfaces and to be no more than three (3) inches above or six (6) inches below top-of-rail elevation at a distance measured thirty (30) feet from the nearest rail.



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- C. Agency will maintain the advanced railroad crossing warning signs and pavement markings and agrees to hold harmless and indemnify BNSF for any claims, damages or losses, in whole or in part, caused by or due to the Agency's failure to maintain the advanced warning signs and markings or other requirements of the MUTCD.
- D. Agency will do nothing and permit nothing to be done in the maintenance of the Walnut Street roadway, which will interfere with or endanger facilities of BNSF.
- E. It is expressly understood by Agency and BNSF that any right to install utilities will be governed by a separate permit or license agreement between the parties hereto.
- F. BNSF will, at its sole cost and expense, operate and maintain the Crossing Signal Equipment, and the new crossing surfaces, from end-of-tie to end-of-tie, in proper condition , and the new crossing surfaces, from end-of-tie to end-of-tie,
- G. Notwithstanding the preceding provision, if any regulations, ordinances, acts, rules or other laws subsequently passed or amended by the Agency or any other governmental or legislative authority increase the Agency's portion of maintenance cost under this Agreement, BNSF will receive the benefit of any such regulations, ordinances, acts, rules or other laws and the Agency's increased portion of maintenance costs will be incorporated into and made a part of this Agreement.
- H. If a railway or highway improvement project necessitates rearrangement, relocation, or alteration of the Crossing Signal Equipment, , or the new crossing surface or the new crossing surface installed hereunder, the costs for such rearrangement, relocation or alteration will be the responsibility of the party requesting such changes.
- I. If any of the Crossing Signal Equipment is partially or wholly destroyed, then such repair and/or replacement costs must be distributed among the parties as follows:
 - i) In the event the BNSF's sole negligence destroys or damages the Crossing Signal Equipment, BNSF must, at its sole cost and expense, replace or repair such Crossing Signal Equipment.



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- ii) In the event the Crossing Signal Equipment is damaged or destroyed by any other cause, Agency must reimburse BNSF for the costs to replace or repair such Crossing Signal Equipment.
- 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 Colorado and the Federal Highway Administration, for a period of three (3) years from the date of 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 24 months 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.



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- 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:
- 18)

BNSF: BNSF's Manager Public Projects
3700 Globeville Road
Denver, CO 80216

Agency: 201 W. Colfax Ave,
Dept. 608
Denver, CO 80202

- 19) Nothing herein shall constitute a multiple fiscal year obligation pursuant to Colorado Constitution, Article X, Section 20. The Agency's obligations under this Agreement are subject to annual appropriation by the City Council of the Agency, provided that, Agency represents and warrants that the Agency's obligation for the cost of construction of the Project as provided herein has either already been approved for expenditure as part of the current or pending appropriation(s) or is funded by third party sources, including grants, and not subject to appropriation. Any failure of a City Council annually to appropriate adequate monies to finance the City's continuing obligations in subsequent fiscal years under this Agreement shall terminate this Agreement, and the Agency and BNSF's obligations thereunder at such time as such then-existing appropriations are to be depleted. Notice shall be given promptly to BNSF of any failure to appropriate such adequate monies.

SIGNATURE PAGE FOLLOWS



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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.

BNSF RAILWAY COMPANY

By: _____

Printed Name: _____

Title: _____

WITNESS:

AGENCY

City and County of Denver

WITNESS:

By: *See attached signature page.

Printed Name: _____

Title: _____

Contract Control Number:

DOTI-202580640-00

Contractor Name:

BNSF Railway Company

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at
Denver, Colorado as of:

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

By:

By:

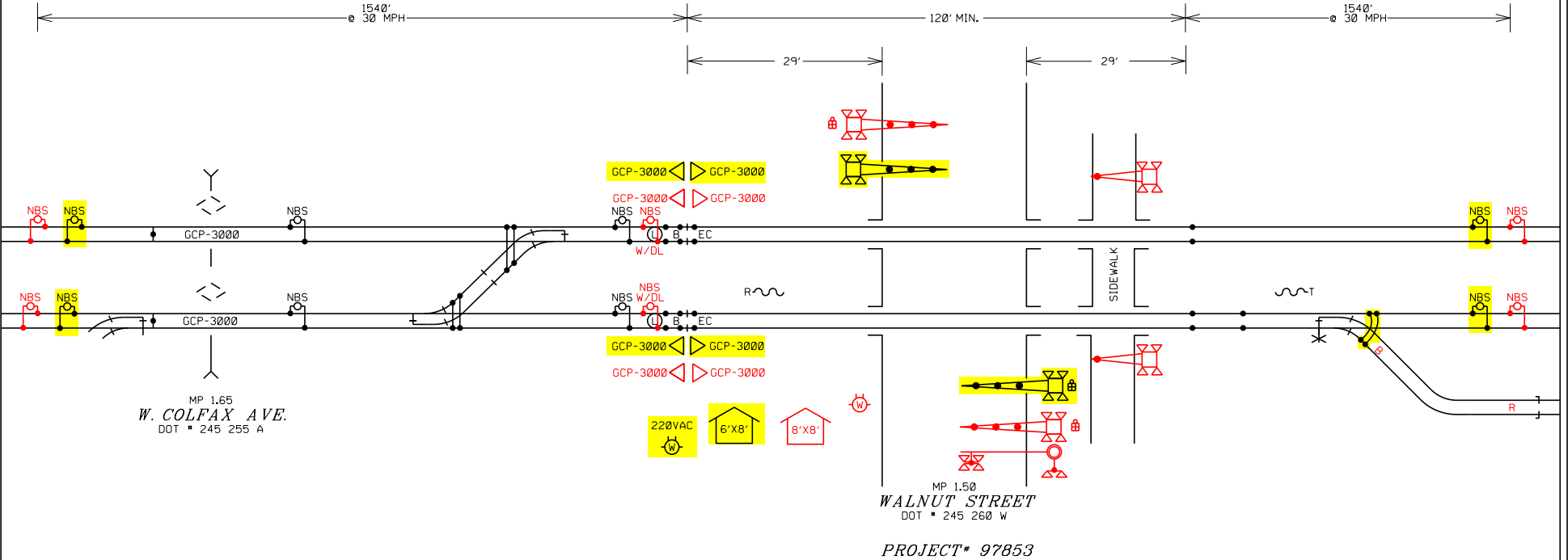
By:



Contract Number: BF-20518889

Exhibit A
'Premises'

BNSF RAILWAY COMPANY



WARNING TIMES

Minimum Warning Time	20 seconds
Buffer Time	10 seconds
Equipment Response Time	4 seconds
Clearance Time	1 seconds

Total Warning Time	31 seconds
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DRAWING SYMBOLS

RAILROAD BUNGALOW	BIDIRECTIONAL CROSSING CONTROL	GATE MECHANISM	NARROW BAND SHUNT
BELL	CROSSING CONTROL CONNECTION	AC POWER METER	UNIDIRECTIONAL CROSSING CONTROL
HARD WIRED SHUNT	CANTILEVER	INSULATED JOINTS	

SCOPE OF WORK

REPLACE: FLASHERS, GATES, CANTILEVERS & BUNGALOW
CONTROL DEVICES: CONSTANT WARNING
SALVAGE: NONE

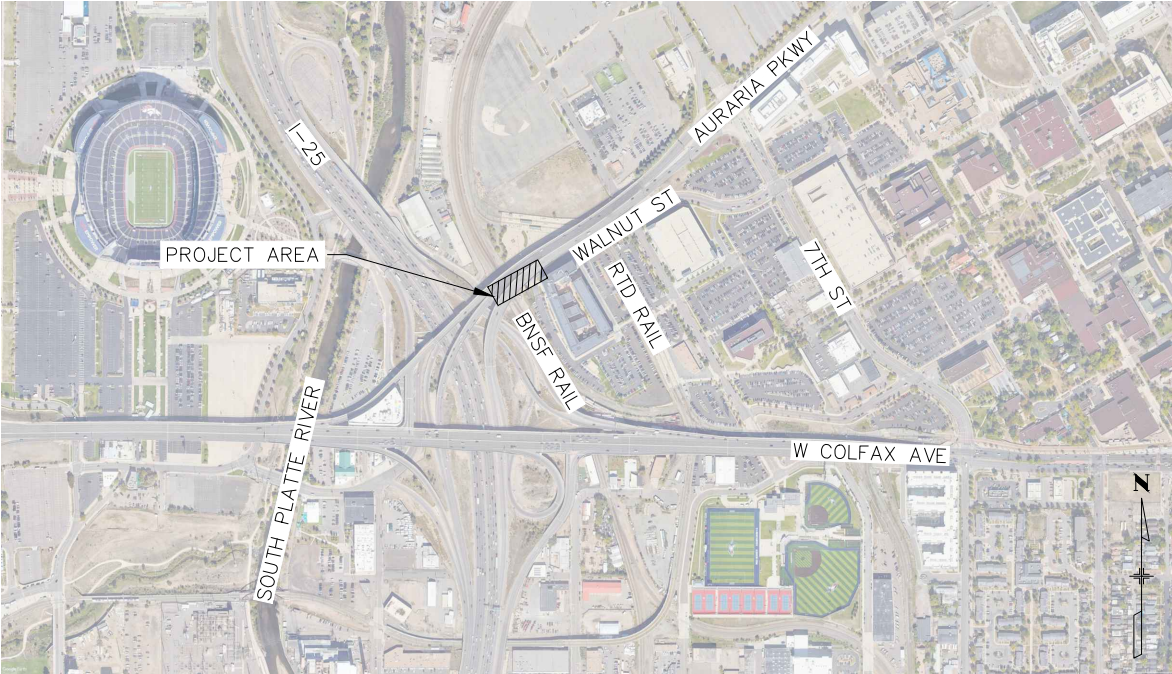
GENERAL INFORMATION

LOCATION	DENVER, CO
STREET	WALNUT STREET
LINE SEGMENT	0477
MILEPOST	1.50
DOT#	245 260 W
DIVISION	POWDER RIVER
SUBDIVISION	PIKES PEAK
OFFICE	LENEXA, KS
SCALE	NOT TO SCALE
DATE	05/01/2024
FILE	97853-STATESKETCH-.DGN
DRAW	AMW

RED = IN YELLOW = OUT

CITY AND COUNTY OF DENVER
DEPARTMENT OF TRANSPORTATION AND INFRASTRUCTURE
TRANSPORTATION IMPLEMENTATION DIVISION
2024-PROJMSTR-0000038
SPORTS WALK
(WALNUT STREET AT CONSOLIDATED MAIN LINE TRACK CROSSING)

TABULATION OF LENGTH AND DESIGN DATA	
STATION	LINEAR FEET
	ROADWAY
WALNUT ST	
STA. 0+07.78 TO 0+58.24	50.5
STA. 10+07.29 TO 10+75.86	68.6
TOTAL	119.1
SUMMARY	
PROJECT GROSS LENGTH (FEET)	119.1
PROJECT GROSS LENGTH (MILES)	0.03
DESIGN DATA	
MINIMUM FLOWLINE GRADE	0.3%
MAXIMUM SIDEWALK CROSS SLOPE	1.87%
MAXIMUM SIDEWALK RUNNING SLOPE	5.21%
ADT	5000
ASSUMED POSTED SPEED	25 MPH
DISTURBED AREA (ACRE)	0.07

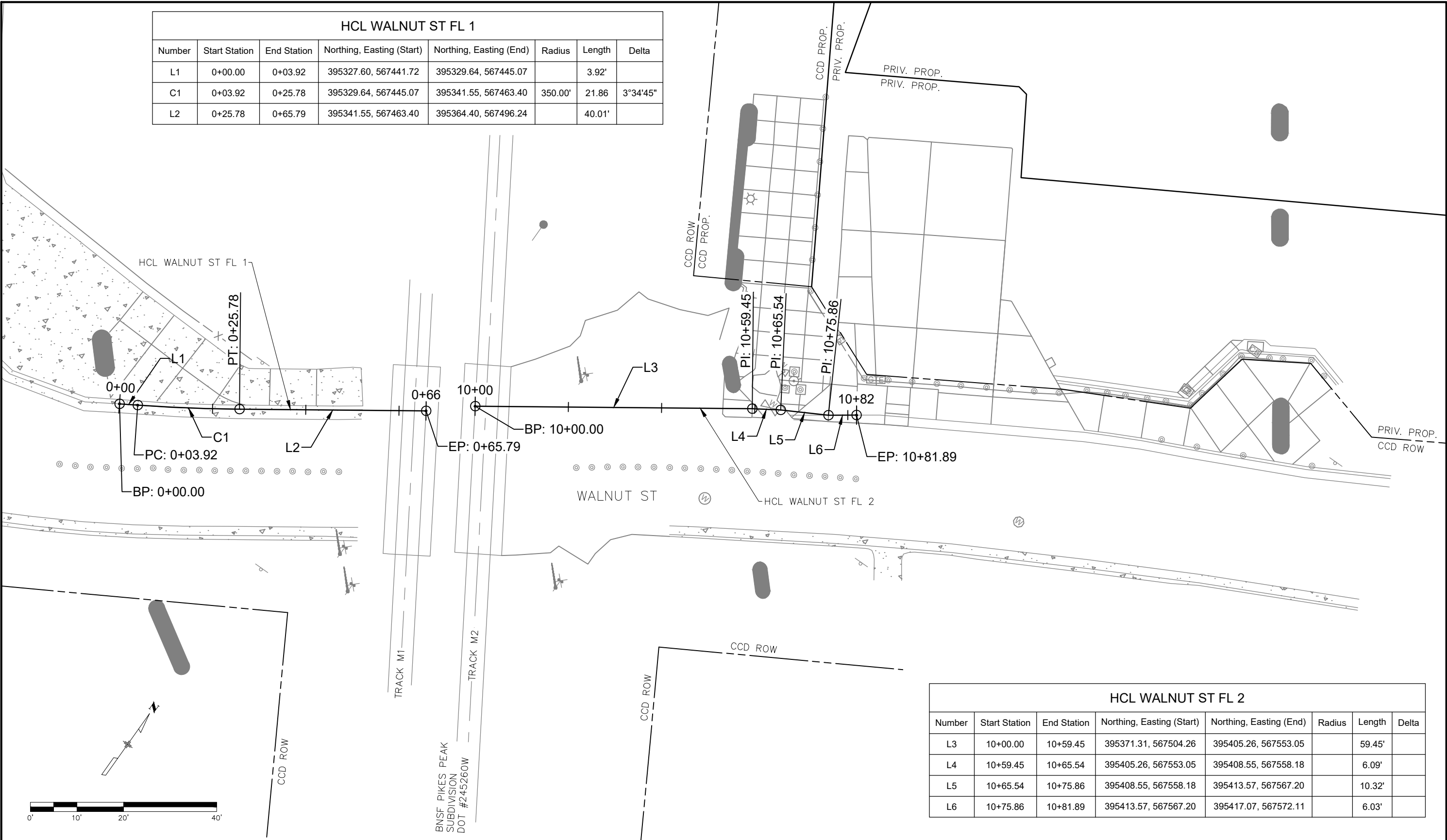


LOCATION MAP

Sheet No.	Sheet Name
1	Title Sheet
2-3	CCD Standard Plans List
4-8	General Notes
9	SOAQ
10	Horizontal Control
11-12	Survey Control
13	Removal Tabulations
14	Removal Plan
15	Earthwork Tabulations
16	Sidewalk Tabulations
17	Sidewalk Plan
18-20	Profile/Details
21	Signing and Striping Tabulations
22	Signing and Striping Plan
23-24	Signing and Striping Details
25	Pedestrian Swing Gate Detail
26	Rail Crossing Site Plan
27	Traffic Control Tabulations
28	Traffic Control Detour Plan
29	Traffic Control Detail
30-35	Cross Sections

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HCL WALNUT ST FL 1							
Number	Start Station	End Station	Northing, Easting (Start)	Northing, Easting (End)	Radius	Length	Delta
L1	0+00.00	0+03.92	395327.60, 567441.72	395329.64, 567445.07		3.92'	
C1	0+03.92	0+25.78	395329.64, 567445.07	395341.55, 567463.40	350.00'	21.86	3°34'45"
L2	0+25.78	0+65.79	395341.55, 567463.40	395364.40, 567496.24		40.01'	



HCL WALNUT ST FL 2							
Number	Start Station	End Station	Northing, Easting (Start)	Northing, Easting (End)	Radius	Length	Delta
L3	10+00.00	10+59.45	395371.31, 567504.26	395405.26, 567553.05		59.45'	
L4	10+59.45	10+65.54	395405.26, 567553.05	395408.55, 567558.18		6.09'	
L5	10+65.54	10+75.86	395408.55, 567558.18	395413.57, 567567.20		10.32'	
L6	10+75.86	10+81.89	395413.57, 567567.20	395417.07, 567572.11		6.03'	

Print Date: 1/16/2025

File Name: SportsWalk Horizontal Control Plan.dwg

Horiz. Scale: 1:20 Vert. Scale: N/A

WILSON & COMPANY
ENGINEERS & ARCHITECTS

990 S Broadway, Suite 220
Denver, CO 80209
(303) 297-2976 main
(303) 297-2693 fax
www.wilsoncoo.com

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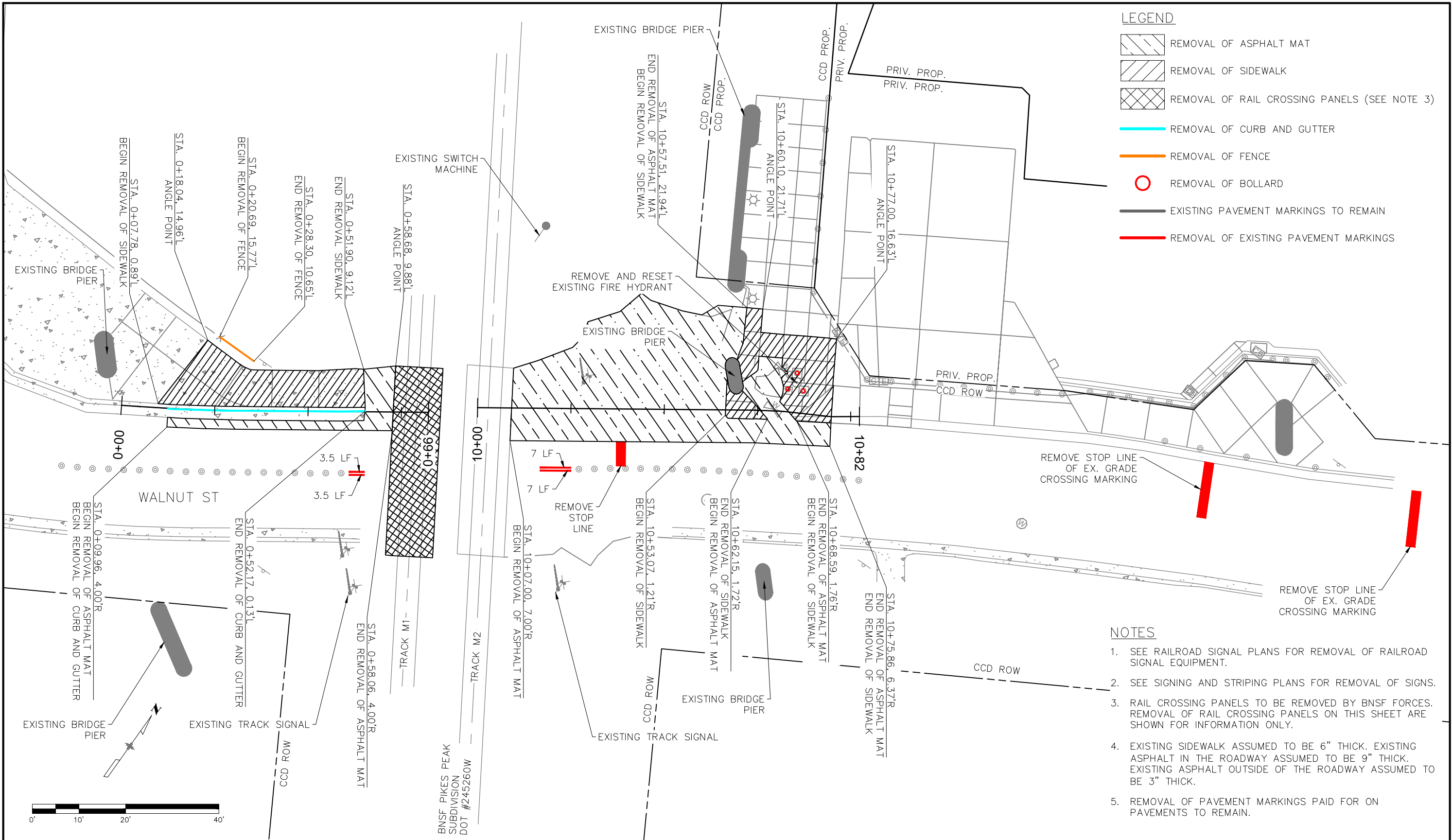
Sheet Revisions		
Date:	Comments	Init.

DEPARTMENT OF TRANSPORTATION
& INFRASTRUCTURE
201 WEST COLFAX AVENUE
DENVER, CO 80202
PHONE: (720) 913-4501
FAX: (720) 913-4544

As Constructed		SPORTS WALK HORIZONTAL CONTROL	
No Revisions:		Designer: KPM	Structure Numbers
Revised:		Detailer: KPM	
Void:		Sheet Subset: CONTROL	Subset Sheets: 1 of 1

Project No./Code	
2024-CIP-0000009	
2024-PROJMSTR-0000038	
Sheet Number	10

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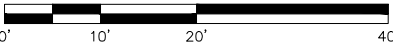


LEGEND

- REMOVAL OF ASPHALT MAT
- REMOVAL OF SIDEWALK
- REMOVAL OF RAIL CROSSING PANELS (SEE NOTE 3)
- REMOVAL OF CURB AND GUTTER
- REMOVAL OF FENCE
- REMOVAL OF BOLLARD
- EXISTING PAVEMENT MARKINGS TO REMAIN
- REMOVAL OF EXISTING PAVEMENT MARKINGS

- NOTES**
- SEE RAILROAD SIGNAL PLANS FOR REMOVAL OF RAILROAD SIGNAL EQUIPMENT.
 - SEE SIGNING AND STRIPING PLANS FOR REMOVAL OF SIGNS.
 - RAIL CROSSING PANELS TO BE REMOVED BY BNSF FORCES. REMOVAL OF RAIL CROSSING PANELS ON THIS SHEET ARE SHOWN FOR INFORMATION ONLY.
 - EXISTING SIDEWALK ASSUMED TO BE 6" THICK. EXISTING ASPHALT IN THE ROADWAY ASSUMED TO BE 9" THICK. EXISTING ASPHALT OUTSIDE OF THE ROADWAY ASSUMED TO BE 3" THICK.
 - REMOVAL OF PAVEMENT MARKINGS PAID FOR ON PAVEMENTS TO REMAIN.

Print Date: 1/27/2025		0000	Sheet Revisions			DEPARTMENT OF TRANSPORTATION & INFRASTRUCTURE 201 WEST COLFAX AVENUE DENVER, CO 80202 PHONE: (720) 913-4501 FAX: (720) 913-4544	As Constructed		SPORTS WALK REMOVAL PLAN			Project No./Code	
File Name: SportsWalk Removal Plan.dwg			Date:	Comments	Init.		No Revisions:					2024-CIP-0000009	
Horiz. Scale: 1:20 Vert. Scale: N/A							Revised:		Designer: KPM	Structure		2024-PROJMSTR-0000038	
990 S Broadway, Suite 220 Denver, CO 80209 (303) 297-2976 main (303) 297-2693 fax www.wilsonco.com							Void:		Detailer: KPM	Numbers		Sheet Number 14	
									Sheet Subset: REM	Subset Sheets: 1 of 1			



Vert. Scale: N/A



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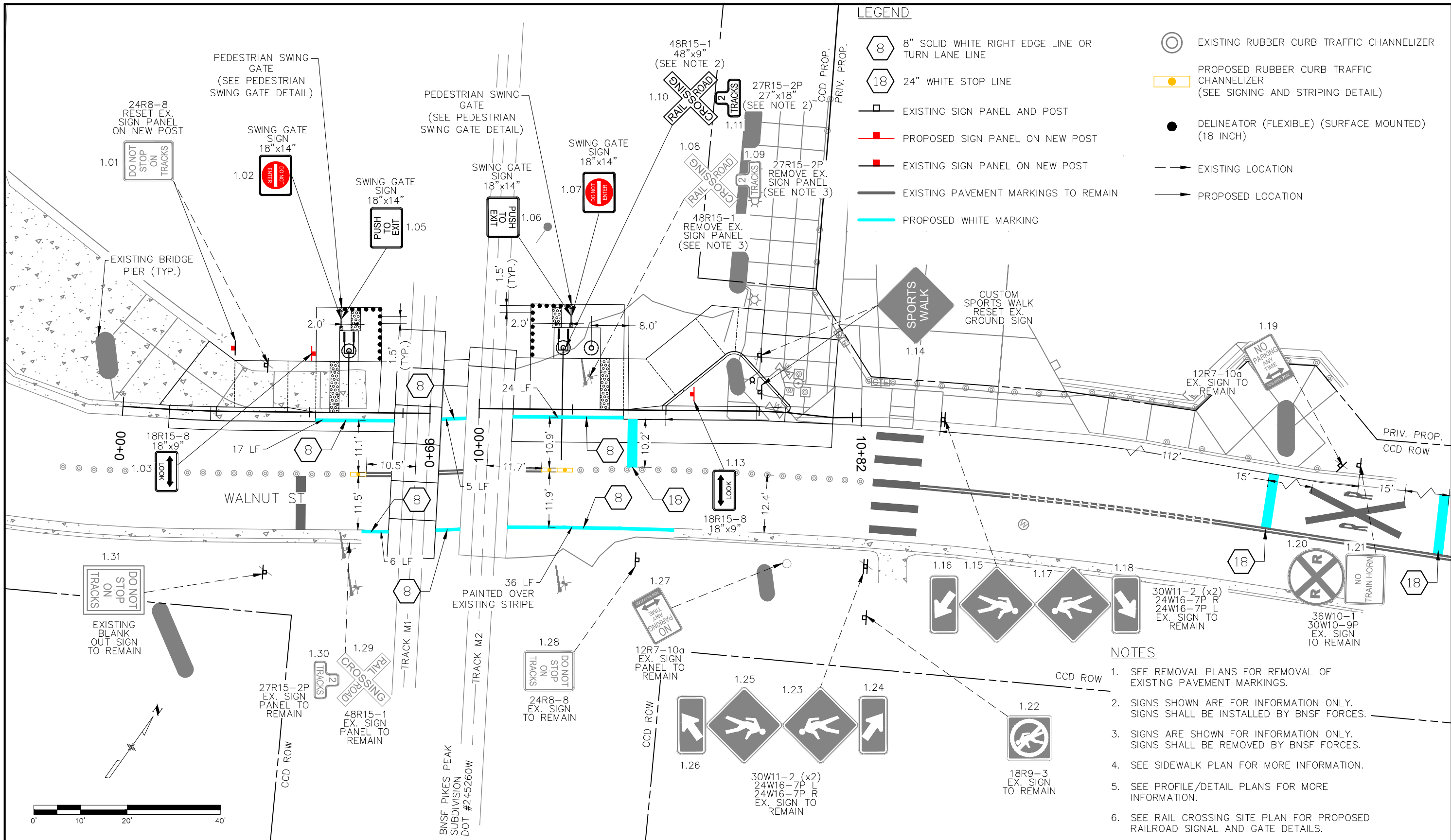


DENVER
MILE HIGH CITY

Sheet Number 17

1. SEE RAIL CROSSING SITE PLAN FOR PROPOSED RAILROAD SIGNAL AND GATE DETAILS.
2. SEE REMOVAL PLANS FOR MORE INFORMATION.
3. SEE PROFILE/DETAIL PLANS FOR MORE INFORMATION.
4. SEE SIGNING AND STRIPING PLANS FOR MORE INFORMATION.
5. SIDEWALK AND CURB AND GUTTER WILL BE 8-INCH THICK IN ACCORDANCE WITH CCD COMMERCIAL DRIVEWAY HEAVY LOAD REQUIREMENTS.
6. 6" OF AGGREGATE BASE COURSE (CLASS 6) WILL BE PLACED AS STABILIZATION MATERIAL UNDER ALL CURB AND GUTTER IN ACCORDANCE WITH CCD STD. DWG. 5.0 AND 5.1.
7. AGGREGATE BASE COURSE (CLASS 6) SHALL BE PLACED IN FILL AREAS WHERE ASPHALT PAVEMENT HAS BEEN REMOVED OUTSIDE THE LIMITS OF THE NEW SIDEWALKS.
8. CONTRACTOR SHALL INSTALL 0.5" OF EXPANSION MATERIAL BETWEEN THE BRIDGE PIER AND CONCRETE PAVEMENT (6 INCH) (COLORED) IN THE ISLAND.
9. CONCRETE CROSSING PANELS ARE SHOWN FOR INFORMATION ONLY AND SHALL BE INSTALLED BY BNSF FORCES.

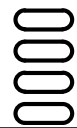
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Print Date: 1/29/2025		0000	Sheet Revisions			 DEPARTMENT OF TRANSPORTATION & INFRASTRUCTURE 201 WEST COLFAX AVENUE DENVER, CO 80202 PHONE: (720) 913-4501 FAX: (720) 913-4544 DENVER THE MILE HIGH CITY	As Constructed		SPORTS WALK SIGNING AND STRIPING PLAN			Project No./Code		
File Name: SportsWalk SS Plan.dwg			Date:	Comments	Init.		No Revisions:					2024-CIP-0000009		
Horiz. Scale: 1:20			Vert. Scale: N/A					Revised:		Designer: KPM		Structure		2024-PROJMSTR-0000038
								Void:		Detailer: LWD		Numbers		
WILSON & COMPANY ENGINEERS & ARCHITECTS 990 S Broadway, Suite 220 Denver, CO 80209 (303) 297-2976 main (303) 297-2693 fax www.wilsonco.com										Sheet Subset: SS PLAN		Subset Sheets: 1 of 1		Sheet Number 22



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| Print Date: 1/29/2025 | |
| File Name: SportsWalk RR Signal Plan.dwg | |
| Horiz. Scale: 1:10 | Vert. Scale: N/A |



As Constructed

Void:

Sheet Subset:	RR PLAN	Subset Sheets:	1 of 1
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Sheet Number 26



Contract Number: BF-20518889

Exhibit B
'RESERVED'



Contract Number: BF-20518889

EXHIBIT "C"

CONTRACTOR REQUIREMENTS

1. General

1. 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 Walnut Street modifications, including reconstructing and widening the roadway, installing railroad crossing signals and activation equipment, interconnected traffic signal, roadway modifications, sidewalk / bike pathways, updated pavement markings and advance warning signage and associated modifications and updates to the crossing.
2. 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.
3. The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.
4. 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; or (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project. The work stoppage will continue until all necessary actions are taken by 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 this Agreement, Railway may immediately terminate this Agreement. 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



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

5. 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.
6. The Contractor must notify **(Agency)** at () and Railway's Manager Public Projects, telephone number () at least thirty (30) calendar days before commencing any work on Railway Property. Contractor's notification to Railway must refer to Railway's file .
7. 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



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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.

8. 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.

2. **Contractor Safety Orientation**

1. 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.

3. **Railway Requirements**

1. 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.
2. The Contractor must notify the Railway's Division Engineer _____ at (_____) _____ and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.



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3. The Contractor must abide by the following temporary clearances during construction:

1. 15'-0" Horizontally from centerline of nearest track
2. 21'-6" Vertically above top of rail
3. 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
4. 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
5. 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
6. 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts

1. Upon completion of construction, the following clearances shall be maintained:

7. 25' Horizontally from centerline of nearest track
8. 23' 6" Vertically above top of rail

1. Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to the **(Agency)** and must not be undertaken until approved in writing by the Railway, and until the **(Agency)** 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.
2. 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.
3. The details of construction affecting the Railway's Property and tracks not included in the contract plans must be submitted to the Railway by **(Agency)** for approval before work is undertaken and this work must not be undertaken until approved by the Railway.
4. 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.



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5. 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.
6. 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. **Contractor Roadway Worker on Track Safety Program and Safety Action Plan**

1. 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. 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.
 1. The required background screening shall at a minimum meet the rail industry background screening criteria defined by the e-RAILSAFE Program as



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outlined at www.eVerifile.com, in addition to any other applicable regulatory requirements.

2. 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.
3. 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.
4. 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. **Railway Flagger Services**

1. The Contractor must give Railway's **Roadmaster (telephone _____)** 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.
2. 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:



Contract Number: BF-20518889

1. When, upon inspection by Railway's Representative, other conditions warrant.
 2. 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.
 3. When work in any way interferes with the safe operation of trains at timetable speeds.
 4. 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.
 5. Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.
3. Flagging services will be performed by qualified Railway flaggers.
1. 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.
 2. Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.
 3. The cost of flagger services provided by the Railway will be borne by **(Agency)**. 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.**



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4. The average train traffic on this route is _____ freight trains per 24-hour period at a timetable speed _____ MPH and _____ passenger trains at a timetable speed of _____ MPH.

1. Contractor General Safety Requirements

1. 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.
2. 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).
3. 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.
4. 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.
5. 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.
6. 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 Crossing 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



Contract Number: BF-20518889

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.

7. 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.
8. 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.)**
9. **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.**
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)
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.
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



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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. **Excavation**

1. Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor must determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact **BNSF's Field Engineering Representative (_____)**. 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.**
2. 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.
3. 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, Crossings or personnel.
4. 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.

2. **Hazardous Waste, Substances and Material Reporting:**



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1. 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.

3. **Personal Injury Reporting**

1. 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.



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NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

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

Injured Person Type:

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

If train involved, Train ID:

Transmit attached information to Accident/Incident Reporting Center by:

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

Officer Providing Information:

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

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



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NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

Please complete this form and provide to the BNSF supervisor, who will input this information into the EHS Star system. For questions, call (817) 352-1267 or email Safety.IncidentReporting@BNSF.com.

Accident City/State: _____ Date: _____ Time: _____

County: _____ Temperature: _____ Weather: _____
(if non-BNSF location)

Name (Last/First/MI): _____

Age: _____ Gender (if available): _____

Company: _____

eRailsafe Badge Number: _____ Expiration Date: _____

BNSF Contractor Badge Number: _____ Expiration Date: _____

Injury: _____ Body Part: _____
(e.g., laceration) (e.g., hand)

Description of accident (including how accident occurred, potential cause, etc.):

Work activity in progress at time of accident: _____

Tools, machinery, or hazardous materials involved in accident: _____

Treatment:

1. First Aid Only
2. Required Medical Treatment
3. Other Medical Treatment: _____

Dr. Name: _____ Date: _____

Dr. Street Address: _____ City: _____ State: _____ Zip: _____

Hospital Name: _____

Hospital Street Address: _____ City: _____ State: _____ Zip: _____

Diagnosis: _____

THIS REPORT IS PART OF BNSF'S ACCIDENT REPORT PURSUANT TO THE ACCIDENT REPORTS STATUTE AND, AS SUCH SHALL NOT "BE ADMITTED AS EVIDENCE OR USED FOR ANY PURPOSE IN ANY SUIT OR ACTION FOR DAMAGES GROWING OUT OF ANY MATTER MENTIONED IN SAID REPORT...." 49 U.S.C. § 20903. See 49 C.F.R. § 225.7(b).



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EXHIBIT C1
EXHIBIT "C-1"

Agreement Between
BNSF RAILWAY COMPANY
and the
CONTRACTOR

Railway File: _____

Agency Project: _____

City and County of Denver, a/an (hereinafter called "Contractor"), has entered into an agreement (hereinafter called "Agreement") dated _____, 20__, **[***Drafter's Note: insert the date of the contract between the Agency and the Contractor here]** with **The City and County of Denver** for the performance of certain work in connection with the following project:_____. Performance of such work will necessarily require Contractor to enter **BNSF RAILWAY COMPANY** (hereinafter called "Railway") right of way and property (hereinafter called "Railway Property"). The Agreement provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for **The City and County of Denver** (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

- A.** 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



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Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about Railway's property or right-of-way. **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**

- B. It is mutually negotiated between the parties that the indemnification obligation shall include all claims brought by Contractor's employees against Railway, its agents, servants, employees or otherwise, and Contractor expressly waives its immunity under the industrial insurance act (RCW Title 51) and assumes potential liability for all actions brought by its employees.**
- C. 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.**
- D. 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.**



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- E. 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.**
- F. 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**

- A. 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



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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.



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- ◆ 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.

A. 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.



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

Other Requirements:

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

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

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

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

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

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



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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.



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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

- A.** 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.
- B.** 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



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amount of such Sales Tax and allow Railway to control and conduct such contest.

- C. 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

- A. 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

- A. 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.



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- B.** 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.
- C.** 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.
- D.** 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.
- E.** Contractor and its subcontractors must give Railway's representative (_____) _____ (____) 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.
- F.** Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.

SIGNATURE PAGE FOLLOWS



Contract Number: BF-20518889

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.

BNSF RAILWAY COMPANY

CONTRACTOR

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: Manager Public Projects

Title: _____

Date: _____

Date: _____

Accepted and effective this _____ day of 20__.

Contact Person: _____

Address: _____

City: _____

State: _____

Zip: _____

Fax: _____

Phone: _____

E-mail: _____



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EXHIBIT D

Cost Estimate:

Estimate Summary of City Costs:

Trackwork	\$97,904
Signal	\$519,855
City Subtotal	\$617,759
Contingency 20%	\$123,552
Total	\$741,311

BNSF RAILWAY COMPANY
FHPM ESTIMATE FOR
CITY OF DENVER, CO

LOCATION DENVER TO 8TH AVE

DETAILS OF ESTIMATE

PLAN ITEM : 000364255

VERSION : 2

PURPOSE, JUSTIFICATION AND DESCRIPTION

WALNUT STREET - DENVER, CO; REPLACE CONSTANT WARNING / FLASHERS / GATES / CANTILEVER / PED FLASHERS / PED GATES;
POWDER RIVER DIV; PIKES PEAK SUBDIV; LS 0477; MP 1.50; DOT# 245260W; SEQ# 97853.

MONTHLY POWER UTILITY COST CENTER : 61875.

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 CITY OF DENVER, CO IS FUNDING 100% OF THIS PROJECT.

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

DESCRIPTION	QUANTITY	U/M	COST	TOTAL \$

LABOR				

ELECTRICAL LABOR F/SIGNAL EQUIPMENT	54.0	MH	2,620	
SIGNAL FIELD - REPLACE	953.0	MH	47,386	
SIGNAL SHOP LABOR - CAP	0.01	MH	1	
PAYROLL ASSOCIATED COSTS			32,683	
DA OVERHEADS			73,859	
EQUIPMENT EXPENSES			17,761	
INSURANCE EXPENSES			9,910	
TOTAL LABOR COST			184,220	184,220

MATERIAL				

ARRESTOR, MDSA-2 XS	2.0	EA N	1,609	
BATTERY, VGL-255	28.0	EA N	7,217	
BATTERY, VGL-350	18.0	EA N	6,060	
BELLS	4.0	EA N	821	
BUNGALOW 8X8 W/ AC	1.0	LS N	17,119	
BUNGALOW MATERIAL	1.0	LS N	13,513	
CABLE, 2C/6 TW	700.0	FT N	1,211	
CABLE, 3C/2	250.0	FT N	1,608	
CABLE, 5C/10	70.0	FT N	159	
CABLE, 5C/6	500.0	FT N	2,885	
CABLE, 7C/14	500.0	FT N	1,350	
CANTILEVER (REQUIRES QUOTE)	1.0	EA N	21,040	
CHARGERS, 12/80 (20/40/60)	3.0	EA N	4,892	
CONSTANT WARNING, GCP3K, 2TK	2.0	EA N	61,843	
CONVERTER, 10-10	3.0	EA N	602	
CONVERTER, 2TC	1.0	EA N	329	
ELECTRICAL MATERIAL	1.0	LS N	3,000	
EVENT RECORDER	1.0	EA N	5,641	
FIELD MATERIAL	1.0	LS N	7,665	
FILL DIRT	20.0	CY N	500	
FOUNDATION	2.0	EA N	1,572	
FOUNDATION, CANT	1.0	EA N	5,550	
GATE KEEPER	4.0	EA N	6,303	
GATE MECHANISM, S-60	2.0	EA N	11,639	
GATE MECHANISM, S-60 PED	2.0	EA N	9,728	
GENERATOR, ACG-3	1.0	EA N	338	
INDUCTOR, DUMMY LOAD	2.0	EA N	1,738	
LED LIGHT	22.0	EA N	4,913	
PSO 4000	1.0	EA N	2,558	
RELAY, DAX	3.0	EA N	4,036	

RELAY, EOR	2.0 EA N	2,691	
RELAY, PEOR	1.0 EA N	1,346	
RELAY, PER	1.0 EA N	1,346	
RELAY, PSO / NWPR	1.0 EA N	1,346	
SHUNT, NBS	4.0 EA N	4,006	
SURFACE ROCK	50.0 CY N	2,500	
USE TAX		14,579	
OFFLINE TRANSPORTATION		2,762	
TOTAL MATERIAL COST		238,015	238,015

OTHER			

AC POWER SERVICE	1.0 EA N	6,250	
BUNGALOW, WIRE AND TEST	1.0 LS N	6,811	
CONTRACT ENGINEERING	1.0 LS N	13,000	
CONTRACT FLAGGING/ SIGNS/ CONES	1.0 LS N	5,000	
DIRECTIONAL BORING	200.0 FT N	17,000	
TOTAL OTHER ITEMS COST		48,061	48,061
PROJECT SUBTOTAL			470,296
CONTINGENCIES			44,411
BILL PREPARATION FEE			5,148
GROSS PROJECT COST			519,855
LESS COST PAID BY BNSF			0
TOTAL BILLABLE COST			519,855

AUTHORITY FOR EXPENDITURE

LOCATION : WALNUT STREET	LINE SEGMENT : 477	AFE NUMBER :
PLANITEM NUMBER : 979150000	MILEPOST : 1.45	RFA NUMBER : 5942024
PROPERTY OF : BNSF RAILWAY COMPANY	DIVISION : PR	CPAR NUMBER : C0000009
OPERATED BY : BNSF RAILWAY COMPANY	SUBDIVISION : PIKES PEAK	BUDGET YEAR : 2024
JOINT FACILITY : CITY OF DENVER	TRACK TYPE : 1	BUDGET CLASS : 6
% BILLABLE (+/-) : 50.0	TAX STATE : CO	REPORTING OFFICE : 111
	SPONSOR : VP ENGINEERING	CENTER/ROLLUP : 29125

PURPOSE, JUSTIFICATION AND DESCRIPTION

PIP, PRS DIV PIKES PEAK SUB LS 477 MP 1.45, CROSSING REHAB WALNUT ST DENVER. 50% BILLABLE TO CITY OF DENVER
PRIMARY FUNDING SOURCE IS CITY FUNDS
** BUY AMERICA(N) APPLIES **

PLAN ITEM	LINE SEG	BEG MP	END MP	TRK NBR	BEGIN STATION	END STATION	PROJECT TYPE	BUD YEAR
979150000	477	1.45	1.45	1	WALNUT	WALNUT STREET	PUBLIC IMPROVEMENT PROJECT	2024

	CASH CAPITAL	NONCASH CAPITAL	OPERATING EXP	REMOVAL COSTS	BILLABLE	TOTALS
LABOR COSTS	31,321	0	4,489	0	35,810	71,620
MATERIAL COSTS	34,468	0	0	0	34,468	68,936
OTHER COSTS	27,583	0	45	0	27,626	55,254
TOTALS	93,372	0	4,534	0	97,904	195,810

SYSTEM MAINTENANCE AND PLANNING
ESTIMATE REF. NUMBER: 5942024
COSTING DATE: 05/01/2024

PRINTED ON: 05/01/2024
ESTIMATED BY: JOHNSON
PRINTED BY: JOHNSON

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

BNSF RAILWAY COMPANY
FHPM ESTIMATE FOR
CITY OF DENVER

LOCATION WALNUT STREET DETAILS OF ESTIMATE PLAN ITEM : 979150000 VERSION : 1

PURPOSE, JUSTIFICATION AND DESCRIPTION

PIP, PRS DIV PIKES PEAK SUB LS 477 MP 1.45, CROSSING REHAB WALNUT ST DENVER. 50% BILLABLE TO CITY OF DENVER

REQUESTED BY ALLAN BREDEN 4/12/2024
PRIMARY FUNDING SOURCE IS CITY FUNDS
** BUY AMERICA(N) APPLIES **

DESCRIPTION	QUANTITY	U/M	COST	TOTAL \$

LABOR				

FLAGGING - PUBLIC CROSSING - CAP	36.0	MH	1,460	
PLACE FIELD WELDS - CAP	85.0	MH	3,377	
REPLACE PUBLIC CROSSING - TOTAL REHAB	112.0	MH	4,213	
REPLACE TRACK PANELS - CAP	30.0	MH	1,129	
SIGNAL LABOR - CAP	29.0	MH	1,274	
SURFACE TRACK - REPLACEMENT - CAP	53.0	MH	2,049	
UNLOAD BALLAST - REPLACEMENT - CAP	1.0	MH	38	
UNLOAD CROSSING MATERIAL - PUBLIC - CAP	56.0	MH	2,107	
UNLOAD TRACK PANELS - REPLACEMENT	15.0	MH	565	
PAYROLL ASSOCIATED COSTS			10,592	
DA OVERHEADS			23,941	
EQUIPMENT EXPENSES			17,666	
INSURANCE EXPENSES			3,209	
TOTAL LABOR COST			71,620	71,620

MATERIAL				

BALLAST NT, SYSTEM AVERAGE COST	100.0	NT **	1,469	
PANEL, TRACK; 40 FT; 136 LB; SC; 10 FT; PANDROL	3.0	EA **	22,062	
RAIL, TRANS, 136 N; 132 W; 40 FT; UNVRSL	8.0	EA	9,848	
SIGNAL MATERIAL	549.0	EA	549	
SPIKE, TBR SCREW 3/4" X 13", F/ROAD XING	252.0	EA **	754	
WELDKIT, GENERIC FOR ALL RAIL WEIGHTS	8.0	KT **	612	
CROSSING, CONCRETE PANELS; 10 FT TIES TANGENT	112.0	FT **	21,084	
XING CONC RAMP 136 LB COMPLETE SET	1.0	ST **	349	
PERF. PVC DRAIN PIPE	120.0	LF	3,000	
MATERIAL HANDLING			2,983	
ONLINE TRANSPORTATION			1,550	
USE TAX			3,947	
OFFLINE TRANSPORTATION			729	
TOTAL MATERIAL COST			68,936	68,936

OTHER				

TRAFFIC CONTROL	3.0	LS	22,500	
TOTAL OTHER ITEMS COST			22,500	22,500
PROJECT SUBTOTAL				163,056
CONTINGENCIES				30,815
BILL PREPARATION FEE				1,939
GROSS PROJECT COST				195,810
LESS COST PAID BY BNSF				97,906
TOTAL BILLABLE COST				97,904