Mile Post 998.2
Line Segment 7200
U.S. DOT Number 028550H
Stockton Subdivision

GRADE CROSSING SIGNAL INSTALLATION AGREEMENT

THIS GRADE CROSSING SIGNAL INSTALLATION AGREEMENT (hereinafter called, "Agreement"), is executed to be effective as of 3|23, 2009, by and between the City of Fresno, a California municipal corporation (hereinafter called, "AGENCY"), and BNSF RAILWAY COMPANY, a Delaware Corporation (hereinafter called, "RAILROAD");

WITNESSETH:

WHEREAS, in the interest of aiding vehicular travel and public safety, the AGENCY is undertaking a project to install railroad crossing signals and activation equipment known as Constant Warning Time (CWT) Circuitry and Flashers;

WHEREAS, the project Mariposa Street (Pedestrian) is located at U.S. DOT crossing 028550H as indicated on exhibit "A", attached hereto and incorporated herein;

WHEREAS, the parties agree that this project will include installation of advance warning signs, pavement marking stop bars or crossing signal equipment (hereinafter collectively called, "Crossing Signal Equipment");

WHEREAS, the AGENCY is paying for the acquisition and installation of crossing signal equipment at Mariposa Street (Pedestrian);

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

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

ARTICLE I – SCOPE OF WORK

1. The term "Project" as used in this agreement includes any and all work related to the installation of crossing signals and activation equipment at U.S. DOT crossing 028550H, more particularly described on Exhibits A and B attached hereto and incorporated herein, including, but not limited to, any and all changes to telephone, telegraph, signal and electrical lines and appurtenances, installation of advance warning signs and pavement marking stop bars, installation of any new crossing surface, 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, RAILROAD agrees as follows:

1. The RAILROAD will, using its own labor forces under applicable labor agreements, install the Crossing Signal Equipment at Mariposa Street (Pedestrian). The work will be performed at AGENCY's expense and in accordance with the Manual on Uniform Traffic Control Devices (hereinafter called, "MUTCD") and the plans and specifications approved by AGENCY and the Federal Highway Administration. The plans and specifications are attached to this Agreement as Exhibit "B" and incorporated herein.

2. A detailed estimate of RAILROAD'S construction engineering, installation labor (including the costs, if any, of electrical service from a public utility) and material costs required for the Project are attached hereto as Exhibit "C" and incorporated herein. In the event construction for the Project has not commenced within six (6) months following the effective date of this Agreement, RAILROAD may, in its sole and absolute discretion, revise the cost estimates set forth in said Exhibit "C". 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 "C" not specifically mentioned therein may be included as a part of this Agreement upon written approval of AGENCY, which approval will not be unreasonably withheld.

3. RAILROAD will furnish all labor, materials, tools and equipment for the railroad portion of the work required for the construction of the Project.

4. The RAILROAD will, at AGENCY'S expense, dispose of all scrap from the RAILROAD'S work hereunder.

5. The RAILROAD will finalize and complete billing of all incurred costs, which shall be marked "Final Invoice" under this Agreement no later than one (1) year following installation of the Crossing Signal Equipment or cessation of work.

ARTICLE III – AGENCY OBLIGATIONS

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

1. AGENCY must perform, at AGENCY'S expense, the following work:

   a) Installation of a pavement marking stop bar in accordance with the MUTCD.

   b) Installation of advance warning signs in accordance with the MUTCD.

2. The AGENCY will approve the location of the signals and signal bungalow prior to installation by RAILROAD.

3. Actual costs for engineering, materials and labor (including third party charges for the installation of electrical service) associated with the installation of the Crossing Signal Equipment must be paid by the AGENCY.

4. In the event the services of a consultant are needed after execution of this Agreement due to any exigency of the RAILROAD and the Project, the AGENCY may select a consultant in accordance with AGENCY's procurement process. All work performed hereunder by any consultant and any resulting costs must be paid by AGENCY as a part of the costs for the Project.

5. During the installation of the Crossing Signal Equipment of, RAILROAD will send AGENCY progressive invoices detailing the costs of the work performed by RAILROAD under this Agreement. AGENCY must reimburse RAILROAD for completed force-account work within thirty (30) days of the date of the invoice for such work. Upon completion of the Project, RAILROAD will send AGENCY a detailed invoice of final costs, segregated as to labor and materials for each item in the recapitulation shown on Exhibit "C". Pursuant to this section, AGENCY must pay the final invoice within ninety (90) days of the date of the final invoice. RAILROAD will assess a finance charge of .033% per day (12% per annum) on any unpaid sums or other charges due under this Agreement which are past its credit terms. The finance charge continues to accrue daily until the date payment is received by RAILROAD, not the date payment is made or the date postmarked on the payment. Finance charges will be assessed on delinquent sums and other charges as of the end of the month and will be reduced by amounts in dispute and any unposted payments received by the month's end. Finance charges will be noted on invoices sent to AGENCY under this section. **For purposes of computing the time limits prescribed by Section 911.2 of the California Government Code for the presentment of a claim against the Agency the cause of action for failure to reimburse BNSF for the costs of the Railroad work performed by it pursuant to this Agreement shall be deemed to have accrued ninety (90) days of the date of the final invoice.**

6. The AGENCY must have advanced railroad crossing warning 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. The AGENCY assumes full responsibility for the maintenance of advanced warning signs and pavement markings and agrees to hold harmless and indemnify the RAILROAD 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.

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

8. Excluding confidential information, the AGENCY agrees to provide, to the BNSF Manager of Evidence Preservation, such Project documentation and records as are agreed to between the parties including: any Project applications; any letters of approval and/or authorization forms (eg. PR-1240 or the equivalent); any and all payment Voucher forms requesting FHWA reimbursement (eg. PR-20 or the equivalent) or any other such Project authorizations or funding records as RAILROAD may request from time to time. Such records will be provided by the AGENCY to RAILROAD on a mutually agreeable schedule or within two (2) months after such records are generated or received by the AGENCY. Section 130 Documentation shall be provided to RAILROAD in one of the following manners:

Manager Evidence Preservation
2600 Lou Menk Drive, AOB-3
Fort Worth, Texas 76131

Or Electronically to:

Manager Evidence Preservation

Section130@bnsf.com

ARTICLE IV- JOINT OBLIGATIONS

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

1. All cost records of the RAILROAD pertaining to the Project will be open to inspection and audit at any reasonable time by representatives of the AGENCY (including the legislative auditor and fiscal analyst for the AGENCY) for a period of one (1) year from the date of the final RAILROAD invoice under this Agreement.

2. 2. Upon completion of the installation of the Crossing Signal Equipment, the RAILROAD, will, at its sole cost and expense, operate and maintain the Crossing Signal Equipment.

3. Notwithstanding the preceding provision, if any regulations, ordinances, acts, rules or other laws subsequently passed or amended by the AGENCY or any other appropriate governmental or legislative authority increase the AGENCY'S portion of maintenance costs under this Agreement, RAILROAD will receive the benefit of any such regulations, ordinances, acts, rules or other laws and the AGENCY'S increased portion of maintenance costs will be incorporated into and made a part of this Agreement.

4. If a railway or a highway improvement project necessitates rearrangement, relocation, or alteration of the Crossing Signal Equipment installed hereunder, the costs for such rearrangement, relocation or alteration will be the responsibility of the party requesting such changes.

5. 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:

a) In the event the RAILROAD's sole negligence destroys or damages the Crossing Signal Equipment, RAILROAD must reimburse AGENCY for the costs to replace or repair such Crossing Signal Equipment.

In the event the Crossing Signal Equipment is damaged or destroyed by any other cause, AGENCY must, at its sole cost and expense, replace or repair such Crossing Signal Equipment.

6. If the Crossing Signal Equipment installed hereunder cannot, through age, be maintained, or, by virtue of its obsolescence, requires replacement, the cost of installation of new crossing signal equipment will be negotiated by the parties hereto on the basis of the current Federal Aid Railroad Signal Program participation and applicable AGENCY at the time of such replacement is warranted.

7. This Agreement will inure to the benefit of and be binding on the parties hereto, their successors, and assigns.

8. In the event any paragraph contained in this Agreement or any item, part, or term within any particular paragraph is determined by a court of competent jurisdiction to be invalid or unenforceable, the validity of the remaining paragraphs or items will not be affected; and the rights and obligations of the parties will be construed and enforced as if this Agreement did not contain that particular paragraph or item held to be invalid or unenforceable.

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

10. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

11. Assignment

(a) This Agreement is personal to RAILROAD and there shall be no assignment by RAILROAD of its rights or obligations under this Agreement without the prior written approval of the City Manager or his/her designee. Any attempted assignment by RAILROAD, its successors or assigns, shall be null and void unless approved in writing by the City Manager or his/her designee.

(b) RAILROAD hereby agrees not to assign the payment of any monies due RAILROAD, except to a subsidiary, parent, or affiliate of RAILROAD, from AGENCY under the terms of this Agreement to any other individual(s), corporation(s) or entity (ies). AGENCY retains the right to pay any and all monies due RAILROAD directly to RAILROAD.

12. In providing the services required under this Agreement, RAILROAD shall at all times comply with all applicable laws of the United States, the State of California and AGENCY, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

13. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this

Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

14. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this agreement and any rights and duties hereunder shall be in the State of California as authorized by the laws of California.

15. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

16. Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

17. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

18. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

19. The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

20. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both AGENCY and RAILROAD.

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

BNSF RAILWAY COMPANY

By: _____

Printed Name: JOHN R. STILLEY

Title: MANAGER PUBLIC PROJECTS

CITY OF FRESNO

By: _____

Printed Name: Scott L. Mozier

Title: Assistant Public Works Director

ATTEST:
REBECCA E. KLISCH
City Clerk

By: _____ 3/25/09
Deputy

APPROVED AS TO FORM:
JAMES C. SANCHEZ
City Attorney

By: _____ 3/25/09
Deputy

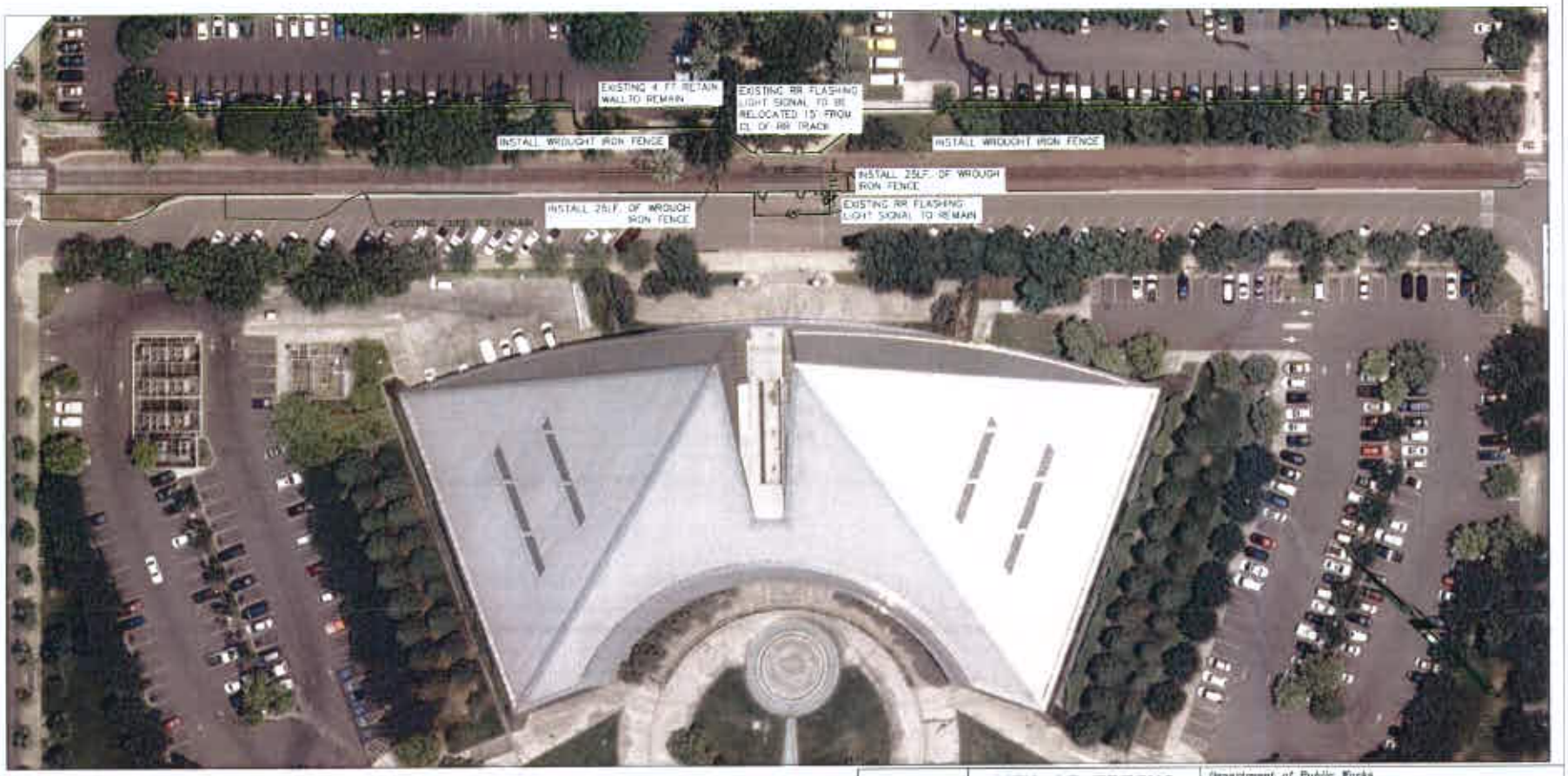
Addresses:

AGENCY:
City of Fresno
Attention: [David A. Cisneros, Manger]
2600 Fresno Street
Fresno, CA 93721
Phone: (559) 621-8804
FAX: (559) 488-1045

RAILROAD:
BNSF Railway Company
Attention: John R. Stilley
740 E. Carnegie Drive
San Bernardino, CA 92408
Phone: (909) 386-4474
FAX: (909) 386 4479

Exhibit "A"

[Insert drawing of crossing here]



CONCRETE CURB BUMPER

WROUGHT IRON FENCE

EXISTING CURB

WROUGHT IRON GATE

EXHIBIT A

CITY OF FRESNO

Department of Public Works

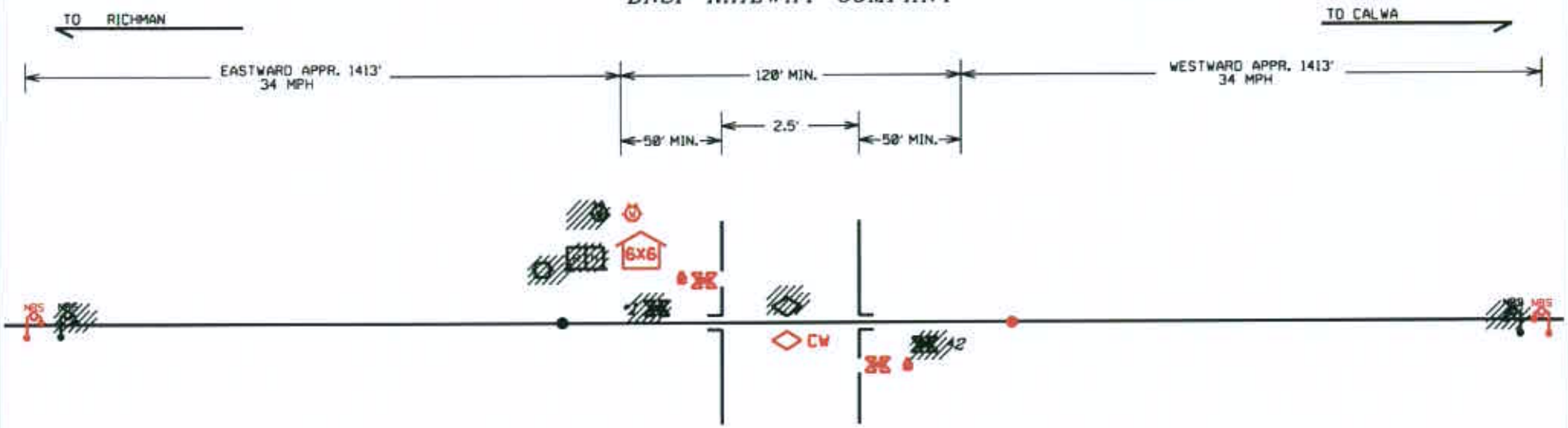
Director

MARIPOSA AVE
FRESNO TO TULARE AVENUES
WROUGHT IRON FENCING

Exhibit "B"

[Insert plans and specifications detailing Railroad's work]

BNSF RAILWAY COMPANY



MARIPOSA(PEDESTRIAN).

DOT# 028 550 H

INSTALL: GATES & FLASHERS

CONTROL DEVICES: CONSTANT WARNING

SOLO - [illegible]

[illegible] - OUT

SALVAGE: NONE

N

INSTRUMENT HOUSE

BELL

METER

CROSSING CONTROLL CONNECTIONS

BIDIRECTIONAL CROSSING CONTROL

UNIDIRECTIONAL CROSSING CONTROL

COUPLER OR TERMINATION

GUARD RAIL

Warning device placement:

Clearance to C.L. Track = Min. 12'

Edge of Road to C.L. Foundation:

Min. 4'3" with curb.

Min. 8'3" without curb.

Max. 12'

House Clearance: 25' Min. to Near Rail

30' Min. to Edge of Road

ALL LIGHTS TO BE LED

BNSF RAILWAY CO.

LOCATION: FRESNO, CA.

STREET: MARIPOSA(PEDESTRIAN).

LS: 7200

M.P. 998.2

DOT # 028 550 H

DIVISION: CALIFORNIA

SUBDIVISION: STOCKTON

KANSAS CITY

NO SCALE

DATE: 06/12/08

FILE: 7200998 20.dgn

REC

Exhibit "C"

[INSERT ESTIMATE OF RAILROAD'S COSTS HERE]

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

BNSF RAILWAY COMPANY
FHPM ESTIMATE FOR
STATE OF CALIFORNIA

LOCATION CALWA TO FRESNO | DETAILS OF ESTIMATE | PLAN ITEM : 028550H | VERSION : 1

PURPOSE, JUSTIFICATION AND DESCRIPTION

2008 PX INSTALL CONSTANT WARNING AND FLASHERS AT MARIPOSA (PEDESTRIAN) IN FRESNO, CA. CALIFORNIA DIV., FRESNO SUBDIV., L/S 7200, M.P. 998.2, DOT # 028550H

MONTHLY POWER UTILITY COST CENTER : 61692

THE MATERIAL LIST BELOW REFLECTS TYPICAL REPRESENTIVE PACKAGES USED FOR ESTIMATING PURPOSE ONLY.
THEY CAN BE EXPECTED TO CHANGE AFTER THE ENGINEERING PROCESS, DETAILED AND ACCURATE MATERIAL LISTS WILL BE FURNISHED WHEN ENGINEERING IS COMPLETED.
CONTINUING CONTRACTS HAVE BEEN ESTABLISHED FOR PORTIONS OF SIGNAL WORK ON THE BNSF RAILROAD.
THIS ESTIMATE IS GOOD FOR 90 DAYS. THEREAFTER THE ESTIMATE IS SUBJECT TO CHANGE IN COST FOR LABOR, MATERIAL, AND OVERHEAD.

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

THE STATE OF CALIFORNIA IS FUNDING THIS PROJECT 100%.

MAINTAIN PROPRIETARY CONFIDENTIALITY.

REVISED TO NEW PRICING LIST 03/01/05 (THERE WAS NO APPROVED MATERIAL LIST AT THIS TIME.)

DESCRIPTION	QUANTITY	U/M		COST	TOTAL $
**********					
LABOR					
**********					
SIGNAL FIELD LABOR - CAP	672.0	MH		16,667	
SIGNAL SHOP LABOR - CAP	64.0	MH		1,476	
PAYROLL ASSOCIATED COSTS				14,695	
EQUIPMENT EXPENSES				4,716	
DA LABOR OVERHEADS				18,143	
INSURANCE EXPENSES				2,902	
TOTAL LABOR COST				58,599	58,599
**********					
MATERIAL					
**********					
AC POWER SERVICE	1.0	EA	N	5,000	
BATTERY	1.0	LS	N	3,482	
BUNGALOW 6X6	1.0	LS	N	8,612	
BUNGALOW MATERIAL	1.0	LS	N	4,864	
CABLE	1.0	LS	N	3,260	
CHARGERS	1.0	LS	N	684	
CONDUIT, PVC 4",	100.0	FT	N	390	
CONSTANT WARNING	1.0	LS	N	18,163	
FIELD MATERIAL	1.0	LS	N	2,170	
FLASHER COMPLETE	2.0	EA	N	3,700	
FOUNDATION, STEEL	2.0	EA	N	1,074	
LED LIGHT ADJUSTMENT	8.0	EA	N	1,792	
LIGHT OUT DETECTOR	1.0	EA	N	709	
MATERIAL FOR ELECTRICAL	1.0	EA	N	1,500	
RECORDER	1.0	EA	N	2,220	
SHUNT, NBS	1.0	EA	N	848	
TELLULAR MONITOR	1.0	EA	N	2,500	
USE TAX				5,283	
OFFLINE TRANSPORTATION				758	
TOTAL MATERIAL COST				67,009	67,009
**********					
OTHER					
**********					
CIVIL WORK	1.0	EA	N	10,000	
CONTRACT EGNR	1.0	EA	N	6,000	
TOTAL OTHER ITEMS COST				16,000	16,000
PROJECT SUBTOTAL					141,608
CONTINGENCIES					14,160

BILL PREPARATION FEE	779
GROSS PROJECT COST	156,547
LESS COST PAID BY BNSF	0
TOTAL BILLABLE COST	156,547