

JOINT USE AND COOPERATIVE CONSTRUCTION AND MAINTENANCE AGREEMENT

THIS JOINT USE AND COOPERATIVE CONSTRUCTION AND MAINTENANCE AGREEMENT (the "Agreement") is entered into as of this _____ day of _____, 2015 (the "Effective Date") by and between the State of Oklahoma ex. rel. Oklahoma Department of Transportation (hereinafter, "ODOT"), and BNSF Railway Company, a Delaware corporation (hereinafter, "BNSF"), for the following intent and purposes.

WHEREAS, ODOT presently owns certain rights-of-way for Interstate Highway No. 244 and is identified as Federal Project No's. I-244-2(37)089 and I-244-2(32)090, generally described as Interstate Highway No. 244 from W. 41st St. to W. 17th St. in the City of Tulsa crossing in part of Sections 14, 22, & 23, T19N, R12E in the City of Tulsa, Tulsa County; and

WHEREAS, a portion of the Cherokee Yard Track Expansion project ("Project") authorized by BNSF includes the construction of additional rail lines along or near a portion of Interstate Highway No. 244; and

WHEREAS, ODOT has approved the construction plans for the Project designated as Cherokee Yard Track Expansion, line segment 1003, MP 425.04 to MP 428.10 pursuant to the terms of this Agreement; and

WHEREAS, ODOT has indicated its willingness to provide certain right-of-way property that BNSF needs to construct, operate, and maintain the Project pursuant to the terms and conditions of this Agreement, such right-of-way property being along or near a portion of Interstate Highway No. 244 right-of-way. The portion of Interstate Highway No. 244 adjacent to the Joint Use Property (as defined below) is sometimes referred to hereinafter as the "IH 244 Segment".

WITNESSETH, in consideration of the mutual covenants, premises and agreements and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I. PROJECT

A. Project Work. The "Project Work" shall mean all actions taken by BNSF, its officers, agents, employees, contractors, permittees and assigns to survey, locate, construct, reconstruct, build, operate, repair and maintain rail, roadway, utility and drainage structures and facilities and all necessary or convenient appurtenances thereto, incidental to the construction of the Project.

B. Plans. Notwithstanding anything contained herein to the contrary, the parties acknowledge that BNSF has previously submitted to ODOT plans and specifications for the construction of the Project titled "Cherokee Yard Track Expansion, line segment 1003, MP 425.04 to MP 428.10", prepared by Hanson Professional Services (collectively, and as may be amended from time to time as set forth herein, the "Plans"), which Plans ODOT expressly

acknowledges and agrees have been previously reviewed and approved by ODOT. The ODOT-approved Plans are attached hereto as **Exhibit A** and incorporated herein by reference. The Plans may be modified or amended only in writing signed executed by BNSF and ODOT.

ARTICLE II. JOINT USE AGREEMENT AND COOPERATIVE CONSTRUCTION AND MAINTENANCE AGREEMENT

A. Grant. ODOT, for and in consideration of the sum of Ten Dollars (\$10.00), receipt of which from BNSF is hereby acknowledged, and the covenants, concessions, agreements, and stipulations of ODOT herein expressed does hereby grant to BNSF by this Agreement the use of the property and airspace (as further described below as the "Joint Use Property") located under the W. 23rd St. south bound off-ramp and W. 23rd St. bridge of Interstate Highway No. 244 (such off-ramp and bridge being referred to herein as the "23rd Street Structures") for the Project Work. The Joint Use Property is shown on the Plans subject to and in accordance with the terms and conditions hereinafter stated. Said Joint Use Property is more particularly described in **Exhibit B**, attached hereto and incorporated herein by reference.

Together with the appurtenances, fixtures, rights, privileges and easements thereunto belonging or appertaining, **EXCEPTING THEREFROM**, (i) that portion of the Joint Use Property occupied by the supports and foundations of the 23rd Street Structures (subject to ODOT's right to expand or relocate said 23rd Street Structures in accordance with Article II, Section C(1) below), and (ii) all the airspace above said 23rd Street Structures and the airspace below said 23rd Street Structures.

B. Legal Description; Binding Agreement. The description of the Joint Use Property on **Exhibit B** shall govern for all purposes under this Agreement. The grant of the agreement by ODOT to BNSF shall allow BNSF to use and occupy the Joint Use Property for the Project Work. The Agreement with BNSF hereunder shall be binding upon and inure to the benefit of the successors and assigns of BNSF and ODOT.

C. Expansion/Relocation.

- (1) By ODOT. BNSF acknowledges that ODOT, at ODOT's sole cost and expense, may desire to expand, reconstruct, repair and/or relocate: (i) the supports and foundations of the 23rd Street Structures ("23rd Street Relocation Work") and/or (ii) IH 244 Segment at an undetermined point in the future ("IH 244 Segment Work"). The 23rd Street Relocation Work and the IH 244 Segment Work are sometimes referred to hereinafter collectively as the "ODOT Work". If ODOT should desire at any point to move forward with the ODOT Work, ODOT agrees to give at least (30) days' written notice of same to BNSF stating the location and nature of the anticipated work in reasonably sufficient time and detail. ODOT shall submit construction plans for such ODOT Work to BNSF for approval, and BNSF hereby agrees to reasonably cooperate in good faith with ODOT in order to reach approval of such plans. ODOT covenants and agrees to accomplish such ODOT Work with minimal interference to BNSF's rail operations and its use and occupancy of the Joint Use Property for the Project Work and other uses contemplated under this Agreement. Other than maintenance and repair of the

23rd Street Structures and activities performed in connection with the ODOT Work, ODOT covenants and agrees, on behalf of itself, its successors and assigns, not to construct any additional structures or grant any additional uses within the Joint Use Property that will interfere with the uses of the Joint Use Property by BNSF for the Project Work.

- (2) By BNSF. ODOT acknowledges that BNSF, at BNSF's sole cost and expense, may desire to expand or relocate portions of the Project Work ("Project Work Relocation") at an undetermined point in the future. If BNSF should desire at any point to move forward with the Project Work Relocation, BNSF shall submit construction plans for such Project Work Relocation to ODOT for approval, and ODOT hereby agrees to reasonably cooperate in good faith with BNSF in order to reach approval of such plans. BNSF covenants and agrees to accomplish such Project Work Relocation with minimal interference to ODOT's use and occupancy of the Joint Use Property for the 23rd Street Structures and other uses contemplated under this Agreement. Other than maintenance and repair of the Project and activities performed in connection with the Project Work Relocation, BNSF covenants and agrees, on behalf of itself, its successors and assigns, not to construct any additional structures or grant any additional uses within the Joint Use Property that will interfere with the uses of the Joint Use Property by ODOT for the 23rd Street Structures.

NOW, THEREFORE, as part of the Joint Use Agreement And Cooperative Construction And Maintenance Agreement the parties hereto covenant and agree as follows:

- (1) The Joint Use Property shall be used by BNSF exclusively for the purpose of the Project Work, including but not limited to the construction, operation and maintenance of the Project (including any future Project Work Relocation) and facilities directly necessary for the construction, operation and maintenance of the Project. Vehicle access to the Joint Use Property directly from the established grade line of the Interstate Highway No. 244 is specifically prohibited.
- (2) The Joint Use Property shall be used by ODOT exclusively for the purposes of: (i) construction, operation and maintenance of the 23rd Street Structures (including any future 23rd Street Relocation Work) and facilities directly necessary for the construction, operation and maintenance of the 23rd Street Structures, and (ii) performance of the IH 244 Segment Work. Crossing of any tracks located on the Joint Use Property at any place other than a public crossing is specifically prohibited.
- (3) Neither party shall conduct bulk storage of gasoline or petroleum products or any other types of flammable or other combustible materials, explosive corrosive

materials, or other materials defined as "toxic" or "hazardous" wastes pursuant to federal, state or local law, be permitted on the Joint Use Property.

- (4) Except for the Project and ancillary structures related to the Project, as contemplated by the Plans, or any Project Relocation Work in accordance with Article II, Section C(2) above, no permanent improvements or alterations shall be made by BNSF in, on, or upon the Joint Use Property without the consent and approval of ODOT first and obtained, in writing, such consent and approval not to be unreasonably withheld, conditioned or delayed.
- (5) Except for the 23rd Street Structures and ancillary structures related to the 23rd Street Structures, or any 23rd Street Relocation Work or IH 244 Segment Work in accordance with Article II, Section C(1) above, no permanent improvements or alterations shall be made by ODOT in, on, or upon the Joint Use Property without the consent and approval of BNSF first and obtained, in writing, such consent and approval not to be unreasonably withheld, conditioned or delayed.
- (6) Except in connection with Project Work, Project Work Relocation, 23rd Street Relocation Work or IH 244 Segment Work, no materials, supplies, equipment, vehicles, personal property of any nature will be stored by BNSF or ODOT, respectively, on the Joint Use Property.
- (7) BNSF agrees: (a) to pay all taxes and assessments that may be legally assessed on BNSF's possessory interest in the Joint Use Property, or on any improvements or equipment placed by BNSF on said Joint Use Property; (b) to pay all charges for water furnished to the herein described Joint Use Property, if any; and (c) to pay all charges for electricity furnished or supplied to or upon any part of the Joint Use Property through a meter to be contracted for by BNSF.
- (8) No signs, displays or devices shall be erected on the Joint Use Property by either party without obtaining written approval of the other party; provided that BNSF may erect any signs contemplated in the Plans except for billboards, and may also erect any signs needed in BNSF's sole discretion for directional, operational, and safety reasons in connection with the Project without any additional written approval of ODOT.
- (9) BNSF shall, at its sole expense, keep and maintain the Joint Use Property reasonably free of all trash, graffiti, vandalism, weeds and debris, and at all times in a reasonably orderly, clean, safe, and sanitary condition. BNSF shall keep the Joint Use Property adequately lighted and use reasonable efforts to eliminate the possible creation of a nuisance or hazard to the public.
- (10) BNSF shall secure all necessary permits required in connection with the Project Work and its operations on the Joint Use Property. BNSF agrees to further comply with all applicable federal, state and local statutes, ordinances, or regulations including all provisions of Title VI of the Civil Rights Act of 1964, 42

U.S.C. 2000d, *et seq.* and its implementing regulations, in connection with BNSF's use and occupancy of the Joint Use Property. Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.* is sometimes referred to in this Agreement as the "Acts", and its implementing regulations 49 C.F.R. Part 21 and 28 C.F.R. section 50.3 are sometimes referred to collectively as the "Regulations". ODOT is considered to be "Recipient" under the Acts and Regulations.

- (11) BNSF, at its sole cost and expense, and at its sole discretion, may replace any and all right-of-way fencing that spanned said Joint Use Property, and all improvements constructed by BNSF thereon in a reasonable manner. BNSF shall take reasonable steps to effectively protect the fences and guard rails, and piers and columns of the 23rd Street Structures and the IH 244 Segment from damage incident to BNSF's use of such Joint Use Property, all without expense to the ODOT.

BNSF shall be responsible for any and all damages to ODOT-owned fences, guard rails, piers, columns, or railway to the extent directly resulting from or directly attributable to the use and occupancy of said Joint Use Property by BNSF or any person entering upon the same with the consent of the BNSF, express or implied. Plans for any future improvements outside of the scope of the Project as shown on the Plans, including driveways, fence openings, wheel rails, surfacing and lighting, shall be filed with and approved by ODOT (and, if applicable, the FHWA) in writing prior to the commencement of any such work by BNSF.

BNSF agrees to the extent provided by Oklahoma law that it will indemnify and hold harmless ODOT from and against any and all claims, lawsuits, damages, liabilities, fines, expenses, fees and costs of any kind, to the extent such claims, lawsuits, damages, liabilities, fines, expenses, fees and costs directly arise from (i) the use and occupancy of the Premises by BNSF or BNSF's agents, contractors, employees or representatives (collectively, "BNSF Parties"), or (ii) the negligence or willful misconduct of BNSF or the BNSF Parties.

- (12) BNSF and ODOT agree that any present and/or future construction, reconstruction or maintenance of the IH 244 Segment that may temporarily occupy the Joint Use Property will not constitute use of a Section 4(f) property. This agreement constitutes a documented agreement of the officials with jurisdiction over the Section 4(f) resource under 23 CFR 774.13(d)(5).
- (13) ODOT, for itself and on behalf of FHWA specifically reserves the right-of-entry by any authorized officer, engineer, employee, contractor, or agent of ODOT and FHWA for the purpose of inspecting said Joint Use Property or the doing of any and all acts necessary or proper on said Joint Use Property in connection with the protection, maintenance, painting, and operation of the freeway structures and its appurtenances; provided that such entry shall be at reasonable times after reasonable prior written notice to BNSF, except in case of any national or other emergency in which case ODOT will notify BNSF of entry as soon as reasonably

practical. Entry onto the Premises by ODOT or FHWA representatives shall not interfere with BNSF's use and occupancy of the Joint Use Property for the Project Work. ODOT will repair any damage to the Joint Use Property and, to the fullest extent permitted by law, will protect, indemnify and hold harmless BNSF for any loss or damage, including property damage or injury or death to persons, in any way resulting from or in connection with any entry, use or occupancy of the Joint Use Property by ODOT, FHWA or their respective employees, agents, representatives or contractors.

- (14) In the event of the termination of this Agreement for any reason, BNSF will peaceably and quietly leave, surrender, and yield up to ODOT the Joint Use Property in good order, condition and repair, reasonable use and wear thereof, and damage by earthquake, fire, public calamity, by the elements, by act of God, or by circumstances over which BNSF has no control excepted, except any improvements, signs, or appurtenances placed on the Joint Use Property pursuant to any provision hereof shall be removed by BNSF upon the termination of this Agreement and said Joint Use Property shall be restored to their previous condition with the exception of surfacing, wheel rails, column guards and landscaping, all at the sole expense of BNSF; provided, that if any such improvements, signs or appurtenances are not so removed after one hundred twenty (120) days' written notice from the ODOT to BNSF, ODOT may proceed to remove the same and to restore the Joint Use Property to its previous condition at BNSF's sole expense.
- (15) Time is of the essence of each and every one of the terms and provisions of this Agreement.
- (16) Notwithstanding any provisions herein to the contrary, this Agreement may be terminated at any time by mutual written agreement of the parties; and the provisions of this Agreement may not be altered, changed, or amended without mutual consent of ODOT and BNSF and only in writing and executed by ODOT and BNSF.
- (17) BNSF agrees to perform work on the Joint Use Property as follows:
 - (a) Construct the Project in accordance with the Plans and otherwise perform the Project Work.
 - (b) Adequately maintain and police the Project.
 - (c) No attachments to any bridge structure shall be made without the prior written approval of ODOT, subject to any such attachments made in accordance with the Plans, which are deemed approved.
- (18) BNSF further agrees to diligently pursue the performance of the Project Work and to give ODOT's Division Engineer, Division Eight Office, 4002 N. Mingo Valley

Expressway, Tulsa, OK, 74116, thirty (30) days prior notice in writing before the start of any phase of the Project in order that an inspection may be made during the progression of the work, any such inspection to be at the discretion and expense of ODOT.

- (19) It is understood and agreed by and between the parties hereto that BNSF shall first obtain permission, ninety (90) days prior notice in writing from ODOT's Division Engineer, Division Eight Office, to install additional facilities other than the Project or the Project Work Relocation. All additional facilities shall be installed at BNSF's sole expense.
- (20) The terms and provisions of this Agreement shall extend to and be binding upon and inure to the benefits of any approved successors or assignees of BNSF and ODOT.
- (21) Subject to the terms of this Agreement (including, without limitation, those provisions governing entry upon the Premises by ODOT and BNSF's right to ensure that any work ODOT desires to perform on the Premises will not interfere with BNSF's rail operations or the Project), it is to be understood that ODOT by execution of this Agreement with BNSF for the use of the Joint Use Property for the Project Work, does not impair or relinquish the ODOT's right to use such land for right-of-way purposes when it is required for the repair, maintenance, construction or reconstruction of the traffic facility for which it was acquired, nor shall use of the Joint Use Property by BNSF under this Agreement ever be construed as abandonment by ODOT of such land acquired for highway purposes. Except in case of emergency, in which case ODOT shall give BNSF as much advance notice as reasonably practical, ODOT agrees to notify BNSF in writing at least one hundred twenty (120) days in advance of any proposed repairs, construction, reconstruction or other activities on the Joint Use Property to be performed by or on behalf of ODOT that could interfere with BNSF's rail operations or the Project.
- (22) The expense of any and all maintenance, operation and/or relocation of said rail on Joint Use Property, by BNSF, will not be eligible for federal reimbursement under 49 CFR Part 24 (uniform Act); provided, however, nothing in this Agreement shall prevent BNSF from seeking reimbursement for any maintenance, operation and/or relocation costs from state or other non-federal funds. If ODOT requests or requires BNSF to reconstruct or relocate its Project improvements from or on the Joint Use Area, such reconstruction or relocation shall be at ODOT's sole cost and expense, and BNSF shall have no obligation to reconstruct or relocate any Project improvements from or on the Joint Use Area until BNSF has received written assurances from ODOT satisfactory to BNSF that all costs related to such reconstruction or relocation are to be borne by ODOT.
- (23) During the performance of this Agreement, BNSF, for itself, its assignees, and successors in interest agrees Appendix A to the Title VI Assurances incorporated

as part of the Title VI Plan (FY 2015) prepared by ODOT and approved by FHWA on October 7, 2014 (the "ODOT Title VI 2015 Plan") shall apply as follows:

- (a) **Compliance with Regulations:** BNSF (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- (b) **Non-discrimination:** BNSF, with regard to the work performed by it during the Project, will not discriminate on the grounds of race, color, or national origin in the selection and retention of contractors, including procurements of materials and leases of equipment. BNSF will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
- (c) **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by BNSF for work to be performed under a contract, including procurements of materials, or leases of equipment, each potential contractor or supplier will be notified by BNSF of the obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
- (d) **Information and Reports:** BNSF will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of BNSF is in the exclusive possession of another who fails or refuses to furnish the information, BNSF will so certify to the Recipient or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
- (e) **Sanctions for Noncompliance:** In the event of BNSF's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - 1. cancelling, terminating, or suspending a contract, in whole or in part.

- (f) **Incorporation of Provisions:** BNSF will include the provisions of paragraphs 22(a) through 22(f) in every contract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. BNSF will take action with respect to any contract or procurement as the Recipient or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if BNSF becomes involved in, or is threatened with litigation by a contractor, or supplier because of such direction, BNSF may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, BNSF may request the United States to enter into the litigation to protect the interests of the United States.
- (24) During the performance of this Agreement, BNSF, for itself, its assignees, and successors in interest agrees Appendix E of the ODOT Title VI 2015 Plan shall apply as follows:

Pertinent Non-Discrimination Authorities:

- (a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- (b) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- (c) Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- (d) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- (e) The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- (f) Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- (g) The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms

“programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

- (h) Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- (i) The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- (j) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- (k) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- (l) Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

ARTICLE III. MISCELLANEOUS

A. Further Assurances. The parties hereto hereby agree to enter into and execute such other documents as the transactions contemplated under this Agreement may reasonably require.

B. Notices. Any notice under this Agreement must be written. Notices must be either (i) hand-delivered to the address set forth below for the recipient; or (ii) placed in the United States certified mail, return receipt requested, addressed to the recipient as specified below; (iii) deposited with an overnight delivery service, addressed to the recipient as specified below; or (iv) telecopied by facsimile transmission to the party at the telecopy number listed below, provided that the transmission is followed with a copy sent by overnight delivery or regular mail to the address specified below. Any notice is effective upon deposit with the U.S. Postal Service or with the overnight delivery service, as applicable; all other notices are effective when received.

- (1) ODOT's address for all purposes under this Agreement is:

Oklahoma Department of Transportation
200 N. E. 21st Street
Oklahoma City, OK 73105-3204
Attention: Casey Shell
Telephone: (405) 521-2688
Telecopy: (405) 521-4280

with a copy to:

Oklahoma Department of Transportation
Division Eight Office
4002 N. Mingo Valley Expressway
Tulsa, OK 74116
Attention: Division Engineer Randle White
Telephone: (918) 838-9933
Telecopy: (918) 832-9074

- (2) BNSF's address for all purposes under this Agreement is:

BNSF RAILWAY COMPANY
2301 Lou Menk Drive GOB 3-W
Fort Worth, Texas 76131
Attention: James A. Ball
Telephone: (817) 352-6549
Telecopy:

with a copy to:

BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, Texas 76131-2828
Attention: _____
Telephone: _____
Telecopy: _____

- (3) Either party may designate another address for this Agreement by giving the other party at least five (5) business days' advance notice of its address change. A party's attorney may send notices on behalf of that party, but a notice is not effective against a party if sent only to that party's attorney.

C. Entire Agreement. This Agreement (including its exhibits) contains the entire agreement between ODOT and BNSF. Oral statements or prior written matter not specifically

incorporated into this Agreement has no force or effect. No variation, modification, or change to this Agreement binds either party unless set forth writing in a document signed by the parties or their duly authorized agents, officers, or representatives.

D. Governing Law. This Agreement is governed by and must be construed in accordance with the laws of the State of Oklahoma.

E. Severability. If any provision in this Agreement is found to be invalid, illegal, or unenforceable, its invalidity, illegality, or unenforceability will not affect any other provision, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.

F. Rule of Construction. Each party and its counsel have reviewed and revised this Agreement. The parties agree that the rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed to interpret this Agreement or its amendments or exhibits.

G. Counterparts. To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature or acknowledgement of, or on behalf of, each part, or that the signature of all persons required to bind any party or the acknowledgment of such party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, and the respective acknowledgments of, each of the parties hereto. Any signature or acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures or acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature or acknowledgment pages.

[Signature page follows]

IN WITNESS WHEREOF, Casey Shell, the Chief Engineer of the Oklahoma Department of Transportation, pursuant to authority vested in him by the Oklahoma Transportation Commission, has hereunto subscribed his name as Chief Engineer of the Oklahoma Department of Transportation, and the Corporate Real Estate Manager of the BNSF Railway Company has executed same pursuant to authority prescribed by law.

This Agreement is approved and executed on this _____ day of _____, 2015 by BNSF RAILWAY COMPANY and the OKLAHOMA DEPARTMENT OF TRANSPORTATION:

ATTEST:

**BNSF RAILWAY COMPANY,
a Delaware Corporation**

By: _____
Corporate Real Estate Manager

APPROVED as to form and legality
this _____ day of _____, 2015

**OKLAHOMA DEPARTMENT
OF TRANSPORTATION**

By: _____
Attorney for Oklahoma
Department of Transportation

By: _____
**Casey Shell
Chief Engineer**

EXHIBIT B

1 OF 1

Joint Use Easement
Property Description

A tract of land situated in the Northwest Quarter (NW/4) Section Fourteen (14), Township Nineteen (19) North, Range Twelve (12) East, of the Indian Base Meridian, Tulsa County, State of Oklahoma according to the U.S. Government Survey thereof. Said strip, piece, or parcel of land being described as follows to-wit:

Commencing at the Northwest Corner of the Northwest Quarter (NW/4) of Section Fourteen (14), Thence S 01°02'57" E and along the West Line of the Northwest Quarter (NW/4) a distance of 1091.02' to a point; Thence N 88°57'03" E a distance of 556.05' to the **Point of Beginning**; Thence Northeast on a curve to the left a distance of 182.13', a radius of 203.70', a delta 51°13'39", with a chord bearing N 32°12'25" E and chord length 176.12' to a point; Thence S 00°00'00" E a distance of 330.68' to a point; Thence S 00°00'21" E a distance of 74.76' to a point; Thence S 00°02'49" W a distance of 16.19' to a point; Thence N 65°34'51" W a distance of 91.17' to a point; thence N 02°38'39" W a distance of 235.17' to the Point of Beginning.

Said strip, piece, or parcel of land contains 0.19 acres more or less.