

CCO Form: MO52  
Approved: 04/04 (BDG)  
Revised: 03/24 (TLP)  
Modified: 05/26 (MWH)

Greene County  
DOT: 673272V  
J8S0836D  
BNSF File No. BF-20620173

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION  
AGREEMENT FOR CROSSING CLOSURE  
AND/OR ROADWAY IMPROVEMENTS**

THIS AGREEMENT (this "Agreement") is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission"), acting by and through the Missouri Department of Transportation ("MoDOT" or "Department"), and BNSF Railway Company, a Delaware corporation (hereinafter, "Railroad"), and City of Republic, Missouri (hereinafter, "Agency").

WITNESSETH:

WHEREAS, the Commission proposes a public improvement project designated as J8S0836D to modify existing grade crossings and construct a bridge to carry Route MM over the Railroad's mainline track on the Railroad's Heartland Division, Cherokee Subdivision at approximately Milepost 247.1, DOT #980857R;

WHEREAS, the closure of the existing grade crossing and vacation and transfer of any and all property rights across the Railroad right-of-way related thereto appears to be warranted near Republic, Missouri, where Orr Street intersects Railroad's Cherokee Subdivision at or near Railroad's Milepost 246.93 at a point more particularly known as DOT 673272V (the "grade crossing").

NOW, THEREFORE, in consideration of the mutual covenants, promises, and representations in this Agreement, the parties agree as follows:

(1) PURPOSE: The purpose of this Agreement is to provide for (i) incentive payments by Railroad, (ii) as applicable, the installation, maintenance, repair, and renewal of necessary safety improvements by Commission and Agency to accomplish the permanent abolishment and closure of the grade crossing to roadway traffic, and (iii) the vacation/surplus by Commission and Agency and transfer to the Railroad of any rights of the Commission and Agency related to the grade crossing (hereinafter, "Project").

(2) SCOPE OF OBLIGATIONS RELATED TO THE INITIAL CLOSURE WORK:

(A) In coordination with the Agency's and Commission's initial closure work described herein, the Railroad shall remove the existing crossing surface and warning signs at the grade crossing; provided, however, that such removal shall not occur unless either (i) the permanent barricades described in subsection (2)(C) have been fully completed, or (ii) temporary barricades providing substantially similar functionality have

been installed and are being maintained by the Agency outside the Railroad right-of-way, and the Agency has confirmed such installation in writing.

(B) The Agency shall vacate/surplus the Agency's property rights in and to the Railroad right-of-way.

(C) The Commission shall be responsible for the installation of a permanent barricade consisting of Type A or D guardrail with Type IV object markers across the roadway approach to the grade crossing at the boundary of the Railroad's right-of-way (but not on the Railroad's property) on both sides of the crossing; obliterating the existing roadway approach on both sides of the crossing up to the track tie ends; removing the existing advance warning signs along each approach to the grade crossing. The work shall be completed according to MoDOT standards and in substantial compliance with Exhibit A.

(3) FUNDING AND APPORTIONMENT:

(A) The Railroad shall assume responsibility for one hundred percent (100%) of the costs of the work described in subsection (2)(A) of this Agreement, using the Railroad's own funds.

(B) The Commission shall assume responsibility for one hundred percent (100%) of the costs of the work described in subsection (2)(C) of this Agreement, using the Commission's own funds.

(C) The Railroad shall pay a cash incentive payment to the Agency from the Railroad's own funds in the amount of Two Hundred Thousand Dollars and No/100 (\$200,000.00), in consideration of the permanent closure of grade crossing to roadway traffic and vacation/surplus of any rights held by the Agency in and to the Railroad right-of-way in connection therewith. The Agency shall submit to the Railroad a statement requesting payment and the Agency's W-9 prior to payment.

(D) The incentive payment provided in subsection (3)(C) of this Agreement shall become due and payable immediately after the last to occur of (i) both of Railroad's and the Commission's inspection confirming that all the work described in section (2) of this Agreement has been completed in accordance with this Agreement and, with respect to the Commission only, the Administrative Order, (ii) the Commission's formal authorization of the Administrative Order (defined below) directing and authorizing the Commission to undertake its obligations set forth herein, and (iii) formal authorization of the Agency directing and authorizing the Agency to undertake its obligations herein.

(E) Notwithstanding any other provision of this Agreement, the parties acknowledge and agree that the only incentive payment associated with the closure and vacation/surplus of property rights at the grade crossings is the incentive payment paid by the Railroad to the Agency. Such incentive payment is nominally made to the Agency to document consideration for the Agency's relinquishment of property rights; however,

the Agency has elected and agreed that this incentive payment shall function solely as a pass-through contribution to the Commission for the Route MM grade separation project. The Agency shall not retain the incentive payment for its own use, and the parties agree the Commission shall serve as the sole recipient of and administrator of the funds for the Project purposes. Subject to all applicable laws, the parties agree that the Railroad may tender the incentive payment directly to the Commission on the Agency's behalf, and such direct payment shall satisfy the Railroad's obligation to the Agency with respect to the incentive payment. The Agency hereby irrevocably assigns its right to receive the incentive payment to the Commission for Project purposes, and payment by the Railroad directly to the Commission shall fully discharge the Railroad's obligation to the Agency.

(4) COST OF PROJECT: The cost of the Project shall be the total monies expended by the Railroad, Agency, and Commission to complete the work and obligations described herein, together with the cash incentive payable by the Railroad in the amounts described in section (3) of this Agreement.

(5) ADDITIONAL REQUIREMENTS RELATED TO THE INITIAL CLOSURE WORK:

(A) The Railroad, upon receipt of notification from the Commission, shall furnish all labor and material and complete the work described in subsection (2)(A) of this Agreement, in accordance with (i) the Ordered Due Date of the Commission's Administrative Order pursuant to section 389.610 RSMo ("Administrative Order"), (ii) to the extent applicable, in accordance with that certain Master Agreement between the Railroad and the Commission, dated May 12, 1980 (the "Master Agreement"), and, (iii) to the extent applicable, in accordance with the rules and regulations contained in Title 23 Code of Federal Regulations (CFR) Part 140 Subpart I and 23 CFR Part 646 Subpart B issued by the Federal Highway Administration (FHWA).

(B) The Agency shall complete its respective performance of the work described in subsection (2)(B) of this Agreement, in accordance with the Ordered Due Date of the Administrative Order approving and authorizing the Project described in this Agreement.

(C) All traffic control devices installed by the Railroad or by the Agency pursuant to this Agreement shall be installed in substantial compliance with the applicable provisions of the *Manual on Uniform Traffic Control Devices* (MUTCD) (2023 Edition), published by the FHWA.

(6) FORCE ACCOUNT AND NON-FORCE ACCOUNT WORK: The Railroad will furnish all of the material and do all of the work to be performed by the Railroad with its own forces, or such work may be done by a contractor paid under a contract let by the Railroad, and, if applicable, in compliance with provisions of 23 CFR Chapter I, Subchapter B, Part 140, Subpart I and Chapter 34 RSMo. Said 23 CFR and Chapter 34 RSMo is by reference made part of this Agreement, but only to the extent such provisions are applicable.

(7) MAINTENANCE AND OPERATION: After the completion of the initial closure work, the Agency shall maintain, repair, and renew the respective permanent barricade installed in subsection (2)(B), using the Agency's own funds.

(8) AGENCY OBLIGATION: The Agency in coordination with the Railroad and Commission hereby agrees to cooperate in the handling of traffic during construction. The Agency shall be responsible for traffic control on public approaches outside the Railroad right-of-way.

(9) AMENDMENTS: Any change in this Agreement, whether by modification or supplementation, must be accomplished by a formal contract amendment signed and approved by the duly authorized representatives of the Railroad, the Commission, and the Agency.

(10) INDEMNIFICATION: To the extent allowed or imposed by law, the Agency shall defend, indemnify, and hold harmless the Commission and Railroad, including their respective members and the Missouri Department of Transportation ("MoDOT" or "Department") employees, from any claim or liability whether based on a claim for damages to real or personal property or to a person for any matter relating to or arising out of the Agency's wrongful or negligent performance of its obligations under this Agreement.

(11) INSURANCE:

(A) The Agency is required or will require any contractor procured by the Agency to work under this Agreement:

1. To obtain a no cost permit from the Commission's district engineer prior to working on the Commission's right-of-way, which shall be signed by an authorized contractor representative (a permit from the Commission's district engineer will not be required for work outside of the Commission's right-of-way); and

2. To carry commercial general liability insurance and commercial automobile liability insurance from a company authorized to issue insurance in Missouri, and to name the Commission, the Missouri Department of Transportation and its employees, the Agency, and the Railroad as additional insureds in amounts sufficient to cover the sovereign immunity limits for Missouri public entities (\$600,000 per claimant and \$4,000,000 per occurrence) as calculated by the Missouri Department of Insurance, Financial Institutions and Professional Registration, and published annually in the Missouri Register pursuant to Section 537.610, RSMo. Such coverage shall be primary and non-contributory, and shall include waiver of subrogation where permitted by law.

(B) In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either party's rights or defenses with regard to each party's applicable sovereign, governmental, or official immunities and protections as

provided by federal and state constitution or law.

(12) NON-EMPLOYMENT OF UNAUTHORIZED ALIENS: To the extent applicable, pursuant to section 285.530 RSMo, no business entity or employer shall knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the State of Missouri. As a condition for the award of any contract or grant in excess of five thousand dollars (\$5,000) by the State or by any political subdivision of the State to a business entity, or for any business entity receiving a state-administered or subsidized tax credit, tax abatement, or loan from the state, the business entity shall:

(A) By sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. E-Verify is an example of a federal work authorization program. The business entity (to the extent applicable) must affirm its enrollment and participation in the E-Verify federal work authorization program with respect to the employees proposed to work in connection with the services requested herein by providing acceptable enrollment and participation documentation consisting of **completed** copy of the E-Verify Memorandum of Understanding. For business entities that are not already enrolled and participating in a federal work authorization program, E-Verify is available at [http://www.dhs.gov/xprevprot/programs/qc\\_1185221678150.shtm](http://www.dhs.gov/xprevprot/programs/qc_1185221678150.shtm).

(B) By sworn affidavit (to the extent applicable), the Railroad affirms that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. A copy of the affidavit referenced herein is provided within this document, attached as **Exhibit B**.

(13) WAIVER OF HEARING ON ISSUANCE OF ADMINISTRATIVE ORDERS:

(A) This Agreement is made subject to approval of the proposed Project by a final administrative order issued by the Missouri Highways and Transportation Commission, or by the Missouri Administrative Hearing Commission (hereinafter "AHC"), in accordance with section 389.610 RSMo Supp. 2004. With reference to the issuance of that administrative order, the Railroad (as applicable), the Agency and the Commission stipulate that the construction of the Project as described in this Agreement will promote public safety and will not adversely affect public necessity. The Railroad and the Agency each consent that the Commission or the AHC, or both, may issue administrative orders approving and authorizing the construction of this Project in conformity with the provisions of this Agreement, and the Railroad and the Agency each waives its right to notice and an opportunity for hearing before the issuance of these administrative orders, so long as no other party requests a hearing.

(14) NONDISCRIMINATION ASSURANCE: With regard to work under this Agreement, to the extent applicable, the Railroad and Agency agree as follows:

(A) Civil Rights Statutes: The Railroad (to the extent applicable) and

Agency shall comply with all applicable state and federal statutes relating to nondiscrimination, including but not limited to Title VI and Title VII of the Civil Rights Act of 1964, as amended (42 USC 2000d and 2000e, *et seq.*), as well as any applicable titles of the Americans with Disabilities Act. In addition, if the Railroad or Agency are providing services or operating programs on behalf of the Department or the Commission, it shall comply with all applicable provisions of Title II of the Americans with Disabilities Act.

(B) Administrative Rules: The Railroad (to the extent applicable) and Agency shall comply with the administrative rules of the United States Department of Transportation (USDOT) relative to nondiscrimination in federally assisted programs of the USDOT (49 CFR Subtitle A, Part 21) which are herein incorporated by reference and made part of this Agreement.

(C) Nondiscrimination: The Railroad (to the extent applicable) and Agency shall not discriminate on grounds of the race, color, religion, creed, sex, disability, national origin, age, or ancestry of any individual in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Railroad (to the extent applicable) and Agency shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR 21.5, including employment practices.

(D) Solicitations for Subcontracts, Including Procurements of Material and Equipment: These assurances concerning nondiscrimination also apply to subcontractors and suppliers of the Railroad (to the extent applicable) and Agency. These may apply to all solicitations either by competitive bidding or negotiation made by the Railroad and Agency for work to be performed under a subcontract including procurement of materials or equipment. Each potential subcontractor or supplier shall be notified by the Railroad (to the extent applicable) and Agency of the requirements of this Agreement relative to nondiscrimination on grounds of the race, color, religion, creed, sex, disability or national origin, age, or ancestry of any individual.

(E) Information and Reports: The Railroad and Agency shall provide all information and reports required by this Agreement, or orders and instructions issued pursuant thereto, and will permit access at reasonable times and places to its books, records, accounts, other sources of information, and its facilities as may be reasonably determined by the Commission or the USDOT to be necessary to ascertain compliance with other contracts, orders and instructions. Where any information required of the Railroad or Agency is in the exclusive possession of another who fails or refuses to furnish this information, the Railroad or Agency shall so certify to the Commission or the USDOT as appropriate and shall set forth what efforts it has made to obtain the information.

(F) Sanctions for Noncompliance: In the event the Railroad or Agency fails to comply with the applicable nondiscrimination provisions of this Agreement, the Commission shall impose such contract sanctions as it or the USDOT may determine to be appropriate, including but not limited to:

1. Withholding of payments under this Agreement until the Railroad and Agency complies; and/or

2. Cancellation, termination, or suspension of this Agreement, in whole or in part, or both.

(G) Incorporation of Provisions: The Railroad (to the extent applicable) and Agency shall include the provisions of section (14) of this Agreement in every subcontract, including procurements of materials and leases of equipment, unless exempted by the statutes, executive order, administrative rules or instructions issued by the Commission or the USDOT. The Railroad (to the extent applicable) and Agency will take such action with respect to any subcontract or procurement as the Commission or the USDOT may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that in the event the Railroad (to the extent applicable) and Agency becomes involved or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Railroad and Agency may request the United States to enter into such litigation to protect the interests of the United States.

(15) COMMISSION REPRESENTATIVE: The Commission's Multimodal Operations Division Director is designated as the Commission's representative for the purpose of administering the provisions of this Agreement. The Commission's representative may designate by written notice other persons having the authority to act on behalf of the Commission in furtherance of the performance of this Agreement.

(16) ASSIGNMENT: The Railroad or Agency shall not assign, transfer, or delegate any interest in this Agreement without the prior written consent of the Commission.

(17) LAW OF MISSOURI TO GOVERN: This Agreement shall be construed according to the applicable laws of the State of Missouri. The Railroad and Agency shall comply with all applicable local, state, and federal laws and regulations relating to the performance of this Agreement; provided that nothing in this Agreement is intended to waive or be construed as the Railroad's consent to waive the preemptive effect of federal law as to the Railroad.

(18) VENUE: It is agreed by the parties that any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, or regarding its alleged breach, shall be instituted only in the Circuit Court of Cole County, Missouri or if applicable, in the U.S. District Court for the Western District of Missouri.

(19) CANCELLATION: The Commission may cancel this Agreement at any time for a material breach of contractual obligations by providing the Railroad and the Agency with written notice of cancellation after providing written notice thereof and a reasonable cure period thereafter. Should the Commission exercise its right to cancel this Agreement for such reasons, cancellation will become effective upon the date specified in the notice of cancellation sent to the Railroad and the Agency.

(20) AUDIT OF RECORDS: The Railroad must maintain all records relating to this Agreement, including but not limited to invoices, payrolls, etc. These records must be available at all reasonable times at no charge to the Commission and/or its designees or representatives during the period of this Agreement and any extension, and for three (3) years after the date of final payment made under this Agreement.

(21) RAILROAD NOTIFICATION: At least five (5) days prior to the commencement of any work described in subsection (2)(A) of this Agreement to be performed by the Railroad, the Railroad shall notify the Commission and the Agency of the date it plans to commence said work.

(22) AUTHORITY TO EXECUTE: The signers of this Agreement warrant that they are acting officially and properly on behalf of their respective institutions and have been duly authorized, directed and empowered to execute this Agreement.

***Remainder of Page Intentionally Left Blank***

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly appointed officials.

Executed by Railroad on \_\_\_\_\_ (date).

Executed by Agency on \_\_\_\_\_ (date).

Executed by Commission on \_\_\_\_\_ (date).

MISSOURI HIGHWAYS AND  
TRANSPORTATION COMMISSION

BNSF RAILWAY COMPANY

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

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

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

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

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

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

ATTEST:

CITY OF REPUBLIC

By: \_\_\_\_\_  
Commission Secretary

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

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

APPROVED AS TO FORM:

ATTEST

By: \_\_\_\_\_  
Commission Counsel

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

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

Ordinance No. \_\_\_\_\_

**Exhibit A**  
Plans

Exhibit B  
**Annual Worker Eligibility Verification Affidavit**

[to be attached hereto]