

DOC # 2010-0052706

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Recorded in Official Records

County of Riverside

Larry W. Ward

Assessor, County Clerk & Recorder



PLEASE COMPLETE THIS INFORMATION
RECORDING REQUESTED BY

Colleen J Nicol, MMC

AND WHEN RECORDED MAIL TO
City Clerk
City of Riverside
3900 Main St.
Riverside, CA 92522
FREE RECORDING-
Exempt Pursuant to
Government Code S6103

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EASEMENT AGREEMENT FOR THE COLUMBIA AVENUE OVERPASS

Title of Document

THIS AREA FOR
RECORDER'S
USE ONLY

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION
(\$3 00 Additional Recording Fee Applies)

16432

**EASEMENT AGREEMENT
FOR THE COLUMBIA AVENUE OVERPASS
Attachment to C&M Agreement**

THIS EASEMENT AGREEMENT FOR THE COLUMBIA AVENUE OVERPASS ("Easement Agreement") is made and entered into as of the 22nd day of JANUARY 2010 ("Effective Date"), by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("Grantor"), and **THE CITY OF RIVERSIDE**, a California Charter City and Municipal Corporation ("Grantee").

A Grantor owns or controls certain real property situated at or near the vicinity of Riverside, County of Riverside, State of California, [Project # 026475S], as described or depicted on Exhibit "A" attached hereto and made a part hereof (the "Premises").

B. Grantor and Grantee have entered into that certain Construction and Maintenance Agreement dated as of November 6, 2007 concerning improvements on or near the Premises (the "**C&M Agreement**")

C. Grantee has requested that Grantor grant to Grantee an easement over the Premises for the Easement Purpose (as defined below)

D. Grantor has agreed to grant Grantee such easement, subject to the terms and conditions set forth in this Easement Agreement.

NOW, THEREFORE, for and in consideration of the foregoing recitals which are incorporated herein, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1 Granting of Easement.

1.1 Easement Purpose. The "**Easement Purpose**" shall be for the purposes set forth in the C&M Agreement. Any improvements to be constructed in connection with the Easement Purpose are referred to herein as "**Improvements**" and shall be constructed, located, configured and maintained by Grantee in strict accordance with the terms of this Easement Agreement and the C&M Agreement.

1.2 Grant. Grantor does hereby grant unto Grantee a non-exclusive easement ("**Easement**") over the Premises for the Easement Purpose and for no other purpose. The Easement is granted subject to any and all restrictions, covenants, easements, licenses, permits, leases and other encumbrances of whatsoever nature whether or not of record, if any, relating to the Premises and subject to all with all applicable federal, state and local laws, regulations, ordinances, restrictions, covenants and court or administrative decisions and orders, including Environmental Laws (defined below) and zoning laws (collectively, "**Laws**"), Grantee may not make any alterations or improvements or perform any maintenance or repair activities within the Premises except in accordance with the terms and conditions of the C&M Agreement.

1.3 Reservations by Grantor. Grantor excepts and reserves the right, to be exercised by Grantor and any other parties who may obtain written permission or authority from Grantor:

- (a) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any existing pipe, power, communication, cable, or utility lines and appurtenances and other facilities or structures of like character (collectively, "**Lines**") upon, over, under or across the Premises;
- (b) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises, and

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- (c) to use the Premises in any manner as the Grantor in its sole discretion deems appropriate, provided Grantor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Grantee for the Easement Purpose.

Section 2 Term of Easement The term of the Easement, unless sooner terminated under provisions of this Easement Agreement, shall be perpetual.

Section 3 No Warranty of Any Conditions of the Premises. Grantee acknowledges that Grantor has made no representation whatsoever to Grantee concerning the state or condition of the Premises, or any personal property located thereon, or the nature or extent of Grantor's ownership interest in the Premises. Grantee has not relied on any statement or declaration of Grantor, oral or in writing, as an inducement to entering into this Easement Agreement, other than as set forth herein GRANTOR HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF ANY SUCH PROPERTY, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTOR SHALL NOT BE RESPONSIBLE TO GRANTEE OR ANY OF GRANTEE'S CONTRACTORS FOR ANY DAMAGES RELATING TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTEE ACCEPTS ALL RIGHTS GRANTED UNDER THIS EASEMENT AGREEMENT IN THE PREMISES IN AN "AS IS, WHERE IS" AND "WITH ALL FAULTS" CONDITION, AND SUBJECT TO ALL LIMITATIONS ON GRANTOR'S RIGHTS, INTERESTS AND TITLE TO THE PREMISES. Grantee has inspected or will inspect the Premises, and enters upon Grantor's rail corridor and property with knowledge of its physical condition and the danger inherent in Grantor's rail operations on or near the Premises Grantee acknowledges that this Easement Agreement does not contain any implied warranties that Grantee or Grantee's Contractors (as hereinafter defined) can successfully construct or operate the Improvements.

Section 4 Nature of Grantor's Interest in the Premises. GRANTOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND GRANTEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE. In case of the eviction of Grantee by anyone owning or claiming title to or any interest in the Premises, or by the abandonment by Grantor of the affected rail corridor, Grantor shall not be liable to refund Grantee any compensation paid hereunder.

Section 5 Improvements. Grantee shall take, in a timely manner, all actions necessary and proper to the lawful establishment, construction, operation, and maintenance of the Improvements, including such actions as may be necessary to obtain any required permits, approvals or authorizations from applicable governmental authorities Any and all cuts and fills, excavations or embankments necessary in the construction, maintenance, or future alteration of the Improvements shall be made and maintained in such manner, form and extent as will provide adequate drainage of and from the adjoining lands and premises of the Grantor; and wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from such lands and premises of the Grantor, the Grantee shall construct and maintain such culverts or drains as may be requisite to preserve such natural and pre-existing drainage, and shall also wherever necessary, construct extensions of existing drains, culverts or ditches through or along the premises of the Grantor, such extensions to be of adequate sectional dimensions to preserve the present flowage of drainage or other waters, and of materials and workmanship equally as good as those now existing In the event any construction, repair, maintenance, work or other use of the Premises by Grantee will affect any Lines, fences, buildings, improvements or other facilities (collectively, "**Other Improvements**"), Grantee will be responsible at Grantee's sole risk to locate and make any adjustments necessary to such Other Improvements. Grantee must contact the owner(s) of the Other Improvements notifying them of any work that may damage these Other Improvements and/or interfere with their service and obtain the owner's written approval prior to so affecting the Other Improvements Grantee must mark all Other Improvements on the Plans and Specifications and mark such Other Improvements in the field in order to verify their locations Grantee must also use all reasonable methods when working on or near Grantor property to determine if any Other Improvements (fiber optic, cable, communication or otherwise) may exist. The Grantee agrees to keep the above-described premises free and clear from combustible materials and to cut and remove or cause to be cut and removed at its sole expense all weeds and vegetation on said premises, said

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work of cutting and removal to be done at such times and with such frequency as to comply with Grantee and local laws and regulations and abate any and all hazard of fire.

Section 6 Taxes and Recording Fees. Grantee shall pay when due any taxes, assessments or other charges (collectively, "**Taxes**") levied or assessed upon the Improvements by any governmental or quasi-governmental body or any Taxes levied or assessed against Grantor or the Premises that are attributable to the Improvements. Grantee agrees to purchase, affix and cancel any and all documentary stamps in the amount prescribed by statute, and to pay any and all required transfer taxes, excise taxes and any and all fees incidental to recordation of the Memorandum of Easement. In the event of Grantee's failure to do so, if Grantor shall become obligated to do so, Grantee shall be liable for all costs, expenses and judgments to or against Grantor, including all of Grantor's legal fees and expenses.

Section 7 Environmental.

7.1 Compliance with Environmental Laws. Grantee shall strictly comply with all federal, state and local environmental Laws in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Toxic Substances Control Act (collectively referred to as the "**Environmental Laws**"). Grantee shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on the Premises. Grantee shall not handle, transport, release or suffer the release of "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any Environmental Laws.

7.2 Notice of Release. Grantee shall give Grantor immediate notice to Grantor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Grantee's use of the Premises. Grantee shall use its best efforts to promptly respond to any release on or from the Premises. Grantee also shall give Grantor immediate notice of all measures undertaken on behalf of Grantee to investigate, remediate, respond to or otherwise cure such release or violation.

7.3 Remediation of Release. In the event that Grantor has notice from Grantee or otherwise of a release or violation of Environmental Laws which occurred or may occur during the term of this Easement Agreement, Grantor may require Grantee, at Grantee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises. If during the construction or subsequent maintenance of the Improvements, soils or other materials considered to be environmentally contaminated are exposed, Grantee will remove and safely dispose of said contaminated soils. Determination of soils contamination and applicable disposal procedures thereof, will be made only by an agency having the capacity and authority to make such a determination.

7.4 Preventative Measures. Grantee shall promptly report to Grantor in writing any conditions or activities upon the Premises known to Grantee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Grantee's reporting to Grantor shall not relieve Grantee of any obligation whatsoever imposed on it by this Easement Agreement. Grantee shall promptly respond to Grantor's request for information regarding said conditions or activities.

7.5 Evidence of Compliance. Grantee agrees periodically to furnish Grantor with proof satisfactory to Grantor that Grantee is in compliance with this **Section 7**. Should Grantee not comply fully with the above-stated obligations of this **Section 7**, notwithstanding anything contained in any other provision hereof, Grantor may, at its option, terminate this Easement Agreement by serving five (5) days' notice of termination upon Grantee. Upon termination, Grantee shall remove the Improvements and restore the Premises as provided in **Section 9**.

Section 8 Default and Termination.

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8.1 Grantor's Performance Rights. If at any time Grantee, or Grantee's Contractors, fails to properly perform its obligations under this Easement Agreement, Grantor, in its sole discretion, may: (i) seek specific performance of the unperformed obligations, or (ii) at Grantee's sole cost, may arrange for the performance of such work as Grantor deems necessary for the safety of its rail operations, activities and property, or to avoid or remove any interference with the activities or property of Grantor, or anyone or anything present on the rail corridor or property with the authority or permission of Grantor. Grantee shall promptly reimburse Grantor for all costs of work performed on Grantee's behalf upon receipt of an invoice for such costs. Grantor's failure to perform any obligations of Grantee or Grantee's Contractors shall not alter the liability allocation set forth in this Easement Agreement.

8.2 Abandonment. Grantor may, at its option, terminate this Easement Agreement by serving five (5) days' notice in writing upon Grantee if Grantee should abandon or cease to use the Premises for the Easement Purpose. Any waiver by Grantor of any default or defaults shall not constitute a waiver of the right to terminate this Easement Agreement for any subsequent default or defaults, nor shall any such waiver in any way affect Grantor's ability to enforce any section of this Easement Agreement.

8.3 Effect of Termination or Expiration. Neither termination nor expiration will release Grantee from any liability or obligation under this Easement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date the Premises are restored as required by **Section 9**.

8.4 Non-exclusive Remedies. The remedies set forth in this **Section 8** shall be in addition to, and not in limitation of, any other remedies that Grantor may have under the C&M Agreement, at law or in equity.

Section 9 Surrender of Premises.

9.1 Removal of Improvements and Restoration. Upon termination of this Easement Agreement, whether by abandonment of the Easement or by the exercise of Grantor's termination rights hereunder, Grantee shall, at its sole cost and expense, immediately perform the following:

- (a) remove all or such portion of Grantee's Improvements and all appurtenances thereto from the Premises, as Grantor directs at Grantor's sole discretion;
- (b) repair and restore any damage to the Premises arising from, growing out of, or connected with Grantee's use of the Premises;
- (c) remedy any unsafe conditions on the Premises created or aggravated by Grantee; and
- (d) leave the Premises in the condition which existed as of the Effective Date.

9.2 Limited License for Entry. If this Easement Agreement is terminated, Grantor may direct Grantee to undertake one or more of the actions set forth above, at Grantee's sole cost, in which case Grantee shall have a limited license to enter upon the Premises to the extent necessary to undertake the actions directed by Grantor. The terms of this limited license include all of Grantee's obligations under this Easement Agreement. Termination will not release Grantee from any liability or obligation under this Easement Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Grantee's Improvements are removed and the Premises are restored to the condition that existed as of the Effective Date. If Grantee fails to surrender the Premises to Grantor upon any termination of the Easement, all liabilities and obligations of Grantee hereunder shall continue in effect until the Premises are surrendered.

Section 10 Liens. Grantee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Grantee on the Premises or attributable to Taxes that are the responsibility of Grantee pursuant to **Section 6**. Grantor is hereby authorized

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to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by Law to prevent the attachment of any such liens to any portion of the Premises; provided, however, that failure of Grantor to take any such action shall not relieve Grantee of any obligation or liability under this **Section 10** or any other section of this Easement Agreement.

Section 11 Tax Exchange. Grantor reserves the right to assign this Easement Agreement to Apex Property & Track Exchange, Inc. ("**Apex**"). Apex is a qualified intermediary within the meaning of Section 1031 of the Internal Revenue Code of 1986, as amended, and Treas. Reg. § 1.1031(k)-1(g), for the purpose of completing a tax-deferred exchange under said Section 1031. Grantor shall bear all expenses associated with the use of Apex, or necessary to qualify this transaction as a tax-deferred exchange, and, except as otherwise provided herein, shall protect, reimburse, indemnify and hold harmless Grantee from and against any and all reasonable and necessary additional costs, expenses, including, attorneys fees, and liabilities which Grantee may incur as a result of Grantor's use of Apex or the qualification of this transaction as a tax-deferred transaction pursuant to Section 1031. Grantee shall cooperate with Grantor with respect to this tax-deferred exchange, and upon Grantor's request, shall execute such documents as may be required to effect this tax-deferred exchange.

Section 12 Notices. Any notice required or permitted to be given hereunder by one party to the other shall be delivered in the manner set forth in the C&M Agreement. Notices to Grantor under this Easement shall be delivered to the following address: BNSF Railway Company, Real Estate Department, 2500 Lou Menk Drive, Ft. Worth, TX 76131, Attn: Permits, or such other address as Grantor may from time to time direct by notice to Grantee.

Section 13 Recordation. It is understood and agreed that this Easement Agreement shall not be in recordable form and shall not be placed on public record and any such recording shall be a breach of this Easement Agreement. Grantor and Grantee shall execute a Memorandum of Easement in the form attached hereto as **Exhibit "B"** (the "**Memorandum of Easement**") subject to changes required, if any, to conform such form to local recording requirements. The Memorandum of Easement shall be recorded in the real estate records in the county where the Premises are located. If a Memorandum of Easement is not executed by the parties and recorded as described above within 30 days of the Effective Date, Grantor shall have the right to terminate this Easement Agreement upon notice to Grantee.

Section 14 Miscellaneous.

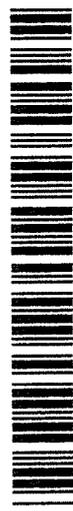
14.1 All questions concerning the interpretation or application of provisions of this Easement Agreement shall be decided according to the substantive Laws of the State of [**California**] without regard to conflicts of law provisions.

14.2 In the event that Grantee consists of two or more parties, all the covenants and agreements of Grantee herein contained shall be the joint and several covenants and agreements of such parties. This instrument and all of the terms, covenants and provisions hereof shall inure to the benefit of and be binding upon each of the parties hereto and their respective legal representatives, successors and assigns and shall run with and be binding upon the Premises.

14.3 If any action at law or in equity is necessary to enforce or interpret the terms of this Easement Agreement, the prevailing party or parties shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party or parties may be entitled.

14.4 If any provision of this Easement Agreement is held to be illegal, invalid or unenforceable under present or future Laws, such provision will be fully severable and this Easement Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof will remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, there will be added automatically as a part of this Easement Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

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Law Department Approved

14.5 This Easement Agreement is the full and complete agreement between Grantor and Grantee with respect to all matters relating to Grantee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Grantee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Grantee or Grantee's obligation to defend and hold Grantor harmless in any prior written agreement between the parties.

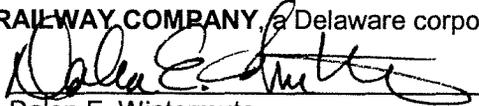
14.6 Time is of the essence for the performance of this Easement Agreement.

14.7 The terms of the C&M Agreement are incorporated herein as if fully set forth in this instrument which terms shall be in full force and effect for purposes of this Easement even if the C&M Agreement is, for whatever reason, no longer in effect.

Witness the execution of this Easement Agreement as of the date first set forth above.

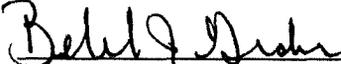
GRANTOR:

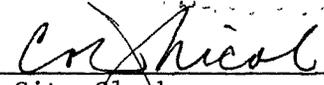
BNSF RAILWAY COMPANY, a Delaware corporation

By: 
Name: Dalen E. Wintermute
Title: Manager Land Revenue Management

GRANTEE:

THE CITY OF RIVERSIDE,
a California Charter City and Municipal Corporation

By: 
Name: Belinda J. Graham
Title: Assistant City Manager

Attest: 
City Clerk



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EXHIBIT "A"

Premises



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EXHIBIT "A"

PARCEL A

A PARCEL OF LAND IN THE CITY OF RIVERSIDE, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, BEING A PORTION OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY'S 100 FOOT WIDE RIGHT OF WAY IN LOTS 1 AND 2 OF SECTION 18, TOWNSHIP 2 SOUTH, RANGE 4 WEST, SAN BERNARDINO MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTERLINE OF COLUMBIA AVENUE AS SHOWN ON "MAP OF ORANGE GROWERS BANK ADDITION," RECORDED IN BOOK 2 OF MAPS, PAGE 40, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, WITH THE SOUTHEASTERLY LINE OF SAID 100 FOOT WIDE RIGHT OF WAY;

THENCE SOUTH 34°58'30" WEST (BEARING ASSUMED FOR PURPOSE OF THIS DESCRIPTION) ALONG SAID SOUTHEASTERLY LINE, 60.965 FEET TO A POINT IN A LINE PARALLEL WITH AND DISTANT SOUTHERLY 50.00 FEET, MEASURED AT RIGHT ANGLES, FROM SAID CENTERLINE;

THENCE NORTH 89°55'30" WEST ALONG SAID PARALLEL LINE, 121.93 FEET TO A POINT IN THE NORTHWESTERLY LINE OF SAID 100-FOOT WIDE RIGHT OF WAY;

THENCE NORTH 34°58'30" EAST ALONG SAID NORTHWESTERLY LINE, 121.93 FEET TO A POINT IN A LINE PARALLEL WITH AND DISTANT NORTHERLY 50.00 FEET, MEASURED AT RIGHT ANGLES, FROM SAID CENTERLINE;

THENCE SOUTH 89°55'30" EAST ALONG LAST SAID PARALLEL LINE, 121.93 FEET TO A POINT IN SAID SOUTHEASTERLY LINE;

THENCE SOUTH 34°58'30" WEST ALONG SAID SOUTHEASTERLY LINE, 60.965 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS AN AREA OF 0.28 OF AN ACRE, MORE OR LESS.

PARCEL B

TWO PARCELS OF LAND IN THE CITY OF RIVERSIDE, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA BEING THOSE PORTIONS OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY'S 100-FOOT WIDE PROPERTY IN SECTION 18, TOWNSHIP 2 SOUTH, RANGE 4 WEST, SAN BERNARDINO MERIDIAN, DESCRIBED AS FOLLOWS:

PARCEL NO. B-1

THAT PORTION OF THAT CERTAIN 100-FOOT WIDE STRIP OF LAND DESCRIBED IN DEED TO THE RIVERSIDE, SANTA ANA AND LOS ANGELES RAILWAY COMPANY (PREDECESSOR IN INTEREST TO FIRST SAID RAILWAY COMPANY)



RECORDED MAY 12, 1886, IN BOOK 46 OF DEEDS, PAGE 368, RECORDS OF SAN BERNARDINO COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHEASTERLY LINE OF SAID 100-FOOT WIDE STRIP OF LAND, SAID POINT BEING THE SOUTHEASTERLY CORNER OF THAT CERTAIN 0.28 ACRE PARCEL OF LAND DESCRIBED IN DEED TO THE COUNTY OF RIVERSIDE RECORDED NOVEMBER 8, 1967, AS INSTRUMENT NUMBER 98471, RECORDS OF FIRST SAID COUNTY;

THENCE NORTH 89°55'30" WEST ALONG THE SOUTHERLY LINE OF SAID 0.28 ACRE PARCEL OF LAND, 121.93 FEET TO A POINT IN THE NORTHWESTERLY LINE OF SAID 100-FOOT WIDE STRIP OF LAND;

THENCE SOUTH 34°58'30" WEST ALONG SAID NORTHWESTERLY LINE, 6.10 FEET TO A POINT IN A LINE PARALLEL WITH AND DISTANT SOUTHERLY 5.00 FEET, MEASURED AT RIGHT ANGLES, FROM SAID SOUTHERLY LINE AND ITS WESTERLY PROLONGATION;

THENCE SOUTH 89°55'30" EAST ALONG SAID PARALLEL LINE, 121.93 FEET TO A POINT IN SAID SOUTHEASTERLY LINE;

THENCE NORTH 34°58'30" EAST ALONG SAID SOUTHEASTERLY LINE, 6.10 FEET TO A POINT OF BEGINNING.

SAID PARCEL CONTAINS AN AREA OF 0.014 OF AN ACRE, MORE OR LESS.

PARCEL NO. B-2

THAT PORTION OF THAT CERTAIN 100-FOOT WIDE STRIP OF LAND DESCRIBED IN DEED TO THE RIVERSIDE, SANTA ANA AND LOS ANGELES RAILWAY COMPANY (PREDECESSOR IN INTEREST TO FIRST SAID RAILWAY COMPANY) RECORDED JUNE 14, 1886, IN BOOK 48 OF DEEDS; PAGE 27, RECORDS OF SAN BERNARDINO COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHEASTERLY LINE OF SAID 100-FOOT WIDE STRIP OF LAND, SAID POINT BEING THE NORTHEASTERLY CORNER OF THAT CERTAIN 0.28 ACRE PARCEL OF LAND DESCRIBED IN DEED TO THE COUNTY OF RIVERSIDE, RECORDED NOVEMBER 8, 1967, AS INSTRUMENT NUMBER 98471, RECORDS OF FIRST SAID COUNTY;

THENCE NORTH 89°55'30" WEST ALONG THE NORTHERLY LINE OF SAID 0.28 ACRE PARCEL OF LAND, 121.93 FEET TO A POINT IN THE NORTHWESTERLY LINE OF SAID 100-FOOT WIDE STRIP OF LAND;

THENCE NORTH 34°58'30" EAST ALONG SAID NORTHWESTERLY LINE, 6.10 FEET TO A POINT IN A LINE PARALLEL WITH AND DISTANT NORTHERLY 5.00 FEET MEASURED AT RIGHT ANGLES FROM SAID NORTHERLY LINE;

THENCE SOUTH 89°55'30" EAST ALONG SAID PARALLEL LINE, 121.93 FEET TO A



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POINT IN SAID SOUTHEASTERLY LINE;

THENCE SOUTH 34°58'30" WEST ALONG SAID SOUTHEASTERLY LINE, 6.10 FEET
TO POINT OF BEGINNING.

SAID PARCEL CONTAINS AN AREA OF 0.014 OF AN ACRE, MORE OR LESS.

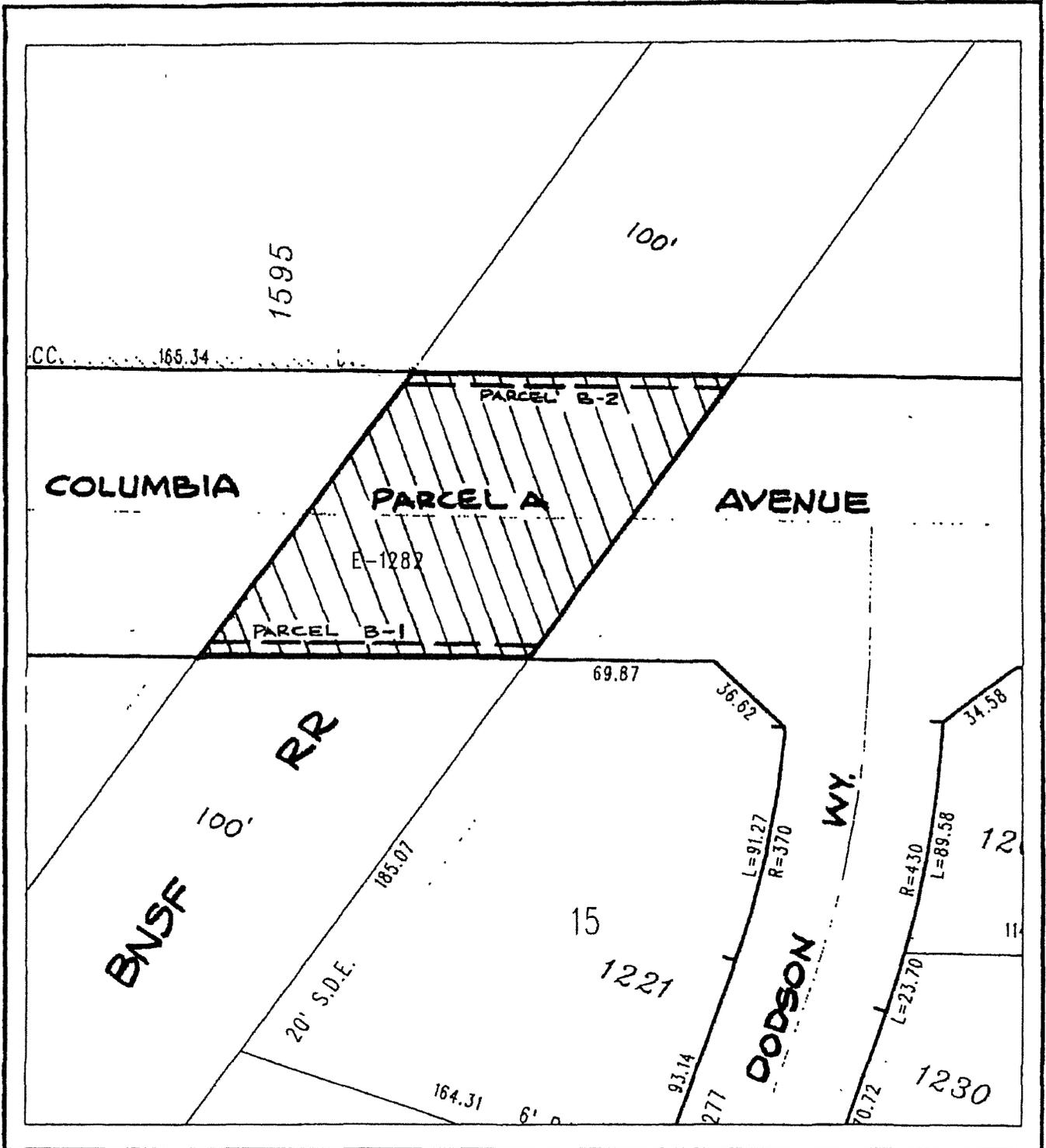
DESCRIPTION APPROVAL:

BY: K. Stant / 1/19/2007
DATE

FOR: MARK S. BROWN
CITY SURVEYOR



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◆ CITY OF RIVERSIDE, CALIFORNIA ◆

THIS PLAT IS SOLELY AN AID IN LOCATING THE PARCEL(S) DESCRIBED IN THE ATTACHED DOCUMENT. IT IS NOT A PART OF THE WRITTEN DESCRIPTION THEREIN.

Sheet 1 of 1



Scale: 1" = 50'	Drawn by: skn	Date: 01/18/07	Subject: COLUMBIA AVENUE GRADE SEPARATION
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EXHIBIT "B"
MEMORANDUM OF EASEMENT



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WHEN RECORDED MAIL TO:

Memorandum of Easement

THIS MEMORANDUM OF EASEMENT is hereby executed this 26th day of JANUARY, 2010, by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Grantor**"), whose address for purposes of this instrument is 2500 Lou Menk Drive, Fort Worth, Texas 76131, and **THE CITY OF RIVERSIDE**, a California Charter City and Municipal Corporation ("**Grantee**"), whose address for purposes of this instrument is 3900 Main Street, 4th Floor, Riverside, California 92522, which terms "Grantor" and "Grantee" shall include, wherever the context permits or requires, singular or plural, and the heirs, legal representatives, successors and assigns of the respective parties:

WITNESSETH:

WHEREAS, Grantor owns or controls certain real property situated in Riverside County, California as described on **Exhibit "A"** attached hereto and incorporated herein by reference (the "**Premises**");

WHEREAS, Grantor and Grantee entered into an Easement Agreement, dated JANUARY 26, 2010, (the "**Easement Agreement**") which set forth, among other things, the terms of an easement granted by Grantor to Grantee over and across the Premises (the "**Easement**"); and

WHEREAS, Grantor and Grantee desire to memorialize the terms and conditions of the Easement Agreement of record.

For valuable consideration the receipt and sufficiency of which are hereby acknowledged, Grantor does grant unto Grantee and Grantee does hereby accept from Grantor the Easement over and across the Premises.

The term of the Easement, unless sooner terminated under provisions of the Easement Agreement, shall be perpetual. Provisions regulating the use and purposes to which the Easement shall be limited, are set forth in detail in the Easement Agreement and Grantor and Grantee agree to abide by the terms of the Easement Agreement.

All the terms, conditions, provisions and covenants of the Easement Agreement are incorporated herein by this reference for all purposes as though written out at length herein, and both the Easement Agreement and this Memorandum of Easement shall be deemed to constitute a single instrument or document. This Memorandum of Easement is not intended to amend, modify, supplement, or supersede any of the provisions of the Easement Agreement and, to the extent there may be any conflict or inconsistency between the Easement Agreement or this Memorandum of Easement, the Easement Agreement shall control.



IN WITNESS WHEREOF, Grantor and Grantee have executed this Memorandum of Easement to as of the date and year first above written.

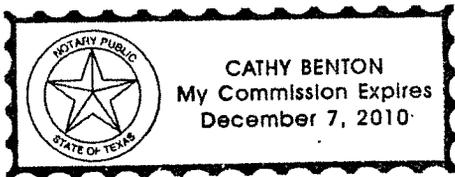
GRANTOR:

BNSF RAILWAY COMPANY, a Delaware corporation

By: 
Name: Dalen E. Wintermute
Title: Manager-Land Revenue Management

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

On this 26th day of January, 2010, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Dalen E. Wintermute, known to me to be Manager-Land Revenue Management, of the corporation that executed the within instrument on behalf of the Corporation therein named, and acknowledged to me that such Corporation executed the same.



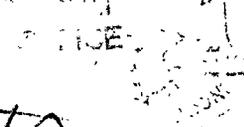

Notary's Signature
My Commission Expires: 12-07-2010



GRANTEE:
THE CITY OF RIVERSIDE,
a California Charter City and Municipal Corporation

By: Belinda J. Graham
Name: Belinda J. Graham
Title: Assistant City Manager

Attest: [Signature]
City Clerk



[Signature]
Notary Public

STATE OF _____ §
COUNTY OF _____ §

This instrument was acknowledged before me on the ___ day of _____, 2009, by _____ (name) as _____ (title) of _____, a _____.

Notary Public
(Seal)
My appointment expires: _____



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02/04/2010 08:00A
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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Riverside

On December 24, 2009 before me, Cheryl Ramirez Balz Notary Public

personally appeared Belinda J. Graham and Colleen J. Nicol



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Handwritten Signature]

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Memorandum of Easement

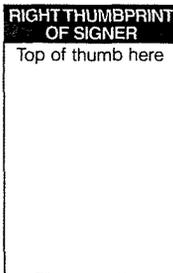
Document Date: December 24, 2009 Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

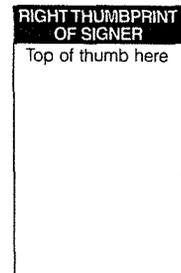
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____



EXHIBIT "A"

PARCEL A

A PARCEL OF LAND IN THE CITY OF RIVERSIDE, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, BEING A PORTION OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY'S 100 FOOT WIDE RIGHT OF WAY IN LOTS 1 AND 2 OF SECTION 18, TOWNSHIP 2 SOUTH, RANGE 4 WEST, SAN BERNARDINO MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTERLINE OF COLUMBIA AVENUE AS SHOWN ON "MAP OF ORANGE GROWERS BANK ADDITION," RECORDED IN BOOK 2 OF MAPS, PAGE 40, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, WITH THE SOUTHEASTERLY LINE OF SAID 100 FOOT WIDE RIGHT OF WAY;

THENCE SOUTH 34°58'30" WEST (BEARING ASSUMED FOR PURPOSE OF THIS DESCRIPTION) ALONG SAID SOUTHEASTERLY LINE, 60.965 FEET TO A POINT IN A LINE PARALLEL WITH AND DISTANT SOUTHERLY 50.00 FEET, MEASURED AT RIGHT ANGLES, FROM SAID CENTERLINE;

THENCE NORTH 89°55'30" WEST ALONG SAID PARALLEL LINE, 121.93 FEET TO A POINT IN THE NORTHWESTERLY LINE OF SAID 100-FOOT WIDE RIGHT OF WAY;

THENCE NORTH 34°58'30" EAST ALONG SAID NORTHWESTERLY LINE, 121.93 FEET TO A POINT IN A LINE PARALLEL WITH AND DISTANT NORTHERLY 50.00 FEET, MEASURED AT RIGHT ANGLES, FROM SAID CENTERLINE;

THENCE SOUTH 89°55'30" EAST ALONG LAST SAID PARALLEL LINE, 121.93 FEET TO A POINT IN SAID SOUTHEASTERLY LINE;

THENCE SOUTH 34°58'30" WEST ALONG SAID SOUTHEASTERLY LINE, 60.965 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS AN AREA OF 0.28 OF AN ACRE, MORE OR LESS.

PARCEL B

TWO PARCELS OF LAND IN THE CITY OF RIVERSIDE, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA BEING THOSE PORTIONS OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY'S 100-FOOT WIDE PROPERTY IN SECTION 18, TOWNSHIP 2 SOUTH, RANGE 4 WEST, SAN BERNARDINO MERIDIAN, DESCRIBED AS FOLLOWS:

PARCEL NO. B-1

THAT PORTION OF THAT CERTAIN 100-FOOT WIDE STRIP OF LAND DESCRIBED IN DEED TO THE RIVERSIDE, SANTA ANA AND LOS ANGELES RAILWAY COMPANY (PREDECESSOR IN INTEREST TO FIRST SAID RAILWAY COMPANY)



RECORDED MAY 12, 1886, IN BOOK 46 OF DEEDS, PAGE 368, RECORDS OF SAN BERNARDINO COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHEASTERLY LINE OF SAID 100-FOOT WIDE STRIP OF LAND, SAID POINT BEING THE SOUTHEASTERLY CORNER OF THAT CERTAIN 0.28 ACRE PARCEL OF LAND DESCRIBED IN DEED TO THE COUNTY OF RIVERSIDE RECORDED NOVEMBER 8, 1967, AS INSTRUMENT NUMBER 98471, RECORDS OF FIRST SAID COUNTY;

THENCE NORTH 89°55'30" WEST ALONG THE SOUTHERLY LINE OF SAID 0.28 ACRE PARCEL OF LAND, 121.93 FEET TO A POINT IN THE NORTHWESTERLY LINE OF SAID 100-FOOT WIDE STRIP OF LAND;

THENCE SOUTH 34°58'30" WEST ALONG SAID NORTHWESTERLY LINE, 6.10 FEET TO A POINT IN A LINE PARALLEL WITH AND DISTANT SOUTHERLY 5.00 FEET, MEASURED AT RIGHT ANGLES, FROM SAID SOUTHERLY LINE AND ITS WESTERLY PROLONGATION;

THENCE SOUTH 89°55'30" EAST ALONG SAID PARALLEL LINE, 121.93 FEET TO A POINT IN SAID SOUTHEASTERLY LINE;

THENCE NORTH 34°58'30" EAST ALONG SAID SOUTHEASTERLY LINE, 6.10 FEET TO A POINT OF BEGINNING.

SAID PARCEL CONTAINS AN AREA OF 0.014 OF AN ACRE, MORE OR LESS.

PARCEL NO. B-2

THAT PORTION OF THAT CERTAIN 100-FOOT WIDE STRIP OF LAND DESCRIBED IN DEED TO THE RIVERSIDE, SANTA ANA AND LOS ANGELES RAILWAY COMPANY (PREDECESSOR IN INTEREST TO FIRST SAID RAILWAY COMPANY) RECORDED JUNE 14, 1886, IN BOOK 48 OF DEEDS; PAGE 27, RECORDS OF SAN BERNARDINO COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHEASTERLY LINE OF SAID 100-FOOT WIDE STRIP OF LAND, SAID POINT BEING THE NORTHEASTERLY CORNER OF THAT CERTAIN 0.28 ACRE PARCEL OF LAND DESCRIBED IN DEED TO THE COUNTY OF RIVERSIDE, RECORDED NOVEMBER 8, 1967, AS INSTRUMENT NUMBER 98471, RECORDS OF FIRST SAID COUNTY;

THENCE NORTH 89°55'30" WEST ALONG THE NORTHERLY LINE OF SAID 0.28 ACRE PARCEL OF LAND, 121.93 FEET TO A POINT IN THE NORTHWESTERLY LINE OF SAID 100-FOOT WIDE STRIP OF LAND;

THENCE NORTH 34°58'30" EAST ALONG SAID NORTHWESTERLY LINE, 6.10 FEET TO A POINT IN A LINE PARALLEL WITH AND DISTANT NORTHERLY 5.00 FEET MEASURED AT RIGHT ANGLES FROM SAID NORTHERLY LINE;

THENCE SOUTH 89°55'30" EAST ALONG SAID PARALLEL LINE, 121.93 FEET TO A



POINT IN SAID SOUTHEASTERLY LINE;

THENCE SOUTH 34°58'30" WEST ALONG SAID SOUTHEASTERLY LINE, 6.10 FEET
TO POINT OF BEGINNING.

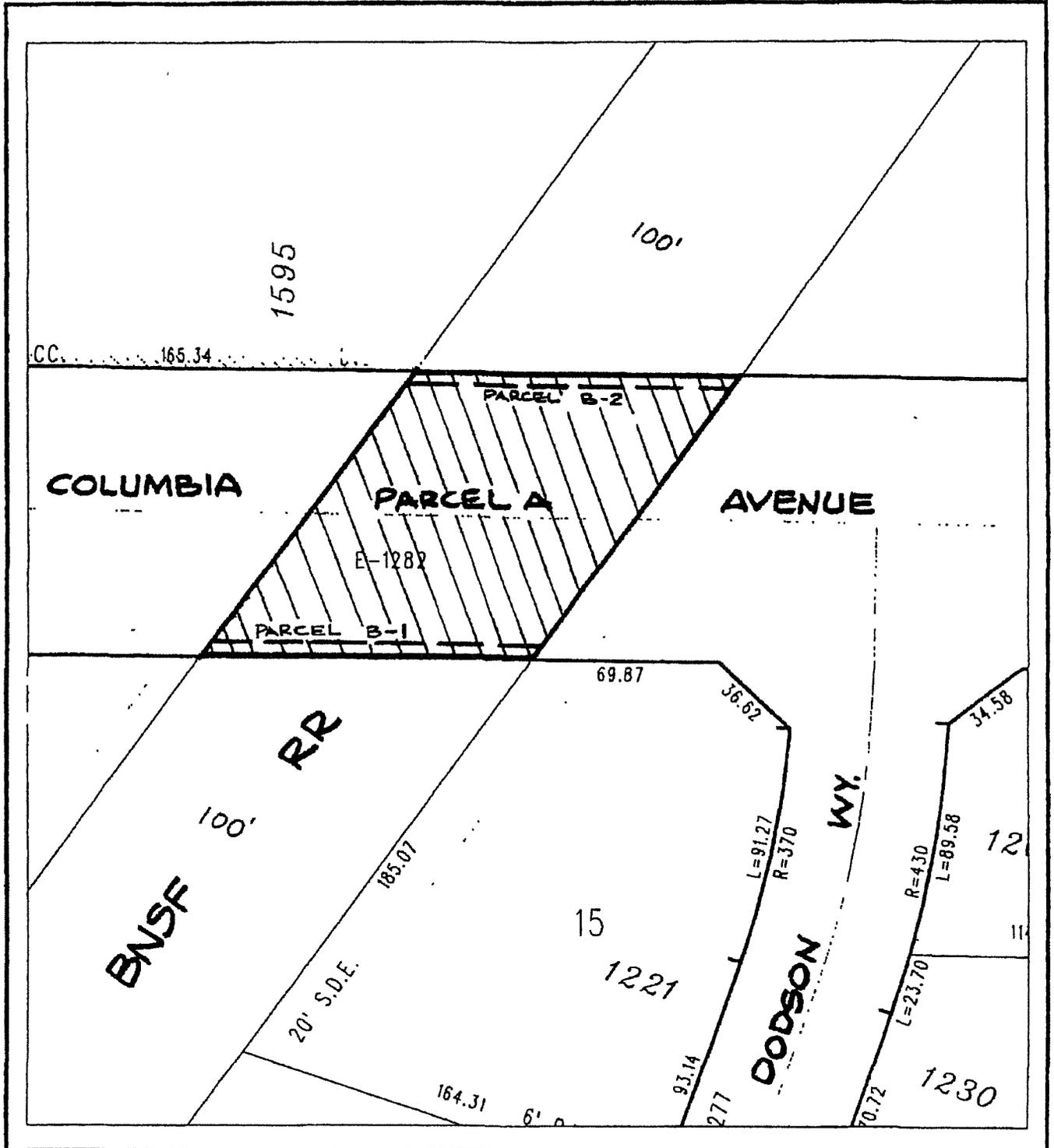
SAID PARCEL CONTAINS AN AREA OF 0.014 OF AN ACRE, MORE OR LESS.

DESCRIPTION APPROVAL:

BY: *[Signature]* 1/19/2007
DATE

FOR: MARK S. BROWN
CITY SURVEYOR





◆ CITY OF RIVERSIDE, CALIFORNIA ◆

THIS PLAT IS SOLELY AN AID IN LOCATING THE PARCEL(S) DESCRIBED IN THE ATTACHED DOCUMENT. IT IS NOT A PART OF THE WRITTEN DESCRIPTION THEREIN.

Sheet 1 of 1



Scale: 1" = 50'

Drawn by: sken

Date: 01/18/07

Subject: COLUMBIA AVENUE GRADE SEPARATION



2010-0052706
02/04/2010 08 00A
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16432



LARRY W. WARD
COUNTY OF RIVERSIDE
ASSESSOR-COUNTY CLERK-RECORDER

Recorder
P O Box 751
Riverside, CA 92502-0751
(951) 486-7000

www.riversideacr.com

CERTIFICATION

Pursuant to the provisions of Government Code 27361.7, I certify under the penalty of perjury that the following is a true copy of illegible wording found in the attached document:

(Print or type the page number(s) and wording below):

Page 3 of 3

"Approved as to Form
City Attorney's Office
By (Richard A Milligan)
Deputy City Attorney"

City of Riverside California
Incorporated 1888

2010-0852706
02/04/2010 08:06A
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Date: 2/2/10

Signature: Susan Allen

Print Name: Susan Allen