

CITY COMMISSION MEETING AGENDA

City Hall Commission Chambers

Monday, February 18, 2019

7:00 p.m.

MEETING #5119

CALL TO ORDER

ROLL CALL

INVOCATION BY Jerre Nolte of United Methodist Church

PLEDGE OF ALLEGIANCE

PETITIONS & PROCLAMATIONS

VISITORS (Limit of five minutes per individual and fifteen minutes per topic. Final action may be deferred until the next City Commission meeting unless an emergency situation does exist).

Annual Boot Hill Museum Report by Executive Director, Lara Brehm

CONSENT CALENDAR

1. Approval of City Commission Work Session Minutes, February 4, 2019;
2. Approval of City Commission Meeting Minutes, February 4, 2019;
3. Appropriation Ordinance No.4 February 18, 2019;
4. Cereal Malt Beverage License:

ORDINANCES & RESOLUTIONS

Resolution No. 2019-03: A Resolution of the City of Dodge City, Kansas, Authorizing Certain Public Improvements and Providing for the Payment of the Costs Thereof. Report by Finance Director/City Clerk, Nannette Pogue.

UNFINISHED BUSINESS

NEW BUSINESS

1. Approval of Bids for Linn Street Reconstruction & Drainage Improvement Project. Report by City Engineer, Tanner Rutschman.
2. Approval of Supplement to Consulting Service Agreement for the Design of a Sampling Basin and Force Main. Report by Director of Engineering, Ray Slattery.
3. Approval of Pre-emption Installation Agreement with BNSF. Report by Director of Engineering, Ray Slattery.
4. Approval of Proposal for Lot at 14th Avenue and Soule Street Subdivision with Conditions. Report by Finance Director City Clerk, Nannette Pogue.

OTHER BUSINESS

EXECUTIVE SESSION

Discussion of Land Acquisition

ADJOURNMENT

CITY COMMISSION MEETING WORK SESSION MINUTES

City Hall Commission Chambers

Monday, February 4, 2019

5:30 p.m.

CALL TO ORDER

ROLL CALL: Mayor Brian Delzeit, Commissioners Kent Smoll, Joyce Warshaw and Rick Sowers. Commissioner Jan Scoggins was reported absent.

Discussion of City of Dodge City Comprehensive Plan. Melissa McCoy, Nathan Littrell and Terri Mujica-McClain presented the Dodge City Comprehensive Plan and facilitated discussion.

ADJOURNMENT

Commissioner Joyce Warshaw moved to adjourn the meeting and Commissioner Kent Smoll seconded the motion. The motion carried 4-0.

Mayor

ATTEST:

Nannette Pogue, City Clerk

CITY COMMISSION MEETING MINUTES

City Hall Commission Chambers

Monday, February 4, 2019

7:00 p.m.

MEETING #5118

CALL TO ORDER

ROLL CALL: Mayor Brian Delzeit, Commissioners Kent Smoll, Joyce Warshaw and Rick Sowers. Commissioner Jan Scoggins was reported absent.

INVOCATION by Juan Espinoza of the United Methodist Church

PLEDGE OF ALLEGIANCE

Commissioner Rick Sowers moved to amend the agenda to add an Executive Session to discuss Land Acquisition to the end of the meeting. Commissioner Kent Smoll seconded the motion. The motion carried 4-0.

PETITIONS & PROCLAMATIONS

VISITORS (Limit of five minutes per individual and fifteen minutes per topic. Final action may be deferred until the next City Commission meeting unless an emergency situation does exist).

CONSENT CALENDAR

1. Approval of City Commission Meeting Minutes, January 22, 2019;
2. Appropriation Ordinance No.3 February 4, 2019;
3. Cereal Malt Beverage License:
 - a. Taylor's Road House, 2305 W. Wyatt Earp Blvd.;
 - b. Don Hector's Restaurant, 208 S. 2nd Avenue;
4. Approval of Prime on the Nine Letter of Agreement;
5. Approval of Tri-Party Bio Gas Sales Agreement.

Commissioner Kent Smoll moved to approve the consent calendar as presented. Commissioner Joyce Warshaw seconded the motion. The motion carried 4-0.

ORDINANCES & RESOLUTIONS

Ordinance No. 3703: An Ordinance authorizing the execution of the Fourth Amendment to the Loan Agreement between Dodge City, Kansas and the State of Kansas, acting by and through the

Kansas Department of Health and Environment for the purpose of obtaining a loan from the Kansas Water Pollution Control Revolving Fund for the purpose of financing a wastewater treatment project; establishing a dedicated source of revenue for repayment of such loan; authorizing and approving certain documents in connection therewith; and authorizing certain other actions in connection with the Fourth Amendment to the Loan Agreement was approved on a motion by Commissioner Rick Sowers. Commissioner Kent Smoll seconded the motion. The motion carried 4-0.

Ordinance No. 3704: An Ordinance dealing with Cereal Malt Beverages and Alcoholic Liquor all articles; and Amending and Repealing certain Sections of Chapter III of the Code of the City of Dodge City, Kansas was approved on a motion by Commissioner Rick Sowers. Commissioner Kent Smoll seconded the motion. The motion carried 4-0.

Ordinance No. 3705: An Ordinance Repealing Chapter XI, Article 2, Section 204 of the Dodge City Code Relating to Firearm Registration was approved on a motion by Commissioner Kent Smoll. Commissioner Joyce Warshaw seconded the motion. The motion carried 4-0.

Ordinance No. 3706: An Ordinance Establishing a Chapter XI, Article 7 of the Code of the City of Dodge City. Entering or Staying upon a Designated Roadway is Prohibited was approved on a motion by Commissioner Joyce Warshaw. Commissioner Rick Sowers seconded the motion. The motion carried 4-0.

NEW BUSINESS

1. Commissioner Rick Sowers moved to appoint the following Commissioners to serve on the following Boards:

Brian Delzeit and Jan Scoggins to serve on the Dodge City/Ford County Development Corporation Board of Directors;

Commissioner Joyce Warshaw to serve on Dodge City YMCA Local Board;

Commissioner Joyce Warshaw to serve on Dodge City YMCA Corporate Board; and

Commissioner Rick Sowers to serve on Community Facilities Advisory Board.

Commissioner Joyce Warshaw seconded the motion. The motion carried 4-0.

2. Commissioner Kent Smoll moved to approve the appointment of Jeff Forrest to fill the vacancy on the Recycling Board. Commissioner Rick Sowers seconded the motion. The motion carried 4-0.
3. Commissioner Joyce Warshaw moved to approve the following appointments and reappointments to the Community Facilities Advisory Board: the reappointment of Michael Martinez for a 3 year term expiring in 2022; the appointment of Martha Mendoza to fill a 3 year term expiring in 2022; and the appointment of Hugo Rodela to

fill an unexpired term expiring in 2020. Commissioner Kent Smoll seconded the motion.
The motion carried 4-0.

OTHER BUSINESS
EXECUTIVE SESSION

At 7:30, Commissioner Rick Sowers moved to recess into Executive Session pursuant to the preliminary discussion related to the acquisition of real property found in K.S.A. 75-4319(b)(6). The justification for closing the meeting is to protect the city's position in the negotiations. The open meeting will resume in 30 minutes at 8:09 p.m. The Commission will not take action upon returning to the open session and prior to adjournment.

At 8:09 Commissioner Rick Sowers moved to extend the Executive Session for 10 minutes. Commissioner Kent Smoll seconded the motion. The motion carried 4-0.

At 8:19 p.m. the Regular Meeting resumed.

ADJOURNMENT

Commissioner Kent Smoll moved to adjourn the meeting. Commissioner Joyce Warshaw seconded the motion. The motion carried 4-0.

ATTEST:

Mayor

Nannette Pogue, City Clerk

Memorandum

To: Cherise Tieben, City Manager
From: Nannette Pogue
Date: February 14, 2019
Subject: Resolution No. 2019-03

Agenda Item: Ordinances and Resolutions

Recommendation: I recommend the approval of Resolution No. 2019-03.

Background: So that the City can obtain financing for construction projects in the form of general obligation bonds or temporary notes, the project first needs to be authorized by Resolution of the City of Dodge City. At the January 22, 2019 City Commission meeting the City Commission approved the 2018 street program and other projects to be financed by General Obligation Bonds. This program included street projects that will need to be financed with General Obligation Bond funding. Those projects are: US 50 Highway & Gary Avenue Intersection Design in the amount of 500,000, 6th Ave & Soule St. Intersection Improvement Design in the amount of \$80,000, Asphalt Street Projects in the amount of \$500,000, Second Avenue Bridge Repair Design in the amount of 100,000 and the construction of the replacement of Avenue K Bridge in the amount of 450,000. In the approval resolution, the public art fund contribution is added to each project instead of a standalone. That is why the amounts in the authorizing resolution are slightly different than what is stated above. Resolution No. 2019-03 formalizes the approval process for bond financing.

Justification: To issue General Obligation Bonds for specific street and other public improvement projects need to be authorized by Resolution.

Financial Considerations: Once the projects are authorized, funding will be issued to fund these projects.

Purpose/Mission: To maintain and improve the infrastructure in Dodge City.

Legal Considerations: None

Attachments: Resolution No. 2019-03.

RESOLUTION NO. 2019-03

A RESOLUTION OF THE CITY OF DODGE CITY, KANSAS, AUTHORIZING CERTAIN PUBLIC IMPROVEMENTS AND PROVIDING FOR THE PAYMENT OF THE COSTS THEREOF.

WHEREAS, K.S.A. 13-1024a, as amended by Charter Ordinance No. 41 (the “Act”) of the City of Dodge City, Kansas (the “City”), provides that for the purpose of paying for any bridge, viaduct, street, sidewalk or pedestrian way improvement, airport, public building or structure, parking improvement, or other public utility or works, including any appurtenances related thereto and the land necessary therefor, for lands for public parks and recreation facilities, including golf courses, stadiums and community centers, and developing and making improvements to the same, within or without the City, for the establishment, development and construction of crematories, desiccating or reduction works, including any appurtenances related thereto and the land necessary therefor, within or without the City, or for the improvement, repair or extension of any waterworks, sanitary sewer facilities, sewage treatment or disposal plant, sewerage system, storm water improvement, electric light plant, crematory, desiccating or reduction works or other public utility plant or works owned by the City, and for the purpose of rebuilding, adding to or extending to the same or acquiring land necessary therefor from time to time, as the necessities of the City may require, or for the acquisition of equipment, vehicles and other personal property to be used in relation to any of the improvements authorized herein, the City may borrow money and issue its general obligation bonds and/or temporary notes for the same; and

WHEREAS, the City may issue such general obligation bonds when authorized to do so by the adoption of a resolution by the City Commission (the “Governing Body”) describing the purpose to be provided for and the amount of general obligation bonds to be issued, such bonds to be issued, sold, delivered and retired in accordance with the provisions of the general bond law; and

WHEREAS, the Governing Body desires to authorize the issuance of general obligation bonds of the City to finance all or a portion of the public improvements set forth below.

THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF DODGE CITY, KANSAS:

Section 1. Public Improvements; Bond Authorization. The Governing Body hereby authorizes the issuance of general obligation bonds of the City (the “Bonds”) for the following described public improvements (collectively the “Improvements”):

<u>Description</u>	<u>Estimated Cost</u>
US 50 Highway & Gary Avenue Intersection Design	\$ 505,000
6 th Ave & Soule St. Intersection Imp Design	80,800
Asphalt Street Projects:	505,000
- Reconstruct Hillcrest Dr. (Division St. to Linn St.)	
- Reconstruct Military Ave. (Ave. L to Ave. M)	
- 2” Overlay on Kirk St. (Sycamore St. to Willow St.)	
- 2” Mill & Inlay of 9 th Ave (Wyatt Eaerp blvd. to Division St.)	
- 2” Mill & Inlay of W. Spruce St. (Westlawn Ave. to Greenwood Ave)	
- 2” Mill & Inlay on W. Brier St. (13 th Ave. to 10 th Ave.)	
- 2” Mill & Inlay on W. Park St. (17 th Ave. To 16 th Ave.)	

- 2" Mill & Inlay on Wright Ave. (Wyatt Earp Blvd. to Division St.)
- 2" Mill 7 Inlay on W. Ash St. (13th to 12 Ave.)
- 2" Mill & Inlay on E. Magnolia St. (Ave. E to Ave F)
- 2" Mill & Inlay on E. Magnolia St. (Ave G to Ave H)
- 2" Mill & Inlay on E. Mulberry St. (Ave C to Ave D)
- 2" Mill & Inlay on E. Mulberry St. (Ave F to Ave G)
- 2" Mill 7 Inlay on E. Oak St. (Ave. F to Ave. G)

Second Avenue Bridge Repair Design	101,000
Replacement of Ave K Bridge - Construction	454,500

The costs of the Improvements, interest on interim financing and associated financing costs shall be payable from the proceeds of the Bonds issued under authority of the Act.

Section 2. Reimbursement. The Bonds may be issued to reimburse expenditures made on or after the date which is 60 days before the date of this Resolution, pursuant to Treasury Regulation § 1.150-2.

Section 3. Effective Date. This Resolution shall take effect and be in full force from and after its adoption by the Governing Body.

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ADOPTED AND APPROVED by the governing body of the City of Dodge City, Kansas, on February 18, 2019

(Seal)

Mayor

ATTEST:

Clerk

CERTIFICATE

I hereby certify that the above and foregoing is a true and correct copy of the Resolution of the City adopted by the governing body on February 18, 2019, as the same appears of record in my office.

DATED: February 18, 2019

Clerk

Memorandum

*To: City Manager
City Commissioners*
*From: Tanner Rutschman, P.E.
City Engineer*
Date: February 18, 2019
*Subject: Linn St. Reconstruction & Drainage
Improvement, SD 1201*
Agenda Item: New Business

Recommendation: Approve the bid from RJA Dozer Service for the construction of the Linn St. Reconstruction & Drainage Improvement Project in the amount of \$217,915.32.

Background: Over the years the City has made minor improvements to temporarily resolve issues that have risen in this location regarding storm drainage. The temporary solutions were a result of budget restrictions. Storm water from 14th Ave. is brought underground to Linn St. where it is released onto the street and conveyed down to Rattlesnake Creek between Bristol Ave. and Greenwood Ave. Here it flows in an open channel swale that is overgrown with trees and is an ongoing maintenance issue. This project will include the installation of underground storm pipe and two new inlets to convey the storm water underground and clean up a portion of Rattlesnake Creek. This will bring the cost of future maintenance and upkeep to nearly zero.

Justification: This project will solve the maintenance issues that are currently being experienced with the drainage ditch and street.

Financial Considerations: The construction of the Linn St. Reconstruction & Drainage Improvement Project will cost \$217,915.32 which was under the Engineer's estimate of \$219,727.50. Funding of this project will be through General Obligation Bonds which had a budgeted amount of \$250,000.

Purpose/Mission: The completion of this project aligns with the City's core value of Ongoing Improvement by reducing future maintenance costs.

Legal Considerations: By approving the bid with RJA Dozer Service the City will enter into a contract with RJA Dozer Service and be responsible to make payments to RJA Dozer Service for the completed work.

Attachments: The bid tabulation which includes the Engineer's estimate.

**CITY OF DODGE CITY, KANSAS
BID TABULATION**

PROJECT: Linn St Drainage Improvements
 PROJECT #: SD 1201
 BID DATE: 02/12/19

CONTRACTOR:
 RJA Dozer
 ADDRESS:
 12946 113 Rd
 CITY: Minneola
 STATE: Kansas
 ZIP: 67865
LOW BIDDER

CONTRACTOR:
 APAC Kansas Shears Division
 ADDRESS:
 P.O. Box 668
 CITY: Dodge City
 STATE: Kansas
 ZIP: 67801

ENGINEER'S ESTIMATE

ITEM	DESCRIPTION	UNIT	QTY	UNIT PRICE	AMOUNT
Storm Sewer Extension					
1	Mobilization	L.S.	1	\$8,000.00	\$ 8,000.00
2	Clearing & Grubbing	L.S.	1	\$5,000.00	\$ 5,000.00
3	Unclassified Excavation	S.Y.	40	\$12.50	\$ 500.00
4	Rem/Repl. 6" Concrete Drive	S.Y.	15	\$60.00	\$ 900.00
5	10' x 6' Type 22 Inlet	Each	2	\$6,000.00	\$ 12,000.00
6	24" HDPE Storm Pipe Installed	L.F.	332	\$40.00	\$ 13,280.00
7	30" Plastic Drain Basin, Installed	Each	2	\$2,500.00	\$ 5,000.00
8	53" x 34" Horiz. Elliptical RCP, Installed	L.F.	94	\$350.00	\$ 32,900.00
9	53" x 34" Ellip. RCP Flared End, Installed	Each	1	\$1,800.00	\$ 1,800.00
10	Flexamat	S.Y.	57	\$100.00	\$ 5,700.00
11	Seeding and Mulching	L.S.	1	\$5,000.00	\$ 5,000.00
12	6" C900 Class 150 Waterline (PVC)	L.F.	20	\$120.00	\$ 2,400.00
13	Install 45° Bend	Each	4	\$600.00	\$ 2,400.00
14	Construction Staking	L.S.	1	\$1,500.00	\$ 1,500.00
Street Improvements					
1	Mobilization	L.S.	1	\$10,000.00	\$ 10,000.00
2	Unclassified Excavation	S.Y.	1700	\$12.50	\$ 21,250.00
3	Crushed Concrete Sub-grade	C.Y.	30	\$20.00	\$ 600.00
4	6" Fly-Ash Sub-grade Prep.	S.Y.	1675	\$8.00	\$ 13,400.00
5	4" Base Course	TON	350	\$80.00	\$ 28,000.00
6	2" Surface Course	TON	233	\$80.00	\$ 18,640.00
7	2" Asphalt Mill	S.Y.	440	\$3.00	\$ 1,320.00
8	Paving Fabric	S.Y.	1675	\$2.50	\$ 4,187.50
9	Remove/Replace Curb & Gutter	L.F.	333	\$40.00	\$ 13,320.00
10	4" Concrete Sidewalk	S.Y.	58	\$35.00	\$ 2,030.00
11	6" Concrete Drive	S.Y.	17	\$50.00	\$ 850.00
12	Remove/Replace 10' Valley Gutter	S.Y.	50	\$60.00	\$ 3,000.00
13	Manhole Adjustment	Each	1	\$1,000.00	\$ 1,000.00
14	Sub-grade Repair	C.Y.	150	\$25.00	\$ 3,750.00
15	Construction Staking	L.S.	1	\$2,000.00	\$ 2,000.00

UNIT PRICE	CONTRACT AMOUNT
\$12,500.00	\$ 12,500.00
\$1,650.00	\$ 1,650.00
\$6.75	\$ 270.00
\$68.40	\$ 1,026.00
\$12,460.00	\$ 24,920.00
\$31.95	\$ 10,607.40
\$3,680.00	\$ 7,360.00
\$121.00	\$ 11,374.00
\$1,500.00	\$ 1,500.00
\$48.06	\$ 2,739.42
\$2,600.00	\$ 2,600.00
\$42.00	\$ 840.00
\$1,800.00	\$ 7,200.00
\$3,600.00	\$ 3,600.00
\$8,600.00	\$ 8,600.00
\$4.55	\$ 7,735.00
\$45.00	\$ 1,350.00
\$7.50	\$ 12,562.50
\$115.00	\$ 40,250.00
\$128.00	\$ 29,824.00
\$6.75	\$ 2,970.00
\$1.44	\$ 2,412.00
\$26.50	\$ 8,824.50
\$74.00	\$ 4,292.00
\$108.00	\$ 1,836.00
\$75.00	\$ 3,750.00
\$1,000.00	\$ 1,000.00
\$9.15	\$ 1,372.50
\$2,950.00	\$ 2,950.00

UNIT PRICE	CONTRACT AMOUNT
\$21,000.00	\$ 21,000.00
\$9,000.00	\$ 9,000.00
\$150.00	\$ 6,000.00
\$260.00	\$ 3,900.00
\$5,600.00	\$ 11,200.00
\$97.00	\$ 32,204.00
\$4,200.00	\$ 8,400.00
\$146.00	\$ 13,724.00
\$1,100.00	\$ 1,100.00
\$105.00	\$ 5,985.00
\$6,530.00	\$ 6,530.00
\$130.00	\$ 2,600.00
\$350.00	\$ 1,400.00
\$1,350.00	\$ 1,350.00
\$31,600.00	\$ 31,600.00
\$4.60	\$ 7,820.00
\$32.00	\$ 960.00
\$12.00	\$ 20,100.00
\$98.00	\$ 34,300.00
\$100.00	\$ 23,300.00
\$3.18	\$ 1,399.20
\$1.80	\$ 3,015.00
\$43.50	\$ 14,485.50
\$83.50	\$ 4,843.00
\$137.00	\$ 2,329.00
\$78.50	\$ 3,925.00
\$940.00	\$ 940.00
\$45.00	\$ 6,750.00
\$750.00	\$ 750.00

TOTAL \$ 219,727.50

TOTAL \$ 217,915.32

TOTAL \$ 280,909.70

BID SECURITY 5%
 START DATE 5/28/2019

BID SECURITY 5%
 START DATE 6/3/2019

Memorandum

*To: City Manager
City Commissioners*

*From: Ray Slattery, P.E.
Director of Engineering Services*

Date: February 13, 2019

*Subject: Supplement to Consulting Agreement for the Design
of a Sampling Basin and Force Main, SS 1701.*

Agenda Item: New Business

Recommendation: Approve the Supplement Agreement to the Consulting Services Agreement with PEC Consultants in the amount of \$19,500.

Background: At the January 2, 2018 Commission Meeting, the Commission approved the Design Services Agreement with PEC for the design of a Sampling Basin and Force Main. It was discovered during the design of the project a new lift station would be required on the National Beef Processors (NBP) location to complete the project as proposed. NBP has given verbal approval to this change.

Justification: The design of the Sampling Basin and Force Main separation will provide an easier, accurate flow measurement and sampling of NBP's waste water. The new force main will remove existing flow from the East Dodge Pressure Sewer (EDPS) and allow for future growth along this system.

Financial Considerations: This revision will add \$19,500 to the contract with PEC. The new total for design services is \$213,500. This along with the video inspection by Mayer Speciality Services brings the total to \$220,650. Funding for these services will be split 50%-50% between the City and NBP. The construction of this project will also be split 50%-50% between the City and NBP. The City's portion of the project was budgetted in the 2018 CIP.

Purpose/Mission: The completion of this project meets our Core Value of Ongoing Improvement. Along with providing Safe services for our citizens.

Legal Considerations: The City as an addition to the contract with PEC Consultants, we are bound by the provisions of this supplement.

Attachments: Supplement Agreement #1 with PEC Consultants.

January 23, 2019

Ray Slattery, PE
City of Dodge City
PO Box 880
Dodge City, KS 67801

Reference: Wastewater System Improvements
Supplemental Agreement No. 1
Original Contract Date: January 2, 2018
PEC Project No. 34-170940-000-1009

Dear Mr. Slattery:

This Supplemental Agreement by Professional Engineering Consultants, P.A. (PEC) modifies the referenced Agreement, and any other previous Supplemental Agreements as may be noted herein.

A. Modification of Scope:

1. Design of new North Lift Station to serve the National Products (NBP) property. New lift station shall replace existing main lift station and accept flows from the existing building lift stations.
2. Design force main improvements from existing building lift stations to route to proposed wet well. Force main design will consider existing pumps and pump design/operating conditions.
3. Design site improvements and produce proposed demolition plans for routing wastewater from existing infrastructure to new lift station and force main. Existing infrastructure and lift station will be demolished.
4. Preparation of written easements for proposed force main lines in accordance with Ford County requirements.
5. Complete alternate design for the South Lift Station for relocation to the north side of the existing fence. Review pump and piping calculations with new conditions. Modification of plans and specifications to address relocation and addition of new fence around South Lift Station.
6. Update cost estimate to reflect design modifications.

B. Time of Performance:

1. The completion date will be unchanged.

C. Payment Provisions:

1.	Original Contract amount	\$194,000.00
2.	Net change by previous Supplemental Agreement(s)	\$ 0.00
3.	The contract amount will increase by this Supplemental Agreement in the amount of	<u>\$ 19,500.00</u>
4.	The new contract amount including this Supplemental Agreement will be	\$213,500.00

D. Authorization to Proceed:

1. Return receipt of this executed Supplemental Agreement will be considered our authorization to proceed.

Sincerely,
PROFESSIONAL ENGINEERING CONSULTANTS, P.A.


Sarah C. Unruh, PE
Water/Wastewater Division

SCU:hsr

ACCEPTED:

CITY OF DODGE CITY

By: _____

Title: _____

Date: _____

NATIONAL BEEF PRODUCTS

By: _____

Title: _____

Date: _____

Memorandum

*To: City Manager
City Commissioners*

*From: Ray Slattery, P.E.
Director of Engineering Services*

Date: February 14, 2019

*Subject: Highway-Rail Signal Interface
Agreement with BNSF for 14th Ave.
Crossing, CA 1901*

Agenda Item: New Business

Recommendation: Approve the Highway-Rail Signal Interface Agreement and cost of the improvements to the BNSF track in the amount of \$125,247.00. This agreement and work is necessary so that traffic signal preemption is available. BNSF will perform the necessary work on their line for the dollar amount quoted in the agreement, Exhibit B.

Background: The City has been looking into what it would take to establish a railroad "Quiet Zone" for quite some time. After countless hours of navigating through the steps and guidelines set forth by the FRA (Federal Railroad Administration) we have finally reached a point in the establishment process where we can all but see the end. Two of the three safety improvements that are required have been completed. The installation of the non-traversable medians and all but a small portion of the signage are done. The final step is to complete the traffic signal preemption. A majority of the preemption work takes place on the BNSF line and can only be completed by BNSF. There is some additional work for the preemption to be completed away from the rail line. The City will need to connect the traffic signal controller at the 14th Ave. & Wyatt Earp Blvd. intersection to the railroad hut at the 14th Ave. crossing. To do this we will need to hire a contractor to install a conduit from our control box to the railroad hut, pull communication wires through the new conduit and modify the existing traffic controller. We believe this can be completed for no more than \$15,000. After this last safety improvement step is complete, the City will need to send written statements to the CEO's of BNSF, Cimarron Valley Railroad, Amtrak, and the Secretary of KDOT stating that the safety improvements have been installed as planned. These statements are required for our Notice of Quiet Zone Establishment to be sent to the Associate Administrator of the FRA and all other involved parties. Once sent to FRA and after a short establishment period, the final few signs can be installed and the Quiet Zone will be in effect. This preemption improvement has also been requested by KDOT for a number of years, although not required at this time without the establishment of the Quiet Zone.

Justification: Currently, trains blow their horns without restriction at any time of day along the main line tracks. This does not bode well for the hotel guests and residents along Wyatt Earp Blvd. attempting to get a decent night's sleep. Establishing this quiet zone will benefit both the

residents and guests of Dodge City by eliminating the sounding of train horns without due cause. As a reminder, the establishment of a quiet zone does not guarantee that trains will never blow their horns. If there is a work zone or the engineer feels there is eminent danger, they have a right to blow their horn.

Financial Considerations: This improvement will be paid through the STAR Bond funding.

Purpose/Mission: The completion of this project aligns with the City's core value of ongoing improvement.

Legal Considerations: By approving the agreement and quote from BNSF, the city will be responsible to the terms of the agreement and to make payments to BNSF for the preemption work on their line.

Attachments: Highway-Rail Interface Agreement with exhibits.

HIGHWAY-RAIL SIGNAL INTERFACE AGREEMENT

**BNSF File No.: BF10014648
Mile Post 353.40
Line Segment 7300
U.S. DOT Number 009108P
La Junta Subdivision**

THIS HIGHWAY-RAIL SIGNAL INTERFACE AGREEMENT (hereinafter called, this “Agreement”), is entered into effective as of _____ (“Effective Date”), by and between BNSF Railway Company, a Delaware Corporation (hereinafter called, “BNSF”), and The City of Dodge City, Kansas (hereinafter called, the “Agency”).

WITNESSETH

WHEREAS, BNSF has grade crossing warning devices located at the intersection of 14th Ave., DOT # 009108P, Line Segment 7300, Mile Post 353.40, as indicated on Exhibit A attached hereto and made a part hereof;

WHEREAS, Agency desires to preempt the highway traffic control signals with the grade crossing warning devices shown on Exhibit A; and

WHEREAS, BNSF will allow the Agency to preempt the highway traffic control signals with the grade crossing warning devices shown on Exhibit A subject to the mutual covenants contained in this Agreement.

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

AGREEMENT

1. PURPOSE

The purpose of this Agreement is as follows: provide for the installation and maintenance of the improvements described below at the 14th Ave. at-grade crossing.

2. SCOPE OF WORK

- a. The Agency must provide BNSF in writing, using the **BNSF Preemption Worksheet** attached hereto and made part of this Agreement as Exhibit D, with the total preempt cycle time required from the start of the preempt cycle of highway traffic control signals until the arrival of the train at the highway-rail crossing.
- b. BNSF will provide an interface box with contact terminals, at Agency's expense on the side of the railroad instrument cabin.
- c. Agency or its contractor will place all necessary cable and conduit on Railroad property, as approved by BNSF and in compliance with the BNSF Utility Accommodation Manual <http://www.bnsf.com/communities/faqs/pdf/utility.pdf> , at the locations shown on Exhibit A, attached to and made a part of this Agreement.
- d. The Agency or its contractor will connect the highway traffic control signals to the contact terminals in the interface box including all necessary cable and conduit.
- e. BNSF will provide flagging services, at Agency's sole expense as set forth in more detail on Exhibit C attached to and made a part of this Agreement.
- f. The Agency or its contractor must install the new highway traffic control signals.
- g. An estimate of the actual costs for BNSF work is shown on Exhibit B attached to and made a part of this Agreement. In the event installation of the improvements has not commenced within six (6) months following the effective date of this Agreement, BNSF may, in its sole and absolute discretion, revise the cost estimates set forth on Exhibit B. If the cost estimates are revised, the revised cost estimates will become a part of this Agreement as though originally set forth herein. Any item of work incidental to the items listed on Exhibit B not specifically mentioned therein may be included as a part of this Agreement upon written approval of the Agency, which approval will not be unreasonably withheld.
- h. The Agency must pay BNSF for the actual costs of any work performed by BNSF under this Agreement within thirty (30) days of the date of the invoice for such work. During the construction of the improvements, BNSF may send Agency progressive invoices detailing the costs of the railroad work performed by BNSF under this Agreement. Upon completion of the improvements and all associated work, BNSF will send Agency a detailed invoice of final costs, segregated as to labor and materials for each item in the recapitulation shown on Exhibit B. Agency must pay the final invoice within ninety (90) days of the date of the final invoice. BNSF will assess a finance charge of .033% per day (12% per annum) on

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

3. CONSTRUCTION AND MAINTENANCE

- a. BNSF will operate and maintain, at its expense, the necessary relays and the other materials required to preempt the highway traffic control signals with the grade crossing warning devices.
- b. BNSF will to operate and maintain, at its expense, the railroad crossing warning devices up to the contact terminals in the interface box.
- c. The Agency or its contractor must, at the Agency's expense, install the highway traffic control signals up to and including connection to the contact terminals in the interface box including all necessary cable and conduit.
- d. Following installation of the traffic control signals, the Agency will own, operate and maintain, at its expense, the highway traffic control signals up to and including connection to the contact terminals in the interface box including all necessary cable and conduit.
- e. For any future inspections or maintenance, routine or otherwise, performed by subcontractors on behalf of the Agency, Agency shall require the subcontractors to execute the C documents. Prior to performing any future maintenance with its own personnel, Agency shall: comply with all of BNSF's applicable safety rules and regulations; require any Agency employee performing maintenance to complete the safety training program at the BNSF's Internet Website "contractororientation.com"; notify BNSF when, pursuant to the requirements of exhibit C, a flagger is required to be present; procure, and have approved by BNSF's Risk Management Department, a Railroad Protective Liability insurance.

4. PROTECTION OF UNDERGROUND SYSTEMS

- a. Agency and its contractor is placed on notice that fiber optic, communication and other cable lines and systems (collectively, the "Lines") owned by various telecommunications or utility companies may be buried on BNSF's property or right-of-way. The Agency or its contractor must contact appropriate personnel to have the Lines located and make arrangements with the owner of the Lines regarding protective measures that must be followed prior to the commencement

of any work on BNSF's property. The Agency or its contractor will be responsible for contacting BNSF and the telecommunications or utility companies and notifying them of any work that may damage these Lines or facilities and/or interfere with their service. The Agency or its contractor must also mark all Lines in order to verify their locations. Agency or its contractor must also use all reasonable methods when working in the BNSF right-of-way or on BNSF property to determine if any other Lines (fiber optic, cable, communication or otherwise) may exist.

- b. Agency or its contractor will be responsible for the rearrangement of any facilities or Lines determined to interfere with the installation or construction of the improvements. Agency and/or its Contractor must cooperate fully with any telecommunications or utility company(ies) in performing such rearrangements.
- c. Failure to mark or identify Lines will be sufficient cause for BNSF to stop construction at no cost to BNSF until these items are completed.
- d. In addition to the liability terms contained elsewhere in this Agreement, Agency and its contractor hereby indemnify, defend and hold harmless BNSF for, from and against all cost, liability, and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of Agency or its contractor, subcontractors, agents and/or employees that cause or in any way or degree contribute to (1) any damage to or destruction of any Lines on BNSF's property or within BNSF's right-of-way, (2) any injury to or death of any person employed by or on behalf of (a) any telecommunications or utility company, (b) Agency's contractor or subcontractors, or (c) Agency, and (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of such telecommunications or utility company(ies). **THE LIABILITY ASSUMED BY AGENCY OR ITS CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY, DEATH, CAUSE OF ACTION OR CLAIM WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF BNSF.**

5. INDEMNIFICATION

- a. Agency hereby indemnifies, defends and holds harmless BNSF for, from and against any and all claims, suits, losses, damages, costs and expenses for injury to or death to third parties or BNSF's officers and employees, and for loss and damage to property belonging to any third parties (including damage to the property of BNSF officers and employees), to the extent caused by the negligence

of the Agency or any of its employees, agents or contractors. The Agency also releases BNSF from and waives any claims for injury or damage to the Agency's highway traffic control signals or other equipment which may occur as a result of any of the work provided for in this Agreement or the operation or the maintenance thereafter of any of the Agency's highway traffic control signals, cables, connections at and about the grade crossing.

- b. To the fullest extent permitted by law, Agency hereby releases, indemnifies, defends and holds harmless BNSF and BNSF's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, employees and agents for, from and against any and all claims, suits, liabilities, losses, damages, costs and expenses (including, without limitation, attorneys fees and court costs) for injury to or death to Agency employees, agents or representatives arising out of, resulting from or related to any act or omission of Agency or any work performed on or about BNSF's property or right-of-way. **THE LIABILITY ASSUMED BY THE AGENCY IN THIS PROVISION WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILROAD, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF BNSF.**
- c. The Agency further agrees, at its expense, in the name and on behalf of BNSF, that it will adjust and settle any claims made against BNSF and will appear and defend any suits or actions at law or in equity brought against BNSF on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by the Agency under this Agreement for which BNSF is alleged to be liable. BNSF will give notice to the Agency in writing of the receipt of pendency of such claims and thereupon the Agency must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against BNSF, BNSF may forward the summons and complaint or process in connection therewith to the Agency, and the Agency must defend, adjust or settle such suits and protect, indemnify, and save harmless BNSF from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

6. AGENCY CONTRACTOR REQUIREMENTS

- a. While on or about BNSF property, Agency and its contractors must fully comply with BNSF's "Contractor Requirements" set forth in Exhibit "C" attached to and made a part of this Agreement. The "Contractor Requirements" include clearance requirements and personal protective equipment requirements. Agency and its contractors will be responsible for becoming familiar with BNSF's "Contractor

Requirements". Prior to entering BNSF property, Agency's Contractor must execute Exhibit C-1 attached to and made a part of this Agreement.

- b. Prior to entering BNSF property, each person providing labor, material, supervision or services connected with the work to be performed on or about BNSF property must complete the safety training program (hereinafter called "BNSF Contractor Safety Orientation") at the following internet website: "www.BNSFcontractor.com". Agency must ensure that each of its contractors, employees, subcontractors, agents or invitees completes the BNSF Contractor Safety Orientation before any work is performed under this Agreement. Additionally, Agency must ensure that each and every contractor, employee, subcontractor, agent or invitee possesses a card certifying completion of the BNSF Contractor Safety Orientation prior to entering BNSF property. Agency must renew the BNSF Contractor Safety Orientation annually.
- c. Prior to entering BNSF property, Agency or its contractors must prepare and implement a safety action plan acceptable to BNSF. Agency must audit compliance with the plan during the course of Agency's work. A copy of the plan and audit results must be kept at the work site and will be available for inspection by BNSF at all reasonable times.

7. INSURANCE

Contractor shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

- A. Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$4,000,000 but in no event less than the amount otherwise carried by the Contractor. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limit to the following:

- ◆ Bodily Injury and Property Damage
- ◆ Personal Injury and Advertising Injury
- ◆ Fire legal liability
- ◆ Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- ◆ The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Waiver of subrogation in favor of and acceptable to Railway.
- ◆ Additional insured endorsement in favor of and acceptable to Railway.

- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to **Railway** employees.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy with regard to the work being performed under this agreement.

B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ◆ Bodily injury and property damage
- ◆ Any and all vehicles owned, used or hired

The policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- ◆ Waiver of subrogation in favor of and acceptable to Railway.
- ◆ Additional insured endorsement in favor of and acceptable to Railway.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

C. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

- ◆ Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- ◆ Waiver of subrogation in favor of and acceptable to Railway.

D. Railroad Protective Liability insurance naming only the **Railway** as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The

policy Must be issued on a standard ISO form CG 00 35 12 04 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment
- ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
- ◆ Endorsed to remove any exclusion for punitive damages.
- ◆ No other endorsements restricting coverage may be added.
- ◆ The original policy must be provided to the **Railway** prior to performing any work or services under this Agreement
- ◆ Definition of “Physical Damage to Property” shall be endorsed to read: “means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured’ care, custody, and control arising out of the acts or omissions of the contractor named on the Declarations.

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

Other Requirements:

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

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

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

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

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

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

Contractor shall notify **Railway** in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration.

Any insurance policy shall be written by a reputable insurance company acceptable to **Railway** or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

If coverage is purchased on a "claims made" basis, Contractor hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this Agreement. Annually Contractor agrees to provide evidence of such coverage as required hereunder.

Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement.

Not more frequently than once every five years, **Railway** may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by Contractor, Contractor shall require that the subcontractor shall provide and maintain insurance coverage(s) as set forth herein, naming **Railway** as an additional insured, and shall require that the subcontractor shall release, defend and indemnify **Railway** to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify **Railway** herein.

Failure to provide evidence as required by this section shall entitle, but not require, **Railway** to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this Agreement.

Damages recoverable by **Railway** shall not be limited by the amount of the required insurance coverage.

In the event of a claim or lawsuit involving **Railway** arising out of this agreement, Contractor will make available any required policy covering such claim or lawsuit.

These insurance provisions are intended to be a separate and distinct obligation on the part of the Contractor. Therefore, these provisions shall be enforceable and Contractor shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work covered hereunder is performed.

For purposes of this section, **Railway** shall mean “Burlington Northern Santa Fe LLC”, “BNSF Railway Company” and the subsidiaries, successors, assigns and affiliates of each.

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

BNSF RAILWAY COMPANY

By: _____

Printed Name: _____

Title: _____

CITY OF DODGE CITY

By: _____

Printed Name: _____

Title: _____

EXHIBIT "A"



EXHIBIT "B"

Attached

EXHIBIT "C"

CONTRACTOR REQUIREMENTS

1.01 General:

- **1.01.01** The Contractor must cooperate with **BNSF RAILWAY COMPANY**, hereinafter referred to as "**Railway**" where work is over or under on or adjacent to Railway property and/or right-of-way, hereafter referred to as "Railway Property", during the construction of the preemption equipment installation at 14th Ave. in Dodge City, Kansas, DOT # 009108P.
- **1.01.02** The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit "C-1" Agreement, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit "C-1". Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to **Rosa Martinez** at Marsh, USA, 214-303-8519.
- **1.01.03** The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.
- **1.01.04** The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations. Railway will have the right to stop construction work on the Project if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the Project work in a manner which is hazardous to Railway property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Contractor fails to pay Railway for the Temporary Construction License or the Easement. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer or until additional insurance has been delivered to and accepted by Railway. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, Railway may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of Railway. Railway's right to stop the work is in addition to any other rights Railway may have including, but not limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop construction work on the Project, Railway agrees to immediately notify the following individual in writing:



Ray Slattery
806 N Second Ave.
PO Box 880
Dodge City, KS 67801

- **1.01.05** The Contractor is responsible for determining and complying with all Federal, State and Local Governmental laws and regulations, including, but not limited to environmental laws and regulations (including but not limited to the Resource Conservation and Recovery Act, as amended; the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA), and health and safety laws and regulations. The Contractor hereby indemnifies, defends and holds harmless Railway for, from and against all fines or penalties imposed or assessed by Federal, State and Local Governmental Agencies against the Railway which arise out of Contractor's work under this Agreement.
- **1.01.06** The Contractor must notify the City of Dodge City at 620-225-8106 and Railway's Manager Public Projects, telephone number 913-551-4484 at least thirty (30) calendar days before commencing any work on Railway Property. Contractor's notification to Railway must refer to Railway's file BF10014648.
- **1.01.07** For any bridge demolition and/or falsework above any tracks or any excavations located with any part of the excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin work until notified by the Railway that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no

case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.

- **1.01.08** Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

1.02 Contractor Safety Orientation

- **1.02.01** No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site www.BNSFcontractor.com. The Contractor must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any work is performed on the Project. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway Contractor Safety Orientation. The Contractor must renew the Railway Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Representative.

1.03 Railway Requirements

- **1.03.01** The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Agency.
- **1.03.02** The Contractor must notify the Railway's Division Engineer William Forbes at William.Forbes@bnsf.com and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.
- **1.03.03** The Contractor must abide by the following temporary clearances during construction:
 - 15'-0" Horizontally from centerline of nearest track
 - 21'-6" Vertically above top of rail
 - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts

- 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
 - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
 - 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts
- **1.03.04** Upon completion of construction, the following clearances shall be maintained:
 - 25' Horizontally from centerline of nearest track
 - 23' 6" Vertically above top of rail
 - **1.03.05** Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to the City of Dodge City and must not be undertaken until approved in writing by the Railway, and until the City of Dodge City has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.
 - **1.03.06** In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Agency.
 - **1.03.07** The details of construction affecting the Railway's Property and tracks not included in the contract plans must be submitted to the Railway by the City of Dodge City for approval before work is undertaken and this work must not be undertaken until approved by the Railway.
 - **1.03.08** At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across the Railways tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed and, at the completion of the project, removed at the expense of the Contractor.
 - **1.03.09** Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor must immediately notify the **Railway's Resource Operations Center at 1(800) 832-5452**, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.

- **1.03.10** The Contractor upon completion of the work covered by this contract, must promptly remove from the Railway's Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said property by said Contractor or any Subcontractor, employee or agent of Contractor or of any Subcontractor, and must cause Railway's Property to be left in a condition acceptable to the Railway's representative.

1.04 Contractor Roadway Worker on Track Safety Program and Safety Action Plan:

- **1.04.01** Each Contractor that will perform work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway Project Representative to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site www.BNSFcontractor.com, which will be made available to Railway prior to commencement of any work on Railway Property. During the performance of work, the Contractor must audit its work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.

1.04.02 Contractor shall have a background investigation performed on all of its employees, subcontractors and agents who will be performing any services for Railroad under this Agreement which are determined by Railroad in its sole discretion **a)** to be on Railroad's property, or **b)** that require access to Railroad Critical Infrastructure, Railroad Critical Information Systems, Railroad's Employees, Hazardous Materials on Railroad's property or is being transported by or otherwise in the custody of Railroad, or Freight in Transit involving Railroad.

The required background screening shall at a minimum meet the rail industry background screening criteria defined by the e-RAILSAFE Program as outlined at <http://www.e-railsafe.com>, in addition to any other applicable regulatory requirements.

Contractor shall obtain written consent from all its employees, subcontractors or agents screened in compliance with the e-RAILSAFE Program to participate in the Program on their behalf and to release completed background information to Railroad's designee. Contractor shall be subject to periodic audit to ensure compliance.

Contractor subject to the e-RAILSAFE Program hereunder shall not permit any of its employees, subcontractors or agents to perform services hereunder who are not first approved under e-RAILSAFE Program standards. Railroad shall have the right to deny entry onto its premises or access as described in this section above to any of Contractor's employees, subcontractors or agents who do not display the authorized identification badge issued by a background screening service meeting the standards set forth in the e-RAILSAFE Program, or who in Railroad's opinion, which may not be unreasonable, may pose a threat to the safety or security of Railroad's operations, assets or personnel.

Contractors shall be responsible for ensuring that its employees, subcontractors and agents are United States citizens or legally working in the United States under a lawful and appropriate work VISA or other work authorization.

1.05 Railway Flagger Services:

- **1.05.01** The Contractor must give Railway's **Roadmaster (telephone 620-227-5968; David.Vigil2@bnsf.com)** a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.
- **1.05.02** Unless determined otherwise by Railway's Project Representative, Railway flagger will be required and furnished when Contractor's work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:
 - **1.05.02a** When, upon inspection by Railway's Representative, other conditions warrant.
 - **1.05.02b** When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.
 - **1.05.02c** When work in any way interferes with the safe operation of trains at timetable speeds.
 - **1.05.02d** When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or

blasting in the vicinity.

- **1.05.02e** Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.
- **1.05.03** Flagging services will be performed by qualified Railway flaggers.
 - **1.05.03a** Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railways Representative.
 - **1.05.03b** Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.
 - **1.05.03c** The cost of flagger services provided by the Railway will be borne by the City of Dodge City. The estimated cost for one (1) flagger is approximately between \$800.00-\$1,600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. **THE FLAGGING RATE IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF FLAGGING PURSUANT TO THIS PARAGRAPH.**
 - **1.05.03d** The average train traffic on this route is 6 freight trains per 24-hour period at a timetable speed 40 MPH and 2 passenger trains at a timetable speed of 60 MPH.

1.06 Contractor General Safety Requirements

- **1.06.01** Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations.
- **1.06.02** Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the

personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).

- **1.06.03** Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by the Railway's Project Representative. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.
- **1.06.04** When Contractor employees are required to work on the Railway Property after normal working hours or on weekends, the Railway's representative in charge of the project must be notified. A minimum of two employees must be present at all times.
- **1.06.05** Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway's Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway's Property by that employee will be denied.
- **1.06.06** Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's representative in charge of the project. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway representative in charge of the project and to the Railway's Resource Operations Center at 1(800) 832-5452. Local emergency numbers are to be obtained from the Railway representative in charge of the project prior to the start of any work and must be posted at the job site.
- **1.06.07** For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway's Property.
- **1.06.08** All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, www.BNSFcontractor.com, however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats; c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railway's representative in charge of the project is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing

protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **(NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**

- **1.06.09 THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF THE SAME WILL OBSTRUCT THE VIEW OF A TRAIN APPROACHING THE CROSSING. PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE AREA WITH CONCURRENCE OF THE RAILWAY'S REPRESENTATIVE.**
- **1.06.10** Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway's Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)
- **1.06.11** Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any work performed over water must meet all Federal, State and Local regulations.
- **1.06.12** All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

1.07 Excavation:

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

(Jake Rzewnicki; Jake.Rzewnicki@bnsf.com). All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. **It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.**

- **1.07.02** The Contractor must cease all work and notify the Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.
- **1.07.03** All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.
- **1.07.04** Any excavations, holes or trenches on the Railway's Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

1.08 Hazardous Waste, Substances and Material Reporting:

- **1.08.01** If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to Railway's Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor must immediately: (a) notify the Railway's Resource Operations Center at 1(800) 832-5452, of such discovery: (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties: and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

1.09 Personal Injury Reporting

- **1.09.01** The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invitees while on the Railway's Property must be reported immediately (by phone mail if unable to contact in person) to the Railway's representative in charge of the project. The



Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1(817) 352-7595 and to the Railway's Project Representative no later than the close of shift on the date of the injury.



NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

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

Injured Person Type:

Passenger on train (C)

Non-employee (N)
(i.e., emp of another railroad, or, non-BNSF emp involved in vehicle accident, including company vehicles)

Contractor/safety sensitive (F)

Contractor/non-safety sensitive (G)

Volunteer/safety sensitive (H)

Volunteer/other non-safety sensitive (I)

Non-trespasser (D) - to include highway users involved in highway rail grade crossing accidents who did not go around or through gates

Trespasser (E) - to include highway users involved in highway rail grade crossing accidents who went around or through gates

Non-trespasser (J) - Off railroad property

If train involved, Train ID:

Transmit attached information to Accident/Incident Reporting Center by:

Fax 1-817-352-7595

or by Phone 1-800-697-6736

or email to: Accident-Reporting.Center@BNSF.com

Officer Providing Information:

(Name)

(Employee No.)

(Phone #)

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



NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

INFORMATION REQUIRED TO BE COLLECTED PURSUANT TO FEDERAL REGULATION. IT SHOULD BE USED FOR COMPLIANCE WITH FEDERAL REGULATIONS ONLY AND IT IS NOT INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY.

1. Accident City/St: _____ 2. Date: _____ Time: _____
County: _____ 3. Temperature: _____ 4. Weather: _____
(if non BNSF location)

Mile Post / Line Segment: _____

5. Driver's License No (and state) or other ID: _____ **SSN (required):** _____

6. Name (last, first, mi): _____

7. Address: _____ City: _____ St: _____ Zip: _____

8. Date of Birth: _____ and/or Age: _____ Gender: _____
(if available)

Phone Number: _____ Employer: _____

9. Injury: _____ 10. Body Part: _____
(i.e., Laceration, etc.) (i.e., Hand, etc.)

11. Description of Accident (To include location, action, result, etc.): _____

12. Treatment:
 First Aid Only
 Required Medical Treatment _____
 Other Medical Treatment _____

13. Dr. Name: _____ Date: _____

14. Dr. Address:
Street: _____ City: _____ St: _____ Zip: _____

15. Hospital Name: _____

16. Hospital Address:
Street: _____ City: _____ St: _____ Zip: _____

17. Diagnosis: _____



EXHIBIT "C-1"

Agreement Between BNSF RAILWAY COMPANY and the CONTRACTOR

Railway File: BF10014648

Agency Project: 14th Ave. Preemption

_____ hereinafter called "Contractor"), has entered into an agreement (hereinafter called "Agreement") dated _____, 2019, with the City of Dodge City for the performance of certain work in connection with the following project: signal preemption at 14th Ave. in Dodge City, Kansas. Performance of such work will necessarily require Contractor to enter **BNSF RAILWAY COMPANY** (hereinafter called "Railway") right of way and property (hereinafter called "Railway Property"). The Agreement provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for the City of Dodge City (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Agreement, has agreed and does hereby agree with Railway as follows:

1) RELEASE OF LIABILITY AND INDEMNITY

Contractor hereby waives, releases, indemnifies, defends and holds harmless Railway for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about Railway's property or right-of-way. **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENSIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**

THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE LOCOMOTIVE INSPECTION ACT, WHENEVER SO CLAIMED.

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all claims made against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify Railway to the fullest extent permitted by applicable law. **THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILWAY FOR RAILWAY'S ACTS OF NEGLIGENCE.**

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

2) TERM

This Agreement is effective from the date of the Agreement until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

3) INSURANCE

Contractor shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

B. Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each

occurrence and an aggregate limit of at least \$4,000,000 but in no event less than the amount otherwise carried by the Contractor. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limit to the following:

- ◆ Bodily Injury and Property Damage
- ◆ Personal Injury and Advertising Injury
- ◆ Fire legal liability
- ◆ Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- ◆ The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Waiver of subrogation in favor of and acceptable to Railway.
- ◆ Additional insured endorsement in favor of and acceptable to Railway.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to **Railway** employees.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy with regard to the work being performed under this agreement.

B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ◆ Bodily injury and property damage
- ◆ Any and all vehicles owned, used or hired

The policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- ◆ Waiver of subrogation in favor of and acceptable to Railway.
- ◆ Additional insured endorsement in favor of and acceptable to Railway.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

C. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

- ◆ Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- ◆ Waiver of subrogation in favor of and acceptable to Railway.

E. Railroad Protective Liability insurance naming only the **Railway** as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 12 04 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment
- ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
- ◆ Endorsed to remove any exclusion for punitive damages.
- ◆ No other endorsements restricting coverage may be added.
- ◆ The original policy must be provided to the **Railway** prior to performing any work or services under this Agreement
- ◆ Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured' care, custody, and control arising out of the acts or omissions of the contractor named on the Declarations.

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

Other Requirements:

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

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



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

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

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

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

Contractor shall notify **Railway** in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration.

Any insurance policy shall be written by a reputable insurance company acceptable to **Railway** or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

If coverage is purchased on a "claims made" basis, Contractor hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this Agreement. Annually Contractor agrees to provide evidence of such coverage as required hereunder.

Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement.

Not more frequently than once every five years, **Railway** may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by Contractor, Contractor shall require that the subcontractor shall provide and maintain insurance coverage(s) as set forth herein, naming **Railway** as an additional insured, and shall require that the subcontractor shall release, defend and indemnify **Railway** to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify **Railway** herein.

Failure to provide evidence as required by this section shall entitle, but not require, **Railway** to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by **Railway** shall not be limited by the amount of the required insurance coverage.

In the event of a claim or lawsuit involving **Railway** arising out of this agreement, Contractor will make available any required policy covering such claim or lawsuit.

These insurance provisions are intended to be a separate and distinct obligation on the part of the Contractor. Therefore, these provisions shall be enforceable and Contractor shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work covered hereunder is performed.

For purposes of this section, **Railway** shall mean "Burlington Northern Santa Fe LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

4) SALES AND OTHER TAXES

In the event applicable sales taxes of a state or political subdivision of a state of the United States are levied or assessed in connection with and directly related to any amounts invoiced by Contractor to Railway ("Sales Taxes"), Railway shall be responsible for paying only the Sales Taxes that Contractor separately states on the invoice or other billing documents provided to Railway; *provided, however*, that (i) nothing herein shall preclude Railway from claiming whatever Sales Tax exemptions are applicable to amounts Contractor bills Railway, (ii) Contractor shall be responsible for all sales, use, excise, consumption, services and other taxes which may accrue on all services, materials, equipment, supplies or fixtures that Contractor and its subcontractors use or consume in the performance of this Agreement, (iii) Contractor shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) that Contractor fails to separately state on the invoice or other billing documents provided to Railway or fails to collect at the time of payment by Railway of

invoiced amounts (except where Railway claims a Sales Tax exemption), and (iv) Contractor shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) if Contractor fails to issue separate invoices for each state in which Contractor delivers goods, provides services or, if applicable, transfers intangible rights to Railway.

Upon request, Contractor shall provide Railway satisfactory evidence that all taxes (together with any penalties, fines or interest thereon) that Contractor is responsible to pay under this Agreement have been paid. If a written claim is made against Contractor for Sales Taxes with respect to which Railway may be liable for under this Agreement, Contractor shall promptly notify Railway of such claim and provide Railway copies of all correspondence received from the taxing authority. Railway shall have the right to contest, protest, or claim a refund, in Railway's own name, any Sales Taxes paid by Railway to Contractor or for which Railway might otherwise be responsible for under this Agreement; provided, however, that if Railway is not permitted by law to contest any such Sales Tax in its own name, Contractor shall, if requested by Railway at Railway's sole cost and expense, contest in Contractor's own name the validity, applicability or amount of such Sales Tax and allow Railway to control and conduct such contest.

Railway retains the right to withhold from payments made under this Agreement amounts required to be withheld under tax laws of any jurisdiction. If Contractor is claiming a withholding exemption or a reduction in the withholding rate of any jurisdiction on any payments under this Agreement, before any payments are made (and in each succeeding period or year as required by law), Contractor agrees to furnish to Railway a properly completed exemption form prescribed by such jurisdiction. Contractor shall be responsible for any taxes, interest or penalties assessed against Railway with respect to withholding taxes that Railway does not withhold from payments to Contractor.

5) EXHIBIT "C" CONTRACTOR REQUIREMENTS

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Agreement, and the Contractor Requirements set forth on Exhibit "C" attached to the Agreement and this Agreement, including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site. Contractor shall execute a Temporary Construction Crossing Agreement or Private Crossing Agreement (<http://www.bnsf.com/communities/faqs/permits-real-estate/>), for any temporary crossing requested to aid in the construction of this Project, if approved by BNSF.

6) TRAIN DELAY

Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. The rate then in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of train delay pursuant to this agreement.

Contractor and its subcontractors must give Railway's representative **Paul Mikols (paul.mikols@bnsf.com)** 4 weeks advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.

Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.



IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized officer the day and year first above written.

Contractor: _____

BNSF Railway Company

By: _____

By: _____

Printed Name: _____

Name: _____

Manager Public Projects

Title: _____

Accepted and effective this _____ day of 20__.

Contact Person: _____

Address: _____

City: _____

State: _____ Zip: _____

Fax: _____

Phone: _____

E-mail: _____

TOTAL OTHER ITEMS COST	20,000	20,000
PROJECT SUBTOTAL		124,006
CONTINGENCIES		0
BILL PREPARATION FEE		1,241
GROSS PROJECT COST		125,247
LESS COST PAID BY BNSF		0
TOTAL BILLABLE COST		125,247

HIGHWAY-RAIL GRADE CROSSING TRAFFIC SIGNAL PREEMPTION REQUEST FORM

The Road Authority traffic controller circuitry requires railroad preemption contacts to initiate the preemption sequence. Per BNSF standard, we will provide normally closed "dry" preemption relay contacts to interconnect the railroad active warning system to the Road Authority traffic signal controller assembly. These contacts are rated at 4 amps. With no trains in the area, these contacts remain closed. The Road Authority Traffic Department will be responsible for installing the interconnection cable between the traffic signal controller and the crossing warning signal control housing. If exit gates are utilized, the Road Authority Traffic Department will be responsible for installing and maintaining the "in pavement" vehicle detection loops from the street to the cable junction box.

To estimate and or design the crossing warning system, BNSF needs to know certain timing parameters.

Definitions:

"Advance Preemption" – The system will be designed to open the preemption contacts for a predetermined amount of time (Advance Preemption Time) prior to activation of the warning devices (flashing lights).

"Simultaneous Preemption" – The system will be designed to open the preemption contact at the same time the warning devices (flashing lights) are activated. Additional warning time may be requested.

"Gate Down Logic" – Per BNSF standard, we will provide normally open "dry" gate down relay contacts to interconnect the crossing warning system to the Road Authority traffic signal controller assembly. These contacts are rated at 4 amps. The system will be designed to close the gate down contacts upon the gates arrival in the down position. This logic is normally utilized to hold track clearance green until the gates are down since the time from preemption to gate down will vary depending upon the traffic signal cycle. In the event the gate does not descend; BNSF provides a parallel island circuit that provides input to terminate track clearance green once track occupies the crossing (island). This circuit will reduce parallel street delays by allowing the traffic signal to exit the track clearance phase after railroad gate is horizontal and providing a green indication for parallel street.

"Minimum Warning Time" – Per the MUTCD and FRA regulations, BNSF must provide at least 20 seconds of warning time for through trains (typically main track applications). However, per BNSF standards for constant warning time train detection equipment, the system will be designed to provide a "nominal" warning time of 30 seconds to ensure MUTCD/FRA minimums are met and to compensate for accelerating trains and ballast conditions.

"Minimum Track Clearance Distance" – For standard two-quadrant railroad warning devices, the minimum track clearance distance is the length along a highway at one or more railroad tracks, measured either from the railroad stop line, warning device or 12 ft. perpendicular to the far rail, along the centerline or edge line of the highway, as appropriate, to obtain the longer distance. For locations with exit gate warning devices, the minimum track clearance distance is the length along a highway at one or more railroad tracks, measured either from the railroad stop line or entrance warning device to the point clear of the exit gate. Note that in cases where the exit gate arm is parallel to the track(s) and/or not perpendicular to the roadway, clearance will be either along the centerline or edge line of the highway, as appropriate, to obtain the longer distance.

When (entrance) gates are used they are typically designed to start their decent within 3 to 5 seconds of the warning lights flashing, descend in an additional 10 to 15 seconds, and reach horizontal at least 5 seconds prior to train arrival per FRA regulations.

The length of the railroad's control circuit approach distance is directly related to the amount of requested "Advanced Preemption Time" (APT). Typically, the longer the APT requirement is, the longer the approach distance, and thus the more control equipment that will be required.

Please provide the following information in order to process your request:

Date of Request: 05/03/2018
Requesting Agency: City of Dodge City

Requested by: Tanner Rutschman, PE
Title: City Engineer

E-mail: tannerr@dodgecity.org
Phone: 620-225-8106

Grade Crossing Information:

State: KS
City: Dodge City
County: Ford
Crossing Street Name: Fourteenth Avenue
Parallel Street Name: Wyatt Earp Boulevard

DOT #: 009108P
District:
RR Subdivision: La Junta, Line Segment 7300
Mile Post: 353.40

Signalized Intersection Information:

1) Provide interconnection configuration: Single break circuit Double break circuit

2) Is a Supervised circuit being requested? Yes No

3) Is this request for Simultaneous Preemption Operation? Yes No

If "Yes", what is your requested Additional Warning Time? (if needed) ___ Seconds

4) Is this request for Advance Preemption Operation? Yes No

If "Yes", what is your requested Vehicle Advance Preemption Time (APT)? 20 Seconds

If "Yes", is a Gate Down circuit being requested? Yes No

** The purpose of the gate-down circuit is to comply with the Institute of Traffic Engineers (ITE) recommended practice to ensure that the Track Clearance Green interval remains on until gates are fully lowered to prevent a "preempt trap". Railroad will provide relay contacts for the gate down circuit.*

5) Is this request for additional time for Advance Pedestrian Preemption Operation? Yes No

If "Yes", what is your requested additional time for Advance Pedestrian Preemption Time (APPT)? ___ Seconds

**Note: Pedestrian Detection is required when using Advance Pedestrian Preemption Operation.*

6) Is a Crossing Active (XC) circuit required to activate blank-out signs or another traffic control device? Yes No

7) Is a Traffic Signal Health circuit being requested? Yes No

Comments / Additional Info:

The above information has been completed by the undersigned representative of the public agency responsible for the traffic signal. The public agency agrees to have all work related to the preemption of the traffic signal complete and operational prior to the activation of the railroad signal system. The public agency further agrees to not change any traffic signal design or timing parameters which may affect the preemption operation without coordinating said change with Railroad.



Signature of public agency representative

5/3/18

Date

TANNER RUTSCHMAN

Print or type name of public agency representative

Please sign, scan this page, and submit electronically along with support documentation to appropriate Manager of Industry and Public Projects.

Memorandum

To: Cherise Tieben, City Manager
From: Nannette Pogue, Finance Director/City Clerk
Date: February 15, 2019
Subject: Approval of Proposal for Lot at 14th & Soule Subdivision
Agenda Item: New Business

Recommendation: I would recommend the conditional approval of the Proposal from Ric Marboeuf and Leon Frazier for Lot 3, 14th & Soule Subdivision. In addition, I would recommend that the sale be conditioned upon the purchaser bringing a plan to the City Commission including the retail tenants or operators. In the event another ready to build proposal is received after the date of approval of this proposal, the purchasers would have 30 days to submit a plan for retail development and tenants. This may assist in timely development of the property.

Background: The City of Dodge City acquired land at 14th & Soule for the development of the Power Center Area STAR Bond district. Of the lots that were available, Casey's, Sutherlands and Dodge Partners have acquired or have contracts to acquire all of the lots with the exception of Lot 3 which is just east of the water tower on Soule Street. The City advertised for proposals for this lot by publishing in the Dodge City Daily Globe and sending to the Economic Development Department to forward to any interested developers. The closing date was February 11, 2019. We received one proposal from Ric Marboeuf and Leon Frazier in the amount of \$60,000. The proposal is attached.

Justification: To increase retail development in the Power Center Area District.

Financial Considerations: Will recapture some of land purchase price.

Purpose/Mission: On-going Improvement. Together we value progress, growth and new possibilities by providing and preparing for the community's future.

Legal Considerations: Title and closing will be prepared

Attachments: Proposal

M.R. BUILDER, LLC™

a division of

Capital Development, LLC

To: City of Dodge City
c/o: Nannette Pogue
806 2nd Avenue
Dodge City, KS 67801

2/11/2019

Re: Lot 3, 14th & Soule Subdivision, Dodge City, KS.

We hereby propose to purchase the above mentioned land parcel for the purpose of developing it as retail/service uses to complement current developments in the area and improve offerings in the Dodge City area.

Purchasers would be Ric Marboeuf and Leon Frazier.

Ric is a local general contractor and developer. Leon is national entrepreneur.

Leon and Ric have partnered in many local joint ventures (commercial and residential), they have built many homes together in the Summerlon Phase II, Victory Hill Estates, Rolling Hills developments as well as the purchase and redevelopment of 108 & 110 W. Plaza (Sherwin Williams and old Konda) buildings.

Our goals are as follow:

For a short period of time we would offer this site as a Turn-Key, Build to Suit site to potential retail/service tenants or operators. In the event a build to suit tenant or operator is not contracted with during that period of time we would commit to developing the site with our own retail/service business.

Though it is too early to identify any potential tenant/operator it is speculative in nature at this time, We would anticipate this site is capable of generating annual sales at around \$1.5 million.

We propose to purchase the site at around county appraised value for \$60,000.00 within 30 days of site being cleared and ready to promote.

Additionally, we propose to not request any subsequent StarBond funds from the City to facilitate process.

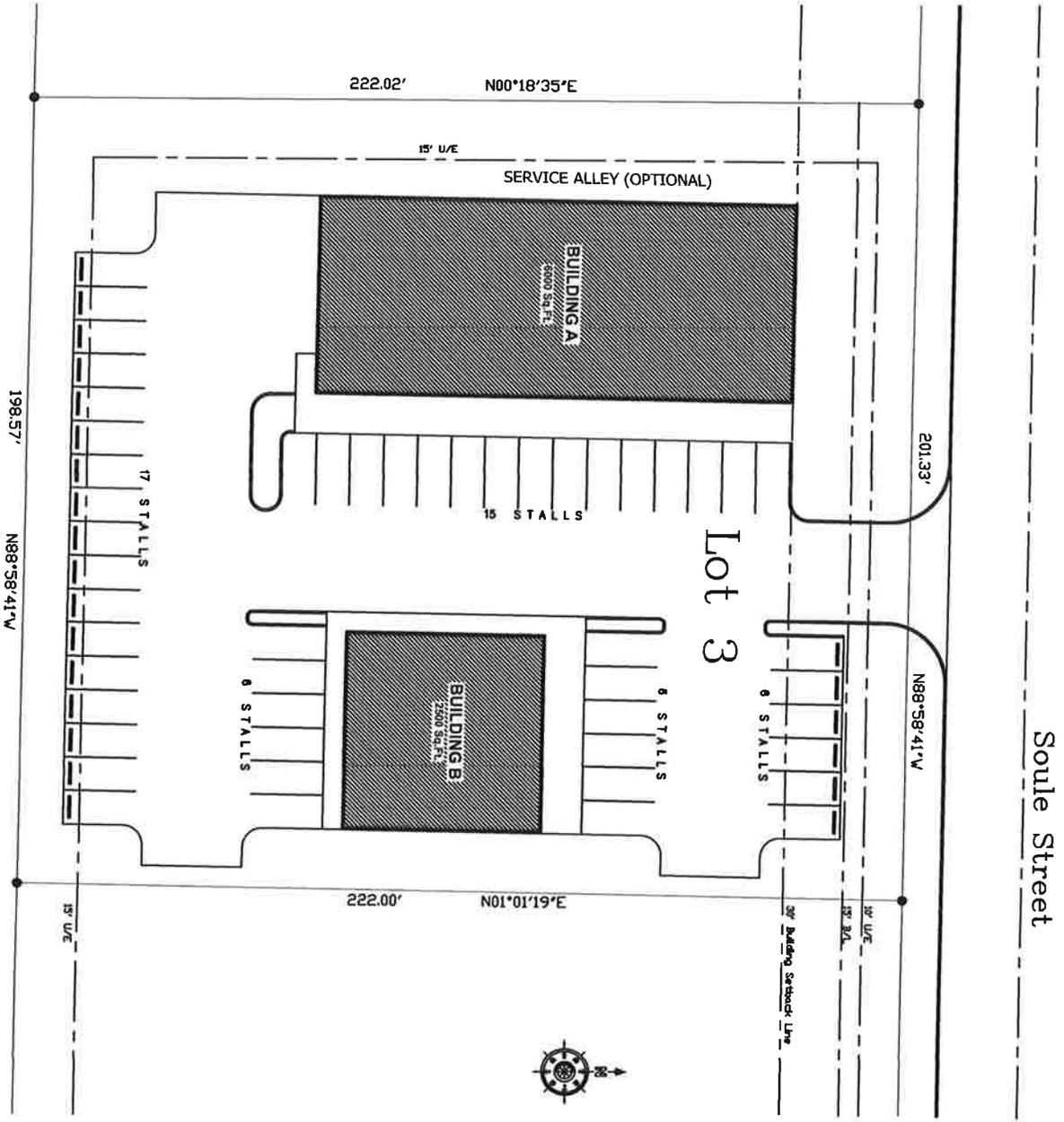
Please find attached a conceptual idea of the site development plan.

We appreciate the opportunity to bid on this land parcel, and look forward to be working with you. Feel free to contact me with questions.

Sincerely,

Ric. Marboeuf

200 W. Beeson Suite A, Dodge City Kansas 67801
Ph.: 620-338-8830, Fax: 620-338-8857



SITE STUDY / CONCEPT PLAN A
 LOT 3 14th & Soule Subdivision
 DODGE CITY, KANSAS

M.R. BUILDER, LLC
 200 WEST BEESON RD. 620-338-8830
 DODGE CITY, KANSAS 67801

THIS DRAWING AND ALL
 PLATS HEREON
 ARE HEREBY
 CERTIFIED BY
 CONFORM WITH
 THE RULES AND
 REGULATIONS OF
 THE BOARD OF
 SURVEYORS
 OF THE STATE OF
 KANSAS