

"SECRETARY'S ORIGINAL"

Agmt. No. 006103010

A G R E E M E N T

BNSF Railway Company
Crossing Signals With Gates

Project No. 23 X-2743-01
HSIP-X274(301)
Douglas County, Kansas

Agreement between the BNSF Railway Company, the City of Lawrence, Douglas County, Kansas and the Secretary of Transportation of the State of Kansas, relative to the construction and maintenance of Highway Crossing Signals under Section 130, United States Code 23.

* * * * *

This agreement, made and entered into this _____ day of _____, _____, by and between the BNSF Railway Company, a Corporation, hereinafter referred to as the "Company", the City of Lawrence, Douglas County, Kansas hereinafter referred to as the "City", and the Secretary of Transportation of the State of Kansas, hereinafter referred to as the "Secretary".

WITNESSETH:

WHEREAS, the Secretary proposes to submit to the Federal Highway Administration of the United States Department of Transportation a project providing for the installation of railway-highway crossing signals, flashing light straight post type with gates at a grade crossing (DOT #005842P) on 11th Street in the City of Lawrence, Douglas County, Kansas, said project to be known and designated as Project No. 23 X-2743-01; HSIP-X274(301) and more particularly described as follows:

at the intersection of 11th Street and the Company's tracks approximately 1,439 feet East and 2,642 feet North of the Southwest Corner of Section 32, Township 12 South, Range 20 East, in the City of Lawrence, Douglas County, Kansas,

and will recommend its approval for construction under Section 130, United States Code 23 and amendments thereto, and

WHEREAS, the locations for the warning devices were determined by a diagnostic team consisting of representatives of the Company, the City, and the Secretary, and

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, and subject to the approval of the Federal Highway Administration, it is hereby agreed by the parties hereto:

1. The total cost of the project will be funded one-hundred percent (100%) using Federal Section 130 Funds, including preliminary engineering, construction, sales tax, users tax and such other items as are properly chargeable to the project under Section 130, United States Code 23 and amendments thereto.

2. The City will install and maintain the advance warning signs.

3. The Company will provide the Secretary with a copy of the bill of materials and the detailed estimate of the cost of the project, the estimate to be attached to and become a part of this agreement.

4. After being notified by the Secretary that the project has been approved and that work may begin, the Company will notify the Secretary's Area Engineer at Osage City, Kansas, at least one week in advance of the date that work on the project is to be started, and should withdrawal from the project become necessary for any reason, the Company will each time notify the Secretary's Area Engineer of the date that work on the project is to be resumed.

5. The Company will remove the existing flashing light straight post type signals and will install the new flashing light straight post type signals with gates and make all connections necessary for their successful operation, and do all incidental and appurtenant work in accordance with the project and the "Manual on Uniform Traffic Control Devices". The Company will furnish all of the material and do all of the work with its own forces, or the work may be done by a contractor paid under a contract let by the Company in compliance with the provisions of 23 C. F. R., Chapter I, Subchapter B, Part 140, Subpart I. Said Title 23 Code of Federal Regulations (23 C. F. R.) is by reference made a part of this agreement. If this work is to be done by a contractor paid under a contract let by the Company, prior written approval shall be obtained from the Secretary. The estimated schedule by the Company for the completion of the work for this project is one year from the date of this agreement.

6. The Company will keep detailed and accurate records of all labor, materials, supplies, incidentals and all other necessary costs involved in carrying out the work performed by the Company under the terms of this agreement, and will give access to such records at any time during regular office hours to any authorized representative of the Secretary or of the Federal Highway Administration, for a period of three years from the date final payment has been received by the Company.

7. Preparation of preliminary estimates, procurements, performance of work, expenditures, billing and reimbursement shall all be done in accordance with 23 C. F. R., Chapter I, Subchapter B, Part 140, Subpart I.

8. To reimburse the Company within thirty (30) calendar days after receipt of the undisputed portion of any invoice for cost incurred for work done by the Company in accordance with the provisions of this Agreement except amounts retained from each billing and payment of the final billing pursuant to paragraph 9.

9. The Company will submit to the Secretary's Area Engineer a final and complete billing of the incurred costs within one year after the completion of the work, and the Secretary will pay an

amount equal to ninety-five percent (95%) of the total amount of each billing for this project pending final audit. Upon completion of final audit, the Secretary will reimburse the Company for the total amount of the final billing found eligible for payment under federal auditing standards, cost principles and regulations. The Company will reimburse the Secretary for one hundred percent (100%) of the amount of all items in the Company's bill which are found to be ineligible for payment under federal auditing standards, cost principles and regulations.

10. The Company shall have title to the signals and gates and at its own cost and expense will maintain the signals and gates and will make ample provision each year for such maintenance, provided, however, the Company shall be entitled to receive any contribution toward the cost of such maintenance as may be now, or hereafter made available by reason of any law, ordinance, regulation, order, grant or by other means or sources.

11. The parties hereto do hereby agree that the "Special Attachment No. 1" herewith, pertaining to the implementation of Title VI of the Civil Rights Act of 1964, is hereby made a part of this agreement.

12. The Company does agree that the "Special Attachment No. 2" herewith, pertaining to lobbying, is hereby made a part of this agreement.

13. It is further understood that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the City, Company and the Secretary and their successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in triplicate by their proper offices on the day and year first herein written.

DEBRA L. MILLER
SECRETARY OF TRANSPORTATION

BY: DANIEL L. SCHERSCHLIGT, P.E.
DIRECTOR OF ENGINEERING
AND DESIGN

BNSF RAILWAY COMPANY

BY: Kamalah Miller
TITLE: Manager of Public Projects

ATTEST:

THE CITY OF LAWRENCE

CITY CLERK

PRESIDENT OF GOVERNING BODY

KANSAS DEPARTMENT OF TRANSPORTATION

Special Attachment
To Contracts or Agreements Entered Into
By the Secretary of Transportation of the State of Kansas

NOTE: Whenever this Special Attachment conflicts with provisions of the Document to which it is attached, this Special Attachment shall govern.

THE CIVIL RIGHTS ACT OF 1964, and any amendments thereto,
REHABILITATION ACT OF 1973, and any amendments thereto,
AMERICANS WITH DISABILITIES ACT OF 1990, and any amendments thereto,
AGE DISCRIMINATION ACT OF 1975, and any amendments thereto,
EXECUTIVE ORDER 12898, FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN
MINORITY POPULATIONS AND LOW INCOME POPULATIONS (1994), and any amendments thereto,
49 C.F.R. Part 26.1 (DBE Program), and any amendments thereto

NOTIFICATION

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (78 Stat. 252), §504 of the Rehabilitation Act of 1973 (87 Stat. 3555) and the Americans with Disabilities Act of 1990 (42 USC 12101), the Age Discrimination Act of 1975 (42 USC 6101), the Regulations of the U.S. Department of Transportation (49 C.F.R., Part 21, 23, and 27), issued pursuant to such ACT, Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations (1994), and the DBE Program (49 C.F.R., Part 26.1), hereby notifies all contracting parties that, the contracting parties will affirmatively insure that this contract will be implemented without discrimination on the grounds of race, religion, color, gender, age, disability, national origin, or minority populations and low income populations as more specifically set out in the following seven "Nondiscrimination Clauses".

CLARIFICATION

Where the term "consultant" appears in the following seven "Nondiscrimination Clauses", the term "consultant" is understood to include all parties to contracts or agreements with the Secretary of Transportation of the State of Kansas.

Nondiscrimination Clauses

During the performance of this contract, the consultant, or the consultant's assignees and successors in interest (hereinafter referred to as the "Consultant"), agrees as follows:

- (1) Compliance with Regulations: The consultant will comply with the Regulations of the U. S. Department of Transportation relative to nondiscrimination in federally-assisted programs of the U.S. Department of Transportation (Title 49, Code of Federal Regulations, Parts 21, 23 and 27,

hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

- (2) Nondiscrimination: The consultant, with regard to the work performed by the consultant after award and prior to the completion of the contract work, will not discriminate on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The consultant will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) Solicitations for Subcontractors, Including Procurements of Material and Equipment: In all solicitations, either competitive bidding or negotiation made by the consultant for work to be performed under a subcontract including procurements of materials and equipment, each potential subcontractor or supplier shall be notified by the consultant of the consultant's obligation under this contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations.
- (4) Information and Reports: The consultant will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and the Secretary of the Transportation of the State of Kansas will be permitted access to the consultant's books, records, accounts, other sources of information, and facilities as may be determined by the Secretary of Transportation of the State of Kansas to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a consultant is in the exclusive possession of another who fails or refuses to furnish this information, the consultant shall so certify to the Secretary of Transportation of the State of Kansas and shall set forth what efforts it has made to obtain the information.
- (5) Employment: The consultant will not discriminate against any employee or applicant for employment because of race, religion, color, gender, age, disability, or national origin.
- (6) Sanctions for Noncompliance: In the event of the consultant's noncompliance with the nondiscrimination provisions of this contract, the Secretary of Transportation of the State of Kansas shall impose such contract sanctions as the Secretary of Transportation of the State of Kansas may determine to be appropriate, including, but not limited to,
 - (a) withholding of payments to the consultant under the contract until the contractor complies, and/or
 - (b) cancellation, termination or suspension of the contract, in whole or in part.
- (7) Disadvantaged Business Obligation

- (a) Disadvantaged Businesses as defined in the Regulations, shall have a level playing field to compete fairly for contracts financed in whole or in part with Federal funds under this contract.
 - (b) All necessary and reasonable steps shall be taken in accordance with the Regulations to ensure that Disadvantaged Businesses have equal opportunity to compete for and perform contracts. No person(s) shall be discriminated against on the basis of race, color, gender, or national origin in the award and performance of federally-assisted contracts.
 - (c) The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of Federally-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.
- (8) Executive Order 12898
- (a) To the extent permitted by existing law, and whenever practical and appropriate, all necessary and reasonable steps shall be taken in accordance with Executive Order 12898 to collect, maintain, and analyze information on the race, color, national origin and income level of persons affected by programs, policies and activities of the Secretary of Transportation of the state of Kansas and use such information in complying with this Order.
- (9) Incorporation of Provisions: The consultant will include the provisions of paragraphs (1) through (8) in every subcontract, including procurements of materials and equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The consultant will take such action with respect to any subcontract or procurement as the Secretary of Transportation of the State of Kansas may direct as a means of enforcing such provisions including sanctions for noncompliance: PROVIDED, however, that, in the event a consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the consultant may request the State to enter into such litigation to protect the interests of the State.

CERTIFICATION FOR FEDERAL-AID CONTRACTS

The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

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

BNSF RAILWAY COMPANY
FHPM ESTIMATE FOR
STATE OF KANSAS

LOCATION EAST LAWRENCE TO WEST LAWRENCE

DETAILS OF ESTIMATE

PLAN ITEM : PSI005842P

VERSION : 1

PURPOSE, JUSTIFICATION AND DESCRIPTION

REVISED TO NEW PRICING LIST 09/04/03

INSTALL CONSTANT WARNING AND FLASHERS WITH GATES AT 11TH STREET IN LAWRENCE, KS. KANSAS DIV., TOPEKA SUBDIV., L/S
7101, M.P. 25.72, DOT # 005842P.
MONTHLY POWER UTILITY COST CENTER: 61839

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

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

THE STATE OF KANSAS IS FUNDING THIS PROJECT 100%.

MAINTAIN PROPRIETARY CONFIDENTIALITY.

DESCRIPTION	QUANTITY U/M	COST	TOTAL \$

LABOR			

PLACE FIELD WELDS - CAP	73.6 MH	1,897	
PLACE OTM - CAP	34.88 MH	823	
SIGNAL FIELD LABOR - CAP	880.0 MH	22,933	
SIGNAL SHOP LABOR - CAP	80.0 MH	2,104	
PAYROLL ASSOCIATED COSTS		19,114	
EQUIPMENT EXPENSES		8,644	
DA LABOR OVERHEADS		29,825	
INSURANCE EXPENSES		4,367	
TOTAL LABOR COST		89,707	89,707

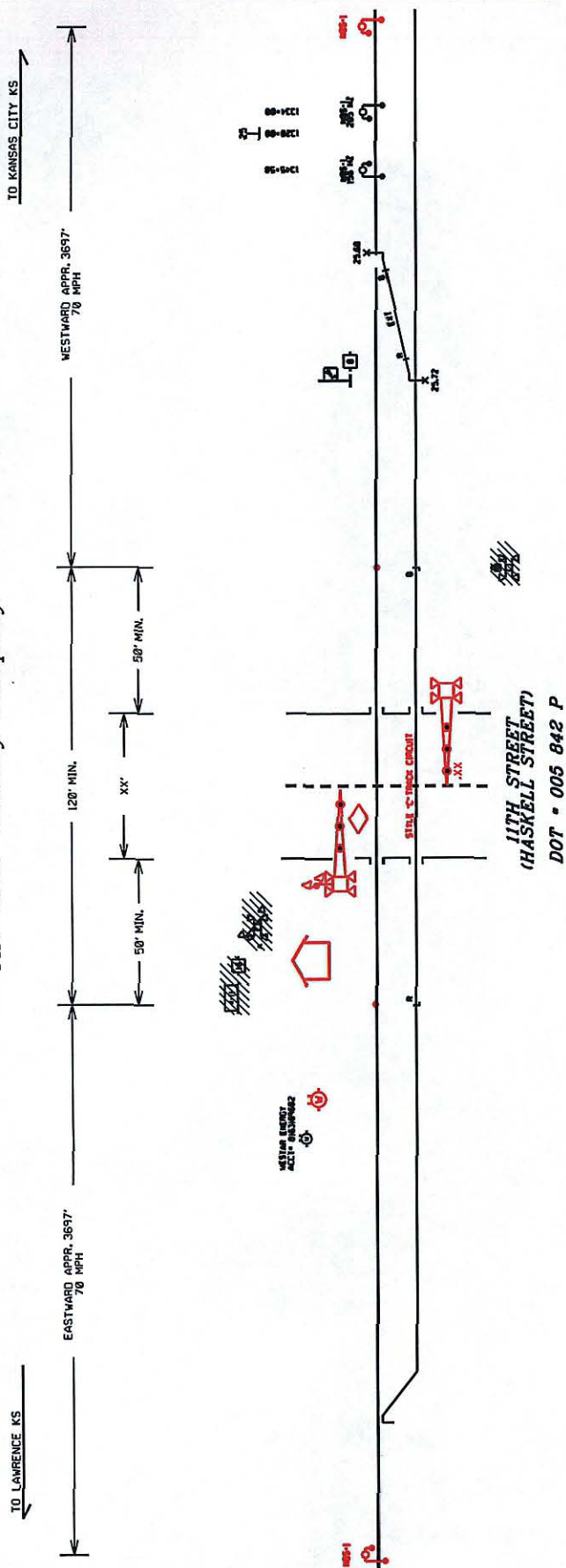
MATERIAL			

RAIL,GENERIC,FOR SIGNAL PROJECTS	4.0 LF X	84	
WELDKIT, GENERIC FOR ALL RAIL WEIGHTS	8.0 KT X	556	
AC TRACK CIRCUIT	1.0 LS N	2,600	
BATTERY	1.0 LS N	5,775	
BUNGALOW 6X6	1.0 EA N	8,612	
BUNGALOW MATERIAL	1.0 LS N	6,144	
CABLE	1.0 LS N	6,682	
CHARGERS	1.0 LS N	1,181	
CONDUIT, PVC 6", SCH 80	100.0 FT N	700	
CONSTANT WARNING	1.0 EA N	24,329	
FIELD MATERIAL	1.0 LS N	5,264	
GATE MECH	2.0 EA N	16,270	
GUARD RAIL. ONE-HALF OVAL	2.0 EA N	924	
LAMP RESISTOR	1.0 EA N	792	
LED GATE LIGHT KIT	2.0 EA N	794	
LED LIGHT ADJUSTMENT	10.0 EA N	2,410	
LIGHT OUT DETECTOR	1.0 EA N	891	
MATERIAL FOR ELECTRICAL	1.0 EA	1,500	
RECORDER	1.0 EA N	5,203	
SHUNT, NBS	4.0 EA N	3,528	
SIDE LIGHT ONE WAY	1.0 EA N	916	
TELLULAR DEVICE	1.0 EA N	2,600	
MATERIAL HANDLING		106	
ONLINE TRANSPORTATION		1	
USE TAX		6,148	
OFFLINE TRANSPORTATION		1,220	
TOTAL MATERIAL COST		105,230	105,230

OTHER

AC POWER SERVICE	1.0 EA	10,000	
CONTRACT ENGR.	1.0 EA N	8,000	
CONTRACT FLAGGING	1.0 EA N	1,500	
CONTRACT SIGNS AND CONES	1.0 EA N	2,500	
FILL DIRT	25.0 CY N	625	
FOUNDATION	2.0 EA N	1,010	
SURFACE ROCK	25.0 CY N	625	
TOTAL OTHER ITEMS COST		24,260	24,260
PROJECT SUBTOTAL			219,197
CONTINGENCIES			21,919
BILL PREPARATION FEE			2,412
GROSS PROJECT COST			243,528
LESS COST PAID BY BNSF			0
TOTAL BILLABLE COST			243,528

The BNSF Railway Company



INSTALL: FLASHERS WITH GATES
 CONTROL DEVICES: CONSTANT WARNING

BOLD - IN

SIGNAL - OUT

SALVAGE: NONE

	INSTRUMENT HOUSE
	BELL
	METER
	CROSSING CONTROL CONNECTIONS
	BIDIRECTIONAL CROSSING CONTROL
	UNIDIRECTIONAL CROSSING CONTROL
	COUPLER OR TERMINATION
	GUARD RAIL

Warning device placement:
 Clearance to C.L. Track = Min. 12', Max. 20'
 Edge of Road to C.L. Foundation:
 Min. 4'3" with curb,
 Min. 8'3" without curb,
 Max. 12'
 House Clearance:
 25' Min. to Near Rail
 30' Min. to Edge of Road
 ALL LIGHTS TO BE LED

BNSF RAILWAY CO.
 LAWRENCE, KS
 11TH STREET (HASKELL STREET)
 LS: 7101
 M.P. 25.72
 DOT # 005 842 P
 DIVISION KANSAS
 SUBDIVISION TOPEKA
 KANSAS CITY
 NO SCALE
 DATE: 12-21-09
 FILE: 7101025 72 .dgn
 DDF/DDF