

"COUNTY'S ORIGINAL"

Agmt. No. 006183021

**A G R E E M E N T**

Federal Aid Project

This Agreement made and entered into in triplicate as of the \_\_\_\_\_ day of \_\_\_\_\_, by and between the BNSF Railway Company, a corporation, hereinafter called "Railroad", and the Secretary of Transportation of the State of Kansas, acting as agent for the County of Sedgwick, Sedgwick County, Kansas, hereinafter called "Secretary", and the County of Sedgwick, Kansas, hereinafter called "County".

**WHEREAS**, the Secretary as agent for the County proposes to construct an improvement under a project designated by Number 87 TE-0433-01; TA-T043(301); Sedgwick County, Kansas, and the improvement includes the construction of a shared use path along 47<sup>th</sup> Street South, DOT Number 009295A on the right-of-way of the Railroad, located in Section 23, T28S, R1E, Sedgwick County, Kansas, as shown on Exhibit "A", attached hereto and made a part hereof, and

**WHEREAS**, the term "improvement" as used in this Agreement, refers to work involving property of the Railroad constructed in accordance with plans approved by the Railroad and the Secretary, and such plans when approved are made a part of this Agreement by reference thereto, and

**WHEREAS**, the parties desire to set forth in this instrument their understanding and agreements relating to the construction, maintenance and allocation of costs of said proposed work and the changes made necessary in connection therewith:

**NOW, THEREFORE**, the parties hereto agree as follows:

**ARTICLE I**

In consideration of covenants and conditions to be fulfilled by the Secretary and the County as hereinafter set forth, RAILROAD AGREES:

1. To give or grant and hereby does give or grant to the Secretary, the County, their agents and contractors, an easement on Railroad's right-of-way, as shown outlined in red on Exhibit "A", and the right to enter, locate, construct, use and maintain a shared use path, a drainage structure extension, and fill slopes on and across Railroad's right-of-way, in accordance with plans and specifications as approved by the Railroad and the Secretary, the Railroad reserving, however, to Railroad, its successors, assigns, tenants or lessees, the right to construct, operate,

rearrange, and maintain along or across said right-of-way, such tracks, pipelines, communications lines, signal lines, electric lines and such other facilities as Railroad, its successors, assigns, tenants or lessees may from time to time find necessary or convenient, as will not unreasonably interfere with the use of the premises for said improvement.

2. To furnish all labor, materials, tools and equipment and to perform all work required to make changes in railroad facilities including alignment, location or elevation of tracks and appurtenances, telephone, telegraph, pipe and signal lines over and/or under its right-of-way, property and tracks and other facilities as may become necessary by reason of said improvement and to comply with the provisions of 23 C.F.R., Chapter I, Part 646, as supplemented and amended in relocation of non-railroad facilities occupying Railroad right-of-way. Said Title 23 Code of Federal Regulations (23 C. F. R.) is by reference made a part of this agreement. The description and estimated cost of such work, material, tools and equipment is particularly set forth in Exhibit "B" which, if required, will be attached hereto and made a part hereof. It is understood and agreed that no work shall be done by the Railroad until such estimate has been approved by the Secretary.

All work to be done hereunder by Railroad shall be done by Railroad's employees working under Railroad Labor Agreements and shall be done on a force account basis, or by contract, subject to the provisions of 23 C. F. R., Chapter I, Part 646, the cost thereof to be paid to Railroad by the Secretary in the manner hereinafter set forth.

3. This Agreement is subject to and the Railroad agrees to comply with 23 U.S.C. 313 ("Buy America") and 23 C.F.R 635.410 ("Buy America requirements") which require that all iron and steel permanently incorporated in the Railroad's facilities that are constructed under this Agreement shall have been manufactured, produced, and processed in the United States. Manufacturing processes include any process which modifies the chemical content, the physical size or shape, or the final finish of the iron or steel. These processes include initial melting, mixing, rolling, machining, extruding, bending, grinding, drilling, and coatings applied to iron or steel (including epoxy coatings, galvanizing, painting, and any other coating that protects or enhances the value of the iron or steel used). Companies providing iron or steel or performing any manufacturing processes on the iron or steel shall include a "Buy America" statement on test reports and material certifications submitted to the Railroad. The "Buy America" statement shall identify the source of the iron or steel and the location(s) of the manufacturing processes. The statement shall certify that the company issuing the test report or material certification complies with all provisions of the Buy America Act. Buy America requirements do not apply to temporary items (Example: temporary sheet piling, steel scaffolding, and falsework) on the contract, even if these items are left in place with the Engineer's approval. The Company will include the test results and material certifications with its billing to the Secretary.

4. Railroad shall, immediately after plans are approved, deliver to the Secretary Railroad's requirements when flagmen are deemed necessary for the safety of Railroad property or the movement of its trains during the progress of the work while on Railroad right-of-way, or in connection with operations off Railroad right-of-way affecting Railroad safety, and of the method to be used in computing its costs therefore. The Secretary shall not be liable for such cost but the Secretary's contracts will require the Secretary's contractor to assume and pay all such costs directly to the Railroad.

5. To provide in Exhibit "C" which is attached hereto, its requirements and methods of cost for contractor. The contractor will complete the Railroad safety seminar before work commences on property of the Railroad. Further the Railroad agrees to provide the Secretary 90 days written notice of any proposed changes to Exhibit "C" revision date June 10, 2010 for review and approval by the Secretary. If any revision of Exhibit "C" results in additional compensation owed to contractor, BNSF shall pay such additional compensation.

6. To present insofar as possible final detailed and itemized statement for work performed by Railroad at expense of the Secretary within one hundred twenty (120) days after completion thereof, such statement to be on the basis of detailed and itemized cost for items set forth in the estimate therefore, and in accordance with and subject to the terms and provisions of 23 C. F. R., Chapter I, Subchapter B, Part 140, Subpart I, as supplemented and amended. The Railroad may present periodic itemized progress bills to the Secretary for work as completed. Final payment will be made in the amount of the difference between the sum of the monthly payments made and the itemized audited statement for the total amount of the work performed by the Railroad upon completion of the work. In the event of overpayment, Railroad shall refund to the Secretary such excess.

Items of material removed and not re-used on the project shall be credited to the cost of the project in accordance with 23 C. F. R., Chapter I, Subchapter B, Part 140, Subpart I.

7. To act in full compliance with the "Special Attachment" (consisting of three pages) related to Title VI of the Civil Rights Act of 1964, said "Special Attachment" affixed hereto and made a part of this Agreement.

## ARTICLE II

In consideration of the covenants and conditions to be fulfilled by Railroad and the County as herein set forth, SECRETARY AGREES:

1. To furnish or cause to be furnished all labor, materials, tools and equipment and to construct the improvement, except such work as is to be performed by Railroad, in accordance with the approved plans and specifications.

2. To require the contractor, in respect to its work

performed upon, over or under Railroad right-of-way, to provide Railroad Protective Liability Insurance as set forth in 23 C. F. R., Chapter I, Part 646, with Policy Limits for Bodily Injury, Death, and Property Damage limited to a combined single limit of \$2,000,000 per occurrence with an aggregate limit of \$6,000,000 applying separately to each annual period, in accordance with the most current ISO Form and shall include the Limited Seepage and Pollution Liability Endorsement.

A. No work shall be started on Railroad property until:

1. Certificate of contractor's public liability and property damage insurance has been furnished to Railroad.
2. Original copy of Railroad's protective insurance policy is furnished to Railroad.
3. Railroad has advised the Secretary, in writing, that limits, form and substance of insurance policies are satisfactory to Railroad.

B. The aforementioned public liability and property damage policy and railroad protective liability insurance policy shall be kept in full force and effect by the Secretary's contractor during the performance of said work upon and adjacent to Railroad's property and thereafter until contractor removes all tools and equipment from Railroad's property and cleans up the premises to satisfaction of Railroad.

3. To require the Contractor, in respect to the Contractor's work performed upon, over or under Railroad right-of-way, to comply with the Contractor Requirements in Exhibit "C", in addition to obligate the Contractor to provide the indemnity provided for in Exhibit "C-1", which indemnity provisions shall mirror the following:

A. Contractor hereby releases, and agrees to indemnify and hold harmless Railroad for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to Contractor's officers, employees, subcontractors, agents, licensees, or invitees (Contractor Agents) or Railroad employees assigned to the project and for loss and damage to property belonging to Contractor Agents or Railroad, arising or alleged to arise in any manner from Contractor Agents' acts or omissions or failure to perform any obligation hereunder. THE LIABILITY ASSUMED BY CONTRACTOR SHALL 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 INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILROAD.

B. Contractor hereby releases, and agrees to indemnify and hold harmless Railroad for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to any other persons whomsoever, including Railroad's officers and employees not assigned to the project, and for loss and damage to property (including, without limitation, environmental damage) belonging to any other persons whomsoever, including Railroad, but only to extent caused by Contractor Agents' acts or omissions or failure to perform any obligation hereunder.

C. THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR SHALL INCLUDE ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILROAD UNDER THE FEDERAL EMPLOYER'S LIABILITY ACT OR STATE BASED WORKERS' COMPENSATION LAWS AND REGULATIONS; INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL HEALTH AND SAFETY ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE, WHENEVER SO CLAIMED.

D. Contractor further hereby agrees, at its expense, in the name and on behalf of Railroad, to adjust and settle all claims made against Railroad, and, at Railroad's discretion, appear and defend any suits or actions, whether at law or in equity, brought against Railroad 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. Railroad shall give notice to Contractor, in writing, of the receipt or pendency of suits or claims and thereupon Contractor shall proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railroad, Railroad may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railroad's discretion, agrees to defend, adjust, and/or settle such suits and protect, indemnify, and save harmless Railroad from and against all damages, verdicts, judgments, orders, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

E. 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 Railroad to the fullest extent permitted by applicable law. THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILROAD FOR ACTS OF NEGLIGENCE BY RAILROAD EMPLOYEES ASSOCIATED WITH THIS PROJECT.

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

4. The Secretary, the Secretary's contractor and agents, will give thirty (30) days notice to the Railroad's contact as shown in the Exhibit "C" before commencing work in connection with the improvement upon or adjacent to Railroad property.

5. To reimburse the Railroad within thirty (30) calendar days after receipt of the undisputed portion of any invoice for cost incurred for work done by the Railroad in accordance with the provisions of this Agreement.

Provided, however, that should some unforeseen condition or combination of conditions increase the cost of the work to be performed by the Railroad in excess of the total cost, as set forth in the estimate required by Article I, Section 2, the Railroad shall not incur any expenditures in excess of said total unless and until so authorized by the Secretary.

Provided, however, that the Secretary shall not have any liability for or obligation to pay for any work done by Railroad unless statement therefore is presented to and received by the Secretary before the expiration of one year after the day of completion of all work done by the Railroad in accordance with the provisions of this Agreement.

In the event the Secretary shall for any reason cancel or terminate the Secretary's contract and abandon the construction of said improvement or in the event the Secretary's contractor shall stop work thereon for a period of sixty (60) calendar days, other than seasonal suspensions authorized by the Secretary, for reason over which the Secretary or contractor has control, and the Secretary has not prepared to relet or resume work under the contract, the Railroad shall have the right to restore its property to the condition existing prior to commencement of work on said improvement. The Secretary agrees to reimburse Railroad for all expenses incurred by Railroad for such restoration by Railroad.

### ARTICLE III

In consideration of the covenants and conditions to be fulfilled by Railroad and the Secretary as herein set forth, COUNTY AGREES:

1. To secure or cause to be secured all highway right of way required for or incident to the proposed improvement, including any right of way required for borrow rights, except that provided for in Section 1 of Article I hereof.

2. To prepare all detail plans, which plans shall be submitted for review and approval by both the duly designated representative of the Railroad and the Secretary.

3. To maintain and repair completed improvement without cost or expense to the Railroad and in a manner satisfactory to the Federal Highway Administration, United States Department of Transportation, or their authorized representatives.

4. To make any and all arrangements with Railroad, Railroad's tenants, and Railroad lessees that may be necessary for the location and relocation of wire lines, pipelines, and other facilities that Railroad's tenants and lessees own, that are located on Railroad's right-of-way and that may be necessary to construct the improvement.

5. To make any and all arrangements with third parties that may be necessary for the location and relocation of wire lines, pipelines, and other facilities outside Railroad's right-of-way and that may be necessary to construct the improvement.

6. To pay any compensation required because of the location and relocation performed under Sections 4 and 5 of Article III.

7. To allow no location or relocation to be undertaken on Railroad's right-of-way under Section 4 of Article III until the Railroad's Assistant Vice President Engineering-Design or that person's authorized representative has approved the location or relocation and the final plans and specifications.

#### ARTICLE IV

##### **SECRETARY, COUNTY AND RAILROAD MUTUALLY AGREE:**

1. The Secretary shall prepare all specifications, including special provisions, for the improvement involving the property of the Railroad, which specifications shall be submitted to the Railroad for their approval. All construction and work done by the parties shall be in accordance with the approved plans and specifications.

2. That all work contemplated in this Agreement shall be mutually scheduled and coordinated, commenced promptly and completed without undue delay. All work shall be performed in a good workmanlike manner.

3. The parties hereto agree that no benefits will accrue to the Railroad pursuant to the provisions of 23 C. F. R., Chapter

I, Part 646, due to the construction or use of said shared use path, because: the project covered by this Agreement is the construction of a shared use path, in view of which there will be no Railroad contribution.

4. The books, papers, and accounts of the parties hereto, so far as they relate to items of expense, labor and materials, or are in any way connected with the work herein contemplated, shall at all reasonable times during regular office hours be open to inspection and audit by agents and authorized representatives of the parties hereto and of the Federal Highway Administration for a period of three (3) years from the date final payment has been received by the Railroad.

5. This Agreement shall be binding upon and inure to the benefit of the Railroad, its successors and assigns, and upon and to the successors and assigns of the Secretary, and upon and to the successors and assigns of the County.

6. That all disbursements required by this Agreement shall be from funds allocated by either the County or the FHWA and the Secretary assumes no obligation for payment hereunder other than as agent for the County.

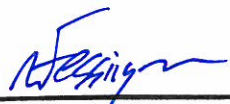
**IN WITNESS WHEREOF**, the parties hereto have duly executed this Agreement in triplicate the day and year first above written.

RICHARD CARLSON, SECRETARY  
OF TRANSPORTATION  
DIRECTOR OF KANSAS TURNPIKE  
AUTHORITY

BY: \_\_\_\_\_  
SCOTT W. KING, P.E., CHIEF  
BUREAU OF ROAD DESIGN

**APPROVED AS TO FORM:**

THE COUNTY OF SEDGWICK

  
\_\_\_\_\_  
Assistant County Counselor

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_

BNSF RAILWAY COMPANY

BY: Kamalah Young  
TITLE: Manager of Public Projects

## 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**

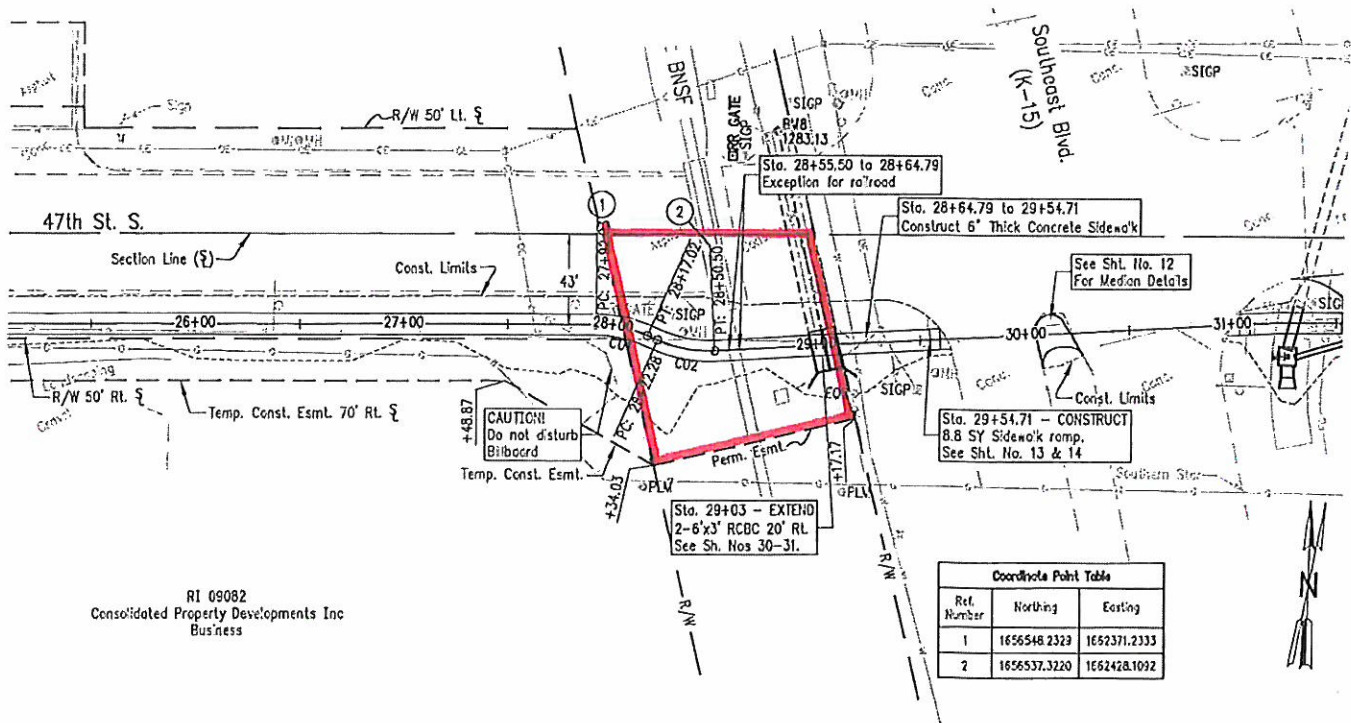
The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- (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.

A tract of land in the East half of the Northwest Quarter of Section 23, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas described as follows: Commencing at the Northwest Corner of the East half of said Northwest Quarter; thence on an assumed bearing of N 89°49'20" E along the North line of said Northwest Quarter, a distance of 727.73 feet to the point of beginning, said point lying on the West line of the BNSF Railway Right-of-way (formally known as the Atchison, Topeka and Santa Fe Railroad); thence continuing N 89°49'20" E along the North line of said Northwest Quarter, a distance of 102.75 feet, to a point on the East line of said Railroad Right-of-way; thence S 13°27'10" E along the East line of said Railroad Right-of-way, a distance of 89.34 feet; thence S 76°32'50" W perpendicular to said Railroad Right-of-way, a distance of 100.00 feet, to a point on the West line of said Railroad Right-of-way, said point also being on the East line of Lot 3, Block A, "S-J Properties 2nd Addition" to Sedgwick County, Kansas; thence N 13°27'10" W along the East line of said Lot 3, Block A, also being the West line of said Railroad Right-of-way a distance of 112.93 feet to the point of beginning.



**EXHIBIT "A"**  
To an Agreement Between the  
Kansas Secretary of Transportation and  
Sedgwick County and the  
BNSF Railway Company  
Project No. 87 TE-0433-01, TA-T043(301)

**STATE OF KANSAS**  
**DEPARTMENT OF TRANSPORTATION**  
**PLAN AND PROFILE OF PROPOSED**

**SHARED USE PATH  
FEDERAL AID PROJECT  
87 TE-0433-01  
SEDGWICK COUNTY**

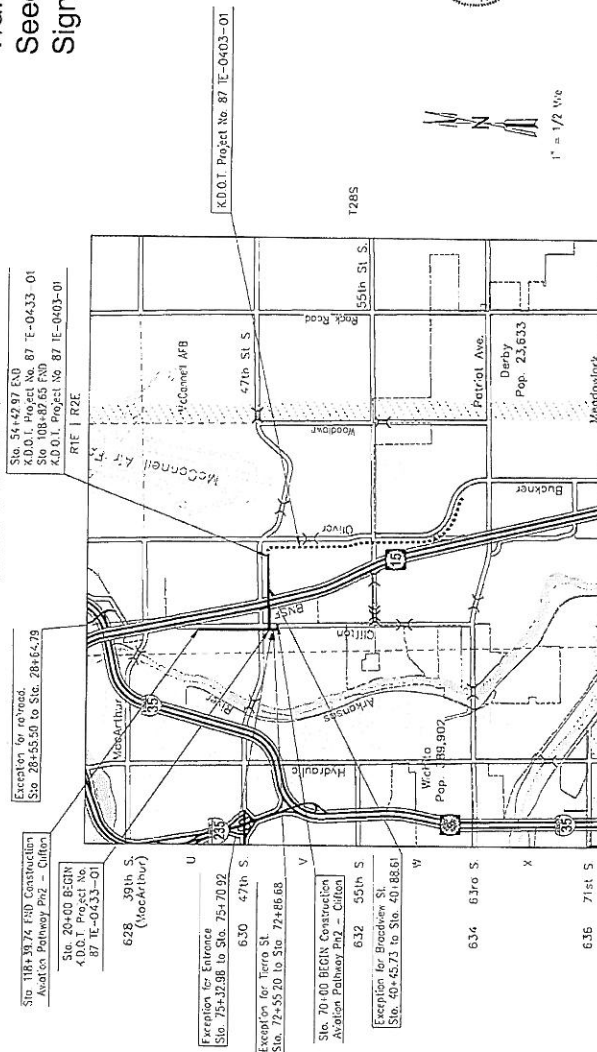
Grading & Surfacing  
RCB Bridge Extension  
Railroad Crossing  
Traffic Signal  
Seeding  
Signing & Pavement Marking

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## DESIGN DESIGNATION

AADT (2016)	=	N/A
AADT (2036)	=	N/A
DHV	=	N/A
D	=	N/A
T	=	N/A
V	=	18 mph
C or A	=	N/A
Clear Zone	=	2 Ft


$$\Gamma = 1/2 \text{ yr}$$
[illegible]

CONVENTIONAL SIGNS	
QUARTY LINE	CENTER LINE OF PROJECT
TY LIMITS	TERMINUS
STATE OR NATIONAL LINE	GRADINGS
CONSTRUCTION SECTION OR OWN'S LINE	DITCH, SLEET & STORM SEWER
CONTRACTOR'S LINE	ACCESS CONTROL
TO-GOY FENCE	POWER POLE
EXISTING FENCE	TELEPHONE POLE
CONTRACTOR'S LINE	WATER VALVE
TO-GOY FENCE	HERSE
EXISTING FENCE	THRESH
CONTRACTOR'S LINE	PROTECT ELEMENTS
TO-GOY FENCE	STRAIN OF CHECK
EXISTING FENCE	

Michael J. Stanger Sep 18.2017

REFCOM FOR APPROVAL

Date \_\_\_\_\_

DAVID C. SPEARS, P.E.  
ASST. COUNTY MANAGER/COUNTY ENGINEER

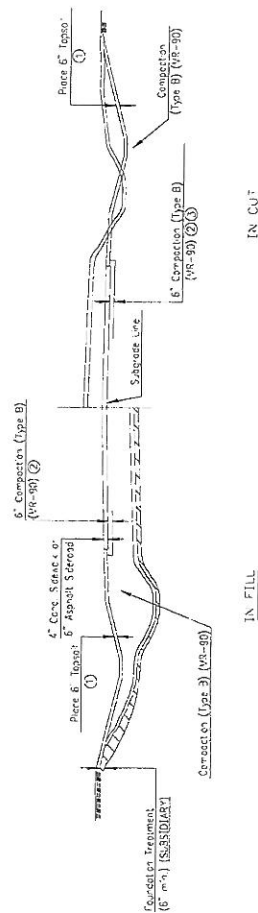
KANSAS DEPARTMENT OF TRANSPORTATION



1. All construction work and materials shall comply with Kansas Department of Transportation (KDOT) Standard Specifications for State Road and Bridge Construction (20-5 Edition) and project special provisions unless otherwise noted.
2. Materials to be wasted shall be wasted on sites provided by the Contractor. These sites shall be approved by the Engineer as to suitability, location, and site location. Locations that, in the opinion of the Engineer, will leave an unsightly appearance will not be approved. Any material or incidentals necessary to complete this work shall be SUBSIDIARY to other items. In the event the estimated quantities given are for information only and may vary in the field. In the event that changes occur, there shall be no adjustment to the unit bid price.
3. All disposal sites must be approved by the Kansas Department of Health & Environment (KDHE). Material either stockpiled or disposed of in a flood plain will require a Kansas State Board of Agriculture permit. Any material dumped in waters of the United States or wetlands is subject to the U.S. Corps of Engineers permitting regulations.
4. Any material buried or stockpiled beyond approved construction limits will require additional archeological investigations unless buried in a previously approved borrow location.
5. All borrow areas provided by the Contractor shall be approved by the Engineer as to suitability of material and location. Special care shall be taken in this approval to minimize the increase of siltation and turbidity of streams, lakes and reservoirs and to avoid interference with the movement of migratory fish. Areas which, in the opinion of the Engineer, may leave an unsightly appearance to the project will not be approved.
6. All borrow area locations shall be submitted to the Engineer for clearance from the Kansas Historical Society and the Kansas Department of Wildlife, Parks, & Tourism prior to any excavation.
7. It is the Contractor's responsibility to maintain drainage throughout the duration of this project. All temporary drainage structures or channels and all work necessary to maintain proper drainage shall be SUBSIDIARY to other items of the contract.
8. Existing utilities, both above and below ground, and their location as shown on the plans, represent the best information available at the time of design. The locations of utilities as shown on the plans are not guaranteed. The Contractor will verify all utilities and their locations before beginning construction. Additional utilities, including overhead utilities, which are not shown on the plans may be encountered. In this event, the Contractor shall adjust his schedules and cooperate with the utility companies in order that their facilities may be adjusted as required to clear construction. The Contractor shall exercise extreme caution while working near utilities and shall be responsible for all utilities caused by Contractor's construction activity. No additional compensation or working days will be allowed by the owner for any delays, inconvenience, or damages sustained by the Contractor due to utility conflicts and their resolution unless all other major items of work on the project have been completed.
9. Notify Weather Energy to arrange for appropriate safety precautions before working within ten feet of an overhead high voltage line in accordance with the Overhead Power Line Accident Prevention Act.
10. The survey datum is based on the project survey records. It is the responsibility of the Contractor to verify the project datum, and all stated control points, and report any discrepancies to the Engineer immediately.
11. The Contractor shall restore to original or better condition, adjacent property disturbed by construction of the project of the Contractor's expense.

① The top 6" of all areas to be seeded shall be free of rocks, rubble, trash and other foreign or toxic material and shall be capable of supporting vegetation

- ① The top 3" of all areas to be seeded shall be free of rocks, unstable topsoil, and any other toxic material and shall be capable of supporting vegetation.
- ② No shale or silt/sand will be permitted in this zone.
- ③ 6" compaction through cults is considered as Foundation Treatment and is SUBDIAT to the bid item "Compaction of Earthwork."



225

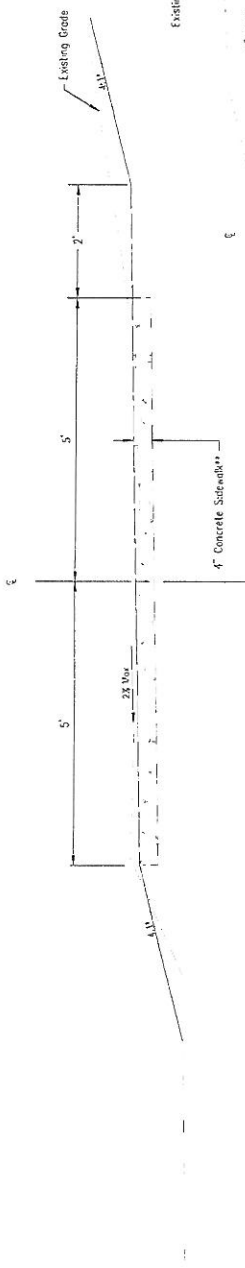
IN FILL

Aviation Pathway - Phase 2

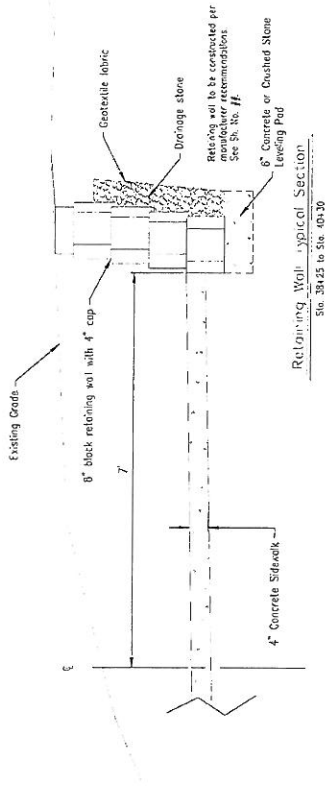
PREPARED BY  
SACK COUNTY PUBLIC WORKS

DAVID C. SPEARS, P.E.	DATE	BY	REASON	DATE	BY	REASON
	6/2017	JLR	O.A.S.	6/2017	JLR	O.A.S.
	7/2017			7/2017		

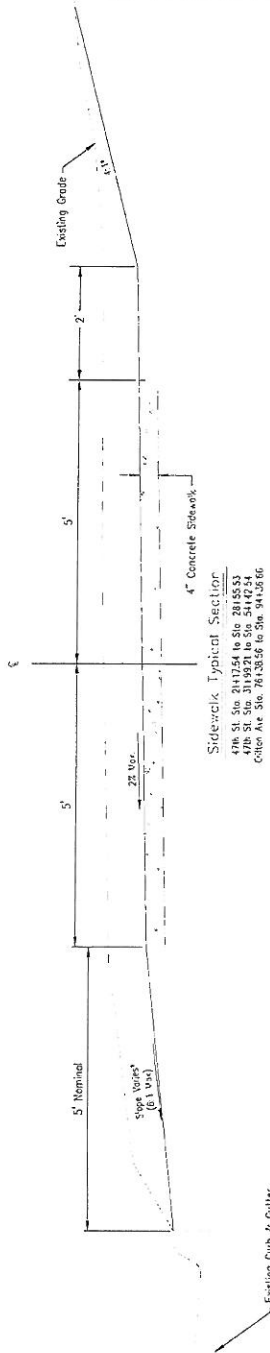
COUNTY	STATE	PROJECT NUMBER	DATE	SHEET NO.	TOTAL SHEETS
ST. LOUIS	MISSOURI	87-11-0433-01	2017	3	103



**Sidewalk Typical Section**  
 47th St. Sta. 28144.26 to Sta. 31159.09  
 Cotton Ave. Sta. 70+18.50 to Sta. 78+38.56  
 Cotton Ave. Sta. 94+36.02 to Sta. 141+52.59



**Retaining Wall Typical Section**  
 Sta. 38+25 to Sta. 40+30



**Sidewalk Typical Section**  
 47th St. Sta. 2117.54 to Sta. 28155.53  
 47th St. Sta. 31199.21 to Sta. 34147.54  
 Cotton Ave. Sta. 74+38.50 to Sta. 94+36.02

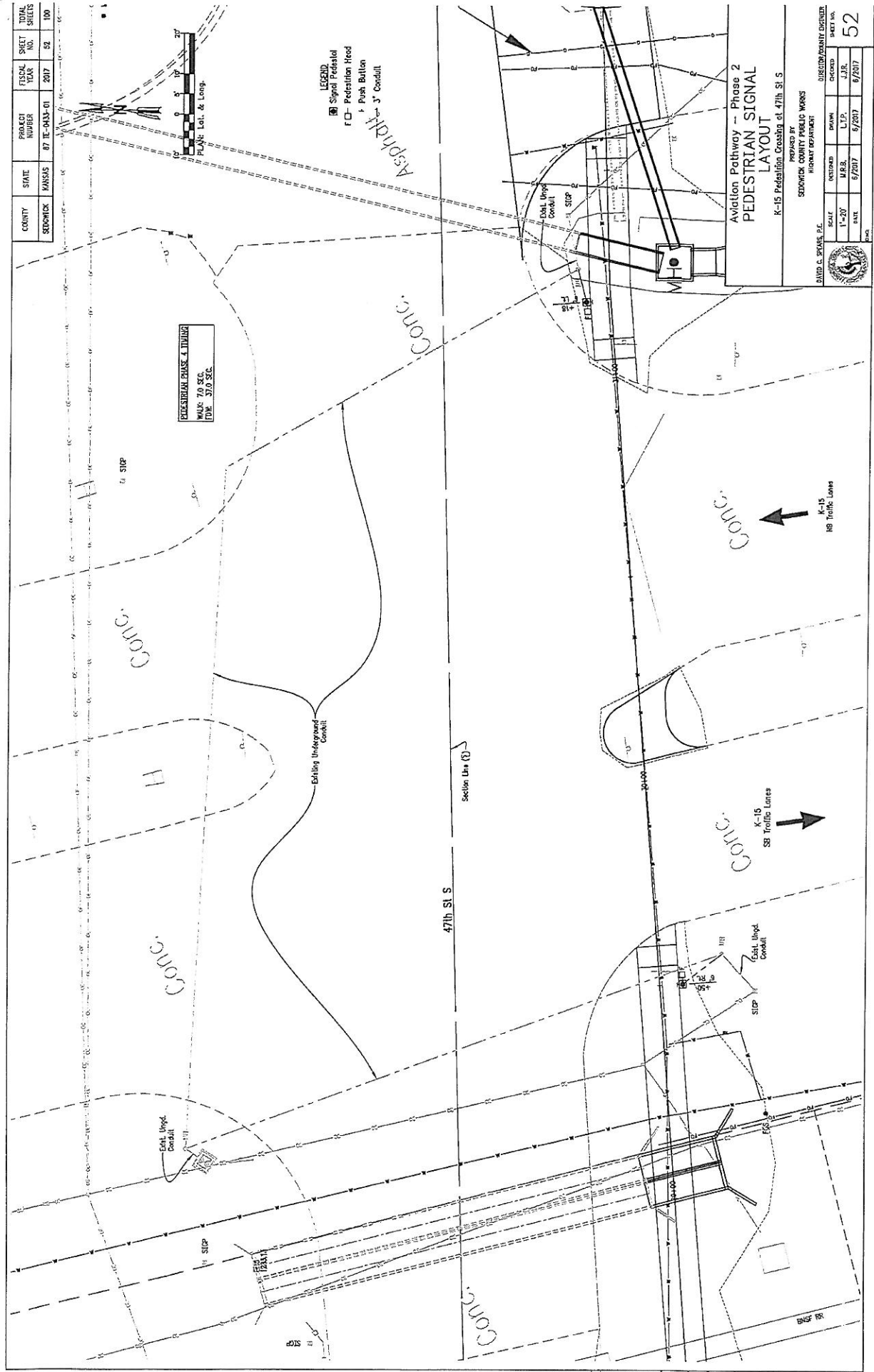
Station	Length	% Grade
24+50	24.25	25
32+50	32.25	25
41+50	41.25	25
47+50	47.25	25
53+50	53.25	25
59+50	59.25	25
65+50	65.25	25
71+50	71.25	25
77+50	77.25	25
83+50	83.25	25
89+50	89.25	25
95+50	95.25	25
101+50	101.25	25
107+50	107.25	25
113+50	113.25	25
119+50	119.25	25
125+50	125.25	25
131+50	131.25	25
137+50	137.25	25
143+50	143.25	25
149+50	149.25	25
155+50	155.25	25
161+50	161.25	25
167+50	167.25	25
173+50	173.25	25
179+50	179.25	25
185+50	185.25	25
191+50	191.25	25
197+50	197.25	25
203+50	203.25	25
209+50	209.25	25
215+50	215.25	25
221+50	221.25	25
227+50	227.25	25
233+50	233.25	25
239+50	239.25	25
245+50	245.25	25
251+50	251.25	25
257+50	257.25	25
263+50	263.25	25
269+50	269.25	25
275+50	275.25	25
281+50	281.25	25
287+50	287.25	25
293+50	293.25	25
299+50	299.25	25
305+50	305.25	25
311+50	311.25	25
317+50	317.25	25
323+50	323.25	25
329+50	329.25	25
335+50	335.25	25
341+50	341.25	25
347+50	347.25	25
353+50	353.25	25
359+50	359.25	25
365+50	365.25	25
371+50	371.25	25
377+50	377.25	25
383+50	383.25	25
389+50	389.25	25
395+50	395.25	25
401+50	401.25	25
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413+50	413.25	25
419+50	419.25	25
425+50	425.25	25
431+50	431.25	25
437+50	437.25	25
443+50	443.25	25
449+50	449.25	25
455+50	455.25	25
461+50	461.25	25
467+50	467.25	25
473+50	473.25	25
479+50	479.25	25
485+50	485.25	25
491+50	491.25	25
497+50	497.25	25
503+50	503.25	25
509+50	509.25	25
515+50	515.25	25
521+50	521.25	25
527+50	527.25	25
533+50	533.25	25
539+50	539.25	25
545+50	545.25	25
551+50	551.25	25
557+50	557.25	25
563+50	563.25	25
569+50	569.25	25
575+50	575.25	25
581+50	581.25	25
587+50	587.25	25
593+50	593.25	25
599+50	599.25	25
605+50	605.25	25
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671+50	671.25	25
677+50	677.25	25
683+50	683.25	25
689+50	689.25	25
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1919+50	1919.25	25
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1961+50	1961.25	25

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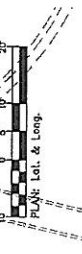
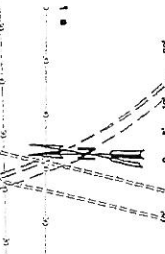








COUNTY	STATE	PROJECT NUMBER	FISCAL YEAR	SHEET NO.	TOTAL SHEETS
SEDGWICK	KANSAS	87 TE-4435-01	2017	52	100



**LEGEND**  
 [Symbol] Signal Pedestal  
 [Symbol] Pedestrian Head  
 [Symbol] Push Button  
 [Symbol] 3" Conduit

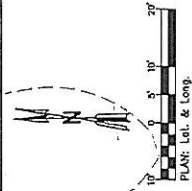
**PEDESTRIAN PHASE & TIMING**  
 WALK: 7.0 SEC.  
 DM: 37.0 SEC.

**Aviation Pathway - Phase 2  
 PEDESTRIAN SIGNAL  
 LAYOUT**  
 K-15 Pedestrian Crossing at 47th St S

DESIGNED BY	DAVID A. SPANKE, P.E.	SCALE	1"=20'	DATE	8/2017
PREPARED BY	SEDGWICK COUNTY PUBLIC WORKS	INCHES	11.5"	DATE	8/2017
PROJECT NUMBER	87 TE-4435-01	FEET	11.5"	DATE	8/2017

**52**

COUNTY	STATE	PROJECT NUMBER	FISCAL YEAR	SHEET NO.	TOTAL SHEETS
SEDGWICK	KANSAS	87 TE-0435-01	2017	60	100



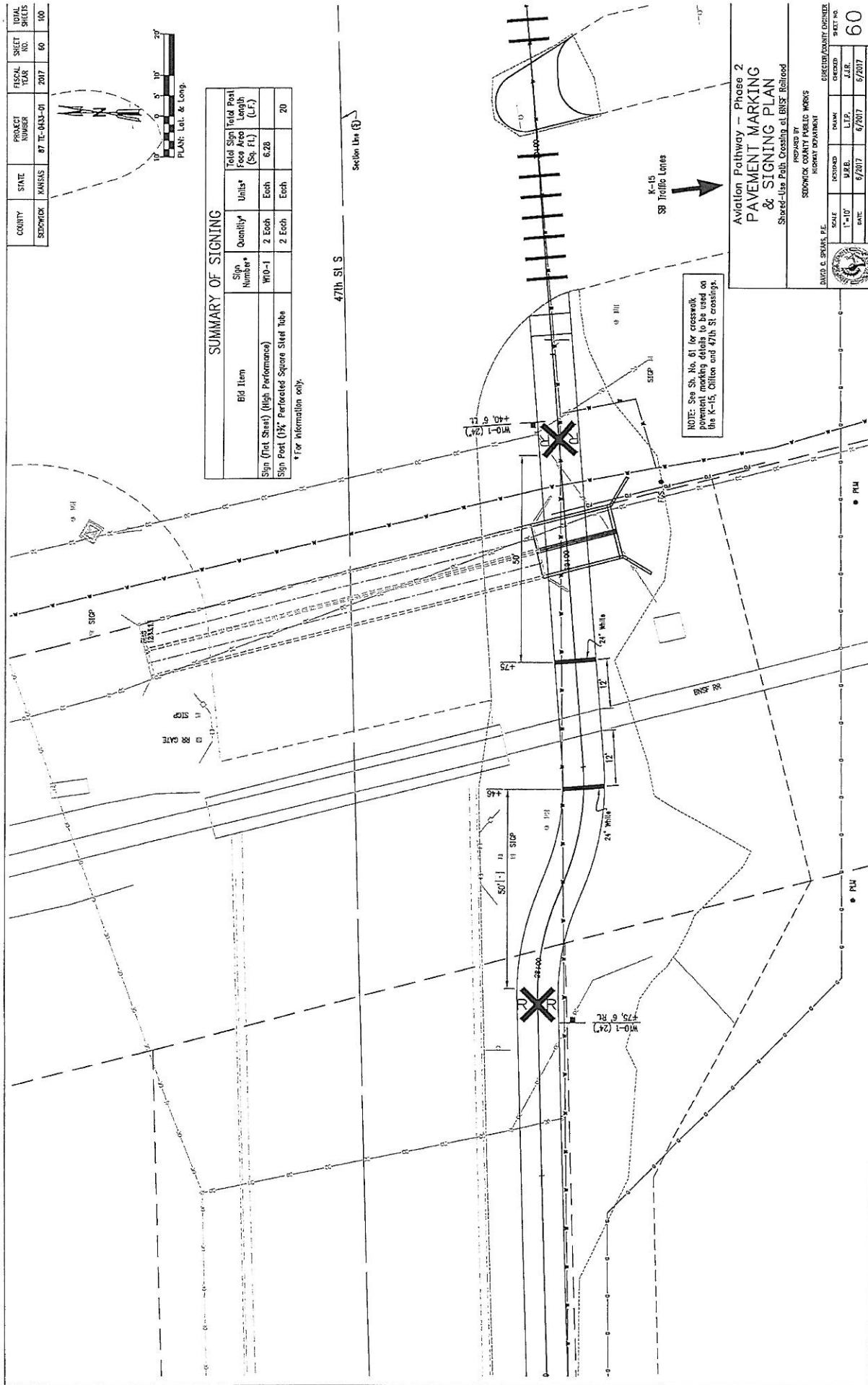
# SUMMARY OF SIGNING

Bid Item	Sign Number*	Quantity*	Units*	Total Sign Total Post Face Area Length (Sq. Ft.)
Sign Post (14" Perforated Square Steel Tube)	WFO-1	2 Each	Each	6.28
		2 Each	Each	20

\*For information only.

47th St S

Section Line (R)



## Aviation Pathway - Phase 2 PAVEMENT MARKING & SIGNING PLAN

Shared-Use Path Crossing at BRIS Railroad

PROPOSED BY  
SEDGWICK COUNTY PUBLIC WORKS  
HIGHWAY DEPARTMENT

DAVID G. SPANUS, P.E.

SCALE  
1"=10'

DATE  
5/2017

DESIGNED BY  
L.P.

CHECKED BY  
J.L.R.

DATE  
5/2017

PROJECT NO.  
60

SHEET NO.



# EXHIBIT B

## AUTHORITY FOR EXPENDITURE

LOCATION : WEST CONNELL	LINE SEGMENT : 7400	AFE NUMBER :
PLANITEM NUMBER : 231507000	MILEPOST : 218.353	RFA NUMBER : 5915918
PROPERTY OF : BNSF RAILWAY COMPANY	DIVISION : KS	CPAR NUMBER : C0000009
OPERATED BY : BNSF RAILWAY COMPANY	SUBDIVISION : ARKANSAS CITY	BUDGET YEAR : 2018
JOINT FACILITY : KDOT	TRACK TYPE : S	BUDGET CLASS : 6
% BILLABLE (+/-) : 100.0	TAX STATE : KS	REPORTING OFFICE : 711
	SPONSOR : VP ENGINEERING	CENTER/ROLLUP : 29125

### PURPOSE, JUSTIFICATION AND DESCRIPTION

PIP KSE DIV ARKANSAS CITY SUB DOT# 009295A - 100% BILLABLE TO KDOT - BNSF TO EXTEND CROSSING SURFACE TO ACCOMMODATE SIDEWALK IMPROVEMENT PROJECT ALONG 47TH STREET IN DERBY, KS

PLAN ITEM	LINE SEG	BEG MP	END MP	TRK NBR	BEGIN STATION	END STATION	PROJECT TYPE	BUD YEAR
231507000	7400	218.353	218.353	S	WEST CONNELL	WEST CONNELL	PUBLIC IMPROVEMENT PROJECT	2018

	CASH CAPITAL	NONCASH CAPITAL	OPERATING EXP	REMOVAL COSTS	BILLABLE	TOTALS
LABOR COSTS	0	0	0	0	4,615	4,615
MATERIAL COSTS	0	0	0	0	7,333	7,333
OTHER COSTS	0	0	0	0	1,326	1,326
TOTALS	0	0	0	0	13,274	13,274

SYSTEM MAINTENANCE AND PLANNING  
ESTIMATE REF. NUMBER : 5915918  
COSTING DATE : 01/01/2018

PRINTED ON : 11/30/2017  
ESTIMATED BY : MATTHEWS  
PRINTED BY : MATTHEWS

# EXHIBIT B

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

BNSF RAILWAY COMPANY  
FHPM ESTIMATE FOR  
KDOT

LOCATION WEST CONNELL DETAILS OF ESTIMATE PLAN ITEM 231507000 VERSION 2

PURPOSE, JUSTIFICATION AND DESCRIPTION

PIP KSE DIV ARKANSAS CITY SUB DOT# 009295A - 100% BILLABLE TO KDOT

BNSF TO EXTEND CROSSING SURFACE TO ACCOMMODATE SIDEWALK IMPROVEMENT PROJECT ALONG 47TH STREET IN DERBY, KS

REQUESTED BY JACOB RZEWNICKI 11/22/17

DESCRIPTION	QUANTITY U/M	COST	TOTAL \$
*****			
LABOR			
*****			
PLACE CROSS TIES - CAP	12 0 MH	358	
PLACE PUBLIC CROSSING - CAP	24 0 MH	715	
UNLOAD CROSS TIES - ADDITION - CAP	1 0 MH	30	
UNLOAD CROSSING MATERIAL - PUBLIC - CAP	12 0 MH	358	
PAYROLL ASSOCIATED COSTS		853	
DA OVERHEADS		1,363	
EQUIPMENT EXPENSES		693	
INSURANCE EXPENSES		245	
TOTAL LABOR COST		4,615	4,615
*****			
MATERIAL			
*****			
SPIKE, TBR SCREW 3/4"X13", F/ROAD XING	54 0 EA **	119	
TIE, TRK, 10FT, PRE-PLATED, 6IN, STD AREA	15 0 EA	1,436	
CONC 136 08-SEC WITH FILLER FOR 10' WOOD TIES **	24 0 FT **	3,888	
CONCRETE XING RAMP AND PANEL RESTRAINT,	3 0 ST **	930	
MATERIAL HANDLING		316	
ONLINE TRANSPORTATION		30	
USE TAX		554	
OFFLINE TRANSPORTATION		60	
TOTAL MATERIAL COST		7,333	7,333
*****			
OTHER			
*****			
TOTAL OTHER ITEMS COST		0	0
PROJECT SUBTOTAL			11,948
CONTINGENCIES			1,194
BILL PREPARATION FEE			132
GROSS PROJECT COST			13,274
LESS COST PAID BY BNSF			0
TOTAL BILLABLE COST			13,274



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

BNSF RAILWAY COMPANY  
FHPM ESTIMATE FOR  
KDOT

LOCATION WEST CONNELL DETAILS OF ESTIMATE PLAN ITEM : 000298575 VERSION : 1

PURPOSE, JUSTIFICATION AND DESCRIPTION

47 TH ST - DERBY, KS, REPLACE METER SERVICE, KANSAS DIV, ARKANSAS CITY SUBDIV, LS 7400, MP 218 35, DOT# 009295A, SEQ# 71338.  
MONTHLY POWER UTILITY COST CENTER : 61691.

THE MATERIAL LIST BELOW REFLECTS TYPICAL REPRESENTATIVE PACKAGES USED FOR ESTIMATING PURPOSES ONLY.  
THIS ESTIMATE IS GOOD FOR 180 DAYS THE ESTIMATE IS SUBJECT TO CHANGE IN COST FOR LABOR, MATERIAL, AND OVERHEAD.  
CONTRACTS HAVE BEEN ESTABLISHED FOR PORTIONS OF SIGNAL WORK ON THE BNSF RAILROAD.

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

THE STATE OF KANSAS IS FUNDING 100% OF THIS PROJECT.

MAINTAIN PROPRIETARY CONFIDENTIALITY

PRIMARY FUNDING SOURCE IS STATE

DESCRIPTION	QUANTITY U/M	COST	TOTAL \$
*****			
LABOR			
*****			
SIGNAL FIELD LABOR - OPER	120 0 MH	3,700	
PAYROLL ASSOCIATED COSTS		2,164	
DA OVERHEADS		3,455	
EQUIPMENT EXPENSES		721	
INSURANCE EXPENSES		621	
TOTAL LABOR COST		10,661	10,661
*****			
MATERIAL			
*****			
CABLE SPLICING KITS	1 0 LS N	100	
CABLE, 3C/2	50 0 FT N	276	
ELECTRICAL MATERIAL	1 0 EA N	1,500	
USE TAX		162	
OFFLINE TRANSPORTATION		22	
TOTAL MATERIAL COST		2,060	2,060
*****			
OTHER			
*****			
AC POWER SERVICE	1 0 EA N	5,000	
MACHINE RENTAL	2 0 DAY N	416	
TOTAL OTHER ITEMS COST		5,416	5,416
PROJECT SUBTOTAL			18,137
CONTINGENCIES			0
BILL PREPARATION FEE			182
GROSS PROJECT COST			18,319
LESS COST PAID BY BNSF			0
TOTAL BILLABLE COST			18,319

Surf. Work 13,274  
Signal Power Work 18,319  
Total 31,593

PROJECT: 87 TE-0433-01

COUNTY: SEDGWICK

TYPE: ROADWAY  
FORM APPROVAL 4-7-2014

**BNSF RAILWAY COMPANY  
FLAGGING REQUIREMENTS**

FOR THE BENEFIT OF PROSPECTIVE BIDDERS, the Kansas Department of Transportation has obtained the requirements of the Burlington Northern and Santa Fe Railway Co. in relation to the protection of its traffic, the conditions under which such protection will be required, the rates of pay, working hours, and other information relating to services necessary to protect railroad traffic during the construction operations.

**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 roadway and sidewalk improvements for Project No. 87 TE-0433-01, Sedgwick Aviation Trail at 47th St. crossing BNSF Railway, DOT#009295A, RR MP 218.35 Ark City Sub.
- **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 immediately and without prior notice 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; or (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project. Railway will have the right to stop construction work on the Project after written notice to both KDOT and Contractor in the event of a material breach of this agreement or terms of the easement agreement. 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. 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:

Kansas Department of Transportation  
Coordinating Section  
700 SW Harrison Street  
Topeka, KS 66603 785.296.3531

- **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 KDOT at 785-296-3529 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 **DOT# 009295A**.
- **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](http://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 **on Railroad right of way**. 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 Darin Martin at (913) 551-4572 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 **KDOT Office** and must not be undertaken until approved in writing by the Railway, and until the **KDOT Office** 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 **KDOT** 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](http://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.

#### **1.05 Railway Flagger Services:**

- **1.05.01** The Contractor must give Railway's Roadmaster **JEREMY WILLINGHAM** at [jeremy.willingham@bnsf.com](mailto:jeremy.willingham@bnsf.com) and BNSF's Flagging Contractor- Rail Pros Field Services at [bnsfinfo@railprofs.com](mailto:bnsfinfo@railprofs.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 KDOT's contractor. 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 the Arkansas City Subdivision is 28 freight trains per 24-hour period at a maximum authorized timetable speed 55 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](http://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 (913-551-4275)**. 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](mailto: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.

I. 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: SEDGWICK COUNTY 47<sup>TH</sup> ST DOT# 009295A

Agency Project: 87 TE-0433-01

\_\_\_\_\_ hereinafter called "Contractor"), has entered into an agreement (hereinafter called "Agreement") dated \_\_\_\_\_, 2018, with **KDOT** for the performance of certain work in connection with the following project: roadway and sidewalk improvements for Project No. 87 TE-0433-01, Sedgwick Aviation Trail at 47th St. crossing BNSF Railway, DOT#009295A, RR MP 218.35 Ark City Sub. 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 **KDOT** (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 for 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 IN ACCORDANCE WITH KANSAS COMPARATIVE FAULT PRINCIPLES. THE LIABILITY ASSUMED BY CONTRACTOR WILL INCLUDE LIABILITY FOR THE ACTS OR OMISSIONS OF RAILWAY EMPLOYEES ASSIGNED TO AND PERFORMING WORK FOR THE PROJECT, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY EMPLOYEES ASSIGNED TO AND PERFORMING WORK FOR THE PROJECT.**

**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 BY RAILWAY EMPLOYEES ASSIGNED TO AND PERFORMING WORK FOR THIS PROJECT.**

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:

- 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 \$6,000,000 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.
- ◆ 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:

Contractor agrees to waive its right of recovery against **Railway** for all claims and suits against **Railway** caused by Contractor, any of Contractor's subcontractors, or Railway employees assigned to and performing work for the Project. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against **Railway** for all such 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](mailto:BNSF@certfocus.com)  
[www.certfocus.com](http://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) **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.

#### 5) **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 caused exclusively by the Contractor, its subcontractors, Railroad employees assigned to and performing work for the Project, or a combination thereof 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 such unscheduled train delays, whether caused by Contractor, or subcontractors, or by the Railroad employees assigned to and performing work for the Project. 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. Damages for train delay are currently \$382.20 per hour per incident. 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 (**Roadmaster JEREMY WILLINGHAM at [jeremy.willingham@bnsf.com](mailto:jeremy.willingham@bnsf.com) and BNSF's Flagging Contractor- Rail Pros Field Services at [bnsfinfo@railprosfs.com](mailto:bnsfinfo@railprosfs.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

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

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

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

**BNSF Railway Company**

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

Name: \_\_\_\_\_  
Manager Public Projects

Contact Person: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

Fax: \_\_\_\_\_

Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_