

**RESOLUTION NO. 19-04**

**A RESOLUTION AUTHORIZING THE UPDATING AND INSTALLATION OF RAILWAY-HIGHWAY CROSSING SIGNALS AND RELATED WORK ON MAXWELL STREET IN THE CITY OF MCPHERSON, KANSAS AND EXECUTION OF RELATED DOCUMENTS .**

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**WHEREAS**, the City of McPherson, Kansas (the “City”), has determined that certain improvements are appropriate for a railroad crossing in the City of McPherson, Kansas (collectively the “Improvements”); and

**WHEREAS**, the City desires to enter into an agreement with the Kansas and Oklahoma Railroad Company and the Secretary of Transportation of the state of Kansas to complete and pay for such work as provided for in the agreement. (Project No. 59-X-3051-01 and Agmt. No. 006193003) (hereinafter “Agreement”).

**BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF MCPHERSON, KANSAS, AS FOLLOWS:**

**Section 1.** The City hereby agrees to the Improvements and to the terms and conditions of the Agreement that is attached hereto as Exhibit A and fully incorporated herein by reference.

**Section 2.** The Mayor and the other officers and representatives of the City are hereby authorized and directed to sign the Agreement on behalf of the City and take such other actions as may be necessary to carry out the Agreement.

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

**ADOPTED** by the City Commission on February 4, 2019.

(SEAL)

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Mayor

ATTEST:

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Clerk

"CITY'S ORIGINAL"

Agmt. No. 006193003

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

Kansas and Oklahoma Railroad Company  
Crossing Signals and Gates

Project No. 59 X-3051-01  
HSIP-X305(101)  
McPherson County, Kansas

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

\* \* \* \* \*

This agreement, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, by and between the Kansas and Oklahoma Railroad Company, hereinafter referred to as the "Company", the City of McPherson, McPherson County, Kansas hereinafter referred to as the "City", and the Secretary of Transportation of the State of Kansas, hereinafter referred to as the "Secretary".

**WITNESSETH:**

**WHEREAS**, the Secretary proposes to submit to the Federal Highway Administration of the United States Department of Transportation a project providing for the installation of railway-highway crossing signals, flashing light straight post type and gates at a grade crossing (DOT #010495F) on Maxwell Street in the City of McPherson, McPherson County, Kansas, said project to be known and designated as Project No. 59 X-3051-01; HSIP-X305(101) and more particularly described as follows:

at the intersection of Maxwell Street and the Company's tracks approximately 400 feet south of the Northwest Corner of Section 27, Township 19 South, Range 3 West, in the City of McPherson, McPherson County, Kansas,

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

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

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

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

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

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

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

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

6. This Agreement is subject to and the Company 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 Company'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 Company. 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.

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

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

9. To reimburse the Company within thirty (30) calendar days after receipt of the undisputed portion of any invoice for cost incurred for work done by the Company in accordance with the provisions of this Agreement except amounts retained from each billing and payment of the final billing pursuant to paragraph 10.

10. The Company will submit to the Secretary's Area Engineer a final and complete billing of the incurred costs within one year after the completion of the work, and the Secretary will pay an amount equal to ninety-five percent (95%) of the total amount of each billing for this project pending final audit. Upon completion of final audit, the Secretary will reimburse the Company for the total amount of the final billing found eligible for payment under federal auditing standards, cost principles and regulations. The Company will reimburse the Secretary for one hundred percent (100%) of the amount of all items in the Company's bill which are found to be ineligible for payment under federal auditing standards, cost principles and regulations.

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

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

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

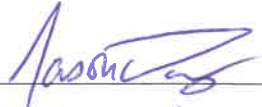
14. It is further understood that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the City, Company and the Secretary and their successors and assigns.

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

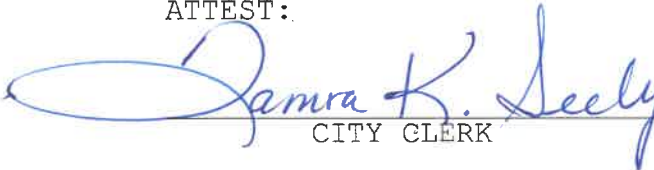
RICHARD CARLSON, SECRETARY  
OF TRANSPORTATION  
DIRECTOR OF KANSAS TURNPIKE  
AUTHORITY

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

KANSAS AND OKLAHOMA RAILROAD  
COMPANY

BY:   
TITLE: General Manager

ATTEST:

  
CITY CLERK

THE CITY OF MCPHERSON

  
PRESIDENT OF GOVERNING BODY

## KANSAS DEPARTMENT OF TRANSPORTATION

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

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

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

### NOTIFICATION

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

### CLARIFICATION

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

#### Nondiscrimination Clauses

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

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

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

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

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



**CERTIFICATION FOR FEDERAL-AID CONTRACTS**

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

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

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

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



*Proposal*  
Railroad Signal Division

PROPOSAL SUBMITTED TO: Kansas & Oklahoma Railroad	PHONE: (316) 261-6170	DATE: December 21, 2018
STREET: 1825 West Harry Street	JOB NAME: Maxwell Street (a.k.a. 15 <sup>th</sup> Ave.) - 010 495 F	
CITY, STATE and ZIP CODE: Wichita, KS 67213	JOB LOCATION: McPherson, McPherson County, KS	
CONTACT: Jason Danz, General Manager	JOB NUMBER: RRP-577	

We hereby submit specifications and estimates for:

RRP-577, Maxwell St. (a.k.a. 15<sup>th</sup> Ave.), McPherson (McPherson County), KS – 010 495 F

A new railroad/highway grade crossing warning signal system will be designed and installed specifically for the location listed above. It will include a new pre-wired grade crossing control shelter with prediction type circuitry and flashing light/gate signal assemblies.

Signal assemblies will include two each automatic gates with 12" LED light units, bells, signs and swing-away gate arm saving devices. Underground signal cable, foundations, and grounding components will be included as well. New conduits will be furnished under the road and track as required. Also, a new AC meter service will be installed for this automatic warning system. After the installation of the proposed signal system is complete, dress stone and grass seed will be placed, as needed, to properly finish the installation. Prior to the installation of the new warning system, C.D.L. Electric will arrange to have the curbs extended 33' on the north side of the tracks and 15' on the south side of the tracks.

Commercial AC power (220V) must be readily available within 75' of the control shelter location. Any additional cost(s) associated with labor or material(s) to get 220-volt commercial power to the proposed AC meter service location is not included in this proposal and will be the responsibility of others at their expense.

Any overhead or underground utilities that may interfere with the installation or proper operation of the proposed signal system must be relocated at the expense of others. C.D.L. Electric, Incorporated will not be responsible for any cost(s) associated with labor or material(s) required to relocate utilities at this location.

If concrete, asphalt or any other type of roadway/walkway material must be removed for the proper installation and operation of the proposed signal system, then additional charges may apply. C.D.L. Electric, Incorporated will not be responsible for any cost(s) associated with labor or material(s) to replace concrete, asphalt or any other type of roadway/walkway material removed during the installation process of the proposed signal material.

We propose hereby to furnish material and labor — complete in accordance with above specifications, for the sum of: \$212,884.00

Two Hundred Twelve Thousand, Eight Hundred Eighty-Four Dollars and 00/100 (\$212,884.00) includes estimated sales tax of 9.0%

The price breakdown is as follows:

Signal Material, Refer to Accompanying Material List (w/ Handling):	\$131,291.00
Labor w/ Expenses:	\$41,755.00
Equipment:	<u>\$22,260.00</u>
Total Sell Price	\$195,306.00
Sales Tax 9.0% (Est.)	<u>\$17,578.00</u>
	<u>\$212,884.00</u>

Continued on next page

Please Note the following:

1. Proposed Prices are valid for Ninety (90) days from the date of this Proposal, beyond ninety days, prices are subject to change
2. Terms: Net Due 30 Days from Invoice Date
3. This proposal may be withdrawn by us if not accepted within ninety (90) days
4. If traffic control for the public roadway, other than typical "Crew Working" type signage is mandated by a third party, then other charges may apply

Authorized Signature:



Mark E. Smallwood  
Senior Project Manager  
mark.smallwood@cdl-electric.com  
(502) 618-2165

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workman's Compensation Insurance.

Acceptance of Proposal — the above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Date of Acceptance: 1/2/19

Signature:  \_\_\_\_\_

Signature: \_\_\_\_\_

Continued on next page

<u>ITEM DESCRIPTION</u>	<u>QTY.</u>	<u>U/M</u>
CONTROL SHELTER, ALUM., W/ FNDS, FAN, AC ITEMS & ACCESSORIES	1	EA
WIRE KIT PACKAGE INCLUDING:		
RELAY, 500 OHM VITAL PLUG-IN TYPE	1	EA
PLUGBOARD KIT FOR VITAL RELAY	1	EA
E-POST KIT FOR VITAL RELAY	1	EA
VLG, VITAL LOGIC GATE	1	EA
WRENCH, AAR TERMINAL TYPE	1	EA
GFD, GROUND FOAULT DETECTOR MODULE	1	EA
ARRESTER	1	LT
EQUALIZER	1	LT
LAMP RESISTOR PANEL, LRP	1	EA
XLC, CROSSING LOGIC CONTROLLER	2	EA
PLUGBOARD, XLC & VLG	3	EA
TRANSFORMER, POWER OFF LIGHTING	1	EA
RELAY, MCKR (NON-VITAL) MAINTAINER CALL/P.O. LIGHTS, w/ BASE	1	EA
POWER-OFF LIGHTS	2	EA
STICKER, LOCATION/CONTACT INFORMATION	1	EA
ELECTROLOGIX, XP4	1	EA
MDSA-1X, MOTION DETECTOR SURGE ARRESTER	1	EA
NARROW BAND SHUNT	2	EA
CHARGER, BATTERY 12/20, 20 AMP	1	EA
CHARGER, BATTERY 12/40, 40 AMP	1	EA
BATTERY, GNB, 264 A.H., 50G11	6	CL
BATTERY, GNB, 368 A.H., 50G15	7	CL
SHOP WIRING HDW., WIRE, TERM. EYES, TAGS, ETC.	1	LT
SERVICES, SHOP WIRING & TESTING SERVICES	1	LT
GATE ASSEMBLY, JCT. BOX, MAST, MECH., SIGN, CWTS. & 12" 2W LEDS	2	EA
BELL, ELECTRONIC 12V TYPE FOR 4"5" MTG.	2	EA
GATE ARM, HI STRIPING, RED/WHITE ALTERNATING, (ADJ)	2	EA
LIGHT KIT FOR GATE ARM 4" LED TYPE, W/ TIP DIODE	2	EA
FOUNDATION, GALVANIZED STEEL 48" DEEP W/ 36" SQ. PLATE	2	EA
GATEKEEPER, SWING-A-WAY GATE ARM DEVICE	2	EA
WIRE, #10 AWG T.C. BLUE FOR WIRING SIGNALS	1	LT
CABLE, U.G. SIGNAL 7 COND. NO. 14 AWG SOLID	1	LT
CABLE, U.G. SIGNAL 7 COND. NO. 6 AWG SOLID	1	LT
TRACK WIRE NO. 6 TW. PR. DUPLEX	1	LT
BOND STRAND, S8 (3/16") TINNED SIGNAL STRAND W/ 4/64" BLACK INS.	1	LT
GROUND ROD, COPPER, 5/8" DIAMETER, 8' LENGTH - POINTED	4	EA
TRACK CONNECTOR "BOOTLEG", WELD-WEB, 3/16" DIA., W/ 1" TAB, 4"	1	LT
LOCK, RAILROAD STD.	5	EA
MISC. MATERIAL FOR FIELD INSTALLATION	1	LT
ENGINEERING SERVICES / CIRCUIT PLANS / AS-IN-SERVICE PLANS	1	LT

MATERIAL ITEMS MAY BE SUBSTITUTED WITH EQUIVALENT TYPE COMPONENTS AS REQUIRED