

ACKNOWLEDGMENT

I, _____, am the _____ (title) and hold authority to bind _____, (“Proposer”), an entity that proposes to purchase and redevelop all or portions of BNSF Tracts 1, 2, 4 and/or Lot B of Tract 3 of the Burlington Northern-Santa Fe 4th Addition to the City of Sioux Falls, Minnehaha County, South Dakota (“the Property”). By signature below, I am making the following binding statements on behalf of the Proposer.

I have reviewed this Acknowledgment, and the documents listed on **Exhibit A** and have shared them with the Proposer’s team, including its partners, investors, agents, consultants, architects, designers, consultants, attorneys, realtors, managers, financiers, and such other professionals as the Proposer will use for its proposed development or redevelopment (both of which are referred to as “development” for purposes of this Acknowledgement).

On behalf of the Proposer, I acknowledge, understand, and agree to the following:

SPECIFIC REQUIREMENTS

1. **Exhibit A** contains a nonexhaustive list of documents containing obligations, legal standards, restrictions, and fees applying to the Sioux Falls Rail Yard Redevelopment Project (“Project”). The records, documents or information made available to Proposer through this list, or otherwise, are being provided for informational purposes only and shall be read in the context they were prepared by City and/or City’s consultants. City does not warrant the accuracy of any record, document or information made available to Proposer or any of the records or documents. Statements of fact or opinion contained in any record, documents or information made available to Proposer shall not be deemed to be a warranty. Further, Proposer is responsible for its own due diligence despite receiving information and documentation relating to the Property from City. Proposer will independently verify such information provided by City and Proposer releases City from any and all liability, damages and claims associated with Proposer’s reliance thereon.
2. Proposer may request City or other public funding or participation for development and, while City will consider such requests, the Proposer is not guaranteed public funding, zoning changes, tax benefits, site or set back variances, fee waivers, or other benefits or privileges. Any requests for financial participation are subject to appropriation by the Sioux Falls City Council, in its sole discretion.
3. The Property is offered only on an “AS IS AND WITH ALL FAULTS” basis the same as the property was purchased by the City from BNSF. (**See Exhibit A, Item 2**) (Quitclaim Deed). Certain environmental studies and test results for the Property are in a public database maintained by the [South Dakota Department of Environmental and Natural Resources Spill Reports Search Database](#) (**Exhibit A, Item 14**). To the extent there are other studies and/or test results held by the City, the City will make such studies available prior to purchase. In addition, Proposer is encouraged to undertake its own independent environmental review, site study, or other review as it deems appropriate and necessary and if it does so, such review will be at Proposer’s own expense. Any soil tests or other invasive testing must be arranged in advance through City Engineering and an access agreement will be required.

4. In the event Proposer purchases the Property, Proposer will be required to make all arrangements and pay all costs for site preparation and construction including but not limited to those necessary for reviewing and complying with environmental and historical requirements and deed restrictions. In addition to any requirements associated with the specific property offered for sale, development is subject to compliance with adopted City fees, design standards, and ordinances, the same as with other development in the City.
5. Notwithstanding Paragraph 4 above, City has removed all railroad tracks from the Property at City's expense. The City also removed a freight building from Tract 2 in 2018 and all of the Property is unimproved. The City has also removed 6 inches of topsoil from the surface of the property.
6. The City acquired the above described property in 2015 by means of a Quitclaim Deed from the BNSF Railway (See **Exhibit A, Item 2**). In the Quitclaim Deed the BNSF Railway reserved mineral rights, and includes deed restrictions relating to utilities, access, and ongoing rail yard operations. The sale of the Property and the Development Agreement will be subject to those reserved mineral rights and deed restrictions.
7. The City has installed the protective boundary fence six (6) foot in height as required by BNSF Quitclaim Deed (**See Exhibit A, Item 2**) and the boundary fence must remain in place permanently.
8. The Property is adjacent to an active railyard. Any use of BNSF property at any time must be arranged with BNSF.
9. Certain documents referenced in **Exhibit A** including the [July 18, 2013, Downtown Sioux Falls Rail Yard Redevelopment Project Draft Environmental Assessment and Section 4\(f\) Evaluation](#) ("Environmental Assessment") the [September 26, 2013, Finding of No Significant Impact and Section 4\(f\) Evaluation for the Downtown Sioux Falls Rail Yard Redevelopment Project](#) ("Finding of No Significant Impact") (**Exhibit A, Item 13**) and the FONSI Compliance Agreement attached as Exhibit G to the August 31, 2015 Real Estate Purchase and Sale Agreement between the City of Sioux Falls and the BNSF Railway (**Exhibit A, Item 1**) include commitments for environmental and other criteria required by the Federal Highway Administration. As part of any Purchase or Development Agreement, City may require Proposer to undertake all or a portion of such commitments prior to or during construction (including but not limited to storm water compliance or constructing ADA complaint sidewalks) and the Development Agreement will address the specifics in detail.
10. The property to be developed is part of an Environmental Overlay District, with standards adopted by the Sioux Falls City Council (Sioux Falls City Ordinances Chapter 161) and any development must comply with those standards

11. As part of the obligations associated with development of the Property, Proposer would be required to pay for all costs for locating or relocating utility and communications facilities and accessory structures, if necessary to suit its needs or as required to meet City standards. In preparing for development, a U.S. Sprint communications line was relocated in 2019 and now lies within and along the east boundary of the Property. Proposer would be required to contribute to the cost of the relocation. Proposer will confer with City Engineering to obtain information on the location and costs. Proposer will also confer with City Engineering and other utilities regarding the location of City and other utilities.
12. The Sioux Falls Downtown Rail Yard is a historic property and any structures the Proposer constructs must be consistent with the City of Sioux Falls Rail Yard Redevelopment Plan, Environmental Assessment, and Finding of No Significant Impact and compatible with the historical nature of the surrounding area and have a similar industrial design as required by the June 2013 South Dakota State Historic Preservation Agreement. The State Historic Preservation Agreement contains signage requirements and a portion of the Property may be sold subject to a reserved easement or other similar arrangement for installation of the signs. The component of the State Historic Preservation Agreement pertaining to recordation has been completed.
13. Any structures to be constructed as part of the development will be subject to building design standards specific to the downtown area (City Ordinance 160.449) and must otherwise meet City planning and zoning requirements. Unless otherwise stated in a Development Agreement, any public improvements to be constructed (such as streets, gutters, sidewalks, light poles), are to be constructed at the expense of the Proposer. If they are to be dedicated to the City so that the City is responsible for future maintenance, then the City's Engineering Design Standards and the City's Development Construction Requirements must be met. Both of these items are administered by the City Engineer. Developer will provide financial assurance for any public improvements as required by City ordinance (escrow, letter of credit, or corporate surety bond).

STANDARD REQUIREMENTS

14. A Development Agreement with the City is required along with a Purchase and Sale Agreement for the Property. Proposer understands the following commitments must be included in addition to any other obligations in the Development Agreement and/or Purchase Agreement:
 - a. Proposer will defend, indemnify and hold the City harmless from any and all claims or lawsuits that may rise from the Developer's activities, including the acts or omissions of the Developer, its independent contractors, agents or employees or officers.
 - b. Proposer will carry adequate liability, builder's risk, worker's compensation, and other appropriate insurance for the project and add the City as an additional insured.
 - c. Proposer will obtain payment and performance bonds or other financial assurance sufficient to guaranty timely performance of all proposed construction and, further, will provide financial assurance as for any public improvements as required by City ordinance.

- d. Proposer will complete the development in a quality and timely manner, with dates to be established in the Development Agreement.
- e. The Proposer will be prohibited from selling the property without the consent of the City until such time as the development project is completed. The Development Agreement may not be assigned by Proposer to others without the consent of the City.
- f. Measures will be included to ensure timely and quality performance in a manner consistent with and in compliance with any obligations and restrictions in the Development Agreement, Deed, and applicable legal requirements.
- g. Proposer will be responsible for all aspects of its respective project including, but not limited to, procuring all necessary approvals and permits, complying with all environmental, historical, and land use criteria, handling all financing, design, construction, landscaping, drainage, and utility installations, payment of platting, regulatory fees, and taxes, and marketing and management pertinent to its own project
- h. Any Development Agreement that includes public improvements (streets, sidewalks, streetlights, etc.) must include the commitment to comply with the City of Sioux Falls Engineering Design Standards For Public Improvements, and the terms of the Subdivision Construction Agreement and financial assurance required by City Ordinance, Ch. 157)
- i. The final Development Agreement and Purchase Agreement will be deemed public records pursuant to state law and will be available to the public once negotiations have concluded (except for proprietary or confidential information exempt from state law).
- j. Compliance with all applicable local, state, and federal laws, codes, and regulations is required.
- k. The Proposer must commit to fully and completely comply with and respond to all terms, conditions, and requirements in this Acknowledgment.
- l. The Proposer must verify it is a duly qualified, capable, and otherwise bondable business entity.
- m. The Proposer must warrant that all applicable patents and copyrights concerning its Development have been and will be adhered to and that City shall not be held liable for any infringement of those rights.
- n. Proposer's certification that (a) neither the Proposer nor its officers, agents, employees, or independent contractors have a possible conflict of interest preventing it or them from entering into a Purchase Agreement for the Property or a Development Agreement, (b) that none of its officers, agents, employees, or independent contractors is an officer or employee of the City of Sioux Falls, and (c) that if such conflict of interest should arise during any negotiations for the Development Agreement or sale of the Property, the City may reject the Proposer's proposal.

- o. Proposer acknowledges the City of Sioux Falls, its officers, directors and employees do not represent Proposer as a client. If Proposer becomes a party to a real estate transaction with the City, Proposer understands that the officers, directors and employees of the City of Sioux Falls may be acting as agents for the City of Sioux Falls.

Date

Signature

Printed Name

Proposer Name

Exhibit A

1. August 31, 2015, Purchase and Sale Agreement between BNSF Railway and the City of Sioux Falls.
2. October 30, 2015, Quitclaim Deed filed with the Minnehaha County Register of Deeds on November 6, 2015, and recorded in Book 565 of Deeds at page 863.
3. Plat of Tracts 1, 2, 3, and 4 of Burlington Northern-Santa Fe 4th Addition to the City of Sioux Falls filed with the Minnehaha County Register of Deeds on September 15, 2015, and Recorded in Book 77 of Plats on page 225 (as corrected by an Affidavit of Correction filed with the Minnehaha County Register of Deeds on Marcy 30, 2016 and Recorded in Book 281 of Misc. on Page 423).
4. Subdivision Plat of Lots A and B of Tract 3 of Burlington Northern-Santa Fe 4th Addition to the City of Sioux Falls filed with the Minnehaha County Register of Deeds on September 30, 2016, and Recorded in Book 78 of Plats on page 227.
5. City of Sioux Falls Engineering Design Standards. www.siouxfalls.org/design-standards
6. City of Sioux Falls Development Construction Documents-Subdivision Construction Agreement and Financial Assurance Forms as required by the City Ordinances of the City of Sioux Falls, Chapter 157. <http://siouxfalls.org/public-works/engineering/construction-mgmt/resources/development-docs>
7. City of Sioux Falls Development Fees set forth in the following City Ordinances and can be reviewed at <http://siouxfalls.org/public-works/engineering>:
 - a. § 51.118—DSCR and RDC Platting Fees
 - b. § 51.065—Water Distribution Platting Fees
 - c. § 96.220—Arterial Street Platting Fees
8. City of Sioux Falls Rail Yard Redevelopment Plan (RDG). www.siouxfalls.org/railyard
9. South Dakota Codified Law Ch. 6-13 (applying to sale of public property). sdlegislature.gov/Statutes/Codified_Laws/DisplayStatute.aspx?Type=Statute&Statute=6-13
10. FONSI Compliance Agreement dated August 31, 2015.
11. 2013 State Historic Preservation Agreement (as amended). www.siouxfalls.org/railyard
12. July 2013 Draft Environmental Impact Assessment. www.siouxfalls.org/railyard.
13. September 2013 Finding of No Significant Impact (FONSI). www.siouxfalls.org/railyard
14. South Dakota Department of Environment and Natural Resources Spill Reports Database <https://arcgis.sd.gov/server/denr/spillsviewer/>