

STATE OF ILLINOIS



ILLINOIS COMMERCE COMMISSION  
TRANSPORTATION DIVISION / RAIL SAFETY SECTION

*Michael E. Stead*

*Rail Safety Program Administrator*

(Filed in E-Docket and e-mailed to Judge Jackson and cc'd)

January 30, 2007

Dean Jackson  
Chief Administrative Law Judge  
Review and Examination  
Illinois Commerce Commission  
527 E. Capitol Avenue  
Springfield, IL 62701

RE: T06-0110

Dear Judge Jackson:

The attached draft Agreed Order is respectfully submitted for your review and approval. Prior to the petition the parties worked extensively to resolve any outstanding issues and draft this Order. Therefore Staff believes that this matter should not require a Hearing. This belief is shared by the parties, and will be formalized in Response filings by the Norfolk Southern and City of Bloomington.

In an effort for the City to meet a target March 2007 letting, we respectfully request that the Order could go before the Commission on the February 22, 2007, or March 7, 2007, bench sessions.

If you have any questions, or require additional information, please contact me at (217) 557-1285 or [mstead@icc.illinois.gov](mailto:mstead@icc.illinois.gov), or Brian Vercruysse, Railroad Safety Specialist, at (630) 424-8750 or [bvercruy@icc.illinois.gov](mailto:bvercruy@icc.illinois.gov).

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael E. Stead".

Michael E. Stead  
Rail Safety Program Administrator

cc: Hannah Eisner, City of Bloomington  
Neil Flynn, NS  
Jason Johnson, IDOT  
Jeff Harpring, IDOT

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

City of Bloomington, Illinois,  
Petitioner

vs.

Norfolk Southern Railway Company, and the State of Illinois,  
Department of Transportation,  
Respondents.

T06-0110

Petition to (1) increase the amount of minimum pre-emption time provided by the Norfolk Southern Railway Company to the City of Bloomington for the traffic signal pre-emption sequence, (2) authorize the use of Grade Crossing Protection Funds for the installation of new warning devices associated with the proposed roadway improvements, and (3) install sidewalks, all at the Martin Luther King Jr. Drive grade crossing (DOT 480 158K, Railroad Milepost 377.34) of the Norfolk Southern Railway Company's track in the City of Bloomington, McLean County, Illinois.

PROPOSED ORDER -- JANUARY 30, 2007

By the Commission:

On December 20, 2006, the City of Bloomington ("City") filed a verified Petition with the Illinois Commerce Commission ("Commission") in the above-captioned matter, seeking permission to increase the minimum preemption time to allow for installation of a new traffic signal near the Martin Luther King Jr. Drive grade crossing (AAR/DOT #480 158K, railroad milepost 377.34) in the City of Bloomington, McLean County, naming as Respondents, the Norfolk Southern Railway Company ("Railroad" or "NS"), and the Illinois Department of Transportation ("IDOT"). The City also requested assistance from the Grade Crossing Protection Fund ("GCPF") for the proposed safety improvement, as well as permission to construct a sidewalk crossing adjacent to the existing roadway crossing.

The matter was scheduled for a hearing on February 13, 2007. On January 30, 2007, Commission Staff ("Staff") filed an agreed Proposed Order that had been drafted in coordination with the City, NS, and IDOT. The City and NS filed responses providing concurrence to the Proposed Order, and agreeing with Staff's opinion that a hearing would not be necessary.

**PETITIONER'S EVIDENCE**

The Martin Luther King Jr. Drive grade crossing of the Railroad's single main track would be located 70 feet from the Martin Luther King Jr. Drive/White Oak Road (Old US 150) intersection once improvements to the roadway intersection were made. The existing Martin Luther King Jr. Drive grade crossing is equipped with automatic flashing light signals, cantilevers, and bells. The average train volume over the crossing is 6 trains per day with a maximum track speed of 49 mph. The four-way Martin Luther King Jr. Drive/White Oak Road intersection is currently equipped only with STOP signs. White Oak Road, which is under McLean County ("County") jurisdiction, has three 12-foot (12') through lanes (1 lane in each direction with a left turn lane) and a posted 45 mph speed limit. Martin Luther King Jr. Drive, which is under City jurisdiction, is a concrete street with five 11-foot (11') lanes (2 lanes in each direction with a left turn lane), a 4-foot striped median, and a posted 45 mph speed limit east of White Oak and 40 mph west of White Oak.

The City proposes improving the Martin Luther King Jr. Drive/White Oak Road intersection by adding right turn lanes on White Oak Road, improving turning radii, installing barrier median on the west approach of the Martin Luther King Jr./BNSF crossing, installing a sidewalk at the crossing, and adding traffic signals. Given the proximity of the grade crossing, the railroad warning devices and the traffic signals must be interconnected. A study was completed indicating that 25 seconds of minimum simultaneous preemption time is necessary to accommodate the proposed traffic signal sequence. The work will require the widening of the railroad's crossing, renewal of the warning devices with the addition of gates and Constant Warning Time ("CWT") circuitry installed with an increased warning time. Also, traffic pre-signals will be installed in advance of the crossing due to the limited distance between the Railroad's track and the MLK Drive/White Oak Road intersection. The pre-signals would be mounted on the new railroad cantilever, and maintained by the City or its contractor from a bucket truck.

With the new sidewalks, pedestrian connections would be provided from existing sidewalk west of the crossing to residential areas east along MLK Drive. At the crossing along the sidewalk approaches, pedestrian signs would be installed and maintained by the City.

It is anticipated that the intersection project and traffic signal interconnect work would begin in July 2007, with an estimated eighteen (18) month project duration. The total cost of the project is estimated at \$1,108,187. Funding participation has been secured through Federal and local sources, and participation from the GCPF is requested.

**RESPONDENT'S EVIDENCE**

Cost estimates for the warning device work, and widening of the crossing have been provided to the City. With the installation of pre-signals on the Railroad's cantilever, the Railroad would require the City and/or its contractor to enter into a right-of-entry agreement for the construction and maintenance. As part of this agreement,

the City or its hired contractor would be required to maintain the traffic signal equipment from a bucket truck (versus climbing the Railroad's cantilever).

### **STAFF'S POSITION**

The project has been reviewed by Staff, and Staff does not have any objections. With the renewal of the warning devices, addition of gates, and upgrade to the circuitry, Staff recommends that the GCPF be used to pay 95% of the installation costs for the crossing warning devices. The remaining costs for the installation of the warning devices, the crossing surface, traffic signals, sidewalk, and associated roadway work should be the responsibility of the City. The maintenance of the warning devices and crossing surface should be the responsibility of the Railroad. Lastly, a Staff representative should be contacted prior to the installation of the traffic signals, so that the signal cabinet and controller can be shop tested, followed by an onsite inspection when the traffic signal is activated at the intersection. Staff should be provided two weeks notice to allow for the scheduling of the shop and onsite activities.

The Commission, having given due consideration to the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) The Commission has jurisdiction of the subject matter and parties herein;
- (2) The Norfolk Southern Railway Company is engaged in the transportation of goods for-hire in the State of Illinois and as such, is a rail carrier within the meaning of Chapter 625 ILCS 5/18c-1104(30) of the Illinois Commercial Transportation Law ("Law") as amended;
- (3) The Illinois Department of Transportation and the City of Bloomington exist by virtue of the laws of the State of Illinois;
- (4) Matters contained in the prefatory portion of this Order are adopted as findings of fact;
- (5) The City of Bloomington proposes an intersection improvement, and the addition of traffic signals to the intersection of Martin Luther King Jr. Drive at White Oak Road (Old US Route 150);
- (6) The traffic signal should be interconnected with the Railroad's warning devices at the Martin Luther King Jr. Drive crossing, which will be upgraded;
- (7) The City proposes that the minimum simultaneous preemption time provided by the Railroad for the proposed traffic signal preemption sequence at the Martin Luther King Jr. Drive grade crossing should be twenty five (25) seconds;
- (8) The City will have jurisdiction over the highway traffic control signals and proposes to install a pre-signal on the eastbound approach of Martin Luther King Jr. Drive by mounting the highway traffic signal head (pre-signal) on a new railroad cantilever signal arm as shown on the City's plan filed with its

December 20, 2006 petition.

- (9) The City should construct a sidewalk over the crossing in conjunction with the roadway project , and provide additional “Crossbuck”, “LOOK”, and “YIELD” signs for pedestrians;
- (10) The total estimated cost for the project is \$1,108,187. A division of costs for the project is noted in the Cost Division Table below. To assist with the upgrades to the warning devices, \$223,490 from the GCPF of the Motor Fuel Tax Law should be allocated with this Order.

**- COST DIVISION TABLE -**

<b>Work Item</b>	<b>EST. COST</b>	<b>CITY</b>	<b>GCPF</b>	<b>NS</b>	<b>IDOT</b>
Intersection Improvements, including Traffic Signals	\$787,634	(100%) \$787,634 <sup>1</sup>	\$0	\$0	\$0
Widen and Reconstruct Crossing Surface at Martin Luther King Jr. Drive, including a new Sidewalk Crossing	\$85,300	(Surface Materials) \$35,300	\$0	(Labor for surface) \$50,000 <sup>2</sup>	\$0
Install automatic flashing light signals, cantilevers, gates and bells all in accordance with the City's plan provided with its petition; and modify constant warning time circuitry designed to provide for a minimum of 25 seconds simultaneous preemption time for the normal operation of through trains at the Martin Luther King Dr. (DOT #480 158K) grade crossing in Bloomington, Illinois	\$235,253	(Remainder) \$11,763	(95%) \$223,490 <sup>3</sup>	\$0 <sup>4</sup>	\$0
<b>Totals</b>	<b>\$1,108,187</b>	<b>\$834,697<sup>5</sup></b>	<b>\$223,490</b>	<b>\$50,000</b>	<b>\$0</b>

Notes:

1. Amount does not include railroad flagging, which is estimated to be \$450 per day. All bills for railroad flagging bills shall be submitted to the City for reimbursement.
2. The Railroad responsible for 100% of future maintenance costs associated with the crossing surface.
3. GCPF amount not to exceed \$223,490; any installation costs above the estimated amount of \$235,253 will be divided between the GCPF and the City in the same percentages noted above, upon submittal and review of evidence to support the additional cost and subject to approval by the Commission..
4. The Railroads responsible for 100% of future operating and maintenance costs associated with the new warning devices, (except for the replacement of the eastbound cantilever, which is discussed in the Ordering paragraphs).

5. The City will utilize Federal Funds to cover approximately 80% of its project costs. Since federal funding is being utilized for the roadway work, and potentially for a portion of the warning device improvements at the subject crossing, all such work will be covered by appropriate provisions of Title 23, Chapter I, Subchapter G, Part 646 of the Federal-Aid Policy Guide adopted Dec. 9, 1991.
  - (11) the City agrees to contract with a private company or companies to perform the installation, maintenance, and repair work for the traffic signal pre-signal on the proposed railroad cantilever. The City will prohibit its employees or contractor(s) from climbing onto the cantilevered structure, and maintenance will be completed utilizing a bucket truck;
  - (12) the City agrees to require its contractor(s) and subcontractor(s) performing the work described in this Order to execute and deliver to the NS prior to entering onto the NS's property a Right of Entry Agreement in the form set forth in Exhibit 1 and hereby incorporated into and made a part of this Order;
  - (13) The City has agreed to execute a written agreement with NS in relation to the signal interconnection at the subject crossing; and that agreement is attached hereto as Exhibit 2 and incorporated herein by this reference;
  - (14) the parties agree that all work should be completed within eighteen (18) months from the date of this Order;
  - (15) Chapters 625 ILCS 5/18c-1702 and 5/18c-1704 require each "person" as defined by Section 5/18c-1104, to comply with every regulation or order of the Commission; these sections further provide that any person who fails to comply with a Commission regulation or order shall forfeit to the State not more than \$1,000 for each such failure, with each day's continuance of the violation being considered a separate offense; while the Commission expects all parties to comply with this Order in all matters addressed herein and in a timely manner, the Commission advises that any failure to comply may result in the assessment of such sanctions.
  - (14) Any person making a Request for an Extension of Time up to 30 days to complete a project ordered by the Commission must file a request with the Director of Processing and Information no later than 14 days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.
  - (15) Any person making a Request for an Extension of Time that exceeds 30 days must file a Petition For Supplemental Order with the Director of Processing and Information no later than 21 days in advance of the scheduled deadline. The Commission will decide Petitions for Supplemental Orders.
  - (16) Requests for Extension of Time and Petitions for Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request for Extension of Time or a Petition for Supplemental Order, the

person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the project within the ordered timeframe.

- (17) The Commission or its Administrative Law Judge reserves the right to deny Petitions for Supplemental Orders and Requests for Extension of Time, if the reason(s) supporting the request is (are) insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the City of Bloomington is hereby granted permission to install a traffic signal at the intersection of White Oak Road at Martin Luther King Jr. Drive, interconnect the traffic signal with the warning devices at the Martin Luther King Jr. Drive grade crossing of the Norfolk Southern Railway Company's track, install a sidewalk, and establish the minimum preemption time provided by the Norfolk Southern Railway Company for the traffic signal preemption sequence at said intersection, and complete the work as noted in the prefatory section and Findings.

IT IS FURTHER ORDERED that the Norfolk Southern Railway Company shall design the warning system for the Martin Luther King Jr. Drive highway-rail grade crossing to provide for a minimum of twenty five (25) seconds simultaneous preemption time for the normal operation of through trains. The Norfolk Southern Railway Company shall be responsible for all future operating and maintenance costs associated with the new crossing warning system.

IT IS FURTHER ORDERED that the Norfolk Southern Railway Company shall widen the Martin Luther King Jr. Drive crossing, upgrade the warning devices, and modify the circuitry, as necessary, to accommodate the City of Bloomington's work, including the addition of sidewalks.

IT IS FURTHER ORDERED that the division of costs for the improvements herein approved shall be conducted as outlined in Finding (10).

It Is Further Ordered that the City or the City's contractor shall install and thereafter maintain all of the highway traffic signals and circuitry, and that such installation and maintenance work herein required by this Order shall be performed using a bucket truck; and that NS shall install and thereafter maintain all of the railroad signals and circuitry herein required by this Order.

IT IS FURTHER ORDERED that the cantilevers installed pursuant to this Order are the property of NS. In the event that the eastbound (pre-signal) cantilever requires replacement for whatever reason, the cost of the replacement and installation of that cantilever will be apportioned as follows: 50% - the NS; 50% the City.

IT IS FURTHER ORDERED that the City's contractor shall be responsible for all traffic signal installation, maintenance, repair and replacement and that NS shall not be

liable for any damages to property or for bodily injury resulting from any traffic signal failure or malfunction.

IT IS FURTHER ORDERED that the City or the City's contractor shall notify NS at least seven (7) days prior to commencing the traffic signal installation required by this Order; and shall notify NS prior to performing maintenance work to the traffic signals required to be installed pursuant to this Order.

IT IS FURTHER ORDERED that the City of Bloomington and the Norfolk Southern Railway Company are hereby required and directed to proceed with the project herein approved and in all aspects thereof to conform to the requirements of 92 Illinois Administrative Code 1535.

IT IS FURTHER ORDERED that the Norfolk Southern Railway Company shall file Form 3 of 92 Illinois Administrative Code 1535 of this Commission showing details of the automatic warning device relocation and circuitry relocation and installation herein required and shall receive approval thereof by X-Resolution before commencing the work of relocation.

IT IS FURTHER ORDERED that after the warning system work herein required has been completed, the Railroad shall not take any action which would result in a reduction of the minimum simultaneous preemption time without approval of the Commission.

IT IS FURTHER ORDERED that the Norfolk Southern Railway Company and City of Bloomington shall each post a readily visible notice inside their respective warning system cabinets at the aforesaid grade crossing notifying their personnel not to take any action which would result in a reduction of the minimum railroad preemption time herein required without the approval of the Commission. An actual size copy of such notice shall be submitted by the Railroad and IDOT to the Commission's Railroad Safety Program Administrator for approval.

IT IS FURTHER ORDERED that the work herein required shall be completed within eighteen (18) months of the date of this Order.

IT IS FURTHER ORDERED that the City of Bloomington and the Norfolk Southern Railway Company shall at six (6) month intervals from the date of this Order until the project has been completed, submit written reports to the Director of Processing, Transportation Bureau of the Commission stating the progress that has been made toward completion of the work herein required. If the project is behind schedule, the report must include a brief explanation of the reason(s) for the delay. Each progress report shall include the Commission Order number, the Order date, the project completion date as noted in the Order, type of improvement, and project manager information (name, title, mailing address, telephone number, and facsimile number) of the employee responsible for the management of the project.

IT IS FURTHER ORDERED that the Norfolk Southern Railway Company shall within five (5) days of the completion of the work herein, file National Inventory Update Report Forms with the Commission's Director of Processing, Transportation Division, as

notice of said completion.

IT IS FURTHER ORDERED that the City of Bloomington shall within five (5) days of the completion of the work herein, provide the parties with a notice of said completion.

IT IS FURTHER ORDERED that all bills for work authorized for reimbursement from the Grade Crossing Protection Fund shall be submitted to the Fiscal Control Unit, Bureau of Local Roads and Streets, Illinois Department of Transportation, 2300 South Dirksen Parkway, Springfield, Illinois 62764. The Department shall send a copy of all invoices to the Director of Processing and Information, Transportation Bureau of the Commission. All bills shall be submitted no later than twelve (12) months from the completion date specified in the Commission Order approving this Agreement. The final bill for expenditures from each party shall be clearly marked "Final Bill". The Department shall not obligate any assistance from the Grade Crossing Protection Fund for the cost of proposed improvements described in this Agreement without prior approval by the Commission. The Commission shall, at the end of the 12<sup>th</sup> month from the completion date specified in this Order or any Supplemental Order, conduct a review to determine if any unused assistance from the Grade Crossing Protection Fund should be de-obligated. Upon completion of the review, the Commission shall notify the Department to de-obligate all residual funds accountable for installation costs for this project.

IT IS FURTHER ORDERED that any person making a Request For Extension Of Time up to 30 days to complete a project ordered by the Commission must file a request with the Director of Processing and Information no later than 14 days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.

IT IS FURTHER ORDERED that any person requesting an extension of time that exceeds thirty (30) days must file a Petition for Supplemental Order with the Director of Processing no later than twenty-one (21) days in advance of the scheduled deadline. The Commission will decide Petitions for Supplemental Orders.

IT IS FURTHER ORDERED that Requests for Extension of Time and Petitions for Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request for Extension of Time or a Petition for Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the project within the ordered timeframe.

IT IS FURTHER ORDERED that the Commission or its Administrative Law Judge reserves the right to deny Requests for Extension of Time and Petitions for Supplemental Orders if the reason(s) supporting the request is insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS FURTHER ORDERED that the Commission shall retain jurisdiction for the purpose of issuing any supplemental order or orders, as it may deem necessary.

IT IS FURTHER ORDERED that in accordance with Chapter 625 ILCS 5/18c-2201 and 5/18c-2206 of the Illinois Commercial Transportation Law, this is a final order subject to the Administrative Review Law.

By Order of the Commission this 22<sup>nd</sup> day of February 2007.

CHARLES E. BOX  
Chairman

## RIGHT OF ENTRY AGREEMENT

**THIS AGREEMENT**, made this \_\_\_\_ day of \_\_\_\_\_, 2006, by and between Norfolk Southern Railway Company (“NS”), and \_\_\_\_\_ a(n) \_\_\_\_\_ corporation, (“Indemnitor”). NS and Indemnitor are hereinafter sometimes individually referred to as a “Party” and jointly referred to as the “Parties”.

### PRELIMINARY STATEMENT

Indemnitor desires to enter upon that portion of NS’s right-of-way property located at Martin Luther King Drive in Bloomington, Illinois depicted in Exhibit “A” attached to and made a part of this Agreement (“Premises”) for the purpose of installing, maintaining and/or repairing traffic signals on the NS cantilever located on the Premises (“Permitted Activities”).

**NOW, THEREFORE**, for and In consideration of the above stated recitals which are by this reference hereby incorporated into this Agreement and the mutual promises and agreements set forth below, the sufficiency of which are hereby acknowledged by the Parties, NS and Indemnitor agree as follows:

1. NS hereby agrees to permit Indemnitor to enter upon the Premises commencing on the effective date of this agreement, to conduct the Permitted Activities and for no other purpose whatsoever subject to the terms and conditions set forth in this Agreement.

2. Indemnitor agrees to reimburse NS for all costs and expenses incurred in connection with the use of NS’s personnel and equipment as a direct result of the Permitted Activities.

3. To the fullest extent permitted by law, Indemnitor agrees to indemnify and hold harmless the NS and its officers, employees and agents from and against all claims, damages, losses and expenses, including but not limited to attorneys’ fees arising out of or resulting from the performance of the work by the Indemnitor on or about the NS’s property; provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property including the loss of use resulting therefrom , and further provided that the Indemnitor shall not be obligated to Indemnify and hold harmless the NS from liability for injury or death or damages proximately caused by the negligence of any officers, employees or agents of NS. The Indemnification and hold harmless provisions set forth in this agreement shall not be construed as an indemnification or hold harmless against and from the negligence of the NS with respect to any construction work performed by the NS’s contractor or those performing on behalf of or with the authority of the Company’s contractor to the extent that such is in violation of the Illinois Construction Contract Indemnification for Negligence Act. 740 ILCS 35/0.01 et seq.

4. Prior to entering upon the Premises or commencing the Permitted Activities, Indemnitor agrees to furnish insurance to NS in form and in such amounts as set forth in Sections 107.11 and 107.27 of the Illinois Department of Transportation's Standard Specification for Road and Bridge Construction, adopted January 1, 2002 ("IDOT Regulations"), and shall deliver to NS's Risk Management Department certificates of insurance or such other documentation acceptable to NS's Risk Management Department evidencing the acquisition of the required insurance and showing NS as additional insureds.

5. Indemnitor agrees to and shall comply with the requirements of Sections 105.02, 105.07, 107.01, 107.04, 107.12, 107.20, 107.28 and 107.31 of the IDOT Regulations during the course of Indemnitor's performance of the Permitted Activities on the Premises.

6. Indemnitor shall not place, keep, store or otherwise permit to be placed, kept or stored on the Premises any equipment or materials except during such time as Indemnitor's employees, agents, contractor's or subcontractors are physically present and conducting activities permitted under this Agreement.

7. Any rights to the Premises not specifically granted to Indemnitor herein, are reserved to NS, its successors and assigns.

8. This Agreement and the rights and obligations accruing hereunder are binding upon the successors and assigns NS and Indemnitor. This Agreement shall be governed by the internal laws of the State of Illinois. This Agreement, together with the Exhibits attached hereto, constitutes the entire Agreement between the Parties with respect to the subject matter hereof. If any provision of this Agreement, or any paragraph, sentence, clause, phrase or work or the application thereof is held invalid, the remainder of this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law provided that such exclusion does not unfairly prejudice the rights of either Party to this Agreement.

9. All notices, demands, elections, and other instruments required or permitted to be given or made by either Party upon the other under the terms of this Agreement or any statute shall be in writing. Such communications shall be deemed to have been sufficiently served if sent by commercial courier, certified or registered mail, return receipt request, with proper postage prepaid at the respective addresses shown below or to such other party or address as either Party may from time to time furnish to the other in writing. Such notices, demands, elections and other instruments shall be considered as delivered to recipient on the day of delivery if sent by commercial courier, on the second business day after deposit in the U.S. Mail if sent by certified or registered mail or on the first business day after successful transmission if sent by facsimile transmission.

(a) Notices to NS shall be sent to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(phone#)

(b) Notices to Indemnitor shall be sent to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(phone#)

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be duly executed by their duly authorized officers on the day and year first written above.

\_\_\_\_\_  
Indemnitor

NORFOLK SOUTHERN RAILWAY  
COMPANY

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

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

Its:\_\_\_\_\_

Its:\_\_\_\_\_

ATTEST:

ATTEST:

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

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

Its:\_\_\_\_\_

Its:\_\_\_\_\_

THIS AGREEMENT, made and entered by and between

**NORFOLK SOUTHERN RAILWAY COMPANY**, a Virginia corporation, hereinafter styled "Railway";

and

**CITY OF BLOOMINGTON**, a municipality of the State of Illinois, hereinafter styled "City":

W I T N E S S E T H:

THAT the PARTIES HERETO agree as follows:

1. THAT, for and in consideration of the premises, the payment of ONE HUNDRED AND 00/100 DOLLARS (\$100.00), and in the interest of public convenience, Railway hereby grants to City, at City's sole cost and expense and insofar as Railway's title enables it so to do and without warranty:

(a) the right to install, maintain, operate, rebuild and remove a base mounted control box, or in lieu thereof, a cable junction box (in either case hereinafter referred to as the "Box") upon the right of way or property of Railway at or near the location noted below; and

(b) the right to install, maintain and remove the necessary wires or cables (hereinafter referred to as the "Cables") under, over or upon the right of way or property and across any tracks of Railway at or near the location noted below; (the Box and the Cables to be located in accordance with Drawing No. \_\_\_\_\_, dated \_\_\_\_\_, attached hereto as Exhibit A and made a part hereof), for the purpose of connecting City's cable to Railway's cable (all hereinafter referred to as the "Interconnection.") to facilitate City's installation and maintenance of traffic light signals at the intersection of Martin Luther King Jr. Drive and White Oak Road, located adjacent to the intersection of Railway's track and Martin Luther King Jr. Drive, located at Milepost 377.34, a public road crossing designated as DOT No. 480 158K which is equipped with grade crossing warning devices, at or near **BLOOMINGTON, McLean County, Illinois** (hereinafter referred to as the "Grade Crossing.").

2. In making the Interconnection, City shall conform to such specifications as may be prescribed by Railway, and shall perform in accordance with sequence charts prepared by City and provided as information to Railway, which said sequence charts are made a part of this Agreement whether or not the same are attached hereto. The installation, maintenance, operation, rebuilding and removal of the Interconnection shall be subject to the inspection, supervision and approval of the Superintendent of Railway, or his duly authorized representative; it being understood and agreed that Railway shall be under no obligation to furnish electric current for the operation of the Interconnection. Approval by the Superintendent of Railway or his duly authorized representative shall in no way limit the obligations, liabilities or risks assumed by City herein.

3. It is understood and agreed by the parties hereto that Railway shall not incur any expense in connection with the Interconnection. City shall pay to Railway, promptly upon receipt

of bill rendered therefor, the actual expenditures incurred by Railway in connection with the Interconnection including, but not limited to, the expenditures shown on the estimate marked Exhibit B and dated \_\_\_\_\_, attached hereto and made a part hereof.

4. In the event that the proper use, maintenance and control of the right of way or property of Railway, or the proper construction, maintenance or use of Railway communication or signal wires located thereon, shall hereafter make necessary any change in the location of the Interconnection, or any related facilities of City, including but not limited to the traffic control devices, City shall make such necessary change(s), at City's sole cost and expense, within thirty (30) days after receipt of written notice from Railway so to do; or, in default thereof, Railway may make such change(s), at the sole cost and expense of City, which shall promptly reimburse Railway upon receipt of bill rendered therefore.

5. Indemnity.

(a) Railway shall have no responsibility or liability for any loss of life or injury to person, or loss of or damage to property, growing out of or arising from the design, installation, maintenance, operation, rebuilding, or removal of the Interconnection. City accepts the privilege hereby granted with full cognizance of the risk of loss of life, personal injury (including, but not limited to, the loss of life or injury to City's agents, workmen, servants, or employees, or users of the Grade Crossing), and property loss or damage that may be caused by the design, installation, maintenance, operation, rebuilding or removal of the Interconnection by City or others. City is willing to assume this risk and covenants that the privilege hereby granted shall be used and enjoyed at the sole risk of City, and that Railway shall not have any responsibility whatsoever for any such loss, injury or damage. To that end, City shall indemnify and hold Railway wholly harmless from the consequences of any such loss, injury (including, but not limited to, the loss of life or injury to City's agents, workmen, servants, or employees, or users of the Grade Crossing), or damage, and the indemnity obligations imposed upon City by this paragraph shall be absolute and shall not be affected by the negligence, either primary or contributory, of Railway, its directors, officers, agents or employees; PROVIDED, and it is distinctly understood and agreed, that the provision of this paragraph shall have no application to any loss, injury or damage growing out of or resulting from the failure or improper operation of said grade crossing warning devices of Railway when such failure or improper operation is not attributable to the presence or existence of the Interconnection; the intention of the parties hereto being that Railway shall have and assumes the same responsibilities and obligations with respect to the grade crossing warning devices, and the operation thereof, that it had prior to the installation of the Interconnection, and no other. City shall have and assume sole responsibility for the Interconnection, including, but not limited to, the operation or function thereof.

(b) Notwithstanding any other provision of this Agreement, it is mutually understood, agreed and covenanted that City accepts this Agreement as a license and assumes all risk of damage to its property by reason of its occupation of the premises herein described, caused by any defects therein or business conducted on the premises, whether caused by the negligence, either primary or contributory, of Railway, its directors, officers, agents or employees, or otherwise, and City hereby indemnifies Railway, its directors, officers, agents, and employees, from and against any such liability for said damage to City's property.

6. Insurance.

(a) Prior to the operation of the Interconnection, City shall procure and maintain during the life of this Agreement a policy of general liability insurance, containing contractual liability coverage and naming Railway as an additional insured, with a combined single limit of not less than \$2,000,000 each occurrence. Said insurance shall be of such form and content as may be acceptable to Railway. As evidence of said insurance, a certificate of insurance shall be furnished to and approved by the Risk Manager, Norfolk Southern Corporation, Three Commercial Place, Norfolk, Virginia 23510-2191, prior to entry on Railway's property or use of the Crossing. Said insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or limits, or changed in any material way, without thirty (30) days' advance written notice to Railway's Risk Manager.

(b) Prior to commencement of the installation, maintenance, rebuilding or removal of the Interconnection during the term of this Agreement, City, or its contractor if it employs one, shall furnish Railway with an original Railroad Protective Liability Insurance Policy naming Railway as the named insured and having a limit of not less than a combined single limit of \$2,000,000 each occurrence and \$6,000,000 aggregate.

(c) The insurance required herein shall not limit the liability assumed by the City under this Agreement.

7. City shall provide written notice to Railway of its proposed entry onto Railway right-of-way or property, and shall secure Railway's approval to enter upon its right-of-way or property. City shall be responsible for any and all costs of flagging.

8. In the event that City disconnects, in whole or in part, the Interconnection without terminating this Agreement as provided in Paragraph 9 hereof, City shall take steps to ensure the safe passage of motor vehicle traffic over the Grade Crossing and shall notify the appropriate public officials that City has disconnected the Interconnection.

9. Either party hereto may terminate this Agreement at any time by (sixty) 60 days' written notice to the other, and upon the expiration of the time limited by such notice this Agreement shall terminate. At or before such termination, City shall, at its sole cost and expense, remove the Interconnection from the premises herein described, and restore said premises and grade crossing warning devices of Railway to the condition existing prior to the installation of the Interconnection and related facilities, including but not limited to the traffic control devices, of City. Any obligation accruing to City under this Agreement prior to the effective date of termination of this Agreement shall survive and shall not be extinguished or otherwise affected by such termination.

10. The word "Railway" as used herein shall include any other company whose property at the aforesaid location may be leased or operated by Railway. Said term also shall include Railway's directors, officers, agents and employees, and any parent company, subsidiary or affiliate of Railway and their directors, officers, agents and employees.

11. This Agreement shall take effect as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and shall supercede and cancel any other agreement governing the installation or

maintenance of an interconnection between grade crossing warning devices and traffic signals at the aforesaid location.

IN WITNESS WHEREOF, the PARTIES HERETO have executed these presents in duplicate, each part being an original, as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

In the Presence of:

**NORFOLK SOUTHERN RAILWAY  
COMPANY**

By

\_\_\_\_\_  
As to Railway.

\_\_\_\_\_  
Real Estate Manager

In the Presence of:

**CITY OF BLOOMINGTON**

By

\_\_\_\_\_  
As to City

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

Nks\Activity No. 1095376\Imanage #428352v1\12-18-06

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

City of Bloomington, Illinois,  
Petitioner

vs.

Norfolk Southern Railway Company, and the State of Illinois,  
Department of Transportation,  
Respondents.

T06-0110

Petition to (1) increase the amount of minimum pre-emption time provided by the Norfolk Southern Railway Company to the City of Bloomington for the traffic signal pre-emption sequence, (2) authorize the use of Grade Crossing Protection Funds for the installation of new warning devices associated with the proposed roadway improvements, and (3) install sidewalks, all at the Martin Luther King Jr. Drive grade crossing (DOT 480 158K, Railroad Milepost 377.34) of the Norfolk Southern Railway Company's track in the City of Bloomington, McLean County, Illinois.

**CERTIFICATE OF SERVICE**

I, Brian Vercruysse, Senior Rail Safety Specialist for the State of Illinois, certify that I served a true and correct copy of the foregoing AGREED ORDER upon the Petitioner and Respondents made parties to this proceeding via electronic means as provided for in Section 200.1050, this 30<sup>th</sup> day of January, 2007 addressed as follows:

**Via Electronic Mail to:**

Hannah R. Eisner  
City of Bloomington  
109 E. Olive St.  
Bloomington, IL 61701  
E-Mail: [heisner@cityblm.org](mailto:heisner@cityblm.org)

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Milton R. Sees  
Director of Highways - IDOT  
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