

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 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.contractororientation.com](http://www.contractororientation.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 Protection of Railway Facilities and Railway Flagger Services:**

- **1.05.01** The Contractor must give Railway's Roadmaster (telephone 630-692-6257) 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 and protective services and devices 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 in the opinion of the Railway's Representative it is necessary to safeguard Railway's Property, employees, trains, engines and facilities.
  - **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, when deemed necessary by the Railway's representative, will be borne by the County of Kendall. The estimated cost for one (1) flagger is \$800.00 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, transportation, meals, lodging and supervision. 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 this route is 25 freight trains per 24-hour period at a timetable speed 60 MPH and 8 passenger trains at a timetable speed of 79 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 Railroad'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.contractororientation.com](http://www.contractororientation.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 Railroad'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, 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 RAILROAD'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 (913-551-4434). 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**

INFORMATION REQUIRED TO BE COLLECTED PURSUANT TO FEDERAL REGULATION. IT SHOULD BE USED FOR COMPLIANCE WITH FEDERAL REGULATIONS ONLY AND IS NOT INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY.

1. Accident City/St \_\_\_\_\_ 2. Date: \_\_\_\_\_ Time:  
County: \_\_\_\_\_ 3. Temperature: \_\_\_\_\_ 4. Weather  
(if non-Railway location)
5. Social Security # \_\_\_\_\_
6. Name (last, first, mi) \_\_\_\_\_
7. Address: Street: \_\_\_\_\_ City: \_\_\_\_\_ St. \_\_\_\_\_ Zip: \_\_\_\_\_
8. Date of Birth: \_\_\_\_\_ and/or Age \_\_\_\_\_ Gender: \_\_\_\_\_  
(if available)
9. (a) Injury: \_\_\_\_\_ (b) Body Part: \_\_\_\_\_  
(i.e. (a) Laceration (b) Hand)
11. Description of Accident (To include location, action, result, etc.): \_\_\_\_\_

12. Treatment:  
? First Aid Only  
? Required Medical Treatment  
? Other Medical Treatment

13. Dr. Name \_\_\_\_\_ 30. Date: \_\_\_\_\_
14. Dr. Address: \*  
Street: \_\_\_\_\_ City: \_\_\_\_\_ St: \_\_\_\_\_ Zip: \_\_\_\_\_
15. Hospital Name: \_\_\_\_\_
16. Hospital Address:  
Street: \_\_\_\_\_ City: \_\_\_\_\_ St: \_\_\_\_\_ Zip: \_\_\_\_\_
17. Diagnosis: \_\_\_\_\_

**FAX TO  
RAILWAY AT (817) 352-7595  
AND COPY TO  
RAILWAY ROADMASTER FAX**

**EXHIBIT "C-1"**

**Agreement  
Between  
BNSF RAILWAY COMPANY  
and the  
CONTRACTOR**

**BNSF RAILWAY COMPANY**  
**Attention: Manager Public Projects**

**Railway File: 072 965G**

**Agency Project: Orchard Road Overpass Widening**

Gentlemen:

The undersigned (hereinafter called, the "Contractor"), has entered into a contract (the "Contract") dated MARCH 28, 2008, with County of Kendall for the performance of certain work in connection with the following project Orchard Road Overpass Widening. Performance of such work will necessarily require contractor to enter BNSF RAILWAY COMPANY ("Railway") right of way and property ("Railway Property"). The Contract provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for County of Kendall (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 Contract, has agreed and does hereby agree with Railway as follows:

**Section 1. RELEASE OF LIABILITY AND INDEMNITY**

To the fullest extent permitted by law, 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 or 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, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**

**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 BOILER 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.

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

## Section 2. TERM

This Agreement is effective from the date of the Contract 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.

## Section 3. INSURANCE

Contractor must, 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 must contain broad form contractual liability with a combined single limit of a minimum of \$5,000,000 each occurrence and an aggregate limit of at least \$10,000,000. Coverage must be purchased on a post 1998 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 must also contain the following endorsements, which must be indicated on the certificate of insurance:

- ◆ It is agreed that any workers' compensation exclusion does not apply to *Railroad* payments related to the Federal Employers Liability Act or a *Railroad Wage Continuation Program* or similar programs and any payments made are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law.
- ◆ The definition of insured contract must be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Any exclusions related to the explosion, collapse and underground hazards must be removed.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy.

B. Business Automobile Insurance. This insurance must 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

C. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

- ◆ Illinois' 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.

D. Railroad Protective Liability insurance naming only the **Railroad** as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 10 93 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
- ◆ Endorsed to remove any exclusion for punitive damages.
- ◆ No other endorsements restricting coverage may be added.
- ◆ The original policy must be provided to the **Railroad** prior to performing any work or services under this Agreement

**Other Requirements:**

All policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

Contractor agrees to waive its right of recovery against **Railroad** for all claims and suits against **Railroad**. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against **Railroad** for all claims and suits. The certificate of insurance must reflect the waiver of subrogation endorsement. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against **Railroad** for loss of its owned or leased property or property under contractor's care, custody or control.

Contractor's insurance policies through policy endorsement, must include wording which states that the policy is primary and non-contributing with respect to any insurance carried by **Railroad**. The certificate of insurance must reflect that the above wording is included in evidenced policies.

All policy(ies) required above (excluding Workers Compensation and if applicable, Railroad Protective) must include a severability of interest endorsement and **Railroad** must be named as an additional insured with respect to work performed under this agreement. Severability of interest and naming **Railroad** as additional insured must be indicated on the certificate of insurance.

Contractor is not allowed to self-insure without the prior written consent of **Railroad**. If granted by **Railroad**, any deductible, self-insured retention or other financial responsibility for claims must be covered directly by contractor in lieu of insurance. Any and all **Railroad** 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 the Work, contractor must furnish to **Railroad** an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify **Railroad** in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision must be indicated on the certificate of insurance. Upon request from **Railroad**, a certified duplicate original of any required policy must be furnished. Contractor should send the certificate(s) to the following address:

BNSF RISK MANAGEMENT  
2500 Lou Menk Drive AOB-1  
Fort Worth, TX 76131-2828  
Fax: 817-352-7207

Any insurance policy must be written by a reputable insurance company acceptable to **Railroad** 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 provide.

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*. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above.

Not more frequently than once every five years, *Railroad* 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 must require that the subcontractor provide and maintain the insurance coverages set forth herein, naming *Railroad* as an additional insured, and requiring that the subcontractor release, defend and indemnify *Railroad* to the same extent and under the same terms and conditions as contractor is required to release, defend and indemnify *Railroad* herein.

Failure to provide evidence as required by this section will entitle, but not require, *Railroad* to terminate this *Agreement* immediately. Acceptance of a certificate that does not comply with this section will not operate as a waiver of contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by contractor will 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 *Railroad* will not be limited by the amount of the required insurance coverage.

For purposes of this section, *Railroad* means "Burlington Northern Santa Fe Corporation", "BNSF RAILWAY COMPANY" and the subsidiaries, successors, assigns and affiliates of each.

#### Section 4. EXHIBIT "C" CONTRACTOR REQUIREMENTS

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Contract, and the Contractor Requirements set forth on Exhibit "C" attached to the Contract 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.

#### Section 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 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 train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. 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 for certain trains may be as high as \$50,000.00 per incident.

Contractor and its subcontractors must give Railway's representative four (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.

Kindly acknowledge receipt of this letter by signing and returning to the Railway two original copies of this letter, which, upon execution by Railway, will constitute an Agreement between us.

\_\_\_\_\_  
(Contractor)

**BNSF Railway Company**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

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

Accepted and effective this \_\_\_\_ day of 20 \_\_.

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Phone: \_\_\_\_\_  
E-mail: \_\_\_\_\_



## Exhibit E



Craig N. Rasmussen, P.E.  
Manager  
Public Projects

BNSF Railway Company  
80 -44<sup>th</sup> Avenue NE  
Minneapolis, MN 55421

(763) 782-3468  
(763) 782-3061 (fax)  
craig.rasmussen@bnsf.com

Date: April 8, 2008

Mr. Francis C. Klass, P.E.  
County Engineer  
6780 Route 47  
Yorkville, IL 60560

Re: Final Approval of Plans and Specifications dated November 28, 2007,  
drafted by HLR Engineering (**hereinafter called, the "Plans and  
Specifications"**)

Dear Mr. Klass:

This letter serves as BNSF RAILWAY COMPANY's ("BNSF") final written approval of the Plans and Specifications covering the construction of the Orchard Road overpass widening. This final written approval is given to Kendall County ("Agency") pursuant to Article III, Section 1 of that certain Overpass Agreement between BNSF and Agency, dated March 28, 2008. If the Plans and Specifications are revised by Agency subsequent to the date set forth above, this letter shall no longer serve as final written approval of the Plans and Specifications and Agency must resubmit said Plans and Specifications to BNSF for final written approval.

Regards,

A handwritten signature in cursive script that reads "Craig Rasmussen".

Craig N Rasmussen, P.E.  
Manager Public Projects

Within 90 days of the conclusion of the Project and final acceptance by BNSF, the Agency will provide BNSF with a complete electronic set of the bridge plans labeled "As Built". Those plans will reflect any and all deviations from the original plans that occurred during construction. The "As Built" plans will be submitted in Micro Station \*.dgn electronic format (preferred) or AutoCAD \*.dwg format. Electronic plans are to be submitted in the original format used for CAD plan preparation and not converted to another format prior to submission. Actual measured "as constructed" clearances shall be shown as well as depth, size and location of all foundation components. The plans shall show dimensioned locations of existing and relocated utilities.

#### BRIDGE MAINTENANCE:

The Agency will be responsible for maintenance and repair of the Structure including the earth retention components, embankment slopes, erosion control, surface drainage, fencing, deck drains, landscaping, paint, walkways, handrails, lighting, and other improvements associated with the Project.

Fencing and other pedestrian access controls within BNSF's right-of-way and incorporated into the Project shall be designed and maintained by the Agency. Trespasser control shall be the responsibility of the Agency. Graffiti removal will be the responsibility of the Agency.

#### BRIDGE INSPECTION:

The Agency will conduct annual routine structural inspections. In the event of an earthquake, fire, flood, damage from vehicular impacts or other emergent situations, the Agency will provide an immediate inspection by qualified personnel and notify BNSF of damage that may affect safe passage of trains. If necessary the Agency will embargo weights or provide lane closures or other such measures to protect the structural integrity of the Structure such that there can be continuous safe passage of trains until repairs are made.

#### BRIDGE ALTERATIONS:

Except as provided otherwise by this Agreement, there will be no alterations made to the Structure that will alter the railroad vertical or horizontal clearances provided by the original design. Pipelines will not be added or attached to the Structure without first submitting plans and calculations to BNSF for review and approval.

## Exhibit F

### BNSF Bridge Requirements

#### BRIDGE DESIGN, PLANS & SPECIFICATIONS:

Except for the design of temporary falsework and shoring, BNSF review of the Structure plans will be limited to the vertical and horizontal clearances, sight distance for existing train signals, foundation dimensions and drainage characteristics as they relate to existing and future tracks. BNSF will not review structural design calculations for the permanent Structure unless a member or members are influenced by railroad live loads.

Temporary falsework and shoring plans and calculations must be reviewed and approved by BNSF prior to beginning construction. The Agency shall perform an independent review of the design calculations for temporary falsework and shoring prior to submitting them to BNSF for approval. Temporary construction clearances must be no less than 15 feet measured horizontally from the centerline of the nearest track and 21 feet-6inches measured vertically from the top of rail of the most elevated track to the bottom of lowest temporary falsework member. State regulatory agencies may have more restrictive requirements for temporary railroad clearances.

For the permanent Structure, the Agency will submit plans showing the least horizontal distance from the centerline of existing and future tracks to the face of the nearest member of the proposed Structure. The location of the least horizontal distance must be accurately described such that BNSF can determine where it will occur in both the horizontal and vertical plane. If the permanent member is within 25 feet of the nearest track (or future track), collision walls shall be incorporated into the permanent Structure design according to American Railway Engineering and Maintenance Association Manual of Recommended Practice - Chapter 8 - Article 2.1.5.

For the permanent Structure, the Agency will submit plans showing the least vertical clearance from top of the most elevated rail of existing and future tracks to the lowest point of the proposed Structure. A profile of the existing top of rail elevation shall be plotted on the bridge plans. The profile shall extend for 500 feet in each direction of the proposed overpass and a separate profile shall be plotted for each track. If the existing top of rail profile(s) is not uniform such that a sag exists in the vicinity of the proposed Structure, the permanent Structure vertical clearance shall be increased sufficiently to accommodate a raise in the track profile to remove the sag. Prior to beginning construction of the permanent Structure, the top of rail elevations should be checked and verified that they have not changed from the assumed elevations utilized for the design of the bridge.

Prior to issuing any invitation to bid on construction of the Structure, the Agency should conduct a pre-bid meeting where prospective Contractors have the opportunity to communicate with BNSF personnel regarding site specific train speeds, train density, and general safety requirements for men and equipment working near live tracks. Any invitation to bid and specifications for the Structure must be submitted to BNSF for review and approval prior to letting of bids for the Project.

#### BRIDGE CONSTRUCTION:

After awarding the bid, but prior to the Contractor entering BNSF's right-of-way or property, the Agency should conduct a pre-construction meeting with BNSF personnel in attendance to reiterate the safety requirements of construction activity adjacent to live tracks.

During construction, BNSF may require an independent engineering inspector to be present during certain critical activities of the Project, including but not limited to: driving foundation piles, erecting falsework, construction of shoring and retaining walls, placing concrete, placing soil backfill and compaction processes. The Agency shall reimburse BNSF for all costs of supplemental inspection services.



**(Construction) Estimate of Cost**

Location and brief description (Sta. and land description of beginning; Sta. only for end for county and road districts; street limits for municipality.)  
 Project begins at Station 145+00 a point approximately 310 north and 60 feet west of the SE corner of the SW ¼,  
 of section 12, T37N, R7E, of the Third Principal Meridian in Kendall County Illinois and proceeds in a northerly direction  
 for 3075.0 feet (0.582 mi) ending at Station 175+75.

Total Project Length	0.582
Net Length	0.582

Surface Type	HMA
Width	52' & var

Shoulder Type	HMA
Width	8

Bridge or Culvert	
Length	162.22 FT
Width	

Item Number	Items	Unit	Quantity	Unit Price	Total Cost
CARRIED FORWARD					
1	EARTH EXCAVATION	CU YD	3226	\$10.00	\$32,260.00
2	FURNISHED EXCAV	CU YD	13780	\$10.00	\$137,800.00
3	POROUS GRAN EMB SPEC	TON	135	\$30.00	\$4,050.00
4	TRENCH BACKFILL	CU YD	898.8	\$28.00	\$25,166.40
5	SEEDING CL 2A SPL	ACRE	6.59	\$2,000.00	\$13,180.00
6	EROSION CONTR BLANKET	SQ YD	27791	\$1.25	\$34,738.75
7	TEMP EROS CONTR SEED	POUND	2637	\$4.00	\$10,548.00
8	TEMP DITCH CHECKS	EACH	19	\$150.00	\$2,850.00
9	PERIMETER EROS BAR	FOOT	5950	\$4.00	\$23,800.00
10	INLET & PIPE PROTECT	EACH	3	\$500.00	\$1,500.00
11	INLET FILTERS	EACH	28	\$250.00	\$7,000.00
12	STONE RIPRAP CL A3	SQ YD	100	\$15.00	\$1,500.00
13	FILTER FABRIC	SQ YD	100	\$3.00	\$300.00
14	SUB GRAN MAT B 4	SQ YD	9551	\$4.50	\$42,979.50
15	HMA BASE CSE 10	SQ YD	7188	\$33.00	\$237,204.00
16	AGG SURF CSE A 6	SQ YD	33	\$15.00	\$495.00
17	BIT MATLS PR CT	GALLON	1572	\$2.50	\$3,930.00
18	AGG PR CT	TON	40	\$50.00	\$2,000.00
19	HMA SURF REM BUTT JT	SQ YD	561	\$10.00	\$5,610.00
20	TEMPORARY RAMP	SQ YD	95	\$25.00	\$2,375.00
21	HMA BC IL-19.0 N70	TON	839	\$60.00	\$50,340.00
22	HMA SC "D" N70	TON	1316	\$65.00	\$85,540.00
23	BR APPROACH PAVT SPL	SQ YD	164	\$250.00	\$41,000.00
24	PCC DRIVEWAY PAVT 6	SQ YD	21	\$75.00	\$1,575.00
25	PC CONC SIDEWALK 4	SQ FT	13993	\$5.00	\$69,965.00
26	PAVEMENT REM	SQ YD	1733	\$10.00	\$17,330.00
27	PAVED SHLD REMOVAL	SQ YD	892	\$8.00	\$7,136.00
28	CL D PATCH T3 12	SQ YD	17	\$150.00	\$2,550.00
<input checked="" type="checkbox"/> Page Total <input type="checkbox"/> Total Estimated Cost					\$864,772.65

Made by LFS Date 3/6/2008  
 Checked by \_\_\_\_\_ Date \_\_\_\_\_



**(Construction) Estimate of Cost**

Location and brief description (Sta. and land description of beginning; Sta. only for end for county and road districts; street limits for municipality.)  
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 of section 12, T37N, R7E, of the Third Principal Meridian in Kendall County Illinois and proceeds in a northerly direction  
 for 3075.0 feet (0.582 mi) ending at Station 175+75.

Total Project Length	0.582
Net Length	0.582

Surface Type	HMA
Width	52' & var

Shoulder Type	HMA
Width	8

Bridge or Culvert	
Length	
Width	

Item Number	Items	Unit	Quantity	Unit Price	Total Cost
	CARRIED FORWARD				\$864,722.65
29	CONC REM	CU YD	73.6	\$750.00	\$55,200.00
30	SLOPE WALL REMOV	SQ YD	70	\$15.00	\$1,050.00
31	PROTECTIVE SHIELD	L SUM	204	\$50.00	\$10,200.00
32	STRUCTURE EXCAVATION	CU YD	53	\$25.00	\$1,325.00
33	CONC STRUCT	CU YD	65.2	\$700.00	\$45,640.00
34	CONC SUP-STR	CU YD	165.5	\$850.00	\$140,675.00
35	BR DECK GROOVING	SQ YD	232	\$10.00	\$2,320.00
36	PROTECTIVE COAT	SQ YD	5410	\$2.00	\$10,820.00
37	F & E STRUCT STEEL	L SUM	1	\$104,250.00	\$104,250.00
38	REINF BARS, EPOXY CTD	POUND	61175	\$1.35	\$82,586.25
39	BAR SPLICERS	EACH	42	\$26.00	\$1,092.00
40	BR FEN RAIL (SDWALK)	FOOT	160	\$200.00	\$32,000.00
41	PARAPET RAILING	FOOT	162	\$100.00	\$16,200.00
42	SLOPE WALL 6	SQ YD	104	\$80.00	\$8,320.00
43	FUR STL PILE HP10X42	FOOT	350	\$35.00	\$12,250.00
44	DRIVING PILES	FOOT	350	\$2.00	\$700.00
45	TEST PILE ST HP10X42	EACH	1	\$4,000.00	\$4,000.00
46	NAME PLATES	EACH	1	\$500.00	\$500.00
47	P CUL 1 RCCP 36	FOOT	46	\$90.00	\$4,140.00
48	P CUL 1 CS/A CP 18	FOOT	24	\$42.00	\$1,008.00
49	END SECTIONS 18	EACH	2	\$475.00	\$950.00
50	PRC FLAR END SEC 12	EACH	2	\$450.00	\$900.00
51	PRC FLAR END SEC 15	EACH	2	\$500.00	\$1,000.00
52	CONCRETE HEADWALLS	CU YD	2.5	\$1,000.00	\$2,500.00
53	SS 1 RCP CL 4 12	FOOT	3978	\$30.00	\$119,340.00
54	SS 1 RCP CL 4 15	FOOT	446	\$35.00	\$15,610.00
55	GEOCOMPOSITE WALL DR	SQ YD	42	\$25.00	\$1,050.00
56	CONC HDWL FOR P DRAIN	EACH	4	\$250.00	\$1,000.00
<input checked="" type="checkbox"/> Page Total <input type="checkbox"/> Total Estimated Cost					\$1,541,348.90

Made by LFS Date 3/06/2008  
 Checked by \_\_\_\_\_ Date \_\_\_\_\_



**(Construction) Estimate of Cost**

Location and brief description (Sta. and land description of beginning; Sta. only for end for county and road districts; street limits for municipality.)  
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 of section 12, T37N, R7E, of the Third Principal Meridian in Kendall County Illinois and proceeds in a northerly direction  
 for 3075.0 feet (0.582 mi) ending at Station 175+75.

Total Project Length	0.582
Net Length	0.582

Surface Type	HMA
Width	52' & var

Shoulder Type	HMA
Width	8

Bridge or Culvert	
Length	
Width	

Item Number	Items	Unit	Quantity	Unit Price	Total Cost
	CARRIED FORWARD				\$1,541,348.90
57	P UNDR FOR STRUCT 6	FOOT	112	\$20.00	\$2,240.00
58	INLETS TA T8G	EACH	1	\$1,000.00	\$1,000.00
59	INLETS TB T24F&G	EACH	23	\$1,200.00	\$27,600.00
60	SAN MAN RECONST	EACH	4	\$1,000.00	\$4,000.00
61	COMB CC&G TB6.12	FOOT	238	\$20.00	\$4,760.00
62	COMB CC&G TB6.24	FOOT	5662	\$23.00	\$130,226.00
63	CONC MEDIAN SURF 4	SQ FT	92	\$10.00	\$920.00
64	CONC MED TSB6.12 SPL	SQ FT	9298	\$15.00	\$139,470.00
65	CONC MEDIAN SPL	SQ FT	100	\$20.00	\$2,000.00
66	SPBGR TY A	FOOT	862.5	\$23.00	\$19,837.50
67	TRAF BAR TERM T6	EACH	4	\$2,500.00	\$10,000.00
68	TR BAR TRM T1 SPL TAN	EACH	4	\$2,500.00	\$10,000.00
69	GUARDRAIL REMOV	FOOT	1364.5	\$5.00	\$6,822.50
70	TRAF CONT & PROT SPL	L SUM	1	\$50,000.00	\$50,000.00
71	SHORT-TERM PAVT MKING	FOOT	560	\$1.00	\$560.00
72	TEMP PT PVT M LINE 4	FOOT	28182	\$0.50	\$14,091.00
73	WORK ZONE PAVT MK REM	SQ FT	9578	\$2.00	\$19,156.00
74	TEMP CONC BARRIER	FOOT	425	\$50.00	\$21,250.00
75	REL TEMP CONC BARRIER	FOOT	425	\$10.00	\$4,250.00
76	THPL PVT MK LINE 4	FOOT	13928	\$1.00	\$13,928.00
77	RAISED REFL PAVT MKR	EACH	74	\$85.00	\$6,290.00
78	RAISED REF PVT MKR BR	EACH	6	\$100.00	\$600.00
79	GUARDRAIL MARKERS	EACH	21	\$10.00	\$210.00
80	BARRIER WALL MARKERS	EACH	18	\$10.00	\$180.00
81	TERMINAL MARKER - DA	EACH	4	\$40.00	\$160.00
82	PAVT MARKING REMOVAL	SQ FT	2080	\$2.00	\$4,160.00
83	RAISED REF PVT MK REM	EACH	38	\$50.00	\$1,900.00
84	ELECT SERV INSTALL	EACH	2	\$2,200.00	\$4,400.00
<input checked="" type="checkbox"/> Page Total					
<input type="checkbox"/> Total Estimated Cost					\$2,041,359.90

Made by LFS Date 3/03/2008  
 Checked by \_\_\_\_\_ Date \_\_\_\_\_

**EXHIBIT G**  
 - Page 3 of 4 -  
**Overpass Agreement**



**(Construction) Estimate of Cost**

Location and brief description (Sta. and land description of beginning; Sta. only for end for county and road districts; street limits for municipality.)  
 Project begins at Station 145+00 a point approximately 310 north and 60 feet west of the SE corner of the SW ¼,  
 of section 12, T37N, R7E, of the Third Principal Meridian in Kendall County Illinois and proceeds in a northerly direction  
 for 3075.0 feet (0.582 mi) ending at Station 175+75.

Total Project Length	0.582
Net Length	0.582

Surface Type	HMA
Width	52' & var

Shoulder Type	HMA
Width	8

Bridge or Culvert	
Length	
Width	

Item Number	Items	Unit	Quantity	Unit Price	Total Cost
	CARRIED FORWARD				\$2,041,359.90
85	CON T 1 1/2 PVC	FOOT	3293	\$7.00	\$23,051.00
86	CON T 2 PVC	FOOT	500	\$8.00	\$4,000.00
87	EC C XLP USE 1C 10	FOOT	2436	\$1.00	\$2,436.00
88	EC C XLP USE 1C 6	FOOT	10329	\$1.20	\$12,394.80
89	EC C XLP USE 1C 1/0	FOOT	1500	\$2.50	\$3,750.00
90	TR & BKFIL F ELECT WK	FOOT	3793	\$3.00	\$11,379.00
91	LUM SV HOR MT 250W	EACH	14	\$450.00	\$6,300.00
92	LIGHT CONTROLLER SPL	EACH	2	\$6,000.00	\$12,000.00
93	LT P A 40MH 15MA	EACH	14	\$1,600.00	\$22,400.00
94	LIGHT POLE FDN 24D	FOOT	112	\$150.00	\$16,800.00
95	BKWY DEV TR B 15BC	EACH	14	\$500.00	\$7,000.00
96	BR APPROACH SHLD REM	SQ YD	66	\$30.00	\$1,980.00
97	MECHANICAL SPLICE	EACH	1294	\$60.00	\$77,640.00
98	REMOVE INLET BOX	EACH	4	\$250.00	\$1,000.00
99	F&P TOP SOIL 6	SQ YD	31908	\$2.50	\$79,770.00
100	TIMBER RAIL	FOOT	429	\$8.00	\$3,432.00
101	CONSTRUCTION LAYOUT	L SUM	1	\$15,000.00	\$15,000.00
102	IMP ATTN TEMP FRN TL3	EACH	2	\$6,000.00	\$12,000.00
103	IMP ATTN REL FRD TL3	EACH	2	\$750.00	\$1,500.00
104	RR PROT LIABILITY INS	L SUM	1	\$80,000.00	\$80,000.00
105	FURNISH LUMINAIRE, SODIUM VAPOR, HORIZONTAL MOUNT, 250 WATT	EACH	1	\$350.00	\$350.00
106	FURNISH LIGHT POLE, ALUMINUM, 40 FT. M.H., 15 FT. MAST ARM	EACH	1	\$1,400.00	\$1,400.00
107	FURNISH BREAKAWAY DEVICE, BASE, 15 INCH BOLT CIRCLE	EACH	1	\$450.00	\$450.00
108	SIDEWALK APPROACH PAVEMENT	SQ YD	44	\$100.00	\$4,400.00
	<input type="checkbox"/> Page Total				
	<input checked="" type="checkbox"/> Total Estimated Cost				\$2,441,792.70

Made by LFS Date 3/06/2008  
 Checked by \_\_\_\_\_ Date \_\_\_\_\_

# KENDALL COUNTY

Resolution No. 08-13

## A Resolution Authorizing County Engineer to Sign Agreement with BNSF Railway Company

**WHEREAS**, Kendall County has jurisdiction of Orchard Road (County Highway 9A) in the vicinity of the BNSF railroad tracks, including the grade separation structure carrying Orchard Road over BNSF, located approximately 1 mile north of U.S. Route 34 in Bristol Township, Kendall County Illinois; and,

**WHEREAS**, Kendall County has determined that the existing grade separation structure must be widened from 2 lanes to 4 lanes to accommodate the growing vehicular traffic and for public safety reasons; and,

**WHEREAS**, BNSF Railway Company, a Delaware Corporation owns and maintains said railroad tracks at this location (U.S. D.O.T. No. 072 965G); and,

**WHEREAS**, in an effort to work cooperatively to reconstruct said grade separation structure from 2 lanes to 4 lanes, Kendall County and BNSF Railway Company must enter into an agreement to define the scope of the project, the apportionment of costs and other aspects related to reconstruction of this structure.

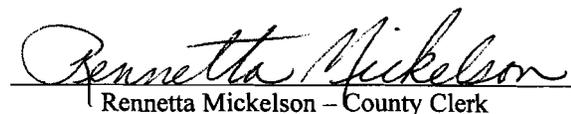
**NOW, THEREFORE BE IT RESOLVED**, that County Engineer, Francis C. Klaas, of Kendall County is hereby authorized to execute an Agreement with BNSF Railway Company, copy attached, covering the bridge reconstruction project of Orchard Road over BNSF Railway Company at U.S. D.O.T. No. 072 965G in Oswego, Illinois.

**BE IT FURTHER RESOLVED**, that Kendall County, under authority granted to County Engineer, Francis C. Klaas, hereby certifies and affirms that funds have been appropriated for said project and shall be released for payment under the terms and conditions of said Agreement.

This resolution approved by the County Board of Kendall County, State of Illinois.

  
John Church – Kendall County Board Chairman

I, Renetta Mickelson, County Clerk in and for said County, in the State aforesaid, and keeper of the records and files thereof, as provided by statute, do hereby certify the foregoing to be a true, perfect and complete copy of a resolution adopted by the Kendall County Board, at its regularly scheduled meeting in Yorkville, Illinois, on the 18<sup>th</sup> day of March, A.D. 2008.

  
Renetta Mickelson – County Clerk