



# Illinois Department of Transportation

2300 South Dirksen Parkway / Springfield, Illinois / 62764

RECEIVED  
AUG 6 2009

August 4, 2009

Elmwood Township  
Peoria County  
Section 08-04117-00-RR  
Project RRP-0143(047)  
Job No. C-94-016-09

X-12992

Illinois Commerce Commission  
RAIL SAFETY SECTION

RE: The installation of LED flashing light signals and gates controlled by CWT circuitry at TR 32 (McClellan Road) at the BNSF Railway Company tracks near Elmwood  
AAR DOT # 097 986W      RR MP 26.55

Mr. Chad Scherwinski  
Manager of Public Projects  
BNSF Railway Company  
80 – 44<sup>th</sup> Avenue NE  
Minneapolis, MN 55421

Dear Mr. Scherwinski:

Your copy of the agreement executed by the department on July 27, 2009 is attached. The general layout plans, and estimate of cost in the amount of \$191,318.00 have been reviewed and are accepted.

Upon approval of a Form 1 or Form 3 Petition by the Illinois Commerce Commission, you are authorized to proceed with the work called for in the attached agreement. Please contact Mr. William L. Atwood, Elmwood Township Highway Commissioner at (309) 635-2883 for proper scheduling of activities.

Please provide us written notice when the project has been placed in service. All bills submitted for payment must be identified with the project, section, and job numbers.

Sincerely,

*Darrell W. Lewis*

Darrell W. Lewis, P.E.  
Acting Engineer of Local Roads and Streets

CC-  
Michael Stead    Attn: Rod Bergeron  
William L. Atwood  
Tom McFarland, Peoria County Engineer  
Joseph Crowe    Attn: Derek Parish  
Debbie Marks

TR 32 (McClellan Road)  
Elmwood Township  
Peoria County  
Section 08-04117-00-RR  
Project RRP-0143(047)  
Job No. C-94-016-09

STATE OF ILLINOIS  
DEPARTMENT OF TRANSPORTATION  
AGREEMENT  
for  
Local Agency Railway-Highway  
Grade Crossing Improvements

THIS AGREEMENT made and entered into by and between the STATE OF ILLINOIS, acting by and through its Department of Transportation, hereinafter referred to as the "STATE", and the Elmwood Township, State of Illinois, acting by and through its Highway Commissioner, hereinafter referred to as the "LA" and the BNSF Railway Company, hereinafter referred to as the "COMPANY."

WITNESSETH:

WHEREAS, in the interest of public safety the STATE proposes to improve crossing warning signal devices at the location listed on Exhibit A, as shown on the attached location map; and

WHEREAS, the parties mutually agree to accomplish the proposed improvements through the use of Federal and/or State funds which are provided under applicable Federal or State act, law or appropriation.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements as hereinafter contained the parties hereto agree as follows:

SECTION 1. The project covered under this agreement shall be subject to all applicable Federal laws, rules, regulations, orders and approvals pertaining to all agreements, specifications, award of contracts, acceptance of work and procedure in general. The STATE and the COMPANY shall be governed by the applicable provisions of the Federal-Aid Policy Guide, Part 646, dated December 9, 1991, and any supplements or amendments thereto

hereinafter referred to as the "Policy Guide". The "State Required Ethical Standards Governing Contract Procurement" is also attached hereto and made a part of this Agreement.

SECTION 2. The COMPANY shall prepare the general layout plans (including surveys and other engineering services), and detailed estimates of cost. These general layout plans and estimates shall be submitted to the STATE for their approval.

SECTION 3. The completed crossing warning devices shall conform to Part VIII of the 2003 Edition of the National Manual on Uniform Traffic Control Devices (MUTCD), including any amendments which may be contained in the Illinois Supplement to the MUTCD. Barrier systems, such as guardrail and impact attenuators should not be used at railroad grade crossings except in extraordinary circumstances. Approval for the erection of any roadside barrier by the COMPANY must be obtained in writing in advance from the STATE.

SECTION 4. All required installation work at the grade crossing(s) shall be performed by the COMPANY with its own forces or in accordance with 23 CFR, part 646.216. In the event the COMPANY intends to use forces other than its own under a continuing contract or contracts, the COMPANY shall provide the Department with a list of the items of work to be accomplished under such contract or contracts and a list of the name of each contractor whose services will be used to perform the work. Such contracts shall be in compliance with the Civil Rights Act of 1964 and implementing regulations applicable to Federal-Aid Projects as well as the Illinois Fair Employment Practices Act and implementing rules and regulations.

SECTION 5. The COMPANY will not begin to work without written authorization from the STATE to proceed. The COMPANY shall file a form 1 or form 3 Petition of Illinois Administrative Code 1535 with the Illinois Commerce Commission (ICC) showing details of the automatic warning devices herein required, and shall receive approval thereof by X-Resolution before commencing with the installation. Upon receipt of authorization from the STATE and the ICC, the COMPANY shall promptly begin the work set forth in the agreement and shall notify in writing the AGENCIES listed on EXHIBIT A before commencing work.

SECTION 6. The COMPANY, for performance of its work as herein specified, may bill the STATE monthly (in sets of two) for the STATE'S 100% share of the cost of materials purchased, delivered and stored on the COMPANY'S property but not yet installed. The materials will become the property of the STATE and must be designated for exclusive use on the project designated on EXHIBIT A.

In the event of any loss of material after payment, the COMPANY will replace the material at no cost to the STATE. The storage area of such materials shall be available for STATE inspection upon 24-hour notice. The bill shall be accompanied by a voucher from the material supplier indicating payment by the COMPANY. Payment under this paragraph shall not be claimed for any bill totaling less than \$500.

In the event the COMPANY fails to install the stored material within one year of the fully executed agreement date, the State may provide a written notice to the Company, requiring the COMPANY to promptly deliver the stored material to a location indicated in writing by the State. Upon delivery, the STATE shall then take possession of said material for the STATE'S own use. The delivery of the material to the STATE shall in no way serve to terminate this agreement or affect the other provisions of this agreement and in addition shall not affect the COMPANY'S right to claim payment for stockpiled material to replace that taken by the STATE.

SECTION 7. The COMPANY, for performance of its work as herein specified, may bill the STATE monthly (in sets of two) for the STATE'S 100% share of its expense as incurred. These progressive invoices may be rendered on the basis of the estimated percentage of the work completed, plus allowable FHWA approved additives. The STATE after verifying that the bills are reasonable and proper shall promptly reimburse the COMPANY for 100% of the amount billed. Payment under this paragraph shall not be claimed for any bill totaling less than \$500. Upon completion of the project, the COMPANY shall provide the STATE with a written notification of the date of completion. The COMPANY, upon completion of its work, shall submit a complete and detailed final bill of all incurred costs to the STATE no later than one year from the date of completion of the project. Otherwise, previous payments to the COMPANY may be

considered final, except as agreed to by the STATE and the COMPANY. After the STATE has checked the final statement and agreed with the COMPANY that the costs are reasonable and proper, insofar as they are able to ascertain, the STATE shall then reimburse the COMPANY an amount, less previous payments, if any, equal to 100% of the amount billed. After the STATE has audited the expenses as incurred by the COMPANY and final inspection of the installation has been made, the STATE shall reimburse the COMPANY for any amount still owed to the COMPANY or bill the COMPANY for any overpayments or items of expense found as not being eligible for reimbursement.

The COMPANY shall maintain, for a minimum of 3 years after the date of the final bill, adequate books, records, and supporting documents to verify the amounts, recipients, and uses of all disbursements of funds passing in conjunction with the contract; the contract and all books, records, and supporting documents related to the contract, which may be stored on electronic files, shall be available for review and may be audited by the AUDITOR GENERAL. The COMPANY agrees to cooperate fully with any audit conducted by the AUDITOR GENERAL and to provide full access to all relevant materials. Failure to maintain the books, records, and supporting documents required by this section shall establish a presumption in favor of the STATE for the recovery of any funds paid by the STATE under the contract for which adequate books, records, and supporting documentation are not available to support their purported disbursement.

SECTION 8. The crossing warning signal system should be placed in service immediately after the installation is completed. The COMPANY shall notify the STATE in writing of the date of the completed installation. The STATE will perform a final inspection upon receiving the written notification.

SECTION 9. When construction of this project is completed, and so long as State law shall so require, the COMPANY shall maintain at its expense, or by agreement with others, provide for the maintenance of the crossing warning signal devices.

SECTION 10. If at any time subsequent to the completion of this improvement, the tracks in the area of the crossing are eliminated for any reason whatsoever, then the said signal system may be removed, relocated and reinstalled at another grade crossing of the COMPANY mutually designated and agreed to by the parties hereto and subject to the approval of the public authorities having any jurisdiction. The reinstalled signal system shall thereafter be subject to the terms of this agreement.

SECTION 11. In compliance with the Federal-Aid Policy Guide, dated December 9, 1991, Section 646.210, the railroad work as herein contemplated requires no contribution from the COMPANY.

SECTION 12. In the event that delays or difficulties arise in securing necessary federal or state approvals, or in acquiring rights-of way, or in settling damage claims, or for any other cause which in the opinion of the STATE render it impracticable to proceed with the construction of the project, then at any time before construction is started, the STATE may serve formal notice of cancellation upon the COMPANY and this agreement shall thereupon terminate. In the event of cancellation, the STATE shall reimburse the COMPANY for all eligible cost and expense incurred by the COMPANY prior to receipt of notice of cancellation and payment by the STATE.

SECTION 13. The COMPANY, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The COMPANY shall carry out applicable requirements of 49 CFR part 26 in the award and administration of STATE-assisted contracts. Failure by the COMPANY to carry out these requirements is a material breach of this Agreement, which may result in the termination of this contract or such other remedy as deemed appropriate.

In the event any work at the crossing is performed by other than COMPANY forces, the provisions of "an act regulating wages of laborers, mechanics and other workers employed in public works by the State, County, City or any public body or any political subdivision or by any one under contract for public works" (Illinois Compiled Statutes, 820 ILCS 130/1 et seq.) shall apply.

SECTION 14. This agreement shall be binding upon the parties hereto, their successors or assigns.

SECTION 15. The COMPANY shall complete all work or shall be responsible that all work is completed by other forces within one year of the date of the fully executed agreement. In the event that all work cannot be completed within one year, the COMPANY shall notify the STATE in writing the cause for the delay before the one-year deadline has expired. Otherwise, the STATE will consider petitioning the Illinois Commerce Commission to order the work to be completed.

SECTION 16. At the time this Agreement was executed, there were funds available for the project; however, obligations assumed by the STATE under this Agreement shall cease immediately, without penalty or payment beyond that which the COMPANY has already accumulated, should the Illinois General Assembly or the Federal Highway Administration fail to appropriate or otherwise make available funds for the project.

SECTION 17. The COMPANY certifies that it, or any affiliate, is not barred from being awarded a contract under 30 ILCS 500. Section 50-11 prohibits a person from entering into a contract with a State agency if it knows or should know that it, or any affiliate, is delinquent in the payment of any debt to the State as defined by the Debt Collection Board. Section 50-12 prohibits a person from entering into a contract with a State agency if it, or any affiliate, has failed to collect and remit Illinois Use Tax on all sales of tangible personal property into the State of Illinois in accordance with the provisions of the Illinois Use Tax Act. The COMPANY further acknowledges that the contracting State agency may declare the contract void if this certification is false or if the COMPANY, or any affiliate, is determined to be delinquent in the payment of any debt to the State during the term of the contract.

SECTION 18. The COMPANY is hereby requested by the STATE, to perform preliminary engineering for the project, and authorized to accrue project reimbursable preliminary engineering costs beginning on May 13, 2009. The COMPANY hereby agrees to not invoice the STATE until such time this agreement is fully executed.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in triplicate by their duly authorized officers as of the dates below indicated.

By execution of this agreement and under penalties of perjury, the COMPANY certifies that its correct Federal Taxpayer Identification Number (TIN) is 41-6034000 and the COMPANY is doing business as a corporation.

Executed by the COMPANY this 2<sup>nd</sup>  
day of July, 2009.

BNSF Railway Company

ATTEST:  
[Signature]

By: [Signature]

Name: CHAD SCHERLUMSKI

Title: MANAGER PUBLIC PROJECTS

Executed by the LOCAL AGENCY this 6<sup>th</sup>  
day of July, 2009.

Elmwood Township

acting by and through its  
Highway Commissioner

ATTEST:  
[Signature]

By WILLIAM L. ATWOOD

Name: William L. Atwood

Title: Highway Commissioner  
Elmwood Township  
Road District

**APPROVED**

State of Illinois, Department of Transportation

[Signature]  
Gary Hannig, Secretary of Transportation

[Signature] 7/27/09  
BY: Eric E. Harm, Deputy Director of Highways Date

[Signature]  
Christine M. Reed, Director of Highways, Chief Engineer

## ATTACHMENT A

### STATE REQUIRED ETHICAL STANDARDS GOVERNING CONTRACT PROCURMENT

The certifications hereinafter made by the COMPANY are each a material representation of fact. The STATE may terminate the agreement if it is later determined that the COMPANY rendered a false or erroneous certification.

**Bribery.** Section 50-5 of the Illinois Procurement Code provides that: (a) no person or business shall be awarded a contract or subcontract under this Code who: (1) has been convicted under the laws of Illinois or any other state of bribery or attempting to bribe an officer or employee of the State of Illinois or any other state in that officer's or employee's official capacity; or (2) has made an admission of guilt of that conduct that is a matter of record but has not been prosecuted for that conduct.

No business shall be barred from contracting with any unit of State or local government as a result of a conviction under this Section of any employee or agent of the business if the employee or agent is no longer employed by the business, and: (1) the business has been finally adjudicated not guilty; or (2) the business demonstrates to the governmental entity with which it seeks to contract, and that entity finds that the commission of the offense was not authorized, requested, commanded, or performed by a director, officer, or high managerial agent on behalf of the business as provided in paragraph (2) of subsection (a) of Section 5-4 of the Criminal Code of 1961.

For purposes of this Section, when an official, agent, or employee of a business committed the bribery or attempted bribery on behalf of the business and in accordance with the direction or authorization of a responsible official of the business, the business shall be chargeable with the conduct.

Every bid submitted to and contract executed by the State shall contain a certification by the COMPANY that it is not barred from being awarded a contract or subcontract under this Section. A COMPANY who makes a false statement, material to the certification, commits a Class 3 felony. The COMPANY certifies that it is not barred from being awarded a contract under Section 50-5.

**Educational Loan.** The Educational Loan Default Act provides that no State agency shall contract with an individual for goods or services if that individual is in default, as defined by Section 2 of this Act, on an educational loan. Any contract used by a State agency shall include a statement certifying that the individual is not in default on an educational loan as provided in this Section.

**Bid Rigging/Bid Rotating.** Section 33E-11 of the Criminal Code of 1961 provides: (a) that every bid submitted to and public contract executed pursuant to such bid by the State or a unit of local government shall contain a certification by the COMPANY that it is not barred from contracting with any unit of State or local government as a result of a violation of either Section 33E-3 or 33E-4 of the Code. The state and units of local government shall provide appropriate forms for such certification.

A COMPANY that makes a false statement, material to the certification, commits a Class 3 felony.

A violation of Section 33E-3 would be represented by a conviction of the crime of bid-rigging which, in addition to Class 3 felony sentencing, provides that any person convicted of this offense or any similar offense of any state or the United States which contains the same elements as this offense shall be barred for 5 years from the date of conviction from contracting with any unit of State or local government. No corporation shall be barred from contracting with any unit of State or local government as a result of a conviction under this Section of any employee or agent of such corporation if the employee so convicted is no longer employed by the corporation, and: (1) it has been finally adjudicated not guilty, or (2) if it demonstrates to the governmental entity with which it seeks to contract and that entity finds that the commission of the offense was neither authorized, requested, commanded, nor performed by a director, officer, or a high managerial agent in behalf of the corporation.

A violation of Section 33E-4 would be represented by a conviction of the crime of bid-rotating which, in addition to Class 2 felony sentencing, provides that any person convicted of this offense or any similar offense of any state or the United States which contains the same elements as this offense shall be permanently barred from contracting with any unit of State or local government. No corporation shall be barred from contracting with any unit of State or local government as a result of a conviction under this Section of any employee or agent of such corporation if the employee so convicted is no longer employed by the corporation and: (1) it has been finally adjudicated not guilty, or (2) if it demonstrates to the governmental entity with which it seeks to contract and that entity finds that the commission of the offense was neither authorized, requested, commanded, nor performed by a director, officer, or a high managerial agent in behalf of the corporation.

The COMPANY certifies that it is not barred from contracting with the Department by reason of a violation of either Section 33E-3 or Section 33E-4.

**International Anti-Boycott.** Section 5 of the International Anti-Boycott Certification Act provides that every contract entered into by the State of Illinois for the manufacture, furnishing, or purchasing of supplies, material, or equipment or for the furnishing of work, labor, or services, in an amount exceeding the threshold for small purchases according to the purchasing laws of this State or \$10,000, whichever is less, shall contain certification, as a material condition of the contract, by which the COMPANY agrees that neither it nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the U.S. Export Administration Act of 1979 or the regulations of the U.S. Department of Commerce promulgated under that Act. The COMPANY makes the certification set forth in Section 5 of the Act.

**Drug Free Workplace.** The Illinois Drug Free Workplace Act applies to this contract and it is necessary to comply with the provisions of the Act if the COMPANY is a corporation, partnership, or other entity (including a sole proprietorship) which has 25 or more employees.

The COMPANY certifies that if awarded a contract in excess of \$5,000 it will provide a drug free workplace by: (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance, including cannabis, is prohibited in the COMPANY's workplace; specifying the actions that will be taken against employees for violations of such prohibition; and notifying the employee that, as a condition of employment on such contract, the employee shall abide by the terms of the statement, and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction; (b) Establishing a drug free awareness program to inform employees about the dangers of drug abuse in the workplace; the COMPANY's policy of maintaining a drug free workplace; any available drug counseling, rehabilitation, and employee assistance programs; and the penalties that may be imposed upon employees for drug violations; (c) Providing a copy of

the statement required by subparagraph (a) to each employee engaged in the performance of the contract and to post the statement in a prominent place in the workplace; (d) Notifying the Department within ten (10) days after receiving notice from an employee or otherwise receiving actual notice of the conviction of an employee for a violation of any criminal drug statute occurring in the workplace; (e) Imposing or requiring, within thirty (30) days after receiving such notice from an employee of a conviction or actual notice of such a conviction, an appropriate personnel action, up to and including termination, or the satisfactory participation in a drug abuse assistance program approved by a federal, state, or local health, law enforcement, or other appropriate agency; (f) Assisting employees in selecting a course of action in the event drug counseling, treatment, and rehabilitation is required and indicating that a trained referral team is in place; (g) Making a good faith effort to continue to maintain a drug free workplace through implementation of the actions and efforts stated in this certification.

**Delinquent Payment.** The COMPANY certifies that it, or any affiliate, is not barred from being awarded a contract under 30 ILCS 500. Section 50-11 prohibits a person from entering into a contract with a State agency if it knows or should know that it, or any affiliate, is delinquent in the payment of any debt to the State as defined by the Debt Collection Board. Section 50-12 prohibits a person from entering into a contract with a State agency if it, or any affiliate, has failed to collect and remit Illinois Use tax on all sales of tangible property into the State of Illinois in accordance with the provisions of the Illinois Use Tax Act. The COMPANY further acknowledges that the contracting State agency may declare the contract void if this certification is false or if the COMPANY, or any affiliate, is determined to be delinquent in the payment of any debt to the State during the term of the contract.

**Felony Convictions.** The COMPANY certifies in accordance with 30 ILCS 500/50-10.5 that no officer, director, partner or other managerial agent of the contracting business has been convicted of a felony under the Sarbanes-Oxley Act of 2002 or of a Class 3 or Class 2 felony under the Illinois Security Law of 1953 for a period of five years prior to the date of the AGREEMENT. The COMPANY acknowledges that the DEPARTMENT shall declare the contract void if this certification is false.

**Environmental Protection Act.** The COMPANY certifies in accordance with 30 ILCS 500/50-12 that the COMPANY is not barred from being awarded a contract under this Section. The COMPANY acknowledges that the DEPARTMENT may declare the contract void if this certification is false.

TR 32 (McClellan Road)  
Elmwood Township  
Peoria County  
Section 08-04117-00-RR  
Project RRP-0143(047)  
Job No. C-94-016-09

EXHIBIT A

CROSSING IDENTIFICATION:

Railroad: BNSF Railway Company

AAR DOT # 097 986W      RR M.P.: 26.55

Road Name: TR 32 (McClellan Road)

Location: TR 32 (McClellan Road) @ BNSF Railway near Elmwood

EXISTING CONDITIONS:

One mainline track equipped with crossbucks

DESCRIPTION OF WORK TO BE DONE BY RAILROAD FORCE ACCOUNT:

1. Install flashing light signals and crossing gates controlled by CWT circuitry.
2. Incidental work necessary to complete the items hereinabove specified.

DESCRIPTION OF WORK TO BE DONE BY OTHERS:

Local Agency agrees to provide at its expense any necessary advance warning signs and pavement markings as required by the MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES. When a marked traffic detour is required, the Local Agency at its expense shall furnish, erect, maintain and remove the traffic control devices necessary to detour highway traffic.

ATTACHMENTS:

State Required Ethical Standards Governing Contract Procurement  
Location Map

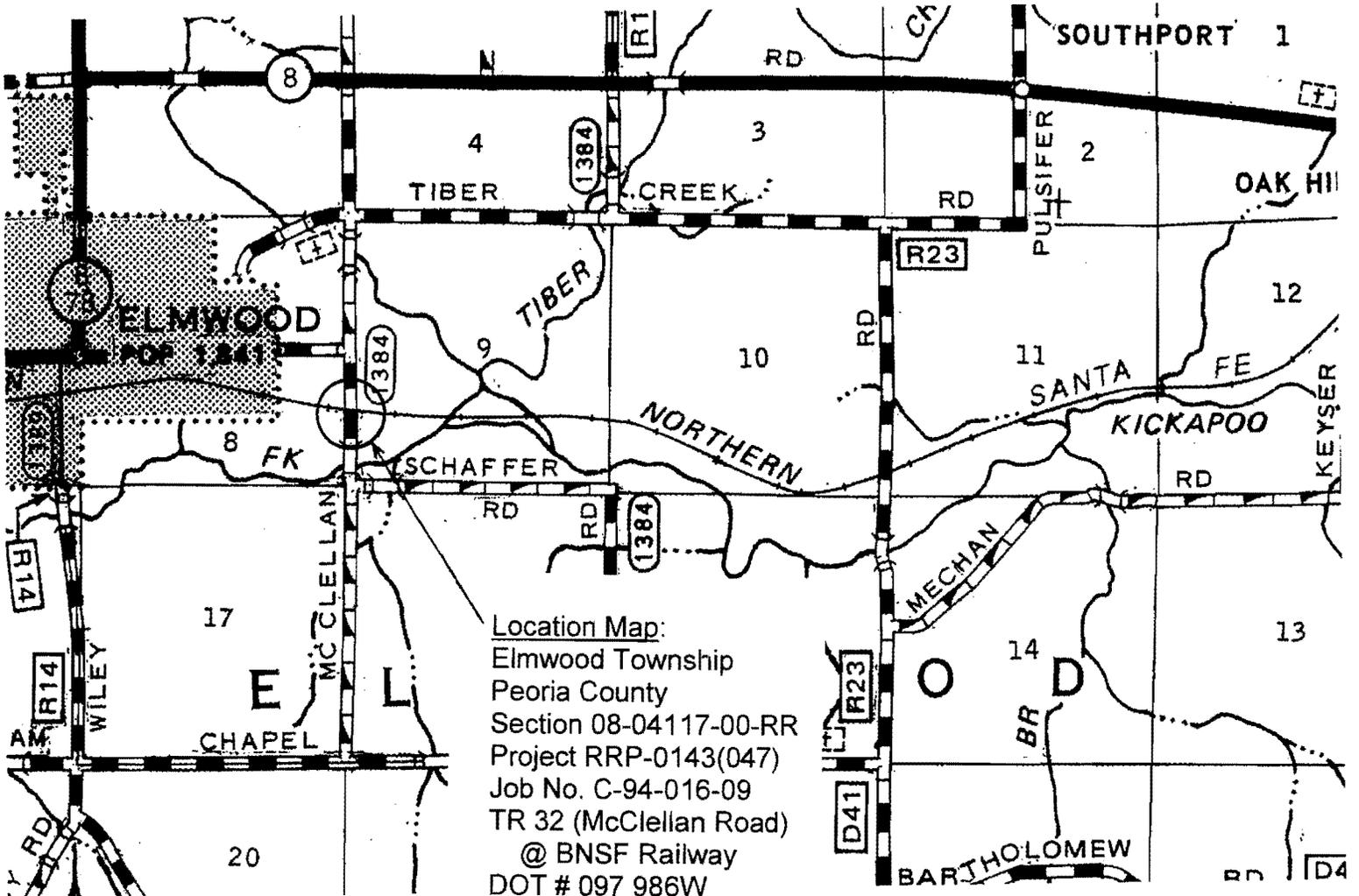
ESTIMATED RAILROAD COST: \$ 191,318  
100% Federal participation \$ 191,318

AGENCIES TO BE NOTIFIED BEFORE COMMENCING WORK:

Mr. William L. Atwood, Elmwood Township Highway Commissioner, 5303 N. Wiley Rd.,  
Elmwood, IL 61529, telephone (309) 743-8832      cell 309 635-2883

SUBMIT ALL BILLS FOR THE STATE'S 100% SHARE TO:

Darrell W. Lewis, P. E.  
Acting Engineer of Local Roads and Streets  
2300 South Dirksen Parkway  
Springfield, Illinois 62764



Location Map:  
 Elmwood Township  
 Peoria County  
 Section 08-04117-00-RR  
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 TR 32 (McClellan Road)  
 @ BNSF Railway  
 DOT # 097 986W  
 RR MP 26.55



BNSF RAILWAY COMPANY

TO GALESBURG

TO PEORIA

EASTWARD APPR. 2053'  
40 MPH

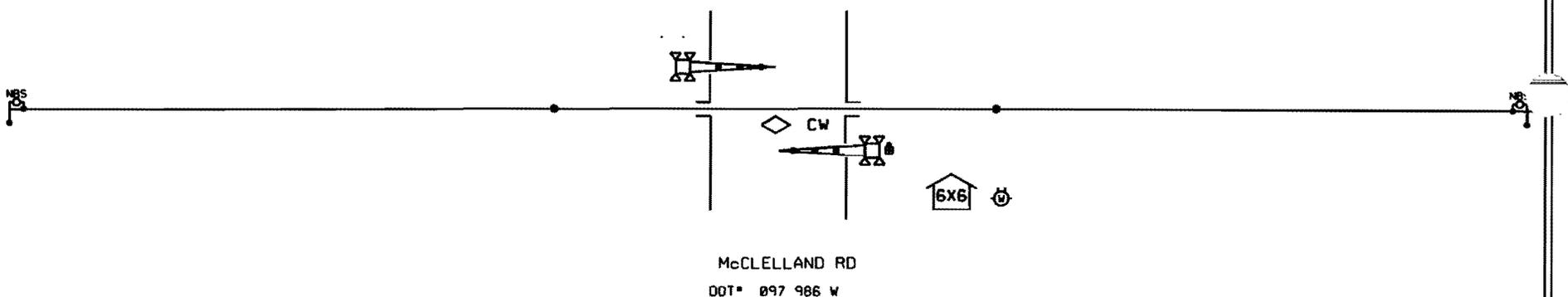
120' MIN.

WESTWARD APPR. 2053'  
40 MPH

50' MIN.

21'

50' MIN.



INSTALL: GATES AND FLASHERS  
CONTROL DEVICES: CONSTANT WARNING

**BOLD - IN**

 - OUT

SALVAGE: NONE



INSTRUMENT HOUSE



BELL



METER



CROSSING CONTROL CONNECTIONS



BIDIRECTIONAL CROSSING CONTROL



UNIDIRECTIONAL CROSSING CONTROL



COUPLER OR TERMINATION

GUARD RAIL

Warning device placement:

Clearance to C.L. Track = Min. 12'

Edge of Road to C.L. Foundation:

Min. 4'3" with curb.

Min. 8'3" without curb.

Max. 12'

House Clearance:

25' Min. to Near Rail

30' Min. to Edge of Road

ALL LIGHTS TO BE LED

**BNSF RAILWAY CO.**

LOCATION: ELMWOOD, IL.

STREET: McCLELLAND.

LS: 108

M.P. 26.55

DOT # 097 986 W

DIVISION: CHICAGO

SUBDIVISION: PEDRIA

KANSAS CITY

NO SCALE

DATE: 06/30/09

FILE: 0108026 55.dgn

DDF/DDF

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AC POWER SERVICE

1.0 EA

5,000

CONTRACT ENGR.

1.0 EA N

5,000

FILL DIRT

30.0 CY N

750

SURFACE ROCK

20.0 CY N

500

TOTAL OTHER ITEMS COST

11,250

11,250

PROJECT SUBTOTAL

172,203

CONTINGENCIES

17,220

BILL PREPARATION FEE

1,895

GROSS PROJECT COST

191,318

LESS COST PAID BY BNSF

0

TOTAL BILLABLE COST

191,318