

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

The Department of Transportation of the State of Illinois,  
for and on behalf of the People of the State of Illinois,

Petitioner,

vs.

BNSF Railway Company, a Delaware Corporation; and  
Unknown Owners,

Respondents.

No. T10-0184

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**Petition for approval of the taking or damaging of  
certain property owned by a common transportation  
carrier in Knox County, Illinois by exercising the  
right of eminent domain. Job No. R-94-020-09;  
Parcel No. 4CAA008PE**

**BNSF'S EXHIBIT LIST**

NOW COMES Respondent, BNSF Railway Company (BNSF), by its attorneys, DALEY  
MOHAN GROBLE, P.C., and for its Exhibit List, submits as follows:

<u>Exhibit</u>	<u>Description</u>
1	Easement for Bridge Project
2	Aerial photo of area
3	Order from T10-0048

DALEY MOHAN GROBLE, P.C.

By: /s/Robert J. Prendergast  
Robert J. Prendergast

Robert J. Prendergast  
Kevin W. Baldwin  
DALEY MOHAN GROBLE, P.C.  
Attorneys for BNSF Railway Company  
55 West Monroe Street, Suite 1600  
Chicago, IL 60603  
Phone—(312) 422-0799  
Fax—(312) 422-5370  
Email—rprendergast@daleymohan.com

## CERTIFICATE OF SERVICE

I, Robert J. Prendergast, an attorney, hereby certify that on the 11th day of February, 2011, I caused the foregoing **BNSF'S EXHIBIT LIST** to be served on attorneys/parties of record by operation of the Court's Electronic Filing System and by email to the addresses listed below:

John Saladino  
Illinois Commerce Commission  
527 E. Capitol Avenue  
Springfield, IL 62701  
jsaladino@icc.illinois.gov

Douglas G. Felder  
Douglas G. Felder, P.C.  
203 North LaSalle Street  
Suite 2300  
Chicago, IL 60601  
dougfelder@aol.com

Ms. Christine Reed, P. E.  
Director of Highways-IDOT  
ATTN: Jeff Harpring, Room 205  
2300 South Dirksen Parkway  
Springfield, IL 62764  
jeff.harpring@illinois.gov

By: /s/ Robert J. Prendergast  
Robert J. Prendergast

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EASEMENT AGREEMENT

FOR \_\_\_\_\_  
(Overpass Agreement)

THIS EASEMENT AGREEMENT FOR \_\_\_\_\_ ("Easement Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_ 20\_\_ ("Effective Date"), by and between BNSF RAILWAY COMPANY, a Delaware corporation ("Grantor"), and the State of Illinois, acting by and through its Department of Transportation, a \_\_\_\_\_ ("Grantee").

A. Grantor owns or controls certain real property situated at or near the vicinity of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_, at Mile Post \_\_\_\_\_, [Project # \_\_\_\_\_], as described or depicted on Exhibit "A-1" attached hereto and made a part hereof (the "Premises").

B. Grantor and Grantee have entered into that certain Overpass Agreement dated as of \_\_\_\_\_ concerning improvements on or near the Premises (the "Overpass Agreement").

C. Grantee has requested that Grantor grant to Grantee an easement over the Premises for the Easement Purpose (as defined below).

D. Grantor has agreed to grant Grantee such easement, subject to the terms and conditions set forth in this Easement Agreement.

NOW, THEREFORE, for and in consideration of the foregoing recitals which are incorporated herein, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1 Granting of Easement.

1.1 Easement Purpose. The "Easement Purpose" shall be for the purposes set forth in the OVERPASS Agreement. Any improvements to be constructed in connection with the Easement Purpose are referred to herein as "Improvements" and shall be constructed, located, configured and maintained by Grantee in strict accordance with the terms of this Easement Agreement and the OVERPASS Agreement.

1.2 Grant. Grantor does hereby grant unto Grantee a non-exclusive easement ("Easement") over the Premises for the Easement Purpose and for no other purpose. The Easement is granted subject to any and all restrictions, covenants, easements, licenses, permits, leases and other encumbrances of whatsoever nature whether or not of record, if any, relating to the Premises and subject to all with all applicable federal, state and local laws, regulations, ordinances, restrictions, covenants and court or administrative decisions and orders, including Environmental Laws (defined below) and zoning laws (collectively, "Laws"). Grantor may not make any alterations or improvements or perform any maintenance or repair activities within the Premises except in accordance with the terms and conditions of the OVERPASS Agreement.

1.3 Reservations by Grantor. Grantor excepts and reserves the right, to be exercised by Grantor and any other parties who may obtain written permission or authority from Grantor:

- (a) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any existing pipe, power, communication, cable, or utility lines and



appurtenances and other facilities or structures of like character (collectively, "Lines") upon, over, under or across the Premises;

- (b) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; and

~~(c) (e)~~ to use the Premises in any manner as the Grantor in its sole discretion deems appropriate, ~~provided Grantor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Grantee for the Easement Purpose. as long as Grantor's use of the Premises does not interfere with the use of the Premises by the Grantee for the easement purpose.~~

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**Section 2 Term of Easement.** The term of the Easement, unless sooner terminated under provisions of this Easement Agreement, shall be perpetual. *If this is a temporary easement replace the preceding sentence with the following:* The term of this Easement, unless sooner terminated under provisions of this Easement Agreement, shall expire on the date that is \_\_\_\_\_ after the Effective Date.]

**Section 3 No Warranty of Any Conditions of the Premises.** Grantee acknowledges that Grantor has made no representation whatsoever to Grantee concerning the state or condition of the Premises, or any personal property located thereon, or the nature or extent of Grantor's ownership interest in the Premises. Grantee has not relied on any statement or declaration of Grantor, oral or in writing, as an inducement to entering into this Easement Agreement, other than as set forth herein. GRANTOR HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF ANY SUCH PROPERTY, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTOR SHALL NOT BE RESPONSIBLE TO GRANTEE OR ANY OF GRANTEE'S CONTRACTORS FOR ANY DAMAGES RELATING TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTEE ACCEPTS ALL RIGHTS GRANTED UNDER THIS EASEMENT AGREEMENT IN THE PREMISES IN AN "AS IS, WHERE IS" AND "WITH ALL FAULTS" CONDITION, AND SUBJECT TO ALL LIMITATIONS ON GRANTOR'S RIGHTS, INTERESTS AND TITLE TO THE PREMISES. Grantee has inspected or will inspect the Premises, and enters upon Grantor's rail corridor and property with knowledge of its physical condition and the danger inherent in Grantor's rail operations on or near the Premises. Grantee acknowledges that this Easement Agreement does not contain any implied warranties that Grantee or Grantee's Contractors (as hereinafter defined) can successfully construct or operate the Improvements.

**Section 4 Nature of Grantor's Interest in the Premises.** GRANTOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND GRANTEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE. In case of the eviction of Grantee by anyone owning or claiming title to or any interest in the Premises, or by the abandonment by Grantor of the affected rail corridor, Grantor shall not be liable to refund Grantee any compensation paid hereunder.

**Section 5 Improvements.** Grantee shall take, in a timely manner, all actions necessary and proper to the lawful establishment, construction, operation, and maintenance of the Improvements, including such actions as may be necessary to obtain any required permits, approvals or authorizations from applicable governmental authorities. Any and all cuts and fills, excavations or embankments necessary in the construction, maintenance, or future alteration of the Improvements shall be made and maintained in such manner, form and extent as will provide adequate drainage of and from the adjoining lands and premises of the Grantor; and wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from such lands and premises of the Grantor, the Grantee shall construct and maintain such culverts or drains as may be requisite to preserve such natural and pre-existing drainage, and shall also wherever necessary, construct extensions of existing drains, culverts or ditches through or along the premises of the Grantor, such extensions to be of adequate sectional dimensions to preserve the present flowage of drainage or other waters, and of materials and workmanship equally as good as those now existing. In the event any construction, repair, maintenance, work or

other use of the Premises by Grantee will affect any Lines, fences, buildings, improvements or other facilities (collectively, "Other Improvements"), Grantee will be responsible at Grantee's sole risk to locate and make any adjustments necessary to such Other Improvements. Grantee must contact the owner(s) of the Other Improvements notifying them of any work that may damage these Other Improvements and/or interfere with their service and obtain the owner's written approval prior to so affecting the Other Improvements. Grantee must mark all Other Improvements on the Plans and Specifications and mark such Other Improvements in the field in order to verify their locations. Grantee must also use all reasonable methods when working on or near Grantor property to determine if any Other Improvements (fiber optic, cable, communication or otherwise) may exist. The Grantee agrees to keep the above-described premises free and clear from combustible materials and to cut and remove or cause to be cut and removed at its sole expense all weeds and vegetation on said premises, said work of cutting and removal to be done at such times and with such frequency as to comply with Grantee and local laws and regulations and abate any and all hazard of fire.

**Section 6 Taxes and Recording Fees.** ~~Grantee shall pay when due any taxes, assessments or other charges (collectively, "Taxes") levied or assessed upon the improvements by any governmental or quasi-governmental body or any Taxes levied or assessed against Grantor or the Premises that are attributable to the improvements.~~ Grantee agrees to purchase, affix and cancel any and all documentary stamps in the amount prescribed by statute, and to pay any and all required transfer taxes, excise taxes and any and all fees incidental to recordation of the Memorandum of Easement. In the event of Grantee's failure to do so, if Grantor shall become obligated to do so, Grantee shall be liable for all costs, expenses and judgments to or against Grantor, including all of Grantor's legal fees and expenses.

**Section 7 Environmental.**

7.1 **Compliance with Environmental Laws.** Grantee shall strictly comply with all federal, state and local environmental Laws in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Toxic Substances Control Act (collectively referred to as the "Environmental Laws"). Grantee shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on the Premises. Grantee shall not handle, transport, release or suffer the release of "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any Environmental Laws.

7.2 **Notice of Release.** Grantee shall give Grantor immediate notice to Grantor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Grantee's use of the Premises. Grantee shall use its best efforts to promptly respond to any release on or from the Premises. Grantee also shall give Grantor immediate notice of all measures undertaken on behalf of Grantee to investigate, remediate, respond to or otherwise cure such release or violation.

7.3 **Remediation of Release.** In the event that Grantor has notice from Grantee or otherwise of a release or violation of Environmental Laws which occurred or may occur during the term of this Easement Agreement, Grantor may require Grantee, at Grantee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises. If during the construction or subsequent maintenance of the Improvements, soils or other materials considered to be environmentally contaminated are exposed, Grantee will remove and safely dispose of said contaminated soils. Determination of soils contamination and applicable disposal procedures thereof, will be made only by an agency having the capacity and authority to make such a determination.

7.4 **Preventative Measures.** Grantee shall promptly report to Grantor in writing any conditions or activities upon the Premises known to Grantee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Grantee's reporting to Grantor shall not relieve Grantee of any obligation whatsoever imposed on it by this Easement Agreement. Grantee shall promptly respond to Grantor's request for information regarding said conditions or activities.

7.5 Evidence of Compliance. Grantee agrees periodically to furnish Grantor with proof satisfactory to Grantor that Grantee is in compliance with this Section 7. Should Grantee not comply fully with the above-stated obligations of this Section 7, notwithstanding anything contained in any other provision hereof, Grantor may, at its option, ~~serve a 30-day written notice of termination of terminate~~ this Easement Agreement ~~by serving five (5) days' notice of termination~~ upon Grantee. ~~If Grantee has not satisfactorily responded to Grantor's notice within 30 days of the receipt of the notice of termination, then Grantor, at its option, may terminate the Easement Agreement.~~ Upon termination, Grantee shall remove the Improvements and restore the Premises as provided in Section 9.

## **Section 8 Default and Termination.**

8.1 Grantor's Performance Rights. If at any time Grantee, or Grantee's Contractors, fails to properly perform its obligations under this Easement Agreement, Grantor, in its sole discretion, may: (i) seek specific performance of the unperformed obligations, or (ii) at Grantee's sole cost, may arrange for the performance of such work as Grantor deems necessary for the safety of its rail operations, activities and property, or to avoid or remove any interference with the activities or property of Grantor, or anyone or anything present on the rail corridor or property with the authority or permission of Grantor. Grantee shall promptly reimburse Grantor for all costs of work performed on Grantee's behalf upon receipt of an invoice for such costs. Grantor's failure to perform any obligations of Grantee or Grantee's Contractors shall not alter the liability allocation set forth in this Easement Agreement.

8.2 Abandonment. Grantor may, at its option, ~~serve a 30-day written notice of termination of terminate~~ this Easement Agreement ~~by serving five (5) days' notice in writing~~ upon Grantee if Grantee should abandon or cease to use the Premises for the Easement Purpose. ~~If Grantee has not satisfactorily responded to Grantor's notice within 30 days of the receipt of the notice of termination, then Grantor, at its option, may terminate the Easement Agreement.~~ Any waiver by Grantor of any default or defaults shall not constitute a waiver of the right to terminate this Easement Agreement for any subsequent default or defaults, nor shall any such waiver in any way affect Grantor's ability to enforce any section of this Easement Agreement.

8.3 Effect of Termination or Expiration. Neither termination nor expiration will release Grantee from any liability or obligation under this Easement, ~~whether of indemnity or otherwise,~~ resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date the Premises are restored as required by Section 9.

8.4 Non-exclusive Remedies. The remedies set forth in this Section 8 shall be in addition to, and not in limitation of, any other remedies that Grantor may have under the OVERPASS Agreement, at law or in equity.

## **Section 9 Surrender of Premises.**

9.1 Removal of Improvements and Restoration. Upon termination of this Easement Agreement, whether by abandonment of the Easement or by the exercise of Grantor's termination rights hereunder, Grantee shall, at its sole cost and expense, immediately perform the following:

- (a) remove all or such portion of Grantee's Improvements and all appurtenances thereto from the Premises, as Grantor directs at Grantor's sole discretion;
- (b) repair and restore any damage to the Premises arising from, growing out of, or connected with Grantee's use of the Premises;
- (c) remedy any unsafe conditions on the Premises created or aggravated by Grantee; and
- (d) ~~leave the Premises in the condition which existed as of the Effective Date.~~

9.2 Limited License for Entry. If this Easement Agreement is terminated, Grantor may direct

Form 105; Rev. 06/01/05

Grantee to undertake one or more of the actions set forth above, at Grantee's sole cost, in which case Grantee shall have a limited license to enter upon the Premises to the extent necessary to undertake the actions directed by Grantor. The terms of this limited license include all of Grantee's obligations under this Easement Agreement. Termination will not release Grantee from any liability or obligation under this Easement Agreement, ~~whether of indemnity or otherwise~~, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Grantee's Improvements are removed and the Premises are restored to the condition that existed as of the Effective Date. If Grantee fails to surrender the Premises to Grantor upon any termination of the Easement, all liabilities and obligations of Grantee hereunder shall continue in effect until the Premises are surrendered.

**Section 10 Liens.** Grantee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Grantee on the Premises or attributable to Taxes that are the responsibility of Grantee pursuant to Section 6. Grantor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by Law to prevent the attachment of any such liens to any portion of the Premises; provided, however, that failure of Grantor to take any such action shall not relieve Grantee of any obligation or liability under this Section 10 or any other section of this Easement Agreement.

**Section 11 Tax Exchange.** Grantor reserves the right to assign this Easement Agreement to Apex Property & Track Exchange, Inc. ("**Apex**"). Apex is a qualified intermediary within the meaning of Section 1031 of the Internal Revenue Code of 1986, as amended, and Treas. Reg. § 1.1031(k)-1(g), for the purpose of completing a tax-deferred exchange under said Section 1031. Grantor shall bear all expenses associated with the use of Apex, or necessary to qualify this transaction as a tax-deferred exchange, and, except as otherwise provided herein, shall protect, reimburse, indemnify and hold harmless Grantee from and against any and all reasonable and necessary additional costs, expenses, including, attorneys fees, and liabilities which Grantee may incur as a result of Grantor's use of Apex or the qualification of this transaction as a tax-deferred transaction pursuant to Section 1031. Grantee shall cooperate with Grantor with respect to this tax-deferred exchange, and upon Grantor's request, shall execute such documents as may be required to effect this tax-deferred exchange.

**Section 12 Notices.** Any notice required or permitted to be given hereunder by one party to the other shall be delivered in the manner set forth in the OVERPASS Agreement. Notices to Grantor under this Easement shall be delivered to the following address: BNSF Railway Company, Real Estate Department, 2500 Lou Menk Drive, Ft. Worth, TX 76131, Attn: Permits, or such other address as Grantor may from time to time direct by notice to Grantee.

**Section 13 Recordation.** It is understood and agreed that this Easement Agreement shall not be in recordable form and shall not be placed on public record and any such recording shall be a breach of this Easement Agreement. Grantor and Grantee shall execute a Memorandum of Easement in the form attached hereto as **Exhibit "B-1"** (the "**Memorandum of Easement**") subject to changes required, if any, to conform such form to local recording requirements. *[IF LEGAL DESCRIPTION IS NOT AVAILABLE USE THE FOLLOWING IN PLACE OF THE PRIOR SENTENCE: As of the Effective Date, a legal description of the Premises is not available. Grantee and Grantor shall work together in good faith to establish the legal description for the Premises. Once Grantor and Grantee have approved the legal description, Grantor and Grantee shall execute a Memorandum of Easement in the form attached hereto as Exhibit "B-1" (the "Memorandum of Easement").]* The Memorandum of Easement shall be recorded in the real estate records in the county where the Premises are located. If a Memorandum of Easement is not executed by the parties and recorded as described above within \_\_\_ days of the Effective Date, Grantor shall have the right to terminate this Easement Agreement upon notice to Grantee.

**Section 14 Miscellaneous.**

14.1 All questions concerning the interpretation or application of provisions of this Easement Agreement shall be decided according to the substantive Laws of the State of ~~Texas~~ Illinois without regard to conflicts of law provisions.

14.2 In the event that Grantee consists of two or more parties, all the covenants and agreements of Grantee herein contained shall be the joint and several covenants and agreements of such parties. This

instrument and all of the terms, covenants and provisions hereof shall inure to the benefit of and be binding upon each of the parties hereto and their respective legal representatives, successors and assigns and shall run with and be binding upon the Premises.

~~14.3 If any action at law or in equity is necessary to enforce or interpret the terms of this Easement Agreement, the prevailing party or parties shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party or parties may be entitled.~~

14.4 If any provision of this Easement Agreement is held to be illegal, invalid or unenforceable under present or future Laws, such provision will be fully severable and this Easement Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof will remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, there will be added automatically as a part of this Easement Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

14.5 This Easement Agreement is the full and complete agreement between Grantor and Grantee with respect to all matters relating to Grantee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Grantee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Grantee or Grantee's obligation to defend and hold Grantor harmless in any prior written agreement between the parties.

14.6 Time is of the essence for the performance of this Easement Agreement.

14.7 The terms of the OVERPASS Agreement are incorporated herein as if fully set forth in this instrument which terms shall be in full force and effect for purposes of this Easement even if the OVERPASS Agreement is, for whatever reason, no longer in effect.

[Signature page follows]

Witness the execution of this Easement Agreement as of the date first set forth above.

**GRANTOR:**

BNSF RAILWAY COMPANY, a Delaware corporation

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

**GRANTEE:**

\_\_\_\_\_  
a \_\_\_\_\_

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



EXHIBIT  
Respondent  
#2



BNSF was represented by counsel. John Saladino of the Commission's Rail Safety Section appeared on behalf of Staff. At the conclusion of the hearing, the record was marked "Heard and Taken."

### **STIPULATED AGREED FACTS**

The City desires to construct a bridge to carry North Seminary Street over the BNSF's tracks, in accordance with the plans prepared by Hanson Professional Services, consulting engineers, and attached as Exhibit 1 to the Petition. Proposed vertical and horizontal clearances for the North Seminary Street Overpass were also included with the plans. The City is utilizing federal funds for this bridge construction project.

The City is planning to construct the new bridge to replace the existing North Seminary Street grade crossing of the BNSF's tracks in an effort to improve public safety by improving emergency response times, reduce vehicle congestions, and preserve the historical and aesthetic nature of the community. The existing North Seminary Street grade crossing will be closed and abolished after the proposed structure is completed and open to traffic.

BNSF currently operates seven (7) rail subdivisions through Galesburg. One of those rail subdivisions is the Chillicothe Subdivision, which carries a significant percentage of the rail traffic through the City. The BNSF Chillicothe Subdivision bisects the City of Galesburg, from north to south. The City has two hospitals, both located north of the Chillicothe Subdivision. The volume and length of BNSF trains operating over the grade crossing can delay ambulance, police and fire services within the City. The number of trains, as well as the number of cars per train, on the Chillicothe Subdivision has continued to increase over the past five years. BNSF believes that the number and length of trains on this subdivision could increase in the future. North Seminary Street is a primary north-south arterial route, located north of downtown Galesburg.

The total cost of the new structure is estimated to be \$13,970,000. The City is seeking assistance from the GCPF to pay for sixty percent (60%) of eligible project costs for the new bridge. Project costs eligible for reimbursement from the GCPF include preliminary engineering, land acquisition, utility relocation, construction engineering, and construction. The City is seeking assistance from the BNSF to pay five percent (5%) of all project costs for the new bridge. BNSF will submit estimates for all costs associated with removal of the North Seminary Street grade crossing, including the surface, automatic warning devices, and warning signs. The cost of removal will be included in the total project costs, and BNSF agrees to pay the five percent (5%) portion of the total project costs.

The City will be responsible for the remainder of the project costs associated with construction of the new structure.

**RESPONDENTS' BNSF and IDOT POSITION**

The BNSF and IDOT support the City's Petition and agree that an Order granting the Petition should be approved by the Commission.

**STAFF POSITION**

Staff has no objection to the City's Petition, and recommends that an Order be issued. The structure will allow for improved mobility in the City and improve safety and convenience to the traveling public.

**FINDINGS AND ORDERING PARAGRAPHS**

The Commission, having reviewed the entire record, finds that:

- (1) The Commission has jurisdiction over the Parties and the subject matter of this proceeding;
- (2) The Petitioner, City of Galesburg, is a political subdivision of the State of Illinois;
- (3) Respondent, BNSF Railway Company, is a rail carrier engaged in the transportation of either or both property and passengers for hire in the State of Illinois, as defined by 625 ILCS 5/18/c-1104(30);
- (4) Respondent, Illinois Department of Transportation is a Department of the State of Illinois which exists by virtue of the laws of the State of Illinois;
- (5) The recitals of fact and conclusions of law contained in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and conclusions of law;
- (6) It is in the interest of public safety and convenience that the City of Galesburg be permitted to construct a bridge to carry North Seminary Street/Kellogg Street over the BNSF Railway Company's tracks, located in Galesburg, Knox County;
- (7) The cost for the proposed improvement should be divided among the Parties and the Grade Crossing Protection Fund of the Motor Fuel Tax Law, in accordance with the Law;
- (8) A contribution in the amount of \$1,963,800 from the Grade Crossing Protection Fund should be authorized by this Order. An additional Grade Crossing Protection Fund contribution, limited to no more than \$6,418,200, will be available during state fiscal year 2011 (July 1, 2010

through June 30, 2011). The Petitioner is required to submit a Supplemental Petition requesting the remaining contribution from the Grade Crossing Protection Fund. As part of the Supplemental Petition submittal, the Petitioner should include evidence to prove that previous contributions from the Grade Crossing Protection Fund for the North Seminary Street Bridge project have been expended;

- (9) It is fair and reasonable that the Secretary of the Illinois Department of Transportation, through the Grade Crossing Protection Fund of the Motor Fuel Tax Law, the City of Galesburg, and BNSF Railway Company each be directed to pay a respective portion of the actual cost of the proposed improvements as set forth below:

Division of Cost

<b>Improvement</b>	<b>Est. Cost</b>	<b>GCPF</b>	<b>City</b>	<b>BNSF</b>	<b>IDOT</b>
Preliminary Engineering	\$1,273,000	60% \$763,800	Remainder	5% \$63,650	\$0
Land Acquisition	\$2,000,000	60% \$1,200,000	Remainder	5% \$100,000	\$0
Utility Relocation	\$650,000	60% \$390,000	Remainder	5% \$32,500	\$0
Construction Engineering	\$1,000,000	60% \$600,000	Remainder	5% \$50,000	\$0
Construction	\$9,047,000	60% \$5,428,200	Remainder	5% \$452,350	\$0
<b>TOTALS</b>	<b>\$13,970,000</b>	<b>\$8,382,000<sup>1</sup></b>	<b>\$4,889,500<sup>2</sup></b>	<b>\$698,500</b>	<b>\$0</b>

Notes:

<sup>1</sup> The GCPF contribution authorized by this Order for the North Seminary Street Bridge project shall not exceed \$1,963,800; an additional contribution, not to exceed \$6,418,200, from the GCPF will be available during state fiscal year 2011 (July 1, 2010 to June 30, 2011) upon submission of a Supplemental Petition by the City. The total contribution from the GCPF for the North Seminary Street Bridge project shall not exceed \$8,382,000.

<sup>2</sup> The City of Galesburg's contribution includes Federal and State funding; The City shall be responsible for all future maintenance of the new bridge.

- (10) The City of Galesburg should be required to proceed with the construction of the new bridge to carry North Seminary Street/Kellogg Street over the BNSF Railway Company's tracks, substantially in accordance with the plans submitted with the City's Petition; the City should complete the final plans and submit them to the Illinois Department of Transportation within twelve (12) months from the date the Commission issues an Order in this matter; the Illinois Department of Transportation should notify all Parties of record, in writing, when it has approved the final plans; the City should complete the work within three (3) years from the date the final plans are

approved by the Illinois Department of Transportation;

- (11) The City of Galesburg should convey a complete set of final plans for the project to the BNSF Railway Company upon receipt of approval from Illinois Department of Transportation;
- (12) All work herein should be completed within three (3) years from the date of approval of the final plans by the Illinois Department of Transportation;
- (13) Chapter 625 ILCS 5/18c-1701 and 5/18c-1704 of the Law require each "person" as defined by 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 Galesburg is hereby authorized to construct a bridge to carry North Seminary Street/Kellogg Street over the BNSF Railway Company's tracks in the City of Galesburg, Knox County, Illinois, in accordance with the plans submitted with the City's Petition.

IT IS FURTHER ORDERED that the cost for the project shall be divided between the Parties and the Grade Crossing Protection Fund in the manner as prescribed in Finding 9 of this Order.

IT IS FURTHER ORDERED that the City of Galesburg shall complete the work, substantially in accordance with the plans submitted with the City's Petition, within three (3) years from the date of approval of the final plans by the Illinois Department of Transportation.

IT IS FURTHER ORDERED that the City of Galesburg and the BNSF Railway Company shall not close and abolish the North Seminary Street highway-rail grade crossing until the new North Seminary Street Bridge is complete and open to traffic.

IT IS FURTHER ORDERED that the City of Galesburg, 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 Division of the Commission stating the progress it has made toward completion of the work herein required. Each progress report shall include the Commission Order number, the Order date, the Project completion date as noted in the Order, crossing information (inventory number and railroad milepost), type of improvement, and project manager information (name, title, mailing address, telephone number, and facsimile number) of the employee responsible for management of the Project.

IT IS FURTHER ORDERED that all bills eligible for reimbursement from the Grade Crossing Protection Fund shall be submitted to the District 4 Office of the Illinois Department of Transportation, 401 Main Street, Peoria, IL, 61602-1111. 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 to the Department no later than twelve (12) months from the completion date specified in this Commission Order. The final bill for expenditures shall be clearly marked "Final Bill". The Commission shall, at the end of the 12<sup>th</sup> month from the completion date specified in this 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. Notification may be by regular mail, electronic mail, fax, or phone.

IT IS FURTHER ORDERED that City of Galesburg shall file written notice with the Director of Processing of the date this project is completed. This notice shall be filed within five (5) days after the completion date.

IT IS FURTHER ORDERED that BNSF Railway Company shall, within five (5) days of the completion of the work herein required of it, shall submit a completely updated United States Department of Transportation Inventory Form (6180.71), to the Federal Railroad Administration, the Chief of Data Services at the Illinois Department of Transportation, and the Director of Processing and Information, Transportation Bureau of the Commission.

IT IS FURTHER ORDERED that BNSF Railway Company be, and it is hereby required and directed to submit a Project Status Report, to the Director of Processing and Information, Transportation Bureau of the Commission, stating that the work herein required of it has been completed. Said Report shall be submitted within five (5) days after the project completion date.

IT IS FURTHER ORDERED that 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.

IT IS FURTHER ORDERED that 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.

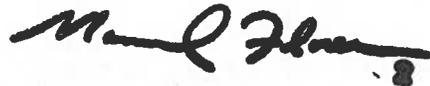
IT IS FURTHER ORDERED that Requests for Extension of Time and Petitions for Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request for Extension of Time or a Petition for 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 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 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 2<sup>nd</sup> day of June 2010.



MANUEL FLORES  
ACTING CHAIRMAN

<b>JUDGE</b>
<b>SECTION CHIEF</b>
<b>ORDERS SUPERVISOR</b>