

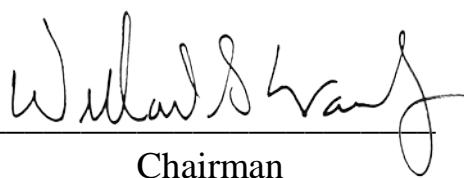
RESOLUTION NO. 21824

Background

The Illinois State Toll Highway Authority (“Tollway”) is interested in procuring Building Automation Maintenance and Repair Services as a Sole Source Contract (No. 19-0010) from Precision Control Systems of Chicago, Inc. for an upper limit of compensation not to exceed \$224,640.00. The Tollway is authorized to procure these goods and/or services pursuant to Section 30 ILCS 500/20-25 of the Illinois Procurement Code which requires statutory advance public notice of at least two weeks. No interested parties requested a hearing to contest a contract award to Precision Control Systems of Chicago, Inc. and, with no objections having been noted, it was approved by the State’s Chief Procurement Officer for General Services.

Resolution

The sole source quote from Precision Control Systems of Chicago, Inc. for the purchase of Building Automation Maintenance and Repair Services is accepted. Contract No. 19-0010 is approved in an amount not to exceed \$224,640.00. As may be necessary, the Chairman/Chief Executive Officer of the Tollway or the Executive Director is authorized to execute the appropriate documents in connection therewith, subject to the approval of the General Counsel, the Chief of Procurement is authorized to issue the necessary purchase orders and contract purchase orders and any other necessary documents in connection therewith, and the Chief Financial Officer is authorized to issue warrants in payment thereof.

Approved by: 
Chairman

RESOLUTION NO. 21825

Background

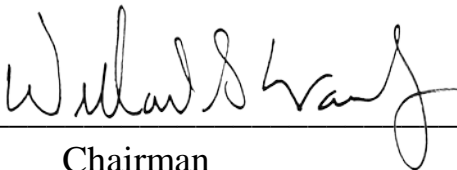
The Illinois State Toll Highway Authority (“Tollway”) advertised for sealed bids on Contract I-18-4446 for Retaining Wall Construction, Grading and Shoulder Rehabilitation, on the Tri-State Tollway (I-294) from Mile Post 31.5 (Canadian National Railroad) to Mile Post 34.9 (Grand Avenue). The lowest responsive and responsible bidder on Contract No. I-18-4446 is Judlau Contracting, Inc. in the amount of \$12,387,295.13.

Resolution

Contract No. I-18-4446 is awarded to Judlau Contracting, Inc. in the amount of \$12,387,295.13, subject to all required approvals, the contractor satisfying applicable DBE, financial, and all other contract award requirements, and execution of all contract documents by the bidder and the Tollway.

The Chairman/Chief Executive Officer of the Tollway is authorized to execute the aforementioned Contract, subject to the approval of the General Counsel and the Chief Financial Officer, and the Chief Financial Officer is authorized to issue warrants in payment thereof.

If the bidder fails to satisfy the contract award requirements, the Executive Director is authorized to approve an award to the next lowest responsible bidder, in accordance with the applicable contract award requirements, and execution of all contract documents by the bidder and the Tollway. The Chairman/Chief Executive Officer of the Tollway is authorized to execute any contract awarded to the next lowest bidder, subject to the approval of the General Counsel and the Chief Financial Officer, and the Chief Financial Officer is authorized to issue warrants in payment thereof.

Approved by: 
Chairman

RESOLUTION NO. 21826

Background

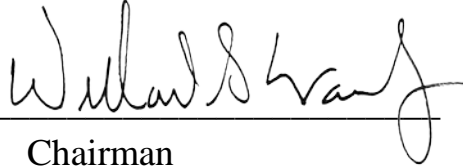
The Illinois State Toll Highway Authority (“Tollway”) advertised for sealed bids on Contract RR-18-4445 for M-8 Maintenance Facility and Site Improvements, on the Reagan Memorial Tollway (I-88) at Mile Post 117.8 (Mettel Road). The lowest responsive and responsible bidder on Contract No. RR-18-4445 is W.E. O’Neil Construction Company in the amount of \$31,350,443.00.

Resolution

Contract No. RR-18-4445 is awarded to W.E. O’Neil Construction Company in the amount of \$31,350,443.00, subject to all required approvals, the contractor satisfying applicable DBE, financial, and all other contract award requirements, and execution of all contract documents by the bidder and the Tollway.

The Chairman/Chief Executive Officer of the Tollway is authorized to execute the aforementioned Contract, subject to the approval of the General Counsel and the Chief Financial Officer, and the Chief Financial Officer is authorized to issue warrants in payment thereof.

If the bidder fails to satisfy the contract award requirements, the Executive Director is authorized to approve an award to the next lowest responsible bidder, in accordance with the applicable contract award requirements, and execution of all contract documents by the bidder and the Tollway. The Chairman/Chief Executive Officer of the Tollway is authorized to execute any contract awarded to the next lowest bidder, subject to the approval of the General Counsel and the Chief Financial Officer, and the Chief Financial Officer is authorized to issue warrants in payment thereof.

Approved by: 
Chairman

RESOLUTION NO. 21827

Background

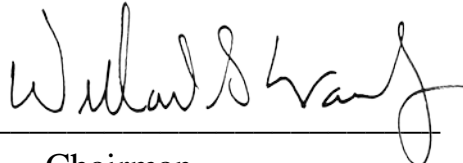
The Illinois State Toll Highway Authority (“Tollway”) advertised for sealed bids on Contract RR-18-4442 for Landscape Planting Improvements, on the Reagan Memorial Tollway (I-88) from Mile Post 76.50 (IL 251 Interchange) to Mile Post 91.62 (Kishwaukee River Bridge). The lowest responsive and responsible bidder on Contract No. RR-18-4442 is Semper Fi Yard Service, Inc. in the amount of \$1,324,035.56.

Resolution

Contract No. RR-18-4442 is awarded to Semper Fi Yard Service, Inc. in the amount of \$1,324,035.56, subject to all required approvals, the contractor satisfying applicable DBE, financial, and all other contract award requirements, and execution of all contract documents by the bidder and the Tollway.

The Chairman/Chief Executive Officer of the Tollway is authorized to execute the aforementioned Contract, subject to the approval of the General Counsel and the Chief Financial Officer, and the Chief Financial Officer is authorized to issue warrants in payment thereof.

If the bidder fails to satisfy the contract award requirements, the Executive Director is authorized to approve an award to the next lowest responsible bidder, in accordance with the applicable contract award requirements, and execution of all contract documents by the bidder and the Tollway. The Chairman/Chief Executive Officer of the Tollway is authorized to execute any contract awarded to the next lowest bidder, subject to the approval of the General Counsel and the Chief Financial Officer, and the Chief Financial Officer is authorized to issue warrants in payment thereof.

Approved by: 
Chairman

RESOLUTION NO. 21828

Background

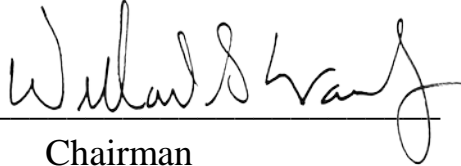
The Illinois State Toll Highway Authority (“Tollway”) advertised for sealed bids on Contract RR-18-4444 for Landscape Planting Improvements, on the Jane Addams Memorial Tollway (I-90) from Mile Post 13.00 (East of Riverside Boulevard) to Mile Post 25.40 (East of Genoa Road). The lowest responsive and responsible bidder on Contract No. RR-18-4444 is Semper Fi Yard Service, Inc. in the amount of \$1,429,406.57.

Resolution

Contract No. RR-18-4444 is awarded to Semper Fi Yard Service, Inc. in the amount of \$1,429,406.57, subject to all required approvals, the contractor satisfying applicable DBE, financial, and all other contract award requirements, and execution of all contract documents by the bidder and the Tollway.

The Chairman/Chief Executive Officer of the Tollway is authorized to execute the aforementioned Contract, subject to the approval of the General Counsel and the Chief Financial Officer, and the Chief Financial Officer is authorized to issue warrants in payment thereof.

If the bidder fails to satisfy the contract award requirements, the Executive Director is authorized to approve an award to the next lowest responsible bidder, in accordance with the applicable contract award requirements, and execution of all contract documents by the bidder and the Tollway. The Chairman/Chief Executive Officer of the Tollway is authorized to execute any contract awarded to the next lowest bidder, subject to the approval of the General Counsel and the Chief Financial Officer, and the Chief Financial Officer is authorized to issue warrants in payment thereof.

Approved by: 
Chairman

RESOLUTION NO. 21829

Background

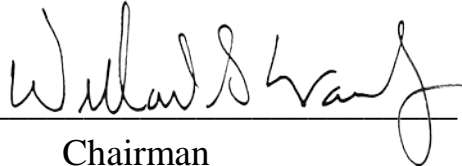
The Illinois State Toll Highway Authority (“Tollway”) advertised for sealed bids on Contract RR-18-4448 for Miscellaneous Drainage Repairs and Improvements, on the Jane Addams Memorial Tollway (I-90) between Mile Post 15.90 and Mile Post 54.70. The lowest responsive and responsible bidder on Contract No. RR-18-4448 is Semper Fi Yard Service, Inc. in the amount of \$649,712.45.

Resolution

Contract No. RR-18-4448 is awarded to Semper Fi Yard Service, Inc. in the amount of \$649,712.45, subject to all required approvals, the contractor satisfying applicable DBE, financial, and all other contract award requirements, and execution of all contract documents by the bidder and the Tollway.

The Chairman/Chief Executive Officer of the Tollway is authorized to execute the aforementioned Contract, subject to the approval of the General Counsel and the Chief Financial Officer, and the Chief Financial Officer is authorized to issue warrants in payment thereof.

If the bidder fails to satisfy the contract award requirements, the Executive Director is authorized to approve an award to the next lowest responsible bidder, in accordance with the applicable contract award requirements, and execution of all contract documents by the bidder and the Tollway. The Chairman/Chief Executive Officer of the Tollway is authorized to execute any contract awarded to the next lowest bidder, subject to the approval of the General Counsel and the Chief Financial Officer, and the Chief Financial Officer is authorized to issue warrants in payment thereof.

Approved by: 
Chairman

RESOLUTION NO. 21830

Background

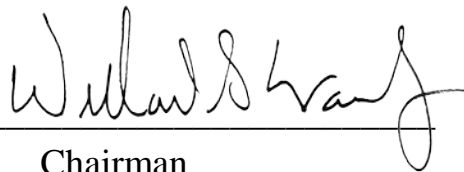
It is necessary and in the best interest of The Illinois State Toll Highway Authority (“Tollway”) to obtain Construction Corridor Manager and Owner's Representative Services (CCM/OR) on the Elgin O’Hare Western Access (EOWA) Corridor (Illinois Route 390/I-490) on Contract I-18-4701.

Knight E/A, Inc. / V3 Companies has submitted a proposal to provide the services for an upper limit of compensation not to exceed \$89,000,000.00. The proposal is for construction related professional services and the services were procured pursuant to 30 ILCS 500/30-15(c) of the Illinois Procurement Code.

Resolution

The Chief Engineering Officer is authorized to negotiate an agreement with Knight E/A, Inc. / V3 Companies to obtain Construction Corridor Manager and Owner's (Tollway) Representative Services, for Contract No. I-18-4701 with an upper limit of compensation not to exceed \$89,000,000.00, subject to review and approval of the General Counsel. The Chairman/Chief Executive Officer of the Tollway is authorized to execute the Agreement, subject to the approval of the Chief Financial Officer, and the Chief Financial Officer is authorized to issue warrants in payment thereof.

Approved by: _____



Chairman

RESOLUTION NO. 21831

Background

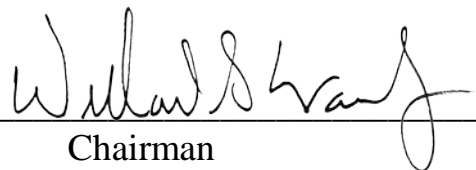
The Illinois State Toll Highway Authority (“Tollway”), pursuant to Resolution No. 21084 approved July 28, 2016, entered into an Agreement with The Roderick Group, Inc. dba Ardmore Roderick (formerly Ardmore Associates, LLC) on Contract RR-14-4202 for Construction Management Services, on the Jane Addams Memorial Tollway (I-90) at Mile Post 15.4 (M-7 Maintenance Facility-Rockford).

Per Tollway request, The Roderick Group, Inc. (dba Ardmore Roderick) has submitted a proposal to provide Supplemental Construction Management for Contract RR-14-4202, increasing the contract upper limit by \$200,000.00, from \$3,582,822.61 to \$3,782,822.61. It is necessary and in the best interest of the Tollway to accept the proposal from The Roderick Group, Inc. dba Ardmore Roderick.

Resolution

The Chief Engineering Officer is authorized to negotiate a Supplemental Agreement with The Roderick Group, Inc. (dba Ardmore Roderick) consistent with the aforementioned proposal to increase the contract upper limit by \$200,000.00, subject to the approval of the General Counsel. The Chairman or the Executive Director is authorized to execute the Agreement, and the Chief Financial Officer is authorized to issue warrants in payment thereof.

Approved by:


Chairman

RESOLUTION NO. 21832

Background

The Illinois State Toll Highway Authority (“Tollway”), pursuant to Resolution No. 20255 approved February 27, 2014, entered into an Agreement with Delcan Corporation on Contract RR-14-9156 for Traffic and Incident Management System (TIMS) Maintenance, Enhancement, and Upgrade Services.

Per Tollway request, Delcan Corporation has submitted a proposal to renew this contract for Traffic and Incident Management System (TIMS) Maintenance, Enhancement, and Upgrade Services for Contract RR-14-9156 for five years, through July 20, 2024, increasing the contract upper limit by \$9,684,298.75, from \$8,534,822.30 to \$18,219,121.05. It is necessary and in the best interest of the Tollway to accept the proposal from Delcan Corporation.

Resolution

The Chief Engineering Officer is authorized to negotiate a Contract Renewal with Delcan Corporation consistent with the aforementioned proposal to increase the contract upper limit by \$9,684,298.75. The Chairman/Chief Executive Officer of the Tollway is authorized to execute the Agreement, subject to the approval of the General Counsel and the Chief Financial Officer, and the Chief Financial Officer is authorized to issue warrants in payment thereof.

Approved by: William S. Kravitz
Chairman

RESOLUTION NO. 21833

Background

The Illinois State Toll Highway Authority (“Tollway”) is an instrumentality and an administrative agency of the State of Illinois. The Toll Highway Act, 605 ILCS 10/1, *et seq.*, grants the Tollway all powers necessary to carry out its legislative purposes.

Pursuant to the Intergovernmental Cooperation Act, 5 ILCS 220/3, *et seq.*, any powers, privileges, functions or authority exercised or which may be exercised by a public agency “may be exercised, combined, transferred, and enjoyed jointly with any other public agency of this State and jointly with any public agency of any other state or of the United States” and reflected in an Intergovernmental Agreement (“IGA”) unless such joint exercise or enjoyment is prohibited by law. To better meet the business and operational needs of the Tollway, it is necessary and in the best interest of the Tollway to streamline approval and authorization of (i) IGAs that do not involve the expenditure of Tollway funds, and (ii) IGAs that involve the expenditure and/or reimbursement of less than \$250,000, by delegating authority to approve and authorize same to officers and agents of the Tollway.

Resolution

The following positions are vested with authority to approve, authorize and execute IGAs within the dollar limits set forth below:

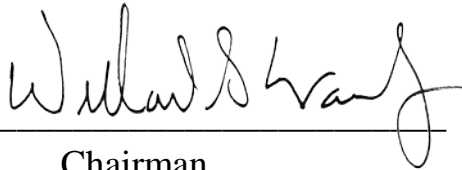
- Executive Director and General Counsel or the Designee of either of these positions: no-cost IGAs

- Executive Director, General Counsel and Chief Financial Officer or the Designee of any of these positions: IGAs involving the expenditure of amounts less than \$250,000 and IGAs requiring reimbursement of authorized expenditures less than \$250,000

RESOLUTION NO. 21833

Resolution – continued

The Chief Engineering Officer is directed to ensure proper controls and oversights are in place to monitor all IGAs which may be executed pursuant to the authority granted by this Resolution.

Approved by: 
Chairman

RESOLUTION NO. 21834

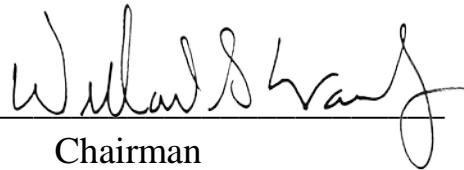
Background

It is in the best interest of the Illinois State Toll Highway Authority (“Tollway”) to enter into an Overpass Agreement (a.k.a. Construction and Maintenance Agreement) with BNSF Railway Company necessary to set forth the parties’ respective obligations in connection with the construction and maintenance of the I-294 Mile-Long Bridge portion of the Central Tri-State Project.

Resolution

The proposed Overpass Agreement is approved in an amount not to exceed \$2,600,000.00 consistent with the terms and conditions as set forth in the attached draft agreement. The General Counsel is authorized to prepare a final agreement in substantial conformity to the attached agreement, as well as any other necessary documents, and the Chairman/Chief Executive Officer of the Tollway is authorized to execute the final agreement, subject to the approval of the General Counsel and the Chief Financial Officer, and the Chief Financial Officer is authorized to issue warrants in payment thereof.

Approved by:



Chairman

OVERPASS AGREEMENT

BNSF File No. BF10013692
Interstate 294 Overpass
U.S. D.O.T. No. 004339F
LS 7000
MP0016.05
Chillicothe Subdivision

This Agreement ("**Agreement**"), is executed to be effective as of _____ ("**Effective Date**"), by and between BNSF RAILWAY COMPANY, a Delaware corporation ("**BNSF**"), and the Illinois State Highway Toll Authority, a political subdivision of the State of Illinois ("**Agency**").

RECITALS:

WHEREAS, BNSF owns and operates a line of railroad in and through the Village of Hodgkins, State of Illinois; and

WHEREAS, Agency desires to improve the existing Interstate 294 overpass crossing by constructing a new crossing at separated grades to be known as the Interstate 294 Overpass and designated as D.O.T. No. 004339F; and

WHEREAS, the existing Interstate 294 Overpass will be permanently closed, vacated and removed upon completion of construction and the placing in service of the new Interstate 294 Overpass.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I) SCOPE OF WORK

1. The term "**Project**" as used herein includes any and all work related to the construction of the proposed Interstate 294 Overpass, together with the removal of the existing Interstate 294 Overpass (hereinafter referred to as the "**Structure**"), more particularly described on the Exhibit A attached hereto and incorporated herein, including, but not limited to, any and all changes to telephone, telegraph, signal and electrical lines and appurtenances, temporary and permanent

track work, fencing, grading, alterations to or new construction of drainage facilities, preliminary and construction engineering and contract preparation. During construction of the Structure, vehicular traffic will be maintained on a portion of the existing or new overpass structure. Additionally, temporary controls during construction must be in compliance with Section 8A-08, "Temporary Traffic Control Zones" of the Manual of Uniform Traffic Control Devices ("MUTCD"), U.S. Department of Transportation.

ARTICLE II) BNSF OBLIGATIONS

In consideration of the covenants of Agency set forth herein and the faithful performance thereof, BNSF agrees as follows:

1. Upon Agency's payment to BNSF of an administrative fee in the sum of Two Thousand and No/100 Dollars (\$2,000), together with the Temporary Construction License Fee in the sum of Nine Hundred Five Thousand and No/100 Dollars (\$905,000.00), the Permanent Easement Deposit due under Article II, Section 2 below, and the Project Engineer fee due under Article II, Section 5 below, BNSF hereby grants to Agency, its contractors, subcontractors, agents, successors and assigns, upon and subject to the terms and conditions set forth in this Agreement, a temporary non-exclusive license (hereinafter called, "Temporary Construction License") to construct the Structure across or upon the portion of BNSF's right-of-way labeled as either "Temporary Easement" or "Permanent Easement" on Exhibit A-1 ("**Premises**"), excepting and reserving BNSF's rights, and the rights of any others who have obtained, or may obtain, permission or authority from BNSF, to do the following:

- (a) Operate, maintain, renew and/or relocate any and all existing railroad track or tracks, wires, pipelines and other facilities of like character upon, over or under the surface of said right-of-way;
- (b) Construct, operate, maintain, renew and/or relocate upon said right-of-way, without limitation, such facilities as the BNSF may from time to time deem appropriate, provided such facilities do not materially interfere with the Agency's use of the Structure;
- (c) Otherwise use or operate the right-of-way as BNSF may from time to time deem appropriate, provided such use or operations does not materially interfere with the Agency's use of the Structure; and

- (d) Require the Agency or its contractor to execute a Temporary Construction Crossing Agreement, for any temporary crossing requested to aid in the construction of this Project regardless of location relative to the requested easements.

The term of the Temporary Construction License begins on the Effective Date and ends on the earlier of (i) substantial completion of the Structure, or (ii) 60 months following the Effective Date. BNSF has the authority and property interests necessary to grant this Temporary Construction License and said license, together with the related rights given by BNSF to Agency in this provision, are without warranty of title of any kind, express or implied, and no covenant of warranty of title will be implied from the use of any word or words herein contained. The Temporary Construction License is for construction of the Structure only and shall not be used by Agency for any other purpose. Agency acknowledges and agrees that Agency shall not have the right, under the Temporary Construction License, to use the Structure for any other purpose than construction. In the event Agency is evicted by anyone owning, or claiming title to or any interest in said right-of-way, BNSF will not be liable to Agency for any damages, losses or any expenses of any nature whatsoever. BNSF reserves the right to grant similar rights to others subsequent to the date of this Agreement; provided, however, that in doing so, BNSF shall not impair or interfere with the rights granted to Agency herein.

2. Agency shall deposit each of the Temporary Construction License Fee due under Article II, Section 1 above, the Project Engineer fee due under Article II, Section 5 below, and the additional sum of Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00) ("Permanent Easement Deposit") into escrow with an escrowee to be designated by BNSF. BNSF shall be entitled to withdraw the Temporary Construction License Fee from the escrow upon execution of this Agreement, with all interest accruing on the monies held in the escrow to become the property of BNSF. Within ninety (90) days following the completion of the Project including construction of the Structure and the restoration of the Relinquishment Premises as provided in the Tollway Easement Agreement, and provided further that Agency is in compliance with the term and conditions of this Agreement, BNSF will grant to Agency, its successors and assigns, an easement (hereinafter called, the "Tollway Easement") to enter upon and use that portion of BNSF's right-of-way described as "Permanent Easement" in Exhibit A-1 which is attached and incorporated ("Tollway Easement Areas") as is necessary to use and maintain the Structure, substantially in the form of Exhibit B attached to this Agreement ("Tollway Easement Agreement"). Prior to delivery of the Tollway Easement Agreement, the parties shall determine any adjustments needed to the final Acquisition Price for the Tollway Easement based upon the rates of \$11.88 per square foot for parcels TW-3B-16-009.P and TW-3B-16-009.01P and \$5.92 per square foot for parcels TW-3B-16-005.P and TW-3B-16-005.03P, and Agency shall deposit any additional sums due to BNSF for the final Acquisition Price and any other costs or expenses due to BNSF with the escrowee. Upon delivery of the Tollway Easement Agreement, BNSF shall be entitled to withdraw the Acquisition Price and any other costs or expenses deposited by Agency to the

escrow, and BNSF shall direct the escrowee to release any remaining funds to be refunded to Agency. BNSF shall have the right to use any funds deposited in escrow in exchange for the acquisition of the Excess Property under the option provided in Article III, Section 5 herein.

3. BNSF will furnish all labor, materials, tools, and equipment for railroad work required for the construction of the Project, such railroad work and the estimated cost thereof being as shown on Exhibit D attached hereto and made a part hereof. In the event construction on the Project has not commenced within six (6) months following the Effective Date, BNSF may, in its sole and absolute discretion, revise the cost estimates set forth in said Exhibit D. In such event, the revised cost estimates will become a part of this Agreement as though originally set forth herein. Any item of work incidental to the items listed on Exhibit D not specifically mentioned therein may be included as a part of this Agreement upon written approval of Agency, which approval will not be unreasonably withheld. Construction of the Project must include the following railroad work by BNSF:

- (a) Procurement of materials, equipment and supplies necessary for the railroad work;
- (b) Preliminary engineering, design, and contract preparation;
- (c) Furnishing of flagging services during construction of the Project as required and set forth in further detail on Exhibit C;
- (d) Furnishing engineering and inspection as required in connection with the construction of the Project;
- (e) Providing a contract project coordinator, at Agency's expense, to serve as a project manager for the Project;
- (f) Construction of temporary at-grade construction crossings following Agency's contractor applying for and receiving a temporary crossing permit at Agency's expense;

4. BNSF will do all railroad work set forth in Article II, Section 3 above on an actual cost basis, when BNSF, in its sole discretion, determines it is required by its labor agreements to perform such work with its own employees working under applicable collective bargaining agreements.

5. In addition to the railroad work set forth in Article II, Section 3 above, BNSF will provide a BNSF-employed Project Engineer to coordinate Project schedule, submittal approvals, and work windows, to be paid for by Agency in a Lump Sum of \$300,000 upon execution of this Agreement. Should the Project duration last beyond 48 months, Agency will pay an additional amount, not to exceed \$6,250 per month, for continued Project Engineer resources;

6. Agency agrees to reimburse BNSF for work of an emergency nature caused by Agency or Agency's contractor in connection with the Project which BNSF deems is reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons or BNSF property. Such work may be performed by BNSF without prior approval of Agency and Agency agrees to fully reimburse BNSF for all such emergency work.

7. BNSF may charge Agency for insurance expenses, including self-insurance expenses, when such expenses cover the cost of Employer's Liability (including, without limitation, liability under the Federal Employer's Liability Act) in connection with the construction of the Project. Such charges will be considered part of the actual cost of the Project, regardless of the nature or amount of ultimate liability for injury, loss or death to BNSF's employees, if any.

8. During the construction of the Project, BNSF will send Agency progressive invoices detailing the costs of the railroad work performed by BNSF under this Agreement. Agency must reimburse BNSF for completed force-account work within ninety (90) days of the receipt of the invoice for such work. Upon completion of the Project, BNSF will send Agency a detailed invoice of final costs, segregated as to labor and materials for each item in the recapitulation shown on Exhibit D. Pursuant to this section and Article IV, Section 6 herein, Agency must pay the final invoice within ninety (90) days of the date of the final invoice. BNSF will assess a finance charge of .033% per day (12% per annum) on any unpaid sums or other charges due under this Agreement which are past its credit terms. The finance charge continues to accrue daily until the date payment is received by BNSF, not the date payment is made or the date postmarked on the payment. Finance charges will be assessed on delinquent sums and other charges as of the end of the month and will be reduced by amounts in dispute and any unposted payments received by the month's end. Finance charges will be noted on invoices sent to Agency under this section.

ARTICLE III) AGENCY OBLIGATIONS

In consideration of the covenants of BNSF set forth herein and the faithful performance thereof, Agency agrees as follows:

1. Agency must furnish to BNSF plans and specifications for the Project. Four sets of said plans (reduced size 11" x 17"), together with two copies of calculations, and two copies of specifications in **English Units**, must be submitted to BNSF for approval prior to commencement of any construction. BNSF will give Agency final written approval of the plans and specifications substantially in the form of Exhibit E, attached to this Agreement and made a part hereof. Upon BNSF's final written approval of the plans and specifications, said plans and specifications will become part of this Agreement and are hereby incorporated herein. Any approval of the plans and specifications by BNSF shall in no way obligate BNSF in any manner with respect to the finished product design and/or construction. Any approval by BNSF shall mean only that the plans and specifications meet the subjective standards of BNSF, and such approval by BNSF shall not be deemed to mean that the plans and specifications or construction is structurally sound and appropriate or that such plans and specifications meet applicable regulations, laws, statutes or local ordinances and/or building codes.

2. Agency must make any required application and obtain all required permits and approvals for the construction of the Project.

3. Agency must provide for and maintain minimum vertical and horizontal clearances, as required in Exhibit C and as approved by BNSF as part of the plans and specifications for the Project.

4. Agency must acquire all rights of way necessary for the construction of the Project, including the Tollway Easement as provided at Exhibit B and a Pipeline Agreement as provided at Exhibit B-1.

5. Agency hereby grants to BNSF an exclusive option, to be exercised no later than one-hundred-eighty (180) days following the delivery of the Tollway Easement under Article II, to purchase the property depicted in Exhibit H ("Excess Property") at a purchase price not to exceed Five Hundred Thousand Dollars (\$500,000.00), subject to a reserved easement substantially identical to the terms contained in the Tollway Easement Agreement, along with an access road easement to BNSF (hereinafter called the "BNSF Access Easement") to enter upon and use that portion of Agency's right-of-way described in Exhibit H-1 which is attached to and incorporated in this Agreement ("BNSF Access Easement Area") for future ingress and egress. The parties shall work together in good faith to prepare a purchase and sale agreement providing for the terms of such purchase including title insurance in such form as may be mutually agreeable to effect the sale of the Excess Property and BNSF Access Easement to BNSF.

6. Agency must make any and all arrangements, in compliance with BNSF's Utility Accommodation Manual (<https://www.bnsf.com/about-bnsf/pdf/utility.pdf>), for the installation or relocation of wire lines, pipe lines and other facilities owned by private persons, companies, corporations, political subdivisions or public utilities other than BNSF which may be necessary for the construction of the Project.

7. Agency must construct the Project as shown on the attached Exhibit A and do all work ("Agency's Work") provided for in the plans and specifications for the Project, except railroad work that will be performed by BNSF hereunder. Agency must furnish all labor, materials, tools and equipment for the performance of Agency's Work. The principal elements of Agency's Work includes, but is not limited to:

- (a) Construction of the Structure;
- (b) All necessary grading and paving, including backfill of excavations and restoration of disturbed vegetation on BNSF's right-of-way;
- (c) Provide suitable drainage, both temporary and permanent;
- (d) Improve existing BNSF storm sewers to accommodate stormwater runoff from the overpass structure;
- (e) Construction and removal of temporary access and parking for BNSF employees, to be maintained for the duration of the Project. Parking to accommodate forty personal vehicles and twelve single-unit trucks in proximity to the location of the new Maintenance of Way building;
- (f) Consistent with any and all applicable rules, laws and regulations, provide appropriate pedestrian control during construction;
- (g) If it is determined by both parties hereto, that because of the ejection of objects from the structure onto BNSF's property, that a fencing system will be an effective deterrent, then the Agency at its sole cost, shall install and maintain a protective fencing system on the highway overpass structure;
- (h) Job site cleanup including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials to the satisfaction of BNSF;

8. Agency must apply and maintain said D.O.T. Crossing number 004339F in a conspicuous location on the Structure.

9. Agency's Work must be performed by Agency or Agency's contractor in a manner that will not endanger or interfere with the safe and timely operations of BNSF and its facilities.

10. For any future inspection or maintenance, either routine or otherwise, performed by subcontractors on behalf of the Agency, below the deck surface or outside the barrier wall, Agency shall require the subcontractors to comply with the provisions of the attached Exhibit C and execute the agreement attached hereto as Exhibit C-1. Prior to performing any future maintenance below the deck surface or outside the barrier wall with its own personnel, Agency shall: comply with all of BNSF's applicable safety rules and regulations; require any Agency employee performing maintenance to complete the safety training program at the BNSF's Internet Website "www.BNSFContractor.com"; notify BNSF when, pursuant to the requirements of Exhibit C, a flagger is required to be present; procure, and have approved by BNSF's Risk Management Department, Railroad Protective Liability insurance.

11. BNSF reserves the right to review plans for Agency's maintenance work on the Structure that is outside the barrier walls or below the deck surface prior to the execution of such work, and may prohibit any such activity that, in BNSF's sole judgment, has the potential to interfere with safe railroad operations. The Agency shall reimburse BNSF for the actual costs incurred by the railroad for plan review, field inspection, and project management on all maintenance projects.

12. This agreement does not allow for Agency to reconstruct or replace any of the structural elements of the bridge over BNSF right-of-way without BNSF consent. If the Agency wishes to perform such work, BNSF may require it to enter into a separate agreement or amend this agreement accordingly. For the purposes of this paragraph, "reconstruct or replace" shall include any activity that involves the removal and replacement of any of the load-carrying structural members with a new member of the same or different design. "Reconstruct or replace" shall not include maintenance activities such as concrete restoration, deck patching, or joint repair.

13. Agency must require its contractor(s) to notify BNSF's Roadmaster at least thirty (30) calendar days prior to requesting a BNSF flagman in accordance with the requirements of Exhibit C attached hereto. Additionally, Agency must require its contractor(s) to notify BNSF's Manager of Public Projects thirty (30) calendar days prior to commencing work on BNSF property or near BNSF tracks.

14. Agency or its contractor(s) must submit four (4) copies of any plans (including two sets of calculations in **English Units**) for proposed shoring, falsework or cribbing to be used over, under, or adjacent to BNSF's tracks to BNSF's Manager of Public Projects for approval. The shoring, falsework or cribbing used by Agency's contractor shall comply with the BNSF Requirements for Construction of Grade Separation Projects set forth on Exhibit F and all applicable requirements promulgated by state and federal agencies, departments, commissions and other legislative bodies. If necessary, Agency must submit for approval two (2) copies of a professionally engineered demolition plan, as set forth in Exhibit F, with applicable calculations to BNSF's Manager of Public Projects. The existing Interstate 294 Overpass will not be removed until BNSF approves Agency's demolition plan in writing.

15. Agency must include the following provisions in any contract with its Contractor(s) performing work on said Project:

- (a) The Contractor is placed on notice that fiber optic, communication and other cable lines and systems (collectively, the "Lines") owned by various telecommunications companies may be buried on BNSF's property or right-of-way. The locations of these Lines have been included on the plans based on information from the telecommunications companies. The Contractor will be responsible for contacting BNSF and the telecommunications companies and notifying them of any work that may damage these Lines or facilities and/or interfere with their service. The Contractor must also mark all lines shown on the plans or marked in the field in order to verify their locations. The Contractor must also use all reasonable methods when working in the BNSF right-of-way or on BNSF property to determine if any other lines (fiber optic, cable, communication or otherwise) may exist.
- (b) The Contractor will be responsible for the rearrangement of any facilities or lines determined to interfere with the construction. The Contractor must cooperate fully with any telecommunications company(ies) in performing such rearrangements.
- (c) Failure to mark or identify these lines will be sufficient cause for BNSF to stop construction at no cost to the Agency or BNSF until these items are completed.
- (d) In addition to the liability terms contained elsewhere in this Agreement, the Contractor hereby indemnifies, defends and holds harmless BNSF for, from and against all cost, liability, and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of Contractor, its subcontractors, agents and/or employees that cause or in any way or degree contribute to (1) any damage to or destruction of any Lines by Contractor, and/or its subcontractors, agents and/or employees, on BNSF's property or within BNSF's right-of-way, (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents

and/or employees, on BNSF's property or within BNSF's right-of-way, and/or (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of such telecommunication company(ies). **TO THE EXTENT ALLOWABLE BY LAW, THE LIABILITY ASSUMED BY PROVIDER WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY, DEATH, CAUSE OF ACTION OR CLAIM WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF BNSF.**

16. Agency must require compliance with the obligations set forth in this agreement, including Exhibit C and Exhibit C-1, and incorporate in each prime contract for construction of the Project, or the specifications therefor (i) the provisions set forth in Article III and IV; and (ii) the provisions set forth in Exhibit C, Exhibit C-1, and Exhibit F attached hereto and by reference made a part hereof.

17. Except as otherwise provided below in this Section, all construction work performed hereunder by Agency for the Project will be pursuant to a contract or contracts to be let by Agency, and all such contracts must include the following:

- (a) All work performed under such contract or contracts within the limits of BNSF's right-of-way must be performed in a good and workmanlike manner in accordance with plans and specifications approved by BNSF;
- (b) Changes or modifications during construction that affect safety or BNSF operations must be subject to BNSF's approval;
- (c) No work will be commenced within BNSF's right-of-way until each of the prime contractors employed in connection with said work must have (i) executed and delivered to BNSF an agreement in the form of Exhibit C-1, and (ii) delivered to and secured BNSF's approval of the required insurance; and
- (d) To facilitate scheduling for the Project, Agency shall have its contractor give BNSF's representative Ajibade Fashola (773-579-5092) or designated successor eight (8) weeks advance notice of the proposed times and dates for work windows. BNSF and Agency's contractor will establish mutually agreeable work windows for the Project. BNSF has the right at any time to revise or change the work windows, due to train

operations or service obligations. BNSF will not be responsible for any additional costs and expenses resulting from a change in work windows. Additional costs and expenses resulting from a change in work windows shall be accounted for in the contractor's expenses for the Project.

- (e) The plans and specifications for the Project shall be consistent with the Tollway's Standard Specifications and must be in compliance with the BNSF Requirements for Construction of Grade Separation Projects set forth on Exhibit F, attached to this Agreement and incorporated herein.

18. Agency must advise the appropriate BNSF Manager of Public Projects, in writing, of the completion date of the Project within thirty (30) days after such completion date. Additionally, Agency must notify BNSF's Manager of Public Projects, in writing, of the date on which Agency and/or its Contractor will meet with BNSF for the purpose of making final inspection of the Project to verify that the surrounding property has been sufficiently cleaned and that the final condition of the former construction area is satisfactory.

19. TO THE FULLEST EXTENT ALLOWABLE BY LAW, AGENCY HEREBY RELEASES, INDEMNIFIES, DEFENDS AND HOLDS HARMLESS BNSF, ITS AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO) OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART) (I) THE USE, OCCUPANCY OR PRESENCE OF AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (II) THE PERFORMANCE, OR FAILURE TO PERFORM BY THE AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS, ITS WORK OR ANY OBLIGATION UNDER THIS AGREEMENT, (III) THE SOLE OR CONTRIBUTING ACTS OR OMISSIONS OF AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (IV) AGENCY'S BREACH OF THE TEMPORARY CONSTRUCTION LICENSE OR EASEMENT GRANTED TO AGENCY PURSUANT TO ARTICLE II OF THIS AGREEMENT, (V) ANY RIGHTS OR INTERESTS GRANTED TO

AGENCY PURSUANT TO THE TEMPORARY CONSTRUCTION LICENSE OR EASEMENT DISCUSSED IN ARTICLE II OF THIS AGREEMENT, (VI) AGENCY'S OCCUPATION AND USE OF BNSF'S PROPERTY OR RIGHT-OF-WAY, INCLUDING, WITHOUT LIMITATION, SUBSEQUENT MAINTENANCE OF THE STRUCTURE BY AGENCY, OR (VII) AN ACT OR OMISSION OF AGENCY OR ITS OFFICERS, AGENTS, INVITEES, EMPLOYEES OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER. TO THE EXTENT ALLOWABLE BY LAW, THE LIABILITY ASSUMED BY AGENCY WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY OR DEATH WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF BNSF.

20. Agency must give BNSF's Manager of Public Projects written notice to proceed ("**Notice to Proceed**") with the railroad work after receipt of necessary funds for the Project. BNSF will not begin the railroad work (including, without limitation, procurement of supplies, equipment or materials) until written notice to proceed is received from Agency.

21. Agency agrees to comply and cause its Contractor(s) performing work on said Project with the following obligations regarding soil disturbing and/or removal work on BNSF property on said Project: All disturbed or excavated soil materials from BNSF property will be properly managed, handled, transported, and disposed of at a licensed Subtitle D landfill. Prior to disposal, all such soil materials will be sampled as required by applicable state and local laws and regulations and landfill requirements. Agency or its Contractor, as appropriate, will be identified as the generator of such soil materials on any required documentation, including but not limited to manifests and waste profiles for landfill disposal. Soil materials from BNSF property shall not be disposed at any Clean Construction Demolition Debris (CCCD) landfills.

ARTICLE IV)

ARTICLE V) JOINT OBLIGATIONS

IN CONSIDERATION of the premises, the parties hereto mutually agree to the following:

1. All work contemplated in this Agreement must be performed in a good and workmanlike manner and each portion must be promptly commenced by the party obligated hereunder to perform the same and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications during construction which affect BNSF will be subject to BNSF's written approval prior to the commencement of any such changes or modifications from Ajibade Fashola (773-579-5092).

2. The work hereunder must be done in accordance with the BNSF Requirements for Construction of Grade Separation Projects set forth on Exhibit F and the detailed plans and specifications approved by BNSF.

3. Agency must require its contractor(s) to reasonably adhere to the Project's construction schedule for all Project work. The parties hereto mutually agree that BNSF's failure to complete the railroad work in accordance with the construction schedule due to inclement weather or unforeseen railroad emergencies will not constitute a breach of this Agreement by BNSF and will not subject BNSF to any liability. Regardless of the requirements of the construction schedule, BNSF reserves the right to reallocate the labor forces assigned to complete the railroad work in the event of an emergency to provide for the immediate restoration of railroad operations of either BNSF or its related railroads, or to protect persons or property on or near any BNSF owned property. In such event, BNSF shall provide Agency with notice of reallocation upon determination of the need to do so. BNSF will not be liable for any additional costs or expenses resulting from any such reallocation of its labor forces. The parties mutually agree that any reallocation of labor forces by BNSF pursuant to this provision and any direct or indirect consequences or costs resulting from any such reallocation will not constitute a breach of this Agreement by BNSF.

4. BNSF will have the right to stop construction work on the Project if any of the following events take place: (i) Agency (or any of its contractors) performs the Project work in a manner contrary to the plans and specifications approved by BNSF; (ii) Agency (or any of its contractors), in BNSF's opinion, prosecutes the Project work in a manner that is hazardous to BNSF property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Agency fails to pay BNSF for the Temporary Construction License or the Tollway Easement pursuant to Article II, Section 1 of this Agreement. The work stoppage will continue until all necessary actions are taken by Agency or its contractor to rectify the situation to the satisfaction of BNSF's Division Engineer or until proof of additional insurance has been delivered to and accepted by BNSF. In the event of an apparent breach of (i) this Agreement, with 30 days' notice and an opportunity to cure, (ii)

the Temporary Construction License, or (iii) the Tollway Easement, BNSF may immediately terminate the Temporary Construction License or the Tollway Easement. Any such work stoppage under this provision will not give rise to any liability on the part of BNSF. BNSF's right to stop the work is in addition to any other rights BNSF may have including, but not limited to, actions or suits for damages or lost profits. In the event that BNSF desires to stop construction work on the Project, BNSF agrees to immediately notify the following individuals in writing:

To: Chief Engineering Officer
Illinois Toll Highway Authority
2700 Ogden Avenue
Downers Grove, IL 60515

and

Jeff Allen
Tollway Project Manager
2700 Ogden Avenue
Downers Grove, IL 60515

5. Agency must supervise and inspect the operations of all Agency contractors to ensure compliance with the plans and specifications approved by BNSF, the terms of this Agreement and all safety requirements of BNSF. If BNSF determines that proper supervision and inspection are not being performed by Agency personnel at any time during construction of the Project BNSF has the right to stop construction (within or adjacent to its operating right-of-way). Construction of the Project will not proceed until Agency corrects the situation to BNSF's reasonable satisfaction. If BNSF feels the situation is not being corrected in an expeditious manner, BNSF will immediately notify the Tollway's Chief Engineering Officer for appropriate corrective action.

6. Pursuant to this section and Article II, Section 8 herein, Agency must reimburse BNSF in full for the actual costs of all work performed by BNSF under this Agreement (including taxes, such as applicable sales and use taxes, business and occupation taxes, and similar taxes).

7. All expenses detailed in statements sent to Agency pursuant to Article II, Section 8 herein will comply with the terms and provisions of the Title 23 U.S. Code, Title 23 Code of Federal

Regulations, and the Federal-Aid Policy Guide, U.S. Department of Transportation, as amended from time to time, which manual is hereby incorporated into and made a part of this Agreement by reference. The parties mutually agree that BNSF's preliminary engineering, design, and contract preparation costs described in Article II, Section 3 herein are part of the costs of the Project even though such work may have preceded the date of this Agreement.

8. The parties mutually agree that neither construction activities for the Project, nor future maintenance of the Structure once completed, to the extent that they occur below the deck surface or outside the barrier wall, will be permitted during the fourth quarter of each calendar year. Emergency work will be permitted only upon prior notification to BNSF's Network Operations Center (telephone number: 800 832-5452). The parties hereto mutually understand and agree that trains cannot be subjected to delay during this time period.

9. Subject to the restrictions imposed by Article IV, Section 8 above, the construction of the Project will not commence until Agency gives BNSF's Manager of Public Projects thirty (30) days prior written notice of such commencement. The commencement notice will reference D.O.T. Crossing No. 004339F and must state the time that construction activities will begin.

10. In addition to the terms and conditions set forth elsewhere in this Agreement, including, but not limited to, the terms and conditions stated in Exhibit F, BNSF and Agency agree to the following terms upon completion of construction of the Project:

- (a) Agency will own and maintain, at its sole cost and expense, the Structure, the highway approaches, and appurtenances thereto, lighting, drainage and any access roadways to BNSF gates installed pursuant to this Agreement. Underbridge lighting is the responsibility of BNSF to install and maintain. BNSF may, at its option, perform maintenance on the Structure in order to avoid conflicts with train operations. BNSF will notify Agency prior to performing any such maintenance on the Structure. In the event such maintenance involves emergency repairs, BNSF will notify Agency at its earliest opportunity. Agency must fully reimburse BNSF for the costs of maintenance performed by BNSF pursuant to this subsection (b).

- (b) Agency must, at Agency's sole cost and expense, keep the Structure painted and free from graffiti.

- (c) Agency must provide BNSF with any and all necessary permits and maintain roadway traffic controls, at no cost to BNSF, whenever requested by BNSF to allow BNSF to inspect the Structure or to make emergency repairs thereto.

- (d) It is expressly understood by Agency and BNSF that any right to install utilities will be governed by a separate permit or license agreement between the parties hereto. Notwithstanding the foregoing, it is expressly understood by the parties that the Agency has the right pursuant to this Agreement, and the Tollway Easement Agreement attached hereto and made a part hereof, to construct the structure as set forth in the Project plans and as necessary for the maintenance and operation of the toll highway system, and that BNSF has the right pursuant to this Agreement and the Tollway Easement Agreement to attach lighting, signals, signal posts, communication wires and other devices now or hereafter to be used by BNSF in the operation of its railroad to the reconstructed structures at its own expense.

- (e) In the event that storm sewers improved as part of the Project (as mentioned in Article III, Section 7, Item d) need to be replaced or improved in relation to BNSF modifications to its facility, Agency agrees to contribute half the actual cost of an in-kind replacement of the storm sewers improved as part of the Project OR half the incremental cost due to stormwater runoff from the overpass as a result of the Project, whichever is greater. Agency will have the option at the time of the BNSF improvements to disconnect all overpass drainage from BNSF storm sewers, releasing Agency from any obligation to contribute to the cost of replacement.

- (f) Agency must use its best and reasonable efforts to keep the Structure clean and free from birds, pigeons, scavengers, vermin, creatures and other animals.

- (g) If Agency (including its contractors and agents) performs (i) alterations or modifications to the Structure, or (ii) any maintenance or other work on the Structure with heavy tools, equipment or machinery at ground surface level horizontally within 25'-0" of the centerline of the nearest track, or (iii) any maintenance or other work outside the limits of the deck of the Structure vertically above the top of the rail, then Agency or its contractors and/or agents must procure and maintain the following insurance coverage, which may be changed from time to time:

Railroad Protective Liability insurance naming only **BNSF** as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the

aggregate. The policy shall be issued on a standard ISO form CG 00 35 12 04 and include the following:

- Endorsed to include the Pollution Exclusion Amendment
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to remove any exclusion for punitive damages.
- Endorsed to include Evacuation Expense Coverage Endorsement.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to **BNSF** prior to performing any work or services under this Agreement
- Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured' care, custody, and control arising out of the acts or omissions of the contractor named on the Declarations.

As used in this paragraph, "**BNSF**" means "Burlington Northern Santa Fe, LLC", "BNSF RAILWAY COMPANY" and the subsidiaries, successors, assigns and affiliates of each.

In lieu of providing a Railroad Protective Liability Policy, Agency or its contractor may participate in BNSF's Blanket Railroad Protective Liability Insurance Policy if available to Agency or its contractors. The limits of coverage are the same as above.

11. Agency hereby grants to BNSF, at no cost or expense to BNSF, a permanent right of access from Agency property to BNSF tracks for maintenance purposes.

12. Agency must provide one set of as built plans (prepared in **English Units**) to BNSF, as well as one set of computer diskettes containing as built CAD drawings of the Structure and identifying the software used for the CAD drawings. The "as built plans" must comply with the BNSF Requirements for Construction of Grade Separation Projects set forth on Exhibit F and depict all information in BNSF engineering stationing and mile post pluses. The "as built plans"

must also include plan and profile, structural bridge drawings and specifications, and drainage plans. All improvements and facilities must be shown.

13. Subject to the restrictions imposed by Article IV, Section 8 above and in accordance with the requirements of Article IV, Section 10 above, Agency must notify and obtain prior authorization from BNSF's Manager of Public Projects before entering BNSF's right-of-way for **INSPECTION OR MAINTENANCE** purposes, and the BNSF Manager of Public Projects will determine if flagging is required. If the construction work hereunder is contracted, Agency must require its prime contractor(s) to comply with the obligations set forth in Exhibit C and Exhibit C-1, as the same may be revised from time to time. Agency will be responsible for its contractor(s) compliance with such obligations.

14. In the event that BNSF shall deem it necessary or desirable in the future, in the performance of its duty as a common carrier, to raise or lower the grade or change the alignment of its tracks or to lay additional track or tracks or to build other facilities in connection with the operation of its railroad, BNSF shall, at its expense, have full right to make such changes or additions, provided such changes or additions do not change or alter the Structure herein proposed to be constructed and provided further, however, that should it become necessary or desirable in the future to change, alter, widen or reconstruct the Structure to accommodate railroad projects, the division of cost of such work, including any cost incidental to alteration of railroad or highway facilities made necessary by the alteration of the Structure shall be determined by separate agreement.

15. Agency may, at Agency's sole expense, alter or reconstruct the highway components of the Structure if necessary or desirable, due to traffic conditions or pedestrian or other recreational traffic, provided, however, that any such alteration or reconstruction, to the extent that it is below the deck surface or outside the barrier wall, must receive BNSF's prior written approval as evidenced by either a supplement to this Agreement, or execution of a new agreement that provides for the termination of this Agreement. Furthermore, any alteration or reconstruction of the highway components of the Structure will be covered by a Commission Order.

16. Any books, papers, records and accounts of the parties hereto relating to the work hereunder or the costs or expenses for labor and material connected with the construction will at all reasonable times be open to inspection and audit by the agents and authorized representatives of the parties hereto, as well as the State of Illinois and the Federal Highway Administration, for a period of three (3) years as required by 30 ILCS 500//20-65.

17. The covenants and provisions of this Agreement are binding upon and inure to the benefit of the successors and assigns of the parties hereto. Notwithstanding the preceding sentence, neither party hereto may assign any of its rights or obligations hereunder without the prior written consent of the other party.

18. In the event construction of the Project does not commence within two years of the Effective Date, this Agreement will become null and void.

19. Neither termination nor expiration of this Agreement will release either party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration.

20. To the maximum extent possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Agreement is prohibited by, or held to be invalid under, applicable law, such provision will be ineffective solely to the extent of such prohibition or invalidity and the remainder of the provision will be enforceable.

21. This Agreement (including exhibits and other documents, manuals, etc. incorporated herein) is the full and complete agreement between BNSF and Agency with respect to the subject matter herein and supersedes any and all other prior agreements between the parties hereto.

22. Any notice provided for herein or concerning this Agreement must be in writing and will be deemed sufficiently given when sent by certified mail, return receipt requested, to the parties at the following addresses:

BNSF Railway Company:

BNSF's Manager of Public Projects

Agency:

|

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by its duly qualified and authorized officials as of the day and year first above written.

BNSF RAILWAY COMPANY

By: _____

Printed Name: _____

Title: _____

WITNESS:

AGENCY

Illinois State Highway Toll Authority

By: _____

Printed Name: _____

Title: Executive Director

By: _____

Printed Name: _____

Title: Chief of Finance

By: _____

Printed Name: _____

Title: General Counsel

Approved as to Form and Constitutionality

Robert T. Lane, Sr. Assistant Attorney General

Exhibit A

[Insert drawing of the Project and/or Structure]

EXHIBIT "A-1"

Premises

|

EXHIBIT B

Tollway Easement Agreement Form

EXHIBIT B-1

Pipeline Agreement Form

EXHIBIT "G"

Excess Property

EXHIBIT “G-1”

BNSF Access Easement Area

|

EXHIBIT "C"

CONTRACTOR REQUIREMENTS

1.01 General:

- **1.01.01** The Contractor must cooperate with **BNSF RAILWAY COMPANY**, hereinafter referred to as "**Railway**" where work is over or under on or adjacent to Railway property and/or right-of-way, hereafter referred to as "Railway Property", during the construction of I-294 Tollway Overpass (004339F) reconstruction.
- **1.01.02** The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit "C-1" Agreement, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit "C-1". Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to **Rosa Martinez** or designated successor at Marsh, USA, 214-303-8519.
- **1.01.03** The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.
- **1.01.04** The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations. Railway will have the right to stop construction work on the Project if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the Project work in a manner which is hazardous to Railway property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Contractor fails to pay Railway for the Temporary Construction License or the Easement. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer or until additional insurance has been delivered to and accepted by Railway. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, Railway may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of Railway. Railway's right to stop the work is in addition to any other rights Railway may have including, but not limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop construction work on the Project, Railway agrees to immediately notify the following individual in writing:

Paul Kovacs

Chief Engineering Officer
Illinois Tollway

- **1.01.05** The Contractor is responsible for determining and complying with all applicable Federal, State and Local Governmental laws and regulations, including, but not limited to environmental laws and regulations (including but not limited to the Resource Conservation and Recovery Act, as amended; the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA), and health and safety laws and regulations. The Contractor hereby indemnifies, defends and holds harmless Railway for, from and against all fines or penalties imposed or assessed by Federal, State and Local Governmental Agencies against the Railway which arise out of Contractor's work under this Agreement.
- **1.01.06** The Contractor must notify the Illinois State Highway Toll Authority at 630-241-6800 and Railway's Manager Public Projects, telephone number 763-782-3495, at least thirty (30) calendar days before commencing any work on Railway Property. Contractor's notification to Railway must refer to Railway's file _____.
- **1.01.07** For any bridge demolition and/or falsework above any tracks or any excavations located with any part of the excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the Project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the Project is located. The Contractor must not begin work until notified by the Railway that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.
- **1.01.08** Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

1.02 Contractor Safety Orientation

- **1.02.01** No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site www.BNSFContractor.com. The Contractor must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any work is performed on the Project. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway Contractor Safety Orientation. The Contractor must renew the Railway Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Representative.

1.03 Railway Requirements

- **1.03.01** The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Agency.
- **1.03.02** The Contractor must notify the Railway's Division Engineer _____ at (_____) _____ and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.
- **1.03.03** The Contractor must abide by the following temporary clearances during construction:
 - 15'-0" Horizontally from centerline of nearest track
 - 21'-6" Vertically above top of rail
 - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
 - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
 - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
 - 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts
- **1.03.04** Upon completion of construction, unless otherwise approved, the horizontal clearances in the approved Project Plans dated _____ shall be maintained:
 - 23' 6" Vertically above top of rail
- **1.03.05** Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to the Illinois State Highway Toll Authority and must not be undertaken until approved in writing by the Railway, and until

the Illinois State Highway Toll Authority has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.

- **1.03.06** In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Agency.
- **1.03.07** The details of construction affecting the Railway's Property and tracks not included in the contract plans must be submitted to the Railway by the Illinois State Highway Toll Authority for approval before work is undertaken and this work must not be undertaken until approved by the Railway.
- **1.03.08** At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across 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 constructed and, at the completion of the Project, removed 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.BNSFContractor.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.

- **1.04.02** Contractor shall have a background investigation performed on all of its employees, subcontractors and agents who will be performing any services for Railroad under this Agreement which are determined by Railroad in its sole discretion **a)** to be on Railroad's property, or **b)** that require access to Railroad Critical Infrastructure, Railroad Critical Information Systems, Railroad's Employees, Hazardous Materials on Railroad's property or is being transported by or otherwise in the custody of Railroad, or Freight in Transit involving Railroad.

The required background screening shall at a minimum meet the rail industry background screening criteria defined by the e-RAILSAFE Program as outlined at www.everifile.com, in addition to any other applicable regulatory requirements.

Contractor shall obtain written consent from all its employees, subcontractors or agents screened in compliance with the e-RAILSAFE Program to participate in the Program on their behalf and to release completed background information to Railroad's designee. Contractor shall be subject to periodic audit to ensure compliance.

Contractor subject to the e-RAILSAFE Program hereunder shall not permit any of its employees, subcontractors or agents to perform services hereunder who are not first approved under e-RAILSAFE Program standards. Railroad shall have the right to deny entry onto its property, including the License Premises or access as described in this section above to any of Contractor's employees, subcontractors or agents who do not display the authorized identification badge issued by a background screening service meeting the standards set forth in the e-RAILSAFE Program, or who in Railroad's opinion, which may not be unreasonable, may pose a threat to the safety or security of Railroad's operations, assets or personnel.

Contractors shall be responsible for ensuring that its employees, subcontractors and agents are United States citizens or legally working in the United States under a lawful and appropriate work VISA or other work authorization.

1.05 Railway Flagger Services:

- **1.05.01** The Contractor must give Railway's **Roadmaster (telephone _____)** 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 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, upon inspection by Railway's Representative, other conditions warrant.
 - **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 will be borne by **(Agency)**. The estimated cost for one (1) flagger is approximately between \$800.00-\$1,600.00 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, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. 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 _____ freight trains per 24-hour period at a timetable speed _____ MPH and _____ passenger trains at a timetable speed of _____ 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 Railway'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.BNSFContractor.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 Railway'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 OR TEMPORARY CONSTRUCTION CROSSING, 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 RAILWAY'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** (_____). 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

(If injuries are in connection with rail equipment accident/incident, highway rail grade crossing accident or automobile accident, ensure that appropriate information is obtained, forms completed and that data entry personnel are aware that injuries relate to that specific event.)

Injured Person Type:

Passenger on train (C)

Non-employee (N)

(i.e., emp of another railroad, or, non-BNSF emp involved in vehicle accident, including company vehicles)

Contractor/safety sensitive (F)

Contractor/non-safety sensitive (G)

Volunteer/safety sensitive (H)

Volunteer/other non-safety sensitive (I)

Non-trespasser (D) - to include highway users involved in highway rail grade crossing accidents who did not go around or through gates

Trespasser (E) - to include highway users involved in highway rail grade crossing accidents who went around or through gates

Non-trespasser (J) - Off railroad property

If train involved, Train ID:

Transmit attached information to Accident/Incident Reporting Center by:

Fax 1-817-352-7595

or by Phone 1-800-697-6736

or email to: Accident-Reporting.Center@BNSF.com

Officer Providing Information:

(Name)

(Employee No.)

(Phone #)

REPORT PREPARED TO COMPLY WITH FEDERAL ACCIDENT REPORTING REQUIREMENTS AND PROTECTED FROM DISCLOSURE PURSUANT TO 49 U.S.C. 20903 AND 83 U.S.C. 490

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 IT IS NOT INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY.

I. Accident City/St: _____ 2. Date: _____ Time: _____
County: _____ 3. Temperature: _____ 4. Weather: _____
(if non BNSF location)

Mile Post / Line Segment: _____

5. Driver's License No (and state) or other ID: _____ **SSN (required):** _____

6. Name (last, first, mi): _____

7. Address: _____ City: _____ St: _____ Zip: _____

8. Date of Birth: _____ and/or Age: _____ Gender: _____
(if available)

Phone Number: _____ Employer: _____

9. Injury: _____ 10. Body Part: _____
(i.e., Laceration, etc.) (i.e., Hand, etc.)

II. Description of Accident (To include location, action, result, etc.):

12. Treatment:

- First Aid Only
- Required Medical Treatment
- Other Medical Treatment

13. Dr. Name: _____ Date: _____

14. Dr. Address:
Street: _____ City: _____ St: _____ Zip: _____

15. Hospital Name: _____

16. Hospital Address:
Street: _____ City: _____ St: _____ Zip: _____

17. Diagnosis: _____

REPORT PREPARED TO COMPLY WITH FEDERAL ACCIDENT REPORTING REQUIREMENTS AND PROTECTED FROM DISCLOSURE PURSUANT TO 49 U.S.C. 20903 AND 83 U.S.C. 490

EXHIBIT "C-1"

Agreement Between BNSF RAILWAY COMPANY and the CONTRACTOR

Railway File: _____

Agency Project: _____

Contractor Name (hereinafter called "Contractor"), has entered into an agreement (hereinafter called "Agreement") dated _____, 201_, with the Illinois State Highway Toll Authority for the performance of certain work in connection with the following Project: I-294 Tollway Overpass (004339F) reconstruction. Performance of such work will necessarily require Contractor to enter **BNSF RAILWAY COMPANY** (hereinafter called "Railway") right of way and property (hereinafter called "Railway Property"). The Agreement provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for the Illinois State Highway Toll Authority (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 Agreement, has agreed and does hereby agree with Railway as follows:

1) RELEASE OF LIABILITY AND INDEMNITY

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. **TO THE EXTENT ALLOWABLE BY LAW, 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 INTENSIONAL 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 LOCOMOTIVE 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.

In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify Railway to the fullest extent permitted by applicable law. **TO THE EXTENT ALLOWABLE BY LAW, THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILWAY FOR RAILWAY'S ACTS OF NEGLIGENCE.**

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

2) TERM

This Agreement is effective from the date of the Agreement 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.

3) INSURANCE

Contractor shall, 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 shall 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 but in no event less than the amount otherwise carried by the Contractor. Coverage must be purchased on a post 2004 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 shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- ◆ The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Waiver of subrogation in favor of and acceptable to Railway.
- ◆ Additional insured endorsement in favor of and acceptable to Railway.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to **Railway** employees.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy with regard to the work being performed under this agreement.

B. Business Automobile Insurance. This insurance shall 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

The policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- ◆ Waiver of subrogation in favor of and acceptable to Railway.
- ◆ Additional insured endorsement in favor of and acceptable to Railway.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

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

- ◆ Contractor's 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.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- ◆ Waiver of subrogation in favor of and acceptable to Railway.
- A. Railroad Protective Liability insurance naming only the **Railway** 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 12 04 and include the following:
- ◆ Endorsed to include the Pollution Exclusion Amendment
 - ◆ 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 **Railway** prior to performing any work or services under this Agreement
 - ◆ Definition of “Physical Damage to Property” shall be endorsed to read: “means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured’ care, custody, and control arising out of the acts or omissions of the contractor named on the Declarations.

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate (if available) in Railway’s Blanket Railroad Protective Liability Insurance Policy.

Other Requirements:

Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.

Contractor agrees to waive its right of recovery against **Railway** for all claims and suits against **Railway**. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against **Railway** for all claims and suits. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against **Railway** for loss of its owned or leased property or property under Contractor’s care, custody or control.

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

Contractor is not allowed to self-insure without the prior written consent of **Railway**. If granted by **Railway**, any self-insured retention or other financial responsibility for claims shall be covered directly by Contractor in lieu of insurance. Any and all **Railway** 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 services, Contractor shall furnish to **Railway** an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments. The certificate should be directed to the following address:

BNSF Railway Company
c/o CertFocus
P.O. Box 140528
Kansas City, MO 64114
Toll Free: 877-576-2378
Fax number: 817-840-7487
Email: BNSF@certfocus.com
www.certfocus.com

Contractor shall notify **Railway** in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration.

Any insurance policy shall be written by a reputable insurance company acceptable to **Railway** 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 provided.

If coverage is purchased on a "claims made" basis, Contractor hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this Agreement. Annually Contractor agrees to provide evidence of such coverage as required hereunder.

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.

Not more frequently than once every five years, **Railway** 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 shall require that the subcontractor shall provide and maintain insurance coverage(s) as set forth herein, naming **Railway** as an additional insured, and shall require that the subcontractor shall release, defend and indemnify **Railway** to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify **Railway** herein.

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

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

In the event of a claim or lawsuit involving **Railway** arising out of this agreement, Contractor will make available any required policy covering such claim or lawsuit.

These insurance provisions are intended to be a separate and distinct obligation on the part of the Contractor. Therefore, these provisions shall be enforceable and Contractor shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work covered hereunder is performed.

For purposes of this section, **Railway** shall mean "Burlington Northern Santa Fe LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

4) SALES AND OTHER TAXES

In the event applicable sales taxes of a state or political subdivision of a state of the United States are levied or assessed in connection with and directly related to any amounts invoiced by Contractor to

Railway ("Sales Taxes"), Railway shall be responsible for paying only the Sales Taxes that Contractor separately states on the invoice or other billing documents provided to Railway; *provided, however*, that (i) nothing herein shall preclude Railway from claiming whatever Sales Tax exemptions are applicable to amounts Contractor bills Railway, (ii) Contractor shall be responsible for all sales, use, excise, consumption, services and other taxes which may accrue on all services, materials, equipment, supplies or fixtures that Contractor and its subcontractors use or consume in the performance of this Agreement, (iii) Contractor shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) that Contractor fails to separately state on the invoice or other billing documents provided to Railway or fails to collect at the time of payment by Railway of invoiced amounts (except where Railway claims a Sales Tax exemption), and (iv) Contractor shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) if Contractor fails to issue separate invoices for each state in which Contractor delivers goods, provides services or, if applicable, transfers intangible rights to Railway.

Upon request, Contractor shall provide Railway satisfactory evidence that all taxes (together with any penalties, fines or interest thereon) that Contractor is responsible to pay under this Agreement have been paid. If a written claim is made against Contractor for Sales Taxes with respect to which Railway may be liable for under this Agreement, Contractor shall promptly notify Railway of such claim and provide Railway copies of all correspondence received from the taxing authority. Railway shall have the right to contest, protest, or claim a refund, in Railway's own name, any Sales Taxes paid by Railway to Contractor or for which Railway might otherwise be responsible for under this Agreement; *provided, however*, that if Railway is not permitted by law to contest any such Sales Tax in its own name, Contractor shall, if requested by Railway at Railway's sole cost and expense, contest in Contractor's own name the validity, applicability or amount of such Sales Tax and allow Railway to control and conduct such contest.

Railway retains the right to withhold from payments made under this Agreement amounts required to be withheld under tax laws of any jurisdiction. If Contractor is claiming a withholding exemption or a reduction in the withholding rate of any jurisdiction on any payments under this Agreement, before any payments are made (and in each succeeding period or year as required by law), Contractor agrees to furnish to Railway a properly completed exemption form prescribed by such jurisdiction. Contractor shall be responsible for any taxes, interest or penalties assessed against Railway with respect to withholding taxes that Railway does not withhold from payments to Contractor.

1) EXHIBIT "C" CONTRACTOR REQUIREMENTS

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Agreement, and the Contractor Requirements set forth on Exhibit "C" attached to the Agreement 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. Contractor shall execute a Temporary Construction Crossing Agreement or Private Crossing Agreement

(<http://www.bnsf.com/communities/fags/permits-real-estate/>), for any temporary crossing requested to aid in the construction of this Project, if approved by BNSF.

2) **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. The rate then in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of train delay pursuant to this agreement.

Contractor and its subcontractors must give Railway's representative (_____) eight (8) 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.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized officer the day and year first above written.

Contractor Name

BNSF Railway Company

By: _____

By: _____

Printed Name: _____

Name: _____

Manager Public Projects

Title: _____

Accepted and effective this _____ day of 20__.

Contact Person: _____

Address: _____

City: _____

State: _____ Zip: _____

Fax: _____

Phone: _____

E-mail: _____

EXHIBIT D

[Insert Cost Estimate for Railroad Work here]

Exhibit E

[Public Projects Manager's letterhead]

Exhibit F

BNSF Requirements for Construction of Grade Separation Projects

RESOLUTION NO. 21835

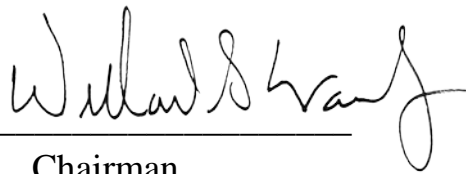
Background

It is in the best interest of The Illinois State Toll Highway Authority (“Tollway”) to enter into a settlement agreement with BNSF Railway Company for the acquisition of real estate parcel TW-5-16-134 which is necessary to reconstruct I-294.

Resolution

The proposed real estate settlement agreement is approved consistent with the terms and conditions as presented to the Board of Directors in Executive Session. The General Counsel is authorized to prepare an agreement and any other necessary documents, and the Chairman/Chief Executive Officer of the Tollway is authorized to execute said documents, subject to the approval of the General Counsel and the Chief Financial Officer, and the Chief Financial Officer is authorized to issue warrants in payment thereof.

Approved by: _____



Chairman

RESOLUTION NO. 21836

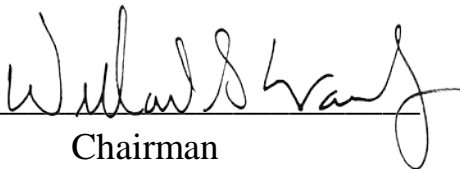
Background

It is in the best interest of The Illinois State Toll Highway Authority (the "Tollway") to settle an eminent domain matter concerning Tollway parcel TW-7-15-002 and titled *ISTHA v. Schiller Lodges, 2016L050322*.

Resolution

The proposed litigation settlement is approved consistent with the terms and conditions as presented to the Board of Directors in Executive Session. The General Counsel is authorized to prepare an agreement and any other necessary documents, and the Chairman/Chief Executive Officer of the Tollway is authorized to execute said documents, subject to the approval of the General Counsel and the Chief Financial Officer, and the Chief Financial Officer is authorized to issue warrants in payment thereof.

Approved by: _____


Chairman