

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

City of Decatur, Illinois :
Petitioner, :
 : T18-0082
v. :
 :
Norfolk Southern Railway Company, Illinois Central :
Railroad Company, and the State of Illinois, Department of :
Transportation, :
Respondents. :
 :
Petition for an Order authorizing construction of a new grade :
separation structure, relocation of a grade crossing, and :
authorization of assistance from the Grade Crossing :
Protection Fund and Multi-Modal Transportation Bond :
"Rebuild Illinois" Funds. :

FINAL ORDER

By the Commission:

PROCEDURAL HISTORY

On August 13, 2018, the City of Decatur, Illinois ("City" or "Decatur") filed a Petition with the Illinois Commerce Commission ("Commission"), naming Norfolk Southern Railroad (NS), and Canadian National Railroad, d/b/a/ Illinois Central Railroad (IC), the Illinois Department of Transportation (IDOT), and others who were later dismissed, as respondents.

On October 11, 2018, after the railroads filed documents stating their correct names, the City filed a Motion for Leave to Amend its Petition to state their names correctly as Norfolk Southern Railway Company and Illinois Central Railroad Company. The Motion for Leave to Amend the Petition also requested that Macon County and Decatur Township, which were both named as Respondents, be dismissed as their jurisdiction over the affected subject roadways had been transferred to the City.

No objections were made to the Motion. The County and Township each filed statements that each had no objection to their dismissal. The Motions were granted by Administrative Law Judge Ruling and the caption was amended accordingly

On October 30, 2019, the City filed its Amended Petition and Request for Interim Order seeking Grade Crossing Protection Fund (GCPF) assistance for design planning and other preparations for its ultimate proposal of a grade separation and improvements

to a separate crossing.

Pursuant to notice, a hearing was held before a duly authorized Administrative Law Judge of the Commission and was conducted at the Commission's offices in Springfield and Chicago by audio-visual connection on December 19, 2019 to take evidence for the requested Interim Order. At the conclusion of the hearing, the record was left open for future hearings on the project to proceed to a Final Order. An Interim Order was entered January 21, 2020 authorizing the requested interim Grade Crossing Protection Fund Assistance.

On November 23, 2020, the City filed a Motion for Leave to File an Amended Petition for Construction of New Grade Separation Crossing. On January 20, 2021, the Administrative Law Judge granted the City's Motion, and clarified that the City's Amended Petition should be correctly identified as the Second Amended Petition. On January 21, 2021, the City filed its Second Amended Petition for an Order Authorizing Construction of a New Grade Separation Structure, Permanent Closures, Installations and Expenditures. Respondent Railroads filed Answers to the City's Second Amended Petition. Revisions are made to the caption in this Order to more accurately reflect the authorization requested.

A telephonic hearing was held to take evidence for the Final Order before a duly authorized Administrative Law Judge of the Commission on December 7, 2021. At the conclusion of the hearing, the record was marked "Heard and Taken."

THE EVIDENCE

The City seeks to address safety concerns created by the proximity of two at-grade crossings within several feet of a road intersection in Decatur. The City requests a final Order to authorize the proposed construction projects and approve Grade Crossing Protection Fund assistance to pay for construction of a highway overpass at one crossing and improvements to two other public crossings.

Track and Road Configuration and Proposed Improvement

Near the intersection of Brush College Road and Faries Parkway in Decatur an Illinois Central track crosses Faries Parkway and a Norfolk Southern track crosses Brush College Road. The proximity of the street intersection to each at-grade crossing creates safety concerns. The City proposes to address these concerns by constructing a grade separation carrying Brush College Road over the NS track. This will allow the City to alter the Faries Parkway approach to the IC crossing and install automatic flashing lights and gates and bells at the IC crossing with Faries Parkway. It will also require relocation of an IC grade crossing with an east-west road, Harrison Avenue, north of the intersection. The north-south overpass will block the east-west Harrison traffic access to cross the IC tracks.

Brush College Road is a north-south street which intersects with Faries Parkway, an east-west street. An IC single track runs adjacent to Brush College Road 16 feet west of the road and crosses Faries Parkway 16 feet west of the road intersection. An NS track runs adjacent to Faries Parkway 23 feet north of the parkway and crosses Brush College Road 23 feet north of the road intersection.

The IC and NS tracks cross each other immediately northwest of the intersection, such that IC and NS trains could not pass through their respective crossings at the same time.

Difficulty of Present Configuration and Limitations of Protective Devices

The proximity of the highway intersection to the highway-rail at-grade crossings creates the need for a system to clear the vehicle intersection when a train approaches. An additional concern is that, due to the constricted space provided by the current highway and railroad geometry at this location, it is not possible to install flashing light signals, gates, or bells at either crossing.

These concerns have been addressed by a train detection circuit at each crossing that interconnects with the intersection traffic signals to simultaneously begin a pre-emption traffic signal sequence designed to allow vehicles to clear the crossing (and, also the intersection as a practical matter due to the subject configuration) before a train enters the crossing.

Additionally, because there are no flashing light signals and gates for roadway users, a flashing white light is automatically activated to alert train crews on the IC or the NS when their simultaneous preemption sequence is completed. As required by Commission Order in a prior docket (T91-0069) addressing these crossings, a train is prohibited from entering either crossing until the light applicable to that track begins flashing. If the applicable light fails to flash, the train crew must stop and ensure the way is clear before proceeding through the applicable crossing.

Crossing Blockage and Motorist Motivation to “Beat the Train”/ Collision History

Despite these protective measures, the lack of gates allows motorists to attempt to “beat the train” without any physical impediment. Train operations at these crossings frequently block the crossings for significant amounts of time. The land use near the crossings is industrial, with several large industrial complexes including Archer-Daniels Midland (ADM) and an affiliated intermodal port facility nearby generating much of the highway and rail traffic.

Motorists familiar with these crossings may be motivated to beat the train to avoid the potential for a significant time delay. Since 1990, there have been 17 train-vehicle collisions at the NS crossing and four train-vehicle collisions at the IC crossing. The collisions resulted in one injury at the NS crossing, no injuries at the IC crossing, and no fatalities at either crossing.

Proposed Resolution

The City has studied various alternatives and determined the best option to address the concerns is, as noted above, the construction of a highway grade separation carrying Brush College Road over the NS track which will then allow improvements on Faries Parkway as it approaches the IC crossing and room to install automatic flashing lights and gates and bells at the IC crossing with Faries Parkway.

It will also require modification to Harrison Road and relocation of the IC crossing to a point north of the overpass. To allow continued access to ADM facilities a north-south extension of Harrison Road will be constructed from the point where it will be blocked by the overpass to a point approximately 500 feet north where it will be re-oriented to the east and cross Faries and the IC track at grade. Automatic flashing lights and gates and bells will be installed at the relocated crossing.

The overpass will also eliminate a north-south pedestrian at-grade crossing over Faries parkway and the NS track, presently indicated only by curb cut-outs. The at-grade crossing will be replaced with a sidewalk on the overpass.

An east-west pedestrian grade crossing over Bush College Road and the IC track will remain at the south leg of the intersection. Automatic flashing lights and gates will be installed for the roadway vehicle crossing, thus alerting pedestrians as well as vehicle traffic.

Design plans for all components of the project were admitted into evidence. The plans admitted into evidence have been and approved by the parties. All work shall be completed in substantial compliance with the plans admitted into evidence.

It is agreed that no work on this project shall be commenced or undertaken within, on, over, or under any NS right of way prior to execution of a construction and maintenance agreement between the City and NS, and that neither the NS nor the City shall unreasonably delay negotiation and execution of a construction and maintenance agreement or right of entry agreements.

Maintenance

The City of Decatur has agreed it will be solely responsible for the future maintenance of the Brush College Road bridge substructure, superstructure, and highway approaches, whether they be located on or off either railroad's right-of-way.

Blockage and Vehicle and Train Counts

Blockage

The City commissioned a count of the train blockages at the subject Brush College Road and Faries Parkway crossings as part of a traffic efficiency study in 2013. The study

found the Brush College Road crossing to be blocked by trains an average of 198 times per week and an average of 17.2 hours per week. The study found the Faries Parkway crossing to be blocked by trains 13 times per week. Thus, as the study concluded, Brush College Road at its crossing with the NS track is blocked significantly more often than Faries Parkway at its crossing with the IC track.

Traffic - Brush College Road and NS

This Brush College Road crossing with NS's track is located at NS milepost IT-43.60 and inventoried as AAR/DOT #328516E. Approximately 9,800 vehicles, including 22% heavy commercial trucks, cross the NS's track each day according to a 2015 traffic count reported by IDOT. The motor vehicular speed limit on Brush College Road is 30 miles per hour at the crossing location. On average, approximately six trains per day use this NS track at a maximum authorized train speed of 10 miles per hour, per train operational information reported by NS to the Federal Railroad Administration in 2017. However, the number of trains can vary considerably, and one train that is switching railcars may, on occasion, go back and forth and block the crossing multiple times in succession.

Traffic - Faries Parkway and IC

Faries Parkway is a generally east-west public street which is owned, maintained, and under the jurisdiction of the City at the point where it crosses IC's single track immediately west of the intersection of Brush College Road and Faries Parkway in Decatur. This highway-rail grade crossing is inventoried as AAR/DOT #291386B and exists at milepost 0.83 on IC's Staley Lead Branch. Approximately 7,400 vehicles, including 21% heavy commercial trucks, cross the IC's track each day according to a 2015 traffic count reported by IDOT. The motor vehicular speed limit on Faries Parkway is 35 miles per hour at the crossing location. On average, approximately 12 trains per day use the IC's track at a maximum authorized train speed of 10 miles per hour, per train operational information reported by IC to the Federal Railroad Administration in 2015.

Traffic - Harrison Avenue and IC

Harrison Street is a generally east-west public street which is owned, maintained, and under the jurisdiction of the City at the point where it crosses IC's single track north of the intersection of Brush College Road and Faries Parkway in Decatur. This highway-rail grade crossing is inventoried as AAR/DOT #291384M and exists at approximate milepost 0.73 on IC's Staley Lead Branch. Approximately 125 vehicles, including 8% heavy commercial trucks, cross the IC's track each day according to a 2015 traffic count reported by IDOT. The motor vehicular speed limit on Harrison Avenue is 30 miles per hour at the crossing location. On average, approximately 12 trains per day use the IC's track at a maximum authorized train speed of 10 miles per hour, per train operational information reported by IC to the Federal Railroad Administration in 2015.

Plans, Construction, Funding and Completion Schedules

Staff previously recommended and the Commission Ordered that GCPF be authorized for the interim need of refunding the City's costs for preliminary engineering activity and utility relocation, in an amount not to exceed \$2.95 Million. All of those costs were needed to complete the full engineering of the 90% plans, which were completed May 11, 2021.

The 90% plans were admitted into evidence. The plans meet all clearance requirements of the Commission and IDOT. Final "100% plans" have since been submitted by the City and are pending approvals by the railroads and IDOT. No significant changes to the 90% plans are being proposed by the parties. Construction of the project will be consistent with the 90% plans admitted as evidence.

The City's access to the interim GCPF funds also was also used to qualify for matching funds from other sources. There were no excess disbursements on the Interim assistance authorized.

Cost estimates for the Brush College Road/Faries Parkway/NS Grade Separation Project were originally prepared in 2013 as part of the Brush College Road Improvement Project design report. Since that time, costs have increased due to inflation in the construction marketplace.

Table 1 (below) lists the total anticipated project costs, reflecting the 100% complete plans.

Table 1			
Brush College Road/Faries Parkway Project Budget			
<u>Item</u>	<u>Vendor</u>	<u>Start Year</u>	<u>Est. Cost in Start Year</u>
<u>ROW Acquisition</u>	<u>Consultant</u>	<u>2018</u>	<u>\$5,800,000</u>
<u>Preliminary Engineering</u>	<u>Engineer</u>	<u>2018</u>	<u>\$3,925,745</u>
<u>Utility Relocation</u>	<u>Ameren</u>	<u>2018</u>	<u>\$4,150,000</u>
<u>Utility Relocation</u>	<u>AT&T</u>	<u>2021</u>	<u>\$153,564</u>
<u>Construction Engineering</u>	<u>Engineer</u>	<u>2021</u>	<u>\$4,541,821</u>
<u>Grade Separation Construction</u>	<u>Contractor</u>	<u>2021</u>	<u>\$39,707,016</u>
<u>Grade Separation Construction</u>	<u>NS</u>	<u>2021</u>	<u>\$600,506</u>
<u>Grade Separation Construction</u>	<u>IC</u>	<u>2021</u>	<u>\$776,481</u>
<u>Contingencies for Unanticipated Conditions</u>	<u>Contractor</u>	<u>2021</u>	<u>\$3,014,867</u>
<u>Total</u>			<u>\$62,670,000</u>

Table 2 (below) shows the project funding plan.

Table 2					
Brush College Road /Faries Parkway Project Funding Plan					
<u>Name of Grant</u>	<u>Source</u>	<u>Assumed Award Year</u>	<u>Amount Secured</u>	<u>Additional Amount Requested</u>	<u>Total</u>
<u>Illinois Jobs Now Grant</u>	<u>State</u>	<u>2016</u>	<u>\$3,500,000</u>	<u>\$0</u>	<u>\$3,500,000</u>
<u>Freight Program Funds</u>	<u>Federal</u>	<u>2018</u>	<u>\$34,000,000</u>	<u>\$0</u>	<u>\$34,000,000</u>
<u>Grade Crossing Protection Fund</u>	<u>ICC</u>	<u>FY20-23</u>	<u>\$2,950,000</u>	<u>\$12,000,000</u>	<u>\$14,950,000</u>
<u>Multi-Modal Transportation Bond Fund</u>	<u>ICC</u>	<u>FY22-23</u>	<u>\$0</u>	<u>\$6,000,000</u>	<u>\$6,000,000</u>
<u>NS Railway</u>	<u>NS</u>	<u>2021-23</u>	<u>\$1,000,000</u>	<u>\$0</u>	<u>\$1,000,000</u>
<u>City of Decatur Funds</u>	<u>City</u>	<u>2018-23</u>	<u>\$3,220,000</u>	<u>\$0</u>	<u>\$3,220,000</u>
<u>Total</u>	<u>All</u>	<u>2016-23</u>	<u>\$42,170,000</u>	<u>\$18,000,000</u>	<u>\$62,670,000</u>

The NS has agreed to contribute a \$1 million lump sum payment to the City, as and for its entire cost participation obligation for Phase III Project construction in substantial accordance with the 90% plans admitted as evidence.

Per Table 2 above, Staff has programmed \$12 million in additional GCPF assistance to reimburse the City for various eligible expenses to: 1) construct the highway overpass grade separation structure over the NS track above the current location of the NS crossing 328516E on Brush College Road; 2) gate the IC crossing 291386B on Faries Parkway, and; 3) relocate and gate the IC crossing 291384M on Harrison Avenue. Accordingly, the total GCPF that has been recommended to date by Staff is not to exceed \$14.95 million combined for all phases (preliminary engineering, utility relocation, right of way acquisition, construction engineering, and project construction).

Also per Table 2, Staff has programmed not to exceed \$6 Million from the Multi-Modal Transportation Bond Fund (also known as Rebuild Illinois Program) to be used as matching funds for the GCPF and other funding sources the City has already secured for the design and construction of the overall improvements.

The programmed amounts from GCPF and the Multi-Modal Transportation Bond Fund are recommended by Staff to reimburse actual costs not to exceed the recommended amount, all subject to the terms stated in the Findings and Ordering provisions of this Order. The City anticipates the construction to be completed on or before December 31, 2025.

RESPONDENTS' POSITIONS

Respondents IC, NS, and IDOT have no objection to the City's Petition and Request for Final Order for the release of additional GCPF assistance for the City's eligible Right of Way Acquisition, Engineering, Utility Relocation, and Construction costs, per the proposed final cost division table to follow herein.

IC will pay no costs, except for future maintenance of automatic warning devices and crossing surfaces, per 92 Illinois Administrative Code part 1535, as IC is not having any public at grade crossing replaced by the proposed grade separation structure.

The NS agrees contribute a \$1 million lump sum, as and for its entire cost participation obligation for the Project, as set forth in the 90% plans admitted as evidence. The City and NS agree that the future maintenance of the Brush College Road bridge substructure, superstructure, and highway approaches will be the sole responsibility of the City.

The City will accept NS' \$1 million payment in complete and full satisfaction of NS' entire cost participation obligation for the Project. The NS agrees neither the City nor its contractors will be required to submit documentation of work performed or payment made for said work, as a condition of the NS paying the City \$1 million in one lump sum at the close out of the project. The parties agree that \$1 million is a liquidated amount, representing the negotiated settlement of a disputed participation obligation, and that this negotiated settlement will be presented to the ICC, for entry into an Order authorizing construction of a grade separation overpass and other improvements at the intersection of Brush College Road and Faries Parkway in Decatur.

STAFF'S POSITION

Staff has no objection to the City's Petition and Request for Final Order for the release of additional GCPF assistance for the City's eligible Right of Way Acquisition, Engineering, Utility Relocation, and Construction costs, per the proposed final cost division table to follow herein.

Staff recommends that a Final Order be approved granting the City's request for an additional \$12 Million of GCPF assistance for refunding up to 100% of the City's eligible Right of Way Acquisition, Engineering, Utility Relocation, and Construction costs, or in such other percentages as needed to match other funding sources, per the proposed final cost division table to follow herein. The new GCPF "not to exceed" limit is \$14.95 Million when added to the \$2.95 Million of GCPF allocated in the prior Interim Order.

Staff further recommends that an amount not to exceed \$6 Million from the Multi-Modal Transportation Bond Fund be allocated to be used as matching funds for the GCPF and other funding sources the City has already secured for the costs of the overall improvements.

COMMISSION ANALYSIS

The Commission believes the project as proposed is appropriate and in the interest of public safety, convenience and necessity and should be supported by a Final Order allocating the additional Grade Crossing Protection Fund assistance and Multi-Modal Transportation Bond Fund in the amounts recommended by Staff and as agreed by the Parties.

FINDINGS AND ORDERING PARAGRAPHS

The Commission, having given due consideration to the entire record herein, finds:

- (1) Petitioner, City of Decatur is a body politic and corporate, organized and existing under and by virtue of the laws of the State of Illinois;
- (2) Respondent, Illinois Department of Transportation is a Department of the State of Illinois which exists by virtue of the laws of the State of Illinois;
- (3) Respondents, Illinois Central Railroad Company and Norfolk Southern Railway Company, are rail carriers engaged in the transportation of either or both property and passengers for hire in the State of Illinois, as defined by the ICTL, 625 ILCS 5/18/c-1104(30);
- (4) The Commission has jurisdiction over the parties and the subject matter of this proceeding;
- (5) The recitals of fact and conclusions of law contained in the prefatory portion of this order are supported by the record and are hereby adopted as findings of fact and conclusions of law;
- (6) The City of Decatur should be authorized to utilize additional Grade Crossing Protection Fund assistance for refunding up to 100% of the City's eligible Right of Way Acquisition, Engineering, Utility Relocation, and Construction costs, or in such other percentages as needed to match other funding sources, per the proposed final cost division table to follow herein, which activities are needed for: a) the elimination of the Norfolk Southern Railway Company's highway-rail grade crossing of Brush College Road (AAR/DOT# 328516E at NS milepost IT-43.60), so that said crossing will be replaced by a highway-rail grade separation structure over Norfolk Southern's track at substantially the same location; b) associated roadway geometry improvements at the Illinois Central Railroad Company's highway-rail grade crossing of Faries Parkway (AAR/DOT# 291386B at milepost 0.83 the Staley Lead Branch) to allow the addition of gates and median barriers at that crossing, and c) the relocation and gating of the IC crossing 291384M on Harrison Avenue and any alternate public street access that may be necessary to accomplish a) and b); and the City of Decatur should be

authorized and directed to proceed with the implementation of the construction all in substantial compliance with the plans admitted into evidence.

- (7) The City of Decatur shall be solely responsible for the future maintenance of the Brush College Road bridge substructure, superstructure, and highway approaches, whether they be located on or off either railroad’s right-of-way.
- (8) It is fair and reasonable that the Secretary of the Illinois Department of Transportation, through the Grade Crossing Protection Fund of the Motor Fuel Tax Law and Multi-Modal Transportation Bond Fund, should be authorized to refund the City’s eligible Right of Way Acquisition, Engineering, Utility Relocation, and Construction costs, per the following cost division table:

PROJECT PHASE	TOTAL ESTIMATED COST	ALREADY SECURED NON-GCPF FUNDS	GCPF TOTAL NOT TO EXCEED	Multi-Modal Transportation Bond Fund TOTAL NOT TO EXCEED	NS LUMP SUM PAYMENT
Preliminary Engineering	\$3,925,745	\$2,975,745	\$1,525,745 ¹	\$0	\$0
Utility Relocation	\$4,303,564	\$2,303,564	\$2,000,000 ¹	\$0	\$0
Right of Way Acquisition	\$5,800,000	\$5,800,000	\$0 ³	\$0	\$0
Project Construction +Contingency	\$44,098,870	\$26,594,615	\$10,124,255 ²	\$6,000,000	\$1,000,000
Construction Engineering	\$4,541,821	\$3,241,821	\$1,300,000 ²	\$0	\$0
TOTALS	\$62,670,000	\$40,720,000	\$14,950,000⁵	\$6,000,000⁴	\$1,000,000⁶

Notes:

¹Values of Preliminary Engineering and Utility Relocation are based on known costs with executed agreements in place and approved by the City Council for each activity. The City is not requesting additional GCPF for Preliminary Engineering and Utility Relocation.

²City requesting GCPF assistance for up to 100% of any unfunded remainder for City’s eligible costs in order to match other funding sources, as needed. Total GCPF not to exceed \$14,950,000 [\$2.95 Million interim GCPF + \$12 Million additional GCPF]. The City may later Petition to request additional GCPF assistance if unanticipated project overruns occur. City needs access to GCPF funds to meet the matching requirements for other federal and state funds, and accordingly the final GCPF amount is to be determined by subsequent accounting, and potential for credits going back to the GCPF upon determination of the known final costs in this Docket.

³City does not anticipate needing GCPF assistance for Right of Way Acquisition. However, the City understands it may later Petition to request such assistance.

⁴Total Multi-Modal Transportation Bond Fund assistance not to exceed \$6,000,000.

⁵“GCPF-eligible” items are: Preliminary Engineering, Utility Relocation, Right-of-Way, Project Construction, and Construction Engineering/Administration. Multi-Modal Transportation Bond Fund eligibility applies to Project Construction only. Anywhere within the project limits in the admitted 90% plans will be considered as being within “touchdown to touchdown” limits, including necessary connecting road(s) and public crossing relocation(s).

⁶As and for its entire cost participation for the project, NS shall contribute a total amount of \$1 Million. NS

shall pay that \$1 Million to the City of Decatur in one lump sum at the close out of the project. The future maintenance of the Brush College Road bridge structure, superstructure, and highway approaches shall be the sole responsibility of the City of Decatur.

- (9) The City of Decatur should be granted time, to and including December 31, 2025, to complete the work required in this docket;
- (10) The City of Decatur shall, at six (6) month intervals from the date of this Final Order, submit to the Director of Processing and Information, Transportation Bureau of the Commission, a Project Status Report regarding the progress made toward completion of the work required in this docket. Each Project Status Report shall include this Commission Order's docket number, reference to AAR/DOT# 328516E NS Brush College Road the Final Order date, the required completion date as noted in finding (8), and the name, title, mailing address, phone number, facsimile number, and electronic mailing address of the City's Project Manager;
- (11) All bills for eligible costs specified in the findings and Ordering provisions of this Order authorized for reimbursement from the GCPF and Multi-Modal Transportation Bond Fund shall be submitted to the Attn: Engineer of Local Roads and Streets, Illinois Department of Transportation District 7, 400 W Wabash, Effingham, IL 62401. All bills shall meet the minimum documentation requirements set forth in the findings and Ordering provisions of this Order. All bills will be paid in accordance with the State Prompt Payment Act as currently enacted (Illinois Compiled Statutes, 30 ILCS 540/). IDOT shall send a copy of all invoices to the Director of Processing and Information, Transportation Bureau of the Commission. All bills shall be submitted no later than twelve (12) months from the completion date specified in finding (9) of this Interim Order, or any Supplemental/Final Order(s) issued for the project. The final invoice for expenditures from the City of Decatur shall be clearly marked "Final Order-Final Invoice."
- (12) For all items authorized for reimbursement, to begin from the date of this Order, from the GCPF and Multi-Modal Transportation Bond Fund, the City of Decatur shall assure that sufficient documentation for all bills is made available for review by the Illinois Department of Transportation or IDOT's representative. IDOT shall process all reimbursement requests in accordance with the Federal-Aid Policy Guide, 23 CFR 140.922, and the State of Illinois travel regulations. For purposes of the contract obligation document, IDOT will need the name of the payee, payee's Tax Identification Number (TIN) and the dollar amount payable to the payee. The minimum documentation that must be made available for reimbursement from the GCPF and Multi-Modal Transportation Bond Fund and associated contract obligation document is outlined below:
 - a) Labor Charges (including additives) - Copies of employee work hours charged to the railroad account code for the project.

- b) Equipment Rental - Copies of rental agreements for the equipment used, including the rental rate; number of hours the equipment was used and railroad account code for the project.
- c) Material – An itemized list of all materials purchased and installed at the crossing location. If materials purchased are installed at multiple crossing locations, a notation must be made to identify the crossing location. Scale tickets shall be provided to verify quantities.
- d) Engineering - Copies of employee work hours charged to the railroad account code for the project.
- e) Supervision - Copies of employee work hours charged to the railroad account code for the project.
- f) Incidental Charges - An itemized list of all incidental charges along with a written explanation of those charges.
- g) Service Dates - Invoice shall include the beginning and ending date of the work accomplished for the invoice.
- h) Final or Progressive - Each invoice shall be marked as a “Progressive Invoice” or a “Final Invoice”, as applicable.
- i) Reference Numbers - Each invoice shall include the AAR/DOT number, the Commission Order number and the state job number when federal funds are involved.
- j) Locations - Each invoice shall show the location, with the street name and AAR DOT crossing inventory number.
- k) Travel – Each invoice shall include copies of all costs incurred, such as lodging, meals, per diem, rates and totals. Rail carriers shall provide an electronic copy of its current Rail Carrier Travel Policy. Reimbursement of travel costs shall be in accordance with State of Illinois travel regulations under 80 Illinois Administrative Code part 3000 and appendices. Any proposal or attempt to use an alternative travel reimbursement method must be reviewed and approved by IDOT prior to travel.

Reimbursement of railroad labor additives (for Railroad Force Account and Railroad Flagging) will be for the most current audited and Federal Highway Administration approved company rates that have been entered into the Company billing system, as of the date of an invoice, for application to invoices for this project covered by this Order. Reimbursement of labor additives will be limited to only the most current direct labor additives, small tools additives, equipment additive rate, if so developed, and the public liability/property damage liability insurance rates as audited and approved by a cognizant State agency and the Federal Highway Administration. Indirect overhead or general and administrative expenses, or those expenses which may be classified as such under generally accepted accounting principles, are not eligible for reimbursement on this project. Surcharges will be subject to review and approval by IDOT;

- (13) Any activities that the City or its contractor(s) may need to perform on Norfolk Southern Railway Company or Illinois Central Railroad Company right of way will require railroad flagging and railroad protective liability insurance approvals by the affected railroad and the execution of a contractor right of entry agreement; no work on this project shall be commenced or undertaken within, on, over, or under any NS right of way prior to execution of a construction and maintenance agreement between the City and NS; neither the NS nor the City shall unreasonably delay negotiation and execution of a construction and maintenance agreement or right of entry agreements;
- (14) All items encompassed by this Order should be undertaken in accordance with all applicable State and Federal laws, rules, standards, regulations and orders and procedures in general;
- (15) 625 ILCS 5/18c-1701 and 1704 require each “person”, as defined by Section 18c-1104, to comply with every regulation or order of the Commission. These sections further provide that any person who fails to comply with a Commission regulation or order shall forfeit to the state not more than \$1,000 for each such failure, with each day’s continuance of the violation being considered a separate offense. While the Commission expects all parties to comply with all matters addressed herein and in a timely manner, the Commission advises that any failure to comply may result in the assessment of such sanctions;
- (16) Any person making a Request for an Extension of Time up to 30 days to complete a project ordered by the Commission must file a request with the Director of Processing and Information no later than 14 days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request;
- (17) Any person making a Request for an Extension of Time that exceeds 30 days must file a Petition for Supplemental Interim Order with the Director of Processing and Information no later than 21 days in advance of the scheduled deadline. The Commission will decide Petitions for Supplemental Interim Orders;
- (18) Requests for Extension of Time and Petitions for Supplemental Interim Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request for Extension of Time or a Petition for Supplemental Interim Order, the person must notify the Commission’s Rail Safety Program Administrator that he/she is unable to complete the project within the ordered timeframe; and
- (19) The Commission or its Administrative Law Judge reserves the right to deny Petitions for Supplemental Interim Orders and Requests for Extension of Time, if the reason(s) supporting the request is (are) insufficient or where it

appears the person has not made a good faith effort to complete the requirements herein within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS THEREFORE ORDERED that the project cost division among the parties, and the funding assistance be authorized from the Grade Crossing Protection Fund of the Motor Fuel Tax Law and the Multi-Modal Transportation Bond Fund to be utilized by the City of Decatur, Illinois as the allocations are set out in in the findings and Ordering provisions of this Order for Engineering and Utility Relocation activities and construction costs needed to: a) eliminate the Norfolk Southern Railway Company's highway-rail grade crossing of Brush College Road (AAR/DOT# 328516E at NS milepost IT-43.60), and replace said crossing with a highway-rail grade separation structure over Norfolk Southern's track at substantially the same location and substantially in conformance with the 90% plans identified and depicted in the Exhibits admitted into evidence b) associated roadway geometry improvements at the Illinois Central Railroad Company's highway-rail grade crossing of IC crossing 291386B on Faries Parkway to allow the addition of gates and median barriers at that crossing, and c) the relocation and gating of the IC crossing 291384M on Harrison Avenue and any alternate public street access that may be necessary to accomplish a) and b); and the City of Decatur is authorized and directed to proceed with the implementation of the construction all in substantial compliance with the plans admitted into evidence.

IT IS FURTHER ORDERED that the City of Decatur shall be solely responsible for the future maintenance of the Brush College Road bridge substructure, superstructure, and highway approaches, whether they be located on or off either railroad's right-of-way.

IT IS FURTHER ORDERED that no work on this project shall be commenced or undertaken within, on, over, or under any NS right of way prior to execution of a construction and maintenance agreement between the City and NS; neither the NS nor the City shall unreasonably delay negotiation and execution of a construction and maintenance agreement or right of entry agreements.

IT IS FURTHER ORDERED that reimbursements from the Grade Crossing Protection Fund of the Motor Fuel Tax Law and the Multi-Modal Transportation Bond Fund are subject to the terms stated in the Findings.

IT IS FURTHER ORDERED that the City of Decatur is hereby granted time, to and including December 31, 2025, to complete the improvements required in this docket.

IT IS FURTHER ORDERED that the City of Decatur shall comply in all manners with Findings (9) through (19) herein, inclusively.

IT IS FURTHER ORDERED that this is a final Order which terminates the proceedings as contemplated by Section 3-101 of the Administrative Review Law (735 ICLS 5/3-101; Administrative Review of Final Orders is subject to the rehearing

requirement of 83 Ill. Adm. Code 200.880(d) and the post-trial motion provisions of Section 2110 of the ICTL (625 ILCS 5/18c) and governed by Sections 2201 through 2206 of the Illinois Commercial Transportation Law (625 ILCS 5/18c) and is subject to the Administrative Review Law to the extent made applicable in those sections.

By Order of the Commission this 16th day of December 2021.

(Signed) CARRIE ZALEWSKI
CHAIRMAN