This agreement, hereinafter referred to as the "AGREEMENT", made and entered into by and between the STATE OF ILLINOIS, acting by and through its Department of Transportation, hereinafter referred to as the "STATE", and BNSF RAILWAY COMPANY, hereinafter referred to as the "COMPANY", collectively referred to as the "PARTIES" and individually referred to as "PARTY".

WITNESSETH:

WHEREAS, Route FAI 74 (I-74) as presently located and constructed in the north half of Section 32, Township 18 North, Range 1 West of the Fourth Principal Meridian in the City of Moline, Rock Island County, Illinois, there crosses the track of the COMPANY by means of a highway overpass structure (Existing Structure Nos. 081-0142 WB & 081-0143 EB, DOT/AAR No. 093 673T, M.P. 249.46); and

WHEREAS, the existing highway overpass structure was originally constructed in 1975 by the STATE under Section 81B; and

WHEREAS, the said highway overpass structure is currently maintained by the STATE; and

WHEREAS, in the interest of public safety and convenience, the STATE hereto desires to completely remove the existing overpass structures and replace them on a new alignment and perform other necessary work substantially as shown on the prints of the general drawings marked Exhibit "A", (Sheets 1 through 13) attached hereto and made a part hereof; and hereinafter referred to as the "PROJECT"; and

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WHEREAS, the STATE has provided the engineering plans and special provisions to the COMPANY and has requested from the COMPANY to provide its review and comments on the engineering plans; and

WHEREAS, the STATE will seek the necessary approval from the Illinois Commerce Commission in accordance with ILCS 5/18c-7401 and 92 Illinois Administrative Code 1535 to take jurisdiction in this matter and enter such Orders as may be necessary; and

WHEREAS, the proposed PROJECT requires the services of COMPANY flaggers(s); and

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

<u>SECTION 1</u>. The preliminary and detailed plans, specifications and special provisions for the PROJECT shall be prepared by or for the STATE at its expense; and all such plans, specifications and special provisions, affecting the interests of the COMPANY, shall be subject to the reasonable approval by the COMPANY's authorized representative.

<u>SECTION 2.</u> The plans and estimates of cost for changes in the COMPANY's facilities and appurtenances on the COMPANY's right-of-way, as necessitated by the proposed improvement, shall be prepared by or on behalf of the COMPANY at the expense of the STATE; and, all such plans and estimates shall be subject to the reasonable approval by an authorized representative of the STATE.

<u>SECTION 3</u>. No changes shall be made on any approved plans, specifications or special provisions by either PARTY hereto without the consent in writing of the other PARTY.

<u>SECTION 4</u>. The PARTIES hereto shall construct or cause to be constructed, in substantial accordance with the approved plans, specifications and special provisions, the following items of work:

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- (I) <u>WORK BY THE STATE</u>. The STATE shall furnish or cause to be furnished, at its expense, all the labor, materials and work equipment required to perform and complete:
 - (a) The preliminary engineering required for preparation of plans, specifications and special provisions for the PROJECT as set forth in this AGREEMENT.
 - (b) The removal of the existing structures (081-0142 WB & 081-0143 EB) and replacing them with proposed structures (081-0177 WB & 081-0178 EB) along with Ramp 6th - C (081-0186) and Ramp 6th - D (081-0187).
 - (c) Engineering and inspection as set forth in this AGREEMENT.
 - (d) Incidental work necessary to complete the items hereinabove specified.

The STATE's work shall be awarded to a competent and experienced contractor(s) who has (have) adequate equipment, organization and finances, and the COMPANY shall be notified of the contractor(s) receiving such award for all work affecting the COMPANY's interest.

(II) <u>WORK BY THE COMPANY</u>. The COMPANY shall furnish or cause to be furnished, at the expense of the STATE, and in accordance with the stipulations as contained in the Federal-Aid Policy Guide, 23 C.F.R. §140.900, and supplements, all the labor, materials and work equipment required to perform and complete:

(a) All temporary and permanent alterations or relocations of communication and signal wire lines, signals and railroad appurtenances on its right-ofway as may be necessitated by the construction of the PROJECT.

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- (b) Engineering review of the plans, specifications and special provisions for the proposed structure over the railroad and engineering and inspection as set forth in this AGREEMENT.
- (c) The furnishing of flagman as required for protection of railroad traffic in conjunction with the work to be performed by the STATE or its contractors as set forth in this AGREEMENT. It is estimated that one (1) flagger will be required for approximately 275 days.

(d) Incidental work necessary to complete the items hereinabove specified.

The estimated cost of COMPANY's work set forth above with the exception of flagging is $\frac{44,4400}{200}$ as shown on the detailed estimate(s) attached hereto and marked as Exhibit B.

Per the Alternative Federal-State procedure in 23 CFR § 646.220, the STATE will certify that the work at the job site is complete, acceptable and in accordance with the terms of this AGREEMENT. A representative of the STATE shall be present at the job site during construction to inspect the work and to assure that all work and materials meet the requirements as set forth in the STATE's "Standard Specifications for Road and Bridge Construction" adopted April 1, 2016, and the "Supplemental Specifications and Recurring Special Provisions" in effect on the date of the invitation for bids. The COMPANY shall give the STATE a seventy-two (72) hour notice in advance of commencement of the work set forth in this AGREEMENT.

<u>SECTION 5</u>. The STATE shall require its contractor(s) to perform his/her (their) work in accordance with the STATE's "Standard Specifications for Road and Bridge Construction" adopted April 1, 2016, and the "Supplemental Specifications and Recurring Special Provisions" in effect on the date of invitation for bids. A single Railroad Protective Liability Insurance policy, naming the COMPANY, shall be carried in limits of \$5,000,000 combined single limit per

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occurrence for bodily injury liability and property damage liability with an aggregate limit of \$10,000,000 over the life of the policy as set forth in Federal-Aid Policy Guide, Chapter I, Subchapter G, Part 646, Subpart A (23 CFR 646A).

SECTION 6. The COMPANY agrees to make all reasonable efforts to furnish the services of a COMPANY-employed or COMPANY-contracted flagger or flaggers. The COMPANY further agrees that should a railroad emergency or other extraordinary situation occur and the COMPANY is unable to provide a flagger or flaggers when needed by the STATE's contractor, the COMPANY may provide other means of protecting its facilities. These alternate means shall be acceptable to the STATE and the COMPANY. Nothing contained herein shall preclude or limit the COMPANY's right to require or provide a railroad flagger or alternate means shall be provided by the COMPANY's sole judgment, such railroad flagger is necessary. Said railroad flagger or alternate means shall be provided by the COMPANY at the STATE's sole cost and expense.

All flagging invoices shall be submitted by the COMPANY to the STATE as set forth in this AGREEMENT. All COMPANY's eligible costs associated with this PROJECT will be reimbursed to the COMPANY directly by the STATE with the exception of flagging services. All flagging costs will be paid by the STATE's contractor to the COMPANY in accordance with Section 109.05 of the "Standard Specifications for Road and Bridge Construction" adopted April 1, 2016, and the "Supplemental Specifications and Recurring Special Provisions" in effect on the date of the invitation for bids.

The flagging invoices should include sufficient identification numbers such as STATE's Job Number, Section Number, Contract Number and project location, so that the STATE is able to apply the invoices to the appropriate account.

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The STATE shall require the contractor(s) to notify the COMPANY at least thirty (30) calendar days in advance of the need of flagging services. For the purposes of this AGREEMENT, a calendar day is defined as any day shown on the calendar.

<u>SECTION 7</u>. Subsequent to the award of any contract(s), and before any work is started on this PROJECT, a pre-construction conference shall be held between the STATE, COMPANY, and the interested contractor(s), at a time and place as designated by the STATE's representative, for the purpose of coordinating the work to be performed by the several PARTIES, and at which time a schedule of operations will be adopted.

<u>SECTION 8</u>. Each PARTY for carrying out its work as herein set forth, will provide the necessary preliminary and construction engineering and inspection and the costs for such services shall be borne by the STATE.

<u>SECTION 9</u>. The temporary minimum clearances, with reference to the COMPANY's track, of any necessary falsework, bracings or forms as required for the construction of the highway overpass structure, shall be not less than:

Vertical – the existing vertical clearances above the top of rails but no less than 21.5'

above top of high rail; and

Lateral – 9' from centerline of the track.

<u>SECTION 10</u>. The STATE shall require its contractor(s), upon the completion of the work of such contractor(s), to remove from within the limits of the COMPANY's right-of-way all machinery, equipment, surplus materials, falsework, rubbish or temporary buildings of such contractor(s), and to leave the right-of-way upon which the said contractor(s) carried on operations in a neat condition, reasonably satisfactory to the authorized representative of the COMPANY.

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SECTION 11. The STATE shall require its contractor(s), before entering upon the COMPANY's right-of-way for performance of any construction work, or work preparatory thereto, to secure a fully executed, standard-form right-of-entry agreement from the COMPANY prior to entry onto the COMPANY's right-of-way for the occupancy and use of the COMPANY's right-of-way outside the limits of the STATE's easements and to comply with all COMPANY recommendations relative to the requirements for right-of-entry agreements, required insurance and general safety regulations to the extent that such requirements do not conflict with applicable State laws or Illinois Administrative Codes.

SECTION 12. The safety and continuity of operation of the traffic of the COMPANY shall be at all times protected and safeguarded, and the STATE shall require its employees and contractor(s) to perform the work accordingly. Whenever the work may affect the safety of trains, the method of doing such work shall first be submitted to the COMPANY's authorized representative for his approval without which it shall not be commenced or performed; such approval must not be unreasonably withheld. The approval of the COMPANY's authorized representative shall not be considered as a release from responsibility, or liability for any damage which the COMPANY may suffer, or for which it may be held liable by the acts of the contractor(s), or those of their subcontractor(s), or their employees.

<u>SECTION 13</u>. When the construction of this PROJECT is completed, the STATE shall maintain at its expense, or by agreement with others, provide for the maintenance of, the highway overpass structure, the highway approaches and all other highway facilities.

In order to fulfill its maintenance obligation, the STATE shall have access to the structure at all times for the performance of inspections, repair, construction, reconstruction and maintenance. The COMPANY shall be notified by the STATE whenever such activities may affect the COMPANY's operations. All construction, reconstruction, inspections, repair or

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maintenance work shall be performed in accordance with the applicable STATE's "Standard Specifications for Road and Bridge Construction" and the "Supplemental Specifications and Recurring Special Provisions" in effect on the date the work is performed.

In accordance with existing maintenance policies, the STATE will not cause snow, ice or other materials to be plowed over the sides of the highway overpass structure. In consideration of this practice, the COMPANY agrees to waive its request for the STATE to attach splash boards to the sides of the highway overpass structure.

The STATE shall accept responsibility to review the need for fencing in the future. If it is determined by both PARTIES hereto, that because of the ejection of objects from the structure onto the COMPANY's property, that a fencing system will be an effective deterrent, then the STATE at its sole cost, shall install and maintain a protective fencing system on the highway overpass structure.

The COMPANY shall maintain at its expense, its tracks, ballast, subballast, signals and all other railroad facilities. In the event of railroad derailments, accidents or collisions caused in whole or in part by the negligence of the COMPANY and resulting in damage to the highway overpass structure, appurtenances or right-of-way, the STATE shall repair or replace said highway overpass structure, appurtenances or right-of-way in compliance with the applicable STATE's design standards and specifications, "Standard Specifications for Road and Bridge Construction" and the "Supplemental Specifications and Recurring Special Provisions" in effect on the date the work is performed, and the COMPANY agrees to reimburse the STATE for the actual cost of such repairs or replacement caused by COMPANY's actions or negligence all in accordance with State law in effect at the time of the railroad derailment, accident or collision.

The COMPANY further agrees to comply with all applicable provisions of federal, state, and local law. The COMPANY further agrees not to erect any advertising signs that would be

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visible from the highway pavement on the COMPANY's property within the limits of the highway right-of-way lines extended across the COMPANY's property.

SECTION 14. The COMPANY shall keep an accurate and detailed account of the actual cost and expense as incurred by it, or for its account, in the performance of the work it herein agrees to perform.

The COMPANY, for performance of its work as outlined in this AGREEMENT, may bill the STATE monthly, for the costs and expenses incurred. After the STATE's representatives have checked the progressive invoices and they have agreed with the COMPANY's representatives that the costs are reasonable and proper, insofar as they are able to ascertain, the STATE shall promptly reimburse the COMPANY in accordance with the State Prompt Payment Act (30 ILCS 540), as currently enacted. The progressive invoices may be rendered on the basis of an estimated percentage of the work completed.

The COMPANY, upon the completion of its work, shall, within one hundred twenty (120) calendar days, render to the STATE a detailed final invoice of the actual cost and expense as incurred by it or for its account. After the STATE's representatives have checked the progressive invoices and the final invoice and they have agreed with the COMPANY's representatives that the costs are reasonable and proper, insofar as they are able to ascertain, the STATE shall promptly reimburse the COMPANY in accordance with the State Prompt Payment Act (30 ILCS 540), as currently enacted, for the amount of the final invoice, except that for any portion of the final invoice in excess of the estimated cost as shown in this AGREEMENT. The STATE may withhold payment of such excess cost until the COMPANY has provided reasonable backup detail as requested by the STATE to justify the additional cost, and the STATE shall promptly review such backup detail as provided by the COMPANY and shall

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thereafter promptly pay the costs in excess of the estimated costs unless reasonable exception is taken thereto.

If the PARTIES cannot reach agreement on reimbursement of the COMPANY's costs above the estimated costs, each PARTY retains all legal and equitable remedies regarding the payment of same; such reimbursements, however, are subject to the provisions of this AGREEMENT.

All invoices shall be clearly marked as "progressive invoice" or "final invoice", as applicable. The COMPANY shall submit four (4) copies of each invoice to the STATE. All invoices should be sent to the Illinois Department of Transportation's District 2 office addressed to:

Mr. Dewayne Bonnell Jr. Railroads & Utilities Technician Illinois Department of Transportation 819 Depot Avenue Dixon, IL. 61021-3546

The COMPANY shall maintain, for a minimum of three (3) years from the date final payment has been received by the COMPANY, adequate books, records, and supporting documents to verify the amounts, recipients, and uses of all disbursements of funds passing in conjunction with this AGREEMENT; and all books, records, and supporting documents related to this AGREEMENT shall be available for review and audit by the Auditor General and other STATE auditors; and the COMPANY agrees to cooperate fully with any audit conducted by the Auditor General and other STATE auditor General and other STATE auditors and to provide full access to all relevant materials. Failure to maintain the books, records, and supporting documents required by this Section shall establish a presumption in favor of the STATE for the recovery of any funds paid by the STATE

under this AGREEMENT for which adequate books, records, and supporting documentation are not available to support their purported disbursement.

After the federal or STATE representatives have audited the expenses as incurred by the COMPANY, including such amounts as may have been suspended from any previous payment, the STATE shall promptly reimburse the COMPANY for the suspended amounts, less the deduction of any item(s) of expense as may be found by the federal or STATE representatives as not being eligible for reimbursement. If the total of the item(s) of expense as may be found by the federal or STATE representatives as not being eligible for reimbursement exceeds the suspended amounts, then the COMPANY shall promptly reimburse the STATE for the overpayment.

<u>SECTION 15.</u> It is the policy of the US Department of Transportation that disadvantaged business enterprises, as defined in 49 Code of Federal Regulations (CFR) Part 26, shall have the maximum opportunity to participate in the performance of agreements financed in whole or in part with federal funds. Consequently, the disadvantaged business enterprises requirements of 49 CFR Part 26 apply to this AGREEMENT. The COMPANY agrees to take all necessary and reasonable steps to ensure that disadvantaged business enterprises, as defined in 49 C.F.R. §26, have the maximum opportunity to participate in the performance of this AGREEMENT.

The COMPANY, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this AGREEMENT. The COMPANY shall carry out applicable requirements of 49 C.F.R. § 26 in the award and administration of federally-assisted contracts. Failure by the COMPANY to carry out these requirements is a material breach of this AGREEMENT, which may result in the termination of this AGREEMENT or such other remedy deemed appropriate.

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Pursuant to 820 ILCS 130/1 et seq., as currently enacted, in the event any work is performed by other than COMPANY forces, the provisions of "an act regulating wages of laborers, mechanics and other workers employed in public works by the state, county, city or any public body or any political subdivision or by anyone under contract for public works" shall apply. Pursuant to 820 ILCS 130/4, the COMPANY is hereby notified "the prevailing rate of wages are revised by the Department of Labor and are available on the Department's official website."

<u>SECTION 16</u>. The PROJECT herein contemplated shall be subject to all applicable federal laws, rules, regulations, orders and approvals pertaining to this AGREEMENT, plans, estimates, specifications, award of contract, acceptance of work and procedure in general. The STATE will reimburse the COMPANY as hereinbefore provided, for only such items of work and expense, and in such amounts and forms as are proper and eligible for payment, including all preliminary engineering costs that were accrued prior to the execution of this AGREEMENT.

<u>SECTION 17</u>. In compliance with Federal-Aid Policy Guide, Chapter I, Subchapter G, Part 646, Subpart B, (23 CFR 646B) and supplements, which determines (among other things) the railway benefit and liability, the construction of the PROJECT as herein proposed meets Classification 2 of Section 646.210(b), a category not considered as a benefit to the COMPANY, and no contribution by the COMPANY is required.

SECTION 18. In the event that delays or difficulties arise in securing federal approval, or in acquiring right-of-ways, or in settling damages or damage claims, or for any other cause which in the opinion of the STATE render it impracticable to proceed with the construction of the PROJECT, then at any time before a construction contract is executed or actual construction is started, the STATE may serve formal notice of cancellation upon the COMPANY and this AGREEMENT shall thereupon become null and void.

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<u>SECTION 19</u>. At the time this AGREEMENT was executed, there were funds available for the PROJECT; however, obligations assumed by the STATE under this AGREEMENT shall cease immediately, without penalty or payment beyond that which the COMPANY has already accumulated, should the Illinois General Assembly or the Federal Highway Administration fail to appropriate or otherwise make available funds for the PROJECT.

<u>SECTION 20</u>. By separate agreement or by condemnation the COMPANY shall convey to the STATE any temporary or permanent property rights necessary to construct, maintain or reconstruct the PROJECT.

<u>SECTION 21</u>. The COMPANY is hereby requested by the STATE, to perform preliminary engineering for the PROJECT, and authorized to accrue PROJECT reimbursable preliminary engineering costs beginning on <u>February 9, 2015</u>. The COMPANY hereby agrees to not invoice the STATE until such time this AGREEMENT is fully executed.

SECTION 22. This AGREEMENT shall be binding upon the PARTIES hereto, their successors or assigns.

<u>SECTION 23.</u> This AGREEMENT shall be construed and interpreted according to the laws of the State of Illinois.

IN WITNESS WHEREOF, the PARTIES hereto have caused this AGREEMENT to be executed in duplicate counterparts, each of which shall be considered as an original, by their duly authorized officials as of the dates below indicated.

Executed by the	COMPANY, tl	his (7^{th})
day of <u>Jv</u> M		, 20 [6 .
Witness:	(Signature)	

Print Name: Daniel Suncher

By: _Cel	1	-	
		Signature)	
Print Name:	Cut	Lin	NVTT
Title:	3 R	NB	proj
Date: _6 -	17-1	6	

BNSF RAILWAY COMPANY

STATE OF ILLINOIS, acting by and through its Department of Transportation

Luc & perte

Randall S. Blankenhorn Secretary

Bv:

Priscilla A. Tobias, P.E. Director, Office of Program Development

7/19/16 Date:

Priscilla A. Tobias, P.E. Director, Office of Program Development

7/15/2016 Date:

The COMPANY certifies that:

- 1. The number shown on this form is the COMPANY's correct taxpayer identification number (or the COMPANY is waiting for a number to be issued to them), and
- 2. The COMPANY is not subject to backup withholding because: (a) the COMPANY is exempt from backup withholding, or (b) the COMPANY has not been notified by the Internal Revenue Service (IRS) that the COMPANY is subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified the COMPANY that the COMPANY is no longer subject to back-up withholding, and
- 3. The COMPANY's person with signatory authority for this AGREEMENT is a U.S. person (including a U.S. resident alien).

Taxpayer Identification Number:41-6034000

Employer Identification Number

(If you are an individual, enter your name and SSN as it appears on your Social Security Card. If completing this certification for a sale proprietorship, enter the owner's name followed by the name of the business and the owners SSN or EIN. For all other entities enter the name of the entity as used to apply for the entity EIN and the EIN.)

Legal Status

	Individual		Government
	Sole Proprietor		Nonresident Alien
	Partnership/Legal Corporation		Estate or Trust
	Tax-exempt		Pharmacy (Non Corp.)
	Corporation providing or	1	Pharmacy/Funeral home/
	billing medical and/or health		Cemetery
~	care services		Limited Liability Company
N	Corporation NOT providing or		(select applicable tax
	billing medical and/or health		classification)
	care services		 D= Disregarded entity
	Other		 C= Corporation
			• P= Partnership































EXHIBIT B

AUTHORITY FOR EXPENDITURE

LOCATION : MOL	LINE LINE SEGMENT :	7 AFE NUMBER	
PLANITEM NUMBER : 2293-	349000 MILEPOST :	249.55 RFA NUMBER :	5930716
PROPERTY OF : BNS	F RAILWAY COMPANY DIVISION :	CH CPAR NUMBER :	CB960016
OPERATED BY : BNSI	SF RAILWAY COMPANY SUBDIVISION :	BARSTOW-ROCK ISLAND BUDGET YEAR	2016
JOINT FACILITY : CH E	DOT TRACK TYPE :	S BUDGET CLASS :	13
% BILLABLE (+/-): 100.0	0 TAX STATE :	IL REPORTING OFFICE:	722
	SPONSOR :	VP ENGINEERING CENTER/ROLLUP	28992

PURPOSE, JUSTIFICATION AND DESCRIPTION

INSP - CHE DIV BARSTOW-ROCK ISLAND SUB LS 7 MP 249.55 - DOT #093673T - 100% BILLABLE TO CHDOT - INSPECTOR / COORDINATOR FOR OVERPASS RECONSTRUCTION PROJECT

PLAN ITEM	LINE SEG	BEG MP	END MP	TRK NBR	BEGIN STATION	END STATION	PROJECT TYPE	BUD YEAR
229349000	7	249.55	249.55	S	MOLINE	MOLINE	INSPECTOR / COORDINATOR	2016

	CASH CAPITAL	NONCASH CAPITAL	OPERATING EXP	REMOVAL COSTS	BILLABLE	TOTALS
LABOR COSTS	0	0	0	0	0	0
MATERIAL COSTS	0	0	0	0	0	0
OTHER COSTS	0	0	0	0	44,440	44,440
TOTALS	0	0	0	0	44,440	44,440

SYSTEM MAINTENANCE AND PLANNING ESTIMATE REF. NUMBER: 5930716 COSTING DATE: 06/10/2016

PRINTED ON: 06/10/2016 ESTIMATED BY: Savard PRINTED BY: Savard

EXHIBIT B

***** MAINTAIN PROPRIETARY CONFIDENTIALITY *****

BNSF RAILWAY COMPANY FHPM ESTIMATE FOR CH DOT

LOCATION MOLINE	DETAILS OF ESTIMATE	PLAN ITEM :	229349000	VERSION :
URPOSE, JUSTIFICATION AND DESCRIPTION				
INSP - CHE DIV BARSTOW-ROCK ISLAND SUB	ES 7 MP 249 55 - DOT #093673T - 100	M BILLABLE TO CH	IDOT	
INSPECTOR / COORDINATOR FOR OVERPASS	RECONSTRUCTION PROJECT			
REQUESTED BY SAMANTHA GARNER 6/7/16				
DESCRIPTION	QUANT	ITY U/M	COST	TOTAL S

LABOR				
TOTAL LABOR COST			0	

MATERIAL				
TOTAL MATERIAL COS	т		0	

OTHER				
INSPECTOR/COORDINATOR		1,0 LS	40,000	
TOTAL OTHER ITEMS CO	ST		40,000	40,00
PROJECT SUBTOTAL CONTINGENCIES BILL PREPARATION FEI	E			40,00 4,00 44
GROSS PROJECT COST LESS COST PAID BY BNS				44,44
TOTAL BILLABLE COST	r			44,44