



# Illinois Department of Transportation

2300 South Dirksen Parkway / Springfield, Illinois / 62764

January 4, 2008

SUBJECT: FAP Route 361  
(Dunham Road)  
Project RS-HPP-1527(25)  
Section 06-00214-07-BR  
Kane County  
Contract No 83951  
Item 87 A  
January 18, 2008 Letting

TO PROSPECTIVE BIDDERS:

To clarify information it is necessary to revise the following:

**Proposal- Added Special Provision "Soil Erosion and Sediment Control" on page 15A, added Kane-DuPage Soil and Water Conservation District Approval on page 15B, added Railroad Agreement on page 100 and revised Table of Contents on page i.**

Prime contractors must utilize the enclosed material when preparing their bid and must include any Schedule of Prices changes in their bidding proposal. Bidders using computer-generated bids are cautioned to reflect any and all Schedule of Prices changes, if involved, into their computer programs.

Since the proposal sheets are printed back to back, bidders are cautioned to exercise care when inserting revised and/or added special provisions into their proposals.

Please call 217-782-7806 if any of the above-described material is not included in this transmittal.

Very truly yours,

Eric Harm  
Interim Engineer of Design and Environment

A handwritten signature in black ink, appearing to read 'Ted B. Walschleger' followed by a small 'P.E.' to the right.

By: Ted B. Walschleger, P. E.  
Engineer of Project Management

SPECIAL PROVISIONS TABLE OF CONTENTS

ITEM PAGE NO.

SPECIAL PROVISIONS 1

LOCATION OF PROJECT 2

DESCRIPTION OF PROJECT 3

RAILROAD COORDINATION 4

CC&P RAILROAD COMPANY INSURANCE REQUIREMENTS 5

CONTRACTOR COOPERATION 7

STATUS OF UTILITIES TO BE ADJUSTED 8

EMBANKMENT I 9

BITUMINOUS COATED AGGREGATE SLOPEWALL 6" 11

TEMPORARY CONCRETE BARRIER, FURNISH AND INSTALL 13

DRAINAGE SCUPPERS, DS-11 14

FIELD OFFICE EQUIPMENT 15

SOIL EROSION AND SEDIMENT CONTROL 15A

KANE-DUPAGE SOIL & WATER CONSERVATION DISTRICT APPROVAL 15B

PERMITS 16

Railroad Agreement 100

Revised 1/4/08

## **SOIL EROSION AND SEDIMENT CONTROL**

**Description:** This work consists of complying with the Kane-DuPage Soil and Water Conservation District (KDSWCD) soil erosion and sediment control requirements. These requirements include the following:

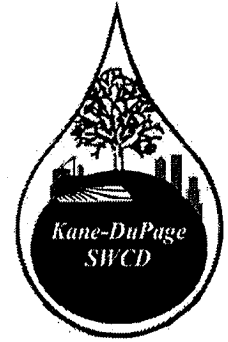
1. Unless otherwise indicated, all vegetative and structural erosion and sediment control practices will be constructed according to minimum standards and specifications in the Illinois Urban Manual revised February 2002.
2. The Kane-DuPage Soil and Water Conservation District (KDSWCD) must be notified one week prior to the pre-construction conference, one week prior to the commencement of land disturbing activities, and one week prior to the final inspection.
3. A copy of the approved erosion and sediment control plan shall be maintained on the site at all times.
4. Prior to commencing land-disturbing activities in areas other than indicated on these plans (including but not limited to, additional phases of development and off-site borrow or waste areas) a supplementary erosion control plan shall be submitted to the owner for review by the KDSWCD.
5. The contractor is responsible for installation of any additional erosion control measures necessary to prevent erosion and sedimentation as determined by the KDSWCD.
6. During dewatering operations, water will be pumped into sediment basins or silt traps. Dewatering directly into field tiles or stormwater structures is prohibited.
7. It is the responsibility of the general contractor to inform any sub-contractor(s) who may perform work on this project, of the requirements in implementing and maintaining the erosion control plans and the National Pollutant Discharge Elimination System (NPDES) permit requirements set forth by the Illinois EPA.

**Basis of Payment:** Any and all work associated with complying with the KDSWCD soil erosion and sediment control requirements will not be paid for separately, but these costs shall be considered as included in the contract unit prices bid for the various items of work involved.

ISA

Added  
1/4/08

# Kane – DuPage Soil & Water Conservation District



December 6, 2007

Brent Kunz  
Bowman, Barrett & Associates Inc.  
130 E. Randolph St. Suite 2650  
Chicago, IL 60601

Corps Number: 199600199

Dear Mr. Kunz:

I received your revised soil erosion and sedimentation control plan submittal for the New Dunham Rd. Bridges over the Canadian National Railroad located in unincorporated Kane County. Thank you for including all the required notes and erosion and sediment control practices into the plans, it will help to protect the quality of protection for the natural resources, both on and off site. This letter and a set of stamped plans located at the construction office on site, will serve to certify that the erosion and sediment control plans meet Technical Standards.

The KDSWCD staff will visit the site several times during the course of construction to assess compliance with the specifications and will be glad to address specific issues that may arise during the course of construction.

Also, I want to clarify that we will be invoicing the Kane County DOT \$243.00 for this project. Since %10 of the funding for the project is from the state of Illinois, then there will be a %10 reduction of our fees.

Sincerely,

*Kelsey Musich*

Kelsey Musich, CPESC-IT  
Resource Conservationist  
Kane-DuPage Soil and Water Conservation District

CC: Kathy Chernich, USACE

2315 Dean Street, Suite 100 St. Charles, Illinois 60175 (630) 584-7961x3 Fax: (630) 584-9534  
[www.kanedupageswcd.org](http://www.kanedupageswcd.org)

All programs and services of the Kane-DuPage SWCD are offered on a nondiscriminatory basis, without regard to race, color, national origin, religion, sex, marital status, or handicap.

15B

Added 1/4/08

**AGREEMENT BETWEEN KANE COUNTY, ILLINOIS  
AND CHICAGO CENTRAL AND PACIFIC RAILROAD COMPANY FOR  
CONSTRUCTION OF IMPROVEMENTS AT DUNHAM ROAD AND RAILROAD  
STRUCTURE W-37.5**

THIS AGREEMENT, made and entered into effective this 3rd day of December 2007 by and between the COUNTY of Kane, a body corporate and politic of the State of Illinois of 719 S. Batavia Avenue, Geneva, Illinois, 60134 (hereinafter the "COUNTY"), and the CHICAGO CENTRAL AND PACIFIC RAILROAD COMPANY an Illinois corporation of 17641 Ashland Avenue, Homewood, IL 60430 (hereinafter "RAILROAD"). The COUNTY and the RAILROAD are sometimes collectively hereinafter referred to as the "PARTIES".

**WITNESSETH**

**WHEREAS**, the COUNTY and the RAILROAD, by virtue of their corporate powers, are authorized to enter into this Agreement; and,

**WHEREAS**, the COUNTY is undertaking certain improvements to Kane County Highway No. 19 (also known as Dunham Road), including the construction and improvement of grade separation structures and the approaches thereto over the RAILROAD'S right of way and tracks located in Coleman, Kane County, Illinois, identified as COUNTY parcel 1ST0032 and the RAILROAD'S structure CCP No. W-37.55, AAR/DOT# 289 904U, (hereinafter the "IMPROVEMENT"); and

**WHEREAS**, the COUNTY is in the process of acquiring certain real property rights for the IMPROVEMENT; and,

**WHEREAS**, the RAILROAD is the owner of certain real property interests, depicted and described on Exhibit "A" attached hereto and made a part hereof, through and across which the IMPROVEMENT will be constructed; and,

**WHEREAS**, the COUNTY, in the interest of public safety and the general welfare is constructing the IMPROVEMENT over the RAILROAD'S real and personal property (hereinafter "FACILITIES"); and,

**WHEREAS**, the COUNTY and the RAILROAD desire to settle their respective rights and obligations with respect to the construction, reconstruction, operation, inspection and maintenance of the IMPROVEMENT through and across the FACILITIES, to provide for the IMPROVEMENT'S impacts to the RAILROAD'S FACILITIES due to said construction, to determine the RAILROAD'S incurred costs resulting from the IMPROVEMENT and the method and manner of ascertaining those costs, including the costs of any RAILROAD betterments (as hereinafter defined) to be included with the construction work of the IMPROVEMENT, and the procedures for making payments therefore, and to provide for the conveyance of required RAILROAD property interests to the COUNTY for COUNTY highway right-of-way.

**NOW, THEREFORE**, the parties hereto each in consideration of the foregoing representations and the mutual covenants and agreements herein, do hereby covenant and agree as follows:

1. **PLANS, SPECIFICATION AND SCHEDULES**

1.1 The COUNTY, at its sole cost and expense, shall prepare detailed plans and specifications, including special provisions, for the IMPROVEMENT. Said plans and specifications will include a proposed construction schedule showing the time or times construction may affect RAILROAD operations or property. Said plans and specifications shall be prepared in accordance with current standards, practices and procedures of the Illinois Department of Transportation (IDOT), the American Railway Engineering and Maintenance-of-Way Association (AREMA) 2007 Manual for Railroad Engineering, and RAILROAD.

1.2 The COUNTY shall submit said plans and specifications to the Chief Engineer of the RAILROAD for review and approval, but only to the extent that the RAILROAD'S interests are affected by said plans and specifications. The RAILROAD agrees to complete its review in a timely fashion, and the RAILROAD'S approval shall not be unreasonably withheld. Construction of the IMPROVEMENT on, over or across the FACILITIES shall not commence until the Chief Engineer of the RAILROAD or his authorized representative approves said plans and specifications in writing to the extent that said plans and specifications affect the interests of the RAILROAD. Said approved detailed plans and specifications are incorporated herein by reference.

1.3 The COUNTY and the RAILROAD jointly shall be responsible for scheduling and coordinating the removal or relocation of the FACILITIES and any personal property, belonging to the RAILROAD'S tenants, licensees, or others occupying RAILROAD property by permission, that are required to be removed or replaced to construct the IMPROVEMENT. Such removals and relocations shall be at the sole cost and expense of the COUNTY and shall be scheduled and coordinated to cause minimal interference to the operation of the RAILROAD. Upon execution hereof the RAILROAD shall provide the COUNTY a list of all tenants, licensees or others occupying the RAILROAD'S property with RAILROAD permission.

2. **BETTERMENTS**

2.1 The COUNTY shall be obligated and the RAILROAD shall be authorized only to replace the FACILITIES that are adjusted or relocated pursuant to the approved plans. The FACILITIES shall be replaced, adjusted or relocated of like size, capacity and materials. If the RAILROAD desires to increase the size, capacity or quality of replaced, adjusted or relocated FACILITIES or in any way improve the FACILITIES over those which currently exist, (hereinafter "betterments") the RAILROAD shall notify the COUNTY immediately with a description of proposed betterments and the COUNTY will

attempt to include said betterments in its contracts for IMPROVEMENT work. The RAILROAD shall pay the COUNTY for all betterment costs within thirty (30) days of receipt of an invoice therefor, or such costs shall be credited to the COUNTY against any sum due the RAILROAD under this Agreement or for property interests conveyed to the COUNTY for the IMPROVEMENT.

2.2 If any betterment resulting from the construction of the IMPROVEMENT consists of different sizes, capacities or materials because identical sizes, capacities or materials are no longer available or do not meet the RAILROAD's current minimum design standards, the RAILROAD will not be obligated to pay the costs of such betterments. The PARTIES agree that replacement of an old improvement with a new improvement of like size, capacity and quality or the functional replacement of FACILITIES per current design standards and generally accepted practices does not constitute, in and of itself, a betterment.

### 3. CONSTRUCTION

3.1 The COUNTY, at its sole cost, risk and expense, shall construct or cause to be constructed the IMPROVEMENT in accordance with the detailed plans and specifications heretofore to be approved by RAILROAD. Those approved plans and specifications may be revised, supplemented or modified only upon the joint approval of the Chief Engineer of the COUNTY (hereinafter the "COUNTY ENGINEER") and the Chief Engineer of the RAILROAD. Any such proposed changes shall be reviewed promptly by the COUNTY and the RAILROAD and such approval(s) shall not be unreasonably withheld.

3.2 It is recognized by the PARTIES that the safety and continuity of operations and traffic of both the RAILROAD and the COUNTY shall be of primary importance and shall at all times be protected and safeguarded. The COUNTY shall give thirty (30) days advance written notice to the Chief Engineer of the RAILROAD or his



authorized representative prior to commencement of any construction work on the IMPROVEMENT affecting the FACILITIES or other RAILROAD property. The COUNTY shall require its contractors to conduct their operations at all times in full compliance with the rules, regulations and requirements of the RAILROAD ("Special Provisions"), attached hereto and incorporated herein by reference. The RAILROAD shall have the right to reasonably amend the Special Provisions from time to time, and in such instances shall provide the COUNTY with a copy of the Special Provisions so amended.

3.3 If deemed necessary by the Chief Engineer of the RAILROAD, the RAILROAD may have inspectors, watchmen, flagmen, trackmen or other employees necessary in the sole but reasonable discretion of the RAILROAD to protect or safeguard railroad traffic and property during construction of IMPROVEMENT, and the RAILROAD shall be reimbursed by the COUNTY for the expense thereof, as provided in Section 6 of this Agreement. Provision of watchmen or other employees by the RAILROAD and other precautions taken by the RAILROAD as a consequence of the work of the COUNTY, its contractor, contractors, or subcontractors on RAILROAD property shall not relieve the COUNTY, its contractor, contractors, or subcontractors of liability for injury or damage arising in connection with construction of IMPROVEMENT. In the event the Chief Engineer of the RAILROAD or his authorized representative deem any work of the COUNTY, its contractor, contractors or subcontractors affecting the FACILITIES or RAILROAD property hazardous to the RAILROAD'S operations, such work shall be suspended until remedial measures are taken satisfactory to the Chief Engineer of the RAILROAD or his duly authorized representative.

3.4 The COUNTY shall cause to be incorporated in all contracts with contractors and subcontractors provisions which will make binding upon them the terms and provisions of this Agreement which are applicable to the contractors' or subcontractors' operations.

3.5 All reference in this Agreement to obligations, acts or operations of contractors or subcontractors of the COUNTY shall also apply to the COUNTY to the extent that the COUNTY elects to perform any of the work itself in lieu of having it performed by its contractors or subcontractors.

3.6 Both the RAILROAD and the COUNTY agree the minimum permanent vertical clearance for all railroad tracks shall be 23 feet 0 inches above the top of the high rail. The COUNTY shall not reduce said minimum vertical track clearance for any reason without prior written authorization from the RAILROAD. If the RAILROAD at any time raises the grade or its tracks or other improvement or otherwise reduces said minimum vertical track clearance at the IMPROVEMENT, all cost, expense, risk and liability for such raising or events resulting from such raising shall be solely the RAILROAD'S.

3.7 Both the RAILROAD and the COUNTY agree that the plans and specifications for the IMPROVEMENT include specification of certain clearances and structures which are consistent with current standards which the RAILROAD would apply to new structures placed on or over its FACILITIES. Approval by the RAILROAD of the plans and specifications for the IMPROVEMENT shall not be construed as a waiver of the right of the RAILROAD to require conformance of plans and specifications with RAILROAD standards, in the event of future substantial reconstruction or alteration of the proposed structures that are a part of the IMPROVEMENT.

#### **4. TEMPORARY RAILROAD TRACK CROSSINGS AT GRADE**

4.1 If at any time the contractors or subcontractors of the COUNTY require a temporary track crossing at grade over any of the RAILROAD'S tracks, the COUNTY shall prepare plans and specifications for such crossing to be approved by RAILROAD, and shall require said contractors or subcontractors to arrange with the RAILROAD for such crossing and for reimbursement of the RAILROAD'S expense, if any, with respect

thereto. The RAILROAD shall not be entitled to a separate charge or fee for such temporary occupancy of its property, provided said crossing is located within the IMPROVEMENT limits as shown on the approved plans and or within the limits of a COUNTY easement.

**5. WORK BY THE RAILROAD**

5.1 Upon the written request of the COUNTY, the RAILROAD, within a reasonable time not to delay construction of the IMPROVEMENT, and at the sole cost and expense of the COUNTY (exclusive of betterments), shall perform or cause to be performed any or all necessary work, both temporary and permanent, in connection with the adjustment, construction, reconstruction, relocation or removal of FACILITIES required by or incidental to the construction of IMPROVEMENT, including but not limited to signal and lighting changes, relocation of wire lines, and maintenance of RAILROAD traffic, during construction of said IMPROVEMENT, including all engineering services incident thereto.

5.2 Any FACILITY work as a result of the IMPROVEMENT performed by the RAILROAD shall be coordinated with the COUNTY. The RAILROAD and its contractors shall cooperate with the COUNTY and its contractors in scheduling and coordinating the RAILROAD'S work so construction of the IMPROVEMENT shall progress as expeditiously as possible with minimal interference to both RAILROAD and COUNTY operations.

**6. COST ESTIMATES AND REIMBURSEMENT**

6.1 Prior to initiation by the RAILROAD of any work contemplated under Section 5, the RAILROAD shall submit to the COUNTY two (2) copies of a detailed estimate of the reimbursable costs to be incurred by the RAILROAD in performance thereof, which estimate shall be used solely for the purpose of appropriations and shall not be deemed a maximum or agreed to total cost. Said estimate shall be itemized into

major items of work and shall show in reasonable detail the amount of labor applicable to the various items of work, material quantities and unit prices, charges for equipment, per diem and subcontractor items, and appropriate percentage additions or allowances for overhead. All RAILROAD work under this Agreement performed by others in excess of ten thousand dollars (\$10,000) must be competitively bid and the RAILROAD must provide the COUNTY a list of bidders and bids. Contracts and contracting parties shall be subject to the reasonable approval of the COUNTY ENGINEER. The COUNTY shall reimburse the RAILROAD for the cost of such reimbursable contracted work.

6.2 The RAILROAD also shall submit to the COUNTY an estimate of the cost of any betterments to the FACILITIES which will be made upon the construction of the IMPROVEMENT. The cost of such betterment(s) shall be credited against the next succeeding progress payment(s) due the RAILROAD from the COUNTY until the value of such betterment(s) is fully credited to the COUNTY.

6.3 Thereafter, during progress of the work, the RAILROAD will be reimbursed by the COUNTY within 90 days following receipt of bills, submitted not more than once per month, on the basis of the current percentage of completion for each work item including materials furnished to the job site, as certified pursuant to the provisions of the succeeding section hereof, applied to the approved total estimated cost for such work less the value of any betterments to be credited to the COUNTY. Partial payments shall be made on this basis until each work item has advanced to approximately 90% of completion, after which the RAILROAD shall submit a final bill for costs for each work item. The RAILROAD shall provide to the COUNTY records suitable for an audit, but RAILROAD shall not be required to retain any records relating to the work more than three (3) years after completion of the project. The COUNTY shall reimburse the RAILROAD for any balance in the amounts due within 90 days after receipt of said final bill. If for any work item, the sum of the partial payments and value of betterments

exceeds the RAILROAD'S final bill, the RAILROAD shall reimburse the COUNTY for such excess amount of payment within 30 days of completion of said work item, or the COUNTY may, at its option, withhold such excess amount from any future payments due the RAILROAD.

6.4 Prior to commencement of any work by the RAILROAD, the RAILROAD and the COUNTY shall each designate in writing an authorized representative or representatives in the field who shall periodically determine and agree upon the estimated percentage of completion for each work item, and these representatives shall execute certificates specifying the percentage of completion, which shall be attached to the RAILROAD'S periodic bills.

6.5 Costs and expenses for work performed by the RAILROAD, as referred to in this Agreement, shall consist of the actual cost of labor, material (less material salvage credits) and other documentable costs.

## **7. RIGHT OF INGRESS AND EGRESS**

7.1 To the extent reasonably necessary for future enjoyment of the permanent easements to be granted for the construction of the IMPROVEMENT, the COUNTY is hereby granted future rights of ingress to and egress from said easement lands over and across adjoining RAILROAD lands for the inspection, construction, maintenance, repair, renewal, reconstruction, improvement, expansion and use of the IMPROVEMENT and existing highway improvements provided, however, that the location of such future ingress and egress may be changed from time to time by the Chief Engineer of the RAILROAD based on the reasonable operational needs of the RAILROAD, and the exercise of such rights shall be subject to the approval of the COUNTY ENGINEER and provided further that any further work of any kind on the IMPROVEMENT shall be subject to the terms of the easement attached herein as

Exhibit B and shall be subject to RAILROAD requirements for work on or near RAILROAD facilities (such as insurance, flagging, right-of-entry, etc.).

**8. REQUIRED CONTRACTOR INSURANCE**

8.1 Before beginning construction of the grade separation structure(s), the COUNTY shall require its contractors and their subcontractors to take out on their own behalf, the following types and amounts of insurance, and to maintain such insurance in effect until completion and acceptance by the COUNTY of the work:

A. Commercial General Liability

1. \$5,000,000 combined single limit Bodily Injury and Property Damage per occurrence
2. \$10,000,000 combined Bodily Injury and Property Damage Aggregate limit

B. Railroad Protective Liability Insurance

1. \$5,000,000 combined single limit Bodily Injury and Property Damage per Occurrence
2. \$10,000,000 combined Bodily Injury and Property Damage Aggregate limit

8.2 The RAILROAD shall be named an additional insured on the contractors' and subcontractors' Commercial General Liability policies and the RAILROAD shall be named as the insured under the Railroad Protective Liability Insurance policy. The limits of insurance provided in this section can be met with a combination of primary and excess insurance policies.

8.3 Before beginning construction of any of the RAILROAD work as described in Section 5 hereof, the RAILROAD shall require its contractors and their subcontractors to take out on their own behalf, the following types and amounts of

insurance, and to maintain such insurance in effect until completion and acceptance by the RAILROAD of the work:

B. Commercial General Liability

2. \$5,000,000 combined single limit Bodily Injury and Property Damage per occurrence

2. \$10,000,000 combined Bodily Injury and Property Damage Aggregate limit

8.4 The COUNTY shall be named an additional insured on the contractors' and subcontractors' Commercial General Liability. The limits of insurance provided in this section can be met with a combination of primary and excess insurance policies.

9. ATTACHMENTS TO GRADE SEPARATION STRUCTURES

9.1 No attachments of any kind will be permitted to be installed on any structures or facility or parts thereof of the COUNTY without the prior written consent of the RAILROAD which consent will not be unreasonably withheld.

10. MAINTENANCE AND REPAIR

10.1 After completion of construction of IMPROVEMENT, the COUNTY, at its own expense, shall maintain, reconstruct and keep in good repair all parts of the IMPROVEMENT except the FACILITIES including signals, signal posts, lights, telegraph, telephone and other wires, and other devices now used or hereafter to be used in the operation of the RAILROAD which may be affixed to said grade separation structures from time to time with the written permission of the COUNTY, said permission not to be unreasonably withheld. After completion of IMPROVEMENT construction per approved plans and specifications, the COUNTY shall have no further maintenance, reconstruction or repair obligations with regard to FACILITIES.

10.2 Upon written request of the RAILROAD, and if the requested work is reasonably necessary for the continuous and safe operation of the RAILROAD, the

COUNTY shall promptly repair or renew any portion of IMPROVEMENT for which it is responsible.

10.3 In the event of derailments, collisions, or other RAILROAD events which result in any damage to the IMPROVEMENT, the RAILROAD shall make any emergency repairs necessary to keep the RAILROAD in operation and repair all RAILROAD equipment affixed to the IMPROVEMENT, at the RAILROAD'S cost and expense. The COUNTY shall make any emergency repairs necessary to keep Dunham Road in operation; and the COUNTY shall make all permanent repairs to restore the IMPROVEMENT to its former condition at the COUNTY's cost and expense.

**11. INDEMNIFICATION**

11.1 The COUNTY shall be responsible for, and shall indemnify and keep harmless from any and all claims and liability the RAILROAD, its agents and employees, from all injuries to persons or damages to property caused by the COUNTY, its officers, directors and employees, and/or the COUNTY'S agents, contractors or subcontractors arising out of the construction, repair, replacement, renewal, expansion or enhancement of IMPROVEMENT or the failure of the COUNTY to maintain IMPROVEMENT in accordance with the terms of this Agreement. The RAILROAD shall promptly notify the COUNTY of any claim or suit made or brought against the RAILROAD for which the RAILROAD may seek indemnity from the COUNTY. No settlement of any such claim shall be made without the prior written consent of the COUNTY and the COUNTY may participate in the defense of any such suit. In the event a judgment shall be rendered against the RAILROAD in any such suit, the RAILROAD shall take, upon request of counsel for the COUNTY, all necessary and proper steps to perfect an appeal therefrom to proper courts of review, shall prosecute such appeal with all due diligence, and shall permit COUNTY counsel to take such part in the appeal as such counsel may deem



advisable. The cost of any such claim or judgment (including appeal) and all proper and reasonable costs incurred in connection with such actions shall be paid by the COUNTY.

11.2 The RAILROAD shall be responsible for, and shall indemnify and keep harmless from any and all claims and liability the COUNTY, its agents and employees, from all injuries to persons or damages to property caused by the RAILROAD, its officers, Directors and employees, and/or the RAILROAD'S agents, contractors or subcontractors arising out of the construction, repair, replacement, renewal, expansion or enhancement of the work of the RAILROAD as set forth in Section 5 hereof or the failure of the RAILROAD to maintain said work of the RAILROAD in accordance with the terms of this Agreement. The COUNTY shall promptly notify the RAILROAD of any claim or suit made or brought against the COUNTY for which the COUNTY may seek indemnity from the RAILROAD. No settlement of any such claim shall be made without the prior written consent of the RAILROAD and the RAILROAD may participate in the defense of any such suit. In the event a judgment shall be rendered against the COUNTY in any such suit, the COUNTY shall take, upon request of counsel for the RAILROAD, all necessary and proper steps to perfect an appeal therefrom to proper courts of review, shall prosecute such appeal with all due diligence, and shall permit RAILROAD counsel to take such part in the appeal as such counsel may deem advisable. The cost of any such claim or judgment (including appeal) and all proper and reasonable costs incurred in connection with such actions shall be paid by the RAILROAD.

**12. APPROVALS SHALL NOT BE UNREASONABLY WITHHELD**

12.1 All approvals, payments and other actions required on the part of the COUNTY or the RAILROAD or their respective representatives shall not be unreasonably withheld or delayed.

117

Added 1/4/08

**13. SUCCESSORS AND ASSIGNS**

13.1 This Agreement shall inure to the benefit of and shall be binding upon the respective successors and assigns of the parties hereto.

**14. NOTICES**

14.1 All notices shall be in writing and be personally delivered or mailed as follows:

**COUNTY:**

COUNTY of KANE  
Division of Transportation  
41W011 Burlington Road  
St. Charles, Illinois 60174 \_\_\_\_  
ATTN: County Engineer

**RAILROAD:**

CHICAGO CENTRAL AND PACIFIC RAILROAD  
COMPANY.  
17641 Ashland Avenue  
Homewood, IL 60430  
ATTN: Chief Engineer

**15. MODIFICATIONS**

15.1 This Agreement is not subject to modification except in writing, executed by duly authorized representatives of the parties.

**16. SECTION HEADINGS**

16.1 The descriptive headings of various sections of this Agreement are for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

**17. LAWS GOVERNING AGREEMENT**

17.1 It is agreed that the laws of the State of Illinois shall apply to this Agreement and to any dispute hereunder.

17.2 Venue for any dispute arising hereunder shall be in the Circuit Court of the Sixteenth Judicial Circuit, Kane County, Illinois.

**18. ADVERTISING SIGNS**

18.1 The RAILROAD shall not permit the construction of any outdoor commercial advertising sign or billboard, cellular telephone tower or structure or any

other subtenant or lessee improvement within the COUNTY'S permanent easements or right-of-way.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

**CHICAGO CENTRAL AND PACIFIC RAILROAD COMPANY.**

Agreed by the RAILROAD on this 2nd day of January, 2008.

By: Paul E. LaDue  
Region Director Contracts and Administration  
Paul E. LaDue

Witness: [Signature]  
Title: Mgr Public Works

**COUNTY OF KANE**

Agreed by the COUNTY on this 31<sup>st</sup> day of December, 2007.

By: Karen McConaughay  
Karen McConaughay  
County Board Chairman

Attest: [Signature]  
County Clerk



## SPECIAL PROVISIONS

### RELATIVE TO FLAGGING AND OTHER PROTECTION OF RAILROAD TRAFFIC AND FACILITIES DURING CONSTRUCTION ADJACENT AND ABOVE, ON OR ACROSS, THE PROPERTY OF, OR ON, ABOVE AND BENEATH THE TRACKS OF THE CHICAGO CENTRAL & PACIFIC RAILROAD COMPANY

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Kane County, Illinois, or any contractor engaged on its behalf, shall, before entering upon the property of the Railroad Company for performance of any work, secure permission from the Engineering Superintendent of the Railroad Company or his authorized representative at 708-332-6581 for the occupancy and use of the Railroad Company's property and shall confer with the Railroad Company relative to requirements for railroad clearances, operation and general safety regulations. Licensee shall complete all necessary registration procedures with [www.e-railsafe.com](http://www.e-railsafe.com) before entry onto Railroad Company's property. Licensee's employees and agents shall successfully complete both on-line training for Railroad Safety and Railroad Security Awareness and a mandatory background check before entry onto Railroad Company's property. Licensee's employees or agents shall qualify for, and make available for inspection to Railroad Company's employees or other authorized personnel at all times while on Railroad Company property, a photo identification issued by [www.e-railsafe.com](http://www.e-railsafe.com), along with at least one other government-issued form of identification. Licensee shall bear all costs of compliance with the requirements of this paragraph. Railroad Company reserves the right to bar any of Licensee's employees or agents from Railroad Company's property at any time for any reason. Licensee will need to contact Rich Hussey, 708-332-3064, CN - Material Supply, to be set up with a vendor number to complete eRailsafe."

Kane County, Illinois, or any contractor engaged on its behalf, shall at all times conduct their work in a manner satisfactory to the Engineering Superintendent of the Railroad Company, or his authorized representative, and shall exercise care so as to not damage the property of the Railroad Company, or that belonging to any other grantees, licensees, permittees or tenants of the Railroad Company, or to interfere with railroad operations.

The Engineering Superintendent of the Railroad Company, or his authorized representative, will at all times have jurisdiction over the safety of railroad operations, and the decision of the Engineering Superintendent or his authorized representative as to procedures which may affect the safety of railroad operations shall be final, and the Licensee, and/or any contractor engaged on its behalf shall be governed by such decision.

All work shall be conducted in such a manner as will assure the safety of the Railroad. The Railroad's authorized representative shall have the right, but not the duty, to require certain procedures to be used or to supervise the work on the Railroad's property.

Should any damage occur to Railroad property as a result of the unauthorized or negligent operations of Kane County, Illinois and/or any Contractor engaged on its behalf, and the Railroad deems it necessary to repair such damage or perform any work for the protection of its property or operations, Kane County, Illinois and/or

Contractor, as the case may be, shall promptly reimburse the Railroad Company for the actual cost of such repairs or work. For the purpose of these Special Provisions, cost shall be deemed to include the direct cost of any labor, materials, equipment, or contract expense plus the Railroad's then current customary additives in each instance.

Kane County, Illinois and/or its Contractor shall at no time cross the Railroad's property or tracks with vehicles or equipment of any kind or character, except at such temporary grade crossing as may be constructed as outlined herein, or at any existing and open public grade crossing.

Any flagging protection, watchmen service or standby personnel required by the Railroad for the safety of railroad operations because of work being conducted by Kane County, Illinois and/or its Contractor, or in connection therewith, will be provided by the Railroad and the cost thereof shall be reimbursed to the Railroad by Kane County, Illinois upon receipt of bill(s) therefor. The requirements of the Railroad are as follows:

The services of a flagman will be required during any operation involving direct interference with the Railroad's tracks or traffic, fouling of railroad operating clearances, or reasonable proximity of accidental hazard to railroad traffic, generally when work takes place within twenty-five feet (25') from the nearest rail. Additional flagmen will also be furnished whenever, in the opinion of Railroad's Engineering Superintendent, such protection is needed.

Before any digging, trenching, or boring activities on Railroad property, or beneath any railroad track, an on-site meeting shall be conducted with the Railroad's Signal Supervisor or Signal Maintainer to ascertain, to the extent possible, the location of any buried railroad signal cables near the proposed work. No digging, trenching or boring activities shall be conducted in the proximity of any known buried Railroad signal cables without the Railroad's Signal Maintainer being present.

In order that the Railroad Company may be prepared to furnish protective services, it is incumbent upon Kane County, Illinois and/or its Contractor to notify the Railroad Company sufficiently in advance of when the protective services are required. For work activities which require a flagman, Signal Maintainer or other Railroad personnel to be present while said work is being conducted, should the Railroad be unable to furnish the flagman or other personnel at the desired time or on the desired date(s), Kane County, Illinois and/or its Contractor shall not perform the said operation or work until such time and date(s) that appropriate Railroad personnel can be made available. It is understood the Railroad Company shall not be liable for any increased costs incurred by Kane County, Illinois and/or its Contractor owing to Railroad's inability or failure to have appropriate Railroad personnel available at the time or on the date requested.

The rate of pay for the Railroad employees will be the prevailing hourly rate for an eight (8) hour day for the class of labor during regularly assigned work hours, overtime rates in accordance with Labor Agreements and Schedules and the Railroad's standard additives, all as in effect at the time the work is performed.

Wage rates are subject to change, at any time, by law or by agreement between the Railroad and employees, and may be retroactive because of negotiations or a ruling by an authorized Governmental Agent. If the wage rates are changed, Kane County, Illinois and/or its Contractor shall pay on the basis of the new rates.

Any digging, trenching, or boring on Railroad property shall be conducted in such a manner that any settlement or caving in of the ground surface shall be avoided.

The following temporary clearances are the minimum that must be maintained at all times during any operation:

Vertical: 23'-0" (7.0 m) above top of highest rail within 8'-0" (2.44 m) of the centerline of any track

Horizontal: 8'-6" (2.59 m) from centerline of the nearest track, measured at right angles thereto

If lesser clearances than the above are required for any part of the work, Kane County, Illinois and/or its Contractor shall secure written authorization from the Railroad's Engineering Superintendent for such lesser clearances in advance of the start of that portion of the work.

No materials, supplies, or equipment will be stored within 15 feet of the centerline of any railroad track, measured at right angles thereto.

Kane County, Illinois and/or its Contractor will be required upon the completion of the work to remove from within the limits of the Railroad's property all machinery, equipment, surplus materials, false work, rubbish or temporary buildings, and to leave said property in a condition satisfactory to the Engineering Superintendent of the Railroad Company or his authorized representative.

Nothing in these Special Provisions shall be construed to place any responsibility on the Railroad for the quality or conduct of the work performed by Kane County, Illinois and/or its Contractor hereunder. Any approval given or supervision exercised by Railroad hereunder, or failure of Railroad to object to any work done, material used, or method of operation shall not be construed to relieve Kane County, Illinois and/or its Contractor of any obligations pursuant hereto or under the Agreement these Special Provisions are appended to.

ACCEPTED:

  
Karen McCaughy  
Kane County, Illinois