



# Illinois Department of Transportation

2300 South Dirksen Parkway / Springfield, Illinois / 62764

July 23, 2007

X-12714

<b>SUBJECT: PRELIMINARY ENGINEERING</b> Grade Crossing Agreement FAP Route 95 (IL 33) Section (6,7)Y,RS-1,6B-1,7B-1&7BR-2 Job No. C-97-089-01 Contract No. 94356 Effingham County	<b>ICRR</b> Corridor: Effingham to Effingham/Jasper County Line  Agreement No. RR701089
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Mr. John Henriksen  
 Manager Public Works  
 Illinois Central Railroad Company  
 17641 S Ashland Ave.  
 Homewood, IL 60430

Dear Mr. Henriksen:

The detailed estimate of cost in the total amount of \$788,653.79, covering your force account work at the subject location, has been reviewed and is satisfactory.

Attached is your company's original counterpart of the fully executed agreement for your company's records.

You are hereby authorized to proceed and assemble the materials necessary to perform your work in conjunction with this agreement.

Our district office will notify you when a pre-construction conference is scheduled.

Very truly yours,

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Cheryl Cathey, P.E.  
 Chief of Preliminary Engineering

MWM:cls:\gen\wpdocs\letters\408918.doc

cc: Christine Reed (R-4) - Attn: Terri Petersen (D-7)  
 Vince Sternitzke  
 Roger Driskell  
 Debbie Marks - Attn: Project Control  
Design & Environment File  
 Unit File

THIS 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 the ILLINOIS CENTRAL RAILROAD COMPANY, hereinafter referred to as the "COMPANY",

WITNESSETH:

THAT, WHEREAS, FAP Route 95 (IL 33) as presently located and constructed, from a point near the City of Effingham to the Effingham/Jasper County line in Effingham County, Illinois, there runs parallel to the single mainline track and the COMPANY; and

WHEREAS, the STATE proposes to improve FAP Route 95 (IL 33) which will require extensive modifications and upgrades to the COMPANY's facilities along this section of IL Route 33; and

WHEREAS, in the interest of public safety and convenience, the parties hereto desire to complete this improvement and make the modifications and upgrades to the COMPANY's facilities all as shown on the prints of the general drawings marked Exhibit A through EXHIBIT ?, attached hereto and made a part hereof; and

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

SECTION 1. By separate document(s), arrangements will be made for the COMPANY to convey to the STATE any property rights necessary to construct the improvement as herein proposed.

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SECTION 2. The STATE shall secure or cause to be secured, without expense to the COMPANY, all the right of way required for or incident to the construction of the highway improvement.

SECTION 3. The preliminary and detailed plans, specifications and special provisions for the highway improvement 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 approval by the COMPANY's authorized representative.

SECTION 4. 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 the COMPANY at the expense of the STATE; and all such plans and estimates shall be subject to approval by an authorized representative of the STATE.

SECTION 5. 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.

SECTION 6. 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:

(I). WORK BY THE COMPANY. 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, Chapter I, Subchapter B, Part 140, Subpart I, (23 CFR 140I) and supplements, all the labor, materials and work equipment required to perform and complete:

(a). The preliminary engineering required for the review of plans, specifications and special provisions prepared by the STATE as set forth in Section 3 and required for the preparation of plans and estimates by the COMPANY as set forth in Section 4.

- (b). Install new grade crossing proper, circuitry, signals, gates and cantilever at roadway 1775 E (DOT/AAR No. 292 658P) as shown on Exhibit 1 (2 sheets) attached hereto and made a part hereof.
- (c). Install new grade crossing proper, circuitry, signals and gates at roadway 2100 E (DOT/AAR No. 292 646V) as shown on Exhibit 2 (3 sheets) and Exhibit 4 attached hereto and made a part hereof.
- (d). The removal of the grade crossing surfaces to accommodate the closures of 1100<sup>th</sup> St / TR139 (DOT/AAR No. 292 645N) and 1250<sup>th</sup> Ave / TR119 (DOT/AAR No. 292 653F).
- (e). The extension of grade crossing surfaces to accommodate 24 foot pavements and additional radii at:
  - 1600<sup>th</sup> St / TR242A (DOT/AAR No. 292 665A)
  - 1650<sup>th</sup> St / TR254 (DOT/AAR No. 292 663L)
  - 1700<sup>th</sup> St / TR268 (DOT/AAR No. 292 662E)
  - 1750<sup>th</sup> St / TR280 (DOT/AAR No. 292 659W)
  - 1800<sup>th</sup> St / TR286 (DOT/AAR No. 292 657H)
  - 2200<sup>th</sup> ST / TR316A (DOT/AAR No. 292 642T)
  - 2400<sup>th</sup> St / (DOT/AAR No. 292 638D)
- (f). Construction engineering and inspection as set forth in Section 9.
- (g). Provide flagging services as set forth in section 7. (**Approximately 180 days**)
- (h). Incidental work necessary to complete the items hereinabove specified.

The estimated cost of COMPANY's work set forth above is \$ 788,653.79 as shown on the detailed estimate(s) attached hereto and made a part hereof.

(II). WORK BY THE STATE. 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 as set forth in Section 3.
- (b). The installation of pipe culverts under the COMPANY's track as Shown on Exhibit 3 (6 sheets) attached hereto and made a part hereof.
- (c). The removal of the pavement structure, degrading of the embankments and the installation of the temporary and permanent traffic barriers to accommodate the grade crossing closures of 1100<sup>th</sup> St / TR139 (DOT/AAR No. 292 645N) and 1250<sup>th</sup> Ave / TR119 (DOT/AAR No. 292 653F).
- (d). The widening and resurfacing of the following roadways across the COMPANY's track:

1600<sup>th</sup> St / TR242A (DOT/AAR No. 292 665A)

1650<sup>th</sup> St / TR254 (DOT/AAR No. 292 663L)

1700<sup>th</sup> St / TR268 (DOT/AAR No. 292 662E)

~~1750<sup>th</sup> St / TR280 (DOT/AAR No. 292 659W)~~

1775<sup>th</sup> St / CH19 (DOT/AAR No. 292 658P)

1800<sup>th</sup> St / TR286 (DOT/AAR No. 292 657H)

2200<sup>th</sup> ST / TR316A (DOT/AAR No. 292 642T)

2400<sup>th</sup> St / (DOT/AAR No. 292 638D)

- (e). The realignment of 2100<sup>th</sup> St / CH13 to a location just west of the existing grade crossing (DOT/AAR No. 292 646V) as shown on Exhibit 4 attached hereto and made a part hereof..
- (f). The extension of various culverts throughout the roadway improvement.
- (g). Engineering and inspection as set forth in Section 9.
- (h). 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.

Federal-Aid Policy Guide, Chapter I, Subchapter B, Part 140, Subpart I, Section 140.922(b) (23 CFR 140 I) requires that the STATE 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 certify 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" and supplements thereto. The COMPANY shall, therefore, give the STATE a 48-hour notice in advance of commencement of the work set forth in this Agreement.

~~SECTION 7.~~ The STATE shall require its contractor(s) to perform his/her (their) work in accordance with the "Standard Specifications for Road and Bridge Construction" adopted January 1, 2007, and the "Supplemental Specifications" 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 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).

The COMPANY agrees to make all reasonable efforts to furnish, at the STATE's sole expense, the services of a COMPANY-employed 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 shall provide other means of protecting its facilities. These alternate means shall be acceptable to the STATE. Nothing contained herein shall preclude or limit COMPANY's right to require or provide a railroad flagger when in COMPANY's sole judgment such railroad flagger is necessary. Said railroad flagger or alternate means shall be provided by COMPANY at STATE's sole cost and expense. The total estimated cost for flagging services for this improvement is reflected in the COMPANY's estimate attached hereto.

Flagging bills may be presented by the COMPANY to the STATE on a monthly basis with a final bill presented in a timely manner after completion of the project. The COMPANY will be reimbursed in accordance with Section 15 of this agreement.

SECTION 8. Subsequent to the award of any contract(s), and before any work is started on this project, a conference shall be held between the representatives of the STATE, the 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.

SECTION 9. Each party will provide the necessary construction engineering and inspection for carrying out its work as herein set forth, and the costs for such services shall be borne by the STATE. The costs as incurred by the COMPANY for inspecting the work

performed by the STATE as may affect its properties and facilities, or the safety and continuity of train operations, shall be borne by the STATE.

SECTION 10. 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 notify the authorized representative of the COMPANY for the occupancy and use of the COMPANY's right of way outside the limits of any STATE Easement, and to comply with his recommendations relative to the requirements for railroad clearances, operation and general safety regulations.

SECTION 11. 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 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 prosecuted. 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.

SECTION 12. If, in connection with the parties' performance under this Agreement, ~~any loss, damage, destruction, injury or death occurs to any person or property as a result~~ of the negligent acts or negligent omissions of the COMPANY, the COMPANY agrees to indemnify and hold harmless the STATE from any and all liability of the STATE which may result from any such loss, damage, destruction, injury or death including all related costs and attorneys' fees and expenses. The COMPANY shall not be obligated to indemnify and

hold harmless the STATE from liability for injury or death proximately caused by the negligence of any employee or agent of the STATE.

The STATE will further incorporate, by special provision amending Article 107.11 of the Standard Specifications for Road and Bridge Construction, an indemnification provision running in favor of the COMPANY from the STATE's Contractor in the following form:

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the COMPANY and its officers, employees and agents from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the work by the Contractor on or about the COMPANY'S property but only to the extent caused in whole or in part by negligent acts or omissions of the Contractor and provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property, including the loss of use resulting therefrom. Moreover, provided that the contractor shall not be obligated to indemnify and hold harmless the COMPANY from liability for injury or death or damages to the extent proximately caused by the negligence of any employee or agent of the COMPANY. The indemnification herein is not limited by the required minimum insurance coverage that is to be provided in accordance with the contract or by any limitation as to the amount or type of damages payable pursuant to law including but not limited to the Federal Employers Liability Act.

SECTION 13. 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, satisfactory to the authorized representative of the COMPANY.

SECTION 14. When the construction of this improvement project is completed, the STATE shall maintain at its expense, or by agreement with others provide for the maintenance of, the highway, improved side roads, all drainage facilities installed or improved under this improvement, and all highway facilities.

The COMPANY shall maintain at its expense, the tracks, grade crossings and all grade crossing warning devices installed under this improvement.

SECTION 15. 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 Section 6 hereof, may bill the STATE monthly (in sets of four) for the costs and expenses incurred. 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 render to the STATE a detailed statement (in sets of four) 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 statement 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 for the amount of the final bill, however, all progressive bills and the final bill are subject to the provisions of Section 17 hereof.

The COMPANY shall maintain, for a minimum of 3 years after the completion of the contract, adequate books, records, and supporting documents to verify the amounts, recipients, and uses of all disbursements of funds passing in conjunction with the contract; the contract and all books, records, and supporting documents related to the contract 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 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 the contract 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 retained 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 any retained amounts, then the COMPANY shall promptly reimburse the STATE for the overpayment.

SECTION 16. The COMPANY, subrecipient 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 CFR part 26 in the award and administration of DOT-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.

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" (Illinois Compiled Statutes, 820 ILCS 130/1) shall apply.

SECTION 17. The project herein contemplated shall be subject to all appropriate Federal laws, rules, regulations, orders and approvals pertaining to all agreements, 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.

SECTION 18. In the event that delays or difficulties arise in securing Federal approval, or in acquiring rights of way, 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.

SECTION 19. Obligations of the STATE under this Agreement shall cease immediately without penalty or payment should the Illinois General Assembly or the federal funding source fail to appropriate or otherwise make available funds for the project.

SECTION 20. Under penalties of perjury, the COMPANY certifies that its correct Federal Taxpayer Identification Number (TIN) is 36-2728842 and the COMPANY is doing business as a corporation.

SECTION 21. The "Illinois Procurement Code Ethical Standards" (Attachment A) attached hereto are hereby made a part of this Agreement.

~~SECTION 22. This Agreement shall be binding upon the parties hereto, their successors or assigns.~~

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in triplicate 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, this 14  
day of MAY, 2007.

ILLINOIS CENTRAL RAILROAD COMPANY

By: Paul E. Lader

OK  
TJH  
5-7-07

STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION

By: [Signature]  
Milton R Sees  
Acting Secretary of Transportation

By: [Signature]  
Ann L. Schneider  
Director - Finance & Administration

Date: 7-23-07

By: N/A  
Milton R. Sees  
Director - Division of Highways  
Chief Engineer

By: [Signature]  
Ellen J. Schanzle-Haskins  
Chief Counsel

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