



ILLINOIS COMMERCE COMMISSION

August 29, 2008

County of Jefferson,
Petitioner,

Vs.

Illinois Central Railroad Company,
Respondents.

T08-0123

Petition to remove the existing grade separation structure carrying Scheller Lane over the Illinois Central Railroad Company track and construct a new roadway on embankment over the existing Railroad right of way situated near the City of Scheller, Jefferson County, Illinois, and apportioning cost thereof.

Mr. Steve Schnake
Jefferson County Highway Engineer
750 Old Fairfield Road
Mt. Vernon, IL 62864

Dear Mr. Schnake:

Receipt is acknowledged of the original and three (3) copies of the Petition filed August 28, 2008 in the above matter.

All future correspondence/pleadings should be filed and addressed to: Mr. Dave Lazarides, Director of Processing, Illinois Commerce Commission, 527 East Capitol Avenue, Springfield, IL 62701 or you may file the original electronically through E-docket if you have an account. To apply for an account, please log on to www.icc.illinois.gov and apply for an E-docket account.

Processing and Information Section

KI

Cc: Staff: Mr. Joseph VonDeBur
Ms. Christine Reed, IDOT
Ms. Ellen Schanzle-Haskins, IDOT
Mr. Lance T. Jones, IDOT
Mr. James Kvedaras, IC
Mr. John Henriksen, IC
Mr. Thomas Healey, IC

Jefferson County Highway Department

Phone:
(618) 244-8031

750 OLD FAIRFIELD ROAD
Mt. Vernon, Illinois 62864
County Engineer: Steve Schnake

Fax:
(618) 242-3392

August 26, 2008

Michael E. Stead
Rail Safety Program Administrator
Illinois Commerce Commission
527 East Capitol Ave.
Springfield, Il. 62794-9280

RECEIVED
AUG 28 2008

Illinois Commerce Commission
RAIL SAFETY SECTION

Re: Petition for Removal of Grade Crossing Structure
N. Scheller Lane, Jefferson County
IC Milepost 274.92m

Attn: Joe Von De Bur

Dear Sir:

T08-0123

The Jefferson County Highway Department is submitting the above referenced petition for your review and approval. One original and three copies are attached.

We appreciate your assistance with this project. Please contact my office if you require further information.

Sincerely,



Steve Schnake, P.E., P.L.S.
County Engineer

SS/jss/sheller icc petition

cc: John Henrickson, IC
Richard Melcher, IDOT
Jeff Harpring, IDOT
Ted Buck w/o encl.
File

5. N. Scheller Lane is an North-South Local Road (Non-Urban) connecting CH-35 to CH-26 with a current average daily traffic of 175 vehicles per day and is a public school busing route.
6. The current train traffic volume is 0 trains per day and has been for some years.
7. The structure is currently weight restricted at 14 Tons for Single Unit vehicles, 14 Tons for 3 or 4 axle vehicles, and 14 Tons for 5 or more axles due to severe wood deterioration.
8. The N. Scheller Lane grade separation structure is functionally obsolete, and a threat to the safety and convenience of the traveling public.
9. The replacement of the N. Scheller Lane grade separation structure is necessary to preserve and promote the safety and convenience of the traveling public.
10. It is uncertain that the Railroad line will be reactivated.
11. The County has developed plans to construct a two lane Asphalt roadway on embankment to replace the existing grade separation structure.
12. The County & Grade Crossing Protection Fund will share financial responsibility for replacing the N. Scheller Lane grade separation structure, 60% and 40% respectively.
13. The County additionally proposes to assume maintenance responsibilities for the proposed roadway and roadway embankment except for railroad ballast, ties, rails, drainage structures, and any other railroad related facilities, which will remain the responsibility of the railroad.
14. An agreement between the parties has been developed (SEE EXHIBIT F) that stipulates that the Railroad will give the County access to its property to perform such construction and maintenance and that the County & Grade Crossing Protection Fund will bear the costs to remove the roadway facility and replace it with a grade separation structure should the rail line be reactivated.
15. In the event that the railroad is reactivated, the County requests that the cost of removing the roadway facility and the construction of a new grade separation structure be eligible for Grade Crossing Protection Funding assistance.
16. The geometric and general information for the proposed improvement for N. Scheller Lane is detailed in Exhibit 'B' which is attached hereto and made part thereof.

17. The estimated cost for the project is \$114,000. The project costs are shown in Exhibits 'C and D' attached hereto and made part thereof.
18. A resolution has been passed by the County of Jefferson to replace the N. Scheller Lane grade separation structure with roadway on embankment which is attached hereto in Exhibit 'E' and made part thereof.

WHEREFORE, the Petitioner, the County of Jefferson prays that the Illinois Commerce Commission order the following:

1. That a hearing be waived due to the existing agreement with the Railroad.
2. That the existing grade separation structure carrying N. Scheller Lane over the Illinois Central Railroad Company track in Jefferson County, Illinois be replaced.
3. That a new roadway on embankment carrying N. Scheller Lane over the Illinois Central Railroad Company in Jefferson County, Illinois be constructed.
4. That the County is authorized to proceed with the N. Scheller Lane bridge replacement project and the cost of replacing the N. Scheller Lane grade separation structure shall be the shared by the Grade Crossing Protection Fund and the County 60% and 40% respectively.
5. That the Railroad shall remain responsible for all railroad ballast, ties, rails and other railroad related facilities at the crossing with N. Scheller Lane.
6. That the County shall be responsible for future maintenance of the N. Scheller Lane roadway and roadway embankment.

Respectfully submitted,

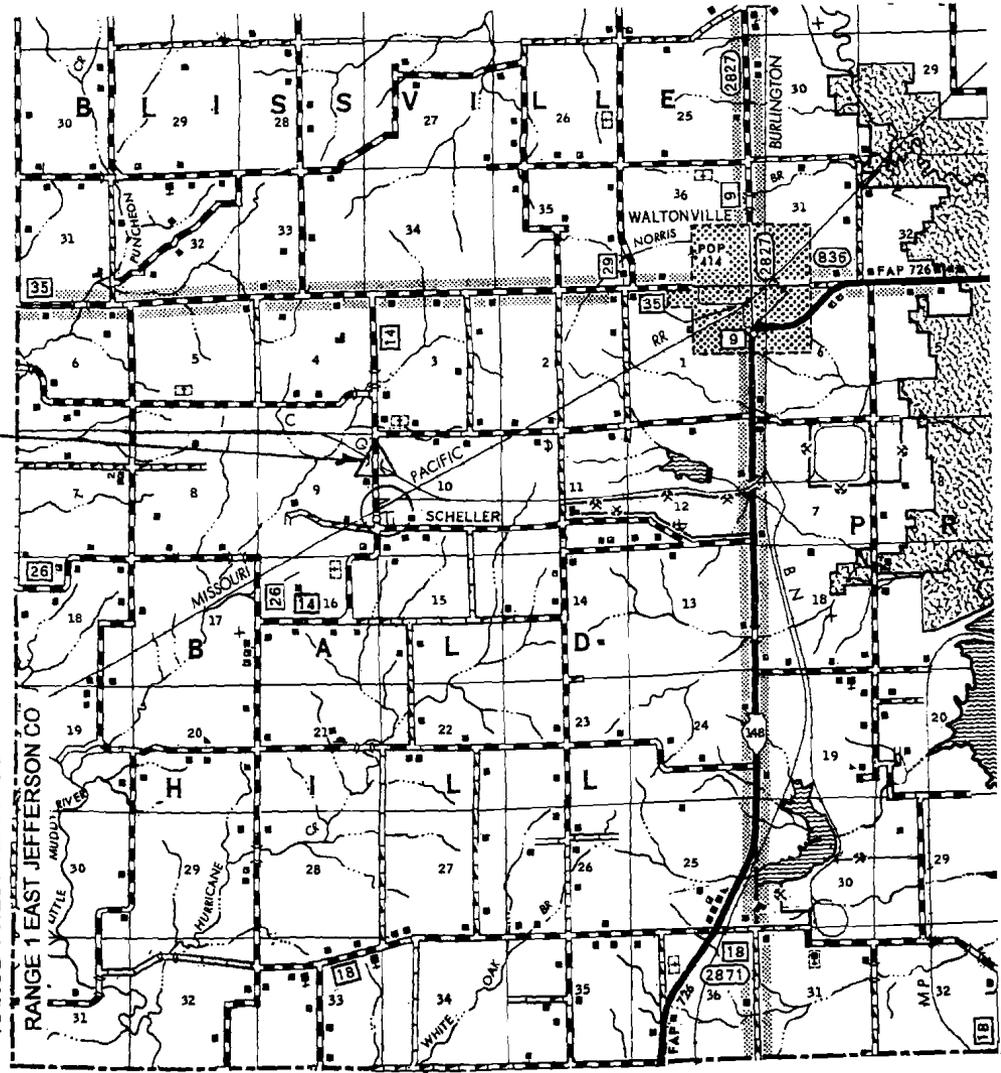
THE COUNTY OF JEFFERSON, ILLINOIS

By: 
Steve Schnake, County Engineer

On Behalf Ted Buck Sr.
Of: County Board
 Chairman



SCALE 1"=1 MILE



PROJECT LOCATION
BEGINS STATION 1+50
ENDS STATION 9+00

STA. 4+55
REMOVE
EXISTING
BRIDGE
STR. #041-9914

RANGE 1 WEST PERRY CO.

RANGE 1 EAST JEFFERSON CO

TWP. 4 SOUTH JEFFERSON CO
TWP. 5 SOUTH FRANKLIN CO.

EXHIBIT A

PROJECT COST ESTIMATE

1. RIGHT OF WAY ACQUISITION	\$ 0
2. CONSTRUCTION	<u>\$100,000</u>
SUBTOTAL	\$100,000
3. ENGINEERING	
PRELIMINARY STUDIES	\$ 2,000
DESIGN	\$ 5,000
MATERIAL TESTING	\$ 2,000
CONSTRUCTION	<u>\$ 5,000</u>
SUBTOTAL	\$ 14,000
TOTAL	\$114,000

PROPOSED PROJECT FUNDING

JEFFERSON CO. (LOCAL FUNDS) @40% X \$114,000	\$ 45,600
GRADE CROSSING PROTECTION FUNDS @ 60% X \$114,000	\$ 68,400
TOTAL	\$114,000

EXHIBIT C

EXHIBIT E

COUNTY OF JEFFERSON RESOLUTION

August 25, 2008

RESOLUTION NO. 2008-07 authorizing the County Board Chairman to petition the Illinois Commerce Commission to replace the N. Scheller Lane grade separation structure over the Illinois Central Railroad Company with roadway on embankment.

Hwy
RESOLUTION NO. 2008-07

A RESOLUTION AUTHORIZING THE PETITION OF THE ILLINOIS
COMMERCE COMMISSION TO REPLACE THE N. SCHELLER LANE BRIDGE
OVER
ILLINOIS CENTRAL RAILROAD COMPANY

WHEREAS, the N. Scheller Lane Bridge over the Illinois Central Railroad Company was built in 1960, has severe deterioration, and is currently weight restricted; and

WHEREAS, N. Schelller Lane is a local road with an average daily traffic count of 175 vehicles per day; and

WHEREAS, the Illinois Central Railroad Company line has not been used for a long period of time; and

WHEREAS, Grade Crossing Protection Funding for the replacement of the N. Scheller Lane Bridge will be 60% and the Counties share will be 40%; and

WHEREAS, the County desires to replace the bridge with a asphalt roadway on fill with appropriate drainage structures; and

WHEREAS, the County has entered into an agreement with the Illinois Central Railroad Company stipulating that the cost of removing the roadway and fill with a new grade separation structure will be borne by the Grade Crossing Protection Fund and County Funding; and

WHEREAS, it is necessary to file a Petition before the Illinois Commerce Commission to pursue replacement of the N. Scheller Lane Bridge with a new roadway on fill.

NOW, THEREFORE, BE IT RESOLVED by the Jefferson County Board of the County of Jefferson, Illinois, that:

1. The County Board Chairman is authorized to pursue the replacement of the N. Scheller Lane Bridge with a roadway on fill.
2. The County Board Chairman is authorized to perform any duties needed to accomplish this.
3. The County Board Chairman shall file with the Illinois Commerce Commission such Petition and other documentation as is necessary or advisable to accomplish the foregoing.
4. This Resolution shall take effect upon its passage and publication.

APPROVED:

BY: 

County Board Chairman

ATTEST:

BY: 

County Clerk

8/25/08

EXHIBIT F

AGREEMENT BETWEEN JEFFERSON COUNTY, ILLINOIS AND ILLINOIS CENTRAL RAILROAD COMPANY FOR BRIDGE DEMOLITION AND ROAD RECONSTRUCTION AT SCHELLER LANE/300E, CH 14 AND RAILROAD STRUCTURE AT MP 274.92 DOT NO. 295 073A

THIS AGREEMENT, made and entered into effective this 3rd day of April 2008 by and between the COUNTY of Jefferson, a body corporate and politic of the State of Illinois of 100 S. 10TH Street, Mt. Vernon, Illinois, 62864 (hereinafter the "COUNTY"), and the ILLINOIS CENTRAL 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 Jefferson County Highway No. 14 (also known as Scheller Lane/300E), including the bridge demolition and improvement of approach grades thereto over the RAILROAD'S right of way and tracks located in Waltonville, Jefferson County, Illinois, AAR/DOT# 295 073A, (hereinafter the "IMPROVEMENT"); and

WHEREAS, the COUNTY, in the interest of public safety and the general welfare, is reconstructing 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,

WHEREAS, the COUNTY recognizes the RAILROAD's potential future need to reopen the existing rail line under FACILITY, and at such time as the RAILROAD notifies the COUNTY of the need to reopen the existing rail line under the FACILITY, the COUNTY agrees to restore and rebuild, and subsequently maintain, the bridge within a reasonable time, as determined by funding approval from the Illinois Department of Transportation (IDOT) and the Illinois Commerce Commission (ICC), of notice to COUNTY to reopen the rail line by RAILROAD, and COUNTY further agrees to the installation and maintenance of a temporary at grade crossing until the new bridge is constructed, all at COUNTY expense.

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, with approved funds from IDOT And ICC, 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 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 the IMPROVEMENT without the prior written consent of the RAILROAD which consent will not be unreasonably withheld.

10. MAINTENANCE, REPAIR AND MODIFICATION

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 RAILROAD shall restore IMPROVEMENTS to Road and Bridge.

10.4 The COUNTY hereby acknowledges that the RAILROAD is a common carrier by rail in interstate commerce. The COUNTY further acknowledges that the RAILROAD may, at any time after this Agreement is executed, in its sole discretion determine that the FACILITIES need to be re-established such that trains may be operated by the RAILROAD over the FACILITIES. Should the RAILROAD notify the COUNTY of its decision to resume operation of trains on the FACILITIES, the County shall promptly install a temporary grade crossing through the IMPROVEMENTS such that operation of trains on the FACILITIES is possible, to the reasonable satisfaction of the RAILROAD. Additionally, the COUNTY shall immediately begin plans to re-install a highway bridge over the FACILITIES such that the temporary grade crossing may be closed once the bridge is completed. The COUNTY shall complete construction of the bridge within a reasonable period as determined by authorized funding from IDOT and ICC, after receipt of notice from the RAILROAD of the intention to operate trains over the FACILITIES. All work provided for in this Section shall be accomplished by the COUNTY at the COUNTY's expense, to the reasonable satisfaction of the RAILROAD.

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.

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 JEFFERSON
750 Old Fairfield Road
Mt. Verono, Illinois 62864
ATTN: County Engineer

RAILROAD:

ILLINOIS CENTRAL RAILROAD Highway
Department 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.

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.

ILLINOIS CENTRAL RAILROAD COMPANY.

Agreed by the RAILROAD on this _____ day of _____, 20__.

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

Witness: _____
Title: _____

COUNTY OF JEFFERSON

Agreed by the COUNTY on this 26th day of August, 2008__.

By: *Ad Buck*
County Board Chairman

Attest: *Conie Simon*
County Clerk



United States Region

John M. Henriksen
Manager Public Works

17641 South Ashland Avenue
Homewood, Illinois 60430-1345
T 708.332.3557
F 708.332.3514

July 30, 2008

Mr. Steve Schnake, PE, PLS
County Engineer
Jefferson County Highway Department
750 Old Fairfield Road
Mt. Vernon, IL 62864

RE : DOT 295 073A, IDOT Structure #041-3022, CH #14, Scheller Lane/300^E,
Waltonville, Jefferson County, Illinois RR MP 274.92

Steve,

We have completed review of your revised agreement for the above referenced project and find the changes acceptable as submitted in your letter of July 1, 2008.

Should you have any further questions please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'John M. Henriksen'. The signature is fluid and cursive, with a long horizontal stroke at the end.

SEE
FORMAL
FILE
FOR
EXHIBIT B
MAP