

Kuntz, Darrell W.

From: Kuntz, Darrell W.
Sent: Wednesday, February 10, 2010 9:00 AM
To: 'Jonathan.Griffith@cn.ca'
Cc: 'Brett Duffy'; 'Rob Bielaski'
Subject: RE: C&M Agreement
Attachments: Libertyville C M Agreement Harris Road Reconstruction Lake County sent for preliminary approval 2 9 10 TH alts(with LCDOT Comments).doc

Good Morning Jon,

I have read the agreement and am in concurrence with the document. I have made some minor formatting changes to the document which can be viewed with the "Track Changes" feature turned on in MS Word.

Thank you for your help with this project.

Darrell Kuntz, P.E.

Project Engineer
Lake County Division of Transportation
600 W Winchester Rd
Libertyville, IL 60048
Email: dkuntz@lakecountyil.gov
Phone: 847-377-7459
Fax: 847-362-5290

From: Jonathan.Griffith@cn.ca [mailto:Jonathan.Griffith@cn.ca]
Sent: Wednesday, February 10, 2010 7:13 AM
To: Kuntz, Darrell W.
Subject: C&M Agreement

Mr. Kuntz

Please review the following and let me know if this will be acceptable.

Thanks -- And Have a Safe Day!!!



Jon Griffith, Technical Service Engineer

17641 S Ashland Ave; Homewood, IL 60430

(708) 332-6581 office; (708) 332-5474 fax



Internal Correspondence

Date:

To: Tracy Bolton
Shane Zazubek
Tom Healey
Paul LaDue

From: Jon Griffith, Engineering Dept.

Subject:

Network Number _____

Please review and, if appropriate, sign approval block on signature page of agreement. After you have approved, please forward to the next addressee. Return to my attention when completed by last addressee.

Thank you.

CN Special Operations Capital Portion:

	\$	Project Cost
	\$	Donation from Lake County
Total	\$	Total CN Cost

Work projected to be done during 2010

APPROVED:

Public Works _____

Engineering _____

Legal _____

Accounting _____

Contracts _____

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January 29, 2010

| Darrel Kuntz
Project Engineer
Lake County Division of Transportation
600 W. Winchester Rd
Libertyville, IL 60048

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| RE: Midlothian Road Crossing Agreement
Waukesha Subdivision. MP CM 43.06, AAR/DOT #689 712G
Village of Libertyville, Lake County, Illinois
T09-0113

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Mr. Kuntz,

Attached are two fully executed copies of the agreement to widen the crossing surface and signals at Midlothian Road. As we discussed on the phone, the Wisconsin Central LTD needs time to assemble the materials for this project. We desire to complete our work while the street is fully closed. This type of work cannot be done under vehicular traffic.

| Thank you for your cooperation up to this point. I look forward to working with The Village of Libertyville and the Lake County Division of Transportation to improve this corridor.

Sincerely,



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January 22, 2008

Darrel Kuntz
Project Engineer
Lake County Division of Transportation
600 W. Winchester Rd
Libertyville, IL 60048

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Subject: Midlothian Road Crossing Agreement
Waukesha Subdivision, MP CM 43.06, AAR/DOT #689 712G
Village of Libertyville, Lake County, Illinois
T09-0113

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Reference is made to our correspondence concerning the highway improvements at the above referenced location. Attached is an agreement for the purposes relating railroad-crossing improvements necessary to your improvements to Midlothian Road.

If satisfactory, please arrange to have both counterparts of the Agreement and the Special Provisions signed on Lake County's behalf and return both to the undersigned for formal execution by the Railroad Company. Approval should not be presumed until a fully executed counterpart is returned for your files. To expedite our final acceptance and approval, the required evidence(s) of insurance and a check made out to Wisconsin Central LTS for \$xxxxx should accompany the return of the documents.

Please keep in mind that there is a 4 to 6 month lead-time for ordering the material required for this project. You will need to coordinate the work as soon as possible with me and Chris Lewzader, CN-Track Supervisor, @ 262-763-4334.

Should you have any questions in these matters, please contact the undersigned at (708) 332-6581.

Sincerely,

**AGREEMENT BETWEEN LAKE COUNTY, ILLINOIS
AND WISCONSIN CENTRAL LTD FOR SIGNALS, CONSTRUCTION
and IMPROVEMENTS ON HARRIS ROAD AND THE RAILROAD CROSSING
AT MP CM 46.03, AAR/DOT# 689-712G, WAUKESHA SUB.**

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THIS AGREEMENT, made and entered into effective this XXth day of January 2010 by and between the COUNTY OF LAKE, ILLINOIS, a body corporate and politic of the State of Illinois, of 18 North County Street, Waukegan, Illinois 60085, (hereinafter the "COUNTY"), and WISCONSIN CENTRAL LTD, 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 the road currently known as Harris Road, but to be renamed "Midlothian Road" as an element of this project, including the construction and improvement of grade crossing modifications thereto over the RAILROAD'S right of way and tracks located in Licensor's Milepost CM-43.06, Waukesha Subdivision, more or less, in Lake County, Illinois.

(hereinafter the "IMPROVEMENT"); and,

WHEREAS, the RAILROAD is the owner or operator 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.

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:

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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 the 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 the 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 the 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 the RAILROAD'S 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 the RAILROAD. Those approved plans and specifications may be revised, supplemented or modified only upon the joint approval of the County 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 5 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. WORK BY THE RAILROAD

4.1 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 temporary gate arm extensions, signal and lighting changes, relocation of wire lines, and maintenance of RAILROAD traffic, during construction of said IMPROVEMENT, including all engineering services incident thereto.

4.2 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.

5. COST ESTIMATES AND REIMBURSEMENT

5.1 The cost estimate from RAILROAD dated **XXXX XX**, 2010 for the crossing work for the permanent warning system (estimated cost \$**??,???.??**), listing the costs to COUNTY, are incorporated herein and made part hereof as summarized in Exhibit B attached hereto and made part hereof, 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 RAILROADS Sub Contractors 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's ENGINEER. The COUNTY shall reimburse the RAILROAD for the cost of such reimbursable contracted work. In the event that said RAILROAD costs exceed the total estimated cost, said additional costs shall be memorialized in an Amendment to this Agreement that will amend solely the total cost to be paid by the COUNTY prior to reimbursement by the COUNTY.

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5.2 The RAILROAD also shall submit to the COUNTY an estimate of the cost of any betterment 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.

5.3 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.

5.4 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.

5.5 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 documented costs and standard overhead charges (not to exceed 30%).

6. REQUIRED CONTRACTOR INSURANCE

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6.1 Before beginning construction of the grade crossing, 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

6.2 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. The Commercial General Liability policies shall have the railroad exclusion removed from the definition of an insured contract.

6.3 Before beginning construction of any of the IMPROVEMENT as described in Section 3 hereof, 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 RAILROAD of the work:

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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

6.4 The RAILROAD 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.

7. MAINTENANCE AND REPAIR

7.1 During construction of IMPROVEMENT, the COUNTY, at its own expense, shall maintain, reconstruct and keep in good repair all parts of the IMPROVEMENT including RAILROAD'S FACILITIES damaged during construction

7.2 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.

8. INDEMNIFICATION

8.1 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.

9. APPROVALS SHALL NOT BE UNREASONABLY WITHHELD

9.1 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.

10. NOTICES

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

COUNTY:	RAILROAD:
Lake County Division of Transportation 600 West Winchester Road Libertyville, IL 60048 ATTN: County Engineer	WISCONSIN CENTRAL LTD 17641 Ashland Avenue Homewood, IL 60430 ATTN: Chief Engineer

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11. MODIFICATIONS

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

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12. SECTION HEADINGS

12.1 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.

13. LAWS GOVERNING AGREEMENT

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

IN WITNESS WHEREOF, the parties hereto have mutually executed this Agreement in duplicate originals this ___ day of _____, 20___, effective, however, as of the day and year first above written.

WISCONSIN CENTRAL LTD.

By: _____
Paul E. Ladue
Region Director Contracts & Administration

_____ County of Lake _____ of the

ATTEST:

State of Illinois, acting by and through its

By _____

_____ County Board

_____ Lake County Clerk

(Seal)

By _____

Title Chairman of the County Board

RECOMMENDED FOR EXECUTION

Martin G. Buehler, P.E.
Director of Transportation/County Engineer
Lake County

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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 WISCONSIN CENTRAL LTD

The Grantee, Licensee, Permittee and/or its Contractor shall, before entering upon the property of the Railroad for performance of any work, secure a right of entry agreement and permission from the Engineering Superintendent of the Railroad Company or his authorized representative at jonathan.griffith@cn.ca for the occupancy and use of the Railroad's property and shall confer with the Railroad relative to requirements for railroad clearances, operation and general safety regulations. Grantee, Licensee, Permittee and/or its Contractor shall have all employees doing work on CN's property or its subcontractors doing work on CN's property go through Railroad Safety Training at <http://www.e-railsafe.com/>. 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. Prior to contacting eRailSafe in order to access CN Property, all Contractors need to call James Conroy at 708-332-5947 or email at James.Conroy@cn.ca in order to get a "Vendor Number". When they have their vendor number, they can then get into eRailsafe. Mr. Conroy will determine if Grantee, Licensee, Permittee and/or its Contractor need only the CN based Safety Training, or if they will have to endure the background checks as well, depending upon the work that they will be engaged to complete. Minimum information required is Company Name, Address, Telephone Number, Contact Person for State Projects the DOT Contract No. and AAR/DOT Number must be included.

The Grantee, Licensee, Permittee and/or its 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 any Grantee, Licensee, Permittee 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, the Grantee, Licensee, Permittee 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.

If the work requires the construction of a temporary grade crossing across the track(s) of the Railroad, the Grantee, Licensee, Permittee and/or its Contractor shall make the necessary

arrangements with the Railroad for the construction, protection, maintenance, and later removal of such temporary grade crossing. The cost of such temporary grade crossing construction, protection, maintenance, and later removal shall be promptly reimbursed to the Railroad upon receipt of bill(s) therefore.

The Grantee, Licensee, Permittee 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 a Grantee, Licensee, Permittee 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 the respective Grantee, Licensee, Permittee or Contractor upon receipt of bill(s) therefore. 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 the Grantee, Licensee, Permittee, and/or its Contractor to notify the Railroad Company sufficiently in advance of when the protective services are required. For work activities that 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), the Grantee, Licensee, Permittee 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 the Grantee, Licensee, Permittee 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.

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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, the Grantee, Licensee, Permittee, and/or its Contractor shall pay on the basis of the new rates.

No digging, trenching, or boring on Railroad property shall be conducted without Railroad's written approval of the plans that were furnished in advance of the excavation.

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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, the Grantee, Licensee, Permittee 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.

The Grantee, Licensee, Permittee 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 the Grantee, Licensee, Permittee 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 the Grantee, Licensee, Permittee and/or its Contractor of any obligations pursuant hereto or under the Agreement these Special Provisions are appended to.

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EXHIBIT A

CROSSING IDENTIFICATION;

Harris Drive, at Wisconsin Central LTD
MP CM-46.03, AAR/DOT# 689-712G

DESCRIPTION OF WORK TO BE PERFORMED BY RAILROAD:

- Provide flagman for COUNTY's work at COUNTY's Expense
- Extend existing crossing surface to accommodate road widening and install bike path crossing
- Reconfigure signal apparatus to accommodate road widening and walkway installation
- Provide for all incidental work necessary to complete the above work
- Bill the COUNTY for the construction costs identified in EXHIBIT B (cost estimated to be \$???,???.??) except as otherwise provided herein.

DESCRIPTION OF WORK TO BE PERFORMED BY THE LOCAL AGENCY:

- Construct the highway at COUNTY expense, up to the face of ties
- Provide traffic control for RAILROAD's work
- Upon receipt and following review of submitted invoices, pay to RAILROAD the actual costs of improvements described in EXHIBIT B (estimated to be \$???,???.??), including applicable traffic control and detour costs.
- Provide for all incidental work necessary to complete the project

RAILROAD's SHARE OF PROJECT EXPENSE:

-0-

ALL OTHER COST/EXPENSE TO BE BORNE BY LOCAL AGENCY.

\$xxxxx