

# DRAFT

AGREEMENT  
FOR  
GRADE CROSSING IMPROVEMENTS

THIS AGREEMENT, made and entered into as of the \_\_\_ day of \_\_\_\_\_, 201\_, by and among the WISCONSIN CENTRAL LTD. (hereinafter referred to as "Railroad") whose mailing address is 17641 S. Ashland Avenue, Homewood, Illinois 60430-1345, the County of Lake, Illinois, an Illinois body politic and corporate, acting by and through its Chair and County Board ("County") whose mailing address is 600 W. Winchester Road, Libertyville, IL 60048,

WITNESSETH:

WHEREAS, in the interest of public safety and convenience, the parties hereto propose to construct and reconfigure the highway-railway grade crossing surface(s), and perform work related thereto, at the location listed on the attached Exhibit A, by reference hereto made a part hereof; and

WHEREAS, the parties mutually agree to accomplish the proposed improvements solely through the use of COUNTY funds;

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectfully kept and performed as hereinafter set forth, it is hereby agreed as follows:

ARTICLE I. For the purpose of identifying the plans, specifications, estimates and other documents, this project will be designated as "Aptakisic Road Warning device improvements for Road Widening and interim Signal Work during construction at Wisconsin Central Ltd.'s Milepost B 33.21, at/near Buffalo Grove, Lake County, Illinois".

ARTICLE II. The proposed improvements to be accomplished shall be in accordance with attached Exhibit A. RAILROAD's portion of the work for the proposed improvements, listed under "WORK TO BE PERFORMED BY RAILROAD" on Exhibit A, shall be in accordance with the plan and estimate(s) of cost attached hereto as Exhibit B. No approved plan or specification shall be changed by RAILROAD excepting for minor changes necessitated by actual field conditions encountered at the time of construction or substitutions of equivalent materials. RAILROAD shall not be responsible for securing any permits, rights, licenses, easements, permissions or other authority for the work reflected on Exhibit A.

ARTICLE III. COUNTY shall prepare any required detailed drawings, plans and specifications as may be required for any proposed improvements listed under "WORK TO BE PERFORMED BY COUNTY" on Exhibit A, and shall perform or arrange for the performance of said items of work at its sole cost, risk and expense, except as may otherwise be specifically provided for in this Agreement. All drawings, plans, and specifications shall be in compliance with all applicable laws, rules, and regulations, including but not limited to the applicable Manual on Uniform Traffic Control Devices.

ARTICLE IV. In the event the work to be performed by COUNTY is to be let by contract, COUNTY shall require its contractor(s), before entering upon the tracks or premises of RAILROAD, or performing any work on or in close proximity thereof, to secure RAILROAD Right-of-Entry Permit from the authorized representative of RAILROAD for the occupancy and use of its premises and/or to confer with RAILROAD relative to its requirements for clearances, operations and general safety regulations. RAILROAD reserves the right to furnish COUNTY's contractor(s), at the sole cost and expense prepaid of said contractor(s), protective services such as, but not limited to, flagmen, watchmen or

other as RAILROAD may deem desirable to promote safety and continuity of rail traffic during the progress of the work, for which said contractor(s) shall be required to prepay RAILROAD before any work takes place. For any such work that is performed by RAILROAD for COUNTY's own forces, COUNTY hereby agrees to so reimburse RAILROAD upon receipt of bills. Cost and expense for work performed by RAILROAD, as referred to in this Article, shall consist of the actual cost of labor, materials and related items, plus RAILROAD's standard additives in effect at the time the work is performed.

ARTICLE V. Each party will, at its own expense, provide the necessary construction engineering and inspection for carrying out its work as set forth in Exhibit A. Any costs which may be incurred by RAILROAD for inspecting the work performed by COUNTY as said work may affect the properties and facilities of RAILROAD, or the safety and continuity of train operations, shall be reimbursed to RAILROAD by COUNTY upon receipt of bill(s) therefor.

ARTICLE VI. Subsequent to the award of any contract or contracts by the parties, and before any work is started on this project, a conference shall be held between the representatives of COUNTY, its contractors, and RAILROAD, at a mutually convenient time and place, 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. At COUNTY's election, the conference may be part of COUNTY's pre-construction meeting. Such schedule of operations will provide sufficient lead-time for the parties to order and assemble their respective materials.

ARTICLE VII. **COUNTY AGREES, TO THE EXTENT IT LAWFULLY MAY, TO DEFEND, INDEMNIFY AND HOLD HARMLESS RAILROAD, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, TRACKAGE RIGHTS TENANTS, SUCCESSORS AND ASSIGNS, AGAINST AND SAVE IT AND THEM HARMLESS FROM LOSS AND DAMAGE TO ANY PROPERTY, AND INJURY TO OR DEATH OF ANY PERSONS, AND FROM ANY LOSS, COST, EXPENSE, FEE, FINE, COURT COST AND/OR ATTORNEY'S**

**FEES, AND EXPENSES INCIDENT THERETO, INCLUDING BUT NOT LIMITED TO COSTS INCURRED IN ENFORCING THE TERMS OF THIS AGREEMENT, ARISING OUT OF ANY WORK TO BE PERFORMED HEREUNDER BY OR ON BEHALF OF COUNTY AND CAUSED BY THE NEGLIGENCE OR WILFULL MISCONDUCT OF THE RESPONSIBLE PARTIES (DEFINED HEREIN AS COUNTY, OR ANY AGENTS OR CONTRACTOR(S) FOR COUNTY, OR THEIR RESPECTIVE OFFICERS, AGENTS OR EMPLOYEES), OR A BREACH BY ANY OF THE RESPONSIBLE PARTIES OF ANY TERM OR PROVISION OF THIS AGREEMENT, OR A VIOLATION OF ANY APPLICABLE LAW, RULE OR REGULATION BY ANY OF THE RESPONSIBLE PARTIES.**

ARTICLE VIII. COUNTY, or its agents or contractors, shall secure (i) Statutory Workers Compensation and Employer's Liability Insurance; (ii) Automobile Liability Insurance in an amount not less than \$1,000,000 combined single limit; and (iii) Commercial General Liability ("GCL") Insurance (Occurrence Form) in an amount not less than \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The GCL policy must name RAILROAD as an additional insured. The GCL policy must not contain any provisions excluding coverage for injury, loss or damage arising out of or resulting from (a) doing business or conducting work on, near, or adjacent to railroad track or facilities, or (b) surface or subsurface pollution, contamination or seepage, or from handling, treatment, disposal or dumping of waste materials or substances. Before commencing any Work, COUNTY shall deliver to RAILROAD a certificate of insurance evidencing the foregoing coverages and true and complete copies of the policies described above. Each policy shall provide for not less than thirty days prior written notice to RAILROAD of cancellation of or any material change in that policy and shall contain the waiver of right of subrogation..

ARTICLE IX. Before any work is started on this project, COUNTY shall provide RAILROAD payment in full for RAILROAD's estimate cost as stated and attached on Exhibit B, "Project Estimate". RAILROAD 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 work it herein

agrees to perform at COUNTY' expense. RAILROAD, upon completion of its work, shall promptly render to COUNTY a detailed final statement of COUNTY's share of its actual expenses as incurred. After COUNTY has checked the final statement and verified that it is reasonable and proper, insofar as they are reasonably able to ascertain, but in no event later than thirty (30) days after receipt of the final statement from RAILROAD, COUNTY shall then reimburse RAILROAD an amount, less previous payments, if any, equal to the full amount of COUNTY's share as billed less any item or items of expense, if any, found as not eligible for reimbursement. Should the final RAILROAD project cost be less than the amount prepaid by the COUNTY, the RAILROAD will refund the difference.

ARTICLE X. This Agreement shall be binding on the parties hereto, their successors and assigns. This Agreement shall be governed by the laws of the State of Illinois without respect to choice of law principles. This Agreement may be amended only through a writing signed by the parties hereto. No waiver of any breach of this Agreement shall constitute precedent for any subsequent breach. Neither party shall be in default of its obligation to perform any obligation hereunder (other than payment to the other party required hereunder) to the extent that performance is prevented or delayed by severe weather, Act of God, strike, lockout, governmental regulation, or other unforeseen condition reasonably beyond the control of the party so affected, but each party shall promptly notify the other of any such event and the estimated duration of the delay caused by the event

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate counterparts, each of which shall be considered an original, by their duly authorized officials as of the day and date first written above.

**WISCONSIN CENTRAL LTD.**

By \_\_\_\_\_  
Chad Anderson  
Regional Chief Engineer

**RECOMMENDED FOR EXECUTION**

\_\_\_\_\_  
Shane Schneider, P.E.  
Director of Transportation / County

Engineer

Lake County

**COUNTY OF LAKE**

**ATTEST:**

By: \_\_\_\_\_  
Chairman  
Lake County Board

\_\_\_\_\_  
County Clerk

Date: \_\_\_\_\_

EXHIBIT A

## SPECIAL PROVISIONS

### RELATIVE TO FLAGGING AND OTHER PROTECTION OF RAILROAD COMPANY 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 Railroad Company for performance of any work, secure a fully executed right of entry license from Railroad Company's Engineering Manager or their authorized representative for the occupancy and use of Railroad Company's property. Grantee, Licensee, Permittee and/or its Contractor and/or subcontractor(s) shall confer with Railroad Company relative to requirements for railroad clearances, operation and general safety regulations.

Prior to any entry onto Railroad Company's property, employees and/or subcontractors of Grantee, Licensee, Permittee and/or its Contractor doing work shall determine by the guidelines hereinafter provided and by the work to be performed the level of safety training to be required.

All employees and/or subcontractors of Grantee, Licensee, Permittee and/or its Contractor not hired by Railroad Company that will work on CN property are required to have minimum [www.contractororientation.com](http://www.contractororientation.com).

- a. EXCEPTION: Railroad Company has exempted those it classifies as "Delivery Persons" from this training. This will include contractors such as UPS, FedEx, trucking companies, etc. who merely access the property to supply materials or equipment.

All employees and/or subcontractors of Grantee, Licensee, Permittee and/or its Contractor hired by Railroad Company which will work on Railroad Company property are required to have minimum CN Safety and Security Awareness training, in addition to undergoing a background check. This training and background check must be obtained through the eRailSafe.com website. If not done before, the contractor must contact CN Special Agent James Conroy at 708-332-5947 or [James.Conroy@cn.ca](mailto:James.Conroy@cn.ca) to be issued a vendor number prior to accessing the noted website. Minimum information required of the Grantee, Licensee, Permittee and/or its Contractor and/or subcontractor(s) when contacting either Special Agent James Conroy or e-RailSafe is Name, Address, Telephone, Contact

Person for State Projects, DOT Contract Number, and the AAR/DOT Number. This training is good for a period of two years.

- a. EXCEPTION: Railroad Company has exempted those employees of contractors providing paving services at a road crossing under construction or repair from this requirement.
- b. EXCEPTION: Railroad Company has exempted those it classifies as "Delivery Persons" from this training. This will include contractors such as UPS, FedEx, trucking companies, etc. who merely access the property to supply materials or equipment.

All employees and/or subcontractors of Grantee, Licensee, Permittee and/or its Contractor hired by Railroad Company, whose duties include and who are engaged in the inspection, construction, maintenance, or repair of railroad track, bridges, roadway, signal and communication systems, roadway facilities, or roadway machinery that will work foul of or have the potential to foul a live track are considered Roadway Workers under FRA regulations and CN Policy. They must complete the On-Track Safety Training course approved by Railroad Company and provided by R.R. Safety – AMR, P.O. Box 75, Lomira, WI 53048, telephone (920) 517-1677, email [rrsafetytraining@yahoo.com](mailto:rrsafetytraining@yahoo.com). This training must be repeated at least once each calendar year.

- a. EXCEPTION: Railroad Company has exempted those employees of contractors providing paving services at a road crossing under construction or repair from this requirement.
- b. EXCEPTION: Railroad Company has exempted those it classifies as "Delivery Persons" from this training. This will include contractors such as UPS, FedEx, trucking companies, etc. who merely access the property to supply materials or equipment.
- c. All the employees and/or subcontractors of Grantee, Licensee, Permittee and/or its Contractor who will operate on-track machinery or those who will provide protection for other employees and/or subcontractors of Grantee, Licensee, Permittee and/or its Contractor must also be trained on CN US Operating Rules pertaining to their duties. They must take and pass the required examination. This training is good for a period of two years.
- d. "Potential to foul a live track" is considered, at a minimum, to be working within twenty-five feet of the track; or as otherwise to be determined by CN Design & Construction Department.

The employees, subcontractors, and/or agents of the Grantee, Licensee, Permittee and/or its Contractor shall qualify for, and make available for inspection to Railroad Company's employees or other authorized personnel at all times while on Railroad Company property, a photo identification issued by [www.e-railsafe.com](http://www.e-railsafe.com), along with at least

one other government-issued form of identification. Grantee, Licensee, Permittee and/or its Contractor and/or subcontractor(s) shall bear all costs of compliance with the requirements of this Section. Railroad Company reserves the right to bar any of employees or agents of Grantee, Licensee, Permittee and/or its Contractor and/or subcontractor(s) from Railroad Company's property at any time for any reason.

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

Engineering Manager of Railroad Company, or their authorized representative, will at all times have jurisdiction over the safety of railroad operations., The decision of the Engineering Manager or their authorized representative as to procedures which may affect the safety of railroad operations shall be final, and Grantee, Licensee, Permittee and/or its Contractor and/or subcontractor(s) shall be governed by such decision.

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

Should any damage occur to Railroad Company property as a result of the authorized or unauthorized operations of Grantee, Licensee, Permittee and/or its Contractor and/or subcontractor(s) and Railroad Company 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 its Contractor, as the case may be, shall promptly reimburse Railroad Company for the actual cost of such repairs or work. For the purpose of these Special Provisions, actual cost shall be deemed to include the direct cost of any labor, materials, equipment, or contract expense plus Railroad Company's current standard additives in each instance.

If the work requires the construction of a temporary grade crossing across the track(s) of Railroad Company, Grantee, Licensee, Permittee and/or its Contractor and/or subcontractor(s) shall make the necessary arrangements and execute Railroad Company's temporary grade crossing agreement for the construction, protection, maintenance, and later removal of such temporary grade crossing. The cost of such temporary grade crossing construction and later removal shall be prepaid to Railroad Company. Additional costs for repairs, maintenance or protection will be paid within thirty (30) days upon receipt of bill(s) therefor.

Grantee, Licensee, Permittee and/or its Contractor and/or subcontractor(s) shall at no time cross Railroad Company'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. Operation over such crossing shall be at the direction and method of Railroad Company's Engineering Manager or their authorized representative.

Railroad Company may, at Grantee's, Licensee's, Permittee's and/or its Contractor's and/or their contractor's sole cost, risk and expense, furnish whatever protective services it considers necessary, including, but not limited to, flagger(s), inspector(s), and stand-by personnel. Flagging protection, inspection services, or standby personnel required by Railroad Company for the safety of railroad operations because of work being conducted by

Grantee, Licensee, Permittee and/or its Contractor, or in connection therewith, will be provided by Railroad Company and the cost of Grantee, Licensee, Permittee and/or its Contractor and shall be prepaid to Railroad Company by Grantee, Licensee, Permittee and/or its Contractor. Flagging protection, inspection services, or standby personnel, necessary or provided in excess of prepayment amounts will be billed at the proper rates and will be promptly paid by overnight delivery.

In the event Railroad Company is unable to furnish protective services at the desired time or on the desired date(s), or if Grantee's, Licensee's, Permittee's and/or its Contractor's prepayment for such services is exhausted and not replenished by Grantee, Licensee, Permittee and/or its Contractor, Grantee, Licensee, Permittee and/or its Contractor and/or subcontractor(s) shall not perform any work on Railroad Company's property until such time and date(s) that appropriate Railroad Company services can be made available and/or appropriate prepayment is received. It is understood that Railroad Company shall not be liable for any delay or increased costs incurred by Grantee, Licensee, Permittee and/or its Contractor and/or subcontractor(s) owing to Railroad Company's inability or failure to have appropriate protective services available at the time or on the date requested.

Grantee, Licensee, Permittee and/or its Contractor and/or subcontractor(s) shall request and secure flagging protection by written notice to Railroad Company using CN's "Request for Flagging Services" form. This form must be submitted at least ten (10) working days in advance of proposed performance of any work or access to Railroad Company's property.

Flagging protection will be required during any operation involving direct and potential interference with Railroad Company's tracks or traffic. This may include but is not limited to fouling of railroad operating clearances, reasonable proximity of accidental hazard to railroad traffic, work within twenty-five (25) feet horizontally of the nearest centerline of any railroad track, any work over any railroad track, or in any other condition that Railroad Company deems protective services necessary, which may include work on or off Railroad Company's property more than twenty-five (25) feet from the nearest centerline of any railroad track, such as any equipment extension (including but not limited to a crane boom) that will reach or has the potential to reach within twenty-five (25) feet of any track.

Grantee, Licensee, Permittee and/or its Contractor and/or subcontractor(s) shall request, prepay, and secure Railroad Company signal facility locates by written notice to Railroad Company along with submission of CN's "Request for Flagging Services" form at least ten (10) working days in advance of proposed performance of any work or access to Railroad Company property. Notice to Railroad Company does not fulfill or satisfy any other notification requirements for utility locates for non-railroad facilities.

Railroad Company may require that prior to digging, trenching, or boring activities on or near Railroad Company property, or beneath any railroad track, an on-site meeting be conducted with Railroad Company's Signal Department representative. No digging, trenching or boring activities shall be conducted in the proximity of any known buried Railroad Company signal cables without Railroad Company's Signal Department representative being present.

The rate of pay for Railroad Company employees will be the prevailing hourly rate for not less than eight (8) hours for the class of labor at regular rates during regularly assigned work hours, and at overtime rates outside of regular hours and in accordance with Labor Agreements or Schedules plus Railroad Company's current standard additives in each instance.

Wage rates are subject to change, at any time, by law or agreement between Railroad Company and employees, and may be retroactive because of negotiations or a ruling by an authorized Governmental Agent. If the wage rates are changed, Grantee, Licensee, Permittee and/or its Contractor and/or subcontractor(s) shall pay on the basis of the new rates and/or additives.

No digging, trenching, or boring on Railroad Company property shall be conducted without Railroad Company's written approval of the plans that were furnished to Railroad Company's Engineering Manager at least thirty (30) in advance of the excavation.

The following temporary clearances are the minimum that must be maintained at all times during any operation on or adjacent to Railroad Company property:

Vertical: 22'-0" (7.00 m) above top of highest rail within 12'-0" (3.81 m) of the centerline of any track

Horizontal: 12'-0" (3.81 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, Grantee, Licensee, Permittee and/or its Contractor and/or subcontractor(s) shall secure written authorization from Railroad Company's Engineering Manager for such lesser clearances in advance of the start of that portion of the work.

No materials, supplies, or equipment will be stored within twenty-five (25) feet from the centerline of any railroad track, measured at right angles thereto.

Grantee, Licensee, Permittee and/or its Contractor and/or subcontractor(s) will be required upon the completion of the work to remove from within the limits of Railroad Company'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 Manager of Railroad Company or their authorized representative.

Nothing in these Special Provisions shall be construed to place any responsibility on Railroad Company for the quality or conduct of the work performed by Grantee, Licensee, Permittee and/or its Contractor and/or subcontractor(s) hereunder. Any approval given or supervision exercised by Railroad Company hereunder, or failure of Railroad Company to object to any work done, material used, or method of operation shall not be construed to relieve Grantee, Licensee, Permittee and/or its Contractor and/or subcontractor(s) and/or subcontractor of any obligations pursuant hereto or under the License these Special Provisions are appended to.

Accepted: \_\_\_\_\_

Print Name: \_\_\_\_\_