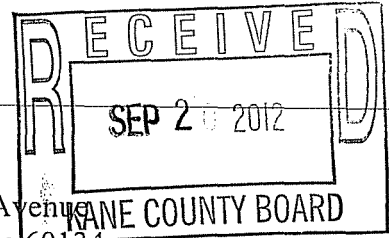


County of Kane
Office of County Board
Kane County Government Center



Karen McConnaughay
Chairman
630-232-5930



719 Batavia Avenue
Geneva, Illinois 60134
Fax 630-232-9188

DOCUMENT VET SHEET
for
Karen McConnaughay
Chairman, Kane County Board

Name of Document: Agreement with CC&P Railroad for Multi-use Path Crossing
(IL 25), Stearns Road Bridge Corridor, Kane County Section
#01-00274-00-BR

Submitted by: Linda Haines

Date Submitted: July 2, 2012

Examined by: Pat Jaeger
(Print name)

(Signature)

July 2, 2012
(Date)

Post on Web: Yes No Atty. Initials

Comments: (5) agreements to sign

Chairman signed: Yes No SEPTEMBER 20, 2012
(Date)

Document returned to: Linda Haines

STATE OF ILLINOIS

COUNTY OF KANE

RESOLUTION NO. 12 - 237

**APPROVING AGREEMENT WITH THE
CHICAGO, CENTRAL AND PACIFIC RAILROAD COMPANY
FOR A MULTI-USE PATH CROSSING (IL25)
STEARNS ROAD BRIDGE CORRIDOR
KANE COUNTY SECTION NO. 06-00214-07-BR**

WHEREAS, the County of Kane desires to cooperate with the Chicago, Central and Pacific Railroad Company ("CC&P") in the construction and maintenance of an at grade pedestrian crossing known as the Illinois State Route 25 Pedestrian Crossing Project, Hereinafter the "Project"); and

WHEREAS, in order to effectuate said improvement it is necessary that the County enter into an agreement with the Chicago, Central and Pacific Railroad Company, an Illinois corporation with offices at 17641 Ashland Avenue, Homewood, IL 60430; and

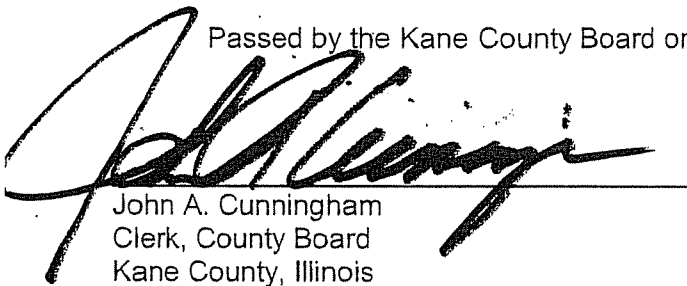
WHEREAS, the County and the Company have determined a mutually satisfactory allocation of responsibilities and costs for the Project; and

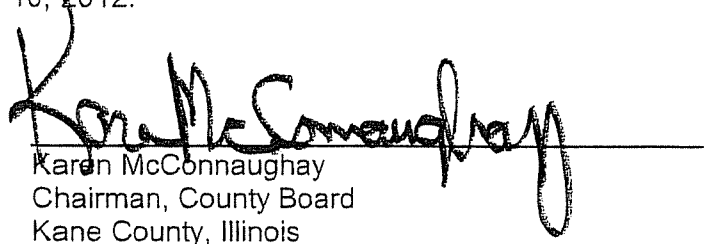
WHEREAS, the County is responsible for the reimbursement of the cost of the railroad's flaggers as well as the maintenance of the crossing to be built as part of the Project; and

WHEREAS, the Project is deemed by the County to be of benefit to the residents of the County of Kane in that the Project's improvements are public in nature and shall facilitate safe and efficient transportation.

NOW, THEREFORE, BE IT RESOLVED by the Kane County Board that the Chairman thereof is hereby authorized to execute an agreement with the Chicago, Central and Pacific Railroad Company for the construction and maintenance of the Illinois State Route 25 Multi-use Path Crossing Project (a copy of which is on file with the County Clerk's Office).


Passed by the Kane County Board on July 10, 2012.


John A. Cunningham
Clerk, County Board
Kane County, Illinois


Karen McConnaughay
Chairman, County Board
Kane County, Illinois

Vote:
Yes 22
No -
Voice -
Abstentions -

7STRNSCC&PRR.4PJ

STATE OF ILLINOIS
COUNTY OF KANE
DATE JUL 18 2012
I, John A. Cunningham, Kane County Clerk and Keeper of the Records in Kane County, Illinois do hereby certify that the attached is a true and correct copy of the original record on file. In witness whereof, I have hereunto set my hand and affix the Seal of the County of Kane at my office in Geneva, Illinois

John A. Cunningham, Kane County Clerk

LICENSE FOR A MULTI-USE PATH CROSSING

THIS AGREEMENT, made and entered into as of the ____ day of September, 2012, by and between the CHICAGO, CENTRAL & PACIFIC RAILROAD COMPANY (hereinafter referred to as "Railroad") whose mailing address is 17641 S. Ashland Avenue, Homewood, Illinois 60430-1345 and the COUNTY of KANE (hereinafter referred to as "Licensee") whose mailing address for purposes of this Agreement is 41W011 Burlington Road, St. Charles, IL 60175, telephone 630-584-1170.

WITNESSETH:

IN CONSIDERATION of the mutual covenants and agreements herein set forth, Railroad, insofar as it lawfully may, does hereby grant unto Licensee a right or license to construct, maintain and use a Multi-Use Path ("Path") approximately five (5) feet in width on either side of the center line of the Path, crossing upon, over and across the property or right-of-way of Railroad (including the tracks located thereon) at approximately Milepost 38.15 on the Freeport Subdivision as shown on the print attached hereto and incorporated herein by reference, and made a part hereof as Exhibit A,

UPON AND SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. DEFINITIONS.

(a) Railroad's Property. "Railroad's Property" shall mean the property shown on the attached print, to the extent owned by Railroad, whether owned in full ownership or as a servitude, easement, or right-of-way, including Railroad's track, the land on which the track is situated, and any adjacent land of Railroad on either side of the track.

(b) License. "License" shall mean the right granted by Railroad to Licensee to construct, maintain and use the Path, under the terms and conditions set forth hereinafter.

(c) License Area. "License Area" shall mean that portion of Railroad's Property over and across which the License is granted. The License Area extends from one edge of the Railroad's Property across the track to the opposite edge of the Railroad's Property and measures a distance of approximately five (5) feet in width on either side of the center line of the Path, (as hereinafter defined) all as more fully shown on the attached print.

(d) Path. "Path" shall mean the Multi-Use Path approaches on either side of the Crossing Proper (as hereinafter defined) within the License Area including that portion between tracks where multiple tracks exist.

(e) Crossing Proper. "Crossing Proper" shall mean that portion of the License Area encompassing an area from end-of-tie to end-of-tie, along with additional crossing surface materials required to eliminate a potential gap between the Path and the roadway crossing surface, agreed by the parties to encompass a total of twenty-one feet (21') of crossing surface when measured parallel to the railroad track, all as shown on Exhibit A.

(f) Licensee's Property. "Licensee's Property" shall mean the property or estate of Licensee to and from which the License provides ingress and egress for Licensee's benefit and use.

(g) Cost. "Cost" shall mean the actual cost of labor, equipment and materials plus Railroad's then current customary additives for overhead and other indirect costs.

2. USE.

(a) The License shall only affect and burden the License Area and no other portion of Railroad's Property, and the Path and Crossing Proper shall be constructed, located, and maintained entirely within the License Area. Licensee shall have no right to use or cross any other portion of Railroad's Property or to use the Path and Crossing Proper for any purposes other than as expressly permitted herein, and Licensee, as a further consideration, cause, and condition without which this License would not have been granted, agrees to restrict the public's use to those purposes and then only to said location and no other for crossing the Railroad's Property, including the track.

(b) Licensee shall not do or permit to be done any act which will in any manner interfere with, limit, restrict, obstruct, damage, interrupt, or endanger Railroad's operations or facilities.

(c) Licensee shall require and shall take all steps necessary to ensure that all persons using the Path and Crossing Proper come to a complete stop, look carefully for approaching trains before fouling or crossing Railroad's tracks, and yield to any approaching train.

(d) The Path and Crossing Proper shall not be used by motor vehicles.

3. TERM.

(a) This License shall become effective as of the date first written above and shall continue in effect thereafter until terminated in one of the manners set forth below:

(i) Either party may at any time give the other party written notice of termination specifying the date on which termination shall be effective, provided that such notice shall be delivered at least thirty (30) days.

(ii) Railroad shall have the right to terminate this Agreement immediately upon written notice to Licensee if Licensee at any time breaches or fails to perform any of the terms and conditions hereof;

(iii) This License shall terminate through non-use or in any other manner provided by law.

(b) Unless the parties mutually agree in writing to leave the Multi-Use Path and Crossing Proper in place after termination, the termination of this Agreement shall not be effective until all removal and restoration of the Multi-Use Path and Crossing Proper from the License Area is complete. Termination of this Agreement shall not release Licensee from any liability or responsibility and duty, which accrued prior to such termination, removal and restoration.

4. CONSTRUCTION. The construction of the Path, including the necessary grading, culverts and drainage on each side of the Railroad's track, shall be performed by Licensee or, at Licensee's option, by an agent or designee for the Licensee, so long as Licensee remains fully liable to Railroad for all of the actions and obligations of its agents and designees, at its own risk and expense, and to the satisfaction of the Railroad's authorized representative. Railroad will install the Crossing Proper over its track(s), from end-of-tie to end-of-tie, and make all adjustments required in Railroad facilities, if any, at Licensee's sole expense. Railroad will accept payment from any agent or designee of Licensee in lieu of receipt of payment from Licensee, so long as Licensee remains fully liable for reimbursement of Railroad hereunder in the event that Licensee's agent or designee fails to fully reimburse Railroad.

5. NOTIFICATION TO RAILROAD. At least ten (10) days prior to entering License Area for the purpose of performing any construction or maintenance work hereunder, Licensee shall notify Railroad's Senior Manager in writing of the type of work to be performed and the date such work will commence. The notice shall be sent to the following address:

Engineering Senior Manager
Chicago, Central & Pacific Railroad Company
17641 South Ashland Avenue
Homewood, IL 60430

If any of Licensee's work will be done by an agent or designee of Licensee, said agent or designee shall secure a fully executed Right of Entry agreement from Railroad before entry or any work is performed on the Railroad's property.

6. SIGHTING AT CROSSING. Licensee shall keep each quadrant of the intersection of the Path with railroad's track free of bushes, trees, weeds, vegetation, and all other obstructions of any kind that could interfere with a pedestrian sighting an approaching train.

7. RAISING WIRE LINES. If it should be necessary to raise any wires on Railroad's property not belonging to Railroad to provide safe clearance for vehicles, Licensee shall make all arrangements therefor at its own sole risk and expense.

8. MAINTENANCE. Licensee shall, at its own risk and expense, maintain said Path in good and safe condition commensurate with its intended use. The Railroad shall, at the sole risk and expense of Licensee, maintain the Crossing Proper, however, Railroad shall have the right, but not the duty, to perform at Licensee's sole risk and expense, any repair or maintenance on the Path that Railroad considers reasonably necessary and Licensee shall pay the cost thereof upon receipt of a bill therefor whether made at Licensee's request or otherwise.

9. CROSSING TO BE KEPT FREE OF DEBRIS. Licensee shall at all times during the term of this Agreement, keep the Railroad's track free of dirt, rocks or other debris or obstructions of any kind, and will not permit any condition which might interfere with the safe and efficient operation of trains over the Crossing Proper, or which might damage equipment or facilities belonging to Railroad or others, or which might constitute a safety hazard of any kind. If at any time Licensee shall fail to do so, Railroad may, at its option, remove any dirt, rocks, debris or obstructions, and Licensee will pay Railroad the cost thereof promptly upon receipt of bill therefor. If the continued or repeated presence of dirt, rocks, debris or obstructions should, in the opinion of Railroad, create an operating hazard, Railroad may keep a flagman on duty at Licensee's expense

until such condition is corrected in a manner reasonably satisfactory to Railroad, or at its option may immediately terminate this Agreement.

10. FENCING AND FLAGGING. Licensee shall, at its own risk and expense, install and maintain any fencing or other barrier, which Railroad indicates, is reasonably necessary. Licensee shall, at its own risk and expense, provide whatever flag protection Railroad shall indicate is necessary. Railroad shall have the right, but not the duty, to provide any such flag protection at Licensee's sole risk and expense and Licensee shall prepay the cost thereof before a flagman will provided. It is further understood and acknowledged by Licensee that Railroad has no obligation or duty to determine the need for any gate or other barrier or the need for flag protection.

11. SIGNS, SIGNALS AND WARNING DEVICES. Licensee acknowledges that Railroad has no obligation or duty to give audible warning of the approach of a train, nor erect whistle posts, nor reduce the speed of its trains, nor alter its operations in any manner, owing to the presence or existence of the Path and Crossing Proper or other use or exercise of the right or license granted herein. Licensee assumes, at its own risk and expense, sole responsibility for determining if any signs, signals or other warning devices are necessary or appropriate for the safety of persons using the License Area and specifically acknowledges that Railroad has no obligation or duty whatever to make any such determination. If the installation of any signs, signals or warning devices on the License Area is presently or hereafter required by law or by competent public authority, or is otherwise requested by Licensee, same shall conform to any then currently applicable practices of the Railroad for such devices as to design, material and workmanship and all costs incurred by the Railroad related to the installation, operation, maintenance, renewal, alteration and upgrading thereof shall be solely borne by Licensee.

12. INDEMNITY. As a further consideration for the License herein granted, and as a condition without which the License would not have been granted, Licensee agrees, regardless of any negligence or other legal fault by or on the part of Railroad or its officers, employees or agents, fully to defend, indemnify and save harmless Railroad and its officers, employees and agents, from and against any and all claims, demands, actions and causes of action, and to assume all risk, responsibility and liability (including all liability for expenses, attorney's fees and costs incurred or sustained by Railroad, whether in defense of any such claims, demands, actions and causes of action or in the enforcement of the indemnification rights hereby conferred),

(a) for death of or injury to any and all persons, including but not limited to the officers, employees, agents, patrons, invitees and licensees of the parties hereto, and for any and all loss, damage or injury to any property whatsoever, including but not limited to that belonging to or in the custody and control of the parties hereto, in whole or in part arising from, growing out of, or in any manner or degree directly or indirectly caused by, attributable to or resulting from the grant or exercise of this License, the failure of Licensee, its agents or designees to conform to the conditions of this Agreement, work performed by Railroad for Licensee under the terms of this Agreement, work performed by Licensee, its agents or designees under the terms of this Agreement, or from the construction, installation, maintenance, repair, renewal, alteration, change, relocation, existence, presence, use, operation or removal of any structure incident thereto, and

(b) for death of or injury to the officers, employees, agents, patrons, invitees and licensees of Licensee and for any and all loss, damage or injury to their property, and to any property belonging to or in the care, custody or control of Licensee, in whole or in part arising from, growing out of, or in any manner or degree directly or indirectly caused by, attributable to or resulting from the conduct of any railroad operations at or near the area in which the herein conferred License is granted or exercised.

It is the intention of the parties hereto that Licensee shall be solely responsible for all such destruction or damage to property or for personal injury to or death of any persons which would not have occurred if such private road crossing had never been constructed or used.

Licensee shall at its sole expense join in or assume, at the election and on demand of Railroad, the defense of any claims, demands, actions and causes of action hereunder arising. The word "Railroad" as used in this Section shall include the assigns of Railroad and any other railroad company that may be operating upon and over the tracks crossing the License Area.

13. INSURANCE. Licensee is a self-insurer for all risks and costs reasonably foreseeable to accrue to the Licensee hereunder. The Licensee shall provide, upon reasonable request from the Railroad, proof of existence and limits of its self insurance reasonably acceptable to the Railroad.

14. REMOVAL OF PATH AND CROSSING PROPER. Prior to termination of this Agreement, Licensee shall remove its Path from Railroad's Property (except for the Crossing Proper located between the ends of ties) and restore the License Area as near as may be, to its former condition insofar as

such restoration may in the opinion of Railroad's duly authorized representative be practical, all at Licensee's sole risk and expense. If Licensee fails to so remove and restore, Railroad shall have the right, but not the obligation, to do so at Licensee's sole risk and expense. Upon termination, Railroad shall have the right, but not the duty, to remove the Path and Crossing Proper and to restore the Railroad's Property, all at Licensee's sole risk and expense. Licensee shall pay the cost of any work performed by Railroad upon presentation of a bill therefor. Railroad shall have the right to require Licensee to deposit the estimated cost of any or all removal or restoration work involving the Path and/or Crossing Proper or to furnish an acceptable performance bond in such amount upon execution of this Agreement or at any time thereafter to assure complete performance under this Section.

15. ASSIGNMENT. Licensee shall not have the right to assign this Agreement without first obtaining the consent in writing of the Railroad, which consent will not be unreasonably withheld.

16. TAXES. The Licensee is a unit of government of the State of Illinois and as such is a tax exempt entity. Licensee shall pay all taxes, general and special, license fees or other charges which may become lawfully due or which may be lawfully assessed against the premises of the Railroad because of the construction, existence, operation or use of the Path and Crossing Proper, or the business of the Licensee conducted in connection with said facility, and shall reimburse the Railroad for any such taxes, license fees or other charges which may be paid by the Railroad upon the presentation of bills therefor.

17. BILLS. All bills that become due hereunder and submitted by the Railroad to Licensee pursuant to the terms of this Agreement shall be paid by Licensee within thirty (30) days of receipt thereof.

18. ENFORCEABILITY. In the event that any parts, sections or other portions of this Agreement are found unenforceable under the applicable law of any courts having jurisdiction over this Agreement, the remaining parts, sections or other portions thereof and the enforcement of same shall not be affected and shall otherwise remain in full effect and enforceable.

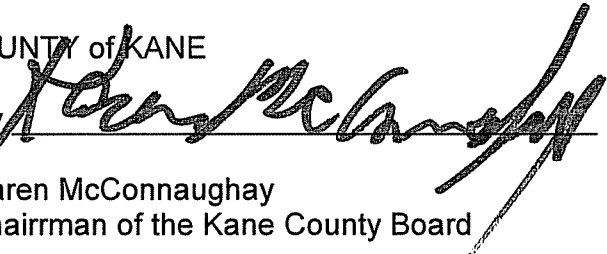
19. PAYMENT. Any payment of fees, costs, expenses and the like provided for herein to be made by the Licensee may be made by any other party on behalf of the Licensee, so long as such payments otherwise conform to the terms hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate as of the date first above written.

CHICAGO, CENTRAL & PACIFIC
RAILROAD COMPANY

By _____
Chad Anderson
Regional Chief Engineer

COUNTY of KANE

By 
Karen McConnaughay
Chairman of the Kane County Board