



CITY OF CRYSTAL LAKE
AGENDA
CITY COUNCIL
REGULAR MEETING
City of Crystal Lake
100 West Woodstock Street, Crystal Lake, IL
City Council Chambers
June 4, 2019
7:30 p.m.

1. **Call to Order**
2. **Roll Call**
3. **Pledge of Allegiance**
4. **Proclamation – Crystal Lake Public Library Summer Reading Program**
5. **Approval of Minutes – May 21, 2019 Regular City Council Meeting**
6. **Accounts Payable**
7. **Public Presentation**
The public is invited to make an issue oriented comment on any matter of public concern not otherwise on the agenda. The public comment may be no longer than 5 minutes in duration. Interrogation of the City staff, Mayor or City Council will not be allowed at this time, nor will any comment from the Council. Personal invectives against City staff or elected officials are not permitted.
8. **Mayor's Report**
9. **City Council Reports**
10. **Consent Agenda**
 - a. **Willow Creek Crystal Lake, Lake Baptism Special Event, Three Oaks Recreation Area**
 - b. **Chippewa Girl Scout Service Unit Special Event and Fee Waiver Request, Three Oaks Recreation Area**
 - c. **Crystal Lake Service League Housewalk Special Event Request for Closing North Shore Drive (The Point), Friday September 6, 2019**
 - d. **Chicago Land Title Trusts 1004004149 & 1004004152 (Whiskey Business and Shopping Center) and Reinhardt/Kirk requests - Annexation Public Hearing Continuations to the August 6, 2019 City Council Meeting**
11. **Habitat for Humanity of Northern Fox Valley 24-Hour Build-A-Thon Special Event Request, Friday, November 1, 2019 through Saturday, November 2, 2019.**
12. **Final Planned Unit Development to increase the outside storage area - 435 S. Main Street, Ace Hardware**
13. **Adopt-A-Highway Program Consideration**
14. **Bid Award – Police Directed Towing Services**

15. **Public Safety Radio System Migration to STARCOM21 – Approving participation in the State of Illinois STARCOM21 Public Safety Radio Network and Adopting an Ordinance Amending the Annual 2019/20 Annual City Budget**
16. **Bid Award – 2019 Street Resurfacing Program**
17. **Intergovernmental Agreement with the McHenry County Conservation District (MCCD) Prairie Trail Improvements in conjunction with the Crystal Lake Avenue and Main Street Intersection Improvement**
18. **Acquisition of Right-of-Way for the Crystal Lake Avenue and Main Street Intersection Improvement**
19. **Board and Commission Appointment and Reappointments – Library Board**
20. **Public Highway At-Grade Crossing Agreements with the Union Pacific Railroad Company for the Crystal Lake Avenue at Main Street Intersection Improvement**
21. **Appropriation of MFT funds for the railroad crossing improvements for the Main Street and Crystal Lake Avenue Intersection Improvements.**
22. **Council Inquiries and Requests**
23. **Adjourn to Executive Session for the purpose of discussing matters of pending and probable litigation, the sale, purchase or lease of real property, collective bargaining and personnel**
24. **Reconvene to Regular Session**
25. **Adjourn**

If special assistance is needed in order to participate in a City of Crystal Lake public meeting, please contact Melanie Nebel, Executive Assistant, at 815-459-2020, at least 24 hours prior to the meeting, if possible, to make arrangements



Agenda Item No: 10 a

**City Council
Agenda Supplement**

Meeting Date:

June 4, 2019

Item:

Willow Creek Crystal Lake, Lake Baptism

Council Discretion:

Motion to approve the Willow Creek Crystal Lake request to hold a special event at the Three Oaks Recreation Area from 1:00 p.m. to 3:30 p.m. on Sunday, September 8, 2019 with a rain date of Sunday, September 15, 2019.

Staff Contact:

Nick Hammonds, Management Analyst

Background:

The City has received a request from Willow Creek Crystal Lake for the use of the Three Oaks Recreation Area beach/wading area and main pavilion for a lake baptism from 1:00 p.m. to 3:30 p.m. on Sunday, September 8, 2019 with a rain date of Sunday, September 15, 2019. From 2011 through 2018, the petitioner successfully complied with the City's requirements and conditions during the lake baptism.

Approximately 600-700 people will participate in this event, including attendees, volunteers and staff. The petitioner is requesting exclusive use of one-half of the sand beach and swim wading area. Per the petitioner's itinerary, the baptism would be staged to ensure that only a portion of the attendees would be in the water at any one time. The petitioner will utilize the park's speaker system, and place crosses on the beach sand. The placement of the crosses would be subject to the conditions in this agenda supplement. The petitioner is requesting that general swimming be allowed from 2:00 p.m. to 3:30 p.m.

The petitioner is also requesting exclusive use of the picnic grove pavilion during this time. All other areas of the park would be open to the public. The petitioner's non-resident attendees will not be subject to beach admission fees, since at the time of the event, the swimming season will be over and non-residents will be allowed to access the beach/playground/spray park area for no charge.

Staff has reviewed this request and would offer the following conditions for approval.

The Petitioner shall:

- Comply with all City Code regulations, Special Event requirements, and Pavilion rental requirements.
- Provide a plan for all on-site signage prior to the event, which shall be reviewed by the City and approved prior to placement.
- Agree that all traffic control activities shall be performed by City staff.
- It is anticipated that all parking will be accommodated onsite with the addition of the two new parking lots, but it is recommended that the Petitioner secure off-site parking for overflow parking, if needed. The petitioner should inform event attendees that off-site overflow parking is available once the Three Oaks parking lot reaches capacity. Also, encourage event attendees to carpool from the church.
- General swimming will take place between 3:00 p.m. and 5:00 p.m. If it is determined that additional guards are needed, the petitioner will compensate the City for additional lifeguard staff time.
- Sound system shall not disturb other users of the park.
- All temporary electrical items shall comply with the 2005 Electric Code and shall be subject to City inspection. Petitioner shall be responsible for contacting the City for an inspection.
- All egress gates will be unobstructed at all times.
- The petitioner's proposed crosses shall not obstruct lifeguard viewing of patrons in the water.
- Reimburse the City for the following:

Special Event Application Fee	\$75
One detail Police Officer (minimum) to assist with traffic control	\$210.12 (\$70.04 per officer, per hour, from Noon – 3:00 PM) (if a second officer is required by the City prior to the event, the petitioner shall compensate the City for this second officer).
Staff Preparation and Restoration Fee	\$120 (4 hours, at \$30 per hour)
Three City Lifeguards	\$150 (5 hours, at \$10 per hour)
Sound System Fee	\$75
Pavilion Rental Fee	\$180
Total Non-Refundable Fee	\$810.12
Special Event Refundable Damage Deposit	\$1,000
Pavilion Rental Refundable Damage Deposit	\$200

Attached is a copy of the petitioner's submittals. The City's Police and Fire Rescue Departments have reviewed this request.

Votes Required to Pass:

Simple majority vote of the City Council.



Agenda Item No: 10b

**City Council
Agenda Supplement**

Meeting Date:

June 4, 2019

Item:

Girl Scout Request for a Special Event at the Three Oaks Recreation Area

Council Discretion:

1. Motion to approve the Chippewa Girl Scout Service Unit request to hold a day camp, including overnight camping, at Three Oaks Recreation Area from Monday, June 24, 2019 through Thursday, June 27, 2019.
2. Motion to waive the application fees, pavilion rental fees, and additional security staff fees.

Staff Contact:

Eric Helm, Deputy City Manager
Nick Hammonds, Management Analyst

Background:

The City has received a request from the Chippewa Girl Scout Service Unit for the use of the Three Oaks Recreation Area to hold a day camp and overnight camping from Monday, June 24, 2019, through Thursday, June 27, 2019. Between 2013 and 2017, the Girl Scouts held this same event and successfully complied with all City conditions.

The overnight camping would only occur on the night of Wednesday, June 26th in the Picnic Grove area and will include approximately 15 – 20 tents. This is the same area utilized in previous years for overnight camping by scout groups. The Chippewa Girl Scout Service Unit is composed of girls that attend Crystal Lake schools and live in the Crystal Lake area. Approximately 100 – 120 girls will participate each day. The ratio of campers to adult chaperons will be 6:1 throughout the week. The Girl Scouts consider this a “twilight camp” since activities will take place from 2:00 PM to 9:00 PM. The Girl Scouts will offer the following events and activities at the park:

- Swimming
- Cooking
- Hiking
- Crafts
- Letterboxing

In addition to the above activities, the Scouts will organize an archery event for two hours each day. City staff will work with the Girl Scouts to ensure that the archery event is conducted safely.

The archery activities will utilize the far end of the volleyball area as a “backdrop” and the area will be roped off. Utilizing the volleyball area ensures that this activity is separated from the areas of the park that are visited by the general public. The Scouts will shoot into hay bales and at least two adult leaders, certified in archery, will supervise the activity.

Overnight Camping

As part of the day camp, from Wednesday, June 26th through Thursday, June 27th, the Girl Scouts would like to overnight camp in the Picnic Grove area. Approximately 15 – 20 tents will be set up in the Picnic Grove. All tents will be removed first thing in the morning. This is the same area that has been utilized by numerous other scout overnight camp groups. Per Chapter 238 of the City Code, overnight camping at Three Oaks Recreation Area may be allowed when approved by the Mayor and City Council.

238-1 General Rules and Admission

- A. Three Oaks Recreation Area General Rules
 - 8. Camping and open fires within the recreational area are prohibited except as authorized by the Mayor and City Council.

In addition, the petitioner is requesting exclusive use of all four pavilions and the Picnic Grove during this time. The petitioner will clean up the site and dispose of the trash from the activities. Since the petitioner is requesting the overnight use of the facility, City staff recommends that a City security staff member monitor the facility during the time when no other Three Oaks staff is present. The additional security staff time would be 3 hours, from 2:00 AM to 5:00 AM.

Staff has reviewed the submittals, and the Petitioner has agreed to comply with all City Code regulations, Special Event requirements, and Pavilion rental requirements. During the entire event, the Scouts will provide the City with an insurance certificate naming the City as additional insured and sign an indemnity/hold harmless agreement. In addition, each parent will sign a “Participant Form” on behalf of their child, which will provide the City further liability protection.

Attached for your information is a copy of the request letter, Special Event Application, Group Use Application, and Pavilion Rental Application. The petitioner has agreed to pay the refundable damage security deposit of \$600. The petitioner is requesting a waiver of the following fees:

Special Event Application Fee:	\$50
Pavilion Rental Fee (four days):	\$1,120
Additional Site Security Staff (one night):	\$36
Total:	\$1,206

For reference, from 2013 through 2017, the City Council approved overnight camping for this group. In addition, the City Council waived the application fees, pavilion rental fees, and additional security staff fees for the 2013 through 2017 events.

Recommended Conditions:

City staff has reviewed the petitioner's request and offers the following conditions:

1. Comply with all City Code regulations, Special Event requirements, and Pavilion rental requirements, including all insurance requirements. Insurance certificates need to be provided annually. Petitioner must adhere to the required City insurance provisions for the use of City-owned property by providing a certificate of insurance naming the City as additional insured, and sign the required Indemnity/Hold Harmless agreement. Also, all participants must sign a waiver releasing the City from any liability related to their participation in the triathlon that will be collected upon race registration.
2. If tents or canopies will be used, the petitioner shall contact the Fire Rescue Department for further review. The use of tents or canopies is subject to review by the Fire Prevention Bureau. The petitioner shall provide a detailed site plan for tents or canopies prior to the event.
3. Submit for City approval, severe weather plans and an evacuation plan.
4. All temporary electrical items shall comply with the 2005 Electric Code and shall be subject to City inspection.
5. All debris created by the event shall be cleaned up during and after the event.
6. In the case of inclement weather, an alternate date can be approved by the City Manager.

The petitioner is aware of the recommended conditions and will be present at the meeting.

Votes Required to Pass:

Simple majority vote of the City Council



Agenda Item No: 10c

City Council Agenda Supplement

Meeting Date: June 4, 2019

Item: Crystal Lake Service League Housewalk Special Event request for closing North Shore Drive (The Point).

City Council discretion: Motion to approve the Special Event for the Crystal Lake Service League Housewalk to be held on September 6, 2019, pursuant to the recommended conditions.

Staff Contact: Michelle Rentzsch, Director of Community Development

Background:

Crystal Lake Service League is requesting to hold its annual Housewalk. This request includes the closure of a portion of North Shore Drive (The Point) on Friday, September 6, 2019, from 8:00 a.m. until 2:00 p.m. and again from 5:00 p.m. to 9:00 p.m.

One of the homes on this year's Housewalk is at the dead end portion of North Shore Drive. The Service League is requesting to close that portion of the street during the Housewalk for the safety of the participants walking to the home. The roadway is narrow in that area and this will allow for safe pedestrian traffic and no parking of vehicles on that portion of the road. Local traffic will be permitted during the temporary closures.

The neighboring property owners have been made aware of this request and have signed a letter that they are aware of the Special Event and road closure.

City staff has reviewed the petitioner's request and does not have any concerns regarding the closure of a portion of North Shore Drive, providing the following conditions are met:

- 1) City-owned barricades must be used to block off the street closure sections. Barricades must be placed to allow limited access to North Shore Drive. In addition, a "Local Traffic Only" sign must be temporarily placed at the entrance to that portion of North Shore Drive.
- 2) Emergency vehicle access must be maintained throughout the event. Items should not be placed on the roadway to prohibit access, and volunteers should be available to remove barricades to allow emergency vehicles on the roadway, if necessary.

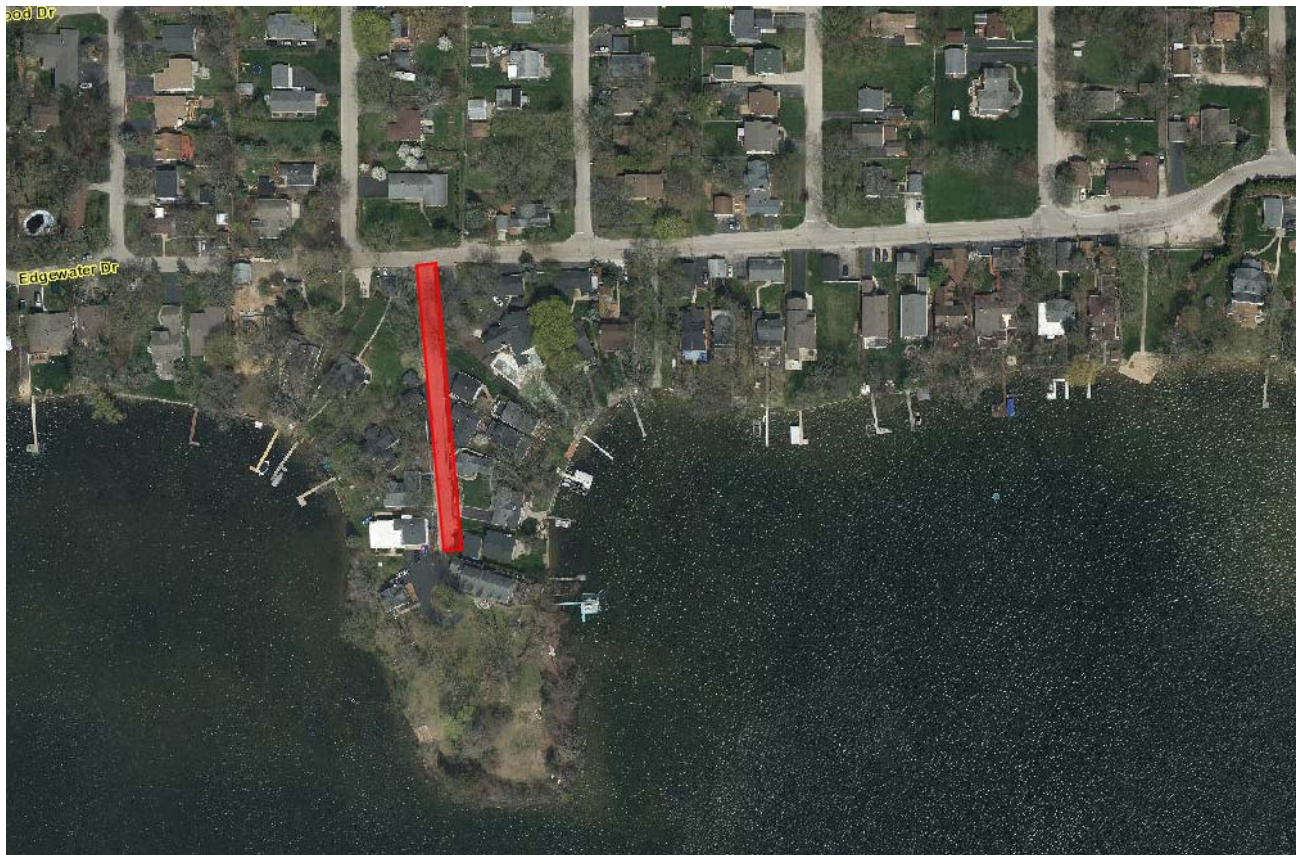
- 3) Any barricades used to restrict traffic or pedestrians on the section of North Shore Drive involved in this request must be easily moveable and manned by event staff should an emergency occur during the event hours.
- 4) Parking along streets in the area (Edgewood, Sunnyside, Mayfield, North Shore) must be restricted to one side of the street only (side of street not with fire hydrant preferably) and “NO PARKING” signs posted on the restricted side (side of street with fire hydrants).
- 5) Fire hydrants located on or near the property of the event must remain unobstructed and “NO PARKING” signs posted.
- 6) All debris created by the event must be cleaned up during and after the event.
- 7) Petitioner must adhere to the required City insurance provisions for the use of City-owned property by providing a certificate of insurance naming the City as additional insured, and sign the required Indemnity/Hold Harmless agreement.

The applicant has been made aware of these recommended conditions and advised to attend the June 4, 2019 City Council meeting to answer any questions.

Votes Required to Pass:

Simple majority vote.

PLN-2019-00076 Crystal Lake Service League Housewalk – Closure of Portion of North Shore Drive





Agenda Item No: 10d

City Council
Agenda Supplement

Meeting Date: June 4, 2019

Item: Chicago Title Land Trusts 1004004149 & 1004004152 (Whiskey Business and Shopping Center) and Reinhardt/Kirk Annexation Public Hearing Continuation

Recommendation: Motion to continue the 1) Chicago Title Land Trusts 1004004149 & 1004004152 and 2) Reinhardt/Kirk requests to the August 6, 2019 City Council meeting for the Annexation Public Hearings.

Staff Contact: Michelle Rentzsch, Director of Community Development
Katie Cowlin, Assistant City Planner

Background:

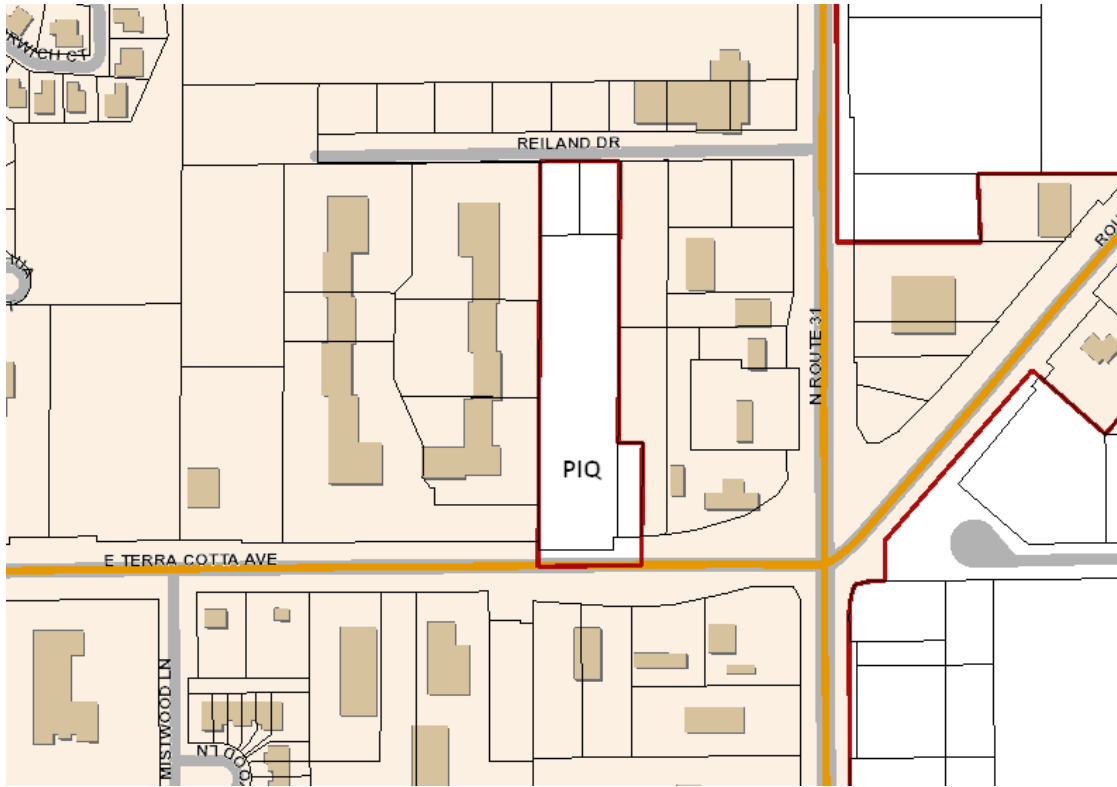
Chicago Title Land Trusts- The petitioner is requesting the annexation of three parcels that total approximately 3.04 acres, located at 4616 Route 176, 4709 Route 176 and lot 13 on Reiland Drive. The parcels are improved with Whiskey Business, a commercial retail shopping center, auto repair business and outdoor storage.

Reinhardt/Kirk- The property is contiguous with the above property and consists of one parcel that totals approximately 0.28 acres, located at 851 Reiland Drive. The property would be involuntarily annexed after the annexation of the Chicago Title Land Trusts.

City staff respectfully requests that the Whiskey Business and Reinhardt/Kirk petitions be continued to the August 6, 2019 City Council meeting for the Annexation Public Hearing in order to continue to work with the petitioner on the annexation agreement for the Chicago Title Land Trusts. Proposed redevelopment of the Chicago Title Land Trust properties (Whiskey Business) prolonged the annexation agreement discussions. City staff and the petitioner are in the process of finalizing the annexation agreement for the City Council's review at this time. Due to the prolonged discussions, the public notifications for the Annexation Public Hearing will be republished.

Votes Required to Pass: A simple majority.

Chicago Title Land Trusts 1004004149 & 1004004152 (Whiskey Business and Shopping Center) & Reinhardt/Krik Annexation Public Hearings





Agenda Item No: 11

City Council Agenda Supplement

Meeting Date: June 4, 2019

Item: Habitat for Humanity of Northern Fox Valley 24-hour Build-A-Thon

Staff Recommendation: Motion to approve the Special Event for the Habitat for Humanity of Northern Fox Valley 24-hour Build-A-Thon to be held on Friday, November 1 through Saturday, November 2, 2019 with a waiver from City Code Section 358-6J restricting construction hours, pursuant to the recommended conditions, and a waiver of the \$50 application fee.

Staff Contact: Michelle Rentzsch, Director of Community Development

Background:

Habitat for Humanity of Northern Fox Valley is requesting to hold a 24-hour Build-A-Thon fundraiser at their homes under construction at 455 and 459 McHenry Avenue on Friday, November 1, 2019 at 6:00 a.m. until Saturday, November 2, 2019 at 6:00 a.m.

The City Code Section 358-6J restricts construction hours to between 7:00 a.m. and 7:00 p.m. Monday through Friday, and 8:00 a.m. to 6:00 p.m. on Saturday.

City staff has reviewed the petitioner's request and does not have any concerns regarding the 24-hour Build-A-Thon, providing the following conditions are met:

- 1) Emergency vehicle access must be maintained throughout the event for adjacent roadways.
- 2) Parking along streets in the area (McHenry Avenue, Lake Street, Linn Street, and Everett Avenue) must be restricted to one side of the street only (side of street not with fire hydrant preferably) and "NO PARKING" signs posted on the restricted side (side of street with fire hydrants).
- 3) Fire hydrants located on or near the property of the event must remain unobstructed and "NO PARKING" signs posted.
- 4) All debris created by the event must be cleaned up during and after the event.

The applicant has been made aware of these recommended conditions and advised to attend the June 4, 2019 City Council meeting to answer any questions.

Votes Required to Pass:

Simple majority vote.

PLN-2019-00089 HABITAT FOR HUMANITY – SPECIAL EVENT





Agenda Item No: 12

City Council
Agenda Supplement

Meeting Date: June 4, 2019

Item: REPORT OF THE PLANNING & ZONING COMMISSION
Ace Hardware

Requests: Final Planned Unit Development Amendment to increase the outdoor storage area.

Petitioner: Adam Ziegler, petitioner
435 S. Main Street

PZC Recommendations: Motion to approve the PZC recommendation and adopt an ordinance granting the Final PUD Amendment to increase the outdoor storage area at 435 S. Main Street, subject to the recommended conditions.

Staff Contact: Michelle Rentzsch, Director of Community Development
Elizabeth Maxwell, City Planner

Background:

- The previous PUD approvals allow Ace to have outside storage to the north of the building in the driveway and on either side of the front entrance to the store.
- During Ace's busy seasons their shipments for high-demand products exceeds their ability to store them inside or in the previously designated areas. This has led to overflow in the parking lot with pallets of mulch, dirt, stone, etc.
- The petitioner has proposed to create a screened area in the parking spaces on the north side of the parking lot to organize this overflow. The screening would consist of an 8-foot, L-shaped, wooden fence.

PZC Highlights:

- The members of the PZC recognized the need for more storage during busy seasonal times and found that the request met the Findings of Fact.

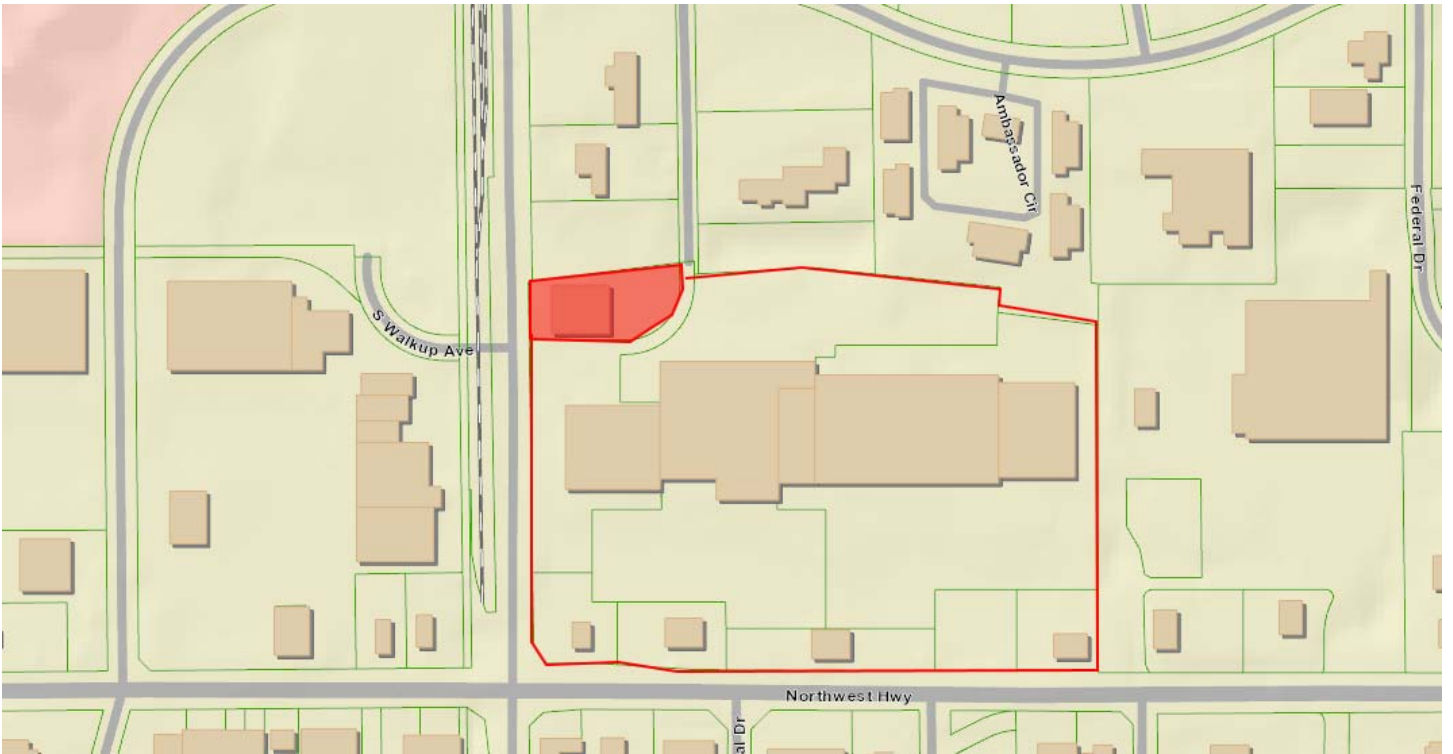
PZC Vote:

The PZC recommended **approval (7-0)** the petitioner's request for a Final Planned Unit Development Amendment with the following conditions:

1. Approved plans, reflecting staff and advisory board recommendations, as approved by the City Council:
 - A. Application (Ziegler's Ace, received 04/19/19)
 - B. Site Plan (Ziegler's Ace, undated, received 04/19/19)
 - C. Fence detail (Ziegler's Ace, undated, received 04/19/19)
2. The overall planned unit development approval and all subsequent amendments are still in effect unless modified by this ordinance.
3. The petitioner must address all of the review comments and requirements of the Community Development, Fire Rescue, Police, and Public Works Departments.

Votes Required to Pass: A simple majority vote.

PLN-2019-00069 ZIEGLER'S ACE HARDWARE – 435 S MAIN ST



Ord. No.
File No.



The City of Crystal Lake Illinois

**AN ORDINANCE GRANTING AN AMENDMENT
TO THE FINAL PUD FOR 435 N MAIN STREET**

WHEREAS, pursuant to the terms of the Petition (File #PLN-2019-69) before the Crystal Lake Planning and Zoning Commission, the Petitioner has requested an Amendment to the Final Planned Unit Development for Final Planned Unit Development Amendment for the expansion of the outside storage and sales area; and

WHEREAS, the Planning and Zoning Commission of the City of Crystal Lake, pursuant to notice duly published on April 26, 2019 in the Northwest Herald, held a public hearing at 7:30 p.m., on May 15, 2019 at City Hall at 100 W. Woodstock Street, Crystal Lake, Illinois to consider the proposed Amendment to the Final Planned Unit Development; and

WHEREAS, on May 15, 2019, the Planning and Zoning Commission, having fully heard and considered the testimony of all those present at the public hearing who wished to testify, made findings of fact as required by law and recommended to the Mayor and City Council of the City of Crystal Lake that the proposed Amendment to the Final Planned Unit Development be approved, all as more specifically set forth in that certain Report of the Planning and Zoning Commission in Case #PLN-2019-69, dated as of May 16, 2019; and

WHEREAS, it is in the best interests of the City of Crystal Lake that the Amendment to the Final Planned Unit Development be granted as requested in said Petition,

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF CRYSTAL LAKE, McHENRY COUNTY, ILLINOIS, as follows:

SECTION I: That a Final Planned Unit Development Amendment be granted for the expansion of the outside storage and sales area for the property located at 435 S. Main Street (19-04-351-001), Crystal Lake, Illinois.

SECTION II: That the Final PUD Amendment be granted with the following conditions:

1. Approved plans, reflecting staff and advisory board recommendations, as approved by the City Council:
 - A. Application (Ziegler's Ace, received 04/19/19)
 - B. Site Plan (Ziegler's Ace, undated, received 04/19/19)
 - C. Fence detail (Ziegler's Ace, undated, received 04/19/19)
2. The overall planned unit development approval and all subsequent amendments are still in effect unless modified by this ordinance.
3. Shift the outside storage area over to the west into the striped area, which would leave 4 available parking spaces on the east end of the parking row.
4. The petitioner must address all of the review comments and requirements of the Community Development, Fire Rescue, Police, and Public Works Departments.

SECTION III: That the City Clerk be and is hereby directed to amend all pertinent records of the City of Crystal Lake to show the issuance of a Planned Unit Development Amendment in accordance with the provisions of this Ordinance, as provided by law.

SECTION IV: That this Ordinance shall be in full force and effect from and after its passage, approval and publication as provide by law.

DATED at Crystal Lake, Illinois, this 4th day of June, 2019.

City of Crystal Lake, an
Illinois municipal corporation

Aaron T. Shepley, Mayor

SEAL

ATTEST:

Nick Kachiroubas, City Clerk

Passed: June 4, 2019

Approved: June 4, 2019



Agenda Item No: 13

City Council Agenda Supplement

Meeting Date:

June 4, 2019

Item:

Consideration of an Adopt-A-Highway Program

Staff Recommendation:

1. Motion to adopt an ordinance approving an Adopt-A-Highway Program for City of Crystal Lake roads; and,
2. Motion to adopt a resolution approving and authorizing the City Manager to execute an agreement with Hannah Beardsley Middle School to adopt a one-half mile stretch of Crystal Lake Avenue from Oak Hollow Road to Erick Street for a two-year period, per the requirements set forth in the City of Crystal Lake Adopt-A-Highway Program.

Staff Contact:

Eric T. Helm, Deputy City Manager
Nick Hammonds, Management Analyst

Background:

Jen Rutishauser, a teacher at Hannah Beardsley Middle School, contacted City staff to inquire about 'adopting' a stretch of Crystal Lake Avenue on behalf of the National Junior Honor's Society to perform litter cleanup along the roadway. In response to this request, City staff has researched the feasibility of allowing groups to 'Adopt-a-Highway' for the purpose of litter collection. The letter requesting to adopt the roadway submitted by Ms. Rutishauser is attached.

Some municipalities operate Adopt-A-Highway programs to promote environmentally friendly practices and encourage community involvement in cleaning litter from roadways. Illinois State Statutes allow municipalities to create an adopt-a-highway program. The Illinois Adopt-A-Highway Act is attached for the City Council's reference. Staff has prepared a proposed Adopt-A-Highway program to allow residents and community groups based in Crystal Lake to adopt one-half to one-mile lengths of specified roadways within the City. Community groups such as Girl and Boy Scouts of America, religious groups, schools and sports teams are able to provide community service through Adopt-A-Highway programs.

The program provides a clean environment, gives civic pride to the community, and serves as a reminder not to litter. A sign will be placed on the stretch of the adopted roadway to signify the name of the resident or organization that has adopted the road. This will provide recognition of adopting groups' efforts to help provide a clean environment in our community. Enrollment in the program is voluntary and does not require any fees for participants.

Numerous counties and municipalities have these types of programs. McHenry County, the City of Woodstock, and the Village of Huntley currently have Adopt-A-Highway programs. The City's Special Legal Counsel recommends establishing the program via ordinance, and approving prospective adoption groups by resolution will allow the Council to approve adoption groups on a case-by-case basis.

Internal Processes:

The City's Public Works Department will coordinate the program. The program involves communication between residents and the Public Works Department to coordinate clean-up days. Public Works will be notified in advance of the anticipated cleaning date, and residents are required to notify Public Works upon completion of the clean-up. Public Works will be responsible for providing safety vests, creating signs to show when the road is being cleaned to make drivers aware of the cleaners, and the necessary bags to be used for collection of refuse and recyclables. Participants will then leave the bags with collected refuse and recyclables in a designated area along the adopted road to be picked up by Public Works.

Staff has prepared a safety presentation per Illinois Adopt-A-Highway Act requirements and must be viewed by enrollees in the program. A page on the City's website has been created to provide information and allow prospective adoption groups to view the safety presentation and available roads. The presentation provides general requirements and safety precautions to be taken when residents are cleaning. Contact information is provided in the presentation as well as in the application forms. City staff may provide additional safety training to adoption groups before cleaning.

Recommendation:

City staff recommends a motion to adopt an ordinance approving an Adopt-A-Highway Program for City of Crystal Lake roadways, and a motion to adopt a resolution approving Hannah Beardsley Middle School to adopt a one-mile stretch of Crystal Lake Avenue from Oak Hollow Road to Erick Street for a two-year period. The City's Public Works Department, Police Department, and Fire Rescue Department have reviewed the proposed rules and guidelines and are supportive of the program. The City's insurance provider, IRMA, has reviewed the required materials and approves of the proposed program. The attached program includes the application and requirements for residents to join. A list of eligible roads to be adopted as part of the program is also included in the attachments as well.

Votes Required to Pass:

Simple Majority



CITY OF CRYSTAL LAKE

ORDINANCE NO. _____

FILE NO. _____

AN ORDINANCE ADOPTING CHAPTER 145 OF THE CRYSTAL LAKE ILLINOIS
MUNICIPAL CODE RELATING TO AN ADOPT-A-HIGHWAY PROGRAM

Adopted by the
Mayor and City Council
of the
City of Crystal Lake
McHenry County, Illinois
this 4th day of June, 2019

Published in pamphlet form by direction
and authority of the City of Crystal Lake
McHenry County, Illinois
this 4th day of June, 2019

ORDINANCE NO. _____

**AN ORDINANCE ADOPTING CHAPTER 145 OF THE CITY OF CRYSTAL LAKE
ILLINOIS MUNICIPAL CODE RELATING TO AN ADOPT-A-HIGHWAY PROGRAM**

WHEREAS, the City of Crystal Lake is empowered pursuant to 605 ILCS 120/1 et. seq., the “Illinois Adopt-A-Highway Act” (“hereinafter referred to as the “ACT”) to establish the terms, requirements and procedures that groups must follow in applying for participation, and participating in, an Adopt-A-Highway Program allowing groups to adopt sections of roadway for the purpose of litter collection; and

WHEREAS, in order to augment the City of Crystal Lake’s litter collection efforts, this Adopt-A-Highway Ordinance will allow volunteer groups to adopt various sections of roadways for the purpose of litter collection; and

WHEREAS, the City of Crystal Lake believes it is in the best interests of the citizens of Crystal Lake to directly administer the Adopt-A-Highway Program with groups wishing to adopt sections of the City’s roadways; and

WHEREAS, the Adopt-A-Highway Ordinance requires said volunteer groups to enter into an agreement with the City defining the responsibilities of the volunteer group and the City; and

WHEREAS, said ACT sets forth the minimum responsibilities and procedures of groups and units of local government;

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of Crystal Lake, McHenry City, Illinois, as follows:

SECTION 1: The foregoing recitals are true and correct and are incorporated into the text of this ordinance as its findings to the same extent as if each such recital had been set forth herein in its entirety.

SECTION 2: The Municipal Code of the City of Crystal Lake is hereby amended to add Chapter 145 to be entitled “ADOPT-A-HIGHWAY PROGRAM” which shall hereinafter provide as follows:

CHAPTER 145. ADOPT-A-HIGHWAY PROGRAM

Sec. 145-1. – Title and Purpose.

(A) *Title.* This subchapter shall be known as and may be referred to as the “City of Crystal Lake Adopt-A-Highway Ordinance” or “this chapter”, and the program it establishes may be referred to as the “City of Crystal Lake Adopt-A-Highway Program”.

(B) *Purpose.* The City of Crystal Lake Adopt-A-Highway Ordinance establishes a program that allows private citizens or organizations, with an address in the City of Crystal Lake, to

support the City of Crystal Lake's anti-litter efforts by allowing groups to adopt a section of City roadway for the purpose of litter collection. The following sections set forth the uniform guidelines and requirements for the administration of the City of Crystal Lake Adopt-A-Highway Program.

Sec. 145-2. – Established.

(A) There is hereby established an Adopt-A-Highway Program of and for the City, pursuant to the Illinois Adopt-A-Highway Act, 605 ILCS 120/1 et seq., and said Act is hereby adopted by reference and incorporated into this article as if fully set forth herein.

(B) The Director of Public Works, or designee, shall administer the Adopt-A-Highway Program, and shall serve as its director, as that term is defined in the Illinois Adopt-A-Highway Act. The Director of Public Works, or designee, shall establish the program terms and conditions.

Sec. 145-3. – Operation of Program.

(A) The Adopt-A-Highway Program of the city shall operate in accordance with the procedures and requirements of the Adopt-A-Highway Act, as the same may be amended from time to time, and the procedures and requirements of this section.

(B) Each group desiring to adopt one (1) or more sections of street right-of-way under the Adopt-A-Highway Program shall submit an application for same on forms supplied by the Director of Public Works, or designee. The Director of Public Works, or designee shall review such applications and shall forward his recommendations to the City Council.

(C) Upon receipt of the recommendations of the Director of Public Works, or designee, the City Council shall consider the same and either approve or deny the application. In the event that an application is approved by the City Council, the City Council shall also authorize the execution of an agreement providing for the group's participation in the Adopt-A-Highway Program. Said form of agreement shall be in such form as may be approved by the Director of Public Works, or designee, and include all of the provisions required by the Adopt-A-Highway Act, and such other provisions, not inconsistent therewith, as the City Council may require. The adoption of a section of a roadway approved by the City Council shall expire two-years following its approval, unless extended by the applicant, with the approval of the Director of Public Works, or designee.

(D) The following procedures and requirements, in addition to the procedures and requirements set forth in the Adopt-A-Highway Act, shall apply to the Adopt-A-Highway Program of the City:

(1) No person shall participate in any litter collection activities pursuant to the Adopt-A-Highway Program unless and until the group has obtained and submitted to the city a release with respect to such person's participation, executed by such person or, if such person is under eighteen (18) years of age, the parent or guardian of such person, such release to be in a form acceptable to the corporation counsel.

(2) Each group shall schedule all litter collection activities with the Director of Public Works, or designee, not less than seven (7) days prior to such activities and shall at that time submit any participant releases not previously submitted and/or new releases for any participants

who have attained the age of eighteen (18) years and for whom releases executed by a parent or guardian were previously submitted to the city.

(3) No group shall schedule any litter collection activities prior to the month of April, nor after the month of November, in any year.

(4) No group shall undertake any litter collection activities before dawn or after dusk on any day or during any period of inclement weather.

(5) No group shall undertake any litter collection activities without first having posted temporary warning signs to inform motorists that work is being conducted along the adopted section(s) of street right-of-way, which signs, must be supplied by the city.

(6) Safety vests, gloves, and litter pick up equipment must be supplied by the adopting organization. The City will supply garbage bags and will remove the garbage collected in bags from the public right-of-way of the road section cleaned.

(7) Other requirements as deemed necessary by the Director of Public Works, or designee.

SECTION 3: All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed insofar as they conflict herewith. Each section and provision of this ordinance are hereby declared to be independent divisions and subdivisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said chapter, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such section or provision so known to be invalid.

SECTION 4: All ordinance or parts of ordinance in conflict with the provisions of this ordinance are hereby repealed.

SECTION 5: This ordinance shall be enforced from and after June 5, 2019.

PASSED THIS 4th DAY OF JUNE, 2019.

AYES:

NAYS:

ABSENT:

APPROVED this 4th day of June, 2019.

City of Crystal Lake, an
Illinois municipal corporation

Aaron T. Shepley, Mayor

SEAL

ATTEST:

Nick Kachiroubas, City Clerk

Passed: June 4, 2019
Approved: June 4, 2019



RESOLUTION

BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF CRYSTAL LAKE that per 605 ILCS 120/1 et. seq., the "Illinois Adopt-A-Highway Act," the City of Crystal Lake approves Hannah Beardsley Middle School for adoption of a one-half mile stretch of Crystal Lake Avenue from Oak Hollow Road to Erick Street for a two-year period, per the requirements set forth in the City of Crystal Lake Adopt-A-Highway Program.

DATED this 4th day of June, 2019.

CITY OF CRYSTAL LAKE, an
Illinois Municipal Corporation,

By: _____
MAYOR

SEAL

ATTEST

CITY CLERK

PASSED: June 4, 2019
APPROVED: June 4, 2019



Agenda Item No: 14

**City Council
Agenda Supplement**

Meeting Date: June 4, 2019

Item: Police Directed Towing Services

Staff Recommendation: Motion to award contracts for police directed towing services to the lowest responsive, responsible bidders: Herrick Auto Rebuilders, Inc.; Ormsby Motors, Inc.; and Whitey's Towing, Inc., and adopt a resolution authorizing the City Manager to execute two-year agreements for police directed towing services with Herrick Auto Rebuilders, Inc.; Ormsby Motors, Inc.; and Whitey's Towing Inc. in the bid amount.

Staff Contact: James Black, Chief of Police

Background:

In 2015, the City initiated a competitive bidding process for Police Directed Towing Services. During our second contract year in 2017, three responsive and responsible bidders were awarded the bid and were contracted to perform police directed towing services for two years. The contracts with the three towing agencies are set to expire on July 31, 2019. The City reinitiated the bidding process and on April 2, 2019, a set of bidding documents, including comprehensive specifications and a model towing services contract developed by staff, was issued to potential bidders on the City's BidSync program. Additionally, the City advertised the available bid in the Northwest Herald. Twelve parties viewed the bid; however, only three offered a proposal.

On Monday, April 29, 2019, the City publicly opened and read aloud three bids received for police directed towing services. The three bidders were Herrick Auto Rebuilders, Inc., Ormsby Motors, Inc., and Whitey's Towing, Inc. These towing firms represent those whom are currently under contract.

The bid process resulted in the three bidders submitting different rates for different services, as described below. Staff thus decided that the most equitable method for evaluating the bids was to determine the lowest bid for each service and to award contracts to all of the three bidders that would be agreeable to providing each service at the lower bid amount. Staff identified the lowest

bids and then met with each bidder to review the results and discuss any issues discovered during the bid process. The following chart sets out the key bid result details:

Service	Ormsby	Whiteys	Herrick	Lowest Bid	2017 Price
BHs Tow TC, Arrest, Impound >12,000lbs	\$175.00	\$175.00	\$175.00	\$175.00	\$170.00
AHs Tow TC, Arrest, Impound >12,000lbs	\$175.00	\$200.00	\$175.00	\$175.00	\$170.00
BHs Tow Disabled >12,000lbs	\$75.00	\$85.00	\$75.00	\$75.00	\$75.00
AHs Tow Disabled >12,000lbs	\$90.00	\$100.00	\$90.00	\$90.00	\$90.00
BHs Tow TC, Arrest, Impound <12,000lbs	\$200.00	\$225.00	\$180.00	\$180.00	\$180.00
AHs Tow TC, Arrest, Impound <12,000lbs	\$200.00	\$250.00	\$200.00	\$200.00	\$200.00
BHs Tow Disabled <12,000lbs	\$175.00	\$150.00	\$150.00	\$150.00	\$150.00
AHs Tow Disabled <12,000lbs	\$190.00	\$175.00	\$170.00	\$170.00	\$170.00
BHs Service Call no tow	\$75.00	\$70.00	\$55.00	\$55.00	\$55.00
AHs Service Call no tow	\$90.00	\$90.00	\$75.00	\$75.00	\$75.00
BHs Recovery Fee >26,000lbs	\$160.00	\$150.00	\$125.00	\$125.00	\$125.00
AHs Recovery Fee >26,000lbs	\$200.00	\$175.00	\$150.00	\$150.00	\$150.00
BHs Under-Reach per hour	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
AHs Under-Reach per hour	\$350.00	\$375.00	\$375.00	\$350.00	\$350.00
Cage Brakes/Drive Shaft Additional Charges	\$80.00	-	-	-	-
Special Handling Fees per hour	\$95.00	\$100.00	\$95.00	\$95.00	\$95.00
Debris Clean-Up per Vehicle	\$45.00	\$40.00	\$40.00	\$40.00	\$40.00
Police Vehicle Tows	\$50.00	\$50.00	\$45.00	\$45.00	\$45.00
Standby Time per hour	\$60.00	\$75.00	\$60.00	\$60.00	\$60.00
Outside City Retrieval per hour	\$75.00	\$75.00	\$60.00	\$60.00	\$60.00
Outside City Retrieval per mile	\$4.00	\$4.00	\$3.50	\$3.50	\$3.50
Oil Clean-Up	\$25.00	\$30.00	\$25.00	\$25.00	\$15.00
Outside Storage >12,000lbs	\$55.00	\$50.00	\$45.00	\$45.00	\$45.00
Inside Storage >12,000lbs	\$60.00	\$60.00	\$55.00	\$55.00	\$55.00
Outside Storage <12,000lbs	\$55.00	\$60.00	\$60.00	\$55.00	\$60.00
Inside Storage <12,000lbs	\$60.00	\$75.00	\$70.00	\$60.00	\$70.00

The pricing for the vast majority of specific towing services will remain at the 2017 level. The accumulative pricing for all services actually decreased during the latest bidding process.

The City's towing regulations and the bid specifications allow the selection of up to four tow companies for police directed towing services. The three bidders have agreed to provide each service at the lowest bid for that service. Further, each towing company has met the City's ordinance requirements. All three towing companies have previously performed work for the City.

Legal staff has reviewed the towing contract.

Recommendation:

The City Manager's Office and the Police Department have reviewed all bids received for completeness and accuracy in accordance with bid requirements. Staff thus recommends that all three bidders be awarded a contract for police directed towing services.

Votes Required to Pass:

Simple majority



RESOLUTION

BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF CRYSTAL LAKE that the City Manager be and he is hereby authorized and directed to execute towing services contracts between the City of Crystal Lake and Anchor Towing, Inc.; Herrick Auto Rebuilders, Inc.; Ormsby Motors, Inc.; and Whitey's Towing, Inc. for Police Department directed towing, for two years beginning on August 1, 2019.

DATED this 4th day of June 2019.

CITY OF CRYSTAL LAKE, an Illinois
Municipal Corporation

BY: _____
Aaron T. Shepley, Mayor

SEAL

ATTEST:

Nick Kachiroubas, City Clerk

PASSED:
APPROVED:



Agenda Item No: 15

City Council Agenda Supplement

Meeting Date:

June 4, 2019

Item:

Public Safety Radio System Migration to STARCOM21

Staff Recommendation:

1. Motion to Adopt a Resolution:

- A. Approving the City's participation in the State of Illinois STARCOM21 public safety radio network through the State of Illinois' designated vendor, Motorola Solutions, as part of the Illinois Joint Purchasing Program, and authorizing the City Manager to execute the STARCOM21 radio network agreements; and
- B. Approving and authorizing the City Manager to execute agreements for the purchase of mobile and portable radios and radio equipment, and tornado siren radio solution with Motorola Solutions, Inc. in the amount of \$1,129,686 with a 5% contingency for unforeseen circumstances; and
- C. Approving and authorizing the monthly STARCOM21 subscription requirements for the duration of the City's participation in STARCOM21; and
- D. Authorizing the City Manager to take any actions necessary to facilitate the migration of the public safety radio system to the StarCom21 radio network.

2. Motion to adopt an Ordinance:

- A. Amending the 2019/2020 Annual City Budget in the amount of \$160,645.30.

Staff Contact:

James Black, Chief of Police
Paul DeRaedt, Fire Rescue Chief
George Koczwar, Director of Finance

Background:

In the late 1990s, the Association of Public Safety Communications Officials (APCO) developed a digital trunked radio standard that would provide a "common air interface" for vendors to use. Thus, any vendor's radios would work on any vendor's system. Prior to this, each vendor's trunked radio system used proprietary signaling which stifled interoperability between vendor systems. This new standard, known as APCO Project 25, or simply P25, has become the de facto standard for public safety

communications in the United States. Its use is strongly encouraged by the Federal Government, as a result of the communication issues experienced during the events of September 11, 2001.

The City's public safety radio system, which provides radio communications for the Police and Fire Rescue Departments, is not P25 compliant. Currently, the City is responsible for maintaining, upgrading, and operating all of the equipment associated with the radio system. The current radio system includes a conventional analog communications infrastructure that is aging and obsolete. This includes paying for increasingly expensive leased lines between radio communications sites where costs can increase 20% or more per year. Replacement and maintenance costs for the existing radio sites are additional annual expenses. Instead of maintaining the current analog communications infrastructure, staff recommends migrating to the State of Illinois STARCOM21 radio network.

The proposed STARCOM21 radio network is the official statewide public safety radio network of Illinois. STARCOM21 is a Project 25 (P25) compliant 700/800 MHz IP-based communication system with over 270 radio tower sites throughout the State of Illinois, including within the City of Crystal Lake. STARCOM21 currently serves more than 45,000 subscribers from various State, local and federal government and non-governmental entities. Motorola Solutions, Inc. of Schaumburg, IL built and manages this system throughout the State under the governance of a board of system users. Motorola has been awarded a contract through the State of Illinois to offer these products and services.

The STARCOM21 system will allow access to the various Illinois mutual aid resources that already exist on the network. STARCOM21 utilizes infrastructure already built by Motorola for the Illinois State Police, other state agencies, and several other local and county users. Additionally, the call quality will substantially increase by migrating to STARCOM21.

STARCOM21 also figures prominently in the Statewide Communications Interoperability Plan (SCIP), which establishes a single statewide platform for all public safety agencies to share emergency information. Managed by the Illinois Emergency Management Agency (IEMA), SCIP was developed by a consortium of federal, state, and local public safety practitioners working through the Illinois Terrorism Task Force's (ITTF's) Communications Committee and the Statewide Interoperability Executive Committee.

Geographically, the City is surrounded by STARCOM21 coverage and the STARCOM21 frequency, as shown by live testing, is now able to provide much more dependable reception. Public safety staff conducted extensive testing of the STARCOM21 radio system and found that the level of building penetration and geographic coverage was far better than what currently exists. Not only can the City confidently replace its existing system without installing additional infrastructure, but the City will benefit from superior digital audio quality and network maintenance. The agreement with Motorola will include the purchase of 162 portable radios, and 30 mobile radios.

Motorola would be the provider of public safety radio communications services going forward. By transitioning to the STARCOM21 radio network, the City will also:

- Gain interoperability with other Southeast Emergency Communication agencies, the McHenry County Sheriff, and the Illinois State Police, as well as other STARCOM21 police and fire departments.
- Be able to roam out of the City limits without loss of communication when conducting investigations, pursuing offenders, or transporting prisoners.
- Expand the number of channels available to investigators and other talk groups.
- Eventually increase officer safety with GPS capabilities.

- Take advantage of system redundancy by using the coverage of surrounding tower sites in the event of a Crystal Lake-specific network outage.
- Reduce the need for significant capital investments related to site improvement and equipment upgrades.
- Avoid costs of managing, updating, and monitoring our own network; Crystal Lake will receive 24/7 network support, and fixed airtime rates from Motorola.
- Eliminate the escalating costs of copper phone lines that currently connect the dispatch center to our receiver sites.
- Allow for expansion if the opportunity arises.

State of Illinois Master Contract:

STARCOM21 is a public/private partnership with Motorola Solutions envisioned and commissioned by the State to enable seamless, interoperable communications among State, local and federal government users. It is a subscriber-based business model not unlike the business model of mobile phone operators. Instead of maintaining the current analog communications infrastructure, the City will pay monthly subscription rates. Subscribers are responsible for purchasing their own mobile or portable radio equipment, training and monthly service fees.

By taking advantage of the economies of scale and the pooling of resources enabled by the partnership between the State of Illinois and Motorola, Inc., potential subscribers do not have to worry about the large upfront cost associated with building out the infrastructure required to have a standalone P25 system. Also, speed to service enables the City to become a part of the network in a matter of months not years as with many system build-outs.

The STARCOM21 Master Contract (CMS3618850) allows for a 25% discount off the Motorola catalog list price for STARCOM21 related products for STARCOM21 subscribers. However, the City has negotiated better terms than those found in the Master Contract. Below is a summary of the City's terms:

- 37% discount on hardware (mobile and portable radios)
- Free airtime for 2 years and 3 months, thereafter the monthly subscriber rates is graduated based on radio use and can be reduced further as more STARCOM21 subscribers sign up to the network. The city is also currently exploring the option of bulk airtime rate reductions with other municipalities utilizing STARCOM21.

The total cost for the hardware and related services is \$1,018,035. Once the City's STARCOM21 radios are active, the City will receive free airtime for 2 years and 3 months and will then pay \$34 per month for each active radio, \$18 a month for each infrequently used radio and there is no monthly fee for inactive or "spare" radios.

Tornado Siren Radios:

In an effort to plan for tornado events, the City has sixteen outdoor warning sirens placed strategically throughout the City to warn the public. Communication between the tornado sirens and the City's dispatch facility is done through an outdated, analog system. As part of the migration to STARCOM21, the radio communications to the outdoor warning sirens will also be upgraded by fitting them with STARCOM21 radios. At the time the City's budget was developed, it was not anticipated that the tornado sirens would be part of the STARCOM21 network. Recent false tornado siren activations in the surrounding area have advanced the migration of the tornado siren radio system. In order to proceed with the STARCOM21 tornado siren radios, the 2019-2020 budget will need to be amended. The

total cost for the hardware and related services is \$111,651. Once the tornado sirens are connected to STARCOM21, the City will pay a \$10 per month fee for each of the 16 tornado siren locations.

Public Works Frequency:

In addition to the separate Police and Fire Rescue frequencies that exist, the City also maintains a Public Works analog radio channel. The City will continue to maintain the Public Works channel as the primary radio communication tool for the Public Works Department and the Three Oaks Recreation Area as well as a dedicated backup to the STARCOM21 system.

Votes Required to Pass:

Resolution - Simple majority

Ordinance – Two-thirds of Corporate Authorities holding office (5)



RESOLUTION NO. 19R-

PUBLIC SAFETY RADIO SYSTEM MIGRATION TO STARCOM21

WHEREAS, the City of Crystal Lake is responsible for maintaining, upgrading, and operating communications equipment, including a conventional analog communications infrastructure; and

WHEREAS, the current equipment is obsolete and is not compliant with the Association of Public Safety Communications Officials (APCO) Project 25 (P25) standard; and

WHEREAS, City staff recommends migrating to a P25 compliant public safety radio communication network; and

WHEREAS, STARCOM21 is the official statewide public safety radio network of Illinois; and

WHEREAS, STARCOM21 is a Project 25 compliant 700/800 MHz IP-based communication system with over 270 radio tower sites throughout the State of Illinois, including within the City of Crystal Lake; and

WHEREAS, Motorola Solutions, Inc. of Schaumburg, IL built and manages the STARCOM21 system throughout the State under the governance of a board of system users and has been awarded a contract through the State of Illinois to offer these products and services; and

WHEREAS, City staff believes it is in the City's best interest to sign a Communications System Agreement, Equipment Purchase Agreement, Software User Agreement, STARCOM21 User Agreement, WAVE Access Application, and STARCOM21 System Key Access Application and Non-Disclosure Agreement (collectively, the "STARCOM21 Agreements") with Motorola Solutions, Inc. to become part of STARCOM21 and to purchase 162 portable radios, and 36 mobile radios, all of which will be delivered, configured, installed, maintained, repaired, and replaced by the Vendor pursuant to the Agreements; and

WHEREAS, City staff believes it is in the City's best interest to utilize the STARCOM21 radio system to control the City's tornado sirens; and

WHEREAS, this agreement allows the City to purchase equipment and related services for \$1,129,686; and

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Crystal Lake, McHenry County, Illinois, as follows:

SECTION ONE: The foregoing recitals are incorporated herein and by this reference

made a part hereof as findings of the Mayor and City Council of the City of Crystal Lake as if fully set forth.

SECTION TWO: It is hereby approved that the City shall participate in the State of Illinois STARCOM21 public safety radio network through the State of Illinois' designated vendor, Motorola Solutions, as part of the Illinois Joint Purchasing Program.

SECTION THREE: The City Manager is authorized to execute the STARCOM21 Agreements and to facilitate the purchase of mobile and portable radios and radio equipment, and tornado siren radio solution with Motorola Solutions, Inc. in the amount of \$1,129,686 with a 5% contingency for unforeseen circumstances.

SECTION FOUR: The monthly STARCOM21 subscription requirements are approved and authorized for the duration of the City's participation in STARCOM21; and

SECTION FIVE: The City Manager is hereby authorized to take any actions necessary to facilitate the migration of the public safety radio system to the STARCOM21 radio network.

DATED at Crystal Lake, Illinois, this 4th day of June, 2019.

APPROVED:

Aaron T. Shepley, Mayor

ATTEST:

Nick Kachiroubas, City Clerk

PASSED: June 4, 2019
APPROVED: June 4, 2019



The City of Crystal Lake

AN ORDINANCE REGARDING PUBLIC SAFETY RADIO SYSTEM MIGRATION TO STARCOM21

WHEREAS, on April 16, 2019, the Annual Budget for Fiscal Year 2019-2020 was adopted and approved by Ordinance 7522-117; and

WHEREAS, it has been determined that certain revisions to the Annual Budget for Fiscal Year 2019-2020 are necessary to adjust for additional expenses which were not anticipated at the time that the Annual Budget for Fiscal Year 2019-2020 was adopted, and

WHEREAS, 65 ILCS 5/8-2-9.6 permits the corporate authorities of the City of Crystal Lake to make such revisions to the Annual Budget for Fiscal Year 2019-2020 upon a two-thirds vote of the corporate authorities; and

WHEREAS, the Mayor and City Council believe it is in the best interest of the City of Crystal Lake to revise the Annual Budget for Fiscal Year 2019-2020 to reflect such budget adjustments, as set forth in this ordinance; and

WHEREAS, all of the adjustments to the Annual Budget for Fiscal Year 2019-2020, contemplated by this ordinance contain sufficient funds to effectuate the purpose of the proposed revisions.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF CRYSTAL LAKE, COUNTY OF MCHENRY, STATE OF ILLINOIS AS FOLLOWS:

SECTION ONE: The foregoing recitals are incorporated herein and by this reference made a part hereof as findings of the Mayor and City Council of the City of Crystal Lake as if fully set forth.

SECTION TWO: The Budget for all corporate purposes of the City of Crystal Lake, County of McHenry, State of Illinois, for the fiscal year commencing on the first day of May 2019 and ending on the thirtieth day of April 2020, as presented to the Mayor and City Council of the City of Crystal Lake on April 16, 2019, is hereby amended and revised and incorporated herein by this reference and made a part hereof and is hereby adopted.

SECTION THREE: Pursuant to Section 8-2-9.6 of the Illinois Municipal Code, (65 ILCS 5/8-2-9.4), the original budgeted expenditures shall be and hereby is amended as follows:

	Fiscal Year	Current	Fiscal Year
	2019-2020	Amendment	2019-2020
	Original Budget	Request	Amended Budget
Combined General Fund Revenues	\$31,537,260	\$160,645	\$31,697,905
Combined Fire Rescue Fund Expenditures	\$28,806,493	\$160,645	\$28,967,138

SECTION FOUR: This ordinance shall be in full force and effect upon passage and approval and publication in pamphlet form as required by law.

DATED at Crystal Lake, Illinois, this 4th day of June, 2019.

APPROVED:

Aaron T. Shepley, Mayor

ATTEST:

Nick Kachiroubas, City Clerk

PASSED: June 4, 2019

APPROVED: June 4, 2019



Agenda Item No: 16

City Council Agenda Supplement

Meeting Date: June 4, 2019

Item: 2019 Street Resurfacing Program Bid Award

Staff Recommendation: Motion to award the 2019 Street Resurfacing Program bid to the lowest responsive and responsible bidder, Geske and Sons, Inc., in the bid amount of \$1,551,018.43, and adopt a resolution authorizing the City Manager to execute a contract with Geske and Sons, Inc., allowing for a 10 percent contingency.

Staff Contact: Abigail Wilgreen, City Engineer

Background:

On March 1, 2019, the City opened and publicly read the bids received for the 2019 Street Resurfacing Program. In addition to the streets listed below for resurfacing, the program includes the addition of two on-street parking areas on Pomeroy Avenue within the parkway just north of the driveway of Vogue Cleaners. It also includes the addition of an eastbound right turn lane on Route 14, east of the Route 14 at Virginia Road intersection. The City received three bids and the results are tabulated below.

<i>Firm</i>	<i>Amount of Bid²</i>
Geske and Sons ¹ Crystal Lake, IL	\$1,551,018.43
Curran Contracting Company Crystal Lake, IL	\$1,599,452.51
Arrow Road Construction Mt. Prospect, IL	\$1,626,649.53

¹ Indicates Recommended Lowest Responsive and Responsible Bidder.

² Corrected Bid Amount Based on Submitted Unit Prices with Adjusted Quantities

The City has used Geske and Sons on past resurfacing programs and is very satisfied with their performance. Specifications were sent to various contractors and standard bid advertisement procedures were followed. This project is included in the Fiscal Year 2019-2020 budget.

Votes Required to Pass:

Simple majority vote.

STREET TYPICAL SECTIONS

Street	Limits		Typical Section
	From	To	
Blackthorn Drive	Primrose Lane	Terra Cotta Road	2
Bittersweet Trail	Blackthorn Drive	Blackthorn Drive	2
Silver Berry Drive	Blackthorn Drive	Terra Cotta Road	2
Fenimore Road	Juniper Lane	North End	2
Juniper Lane	Fenimore Road	Forest Drive	2
Forest Drive	Greenview Drive	Oak Valley Drive	2
Greenview Court	Greenview Drive	East End	2
Oak Valley Drive	Forest Drive	Route 31	2
Grandview Drive	Pingree Road	Greenview Drive	2
Greenview Drive	Juniper Lane	Oak Valley Drive	2
Oak Valley Court	Oak Valley Drive	North End	2
Wimbleton Lane	Barlina Road	Camelot Drive	2
Camelot Drive	Golf Course Road	Golf Course Road	2
Camelot Court	Camelot Drive	South End	2
Camelot Place	Camelot Drive	North End	2
Manchester Drive	Ackman Road	Amberwood Drive	2
Manchester Ct	Manchester Drive	Manchester Drive	2
N. Knollwood Circle	Amberwood Drive	Amberwood Drive	2
S. Knollwood Circle	Amberwood Drive	Amberwood Drive	2
Village Road	E. Stone Creek Circle	Golf Course Road	1
Village Road	801 Village Road	821 Village Road	2
Nashville Lane	Village Road	Thomasville Lane	2
Louisville Lane	Nashville Lane	Village Road	2
Thomasville Lane	Miller Road	Louisville Lane	2



The City of Crystal Lake Illinois

RESOLUTION

BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF CRYSTAL LAKE that the City Manager be authorized to execute the contract with Geske and Sons, Inc., for the 2019 Street Resurfacing Program in the amount of \$1,551,018.43. The City Manager is additionally authorized to approve up to 10 percent in justifiable contract amendments from a contingency allowance.

DATED this 4th day of June, 2019.

CITY OF CRYSTAL LAKE, an Illinois
Municipal Corporation

BY: _____
Mayor

SEAL

ATTEST:

City Clerk

PASSED: June 4, 2019

APPROVED: June 4, 2019



Agenda Item No: 17

City Council Agenda Supplement

Meeting Date: June 4, 2019

Item: Intergovernmental Agreement between the McHenry County Conservation District and the City for improvements to be constructed and maintained along the Prairie Trail in conjunction with the construction of the Crystal Lake Avenue and Main Street Intersection Improvement.

Staff Recommendation: Motion to adopt a resolution authorizing the City Manager to execute an agreement with the McHenry County Conservation District for improvements to be constructed and maintained along the Prairie Trail in conjunction with the construction of the Crystal Lake Avenue and Main Street Intersection Improvement.

Staff Contact: Abigail Wilgreen, City Engineer

Background:

The intersection improvement to Crystal Lake Avenue and Main Street consists of widening and resurfacing of the intersection, the installation of a permanent traffic signal, intersection lighting, streetscaping elements, and a barrier median on the west side of the tracks at the eastern end of Crystal Lake Avenue to mirror the median on the east side of the tracks.

As part of this improvement, the existing McHenry County Conservation District (MCCD) Prairie Trail will be relocated away from Main Street to provide a parkway where new trees will be planted. In order to complete this work, a portion of the Prairie Trail within the MCCD property will need to be realigned and reconstructed. This realignment also leaves a portion of the currently paved area as grass-covered green space. Due to this change, MCCD has requested that the City mow and maintain this area. The Public Works Department currently maintains the area to the north and has agreed to maintain this area. Once the property develops, the new owner will be responsible for the parkway maintenance.

The attached intergovernmental agreement grants permission to the City and its contractor to enter upon the MCCD property for the purposes of realigning and reconstructing the trail. It also grants permission for the City to access part of the area for mowing and maintaining the new

green space. The area the City will maintain is approximately 220 square feet. MCCD will still be responsible for maintaining the paved portions of the Prairie Trail at its sole cost.

This agreement has been reviewed by the City's special counsel and attorneys for MCCD. The MCCD Board of Trustees approved this agreement at their meeting on May 16, 2019.

Votes Required to Pass:
Simple majority vote.





The City of Crystal Lake Illinois

RESOLUTION

BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF CRYSTAL LAKE that the City Manager be authorized to execute the intergovernmental agreement with the McHenry County Conservation District for improvements to be constructed and maintained along the Prairie Trail in conjunction with the construction of the Crystal Lake Avenue and Main Street Intersection Improvement.

DATED this 4th day of June, 2019

CITY OF CRYSTAL LAKE, an Illinois Municipal Corporation

BY: _____
MAYOR

SEAL

ATTEST:

CITY CLERK

PASSED: June 4, 2019

APPROVED: June 4, 2019



Agenda Item No: **18**

City Council Agenda Supplement

Meeting Date: June 4, 2019

Item: Acquisition of right-of-way for the Crystal Lake Avenue and Main Street Intersection Improvement.

Staff Recommendation: Motion to adopt a resolution approving the negotiated sum, authorizing the City Manager to execute any agreement or documents, and authorizing payment to two property owners for right-of-way needed for the Crystal Lake Avenue and Main Street Intersection Improvement.

Staff Contact: Abigail Wilgreen, City Engineer

Background:

The intersection improvement to Crystal Lake Avenue and Main Street consists of widening and resurfacing of the intersection, the installation of a permanent traffic signal, intersection lighting, streetscaping elements, and a barrier median on the west side of the tracks at the eastern end of Crystal Lake Avenue to mirror the median on the east side of the tracks. The project also includes the installation of the required right turn lanes into Willow Creek Church as required by their SUP approval.

In order to complete the project, the City needs to acquire right-of-way and easements from two properties using the Federal Process. An appraisal was completed for each property using an IDOT-approved appraisal and negotiator to negotiate the price for the needed right-of-way and easements with each property owner.

<i>Property Address</i>	<i>PIN</i>	<i>Appraisal Amount</i>	<i>Settlement Amount</i>	<i>Area Acquired (Acres)</i>	<i>Easement (Acres)</i>
95 E. Crystal Lake	19-05-228-050	\$112,500.00	\$112,500.00	0.237	0.263
111 S. Main	19-04-101-007	\$33,400.00	\$33,400.00	0.192	0.123

City Council and staff reviewed the appraisal amount in April of 2019 and deemed it acceptable. TIF funds will be utilized to pay for 95 E. Crystal Lake Avenue and Willow Creek Church will be required, per their SUP approval, to fund the cost for 111 S. Main Street.

Votes Required to Pass:
Simple majority vote.



The City of Crystal Lake Illinois

RESOLUTION

BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF CRYSTAL LAKE that the negotiated sums for right-of-way and easements needed for the Crystal Lake Avenue and Main Street Intersection Improvement for the following properties are hereby acceptable, that the City Manager be authorized to execute any agreements or documents related to acquiring the right-of-way and easements, and that City staff be authorized to remit payment for right-of-way and easements:

- 95 East Crystal Lake Avenue (PIN 19-05-228-050): \$112,500.00
- 111 South Main Street (PIN 19-04-101-007): \$33,400.00

DATED this 4th day of June, 2019.

CITY OF CRYSTAL LAKE, an Illinois
Municipal Corporation

BY: _____
MAYOR

SEAL

ATTEST:

CITY CLERK

PASSED: June 4, 2019

APPROVED: June 4, 2019

May 28, 2019

Ms. Abigail Wilgreen, PE, CFM
City Engineer
City of Crystal Lake
100 W. Woodstock Street
Crystal Lake, IL 60014

City of Crystal Lake

Route: F.A.U. Route 116 (Crystal Lake Avenue), F.A.U. Route 124 (Main Street)
Section: 12-00116-00-CH
Job No.: R-55-001-97
Parcel: 0002 & TE
PIN: 19-05-228-050

Dear Ms. Wilgreen:

Please have Crystal Lake issue a check to the following payee as soon as possible:

Payee: **First Midwest Bank**
8750 West Bryn Mawr Avenue
Suite 1300
Chicago, IL 60631
Phone: (708) 831-7547

Amount: **\$112,500.00**

Please forward the check to my office and I will forward it to the property owner.

If you have any questions please do not hesitate to contact me at (312) 676-2907.

Very truly yours,



Mark D. Mathewson

MDM:km

May 28, 2019

Ms. Abigail Wilgreen, PE, CFM
City Engineer
City of Crystal Lake
100 W. Woodstock Street
Crystal Lake, IL 60014

City of Crystal Lake

Route: F.A.U. Route 116 (Crystal Lake Avenue), F.A.U. Route 124 (Main Street)
Section: 12-00116-00-CH
Job No.: R-55-001-97
Parcel: 0007 & TE
PIN: 19-04-101-007

Dear Ms. Wilgreen:

Please have Crystal Lake issue a check to the following payee as soon as possible:

Payee: **John D. Goerner Irrevocable Trust No. 1 dated December 22, 1992 and Mark E. Goerner Irrevocable Trust No. 1 dated December 22, 1992**
111 South Main Street
Crystal Lake, IL 60014
Phone: (815) 455-1900

Amount: **\$33,400.00**

Please forward the check to my office and I will forward it to the property owner.

If you have any questions please do not hesitate to contact me at (312) 676-2907.

Very truly yours,



Mark D. Mathewson

MDM:km



Agenda Item No: 19

**City Council
Agenda Supplement**

Meeting Date: June 4, 2019

Item: Board and Commission Reappointments

Mayor's Recommendation: Motion to reappoint John Engebretson and appoint Bonita Drew to the Library Board.

Contact: Aaron T. Shepley, Mayor

Background:

On June 30, 2019 terms on the Library Board for John Engebretson, Don Peters and Monica Szalaj will expire. Mr. Engebretson has expressed an interest in reappointment to the Library Board for a three-year term, expiring on June 30, 2022.

Mr. Peters and Ms. Szalaj do not wish to be reappointed. Bonita Drew, a resident of Crystal Lake since 1990, has been recommended to replace Mr. Peters once his term has ended, for a three-year term on the Library Board, expiring on June 30, 2022. Ms. Drew has worked with the Crystal Lake Library Foundation in the past and was involved in the 2017 Clay Jenkins/Thomas Jefferson fundraiser with the Raue Center.

There is currently no replacement for Mrs. Szalaj, and her position on the Library Board would remain vacant.

Library Board appointments and reappointments are nominated by the Mayor and confirmed by City Council.

Should the Council have any questions, please contact Mayor Shepley.

Votes Required to Pass: Simple majority

Melanie Nebel

From: Don Peters <dpeters344@att.net>
Sent: Wednesday, April 10, 2019 11:05 AM
To: Melanie Nebel
Subject: Resignation from Crystal Lake Public Library Board of Trustees

Follow Up Flag: Follow up
Flag Status: Flagged

Mayor Aaron Shepley,

I would like to inform you that I will not be asking for reappointment to the Crystal Lake Public Library Board when my term ends June 30, 2019. I would like to thank you for appointing me numerous times over the past 20+ years. It has been an honor and pleasure to have served the city in this capacity.

I have recruited a person that is interested in serving on the Board. Her name is Bonnie Drew. She will be sending a letter to you, in the near future, indicating her desire to serve on the Board. I have worked with her in the past and think that she would be an excellent Board member. I hope that you would consider appointing her to be my replacement.

Thank you again for the opportunity to serve the City of Crystal Lake,

Donald Peters
610 Tomahawk Ln.
Crystal Lake, IL 60012
815-459-6971

Bonita A. Drew
353 Grove Street
Crystal Lake, IL 60014

The Honorable Aaron Shepley, Mayor of Crystal Lake
100 W. Woodstock Street
Crystal Lake, IL 60014

Dear Mr. Mayor,

This letter is to express my interest in joining the board of trustees of the Crystal Lake Public Library. My family was transferred to Crystal Lake from Waukesha, WI in 1990. My two daughters graduated from Crystal Lake Central and one daughter has been a teacher in District 47 since 2001. Our entire family have been avid supporters of the library.

I served on the Crystal Lake Library Foundation and worked on the committee for the 2017 Clay Jenkins/Thomas Jefferson fundraiser with the Raue Center. I helped the Foundation partner with District 47 to bring Mr. Jenkins to Crystal Lake early to do two presentations for our middle school 7th graders.

I would now like to share my enthusiasm and passion with the library board. I would like to see our library grow and continue to listen to and serve our community.

I sincerely appreciate your consideration in allowing me to serve our city on the library board.

Sincerely,



Bonita A. Drew

cc: Kathryn I. Martens



Agenda Item No: 20

City Council Agenda Supplement

Meeting Date: June 4, 2019

Item: Public Highway At-Grade Crossing Agreements with the Union Pacific Railroad Company for the Crystal Lake Avenue at Main Street Intersection Improvement

Staff Recommendation:

1. Motion to adopt a resolution authorizing the City Manager to execute three Public Highway At-Grade Crossing Agreements with the Union Pacific Railroad Company and provide payment to the Union Pacific Railroad Company in the lump sum amount of \$16,800, for right-of-way license fees relating to the improvement of the intersection of Crystal Lake Avenue and Main Street.
2. Motion authorizing payment to the Union Pacific Railroad Company in the amount of \$57,325 for the widening of crossing surface at AAR/DOT#178799N and relocating one road gate and light assembly at AAR/DOT#176970T relating to the improvement of the intersection of Crystal Lake Avenue and Main Street
3. Motion authorizing payment to the Illinois Department of Transportation for 10 percent of the project costs for the work at the railroad crossings AAR/DOT #176970T, #178801M, #178799N relating to the improvement of the intersection of Crystal Lake Avenue and Main Street.

Staff Contact: Abigail Wilgreen, City Engineer

Background:

The intersection improvement to Crystal Lake Avenue and Main Street consists of widening and resurfacing of the intersection, the installation of a permanent traffic signal, intersection lighting, streetscaping elements, and a barrier median on the west side of the tracks at the eastern end of Crystal Lake Avenue to mirror the median on the east side of the tracks. The project also includes the relocation of existing railroad posts/gates to accommodate the widening of the roadways.

To facilitate the roadway improvements, work is required at the three existing railroad crossings within the limits of the intersection improvement. The Union Pacific Railroad Company (Railroad) requires a Public At-Grade Crossing Agreement be executed with the City for each existing railroad crossing. The agreements outline the construction and maintenance responsibilities of the City and Railroad. A right-of-way license fee is required for each crossing agreement for a total of \$16,800.

The necessary work at each location to facilitate the intersection improvements includes:

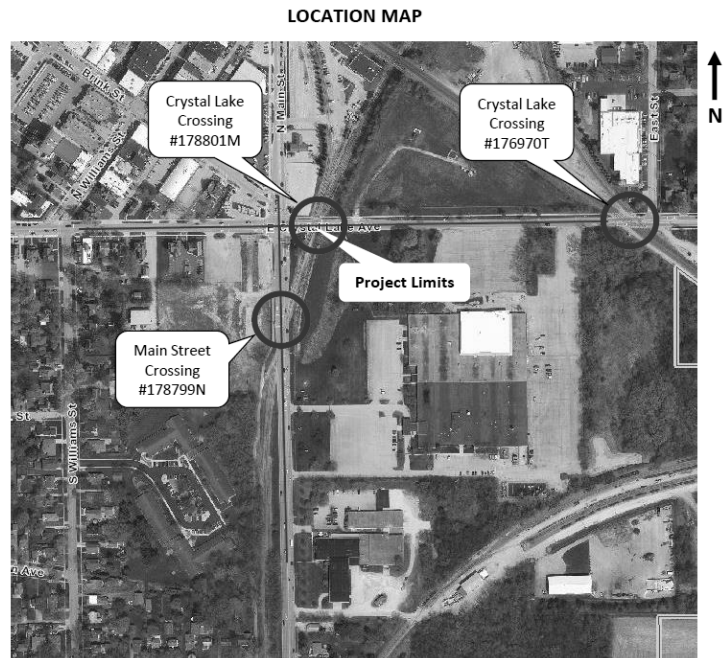
178799N (Crossing on Main Street)
Reconstruction and widening of the crossing including installation of two road gates, moving and upgrading cantilevers, replacing asphalt, relocating new cantilevers and interconnection of railroad signals.

178801M (Crossing on Crystal Lake Avenue, just east of intersection)
Installation of two road gates, one cantilever, interconnection of railroad signals with traffic signal and replacing signal cabinet.

176970T (Crossing on Crystal Lake Avenue at east end of project limits)
Installation of two pedestrian gates and relocating one road gate on the south side of Crystal Lake Avenue.

The cost of the improvements will be completed by the Railroad with 90% of the funding for portions of the work being provided by the Illinois Department of Transportation through the Grade Crossing Protection Fund (GCPF) and as outlined in the State of Illinois, Illinois Commerce Commission Order dated May 30, 2019. Portions of the work are not eligible for funding by the GCPF and will be the responsibility of the City.

Work is completed by the Railroad with the City being responsible for the actual costs of the work after it has been completed. The Railroad completed an estimate of cost for the work, which is summarized below:



IMPROVEMENT	EST. COST	EST. GCPF	EST. CITY	RAILROAD
<i>DOT#178799N</i>				
Relocation and installation of new warning devices	\$214,257	(90%) \$192,831.30	(10%) \$21,427.70	(0%) \$0
Widening of crossing surface	\$52,325	(0%) \$0	(100%) \$52,325	(0%) \$0
<i>DOT#178801M</i>				
Installation of two gates and one cantilever with interconnect	\$378,909	(90%) \$341,018.10	(10%) \$37,890.90	(0%) \$0
<i>DOT#176970T</i>				
Installation of two pedestrian gates	\$164,605	(90%) \$148,144.50	(10%) \$16,460.50	(0%) \$0
Relocating one road gate and light assembly	\$5,000	(0%) \$0	(100%) \$5,000	(0%) \$0
TOTALS	\$815,096.00	\$ 681,993.90	\$ 133,104.10	\$0

The agreement has been reviewed by legal counsel and no concerns were reported to staff.

Votes Required to Pass:

A simple majority.

UP Real Estate Folder No.: 2760-11

PUBLIC AT-GRADE CROSSING

CRYSTAL LAKE AVENUE
DOT NUMBER 176970T
MILE POST 42.53, SUB
CRYSTAL LAKE, MCHENRY COUNTY, ILLINOIS

THIS AGREEMENT ("Agreement") is made and entered into as of the ____ day of _____, 20____ ("Effective Date"), by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, to be addressed at Real Estate Department, 1400 Douglas Street, Mail Stop 1690, Omaha, Nebraska 68179 ("Railroad") and the **CITY OF CRYSTAL LAKE**, a municipal corporation or political subdivision of the State of Illinois to be addressed at 100 W. Woodstock St., Crystal Lake, IL 60014 ("Political Body").

RECITALS:

The Political Body desires to undertake as its project (the "Project") the installation of two (2) pedestrian gates and relocating one road gate at the existing Crystal Lake Avenue at-grade public road crossing, DOT Number 176970T at Railroad's Milepost 42.53 on Railroad's Harvard Sub at or near Crystal Lake, McHenry County, Illinois (the "Roadway"). The portion of the Roadway within the Railroad's property is hereinafter referred to as the "Crossing Area." The Crossing Area is shown on the print marked **Exhibit A** attached hereto and hereby made a part hereof.

The Railroad and the Political Body are entering into this Agreement to cover the above.

AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between the parties hereto as follows:

Section 1. EXHIBIT B

The general terms and conditions marked **Exhibit B**, are attached hereto and hereby made a part hereof.

Section 2. RAILROAD GRANTS RIGHT

For and in consideration **ONE THOUSAND DOLLARS (\$1,000)** to be paid by the Political Body to the Railroad upon the execution and delivery of this Agreement and in further consideration of the Political Body's agreement to perform and comply with the terms of this Agreement, the Railroad hereby grants to the Political Body the right to construct, maintain and repair the Roadway over and across the Crossing Area.

Section 3. DEFINITION OF CONTRACTOR

For purposes of this Agreement the term "Contractor" shall mean the contractor or contractors hired by the Political Body to perform any Project work on any portion of the Railroad's property and shall also include the Contractor's subcontractors and the Contractor's and subcontractor's respective employees, officers and agents, and others acting under its or their authority, including without limitation any CIC (defined below) hired by the Political Body.

Section 4. CONTRACTOR'S RIGHT OF ENTRY AGREEMENT - INSURANCE

A. Prior to Contractor performing any Project work within the Crossing Area or on any portion of Railroad's property, and any subsequent maintenance or repair work, the Political Body shall require the Contractor to:

(i) execute the Railroad's then current form of Contractor's Right of Entry Agreement ("CROE").

(ii) obtain the then current insurance required in the CROE; and

(iii) provide such insurance policies, certificates, binders and/or endorsements to the Railroad.

B. The Railroad's current CROE is marked **Exhibit D**, attached hereto and hereby made a part hereof. The Political Body confirms that it will inform its Contractor that it is required to execute such form of agreement and obtain the required insurance before commencing any work on any Railroad property. Under no circumstances will the Contractor be allowed on the Railroad's property without first executing the Railroad's CROE and obtaining the insurance set forth therein and also providing to the Railroad the insurance policies, binders, certificates and/or endorsements described therein.

C. All insurance correspondence, binders, policies, certificates and/or endorsements shall be sent to:

Senior Manager - Contracts
Union Pacific Railroad Company
Real Estate Department
1400 Douglas Street, Mail Stop 1690
Omaha, NE 68179-1690
UP File Folder No. 2760-11

D. If the Political Body's own employees will be performing any of the Project work, the Political Body may self-insure all or a portion of the insurance coverage subject to the Railroad's prior review and approval.

Section 5. FEDERAL AID POLICY GUIDE

If the Political Body will be receiving any federal funding for the Project, the applicable rules, regulations and provisions of the Federal Aid Policy Guide as contained in 23 CFR 140, Subpart I and 23 CFR 646, Subparts A and B as of the Effective Date are incorporated into this Agreement by reference.

Section 6. NO PROJECT EXPENSES TO BE BORNE BY RAILROAD

The Political Body agrees that no Project costs and expenses are to be borne by the Railroad, including without limitation any cost and expense for work performed by Contractor and/or any CIC. In addition, the Railroad is not required to contribute any funding for the Project.

Section 7. WORK TO BE PERFORMED BY RAILROAD; BILLING SENT TO POLITICAL BODY; POLITICAL BODY'S PAYMENT OF BILLS

A. The work to be performed by the Railroad, at the Political Body's sole cost and expense, is described in the Railroad's Material and Force Account Estimate dated December 4, 2018, marked **Exhibit C**, attached hereto and hereby made a part hereof (the "Estimate"). As set forth in the Estimate, the Railroad's estimated cost for the Railroad's work associated with the Project is One Hundred Sixty Nine Thousand Six Hundred Five Dollars (\$169,605).

B. The Railroad, if it so elects, may recalculate and update the Estimate submitted to the Political Body in the event the Political Body does not commence construction on the portion of the Project located on the Railroad's property within six (6) months from the date of the Estimate.

C. Railroad, in its sole and absolute discretion, shall determine whether a flagman or other special protective or safety measures are required in connection with the Project (any of the foregoing, collectively "Flagging Services"). For purposes of clarity, Railroad and Political Body each acknowledge that Railroad may contract a CIC for the performance of any Flagging Services that are part of Railroad's work (as provided in Section 4 of Exhibit B) or, alternatively, that the Political Body may hire a CIC as a Contractor to perform Flagging Services, subject to Section 6.C of Exhibit B and any and all other applicable terms and conditions set forth in this Agreement. If any Flagging Services are to be performed in connection with the Project, then, after consultation with the Political Body, Railroad shall determine, in Railroad's sole and absolute discretion, whether Railroad or the CIC will bill the Political Body or, alternatively, the Contractor directly, for the costs of such Flagging Services. If Railroad determines the Contractor will be billed directly pursuant to the foregoing sentence, Political Body agrees that it will pay the Railroad or the CIC, as applicable, on demand for any such costs that have not been paid by any Contractor within thirty (30) days of the Contractor's receipt of billing. The Political Body acknowledges that whether or not the Estimate includes costs for Flagging Services performed by Railroad or a CIC, as applicable, such costs shall be at no expense

to Railroad.

D. The Railroad shall send progressive billing to the Political Body during the Project and final billing to the Political Body within one hundred eighty (180) days after receiving written notice from the Political Body that all Project work affecting the Railroad's property has been completed.

E. The Political Body agrees to reimburse the Railroad within thirty (30) days of its receipt of billing from the Railroad for one hundred percent (100%) of all actual costs incurred by the Railroad in connection with the Project including, but not limited to, all actual costs of engineering review (including preliminary engineering review costs incurred by Railroad prior to the Effective Date of this Agreement), construction, inspection, flagging (unless flagging costs are to be billed directly to the Contractor), procurement of materials, equipment rental, manpower and deliveries to the job site and all direct and indirect overhead labor/construction costs including Railroad's standard additive rates.

Section 8. PLANS

A. The Political Body, at its expense, shall prepare, or cause to be prepared by others, the detailed plans and specifications for the Project and submit such plans and specifications to the Railroad's Assistant Vice President Engineering-Design, or his authorized representative, for prior review and approval. The plans and specifications shall include all Roadway layout specifications, cross sections and elevations, associated drainage, and other appurtenances.

B. The final one hundred percent (100%) completed plans that are approved in writing by the Railroad's Assistant Vice President Engineering-Design, or his authorized representative, are hereinafter referred to as the "Plans". The Plans are hereby made a part of this Agreement by reference.

C. No changes in the Plans shall be made unless the Railroad has consented to such changes in writing.

D. The Railroad's review and approval of the Plans in no way relieves the Political Body or the Contractor from their responsibilities, obligations and/or liabilities under this Agreement, and will be given with the understanding that the Railroad makes no representations or warranties as to the validity, accuracy, legal compliance or completeness of the Plans and that any reliance by the Political Body or Contractor on the Plans is at the risk of the Political Body and Contractor.

Section 9. NON-RAILROAD IMPROVEMENTS

A. Submittal of plans and specifications for protecting, encasing, reinforcing, relocation, replacing, removing and abandoning in place all non-railroad owned facilities (the "Non Railroad Facilities") affected by the Project including, without limitation, utilities, fiber optics, pipelines, wirelines, communication lines and fences is required under Section

8. The Non Railroad Facilities plans and specifications shall comply with Railroad's standard specifications and requirements, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines. Railroad has no obligation to supply additional land for any Non Railroad Facilities and does not waive its right to assert preemption defenses, challenge the right-to-take, or pursue compensation in any condemnation action, regardless if the submitted Non Railroad Facilities plans and specifications comply with Railroad's standard specifications and requirements. Railroad has no obligation to permit any Non Railroad Facilities to be abandoned in place or relocated on Railroad's property.

B. Upon Railroad's approval of submitted Non Railroad Facilities plans and specifications, Railroad will attempt to incorporate them into new agreements or supplements of existing agreements with Non Railroad Facilities owners or operators. Railroad may use its standard terms and conditions, including, without limitation, its standard license fee and administrative charges when requiring supplements or new agreements for Non Railroad Facilities. Non Railroad Facilities work shall not commence before a supplement or new agreement has been fully executed by Railroad and the Non Railroad Facilities owner or operator, or before Railroad and Political Body mutually agree in writing to (i) deem the approved Non Railroad Facilities plans and specifications to be Plans pursuant to Section 8B, (ii) deem the Non Railroad Facilities part of the Roadway, and (iii) supplement this Agreement with terms and conditions covering the Non Railroad Facilities.

Section 10. EFFECTIVE DATE; TERM; TERMINATION

A. This Agreement is effective as of the Effective Date and shall continue in full force and effect for as long as the Roadway remains on the Railroad's property.

B. The Railroad, if it so elects, may terminate this Agreement effective upon delivery of written notice to the Political Body in the event the Political Body does not commence construction on the portion of the Project located on the Railroad's property within twelve (12) months from the Effective Date.

C. If the Agreement is terminated as provided above, or for any other reason, the Political Body shall pay to the Railroad all actual costs incurred by the Railroad in connection with the Project up to the date of termination, including, without limitation, all actual costs incurred by the Railroad in connection with reviewing any preliminary or final Project Plans.

Section 11. CONDITIONS TO BE MET BEFORE POLITICAL BODY CAN COMMENCE WORK

Neither the Political Body nor the Contractor may commence any work within the Crossing Area or on any other Railroad property until:

- (i) The Railroad and the Political Body have executed this Agreement.

(ii) The Railroad has provided to the Political Body the Railroad's written approval of the Plans.

(iii) The Political Body has required each Contractor to (a) execute Railroad's CROE and obtain and/or provide to the Railroad the insurance policies, certificates, binders, and/or endorsements required under the CROE; (b) provide the advance notice(s) required under the CROE to the Railroad representative(s) named in the CROE; and (c) participate in a preconstruction meeting to coordinate work activities with Railroad if any work to be provided by the Contractor will involve flagging protection and/or if there is separate work to be performed by the Railroad for the Project.

Section 12. FUTURE PROJECTS

Future projects involving substantial maintenance, repair, reconstruction, renewal and/or demolition of the Roadway shall not commence until Railroad and Political Body agree on the plans for such future projects, cost allocations, right of entry terms and conditions and temporary construction rights, terms and conditions.

Section 13. ASSIGNMENT; SUCCESSORS AND ASSIGNS

A. Political Body shall not assign this Agreement without the prior written consent of Railroad.

B. Subject to the provisions of Paragraph A above, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of Railroad and Political Body.

Section 14. FEDERAL FUNDING

If the Political Body will be receiving American Recovery and Reinvestment Act ("ARRA") funding for the Project, the Political Body agrees that it is responsible in performing and completing all ARRA reporting documents for the Project. The Political Body confirms and acknowledges that Section 1512 of the ARRA provisions applies only to a "recipient" receiving ARRA funding directing from the federal government and, therefore, (i) the ARRA reporting requirements are the responsibility of the Political Body and not of the Railroad, and (ii) the Political Body shall not delegate any ARRA reporting responsibilities to the Railroad. The Political Body also confirms and acknowledges that (i) the Railroad shall provide to the Political Body the Railroad's standard and customary billing for expenses incurred by the Railroad for the Project including the Railroad's standard and customary documentation to support such billing, and (ii) such standard and customary billing and documentation from the Railroad provides the information needed by the Political Body to perform and complete the ARRA reporting documents. The Railroad confirms that the Political Body and the Federal Highway Administration shall have the right to audit the Railroad's billing and documentation for the Project as provided in Section 11 of Exhibit B of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the Effective Date first herein written.

UNION PACIFIC RAILROAD COMPANY
(Federal Tax ID #94-6001323)

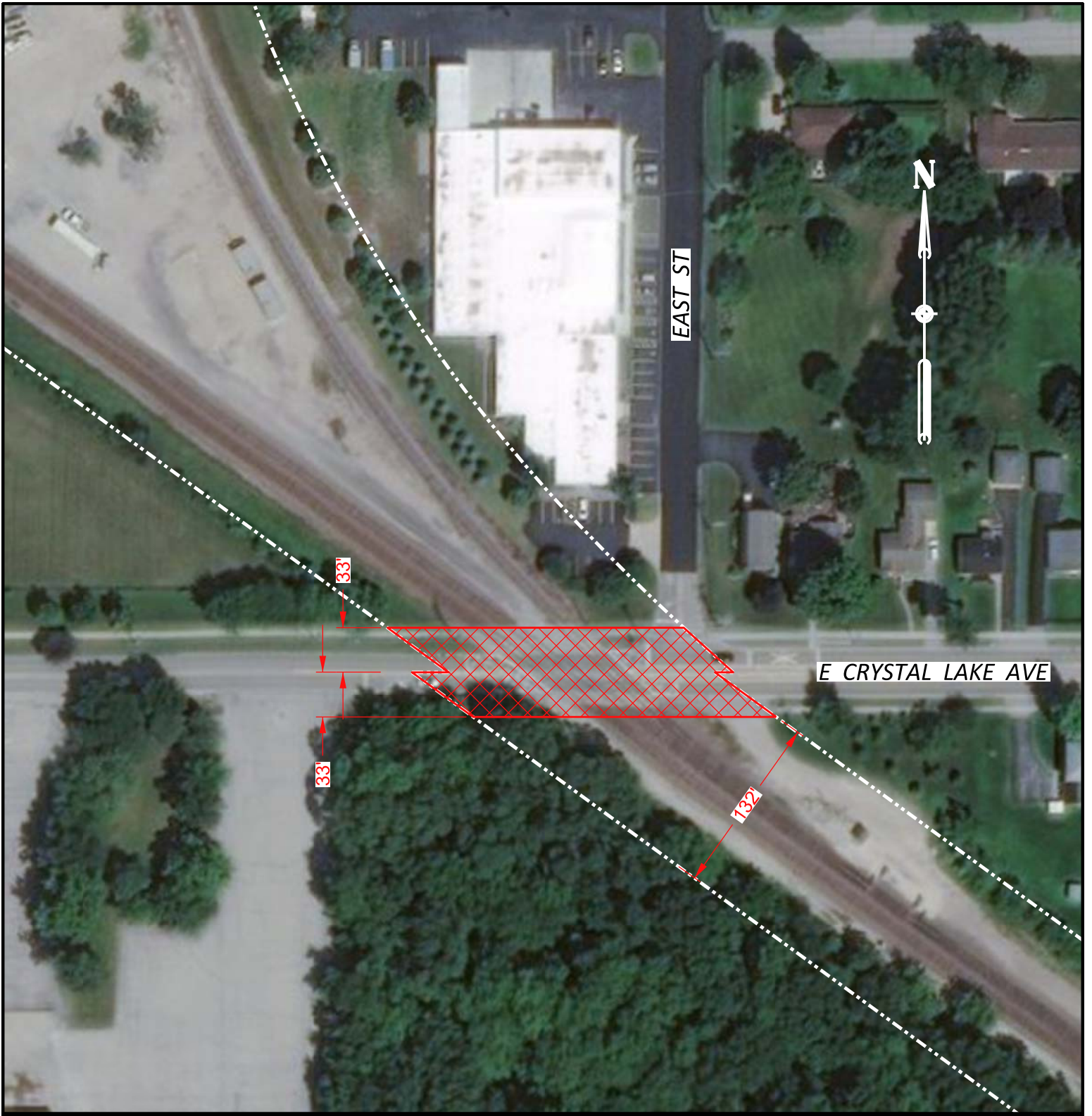
By: _____
Printed Name: _____
Title: _____

CITY OF CRYSTAL LAKE


By: _____
Printed Name: _____
Title: _____

**EXHIBIT A
TO
PUBLIC AT GRADE CROSSING AGREEMENT**

Exhibit A will be a print showing the Crossing Area



LEGEND:

CROSSING AREA 

UPRRCO. R/W OUTLINED 

CROSSING AREA = 14,490 SQ. FT. +/-

NOTE: BEFORE YOU BEGIN ANY WORK, SEE AGREEMENT FOR FIBER OPTIC PROVISIONS.

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY

CRYSTAL LAKE, MCHENRY COUNTY, ILLINOIS

M.P. 42.53 - HARVARD SUB.

MAP CNW V-16 / 2

SCALE: 1" = 100'

OFFICE OF REAL ESTATE
OMAHA, NEBRASKA DATE: 4-23-2019

PJB FILE: 0276011

CADD FILENAME	0276011
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SCAN FILENAME	ILV160S2-276011.TIF
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**EXHIBIT B
TO
PUBLIC AT GRADE CROSSING AGREEMENT**

SECTION 1. CONDITIONS AND COVENANTS

A. The Railroad makes no covenant or warranty of title for quiet possession or against encumbrances. The Political Body shall not use or permit use of the Crossing Area for any purposes other than those described in this Agreement. Without limiting the foregoing, the Political Body shall not use or permit use of the Crossing Area for railroad purposes, or for gas, oil or gasoline pipe lines. Any lines constructed on the Railroad's property by or under authority of the Political Body for the purpose of conveying electric power or communications incidental to the Political Body's use of the property for highway purposes shall be constructed in accordance with specifications and requirements of the Railroad, and in such manner as not adversely to affect communication or signal lines of the Railroad or its licensees now or hereafter located upon said property. No nonparty shall be admitted by the Political Body to use or occupy any part of the Railroad's property without the Railroad's written consent. Nothing herein shall obligate the Railroad to give such consent.

B. The Railroad reserves the right to cross the Crossing Area with such railroad tracks as may be required for its convenience or purposes. In the event the Railroad shall place additional tracks upon the Crossing Area, the Political Body shall, at its sole cost and expense, modify the Roadway to conform with all tracks within the Crossing Area.

C. The right hereby granted is subject to any existing encumbrances and rights (whether public or private), recorded or unrecorded, and also to any renewals thereof. The Political Body shall not damage, destroy or interfere with the property or rights of nonparties in, upon or relating to the Railroad's property, unless the Political Body at its own expense settles with and obtains releases from such nonparties.

D. The Railroad reserves the right to use and to grant to others the right to use the Crossing Area for any purpose not inconsistent with the right hereby granted, including, but not by way of limitation, the right to construct, reconstruct, maintain, operate, repair, alter, renew and replace tracks, facilities and appurtenances on the property; and the right to cross the Crossing Area with all kinds of equipment.

E. So far as it lawfully may do so, the Political Body will assume, bear and pay all taxes and assessments of whatsoever nature or kind (whether general, local or special) levied or assessed upon or against the Crossing Area, excepting taxes levied upon and against the property as a component part of the Railroad's operating property.

F. If any property or rights other than the right hereby granted are necessary for the construction, maintenance and use of the Roadway and its appurtenances, or for the performance of any work in connection with the Project, the Political Body will acquire all such other property and rights at its own expense and without expense to the Railroad.

SECTION 2. CONSTRUCTION OF ROADWAY

A. The Political Body, at its expense, will apply for and obtain all public authority required by law, ordinance, rule or regulation for the Project, and will furnish the Railroad upon request with satisfactory evidence that such authority has been obtained.

B. Except as may be otherwise specifically provided herein, the Political Body, at its expense, will furnish all necessary labor, material and equipment, and shall construct and complete the Roadway and all appurtenances thereof. The appurtenances shall include, without limitation, all necessary and proper highway warning devices (except those installed by the Railroad within its right of way) and all necessary drainage facilities, guard rails or barriers, and right of way fences between the Roadway and the railroad tracks. Upon completion of the Project, the Political Body shall remove from the Railroad's property all temporary structures and false work, and will leave the Crossing Area in a condition satisfactory to the Railroad.

C. All construction work of the Political Body upon the Railroad's property (including, but not limited to, construction of the Roadway and all appurtenances and all related and incidental work) shall be performed and completed in a manner satisfactory to the Assistant Vice President Engineering-Design of the Railroad or his authorized representative and in compliance with the Plans, and other guidelines furnished by the Railroad.

D. All construction work of the Political Body shall be performed diligently and completed within a reasonable time. No part of the Project shall be suspended, discontinued or unduly delayed without the Railroad's written consent, and subject to such reasonable conditions as the Railroad may specify. It is understood that the Railroad's tracks at and in the vicinity of the work will be in constant or frequent use during progress of the work and that movement or stoppage of trains, engines or cars may cause delays in the work of the Political Body. The Political Body hereby assumes the risk of any such delays and agrees that no claims for damages on account of any delay shall be made against the Railroad by the State and/or the Contractor.

SECTION 3. INJURY AND DAMAGE TO PROPERTY

If the Political Body, in the performance of any work contemplated by this Agreement or by the failure to do or perform anything for which the Political Body is responsible under the provisions of this Agreement, shall injure, damage or destroy any property of the Railroad or of any other person lawfully occupying or using the property of the Railroad, such property shall be replaced or repaired by the Political Body at the Political Body's own expense, or by the Railroad at the expense of the Political Body, and to the satisfaction of the Railroad's Assistant Vice President Engineering-Design.

SECTION 4. RAILROAD MAY USE CONTRACTORS TO PERFORM WORK

The Railroad may contract for the performance of any of its work by other than the Railroad forces. The Railroad shall notify the Political Body of the contract price within ninety (90) days after it is awarded. Unless the Railroad's work is to be performed on a fixed price basis, the Political Body shall reimburse the Railroad for the amount of the contract.

SECTION 5. MAINTENANCE AND REPAIRS

A. The Political Body shall, at its own sole expense, maintain, repair, and renew, or cause to be maintained, repaired and renewed, the entire Crossing Area and Roadway, except the portions between the track tie ends, which shall be maintained by and at the expense of the Railroad.

B. If, in the future, the Political Body elects to have the surfacing material between the track tie ends, or between tracks if there is more than one railroad track across the Crossing Area, replaced with paving or some surfacing material other than timber planking, the Railroad, at the Political Body's expense, shall install such replacement surfacing, and in the future, to the extent repair or replacement of the surfacing is necessitated by repair or rehabilitation of the Railroad's tracks through the Crossing Area, the Political Body shall bear the expense of such repairs or replacement.

SECTION 6. CHANGES IN GRADE

If at any time the Railroad shall elect, or be required by competent authority to, raise or lower the grade of all or any portion of the track(s) located within the Crossing Area, the Political Body shall, at its own expense, conform the Roadway to conform with the change of grade of the trackage.

SECTION 7. REARRANGEMENT OF WARNING DEVICES

If the change or rearrangement of any warning device installed hereunder is necessitated for public or Railroad convenience or on account of improvements for either the Railroad, highway or both, the parties will apportion the expense incidental thereto between themselves by negotiation, agreement or by the order of a competent authority before the change or rearrangement is undertaken.

SECTION 8. SAFETY MEASURES; PROTECTION OF RAILROAD COMPANY OPERATIONS

It is understood and recognized that safety and continuity of the Railroad's operations and communications are of the utmost importance; and in order that the same may be adequately safeguarded, protected and assured, and in order that accidents may be prevented and avoided, it is agreed with respect to all of said work of the Political Body that the work will be performed in a safe manner and in conformity with the following standards:

A. **Definitions.** All references in this Agreement to the Political Body shall also include the Contractor and their respective officers, agents and employees, and others acting under its or their authority; and all references in this Agreement to work of the Political Body shall include work both within and outside of the Railroad's property.

B. **Entry on to Railroad's Property by Political Body.** If the Political Body's employees need to enter Railroad's property in order to perform an inspection of the Roadway, minor maintenance or other activities, the Political Body shall first provide at least ten (10) working days advance notice to the Railroad Representative. With respect to such entry on to Railroad's property, the Political Body, to the extent permitted by law, agrees to release, defend and indemnify the Railroad from and against any loss, damage, injury, liability, claim, cost or expense incurred by any person including, without limitation, the Political Body's employees, or damage to any property or equipment (collectively the "Loss") that arises from the presence or activities of Political Body's employees on Railroad's property, except to the extent that any Loss is caused by the sole direct negligence of Railroad.

C. **Flagging.**

(i) If the Political Body's employees need to enter Railroad's property as provided in Paragraph B above, the Political Body agrees to notify the Railroad Representative at least thirty (30) working days in advance of proposed performance of any work by Political Body in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad approved flagman is provided to watch for trains. Upon receipt of such thirty (30) day notice, the Railroad Representative will determine and inform Political Body whether a flagman need be present and whether Political Body needs to implement any special protective or safety measures.

(ii) The provisions set forth in this subsection are only applicable for Flagging Services performed by employees of Railroad: the rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with labor agreements and schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an

authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Political Body shall pay on the basis of the new rates and charges. Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Political Body may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Political Body must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Political Body will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

(iii) Political Body or its Contractor shall be permitted to hire a private contractor (such private contractor being commonly known in the railroad industry as a contractor-in-charge ("CIC")) to perform Flagging Services in lieu of Railroad providing such services or in concert with Railroad providing such services, subject to receiving prior written approval by Railroad, which approval shall be in Railroad's sole and absolute discretion. If Railroad agrees to permit Political Body or its Contractor to utilize a CIC pursuant to the preceding sentence, the Political Body or its Contractor, as applicable, shall be required to obtain Railroad's prior written approval for each of the following items, as determined in all respects in Railroad's sole and absolute discretion: (i) the identity of the third-party performing the role of CIC; (ii) the scope of the Flagging Services to be performed by the approved CIC; and (iii) any other terms and conditions governing the Flagging Services to be provided by the CIC. Railroad reserves the right to rescind any approval pursuant to this section, in whole or in part, at any time, as determined in Railroad's sole and absolute discretion,

(iv) If any flagging or other special protective or safety measures are performed by Railroad and/or a CIC, Political Body agrees that Political Body is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

D. **Compliance With Laws**. The Political Body shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The Political Body shall use only such methods as are consistent with safety, both as concerns the Political Body, the Political Body's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The Political Body (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Railroad's premises. If any failure by the

Political Body to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the Political Body shall reimburse, and to the extent it may lawfully do so, indemnify the Railroad for any such fine, penalty, cost, or charge, including without limitation attorney's fees, court costs and expenses. The Political Body further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.

E. **No Interference or Delays.** The Political Body shall not do, suffer or permit anything which will or may obstruct, endanger, interfere with, hinder or delay maintenance or operation of the Railroad's tracks or facilities, or any communication or signal lines, installations or any appurtenances thereof, or the operations of others lawfully occupying or using the Railroad's property or facilities.

F. **Supervision.** The Political Body, at its own expense, shall adequately police and supervise all work to be performed by the Political Body, and shall not inflict injury to persons or damage to property for the safety of whom or of which the Railroad may be responsible, or to property of the Railroad. The responsibility of the Political Body for safe conduct and adequate policing and supervision of the Project shall not be lessened or otherwise affected by the Railroad's approval of plans and specifications, or by the Railroad's collaboration in performance of any work, or by the presence at the work site of the Railroad's representatives, or by compliance by the Political Body with any requests or recommendations made by such representatives. If a representative of the Railroad is assigned to the Project, the Political Body will give due consideration to suggestions and recommendations made by such representative for the safety and protection of the Railroad's property and operations.

G. **Suspension of Work.** If at any time the Political Body's engineers or the Vice President-Engineering Services of the Railroad or their respective representatives shall be of the opinion that any work of the Political Body is being or is about to be done or prosecuted without due regard and precaution for safety and security, the Political Body shall immediately suspend the work until suitable, adequate and proper protective measures are adopted and provided.

H. **Removal of Debris.** The Political Body shall not cause, suffer or permit material or debris to be deposited or cast upon, or to slide or fall upon any property or facilities of the Railroad; and any such material and debris shall be promptly removed from the Railroad's property by the Political Body at the Political Body's own expense or by the Railroad at the expense of the Political Body. The Political Body shall not cause, suffer or permit any snow to be plowed or cast upon the Railroad's property during snow removal from the Crossing Area.

I. **Explosives.** The Political Body shall not discharge any explosives on or in the vicinity of the Railroad's property without the prior consent of the Railroad's Vice President-Engineering Services, which shall not be given if, in the sole discretion of the Railroad's Vice President-Engineering Services, such discharge would be dangerous or

would interfere with the Railroad's property or facilities. For the purposes hereof, the "vicinity of the Railroad's property" shall be deemed to be any place on the Railroad's property or in such close proximity to the Railroad's property that the discharge of explosives could cause injury to the Railroad's employees or other persons, or cause damage to or interference with the facilities or operations on the Railroad's property. The Railroad reserves the right to impose such conditions, restrictions or limitations on the transportation, handling, storage, security and use of explosives as the Railroad, in the Railroad's sole discretion, may deem to be necessary, desirable or appropriate.

J. **Excavation.** The Political Body shall not excavate from existing slopes nor construct new slopes which are excessive and may create hazards of slides or falling rock, or impair or endanger the clearance between existing or new slopes and the tracks of the Railroad. The Political Body shall not do or cause to be done any work which will or may disturb the stability of any area or adversely affect the Railroad's tracks or facilities. The Political Body, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by the Political Body in connection with construction, maintenance or other work. The shoring and cribbing shall be constructed and maintained with materials and in a manner approved by the Railroad's Assistant Vice President Engineering - Design to withstand all stresses likely to be encountered, including any stresses resulting from vibrations caused by the Railroad's operations in the vicinity.

K. **Drainage.** The Political Body, at the Political Body's own expense, shall provide and maintain suitable facilities for draining the Roadway and its appurtenances, and shall not suffer or permit drainage water therefrom to flow or collect upon property of the Railroad. The Political Body, at the Political Body's own expense, shall provide adequate passageway for the waters of any streams, bodies of water and drainage facilities (either natural or artificial, and including water from the Railroad's culvert and drainage facilities), so that said waters may not, because of any facilities or work of the Political Body, be impeded, obstructed, diverted or caused to back up, overflow or damage the property of the Railroad or any part thereof, or property of others. The Political Body shall not obstruct or interfere with existing ditches or drainage facilities.

L. **Notice.** Before commencing any work, the Political Body shall provide the advance notice that is required under the Contractor's Right of Entry Agreement.

M. **Fiber Optic Cables.** Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Political Body shall telephone the Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by the Political Body. If it is, Political Body will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad's premises.

SECTION 9. INTERIM WARNING DEVICES

If at anytime it is determined by a competent authority, by the Political Body, or by agreement between the parties, that new or improved train activated warning devices should be installed at the Crossing Area, the Political Body shall install adequate temporary warning devices or signs and impose appropriate vehicular control measures to protect the motoring public until the new or improved devices have been installed.

SECTION 10. OTHER RAILROADS

All protective and indemnifying provisions of this Agreement shall inure to the benefit of the Railroad and any other railroad company lawfully using the Railroad's property or facilities.

SECTION 11. BOOKS AND RECORDS

The books, papers, records and accounts of Railroad, so far as they relate to the items of expense for the materials to be provided by Railroad under this Project, or are associated with the work to be performed by Railroad under this Project, shall be open to inspection and audit at Railroad's offices in Omaha, Nebraska, during normal business hours by the agents and authorized representatives of Political Body for a period of three (3) years following the date of Railroad's last billing sent to Political Body.

SECTION 12. REMEDIES FOR BREACH OR NONUSE

A. If the Political Body shall fail, refuse or neglect to perform and abide by the terms of this Agreement, the Railroad, in addition to any other rights and remedies, may perform any work which in the judgment of the Railroad is necessary to place the Roadway and appurtenances in such condition as will not menace, endanger or interfere with the Railroad's facilities or operations or jeopardize the Railroad's employees; and the Political Body will reimburse the Railroad for the expenses thereof.

B. Nonuse by the Political Body of the Crossing Area for public highway purposes continuing at any time for a period of eighteen (18) months shall, at the option of the Railroad, work a termination of this Agreement and of all rights of the Political Body hereunder.

C. The Political Body will surrender peaceable possession of the Crossing Area and Roadway upon termination of this Agreement. Termination of this Agreement shall not affect any rights, obligations or liabilities of the parties, accrued or otherwise, which may have arisen prior to termination.

SECTION 13. MODIFICATION - ENTIRE AGREEMENT

No waiver, modification or amendment of this Agreement shall be of any force or

effect unless made in writing, signed by the Political Body and the Railroad and specifying with particularity the nature and extent of such waiver, modification or amendment. Any waiver by the Railroad of any default by the Political Body shall not affect or impair any right arising from any subsequent default. This Agreement and Exhibits attached hereto and made a part hereof constitute the entire understanding between the Political Body and the Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work or any part thereof.

EXHIBIT C

TO

PUBLIC AT GRADE CROSSING AGREEMENT

Exhibit C (if applicable) will be Railroad's Material and Force Agreement Estimate.

Material And Force Account Estimate

Estimate Creation Date: 12/4/2018 Number: 118043 Version: 3

Estimate Good Until 06/04/19

Location: HARVARD SUB, NO 1, 32-42.47

Buy America: No

Description of Work: Relocate gate 2 due to road widening.

COMMENTS	Description	QTY	UOM	Unit Cost	LABOR	MATERIAL	TOTAL
SIGNAL							
	Xing - Boring	1	LS	10,000.00	0	10,000	10,000
	Xing - Dax (Modules And 1000' Cable)	1	EA	9,732.00	5,000	4,732	9,732
	Xing - Dax Cable 1000'	1.5	EA	6,440.00	6,000	3,660	9,660
	Xing - Engineering Design	1	LS	3,244.00	3,244	0	3,244
	Xing - Fill/Rock/Gravel	1	LS	3,000.00	0	3,000	3,000
Fedral W/O Ind. 160.8%	Xing - Labor Additive	1	LS	66,631.00	66,631	0	66,631
	Xing - Relay Track Circuit	1	EA	6,100.00	4,800	1,300	6,100
	Xing - External SSCC	1	EA	3,955.00	0	3,955	3,955
	Xing - Pedestrian Gates (pair)	1	EA	57,283.00	22,393	34,890	57,283

Sub-Total = 108,068 61,537 169,605

Totals = 108,068 61,537 169,605

Grand Total = \$169,605

This is a preliminary estimate, intended to provide a ballpark cost to determine whether a proposed project warrants further study. This estimate is not to be used for budget authority. Quantities and costs are estimated using readily available information and experience with similar projects. Site conditions and changes in project scope and design may result in significant cost variance.

EXHIBIT D
TO
PUBLIC AT-GRADE CROSSING AGREEMENT

Exhibit D will be Current Form of Contractor's Right of Entry Agreement

CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made and entered into as of the _____ day of _____, 2019, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Railroad"); and _____, a _____ corporation ("Contractor").

RECITALS:

Contractor has been hired by City of Crystal Lake ("City") for the the installation of two (2) pedestrian gates and relocating one road gate at the existing Crystal Lake Avenue at-grade public road crossing, DOT Number 176970T at Railroad's Milepost 42.53 on Railroad's Harvard Sub at or near Crystal Lake, McHenry County, Illinois, as such locations are in the general location shown on the prints marked **Exhibit A**, attached hereto and hereby made a part hereof, which work is the subject of an agreement dated _____, 2019 between Railroad and the City.

Railroad is willing to permit Contractor to perform the work described above at the location described above subject to the terms and conditions contained in this agreement

AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between Railroad and Contractor, as follows:

ARTICLE 1 - DEFINITION OF CONTRACTOR.

For purposes of this agreement, all references in this agreement to Contractor shall include Contractor's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority. For purposes of clarity, Contractor agrees that any CIC (defined below) hired by Contractor is a subcontractor of Contractor and therefore included in the defined term Contractor pursuant to the foregoing sentence.

ARTICLE 2 - RIGHT GRANTED; PURPOSE.

Railroad hereby grants to Contractor the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the property described in the Recitals for the purpose of performing the work described in the Recitals above. The right herein granted to Contractor is limited to those portions of Railroad's property specifically described herein, or as designated by the Railroad Representative named in Article 4.

ARTICLE 3 - TERMS AND CONDITIONS CONTAINED IN EXHIBITS B, C AND D.

The terms and conditions contained in **Exhibit B**, **Exhibit C** and **Exhibit D**, attached hereto, are hereby made a part of this agreement.

ARTICLE 4 - ALL EXPENSES TO BE BORNE BY CONTRACTOR; RAILROAD REPRESENTATIVE.

A. Contractor shall bear any and all costs and expenses associated with any work performed by Contractor (including without limitation any CIC), or any costs or expenses incurred by Railroad relating to this agreement.

B. Contractor shall coordinate all of its work with the following Railroad representative or his or her duly authorized representative (the "Railroad Representative"):

Jared Treaster
Manager Track Mntnc.
573-218-4382
jtreast@up.com

C. Contractor, at its own expense, shall adequately police and supervise all work to be performed by Contractor and shall ensure that such work is performed in a safe manner as set forth in Section 7 of **Exhibit B**. The responsibility of Contractor for safe conduct and adequate policing and supervision of Contractor's work shall not be lessened or otherwise affected by Railroad's approval of plans and specifications involving the work, or by Railroad's collaboration in performance of any work, or by the presence at the work site of a Railroad Representative, or by compliance by Contractor with any requests or recommendations made by Railroad Representative.

ARTICLE 5 - SCHEDULE OF WORK ON A MONTHLY BASIS.

The Contractor, at its expense, shall provide on a monthly basis a detailed schedule of work to the Railroad Representative named in Article 4B above. The reports shall start at the execution of this agreement and continue until this agreement is terminated as provided in this agreement or until the Contractor has completed all work on Railroad's property.

ARTICLE 6 - TERM; TERMINATION.

A. The grant of right herein made to Contractor shall commence on the date of this agreement, and continue until _____, unless sooner terminated as herein provided, or at such time as Contractor has completed its work on Railroad's property, whichever is earlier. Contractor agrees to notify the Railroad Representative in writing when it has completed its work on Railroad's property.

B. This agreement may be terminated by either party on ten (10) days written notice to the other party.

ARTICLE 7 - CERTIFICATE OF INSURANCE.

A. Before commencing any work, contractor will provide Railroad with the (i) insurance binders, policies, certificates and endorsements set forth in **Exhibit C** of this agreement, and (ii) the insurance endorsements obtained by each subcontractor as required under Section 12 of **Exhibit B** of this agreement.

B. All insurance correspondence, binders, policies, certificates and endorsements shall be sent to:

Union Pacific Railroad Company
1400 Douglas STOP 1690
Omaha, NE 68179
Folder 2760-11

ARTICLE 8 - PRECONSTRUCTION MEETING.

If the work to be performed by the Contractor will involve the Railroad providing any flagging protection (or if a CIC is approved to provide flagging protection pursuant to the terms set forth herein) and/or there is separate work to be performed by the Railroad, the Contractor confirms that no work shall commence until the Railroad and Contractor participate in a preconstruction meeting involving flagging procedures and coordination of work activities of the Contractor and the Railroad (and any CIC, as applicable.)

ARTICLE 9. DISMISSAL OF CONTRACTOR'S EMPLOYEE.

At the request of Railroad, Contractor shall remove from Railroad's property any employee of Contractor who fails to conform to the instructions of the Railroad Representative in connection with the work on Railroad's property, and any right of Contractor shall be suspended until such removal has occurred. Contractor shall indemnify Railroad against any claims arising from the removal of any such employee from Railroad's property.

ARTICLE 10. ADMINISTRATIVE FEE.

Upon the execution and delivery of this agreement, Contractor shall pay to Railroad (\$1025.00) as reimbursement for clerical, administrative and handling expenses in connection with the processing of this agreement.

ARTICLE 11. CROSSINGS; COMPLIANCE WITH MUTCD AND FRA GUIDELINES.

A. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Contractor without the prior written permission of Railroad.

B. Any permanent or temporary changes, including temporary traffic control, to crossings must conform to the Manual of Uniform Traffic Control Devices (MUTCD) and any applicable Federal Railroad Administration rules, regulations and guidelines, and must be reviewed by the Railroad prior to any changes being implemented. In the event the Railroad is found to be out of compliance with federal safety regulations due to the Contractor's modifications, negligence, or any other reason arising from the Contractor's presence on the Railroad's property, the Contractor agrees to assume liability for any civil penalties imposed upon the Railroad for such noncompliance.

ARTICLE 12.- EXPLOSIVES.

Explosives or other highly flammable substances shall not be stored or used on Railroad's property without the prior written approval of Railroad.

IN WITNESS WHEREOF, the parties hereto have duly executed this agreement in duplicate as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

By: _____

Title: _____

(Name of Contractor)

By: _____
Title: _____

EXHIBIT A
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Exhibit A will be a print showing the general location of the work site.

EXHIBIT B
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Section 1. NOTICE OF COMMENCEMENT OF WORK - RAILROAD FLAGGING - PRIVATE FLAGGING.

A. Contractor agrees to notify the Railroad Representative at least ten (10) working days in advance of Contractor commencing its work and at least thirty (30) working days in advance of proposed performance of any work by Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track.

B. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad approved flagman is provided to watch for trains. Upon receipt of such thirty (30)-day notice, the Railroad Representative will determine and inform Contractor whether a flagman need be present and whether Contractor needs to implement any special protective or safety measures.

C. Contractor shall be permitted to hire a private contractor to perform flagging or other special protective or safety measures (such private contractor being commonly known in the railroad industry as a contractor-in-charge ("CIC")) in lieu of Railroad providing such services or in concert with Railroad providing such services, subject to prior written approval by Railroad, which approval shall be in Railroad's sole and absolute discretion. If Railroad agrees to permit Contractor to utilize a CIC pursuant to the preceding sentence, Contractor shall obtain Railroad's prior approval in writing for each of the following items, as determined in all respects in Railroad's sole and absolute discretion: (i) the identity of the third-party performing the role of CIC; (ii) the scope of the services to be performed for the project by the approved CIC; and (iii) any other terms and conditions governing such services to be provided by the CIC. If flagging or other special protective or safety measures are performed by an approved CIC, Contractor shall be solely responsible for (and shall timely pay such CIC for) its services. Railroad reserves the right to rescind any approval pursuant to this Section 1, Subsection C., in whole or in part, at any time, as determined in Railroad's sole and absolute discretion.

D. If any flagging or other special protective or safety measures are performed by employees of Railroad and/or any contractor of Railroad, Railroad will bill Contractor for such expenses incurred by Railroad, unless Railroad and a federal, state or local governmental entity have agreed that Railroad is to bill such expenses to the federal, state or local governmental entity. If Railroad will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor's receipt of billing.

E. If any flagging or other special protective or safety measures are performed by Railroad or a CIC, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this agreement.

F. The provisions set forth in this subsection are only applicable for Flagging Services performed by employees of Railroad: the rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with labor agreements and schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Contractor (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges. If flagging is performed by Railroad, reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work.

Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED

A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire property including the right and power of Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by Railroad without liability to Contractor or to any other party for compensation or damages.

B. The foregoing grant is also subject to all outstanding superior rights (whether recorded or unrecorded and including those in favor of licensees and lessees of Railroad's property, and others) and the right of Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 3. NO INTERFERENCE WITH OPERATIONS OF RAILROAD AND ITS TENANTS.

A. Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad Representative. Nothing shall be done or permitted to be done by Contractor at any time that would in any manner impair the safety of such operations. When not in use, Contractor's machinery and materials shall be kept at least fifty (50) feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroads tracks except at existing open public crossings.

B. Operations of Railroad and work performed by Railroad personnel and delays in the work to be performed by Contractor caused by such railroad operations and work are expected by Contractor, and Contractor agrees that Railroad shall have no liability to Contractor, or any other person or entity for any such delays. The Contractor shall coordinate its activities with those of Railroad and third parties so as to avoid interference with railroad operations. The safe operation of Railroad train movements and other activities by Railroad takes precedence over any work to be performed by Contractor.

Section 4. LIENS.

Contractor shall pay in full all persons who perform labor or provide materials for the work to be performed by Contractor. Contractor shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be created or enforced against any property of Railroad for any such work performed. Contractor shall indemnify and hold harmless Railroad from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished. If Contractor fails to promptly cause any lien to be released of record, Railroad may, at its election, discharge the lien or claim of lien at Contractor's expense.

Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

A. Fiber optic cable systems may be buried on Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Contractor shall telephone Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on Railroad's property to be used by Contractor. If it is,

Contractor will telephone the telecommunications company(ies) involved, make arrangements for a cable locator and, if applicable, for relocation or other protection of the fiber optic cable. Contractor shall not commence any work until all such protection or relocation (if applicable) has been accomplished.

B. IN ADDITION TO OTHER INDEMNITY PROVISIONS IN THIS AGREEMENT, CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD RAILROAD HARMLESS FROM AND AGAINST ALL COSTS, LIABILITY AND EXPENSE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND EXPENSES) ARISING OUT OF ANY ACT OR OMISSION OF CONTRACTOR, ITS AGENTS AND/OR EMPLOYEES, THAT CAUSES OR CONTRIBUTES TO (1) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATIONS SYSTEM ON RAILROAD'S PROPERTY, AND/OR (2) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, ON RAILROAD'S PROPERTY. CONTRACTOR SHALL NOT HAVE OR SEEK RECOURSE AGAINST RAILROAD FOR ANY CLAIM OR CAUSE OF ACTION FOR ALLEGED LOSS OF PROFITS OR REVENUE OR LOSS OF SERVICE OR OTHER CONSEQUENTIAL DAMAGE TO A TELECOMMUNICATION COMPANY USING RAILROAD'S PROPERTY OR A CUSTOMER OR USER OF SERVICES OF THE FIBER OPTIC CABLE ON RAILROAD'S PROPERTY.

Section 6. PERMITS - COMPLIANCE WITH LAWS.

In the prosecution of the work covered by this agreement, Contractor shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

Section 7. SAFETY.

A. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Contractor. Contractor shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Contractor shall at a minimum comply with Railroad's safety standards listed in **Exhibit D**, hereto attached, to ensure uniformity with the safety standards followed by Railroad's own forces. As a part of Contractor's safety responsibilities, Contractor shall notify Railroad if Contractor determines that any of Railroad's safety standards are contrary to good safety practices. Contractor shall furnish copies of **Exhibit D** to each of its employees before they enter the job site.

B. Without limitation of the provisions of paragraph A above, Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job.

C. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Contractor shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of Railroad, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.

D. If and when requested by Railroad, Contractor shall deliver to Railroad a copy of Contractor's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Contractor to correct any deficiencies in the Safety Plan. The terms of this agreement shall control if there are any inconsistencies between this agreement and the Safety Plan.

Section 8. INDEMNITY.

A. TO THE EXTENT NOT PROHIBITED BY APPLICABLE STATUTE, CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS RAILROAD, ITS AFFILIATES, AND ITS AND THEIR OFFICERS, AGENTS AND EMPLOYEES (INDIVIDUALLY AN "INDEMNIFIED PARTY" OR COLLECTIVELY "INDEMNIFIED PARTIES") FROM AND AGAINST ANY AND ALL LOSS, DAMAGE, INJURY, LIABILITY, CLAIM, DEMAND, COST OR EXPENSE (INCLUDING, WITHOUT LIMITATION, ATTORNEY'S, CONSULTANT'S AND EXPERT'S FEES, AND

COURT COSTS), FINE OR PENALTY (COLLECTIVELY, "LOSS") INCURRED BY ANY PERSON (INCLUDING, WITHOUT LIMITATION, ANY INDEMNIFIED PARTY, CONTRACTOR, OR ANY EMPLOYEE OF CONTRACTOR OR OF ANY INDEMNIFIED PARTY) ARISING OUT OF OR IN ANY MANNER CONNECTED WITH (I) ANY WORK PERFORMED BY CONTRACTOR, OR (II) ANY ACT OR OMISSION OF CONTRACTOR, ITS OFFICERS, AGENTS OR EMPLOYEES, OR (III) ANY BREACH OF THIS AGREEMENT BY CONTRACTOR.

B. THE RIGHT TO INDEMNITY UNDER THIS SECTION 8 SHALL ACCRUE UPON OCCURRENCE OF THE EVENT GIVING RISE TO THE LOSS, AND SHALL APPLY REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF ANY INDEMNIFIED PARTY, EXCEPT WHERE THE LOSS IS CAUSED BY THE SOLE ACTIVE NEGLIGENCE OF AN INDEMNIFIED PARTY AS ESTABLISHED BY THE FINAL JUDGMENT OF A COURT OF COMPETENT JURISDICTION. THE SOLE ACTIVE NEGLIGENCE OF ANY INDEMNIFIED PARTY SHALL NOT BAR THE RECOVERY OF ANY OTHER INDEMNIFIED PARTY.

C. CONTRACTOR EXPRESSLY AND SPECIFICALLY ASSUMES POTENTIAL LIABILITY UNDER THIS SECTION 8 FOR CLAIMS OR ACTIONS BROUGHT BY CONTRACTOR'S OWN EMPLOYEES. CONTRACTOR WAIVES ANY IMMUNITY IT MAY HAVE UNDER WORKER'S COMPENSATION OR INDUSTRIAL INSURANCE ACTS TO INDEMNIFY THE INDEMNIFIED PARTIES UNDER THIS SECTION 8. CONTRACTOR ACKNOWLEDGES THAT THIS WAIVER WAS MUTUALLY NEGOTIATED BY THE PARTIES HERETO.

D. NO COURT OR JURY FINDINGS IN ANY EMPLOYEE'S SUIT PURSUANT TO ANY WORKER'S COMPENSATION ACT OR THE FEDERAL EMPLOYERS' LIABILITY ACT AGAINST A PARTY TO THIS AGREEMENT MAY BE RELIED UPON OR USED BY CONTRACTOR IN ANY ATTEMPT TO ASSERT LIABILITY AGAINST ANY INDEMNIFIED PARTY.

E. THE PROVISIONS OF THIS SECTION 8 SHALL SURVIVE THE COMPLETION OF ANY WORK PERFORMED BY CONTRACTOR OR THE TERMINATION OR EXPIRATION OF THIS AGREEMENT. IN NO EVENT SHALL THIS SECTION 8 OR ANY OTHER PROVISION OF THIS AGREEMENT BE DEEMED TO LIMIT ANY LIABILITY CONTRACTOR MAY HAVE TO ANY INDEMNIFIED PARTY BY STATUTE OR UNDER COMMON LAW.

Section 9. RESTORATION OF PROPERTY.

In the event Railroad authorizes Contractor to take down any fence of Railroad or in any manner move or disturb any of the other property of Railroad in connection with the work to be performed by Contractor, then in that event Contractor shall, as soon as possible and at Contractor's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed. Contractor shall remove all of Contractor's tools, equipment, rubbish and other materials from Railroad's property promptly upon completion of the work, restoring Railroad's property to the same state and condition as when Contractor entered thereon.

Section 10. WAIVER OF DEFAULT.

Waiver by Railroad of any breach or default of any condition, covenant or agreement herein contained to be kept, observed and performed by Contractor shall in no way impair the right of Railroad to avail itself of any remedy for any subsequent breach or default.

Section 11. MODIFICATION - ENTIRE AGREEMENT.

No modification of this agreement shall be effective unless made in writing and signed by Contractor and Railroad. This agreement and the exhibits attached hereto and made a part hereof constitute the entire understanding between Contractor and Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work to be performed by Contractor.

Section 12. ASSIGNMENT - SUBCONTRACTING.

Contractor shall not assign or subcontract this agreement, or any interest therein, without the written consent of the Railroad. Contractor shall be responsible for the acts and omissions of all subcontractors. Before Contractor

commences any work, the Contractor shall, except to the extent prohibited by law; (1) require each of its subcontractors to include the Contractor as "Additional Insured" on the subcontractor's Commercial General Liability policy and Umbrella or Excess policies (if applicable) with respect to all liabilities arising out of the subcontractor's performance of work on behalf of the Contractor by endorsing these policies with ISO Additional Insured Endorsements CG 20 10, and CG 20 37 (or substitute forms providing equivalent coverage); (2) require each of its subcontractors to endorse their Commercial General Liability Policy with "Contractual Liability Railroads" ISO Form CG 24 17 10 01 (or a substitute form providing equivalent coverage) for the job site; and (3) require each of its subcontractors to endorse their Business Automobile Policy with "Coverage For Certain Operations In Connection With Railroads" ISO Form CA 20 70 10 01 (or a substitute form providing equivalent coverage) for the job site.

EXHIBIT C
TO
CONTRACTOR'S
RIGHT OF ENTRY AGREEMENT

Union Pacific Railroad Company
Insurance Provisions For
Contractor's Right of Entry Agreement

Contractor shall, at its sole cost and expense, procure and maintain during the course of the Project and until all Project work on Railroad's property has been completed and the Contractor has removed all equipment and materials from Railroad's property and has cleaned and restored Railroad's property to Railroad's satisfaction, the following insurance coverage:

- A. Commercial General Liability insurance.** Commercial general liability (CGL) with a limit of not less than \$5,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.
- Designated Construction Project(s) General Aggregate Limit ISO Form CG 25 03 03 97 (or a substitute form providing equivalent coverage) showing the project on the form schedule.

- B. Business Automobile Coverage insurance.** Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$5,000,000 for each accident and coverage must include liability arising out of any auto (including owned, hired and non-owned autos).

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

- C. Workers' Compensation and Employers' Liability insurance.** Coverage must include but not be limited to:
- Contractor's statutory liability under the workers' compensation laws of the state where the work is being performed.
 - Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Contractor is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

- D. Railroad Protective Liability insurance.** Contractor must maintain "Railroad Protective Liability" (RPL) insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. The definition of "JOB LOCATION" and "WORK" on the declaration page of the policy shall refer to this agreement and shall describe all WORK or OPERATIONS performed under this agreement. Contractor shall provide this agreement to Contractor's insurance agent(s) and/or broker(s) and Contractor shall instruct such agent(s) and/or broker(s) to procure the insurance coverage required by this agreement. A BINDER STATING THE POLICY IS IN PLACE MUST BE SUBMITTED TO RAILROAD BEFORE THE WORK MAY COMMENCE AND UNTIL THE ORIGINAL POLICY IS FORWARDED TO UNION PACIFIC RAILROAD.

- E. Umbrella or Excess insurance.** If Contractor utilizes umbrella or excess policies, these policies must “follow form” and afford no less coverage than the primary policy.
- F. Pollution Liability insurance.** Pollution liability coverage must be included when the scope of the work as defined in the agreement includes installation, temporary storage, or disposal of any "hazardous" material that is injurious in or upon land, the atmosphere, or any watercourses; or may cause bodily injury at any time.

If required, coverage may be provided in separate policy form or by endorsement to Contractors CGL or RPL. Any form coverage must be equivalent to that provided in ISO form CG 24 15 "Limited Pollution Liability Extension Endorsement" or CG 28 31 "Pollution Exclusion Amendment" with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If the scope of work as defined in this agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

Other Requirements

- G.** All policy(ies) required above (except business automobile, worker's compensation and employers liability) must include Railroad as “Additional Insured” using ISO Additional Insured Endorsements CG 20 10, and CG 20 37 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall not be limited by Contractor's liability under the indemnity provisions of this agreement. BOTH CONTRACTOR AND RAILROAD EXPECT THAT UNION PACIFIC RAILROAD COMPANY WILL BE PROVIDED WITH THE BROADEST POSSIBLE COVERAGE AVAILABLE BY OPERATION OF LAW UNDER ISO ADDITIONAL INSURED FORMS CG 20 10 AND CG 20 37.
- H.** Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement, or (b) all punitive damages are prohibited by all states in which this agreement will be performed.
- I.** Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees for damages covered by the workers compensation and employers liability or commercial umbrella or excess liability obtained by Contractor required in this agreement where prohibited by law. This waiver must be stated on the certificate of insurance.
- J.** Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this agreement.
- K.** All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the work is being performed.
- L.** The fact that insurance is obtained by Contractor or by Railroad on behalf of Contractor will not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this agreement. Damages recoverable by Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage.

EXHIBIT D
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

MINIMUM SAFETY REQUIREMENTS

The term "employees" as used herein refer to all employees of Contractor as well as all employees of any subcontractor or agent of Contractor.

I. Clothing

- A. All employees of Contractor will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Contractor's employees must wear:

- (i) Waist-length shirts with sleeves.
 - (ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
 - (iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.
- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.
- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

II. Personal Protective Equipment

Contractor shall require its employees to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- (i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Contractor's company logo or name.
- (ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- (iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
 - 100 feet of a locomotive or roadway/work equipment
 - 15 feet of power operated tools
 - 150 feet of jet blowers or pile drivers
 - 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
 -
- (iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

III. On Track Safety

Contractor is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- (i) Maintain a distance of twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.
- (ii) Wear an orange, reflectorized workwear approved by the Railroad Representative.
- (iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Contractor must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Contractor will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

IV. Equipment

- A. It is the responsibility of Contractor to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Contractor's equipment is unsafe for use, Contractor shall remove such equipment from Railroad's property. In addition, Contractor must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
 - Familiar and comply with Railroad's rules on lockout/tagout of equipment.
 - Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
 - Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other railbound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

V. General Safety Requirements

- A. Contractor shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Contractor shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Contractor meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:

- (i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
- (ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
- (iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
- (iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
- (v) Before stepping over or crossing tracks, look in both directions first.
- (vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.

E. All employees must comply with all federal and state regulations concerning workplace safety.

PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT

MAIN STREET
DOT NUMBER 178799N
MILE POST 58.16, CRYSTAL LAKE INDUSTRIAL LEAD
CRYSTAL LAKE, MCHENRY COUNTY, ILLINOIS

THIS AGREEMENT ("Agreement") is made and entered into as of the ____ day of _____, 2019 ("Effective Date"), by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, to be addressed at Real Estate Department, 1400 Douglas Street, Mail Stop 1690, Omaha, Nebraska 68179 ("Railroad") and **CITY OF CRYSTAL LAKE**, a municipal corporation or political subdivision of the State of Illinois to be addressed at 100 W. Woodstock St., Crystal Lake, Illinois, 60014 ("Political Body").

RECITALS:

The Political Body desires to undertake as its project (the "Project") reconstructing and widening the crossing including the, installation of two road gates; moving and upgrading cantilevers; replacing asphalt; relocating new cantilevers; and the interconnection of Railroad signals, at the existing Main St. at-grade public road crossing, DOT Number 178799N at Railroad's Milepost 58.16 on Railroad's Crystal Lake Industrial Lead at or near Crystal Lake, McHenry County, Illinois (the "Roadway"). The area currently used by the Political Body is depicted on **Exhibit A Survey Print** attached hereto and made a part hereof as the "Existing Crossing Area" and the additional crossing area which the Political Body needs in order to construct the Project is the "New Crossing Area". The Existing Crossing Area and the New Crossing Area are collectively referred to as "the Crossing Area".

In support of its Project, the Political Body has requested the Railroad's cooperation in connection with installing the necessary relays and other materials required to interconnect and coordinate the operation of said railroad grade crossing protection devices with the operation of said highway traffic control signals. Said signal work is to be performed at the sole expense of Political Body as is described in **Exhibit E Signal Design Schematic** attached hereto and made a part hereof.

The Railroad and the Political Body are entering into this Agreement to cover the above.

AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between the parties hereto as follows:

Section 1. EXHIBIT B

The general terms and conditions marked **Exhibit B**, are attached hereto and hereby made a part hereof.

Section 2. RAILROAD GRANTS RIGHT

For and in consideration **Fourteen Thousand Dollars (\$14,800.00)** to be paid by the Political Body to the Railroad upon the execution and delivery of this Agreement and in further consideration of the Political Body's agreement to perform and comply with the terms of this Agreement, the Railroad hereby grants to the Political Body the right to construct, maintain and repair the Roadway over and across the Crossing Area.

For purposes of advanced signal preemption, Railroad hereby grants permission and authority to Political Body and/or its Contractor (as defined below) to install the conduit with the necessary wiring on Railroad right of way on the condition that prior to performing any work on Railroad's property, Political Body shall, or shall require its Contractor to, notify the Railroad and/or enter into a right of entry agreement with Railroad, as applicable pursuant to the terms and conditions of this Agreement.

Section 3. DEFINITION OF CONTRACTOR

For purposes of this Agreement the term "Contractor" shall mean the contractor or contractors hired by the Political Body to perform any Project work on any portion of the Railroad's property and shall also include the Contractor's subcontractors and the Contractor's and subcontractor's respective employees, officers and agents, and others acting under its or their authority.

Section 4. CONTRACTOR'S RIGHT OF ENTRY AGREEMENT - INSURANCE

A. Prior to Contractor performing any work within the Crossing Area and any subsequent maintenance and repair work, the Political Body shall require the Contractor to:

- execute the Railroad's then current Contractor's Right of Entry Agreement
- obtain the then current insurance required in the Contractor's Right of Entry Agreement; and
- provide such insurance policies, certificates, binders and/or endorsements to the Railroad.

B. The Railroad's current Contractor's Right of Entry Agreement is marked **Exhibit D**, attached hereto and hereby made a part hereof. The Political Body confirms that it will inform its Contractor that it is required to execute such form of agreement and obtain the required insurance before commencing any work on any Railroad property. Under no circumstances will the Contractor be allowed on the Railroad's property without first executing the Railroad's Contractor's Right of Entry Agreement and obtaining the insurance set forth therein and also providing to the Railroad the insurance policies, binders, certificates and/or endorsements described therein.

C. All insurance correspondence, binders, policies, certificates and/or endorsements shall be sent to:

Senior Manager - Contracts
Union Pacific Railroad Company
Real Estate Department
1400 Douglas Street, Mail Stop 1690
Omaha, NE 68179-1690
UP File Folder No. 3131-64

D. If the Political Body's own employees will be performing any of the Project work, the Political Body may self-insure all or a portion of the insurance coverage subject to the Railroad's prior review and approval.

Section 5. FEDERAL AID POLICY GUIDE

If the Political Body will be receiving any federal funding for the Project, the current rules, regulations and provisions of the Federal Aid Policy Guide as contained in 23 CFR 140, Subpart I and 23 CFR 646, Subparts A and B are incorporated into this Agreement by reference.

Section 6. NO PROJECT EXPENSES TO BE BORNE BY RAILROAD

The Political Body agrees that no Project costs and expenses are to be borne by the Railroad. In addition, the Railroad is not required to contribute any funding for the Project.

Section 7. WORK TO BE PERFORMED BY RAILROAD; BILLING SENT TO POLITICAL BODY; POLITICAL BODY'S PAYMENT OF BILLS

A. The work to be performed by the Railroad, at the Political Body's sole cost and expense, is described in the Railroad's Material and Force Account Estimate for surface work dated December 4, 2018 and the Railroad's Material and Force Account Estimate for signal work dated June 5, 2018, collectively marked **Exhibit C**, attached hereto and hereby made a part hereof (the "Estimate"). As set forth in the Estimate, the Railroad's total estimated cost for the Railroad's work associated with the Project is Two Hundred Sixty Six Thousand Five Hundred Eighty Two Dollars (\$266,582).

B. The Railroad, if it so elects, may recalculate and update the Estimate submitted to the Political Body in the event the Political Body does not commence construction on the portion of the Project located on the Railroad's property within six (6) months from the date of the Estimate.

C. The Political Body acknowledges that the Estimate does not include any estimate of flagging or other protective service costs that are to be paid by the Political Body or the Contractor in connection with flagging or other protective services provided by the Railroad in connection with the Project. All of such costs incurred by the Railroad are to be paid by the Political Body or the Contractor as determined by the Railroad and the Political Body. If it is determined that the Railroad will be billing the Contractor directly for such costs, the Political Body agrees that it will pay the Railroad for any flagging costs that have not been paid by any Contractor within thirty (30) days of the Contractor's receipt of billing.

D. The Railroad shall send progressive billing to the Political Body during the Project and final billing to the Political Body within one hundred eighty (180) days after receiving written notice from the Political Body that all Project work affecting the Railroad's property has been completed.

E. The Political Body agrees to reimburse the Railroad within thirty (30) days of its receipt of billing from the Railroad for one hundred percent (100%) of all actual costs incurred by the Railroad in connection with the Project including, but not limited to, all actual costs of engineering review (including preliminary engineering review costs incurred by Railroad prior to the Effective Date of this Agreement), construction, inspection, flagging (unless flagging costs are to be billed directly to the Contractor), procurement of materials, equipment rental, manpower and deliveries to the job site and all direct and indirect overhead labor/construction costs including Railroad's standard additive rates.

Section 8. PLANS

A. The Political Body, at its expense, shall prepare, or cause to be prepared by others, the detailed plans and specifications for the Project and the Structure and submit such plans and specifications to the Railroad's Assistant Vice President Engineering-Design, or his authorized representative, for prior review and approval. The plans and specifications shall include all Roadway layout specifications, cross sections and elevations, associated drainage, and other appurtenances.

B. The final one hundred percent (100%) completed plans that are approved in writing by the Railroad's Assistant Vice President Engineering-Design, or his authorized representative, are hereinafter referred to as the "Plans". The Plans are hereby made a part of this Agreement by reference.

C. No changes in the Plans shall be made unless the Railroad has consented

to such changes in writing.

D. The Railroad's review and approval of the Plans will in no way relieve the Political Body or the Contractor from their responsibilities, obligations and/or liabilities under this Agreement, and will be given with the understanding that the Railroad makes no representations or warranty as to the validity, accuracy, legal compliance or completeness of the Plans and that any reliance by the Political Body or Contractor on the Plans is at the risk of the Political Body and Contractor.

Section 9. NON-RAILROAD IMPROVEMENTS

A. Submittal of plans and specifications for protecting, encasing, reinforcing, relocation, replacing, removing and abandoning in place all non-railroad owned facilities (the "Non Railroad Facilities") affected by the Project including, without limitation, utilities, fiber optics, pipelines, wirelines, communication lines and fences is required under Section 8. The Non Railroad Facilities plans and specifications shall comply with Railroad's standard specifications and requirements, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines. Railroad has no obligation to supply additional land for any Non Railroad Facilities and does not waive its right to assert preemption defenses, challenge the right-to-take, or pursue compensation in any condemnation action, regardless if the submitted Non Railroad Facilities plans and specifications comply with Railroad's standard specifications and requirements. Railroad has no obligation to permit any Non Railroad Facilities to be abandoned in place or relocated on Railroad's property.

B. Upon Railroad's approval of submitted Non Railroad Facilities plans and specifications, Railroad will attempt to incorporate them into new agreements or supplements of existing agreements with Non Railroad Facilities owners or operators. Railroad may use its standard terms and conditions, including, without limitation, its standard license fee and administrative charges when requiring supplements or new agreements for Non Railroad Facilities. Non Railroad Facilities work shall not commence before a supplement or new agreement has been fully executed by Railroad and the Non Railroad Facilities owner or operator, or before Railroad and Political Body mutually agree in writing to (i) deem the approved Non Railroad Facilities plans and specifications to be Plans pursuant to Section 8B, (ii) deem the Non Railroad Facilities part of the Structure, and (iii) supplement this Agreement with terms and conditions covering the Non Railroad Facilities.

Section 10. EFFECTIVE DATE; TERM; TERMINATION

A. This Agreement is effective as of the Effective Date first herein written and shall continue in full force and effect for as long as the Roadway remains on the Railroad's property.

B. The Railroad, if it so elects, may terminate this Agreement effective upon

delivery of written notice to the Political Body in the event the Political Body does not commence construction on the portion of the Project located on the Railroad's property within twelve (12) months from the Effective Date.

C. If the Agreement is terminated as provided above, or for any other reason, the Political Body shall pay to the Railroad all actual costs incurred by the Railroad in connection with the Project up to the date of termination, including, without limitation, all actual costs incurred by the Railroad in connection with reviewing any preliminary or final Project Plans.

Section 11. CONDITIONS TO BE MET BEFORE POLITICAL BODY CAN COMMENCE WORK

Neither the Political Body nor the Contractor may commence any work within the Crossing Area or on any other Railroad property until:

- (i) The Railroad and Political Body have executed this Agreement.
- (ii) The Railroad has provided to the Political Body the Railroad's written approval of the Plans.
- (iii) Each Contractor has executed Railroad's Contractor's Right of Entry Agreement and has obtained and/or provided to the Railroad the insurance policies, certificates, binders, and/or endorsements required under the Contractor's Right of Entry Agreement.
- (iv) Each Contractor has given the advance notice(s) required under the Contractor's Right of Entry Agreement to the Railroad Representative named in the Contractor's Right of Entry Agreement.

Section 12. FUTURE PROJECTS

Future projects involving substantial maintenance, repair, reconstruction, renewal and/or demolition of the Roadway shall not commence until Railroad and Political Body agree on the plans for such future projects, cost allocations, right of entry terms and conditions and temporary construction rights, terms and conditions.

Section 13. ASSIGNMENT; SUCCESSORS AND ASSIGNS

A. Political Body shall not assign this Agreement without the prior written consent of Railroad.

- B. Subject to the provisions of Paragraph A above, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of Railroad and Political Body.

Section 14. SPECIAL PROVISIONS PERTAINING TO AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

If the Political Body will be receiving American Recovery and Reinvestment Act ("ARRA") funding for the Project, the Political Body agrees that it is responsible in performing and completing all ARRA reporting documents for the Project. The Political Body confirms and acknowledges that Section 1512 of the ARRA provisions applies only to a "recipient" receiving ARRA funding directing from the federal government and, therefore, (i) the ARRA reporting requirements are the responsibility of the Political Body and not of the Railroad, and (ii) the Political Body shall not delegate any ARRA reporting responsibilities to the Railroad. The Political Body also confirms and acknowledges that (i) the Railroad shall provide to the Political Body the Railroad's standard and customary billing for expenses incurred by the Railroad for the Project including the Railroad's standard and customary documentation to support such billing, and (ii) such standard and customary billing and documentation from the Railroad provides the information needed by the Political Body to perform and complete the ARRA reporting documents. The Railroad confirms that the Political Body and the Federal Highway Administration shall have the right to audit the Railroad's billing and documentation for the Project as provided in Section 11 of **Exhibit B** of this Agreement.

Section 15. SIGNAL PREEMPTION

A. Political Body and Railroad, severally and collectively, agree to interconnect and coordinate the operation of the railroad grade crossing protection devices with the operation of the highway traffic control signals at the Crossing Area, in accordance with the design schematic marked **Exhibit E**, hereto attached and hereby made a part hereof (the "Designs").

B. Political Body, at its expense, shall furnish all material, labor, equipment and supervision for the installation and maintenance of highway traffic control signals at the Crossing Area, as applicable in accordance with the Designs.

C. Railroad, at Political Body's expense, shall furnish all material, labor, equipment and supervision for the work described in the Estimate(s) and in accordance with the Designs, including, as applicable, installation of signals and/or appurtenances and installation of the necessary relays and other materials required to interconnect and coordinate the operation of the highway traffic control signals to be installed by the Political Body.

D. Each party shall take all suitable precautions to prevent any interference (by induction, leakage of electricity or otherwise) with the operation of the other party's signals or communications lines, or those of its tenants; and if, at any time,

the operation or maintenance of its signals results in any electrostatic effects, the party whose signals are causing the interference shall, at its expense, immediately take such action as may be necessary to eliminate such interference.

E. Except as set forth in this Section, Political Body shall not be liable to Railroad on account of any failure of Railroad's warning devices to operate properly, nor shall Railroad have or be entitled to maintain any action against Political Body arising from any failure from Railroad's warning devices to operate properly. Similarly, Railroad shall not be liable to Political Body on account of any failure of Political Body's traffic signal to operate properly, nor shall Political Body have or be entitled to maintain any action against Railroad arising from any failure of Political Body's traffic signal to operate properly.

Section 16. SIGNAL MAINTENANCE COSTS

The Political Body agrees to reimburse the Railroad the cost of future maintenance of the grade crossing protection devices within thirty (30) days after the Political Body's receipt of any invoices from the Railroad.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the Effective Date first herein written.

UNION PACIFIC RAILROAD COMPANY
(Federal Tax ID #94-6001323)

By: _____
Printed Name: _____
Title: _____

CITY OF CRYSTAL LAKE

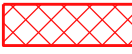

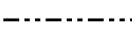
By: _____
Printed Name: _____
Title: _____

**EXHIBIT A
TO
PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT**

Exhibit A will be a print showing the Crossing Area (see Recitals)



LEGEND:

EXISTING CROSSING AREA	
EXISTING CROSSING AREA = 22,825 SQ. FT. +/-	
NEW CROSSING AREA	
NEW CROSSING AREA = 1,845 SQ. FT. +/-	
UPRRCO. R/W OUTLINED	

CADD FILENAME	0313164
SCAN FILENAME	X

NOTE: BEFORE YOU BEGIN ANY WORK, SEE AGREEMENT FOR FIBER OPTIC PROVISIONS.
 EXHIBIT "A"
 UNION PACIFIC RAILROAD COMPANY
 CRYSTAL LAKE, MCHENRY COUNTY, ILLINOIS
 M.P. 58.16 - CRYSTAL LAKE IND. LEAD
 MAP CNW V-5 / 5
 SCALE: 1" = 100'
 OFFICE OF REAL ESTATE
 OMAHA, NEBRASKA DATE: 4-23-2019
 PJB FILE: 0313164

**EXHIBIT B
TO
PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT**

SECTION 1. CONDITIONS AND COVENANTS

A. The Railroad makes no covenant or warranty of title for quiet possession or against encumbrances. The Political Body shall not use or permit use of the Crossing Area for any purposes other than those described in this Agreement. Without limiting the foregoing, the Political Body shall not use or permit use of the Crossing Area for railroad purposes, or for gas, oil or gasoline pipe lines. Any lines constructed on the Railroad's property by or under authority of the Political Body for the purpose of conveying electric power or communications incidental to the Political Body's use of the property for highway purposes shall be constructed in accordance with specifications and requirements of the Railroad, and in such manner as not adversely to affect communication or signal lines of the Railroad or its licensees now or hereafter located upon said property. No nonparty shall be admitted by the Political Body to use or occupy any part of the Railroad's property without the Railroad's written consent. Nothing herein shall obligate the Railroad to give such consent.

B. The Railroad reserves the right to cross the Crossing Area with such railroad tracks as may be required for its convenience or purposes. In the event the Railroad shall place additional tracks upon the Crossing Area, the Political Body shall, at its sole cost and expense, modify the Roadway to conform with all tracks within the Crossing Area.

C. The right hereby granted is subject to any existing encumbrances and rights (whether public or private), recorded or unrecorded, and also to any renewals thereof. The Political Body shall not damage, destroy or interfere with the property or rights of nonparties in, upon or relating to the Railroad's property, unless the Political Body at its own expense settles with and obtains releases from such nonparties.

D. The Railroad reserves the right to use and to grant to others the right to use the Crossing Area for any purpose not inconsistent with the right hereby granted, including, but not by way of limitation, the right to construct, reconstruct, maintain, operate, repair, alter, renew and replace tracks, facilities and appurtenances on the property; and the right to cross the Crossing Area with all kinds of equipment.

E. So far as it lawfully may do so, the Political Body will assume, bear and pay all taxes and assessments of whatsoever nature or kind (whether general, local or special) levied or assessed upon or against the Crossing Area, excepting taxes levied upon and against the property as a component part of the Railroad's operating

property.

F. If any property or rights other than the right hereby granted are necessary for the construction, maintenance and use of the Roadway and its appurtenances, or for the performance of any work in connection with the Project, the Political Body will acquire all such other property and rights at its own expense and without expense to the Railroad.

SECTION 2. CONSTRUCTION OF ROADWAY

A. The Political Body, at its expense, will apply for and obtain all public authority required by law, ordinance, rule or regulation for the Project, and will furnish the Railroad upon request with satisfactory evidence that such authority has been obtained.

B. Except as may be otherwise specifically provided herein, the Political Body, at its expense, will furnish all necessary labor, material and equipment, and shall construct and complete the Roadway and all appurtenances thereof. The appurtenances shall include, without limitation, all necessary and proper highway warning devices (except those installed by the Railroad within its right of way) and all necessary drainage facilities, guard rails or barriers, and right of way fences between the Roadway and the railroad tracks. Upon completion of the Project, the Political Body shall remove from the Railroad's property all temporary structures and false work, and will leave the Crossing Area in a condition satisfactory to the Railroad.

C. All construction work of the Political Body upon the Railroad's property (including, but not limited to, construction of the Roadway and all appurtenances and all related and incidental work) shall be performed and completed in a manner satisfactory to the Assistant Vice President Engineering-Design of the Railroad or his authorized representative and in compliance with the Plans, and other guidelines furnished by the Railroad.

D. All construction work of the Political Body shall be performed diligently and completed within a reasonable time. No part of the Project shall be suspended, discontinued or unduly delayed without the Railroad's written consent, and subject to such reasonable conditions as the Railroad may specify. It is understood that the Railroad's tracks at and in the vicinity of the work will be in constant or frequent use during progress of the work and that movement or stoppage of trains, engines or cars may cause delays in the work of the Political Body. The Political Body hereby assumes the risk of any such delays and agrees that no claims for damages on account of any delay shall be made against the Railroad by the State and/or the Contractor.

SECTION 3. INJURY AND DAMAGE TO PROPERTY

If the Political Body, in the performance of any work contemplated by this Agreement or by the failure to do or perform anything for which the Political Body is responsible under the provisions of this Agreement, shall injure, damage or destroy any property of the Railroad or of any other person lawfully occupying or using the property of the Railroad, such property shall be replaced or repaired by the Political Body at the Political Body's own expense, or by the Railroad at the expense of the Political Body, and to the satisfaction of the Railroad's Assistant Vice President Engineering-Design.

SECTION 4. RAILROAD MAY USE CONTRACTORS TO PERFORM WORK

The Railroad may contract for the performance of any of its work by other than the Railroad forces. The Railroad shall notify the Political Body of the contract price within ninety (90) days after it is awarded. Unless the Railroad's work is to be performed on a fixed price basis, the Political Body shall reimburse the Railroad for the amount of the contract.

SECTION 5. MAINTENANCE AND REPAIRS

A. The Political Body shall, at its own sole expense, maintain, repair, and renew, or cause to be maintained, repaired and renewed, the entire Crossing Area and Roadway, except the portions between the track tie ends, which shall be maintained by and at the expense of the Railroad.

B. If, in the future, the Political Body elects to have the surfacing material between the track tie ends, or between tracks if there is more than one railroad track across the Crossing Area, replaced with paving or some surfacing material other than timber planking, the Railroad, at the Political Body's expense, shall install such replacement surfacing, and in the future, to the extent repair or replacement of the surfacing is necessitated by repair or rehabilitation of the Railroad's tracks through the Crossing Area, the Political Body shall bear the expense of such repairs or replacement.

SECTION 6. CHANGES IN GRADE

If at any time the Railroad shall elect, or be required by competent authority to, raise or lower the grade of all or any portion of the track(s) located within the Crossing Area, the Political Body shall, at its own expense, conform the Roadway to conform with the change of grade of the trackage.

SECTION 7. REARRANGEMENT OF WARNING DEVICES

If the change or rearrangement of any warning device installed hereunder is necessitated for public or Railroad convenience or on account of improvements for either the Railroad, highway or both, the parties will apportion the expense incidental

thereto between themselves by negotiation, agreement or by the order of a competent authority before the change or rearrangement is undertaken.

SECTION 8. SAFETY MEASURES; PROTECTION OF RAILROAD COMPANY OPERATIONS

It is understood and recognized that safety and continuity of the Railroad's operations and communications are of the utmost importance; and in order that the same may be adequately safeguarded, protected and assured, and in order that accidents may be prevented and avoided, it is agreed with respect to all of said work of the Political Body that the work will be performed in a safe manner and in conformity with the following standards:

A. **Definitions.** All references in this Agreement to the Political Body shall also include the Contractor and their respective officers, agents and employees, and others acting under its or their authority; and all references in this Agreement to work of the Political Body shall include work both within and outside of the Railroad's property.

B. **Entry on to Railroad's Property by Political Body.** If the Political Body's employees need to enter Railroad's property in order to perform an inspection of the Roadway, minor maintenance or other activities, the Political Body shall first provide at least ten (10) working days advance notice to the Railroad Representative. With respect to such entry on to Railroad's property, the Political Body, to the extent permitted by law, agrees to release, defend and indemnify the Railroad from and against any loss, damage, injury, liability, claim, cost or expense incurred by any person including, without limitation, the Political Body's employees, or damage to any property or equipment (collectively the "Loss") that arises from the presence or activities of Political Body's employees on Railroad's property, except to the extent that any Loss is caused by the sole direct negligence of Railroad.

C. **Flagging.**

(i) If the Political Body's employees need to enter Railroad's property as provided in Paragraph B above, the Political Body agrees to notify the Railroad Representative at least thirty (30) working days in advance of proposed performance of any work by Political Body in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such thirty (30) day notice, the Railroad Representative will determine and inform Political Body whether a flagman need be present and whether Political Body needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill

Political Body for such expenses incurred by Railroad. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Political Body agrees that Political Body is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

(ii) The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Political Body shall pay on the basis of the new rates and charges.

(iii) Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Political Body may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Political Body must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Political Body will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

D. **Compliance With Laws.** The Political Body shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The Political Body shall use only such methods as are consistent with safety, both as concerns the Political Body, the Political Body's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The Political Body (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal

Railroad Administration regulations shall be followed when work is performed on the Railroad's premises. If any failure by the Political Body to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the Political Body shall reimburse, and to the extent it may lawfully do so, indemnify the Railroad for any such fine, penalty, cost, or charge, including without limitation attorney's fees, court costs and expenses. The Political Body further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.

E. **No Interference or Delays.** The Political Body shall not do, suffer or permit anything which will or may obstruct, endanger, interfere with, hinder or delay maintenance or operation of the Railroad's tracks or facilities, or any communication or signal lines, installations or any appurtenances thereof, or the operations of others lawfully occupying or using the Railroad's property or facilities.

F. **Supervision.** The Political Body, at its own expense, shall adequately police and supervise all work to be performed by the Political Body, and shall not inflict injury to persons or damage to property for the safety of whom or of which the Railroad may be responsible, or to property of the Railroad. The responsibility of the Political Body for safe conduct and adequate policing and supervision of the Project shall not be lessened or otherwise affected by the Railroad's approval of plans and specifications, or by the Railroad's collaboration in performance of any work, or by the presence at the work site of the Railroad's representatives, or by compliance by the Political Body with any requests or recommendations made by such representatives. If a representative of the Railroad is assigned to the Project, the Political Body will give due consideration to suggestions and recommendations made by such representative for the safety and protection of the Railroad's property and operations.

G. **Suspension of Work.** If at any time the Political Body's engineers or the Vice President-Engineering Services of the Railroad or their respective representatives shall be of the opinion that any work of the Political Body is being or is about to be done or prosecuted without due regard and precaution for safety and security, the Political Body shall immediately suspend the work until suitable, adequate and proper protective measures are adopted and provided.

H. **Removal of Debris.** The Political Body shall not cause, suffer or permit material or debris to be deposited or cast upon, or to slide or fall upon any property or facilities of the Railroad; and any such material and debris shall be promptly removed from the Railroad's property by the Political Body at the Political Body's own expense or by the Railroad at the expense of the Political Body. The Political Body shall not cause, suffer or permit any snow to be plowed or cast upon the Railroad's property during snow removal from the Crossing Area.

I. **Explosives.** The Political Body shall not discharge any explosives on or in the vicinity of the Railroad's property without the prior consent of the Railroad's Vice

President-Engineering Services, which shall not be given if, in the sole discretion of the Railroad's Vice President-Engineering Services, such discharge would be dangerous or would interfere with the Railroad's property or facilities. For the purposes hereof, the "vicinity of the Railroad's property" shall be deemed to be any place on the Railroad's property or in such close proximity to the Railroad's property that the discharge of explosives could cause injury to the Railroad's employees or other persons, or cause damage to or interference with the facilities or operations on the Railroad's property. The Railroad reserves the right to impose such conditions, restrictions or limitations on the transportation, handling, storage, security and use of explosives as the Railroad, in the Railroad's sole discretion, may deem to be necessary, desirable or appropriate.

J. **Excavation.** The Political Body shall not excavate from existing slopes nor construct new slopes which are excessive and may create hazards of slides or falling rock, or impair or endanger the clearance between existing or new slopes and the tracks of the Railroad. The Political Body shall not do or cause to be done any work which will or may disturb the stability of any area or adversely affect the Railroad's tracks or facilities. The Political Body, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by the Political Body in connection with construction, maintenance or other work. The shoring and cribbing shall be constructed and maintained with materials and in a manner approved by the Railroad's Assistant Vice President Engineering - Design to withstand all stresses likely to be encountered, including any stresses resulting from vibrations caused by the Railroad's operations in the vicinity.

K. **Drainage.** The Political Body, at the Political Body's own expense, shall provide and maintain suitable facilities for draining the Roadway and its appurtenances, and shall not suffer or permit drainage water therefrom to flow or collect upon property of the Railroad. The Political Body, at the Political Body's own expense, shall provide adequate passageway for the waters of any streams, bodies of water and drainage facilities (either natural or artificial, and including water from the Railroad's culvert and drainage facilities), so that said waters may not, because of any facilities or work of the Political Body, be impeded, obstructed, diverted or caused to back up, overflow or damage the property of the Railroad or any part thereof, or property of others. The Political Body shall not obstruct or interfere with existing ditches or drainage facilities.

L. **Notice.** Before commencing any work, the Political Body shall provide the advance notice to the Railroad that is required under the Contractor's Right of Entry Agreement.

M. **Fiber Optic Cables.** Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Political Body shall telephone the Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except

holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by the Political Body. If it is, Political Body will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad's premises.

SECTION 9. INTERIM WARNING DEVICES

If at anytime it is determined by a competent authority, by the Political Body, or by agreement between the parties, that new or improved train activated warning devices should be installed at the Crossing Area, the Political Body shall install adequate temporary warning devices or signs and impose appropriate vehicular control measures to protect the motoring public until the new or improved devices have been installed.

SECTION 10. OTHER RAILROADS

All protective and indemnifying provisions of this Agreement shall inure to the benefit of the Railroad and any other railroad company lawfully using the Railroad's property or facilities.

SECTION 11. BOOKS AND RECORDS

The books, papers, records and accounts of Railroad, so far as they relate to the items of expense for the materials to be provided by Railroad under this Project, or are associated with the work to be performed by Railroad under this Project, shall be open to inspection and audit at Railroad's offices in Omaha, Nebraska, during normal business hours by the agents and authorized representatives of Political Body for a period of three (3) years following the date of Railroad's last billing sent to Political Body.

SECTION 12. REMEDIES FOR BREACH OR NONUSE

A. If the Political Body shall fail, refuse or neglect to perform and abide by the terms of this Agreement, the Railroad, in addition to any other rights and remedies, may perform any work which in the judgment of the Railroad is necessary to place the Roadway and appurtenances in such condition as will not menace, endanger or interfere with the Railroad's facilities or operations or jeopardize the Railroad's employees; and the Political Body will reimburse the Railroad for the expenses thereof.

B. Nonuse by the Political Body of the Crossing Area for public highway purposes continuing at any time for a period of eighteen (18) months shall, at the option of the Railroad, work a termination of this Agreement and of all rights of the Political Body hereunder.

C. The Political Body will surrender peaceable possession of the Crossing Area and Roadway upon termination of this Agreement. Termination of this Agreement shall not affect any rights, obligations or liabilities of the parties, accrued or otherwise, which may have arisen prior to termination.

SECTION 13. MODIFICATION - ENTIRE AGREEMENT

No waiver, modification or amendment of this Agreement shall be of any force or effect unless made in writing, signed by the Political Body and the Railroad and specifying with particularity the nature and extent of such waiver, modification or amendment. Any waiver by the Railroad of any default by the Political Body shall not affect or impair any right arising from any subsequent default. This Agreement and Exhibits attached hereto and made a part hereof constitute the entire understanding between the Political Body and the Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work or any part thereof.

EXHIBIT C

TO

PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT

Exhibit C (if applicable) will be Railroad's Material and Force Agreement Estimate.

DATE: 2018-12-04

ESTIMATE OF MATERIAL AND FORCE ACCOUNT WORK
 BY THE
 UNION PACIFIC RAILROAD

THIS ESTIMATE GOOD FOR 6 MONTHS EXPIRATION DATE IS :2019-06-04

DESCRIPTION OF WORK:
 CRYSTAL LAKE, IL/ MAIN STREET/ DOT#178799N-4/ MP: 58.17
 UPRR TO WIDEN EXISTING ASPHALT CROSSING SURFACE 64TF, INCLUDING
 TIES AND OTM.
 BILLING: UPRR WILL BE REIMBURSED FOR 100% OF PROJECT COST.

PID: 105644 AWO: MP,SUBDIV: 58.17, CRYSTALLAK
 SERVICE UNIT: 23 CITY: TERRE COTTA STATE: IL

DESCRIPTION	QTY	UNIT	LABOR	MATERIAL	RECOLL	UPRR	TOTAL
ENGINEERING WORK							
ENGINEERING			2843		2843		2843
LABOR ADDITIVE 158%			4493		4493		4493
TOTAL ENGINEERING			7336		7336		7336
SIGNAL WORK							
LABOR ADDITIVE 158%			425		425		425
SIGNAL			320	5	325		325
TOTAL SIGNAL			745	5	750		750
TRACK & SURFACE WORK							
BALAST	1.00	CL	181	909	1090		1090
BILL PREP FEE				1800	1800		1800
CONTRACT COSTS				18000	18000		18000
ENVIRONMENTAL PERMIT				10	10		10
FOREIGN LINE FREIGHT				467	467		467
HOMELINE FREIGHT				900	900		900
LABOR ADDITIVE 158%			10096		10096		10096
MATL STORE EXPENSE				4	4		4
OTM			534	86	620		620
PILOT CONDUCTOR			988		988		988
RDXING	46.00	TF	3159	1	3160		3160
SALES TAX				101	101		101
TRK-SURF,LIN			886		886		886
XTIE	29.00	EA	4544	1573	6117		6117
TOTAL TRACK & SURFACE			20388	23851	44239		44239
LABOR/MATERIAL EXPENSE			28469	23856			
RECOLLECTIBLE/UPRR EXPENSE					52325	0	
ESTIMATED PROJECT COST							52325

THE ABOVE FIGURES ARE ESTIMATES ONLY AND SUBJECT TO FLUCTUATION. IN THE EVENT OF AN INCREASE OR DECREASE IN THE COST OR QUANTITY OF MATERIAL OR LABOR REQUIRED, UPRR WILL BILL FOR ACTUAL CONSTRUCTION COSTS AT THE CURRENT EFFECTIVE RATE.

Material And Force Account Estimate

CITY OF CRYSTAL LAKE

Estimate Creation Date: 6/5/2018 Number: 117624 Version: 2

Estimate Good Until 01/31/20

Location: CRYSTAL LAKE IND LD, CNRT, 57.7-58.72

Buy America: No

Description of Work: CRYSTAL LAKE, IL, MAIN STREET, M.P. 58.17, CRYSTAL LAKE INDUSTRIAL LEAD, DOT#178799N, WO#43337, PID#105643 (100% RECOLLECTABLE)

COMMENTS	Description	QTY	UOM	Unit Cost	LABOR	MATERIAL	TOTAL
SIGNAL							
	Xing - Engineering Design	1	LS	4,379.00	4,379	0	4,379
	Xing - Add Gates Existing Location (pair)	1	EA	58,483.00	26,000	32,483	58,483
	Xing - Cantilever Arm <41'	21	LF	767.00	0	16,107	16,107
	Xing - Cantilever Mast <37' Cant	2	EA	23,613.00	37,500	9,726	47,226
	Xing - Location Removal (Gates/Cants)	1	LS	4,000.00	4,000	0	4,000
FED W/O 116.95% (SIG)	Xing - Labor Additive	1	LS	84,062.49	84,062	0	84,062

Sub-Total = 155,941 58,316 214,257

Totals = 155,941 58,316 214,257

Grand Total = \$214,257

Please Note: The above figures are estimates only and are subject to fluctuation. In the event of an increase or decrease in the cost or amount of material or labor required, IDOT will pay actual construction costs at the current rates effective thereof.

EXHIBIT D
TO
PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT

CONTRACTOR'S
RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made and entered into as of the _____ day of _____, 20_____, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Railroad"); and _____, a _____ corporation ("Contractor").

RECITALS:

Contractor has been hired by City of Crystal Lake to perform work relating to the reconstructing and widening the crossing, moving and upgrading cantilevers, replacing asphalt, relocating new cantilevers, and interconnecting at the existing Main St. at-grade public road crossing, DOT Number 178799N at Railroad's Milepost 58.16 on Railroad's Crystal Lake Industrial Lead at or near Crystal Lake, McHenry County, Illinois, (the "work") as such location is in the general location shown on the print marked **Exhibit A**, attached hereto and hereby made a part hereof, which work is the subject of a contract dated _____ between Railroad and the City.

Railroad is willing to permit Contractor to perform the work described above at the location described above subject to the terms and conditions contained in this Agreement

AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between Railroad and Contractor, as follows:

ARTICLE 1 - DEFINITION OF CONTRACTOR.

For purposes of this Agreement, all references in this agreement to Contractor shall include Contractor's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority.

ARTICLE 2 - RIGHT GRANTED; PURPOSE.

Railroad hereby grants to Contractor the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the property described in the Recitals for the purpose of performing the work described in the Recitals above. The right herein granted to Contractor is limited to those portions of Railroad's property specifically described herein, or as designated by the Railroad Representative named in Article 4.

ARTICLE 3 - TERMS AND CONDITIONS CONTAINED IN EXHIBITS B, C AND D.

The terms and conditions contained in **Exhibit B**, **Exhibit C** and **Exhibit D**, attached hereto, are hereby made a part of this Agreement.

ARTICLE 4 - ALL EXPENSES TO BE BORNE BY CONTRACTOR; RAILROAD REPRESENTATIVE.

A. Contractor shall bear any and all costs and expenses associated with any work performed by Contractor, or any costs or expenses incurred by Railroad relating to this Agreement.

B. Contractor shall coordinate all of its work with the following Railroad representative or his or her duly authorized representative (the "Railroad Representative"):

Jared Treaster
Manager Track Mntnc.
573-218-4382
jtreast@up.com

C. Contractor, at its own expense, shall adequately police and supervise all work to be performed by Contractor and shall ensure that such work is performed in a safe manner as set forth in Section 7 of **Exhibit B**. The responsibility of Contractor for safe conduct and adequate policing and supervision of Contractor's work shall not be lessened or otherwise affected by Railroad's approval of plans and specifications involving the work, or by Railroad's collaboration in performance of any work, or by the presence at the work site of a Railroad Representative, or by compliance by Contractor with any requests or recommendations made by Railroad Representative.

ARTICLE 5 - SCHEDULE OF WORK ON A MONTHLY BASIS.

The Contractor, at its expense, shall provide on a monthly basis a detailed schedule of work to the Railroad Representative named in Article 4B above. The reports shall start at the execution of this Agreement and continue until this Agreement is terminated as provided in this Agreement or until the Contractor has completed all work on Railroad's property.

ARTICLE 6 - TERM; TERMINATION.

A. The grant of right herein made to Contractor shall commence on the date of this Agreement, and continue until _____, unless sooner terminated as herein provided, or at such time as Contractor has completed its work on Railroad's property, whichever is earlier. Contractor agrees to notify the Railroad Representative in writing when it has completed its work on Railroad's property.

B. This Agreement may be terminated by either party on ten (10) days written notice to the other party.

ARTICLE 7 - CERTIFICATE OF INSURANCE.

A. Before commencing any work, Contractor will provide Railroad with the (i) insurance binders, policies, certificates and endorsements set forth in **Exhibit C** of this Agreement, and (ii) the insurance endorsements obtained by each subcontractor as required under Section 12 of **Exhibit B** of this Agreement.

B. All insurance correspondence, binders, policies, certificates and endorsements shall be sent to:

Union Pacific Railroad Company
1400 Douglas St. STOP 1690
Omaha, NE 68179
Attn: Sr. Manager-Real Estate
Folder No. 3131-64

ARTICLE 8 - DISMISSAL OF CONTRACTOR'S EMPLOYEE.

At the request of Railroad, Contractor shall remove from Railroad's property any employee of Contractor who fails to conform to the instructions of the Railroad Representative in connection with the work on Railroad's property, and any right of Contractor shall be suspended until such removal has occurred. Contractor shall indemnify Railroad against any claims arising from the removal of any such employee from Railroad's property.

ARTICLE 9- ADMINISTRATIVE FEE.

Upon the execution and delivery of this Agreement, Contractor shall pay to Railroad (\$1025.00) as reimbursement for clerical, administrative and handling expenses in connection with the processing of this Agreement.

ARTICLE 10 - CROSSINGS; COMPLIANCE WITH MUTCD AND FRA GUIDELINES.

A. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Contractor without the prior written permission of Railroad.

B. Any permanent or temporary changes, including temporary traffic control, to crossings must conform to the Manual of Uniform Traffic Control Devices (MUTCD) and any applicable Federal Railroad Administration rules, regulations and guidelines, and must be reviewed by the Railroad prior to any changes being implemented. In the event the Railroad is found to be out of compliance with federal safety regulations due to the Contractor's modifications, negligence, or any other reason arising from the Contractor's presence on the Railroad's property, the Contractor agrees to assume liability for any civil penalties imposed upon the Railroad for such noncompliance.

ARTICLE 11.- EXPLOSIVES.

Explosives or other highly flammable substances shall not be stored or used on Railroad's property without the prior written approval of Railroad.

IN WITNESS WHEREOF, the parties hereto have duly executed this agreement in duplicate as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

By: _____
Title: _____

(Name of Contractor)

By: _____
Title: _____

EXHIBIT A

Exhibit A will be a print showing the general location of the work site.

EXHIBIT B
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.

A. Contractor agrees to notify the Railroad Representative at least ten (10) working days in advance of Contractor commencing its work and at least thirty (30) working days in advance of proposed performance of any work by Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such thirty (30)-day notice, the Railroad Representative will determine and inform Contractor whether a flagman need be present and whether Contractor needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Contractor for such expenses incurred by Railroad, unless Railroad and a federal, state or local governmental entity have agreed that Railroad is to bill such expenses to the federal, state or local governmental entity. If Railroad will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor's receipt of billing. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

B. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Contractor (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.

C. Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED

A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire property including the right and power of Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be

freely done at any time or times by Railroad without liability to Contractor or to any other party for compensation or damages.

B. The foregoing grant is also subject to all outstanding superior rights (whether recorded or unrecorded and including those in favor of licensees and lessees of Railroad's property, and others) and the right of Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 3. NO INTERFERENCE WITH OPERATIONS OF RAILROAD AND ITS TENANTS.

A. Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad Representative. Nothing shall be done or permitted to be done by Contractor at any time that would in any manner impair the safety of such operations. When not in use, Contractor's machinery and materials shall be kept at least fifty (50) feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroads tracks except at existing open public crossings.

B. Operations of Railroad and work performed by Railroad personnel and delays in the work to be performed by Contractor caused by such railroad operations and work are expected by Contractor, and Contractor agrees that Railroad shall have no liability to Contractor, or any other person or entity for any such delays. The Contractor shall coordinate its activities with those of Railroad and third parties so as to avoid interference with railroad operations. The safe operation of Railroad train movements and other activities by Railroad takes precedence over any work to be performed by Contractor.

Section 4. LIENS.

Contractor shall pay in full all persons who perform labor or provide materials for the work to be performed by Contractor. Contractor shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be created or enforced against any property of Railroad for any such work performed. Contractor shall indemnify and hold harmless Railroad from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished. If Contractor fails to promptly cause any lien to be released of record, Railroad may, at its election, discharge the lien or claim of lien at Contractor's expense.

Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

A. Fiber optic cable systems may be buried on Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Contractor shall telephone Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on Railroad's property to be used by Contractor. If it is, Contractor will telephone the telecommunications company(ies) involved, make arrangements for a cable locator and, if applicable, for relocation or other protection of the fiber optic cable. Contractor shall not commence any work until all such protection or relocation (if applicable) has been accomplished.

B. In addition to other indemnity provisions in this Agreement, Contractor shall indemnify, defend and hold Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of Contractor, its agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Railroad's property. Contractor shall not have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

Section 6. PERMITS - COMPLIANCE WITH LAWS.

In the prosecution of the work covered by this Agreement, Contractor shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

Section 7. SAFETY.

A. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Contractor. Contractor shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Contractor shall at a minimum comply with Railroad's safety standards listed in **Exhibit D**, hereto attached, to ensure uniformity with the safety standards followed by Railroad's own forces. As a part of Contractor's safety responsibilities, Contractor shall notify Railroad if Contractor determines that any of Railroad's safety standards are contrary to good safety practices. Contractor shall furnish copies of **Exhibit D** to each of its employees before they enter the job site.

B. Without limitation of the provisions of paragraph A above, Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job.

C. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Contractor shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of Railroad, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.

D. If and when requested by Railroad, Contractor shall deliver to Railroad a copy of Contractor's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Contractor to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

Section 8. INDEMNITY.

A. To the extent not prohibited by applicable statute, Contractor shall indemnify, defend and hold harmless Railroad, its affiliates, and its and their officers, agents and employees (individually an "Indemnified Party" or collectively "Indemnified Parties") from and against any and all loss, damage, injury, liability, claim, demand, cost or expense (including, without limitation, attorney's, consultant's and expert's fees, and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, any Indemnified Party, Contractor, or any employee of Contractor or of any Indemnified Party) arising out of or in any manner connected with (i) any work performed by Contractor, or (ii) any act or omission of Contractor, its officers, agents or employees, or (iii) any breach of this Agreement by Contractor.

B. The right to indemnity under this Section 8 shall accrue upon occurrence of the event giving rise to the Loss, and shall apply regardless of any negligence or strict liability of any Indemnified Party, except where the Loss is caused by the sole active negligence of an Indemnified Party as established by the final judgment of a court of competent jurisdiction. The sole active negligence of any Indemnified Party shall not bar the recovery of any other Indemnified Party.

C. Contractor expressly and specifically assumes potential liability under this Section 8 for claims or actions brought by Contractor's own employees. Contractor waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify the Indemnified Parties under this Section 8. Contractor acknowledges that this waiver was mutually negotiated by the parties hereto.

D. No court or jury findings in any employee's suit pursuant to any worker's compensation act or the Federal

Employers' Liability Act against a party to this Agreement may be relied upon or used by Contractor in any attempt to assert liability against any Indemnified Party.

E. The provisions of this Section 8 shall survive the completion of any work performed by Contractor or the termination or expiration of this Agreement. In no event shall this Section 8 or any other provision of this Agreement be deemed to limit any liability Contractor may have to any Indemnified Party by statute or under common law.

Section 9. RESTORATION OF PROPERTY.

In the event Railroad authorizes Contractor to take down any fence of Railroad or in any manner move or disturb any of the other property of Railroad in connection with the work to be performed by Contractor, then in that event Contractor shall, as soon as possible and at Contractor's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed. Contractor shall remove all of Contractor's tools, equipment, rubbish and other materials from Railroad's property promptly upon completion of the work, restoring Railroad's property to the same state and condition as when Contractor entered thereon.

Section 10. WAIVER OF DEFAULT.

Waiver by Railroad of any breach or default of any condition, covenant or agreement herein contained to be kept, observed and performed by Contractor shall in no way impair the right of Railroad to avail itself of any remedy for any subsequent breach or default.

Section 11. MODIFICATION - ENTIRE AGREEMENT.

No modification of this Agreement shall be effective unless made in writing and signed by Contractor and Railroad. This Agreement and the exhibits attached hereto and made a part hereof constitute the entire understanding between Contractor and Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work to be performed by Contractor.

Section 12. ASSIGNMENT - SUBCONTRACTING.

Contractor shall not assign or subcontract this Agreement, or any interest therein, without the written consent of the Railroad. Contractor shall be responsible for the acts and omissions of all subcontractors. Before Contractor commences any work, the Contractor shall, except to the extent prohibited by law; (1) require each of its subcontractors to include the Contractor as "Additional Insured" in the subcontractor's Commercial General Liability policy and Business Automobile policies with respect to all liabilities arising out of the subcontractor's performance of work on behalf of the Contractor by endorsing these policies with ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage; (2) require each of its subcontractors to endorse their Commercial General Liability Policy with "Contractual Liability Railroads" ISO Form CG 24 17 10 01 (or a substitute form providing equivalent coverage) for the job site; and (3) require each of its subcontractors to endorse their Business Automobile Policy with "Coverage For Certain Operations In Connection With Railroads" ISO Form CA 20 70 10 01 (or a substitute form providing equivalent coverage) for the job site.

EXHIBIT C
TO
CONTRACTOR'S
RIGHT OF ENTRY AGREEMENT

Union Pacific Railroad Company
Insurance Provisions For
Contractor's Right of Entry Agreement

Contractor shall, at its sole cost and expense, procure and maintain during the course of the Project and until all Project work on Railroad's property has been completed and the Contractor has removed all equipment and materials from Railroad's property and has cleaned and restored Railroad's property to Railroad's satisfaction, the following insurance coverage:

- A. Commercial General Liability insurance.** Commercial general liability (CGL) with a limit of not less than \$5,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.
- Designated Construction Project(s) General Aggregate Limit ISO Form CG 25 03 03 97 (or a substitute form providing equivalent coverage) showing the project on the form schedule.

- B. Business Automobile Coverage insurance.** Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$5,000,000 for each accident and coverage must include liability arising out of any auto (including owned, hired and non-owned autos).

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

- C. Workers' Compensation and Employers' Liability insurance.** Coverage must include but not be limited to:
- Contractor's statutory liability under the workers' compensation laws of the state where the work is being performed.
 - Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Contractor is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy must contain the following endorsement, which must be stated on the certificate of insurance:

- Alternate Employer endorsement ISO form WC 00 03 01 A (or a substitute form providing equivalent coverage) showing Railroad in the schedule as the alternate employer (or a substitute form providing equivalent coverage).

- D. Railroad Protective Liability insurance.** Contractor must maintain "Railroad Protective Liability" (RPL) insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. The definition of "JOB LOCATION" and "WORK" on the declaration page of the policy shall refer to

this Agreement and shall describe all WORK or OPERATIONS performed under this agreement. Contractor shall provide this Agreement to Contractor's insurance agent(s) and/or broker(s) and Contractor shall instruct such agent(s) and/or broker(s) to procure the insurance coverage required by this Agreement. A BINDER STATING THE POLICY IS IN PLACE MUST BE SUBMITTED TO RAILROAD BEFORE THE WORK MAY COMMENCE AND UNTIL THE ORIGINAL POLICY IS FORWARDED TO UNION PACIFIC RAILROAD.

- E. Umbrella or Excess insurance.** If Contractor utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.
- F. Pollution Liability insurance.** Pollution liability coverage must be included when the scope of the work as defined in the Agreement includes installation, temporary storage, or disposal of any "hazardous" material that is injurious in or upon land, the atmosphere, or any watercourses; or may cause bodily injury at any time.

If required, coverage may be provided in separate policy form or by endorsement to Contractors CGL or RPL. Any form coverage must be equivalent to that provided in ISO form CG 24 15 "Limited Pollution Liability Extension Endorsement" or CG 28 31 "Pollution Exclusion Amendment" with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If the scope of work as defined in this Agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

Other Requirements

- G.** All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement.
- H.** Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.
- I.** Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.
- J.** Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.
- K.** All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the work is being performed.
- L.** The fact that insurance is obtained by Contractor or by Railroad on behalf of Contractor will not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage.

EXHIBIT D
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

MINIMUM SAFETY REQUIREMENTS

The term "employees" as used herein refer to all employees of Contractor as well as all employees of any subcontractor or agent of Contractor.

I. Clothing

- A. All employees of Contractor will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Contractor's employees must wear:

- (i) Waist-length shirts with sleeves.
 - (ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
 - (iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.
- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.
- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

II. Personal Protective Equipment

Contractor shall require its employees to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- (i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Contractor's company logo or name.
- (ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- (iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
 - 100 feet of a locomotive or roadway/work equipment
 - 15 feet of power operated tools
 - 150 feet of jet blowers or pile drivers
 - 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
 -
- (iii) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

III. On Track Safety

Contractor is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- (i) Maintain a distance of twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.
- (ii) Wear an orange, reflectorized workwear approved by the Railroad Representative.
- (iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Contractor must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Contractor will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

IV. Equipment

- A. It is the responsibility of Contractor to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Contractor's equipment is unsafe for use, Contractor shall remove such equipment from Railroad's property. In addition, Contractor must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
 - Familiar and comply with Railroad's rules on lockout/tagout of equipment.
 - Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
 - Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other railbound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

V. General Safety Requirements

- A. Contractor shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Contractor shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Contractor meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:

- (i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
 - (ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
 - (iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
 - (iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
 - (v) Before stepping over or crossing tracks, look in both directions first.
 - (vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.

**EXHIBIT E
TO
PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT**

Exhibit E will be signal design schematic

PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT

CRYSTAL LAKE AVENUE
DOT NUMBER 178801M
MILE POST 58.24, CRYSTAL LAKE INDUSTRIAL LEAD
CRYSTAL LAKE, MCHENRY COUNTY, ILLINOIS

THIS AGREEMENT ("Agreement") is made and entered into as of the ____ day of _____, 2019 ("Effective Date"), by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, to be addressed at Real Estate Department, 1400 Douglas Street, Mail Stop 1690, Omaha, Nebraska 68179 ("Railroad") and **CITY OF CRYSTAL LAKE**, a municipal corporation or political subdivision of the State of Illinois to be addressed at 100 W. Woodstock St., Crystal Lake, Illinois, 60014 ("Political Body").

RECITALS:

The Political Body desires to undertake as its project (the "Project") the installation of two road gates, one cantilever, the interconnection of the Railroad signals to the traffic signals, and replacing of the signal cabin, at the existing Crystal Lake Avenue at-grade public road crossing, DOT Number 178801M at Railroad's Milepost 58.24 on Railroad's Crystal Lake Industrial Lead at or near Crystal Lake, McHenry County, Illinois (the "Roadway"). The area currently used by the Political Body is depicted on **Exhibit A Survey Print** attached hereto and made a part hereof as the "Existing Crossing Area" and the additional crossing area which the Political Body needs in order to construct the Project is the "New Crossing Area". The Existing Crossing Area and the New Crossing Area are collectively referred to as "the Crossing Area".

In support of its Project, the Political Body has requested the Railroad's cooperation in connection with installing the necessary relays and other materials required to interconnect and coordinate the operation of said railroad grade crossing protection devices with the operation of said highway traffic control signals. Said signal work is to be performed at the sole expense of Political Body as is described in **Exhibit E Signal Design Schematic** attached hereto and made a part hereof.

The Railroad and the Political Body are entering into this Agreement to cover the above.

AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between the parties hereto as follows:

Section 1. EXHIBIT B

The general terms and conditions marked **Exhibit B**, are attached hereto and hereby made a part hereof.

Section 2. RAILROAD GRANTS RIGHT

For and in consideration **One Thousand Dollars (\$1,000.00)** to be paid by the Political Body to the Railroad upon the execution and delivery of this Agreement and in further consideration of the Political Body's agreement to perform and comply with the terms of this Agreement, the Railroad hereby grants to the Political Body the right to construct, maintain and repair the Roadway over and across the Crossing Area.

For purposes of advanced signal preemption, Railroad hereby grants permission and authority to Political Body and/or its Contractor (as defined below) to install the conduit with the necessary wiring on Railroad right of way on the condition that prior to performing any work on Railroad's property, Political Body shall, or shall require its Contractor to, notify the Railroad and/or enter into a right of entry agreement with Railroad, as applicable pursuant to the terms and conditions of this Agreement.

Section 3. DEFINITION OF CONTRACTOR

For purposes of this Agreement the term "Contractor" shall mean the contractor or contractors hired by the Political Body to perform any Project work on any portion of the Railroad's property and shall also include the Contractor's subcontractors and the Contractor's and subcontractor's respective employees, officers and agents, and others acting under its or their authority.

Section 4. CONTRACTOR'S RIGHT OF ENTRY AGREEMENT - INSURANCE

A. Prior to Contractor performing any work within the Crossing Area and any subsequent maintenance and repair work, the Political Body shall require the Contractor to:

- execute the Railroad's then current Contractor's Right of Entry Agreement
- obtain the then current insurance required in the Contractor's Right of Entry Agreement; and
- provide such insurance policies, certificates, binders and/or endorsements to the Railroad.

B. The Railroad's current Contractor's Right of Entry Agreement is marked **Exhibit D**, attached hereto and hereby made a part hereof. The Political Body confirms that it will inform its Contractor that it is required to execute such form of agreement and obtain the required insurance before commencing any work on any Railroad property. Under no circumstances will the Contractor be allowed on the Railroad's property without first executing the Railroad's Contractor's Right of Entry Agreement and obtaining the insurance set forth therein and also providing to the Railroad the insurance policies, binders, certificates and/or endorsements described therein.

C. All insurance correspondence, binders, policies, certificates and/or endorsements shall be sent to:

Senior Manager - Contracts
Union Pacific Railroad Company
Real Estate Department
1400 Douglas Street, Mail Stop 1690
Omaha, NE 68179-1690
UP File Folder No. 3131-63

D. If the Political Body's own employees will be performing any of the Project work, the Political Body may self-insure all or a portion of the insurance coverage subject to the Railroad's prior review and approval.

Section 5. FEDERAL AID POLICY GUIDE

If the Political Body will be receiving any federal funding for the Project, the current rules, regulations and provisions of the Federal Aid Policy Guide as contained in 23 CFR 140, Subpart I and 23 CFR 646, Subparts A and B are incorporated into this Agreement by reference.

Section 6. NO PROJECT EXPENSES TO BE BORNE BY RAILROAD

The Political Body agrees that no Project costs and expenses are to be borne by the Railroad. In addition, the Railroad is not required to contribute any funding for the Project.

Section 7. WORK TO BE PERFORMED BY RAILROAD; BILLING SENT TO POLITICAL BODY; POLITICAL BODY'S PAYMENT OF BILLS

A. The work to be performed by the Railroad, at the Political Body's sole cost and expense, is described in the Railroad's Material and Force Account Estimate for signal work dated April 30, 2019 marked **Exhibit C**, attached hereto and hereby made a part hereof (the "Estimate"). As set forth in the Estimate, the Railroad's total estimated cost for the Railroad's work associated with the Project is Three Hundred Seventy Eight Nine Hundred and Nine Dollars (\$378,909).

B. The Railroad, if it so elects, may recalculate and update the Estimate submitted to the Political Body in the event the Political Body does not commence construction on the portion of the Project located on the Railroad's property within six (6) months from the date of the Estimate.

C. The Political Body acknowledges that the Estimate does not include any estimate of flagging or other protective service costs that are to be paid by the Political Body or the Contractor in connection with flagging or other protective services provided by the Railroad in connection with the Project. All of such costs incurred by the Railroad are to be paid by the Political Body or the Contractor as determined by the Railroad and the Political Body. If it is determined that the Railroad will be billing the Contractor directly for such costs, the Political Body agrees that it will pay the Railroad for any flagging costs that have not been paid by any Contractor within thirty (30) days of the Contractor's receipt of billing.

D. The Railroad shall send progressive billing to the Political Body during the Project and final billing to the Political Body within one hundred eighty (180) days after receiving written notice from the Political Body that all Project work affecting the Railroad's property has been completed.

E. The Political Body agrees to reimburse the Railroad within thirty (30) days of its receipt of billing from the Railroad for one hundred percent (100%) of all actual costs incurred by the Railroad in connection with the Project including, but not limited to, all actual costs of engineering review (including preliminary engineering review costs incurred by Railroad prior to the Effective Date of this Agreement), construction, inspection, flagging (unless flagging costs are to be billed directly to the Contractor), procurement of materials, equipment rental, manpower and deliveries to the job site and all direct and indirect overhead labor/construction costs including Railroad's standard additive rates.

Section 8. PLANS

A. The Political Body, at its expense, shall prepare, or cause to be prepared by others, the detailed plans and specifications for the Project and the Structure and submit such plans and specifications to the Railroad's Assistant Vice President Engineering-Design, or his authorized representative, for prior review and approval. The plans and specifications shall include all Roadway layout specifications, cross sections and elevations, associated drainage, and other appurtenances.

B. The final one hundred percent (100%) completed plans that are approved in writing by the Railroad's Assistant Vice President Engineering-Design, or his authorized representative, are hereinafter referred to as the "Plans". The Plans are hereby made a part of this Agreement by reference.

C. No changes in the Plans shall be made unless the Railroad has consented to such changes in writing.

D. The Railroad's review and approval of the Plans will in no way relieve the Political Body or the Contractor from their responsibilities, obligations and/or liabilities under this Agreement, and will be given with the understanding that the Railroad makes no representations or warranty as to the validity, accuracy, legal compliance or completeness of the Plans and that any reliance by the Political Body or Contractor on the Plans is at the risk of the Political Body and Contractor.

Section 9. NON-RAILROAD IMPROVEMENTS

A. Submittal of plans and specifications for protecting, encasing, reinforcing, relocation, replacing, removing and abandoning in place all non-railroad owned facilities (the "Non Railroad Facilities") affected by the Project including, without limitation, utilities, fiber optics, pipelines, wirelines, communication lines and fences is required under Section 8. The Non Railroad Facilities plans and specifications shall comply with Railroad's standard specifications and requirements, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines. Railroad has no obligation to supply additional land for any Non Railroad Facilities and does not waive its right to assert preemption defenses, challenge the right-to-take, or pursue compensation in any condemnation action, regardless if the submitted Non Railroad Facilities plans and specifications comply with Railroad's standard specifications and requirements. Railroad has no obligation to permit any Non Railroad Facilities to be abandoned in place or relocated on Railroad's property.

B. Upon Railroad's approval of submitted Non Railroad Facilities plans and specifications, Railroad will attempt to incorporate them into new agreements or supplements of existing agreements with Non Railroad Facilities owners or operators. Railroad may use its standard terms and conditions, including, without limitation, its standard license fee and administrative charges when requiring supplements or new agreements for Non Railroad Facilities. Non Railroad Facilities work shall not commence before a supplement or new agreement has been fully executed by Railroad and the Non Railroad Facilities owner or operator, or before Railroad and Political Body mutually agree in writing to (i) deem the approved Non Railroad Facilities plans and specifications to be Plans pursuant to Section 8B, (ii) deem the Non Railroad Facilities part of the Structure, and (iii) supplement this Agreement with terms and conditions covering the Non Railroad Facilities.

Section 10. EFFECTIVE DATE; TERM; TERMINATION

A. This Agreement is effective as of the Effective Date first herein written and shall continue in full force and effect for as long as the Roadway remains on the Railroad's property.

B. The Railroad, if it so elects, may terminate this Agreement effective upon delivery of written notice to the Political Body in the event the Political Body does not

commence construction on the portion of the Project located on the Railroad's property within twelve (12) months from the Effective Date.

C. If the Agreement is terminated as provided above, or for any other reason, the Political Body shall pay to the Railroad all actual costs incurred by the Railroad in connection with the Project up to the date of termination, including, without limitation, all actual costs incurred by the Railroad in connection with reviewing any preliminary or final Project Plans.

Section 11. CONDITIONS TO BE MET BEFORE POLITICAL BODY CAN COMMENCE WORK

Neither the Political Body nor the Contractor may commence any work within the Crossing Area or on any other Railroad property until:

- (i) The Railroad and Political Body have executed this Agreement.
- (ii) The Railroad has provided to the Political Body the Railroad's written approval of the Plans.
- (iii) Each Contractor has executed Railroad's Contractor's Right of Entry Agreement and has obtained and/or provided to the Railroad the insurance policies, certificates, binders, and/or endorsements required under the Contractor's Right of Entry Agreement.
- (iv) Each Contractor has given the advance notice(s) required under the Contractor's Right of Entry Agreement to the Railroad Representative named in the Contractor's Right of Entry Agreement.

Section 12. FUTURE PROJECTS

Future projects involving substantial maintenance, repair, reconstruction, renewal and/or demolition of the Roadway shall not commence until Railroad and Political Body agree on the plans for such future projects, cost allocations, right of entry terms and conditions and temporary construction rights, terms and conditions.

Section 13. ASSIGNMENT; SUCCESSORS AND ASSIGNS

A. Political Body shall not assign this Agreement without the prior written consent of Railroad.

B. Subject to the provisions of Paragraph A above, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of Railroad and Political Body.

Section 14. SPECIAL PROVISIONS PERTAINING TO AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

If the Political Body will be receiving American Recovery and Reinvestment Act ("ARRA") funding for the Project, the Political Body agrees that it is responsible in performing and completing all ARRA reporting documents for the Project. The Political Body confirms and acknowledges that Section 1512 of the ARRA provisions applies only to a "recipient" receiving ARRA funding directing from the federal government and, therefore, (i) the ARRA reporting requirements are the responsibility of the Political Body and not of the Railroad, and (ii) the Political Body shall not delegate any ARRA reporting responsibilities to the Railroad. The Political Body also confirms and acknowledges that (i) the Railroad shall provide to the Political Body the Railroad's standard and customary billing for expenses incurred by the Railroad for the Project including the Railroad's standard and customary documentation to support such billing, and (ii) such standard and customary billing and documentation from the Railroad provides the information needed by the Political Body to perform and complete the ARRA reporting documents. The Railroad confirms that the Political Body and the Federal Highway Administration shall have the right to audit the Railroad's billing and documentation for the Project as provided in Section 11 of **Exhibit B** of this Agreement.

Section 15. SIGNAL PREEMPTION

A. Political Body and Railroad, severally and collectively, agree to interconnect and coordinate the operation of the railroad grade crossing protection devices with the operation of the highway traffic control signals at the Crossing Area, in accordance with the design schematic marked **Exhibit E**, hereto attached and hereby made a part hereof (the "Designs").

B. Political Body, at its expense, shall furnish all material, labor, equipment and supervision for the installation and maintenance of highway traffic control signals at the Crossing Area, as applicable in accordance with the Designs.

C. Railroad, at Political Body's expense, shall furnish all material, labor, equipment and supervision for the work described in the Estimate(s) and in accordance with the Designs, including, as applicable, installation of signals and/or appurtenances and installation of the necessary relays and other materials required to interconnect and coordinate the operation of the highway traffic control signals to be installed by the Political Body.

D. Each party shall take all suitable precautions to prevent any interference (by induction, leakage of electricity or otherwise) with the operation of the other party's signals or communications lines, or those of its tenants; and if, at any time, the operation or maintenance of its signals results in any electrostatic effects, the party

whose signals are causing the interference shall, at its expense, immediately take such action as may be necessary to eliminate such interference.

E. Except as set forth in this Section, Political Body shall not be liable to Railroad on account of any failure of Railroad's warning devices to operate properly, nor shall Railroad have or be entitled to maintain any action against Political Body arising from any failure from Railroad's warning devices to operate properly. Similarly, Railroad shall not be liable to Political Body on account of any failure of Political Body's traffic signal to operate properly, nor shall Political Body have or be entitled to maintain any action against Railroad arising from any failure of Political Body's traffic signal to operate properly.

Section 16. SIGNAL MAINTENANCE COSTS

The Political Body agrees to reimburse the Railroad the cost of future maintenance of the grade crossing protection devices within thirty (30) days after the Political Body's receipt of any invoices from the Railroad.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the Effective Date first herein written.

UNION PACIFIC RAILROAD COMPANY
(Federal Tax ID #94-6001323)

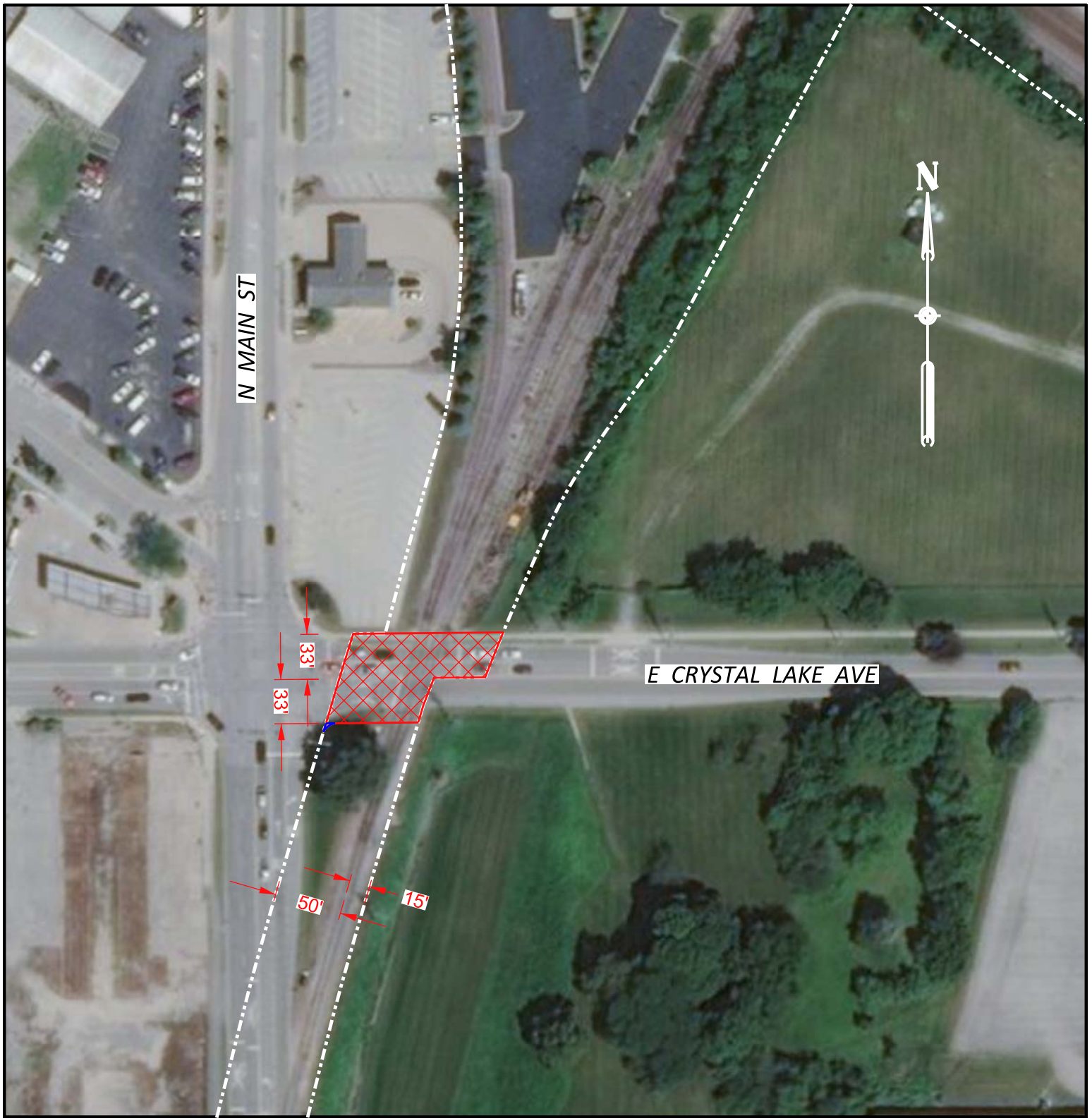
By: _____
Printed Name: _____
Title: _____

CITY OF CRYSTAL LAKE




By: _____
Printed Name: _____
Title: _____

**EXHIBIT A
TO
PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT**

Exhibit A will be a print showing the Crossing Area (see Recitals)



LEGEND:

- EXISTING CROSSING AREA 
- EXISTING CROSSING AREA = 5872 SQ. FT. +/-
- NEW CROSSING AREA 
- NEW CROSSING AREA = 12 SQ. FT. +/-
- UPRRCO. R/W OUTLINED 

NOTE: BEFORE YOU BEGIN ANY WORK, SEE AGREEMENT FOR FIBER OPTIC PROVISIONS.

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY

CRYSTAL LAKE, MCHENRY COUNTY, ILLINOIS

M.P. 58.24 - CRYSTAL LAKE IND. LEAD

MAP CNW V-16 / 2

SCALE: 1" = 100'

OFFICE OF REAL ESTATE
OMAHA, NEBRASKA DATE: 4-23-2019

PJB FILE: 0313163

CADD FILENAME	0313163
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SCAN FILENAME	ILV5S5A-313163.TIF
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**EXHIBIT B
TO
PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT**

SECTION 1. CONDITIONS AND COVENANTS

A. The Railroad makes no covenant or warranty of title for quiet possession or against encumbrances. The Political Body shall not use or permit use of the Crossing Area for any purposes other than those described in this Agreement. Without limiting the foregoing, the Political Body shall not use or permit use of the Crossing Area for railroad purposes, or for gas, oil or gasoline pipe lines. Any lines constructed on the Railroad's property by or under authority of the Political Body for the purpose of conveying electric power or communications incidental to the Political Body's use of the property for highway purposes shall be constructed in accordance with specifications and requirements of the Railroad, and in such manner as not adversely to affect communication or signal lines of the Railroad or its licensees now or hereafter located upon said property. No nonparty shall be admitted by the Political Body to use or occupy any part of the Railroad's property without the Railroad's written consent. Nothing herein shall obligate the Railroad to give such consent.

B. The Railroad reserves the right to cross the Crossing Area with such railroad tracks as may be required for its convenience or purposes. In the event the Railroad shall place additional tracks upon the Crossing Area, the Political Body shall, at its sole cost and expense, modify the Roadway to conform with all tracks within the Crossing Area.

C. The right hereby granted is subject to any existing encumbrances and rights (whether public or private), recorded or unrecorded, and also to any renewals thereof. The Political Body shall not damage, destroy or interfere with the property or rights of nonparties in, upon or relating to the Railroad's property, unless the Political Body at its own expense settles with and obtains releases from such nonparties.

D. The Railroad reserves the right to use and to grant to others the right to use the Crossing Area for any purpose not inconsistent with the right hereby granted, including, but not by way of limitation, the right to construct, reconstruct, maintain, operate, repair, alter, renew and replace tracks, facilities and appurtenances on the property; and the right to cross the Crossing Area with all kinds of equipment.

E. So far as it lawfully may do so, the Political Body will assume, bear and pay all taxes and assessments of whatsoever nature or kind (whether general, local or special) levied or assessed upon or against the Crossing Area, excepting taxes levied upon and against the property as a component part of the Railroad's operating

property.

F. If any property or rights other than the right hereby granted are necessary for the construction, maintenance and use of the Roadway and its appurtenances, or for the performance of any work in connection with the Project, the Political Body will acquire all such other property and rights at its own expense and without expense to the Railroad.

SECTION 2. CONSTRUCTION OF ROADWAY

A. The Political Body, at its expense, will apply for and obtain all public authority required by law, ordinance, rule or regulation for the Project, and will furnish the Railroad upon request with satisfactory evidence that such authority has been obtained.

B. Except as may be otherwise specifically provided herein, the Political Body, at its expense, will furnish all necessary labor, material and equipment, and shall construct and complete the Roadway and all appurtenances thereof. The appurtenances shall include, without limitation, all necessary and proper highway warning devices (except those installed by the Railroad within its right of way) and all necessary drainage facilities, guard rails or barriers, and right of way fences between the Roadway and the railroad tracks. Upon completion of the Project, the Political Body shall remove from the Railroad's property all temporary structures and false work, and will leave the Crossing Area in a condition satisfactory to the Railroad.

C. All construction work of the Political Body upon the Railroad's property (including, but not limited to, construction of the Roadway and all appurtenances and all related and incidental work) shall be performed and completed in a manner satisfactory to the Assistant Vice President Engineering-Design of the Railroad or his authorized representative and in compliance with the Plans, and other guidelines furnished by the Railroad.

D. All construction work of the Political Body shall be performed diligently and completed within a reasonable time. No part of the Project shall be suspended, discontinued or unduly delayed without the Railroad's written consent, and subject to such reasonable conditions as the Railroad may specify. It is understood that the Railroad's tracks at and in the vicinity of the work will be in constant or frequent use during progress of the work and that movement or stoppage of trains, engines or cars may cause delays in the work of the Political Body. The Political Body hereby assumes the risk of any such delays and agrees that no claims for damages on account of any delay shall be made against the Railroad by the State and/or the Contractor.

SECTION 3. INJURY AND DAMAGE TO PROPERTY

If the Political Body, in the performance of any work contemplated by this Agreement or by the failure to do or perform anything for which the Political Body is responsible under the provisions of this Agreement, shall injure, damage or destroy any property of the Railroad or of any other person lawfully occupying or using the property of the Railroad, such property shall be replaced or repaired by the Political Body at the Political Body's own expense, or by the Railroad at the expense of the Political Body, and to the satisfaction of the Railroad's Assistant Vice President Engineering-Design.

SECTION 4. RAILROAD MAY USE CONTRACTORS TO PERFORM WORK

The Railroad may contract for the performance of any of its work by other than the Railroad forces. The Railroad shall notify the Political Body of the contract price within ninety (90) days after it is awarded. Unless the Railroad's work is to be performed on a fixed price basis, the Political Body shall reimburse the Railroad for the amount of the contract.

SECTION 5. MAINTENANCE AND REPAIRS

A. The Political Body shall, at its own sole expense, maintain, repair, and renew, or cause to be maintained, repaired and renewed, the entire Crossing Area and Roadway, except the portions between the track tie ends, which shall be maintained by and at the expense of the Railroad.

B. If, in the future, the Political Body elects to have the surfacing material between the track tie ends, or between tracks if there is more than one railroad track across the Crossing Area, replaced with paving or some surfacing material other than timer planking, the Railroad, at the Political Body's expense, shall install such replacement surfacing, and in the future, to the extent repair or replacement of the surfacing is necessitated by repair or rehabilitation of the Railroad's tracks through the Crossing Area, the Political Body shall bear the expense of such repairs or replacement.

SECTION 6. CHANGES IN GRADE

If at any time the Railroad shall elect, or be required by competent authority to, raise or lower the grade of all or any portion of the track(s) located within the Crossing Area, the Political Body shall, at its own expense, conform the Roadway to conform with the change of grade of the trackage.

SECTION 7. REARRANGEMENT OF WARNING DEVICES

If the change or rearrangement of any warning device installed hereunder is necessitated for public or Railroad convenience or on account of improvements for either the Railroad, highway or both, the parties will apportion the expense incidental

thereto between themselves by negotiation, agreement or by the order of a competent authority before the change or rearrangement is undertaken.

SECTION 8. SAFETY MEASURES; PROTECTION OF RAILROAD COMPANY OPERATIONS

It is understood and recognized that safety and continuity of the Railroad's operations and communications are of the utmost importance; and in order that the same may be adequately safeguarded, protected and assured, and in order that accidents may be prevented and avoided, it is agreed with respect to all of said work of the Political Body that the work will be performed in a safe manner and in conformity with the following standards:

A. **Definitions.** All references in this Agreement to the Political Body shall also include the Contractor and their respective officers, agents and employees, and others acting under its or their authority; and all references in this Agreement to work of the Political Body shall include work both within and outside of the Railroad's property.

B. **Entry on to Railroad's Property by Political Body.** If the Political Body's employees need to enter Railroad's property in order to perform an inspection of the Roadway, minor maintenance or other activities, the Political Body shall first provide at least ten (10) working days advance notice to the Railroad Representative. With respect to such entry on to Railroad's property, the Political Body, to the extent permitted by law, agrees to release, defend and indemnify the Railroad from and against any loss, damage, injury, liability, claim, cost or expense incurred by any person including, without limitation, the Political Body's employees, or damage to any property or equipment (collectively the "Loss") that arises from the presence or activities of Political Body's employees on Railroad's property, except to the extent that any Loss is caused by the sole direct negligence of Railroad.

C. **Flagging.**

(i) If the Political Body's employees need to enter Railroad's property as provided in Paragraph B above, the Political Body agrees to notify the Railroad Representative at least thirty (30) working days in advance of proposed performance of any work by Political Body in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such thirty (30) day notice, the Railroad Representative will determine and inform Political Body whether a flagman need be present and whether Political Body needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill

Political Body for such expenses incurred by Railroad. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Political Body agrees that Political Body is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

(ii) The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Political Body shall pay on the basis of the new rates and charges.

(iii) Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Political Body may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Political Body must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Political Body will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

D. **Compliance With Laws.** The Political Body shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The Political Body shall use only such methods as are consistent with safety, both as concerns the Political Body, the Political Body's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The Political Body (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal

Railroad Administration regulations shall be followed when work is performed on the Railroad's premises. If any failure by the Political Body to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the Political Body shall reimburse, and to the extent it may lawfully do so, indemnify the Railroad for any such fine, penalty, cost, or charge, including without limitation attorney's fees, court costs and expenses. The Political Body further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.

E. **No Interference or Delays.** The Political Body shall not do, suffer or permit anything which will or may obstruct, endanger, interfere with, hinder or delay maintenance or operation of the Railroad's tracks or facilities, or any communication or signal lines, installations or any appurtenances thereof, or the operations of others lawfully occupying or using the Railroad's property or facilities.

F. **Supervision.** The Political Body, at its own expense, shall adequately police and supervise all work to be performed by the Political Body, and shall not inflict injury to persons or damage to property for the safety of whom or of which the Railroad may be responsible, or to property of the Railroad. The responsibility of the Political Body for safe conduct and adequate policing and supervision of the Project shall not be lessened or otherwise affected by the Railroad's approval of plans and specifications, or by the Railroad's collaboration in performance of any work, or by the presence at the work site of the Railroad's representatives, or by compliance by the Political Body with any requests or recommendations made by such representatives. If a representative of the Railroad is assigned to the Project, the Political Body will give due consideration to suggestions and recommendations made by such representative for the safety and protection of the Railroad's property and operations.

G. **Suspension of Work.** If at any time the Political Body's engineers or the Vice President-Engineering Services of the Railroad or their respective representatives shall be of the opinion that any work of the Political Body is being or is about to be done or prosecuted without due regard and precaution for safety and security, the Political Body shall immediately suspend the work until suitable, adequate and proper protective measures are adopted and provided.

H. **Removal of Debris.** The Political Body shall not cause, suffer or permit material or debris to be deposited or cast upon, or to slide or fall upon any property or facilities of the Railroad; and any such material and debris shall be promptly removed from the Railroad's property by the Political Body at the Political Body's own expense or by the Railroad at the expense of the Political Body. The Political Body shall not cause, suffer or permit any snow to be plowed or cast upon the Railroad's property during snow removal from the Crossing Area.

I. **Explosives.** The Political Body shall not discharge any explosives on or in the vicinity of the Railroad's property without the prior consent of the Railroad's Vice

President-Engineering Services, which shall not be given if, in the sole discretion of the Railroad's Vice President-Engineering Services, such discharge would be dangerous or would interfere with the Railroad's property or facilities. For the purposes hereof, the "vicinity of the Railroad's property" shall be deemed to be any place on the Railroad's property or in such close proximity to the Railroad's property that the discharge of explosives could cause injury to the Railroad's employees or other persons, or cause damage to or interference with the facilities or operations on the Railroad's property. The Railroad reserves the right to impose such conditions, restrictions or limitations on the transportation, handling, storage, security and use of explosives as the Railroad, in the Railroad's sole discretion, may deem to be necessary, desirable or appropriate.

J. **Excavation.** The Political Body shall not excavate from existing slopes nor construct new slopes which are excessive and may create hazards of slides or falling rock, or impair or endanger the clearance between existing or new slopes and the tracks of the Railroad. The Political Body shall not do or cause to be done any work which will or may disturb the stability of any area or adversely affect the Railroad's tracks or facilities. The Political Body, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by the Political Body in connection with construction, maintenance or other work. The shoring and cribbing shall be constructed and maintained with materials and in a manner approved by the Railroad's Assistant Vice President Engineering - Design to withstand all stresses likely to be encountered, including any stresses resulting from vibrations caused by the Railroad's operations in the vicinity.

K. **Drainage.** The Political Body, at the Political Body's own expense, shall provide and maintain suitable facilities for draining the Roadway and its appurtenances, and shall not suffer or permit drainage water therefrom to flow or collect upon property of the Railroad. The Political Body, at the Political Body's own expense, shall provide adequate passageway for the waters of any streams, bodies of water and drainage facilities (either natural or artificial, and including water from the Railroad's culvert and drainage facilities), so that said waters may not, because of any facilities or work of the Political Body, be impeded, obstructed, diverted or caused to back up, overflow or damage the property of the Railroad or any part thereof, or property of others. The Political Body shall not obstruct or interfere with existing ditches or drainage facilities.

L. **Notice.** Before commencing any work, the Political Body shall provide the advance notice to the Railroad that is required under the Contractor's Right of Entry Agreement.

M. **Fiber Optic Cables.** Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Political Body shall telephone the Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except

holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by the Political Body. If it is, Political Body will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad's premises.

SECTION 9. INTERIM WARNING DEVICES

If at anytime it is determined by a competent authority, by the Political Body, or by agreement between the parties, that new or improved train activated warning devices should be installed at the Crossing Area, the Political Body shall install adequate temporary warning devices or signs and impose appropriate vehicular control measures to protect the motoring public until the new or improved devices have been installed.

SECTION 10. OTHER RAILROADS

All protective and indemnifying provisions of this Agreement shall inure to the benefit of the Railroad and any other railroad company lawfully using the Railroad's property or facilities.

SECTION 11. BOOKS AND RECORDS

The books, papers, records and accounts of Railroad, so far as they relate to the items of expense for the materials to be provided by Railroad under this Project, or are associated with the work to be performed by Railroad under this Project, shall be open to inspection and audit at Railroad's offices in Omaha, Nebraska, during normal business hours by the agents and authorized representatives of Political Body for a period of three (3) years following the date of Railroad's last billing sent to Political Body.

SECTION 12. REMEDIES FOR BREACH OR NONUSE

A. If the Political Body shall fail, refuse or neglect to perform and abide by the terms of this Agreement, the Railroad, in addition to any other rights and remedies, may perform any work which in the judgment of the Railroad is necessary to place the Roadway and appurtenances in such condition as will not menace, endanger or interfere with the Railroad's facilities or operations or jeopardize the Railroad's employees; and the Political Body will reimburse the Railroad for the expenses thereof.

B. Nonuse by the Political Body of the Crossing Area for public highway purposes continuing at any time for a period of eighteen (18) months shall, at the option of the Railroad, work a termination of this Agreement and of all rights of the Political Body hereunder.

C. The Political Body will surrender peaceable possession of the Crossing Area and Roadway upon termination of this Agreement. Termination of this Agreement shall not affect any rights, obligations or liabilities of the parties, accrued or otherwise, which may have arisen prior to termination.

SECTION 13. MODIFICATION - ENTIRE AGREEMENT

No waiver, modification or amendment of this Agreement shall be of any force or effect unless made in writing, signed by the Political Body and the Railroad and specifying with particularity the nature and extent of such waiver, modification or amendment. Any waiver by the Railroad of any default by the Political Body shall not affect or impair any right arising from any subsequent default. This Agreement and Exhibits attached hereto and made a part hereof constitute the entire understanding between the Political Body and the Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work or any part thereof.

EXHIBIT C

TO

PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT

Exhibit C (if applicable) will be Railroad's Material and Force Agreement Estimate.

Material And Force Account Estimate

CITY OF CRYSTAL LAKE

Estimate Creation Date: 4/30/2019 Number: 117385 Version: 2

Estimate Good Until 01/31/20

Location: CRYSTAL LAKE IND LD, CNRT, 57.7-58.72

Buy America: No

Description of Work: CRYSTAL LAKE, IL, CRYSTAL LAKE AVENUE, CRYSTAL LAKE IND LEAD, DOT#178801M, WO#43338, PID#105646, (100% RECOLLECTABLE)

COMMENTS	Description	QTY	UOM	Unit Cost	LABOR	MATERIAL	TOTAL
SIGNAL							
	Xing - Engineering Design	1	LS	4,618.00	4,618	0	4,618
	Xing - 1 Trk Ring-10 w/Gates	1	EA	126,839.00	43,600	83,239	126,839
	Xing - Relay Track Circuit	1	EA	6,100.00	4,800	1,300	6,100
	Xing - IJ	4	PR	9,000.00	17,992	18,008	36,000
	Xing - Sidelight	1	EA	907.00	0	907	907
	Xing - Cantilever Mast <37' Cant	1	EA	23,613.00	18,750	4,863	23,613
	Xing - Cantilever Arm <41'	21	LF	767.00	0	16,107	16,107
	Xing - Location Removal (Gates)	1	LS	2,000.00	2,000	0	2,000
	Xing - Switch Insulation Package	2	EA	6,658.00	7,040	6,276	13,316
	Xing - CAR14/24 (IL)	1	LS	6,482.00	3,840	2,642	6,482
COST OF ROAD CLOSURE	Xing - Misc.	1	LS	15,000.00	0	15,000	15,000
FED W/O 116.95% (SIG)	Xing - Labor Additive	1	LS	98,995.83	98,996	0	98,996
FED W/O 160.80% (TRK)	Xing - Labor Additive	1	LS	28,931.00	28,931	0	28,931

Sub-Total = 230,567 148,342 378,909

Totals = 230,567 148,342 378,909

Grand Total = \$378,909

Please Note: The above figures are estimates only and are subject to fluctuation. In the event of an increase or decrease in the cost or amount of material or labor required, CITY OF CRYSTAL LAKE will pay actual construction costs at the current rates effective thereof.

EXHIBIT D
TO
PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT

CONTRACTOR'S
RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made and entered into as of the _____ day of _____, 20_____, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Railroad"); and _____, a _____ corporation ("Contractor").

RECITALS:

Contractor has been hired by City of Crystal Lake to perform work relating to the installation of two road gates, one cantilever, the interconnection of the Railroad signals to the traffic signals, and replacing the signal cabin, at the existing Crystal Lake Avenue at-grade public road crossing, DOT Number 178801M at Railroad's Milepost 58.24 on Railroad's Crystal Lake Industrial Lead at or near Crystal Lake, McHenry County, Illinois, (the "work") as such location is in the general location shown on the print marked **Exhibit A**, attached hereto and hereby made a part hereof, which work is the subject of a contract dated _____ between Railroad and the City.

Railroad is willing to permit Contractor to perform the work described above at the location described above subject to the terms and conditions contained in this Agreement

AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between Railroad and Contractor, as follows:

ARTICLE 1 - DEFINITION OF CONTRACTOR.

For purposes of this Agreement, all references in this agreement to Contractor shall include Contractor's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority.

ARTICLE 2 - RIGHT GRANTED; PURPOSE.

Railroad hereby grants to Contractor the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the property described in the Recitals for the purpose of performing the work described in the Recitals above. The right herein granted to Contractor is limited to those portions of Railroad's property specifically described herein, or as designated by the Railroad Representative named in Article 4.

ARTICLE 3 - TERMS AND CONDITIONS CONTAINED IN EXHIBITS B, C AND D.

The terms and conditions contained in **Exhibit B**, **Exhibit C** and **Exhibit D**, attached hereto, are hereby made a part of this Agreement.

ARTICLE 4 - ALL EXPENSES TO BE BORNE BY CONTRACTOR; RAILROAD REPRESENTATIVE.

A. Contractor shall bear any and all costs and expenses associated with any work performed by Contractor, or any costs or expenses incurred by Railroad relating to this Agreement.

B. Contractor shall coordinate all of its work with the following Railroad representative or his or her duly authorized representative (the "Railroad Representative"):

Jared Treaster
Manager Track Mntnc.
573-218-4382
jtreast@up.com

C. Contractor, at its own expense, shall adequately police and supervise all work to be performed by Contractor and shall ensure that such work is performed in a safe manner as set forth in Section 7 of **Exhibit B**. The responsibility of Contractor for safe conduct and adequate policing and supervision of Contractor's work shall not be lessened or otherwise affected by Railroad's approval of plans and specifications involving the work, or by Railroad's collaboration in performance of any work, or by the presence at the work site of a Railroad Representative, or by compliance by Contractor with any requests or recommendations made by Railroad Representative.

ARTICLE 5 - SCHEDULE OF WORK ON A MONTHLY BASIS.

The Contractor, at its expense, shall provide on a monthly basis a detailed schedule of work to the Railroad Representative named in Article 4B above. The reports shall start at the execution of this Agreement and continue until this Agreement is terminated as provided in this Agreement or until the Contractor has completed all work on Railroad's property.

ARTICLE 6 - TERM; TERMINATION.

A. The grant of right herein made to Contractor shall commence on the date of this Agreement, and continue until _____, unless sooner terminated as herein provided, or at such time as Contractor has completed its work on Railroad's property, whichever is earlier. Contractor agrees to notify the Railroad Representative in writing when it has completed its work on Railroad's property.

B. This Agreement may be terminated by either party on ten (10) days written notice to the other party.

ARTICLE 7 - CERTIFICATE OF INSURANCE.

A. Before commencing any work, Contractor will provide Railroad with the (i) insurance binders, policies, certificates and endorsements set forth in **Exhibit C** of this Agreement, and (ii) the insurance endorsements obtained by each subcontractor as required under Section 12 of **Exhibit B** of this Agreement.

B. All insurance correspondence, binders, policies, certificates and endorsements shall be sent to:

Union Pacific Railroad Company
1400 Douglas St. STOP 1690
Omaha, NE 68179
Attn: Sr. Manager-Real Estate
Folder No. 3131-63

ARTICLE 8 - DISMISSAL OF CONTRACTOR'S EMPLOYEE.

At the request of Railroad, Contractor shall remove from Railroad's property any employee of Contractor who fails to conform to the instructions of the Railroad Representative in connection with the work on Railroad's property, and any right of Contractor shall be suspended until such removal has occurred. Contractor shall indemnify Railroad against any claims arising from the removal of any such employee from Railroad's property.

ARTICLE 9- ADMINISTRATIVE FEE.

Upon the execution and delivery of this Agreement, Contractor shall pay to Railroad (\$1025.00) as reimbursement for clerical, administrative and handling expenses in connection with the processing of this Agreement.

ARTICLE 10 - CROSSINGS; COMPLIANCE WITH MUTCD AND FRA GUIDELINES.

A. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Contractor without the prior written permission of Railroad.

B. Any permanent or temporary changes, including temporary traffic control, to crossings must conform to the Manual of Uniform Traffic Control Devices (MUTCD) and any applicable Federal Railroad Administration rules, regulations and guidelines, and must be reviewed by the Railroad prior to any changes being implemented. In the event the Railroad is found to be out of compliance with federal safety regulations due to the Contractor's modifications, negligence, or any other reason arising from the Contractor's presence on the Railroad's property, the Contractor agrees to assume liability for any civil penalties imposed upon the Railroad for such noncompliance.

ARTICLE 11.- EXPLOSIVES.

Explosives or other highly flammable substances shall not be stored or used on Railroad's property without the prior written approval of Railroad.

IN WITNESS WHEREOF, the parties hereto have duly executed this agreement in duplicate as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

By: _____
Title: _____

(Name of Contractor)

By: _____
Title: _____

EXHIBIT A

Exhibit A will be a print showing the general location of the work site.

EXHIBIT B
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.

A. Contractor agrees to notify the Railroad Representative at least ten (10) working days in advance of Contractor commencing its work and at least thirty (30) working days in advance of proposed performance of any work by Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such thirty (30)-day notice, the Railroad Representative will determine and inform Contractor whether a flagman need be present and whether Contractor needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Contractor for such expenses incurred by Railroad, unless Railroad and a federal, state or local governmental entity have agreed that Railroad is to bill such expenses to the federal, state or local governmental entity. If Railroad will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor's receipt of billing. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

B. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Contractor (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.

C. Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED

A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire property including the right and power of Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be

freely done at any time or times by Railroad without liability to Contractor or to any other party for compensation or damages.

B. The foregoing grant is also subject to all outstanding superior rights (whether recorded or unrecorded and including those in favor of licensees and lessees of Railroad's property, and others) and the right of Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 3. NO INTERFERENCE WITH OPERATIONS OF RAILROAD AND ITS TENANTS.

A. Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad Representative. Nothing shall be done or permitted to be done by Contractor at any time that would in any manner impair the safety of such operations. When not in use, Contractor's machinery and materials shall be kept at least fifty (50) feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroads tracks except at existing open public crossings.

B. Operations of Railroad and work performed by Railroad personnel and delays in the work to be performed by Contractor caused by such railroad operations and work are expected by Contractor, and Contractor agrees that Railroad shall have no liability to Contractor, or any other person or entity for any such delays. The Contractor shall coordinate its activities with those of Railroad and third parties so as to avoid interference with railroad operations. The safe operation of Railroad train movements and other activities by Railroad takes precedence over any work to be performed by Contractor.

Section 4. LIENS.

Contractor shall pay in full all persons who perform labor or provide materials for the work to be performed by Contractor. Contractor shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be created or enforced against any property of Railroad for any such work performed. Contractor shall indemnify and hold harmless Railroad from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished. If Contractor fails to promptly cause any lien to be released of record, Railroad may, at its election, discharge the lien or claim of lien at Contractor's expense.

Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

A. Fiber optic cable systems may be buried on Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Contractor shall telephone Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on Railroad's property to be used by Contractor. If it is, Contractor will telephone the telecommunications company(ies) involved, make arrangements for a cable locator and, if applicable, for relocation or other protection of the fiber optic cable. Contractor shall not commence any work until all such protection or relocation (if applicable) has been accomplished.

B. In addition to other indemnity provisions in this Agreement, Contractor shall indemnify, defend and hold Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of Contractor, its agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Railroad's property. Contractor shall not have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

Section 6. PERMITS - COMPLIANCE WITH LAWS.

In the prosecution of the work covered by this Agreement, Contractor shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

Section 7. SAFETY.

A. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Contractor. Contractor shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Contractor shall at a minimum comply with Railroad's safety standards listed in **Exhibit D**, hereto attached, to ensure uniformity with the safety standards followed by Railroad's own forces. As a part of Contractor's safety responsibilities, Contractor shall notify Railroad if Contractor determines that any of Railroad's safety standards are contrary to good safety practices. Contractor shall furnish copies of **Exhibit D** to each of its employees before they enter the job site.

B. Without limitation of the provisions of paragraph A above, Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job.

C. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Contractor shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of Railroad, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.

D. If and when requested by Railroad, Contractor shall deliver to Railroad a copy of Contractor's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Contractor to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

Section 8. INDEMNITY.

A. To the extent not prohibited by applicable statute, Contractor shall indemnify, defend and hold harmless Railroad, its affiliates, and its and their officers, agents and employees (individually an "Indemnified Party" or collectively "Indemnified Parties") from and against any and all loss, damage, injury, liability, claim, demand, cost or expense (including, without limitation, attorney's, consultant's and expert's fees, and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, any Indemnified Party, Contractor, or any employee of Contractor or of any Indemnified Party) arising out of or in any manner connected with (i) any work performed by Contractor, or (ii) any act or omission of Contractor, its officers, agents or employees, or (iii) any breach of this Agreement by Contractor.

B. The right to indemnity under this Section 8 shall accrue upon occurrence of the event giving rise to the Loss, and shall apply regardless of any negligence or strict liability of any Indemnified Party, except where the Loss is caused by the sole active negligence of an Indemnified Party as established by the final judgment of a court of competent jurisdiction. The sole active negligence of any Indemnified Party shall not bar the recovery of any other Indemnified Party.

C. Contractor expressly and specifically assumes potential liability under this Section 8 for claims or actions brought by Contractor's own employees. Contractor waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify the Indemnified Parties under this Section 8. Contractor acknowledges that this waiver was mutually negotiated by the parties hereto.

D. No court or jury findings in any employee's suit pursuant to any worker's compensation act or the Federal

Employers' Liability Act against a party to this Agreement may be relied upon or used by Contractor in any attempt to assert liability against any Indemnified Party.

E. The provisions of this Section 8 shall survive the completion of any work performed by Contractor or the termination or expiration of this Agreement. In no event shall this Section 8 or any other provision of this Agreement be deemed to limit any liability Contractor may have to any Indemnified Party by statute or under common law.

Section 9. RESTORATION OF PROPERTY.

In the event Railroad authorizes Contractor to take down any fence of Railroad or in any manner move or disturb any of the other property of Railroad in connection with the work to be performed by Contractor, then in that event Contractor shall, as soon as possible and at Contractor's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed. Contractor shall remove all of Contractor's tools, equipment, rubbish and other materials from Railroad's property promptly upon completion of the work, restoring Railroad's property to the same state and condition as when Contractor entered thereon.

Section 10. WAIVER OF DEFAULT.

Waiver by Railroad of any breach or default of any condition, covenant or agreement herein contained to be kept, observed and performed by Contractor shall in no way impair the right of Railroad to avail itself of any remedy for any subsequent breach or default.

Section 11. MODIFICATION - ENTIRE AGREEMENT.

No modification of this Agreement shall be effective unless made in writing and signed by Contractor and Railroad. This Agreement and the exhibits attached hereto and made a part hereof constitute the entire understanding between Contractor and Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work to be performed by Contractor.

Section 12. ASSIGNMENT - SUBCONTRACTING.

Contractor shall not assign or subcontract this Agreement, or any interest therein, without the written consent of the Railroad. Contractor shall be responsible for the acts and omissions of all subcontractors. Before Contractor commences any work, the Contractor shall, except to the extent prohibited by law; (1) require each of its subcontractors to include the Contractor as "Additional Insured" in the subcontractor's Commercial General Liability policy and Business Automobile policies with respect to all liabilities arising out of the subcontractor's performance of work on behalf of the Contractor by endorsing these policies with ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage; (2) require each of its subcontractors to endorse their Commercial General Liability Policy with "Contractual Liability Railroads" ISO Form CG 24 17 10 01 (or a substitute form providing equivalent coverage) for the job site; and (3) require each of its subcontractors to endorse their Business Automobile Policy with "Coverage For Certain Operations In Connection With Railroads" ISO Form CA 20 70 10 01 (or a substitute form providing equivalent coverage) for the job site.

EXHIBIT C
TO
CONTRACTOR'S
RIGHT OF ENTRY AGREEMENT

Union Pacific Railroad Company
Insurance Provisions For
Contractor's Right of Entry Agreement

Contractor shall, at its sole cost and expense, procure and maintain during the course of the Project and until all Project work on Railroad's property has been completed and the Contractor has removed all equipment and materials from Railroad's property and has cleaned and restored Railroad's property to Railroad's satisfaction, the following insurance coverage:

- A. Commercial General Liability insurance.** Commercial general liability (CGL) with a limit of not less than \$5,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.
- Designated Construction Project(s) General Aggregate Limit ISO Form CG 25 03 03 97 (or a substitute form providing equivalent coverage) showing the project on the form schedule.

- B. Business Automobile Coverage insurance.** Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$5,000,000 for each accident and coverage must include liability arising out of any auto (including owned, hired and non-owned autos).

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

- C. Workers' Compensation and Employers' Liability insurance.** Coverage must include but not be limited to:
- Contractor's statutory liability under the workers' compensation laws of the state where the work is being performed.
 - Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Contractor is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy must contain the following endorsement, which must be stated on the certificate of insurance:

- Alternate Employer endorsement ISO form WC 00 03 01 A (or a substitute form providing equivalent coverage) showing Railroad in the schedule as the alternate employer (or a substitute form providing equivalent coverage).

- D. Railroad Protective Liability insurance.** Contractor must maintain "Railroad Protective Liability" (RPL) insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. The definition of "JOB LOCATION" and "WORK" on the declaration page of the policy shall refer to

this Agreement and shall describe all WORK or OPERATIONS performed under this agreement. Contractor shall provide this Agreement to Contractor's insurance agent(s) and/or broker(s) and Contractor shall instruct such agent(s) and/or broker(s) to procure the insurance coverage required by this Agreement. A BINDER STATING THE POLICY IS IN PLACE MUST BE SUBMITTED TO RAILROAD BEFORE THE WORK MAY COMMENCE AND UNTIL THE ORIGINAL POLICY IS FORWARDED TO UNION PACIFIC RAILROAD.

- E. Umbrella or Excess insurance.** If Contractor utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.
- F. Pollution Liability insurance.** Pollution liability coverage must be included when the scope of the work as defined in the Agreement includes installation, temporary storage, or disposal of any "hazardous" material that is injurious in or upon land, the atmosphere, or any watercourses; or may cause bodily injury at any time.

If required, coverage may be provided in separate policy form or by endorsement to Contractors CGL or RPL. Any form coverage must be equivalent to that provided in ISO form CG 24 15 "Limited Pollution Liability Extension Endorsement" or CG 28 31 "Pollution Exclusion Amendment" with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If the scope of work as defined in this Agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

Other Requirements

- G.** All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement.
- H.** Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.
- I.** Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.
- J.** Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.
- K.** All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the work is being performed.
- L.** The fact that insurance is obtained by Contractor or by Railroad on behalf of Contractor will not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage.

EXHIBIT D
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

MINIMUM SAFETY REQUIREMENTS

The term "employees" as used herein refer to all employees of Contractor as well as all employees of any subcontractor or agent of Contractor.

I. Clothing

- A. All employees of Contractor will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Contractor's employees must wear:

- (i) Waist-length shirts with sleeves.
 - (ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
 - (iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.
- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.
- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

II. Personal Protective Equipment

Contractor shall require its employees to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- (i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Contractor's company logo or name.
- (ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- (iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
 - 100 feet of a locomotive or roadway/work equipment
 - 15 feet of power operated tools
 - 150 feet of jet blowers or pile drivers
 - 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
 -
- (iii) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

III. On Track Safety

Contractor is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- (i) Maintain a distance of twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.
- (ii) Wear an orange, reflectorized workwear approved by the Railroad Representative.
- (iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Contractor must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Contractor will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

IV. Equipment

- A. It is the responsibility of Contractor to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Contractor's equipment is unsafe for use, Contractor shall remove such equipment from Railroad's property. In addition, Contractor must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
 - Familiar and comply with Railroad's rules on lockout/tagout of equipment.
 - Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
 - Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other railbound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

V. General Safety Requirements

- A. Contractor shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Contractor shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Contractor meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:

- (i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
 - (ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
 - (iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
 - (iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
 - (v) Before stepping over or crossing tracks, look in both directions first.
 - (vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.

**EXHIBIT E
TO
PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT**

Exhibit E will be signal design schematic



The City of Crystal Lake Illinois

RESOLUTION

BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF CRYSTAL LAKE that:

The City Manager be authorized to execute three Public Highway At-Grade Crossing Agreements with the Union Pacific Railroad Company and provide payment to the Union Pacific Railroad Company in the lump sum amount of \$16,800, for right-of-way license fees relating to the improvement of the intersection of Crystal Lake Avenue and Main Street; and,

Provide payment to the Union Pacific Railroad Company in the amount of \$57,325 for the widening of crossing surface at AAR/DOT#178799N and relocating one road gate and light assembly at AAR/DOT#176970T relating to the improvement of the intersection of Crystal Lake Avenue and Main Street; and,

Provide payment to the Illinois Department of Transportation for 10 percent of the project costs for the work at the railroad crossings AAR/DOT #176970T, #178801M, #178799N relating to the improvement of the intersection of Crystal Lake Avenue and Main Street.

DATED this 4th day of June, 2019.

CITY OF CRYSTAL LAKE, an Illinois
Municipal Corporation

BY: _____
AARON T. SHEPLEY, MAYOR

SEAL

ATTEST:

NICK KACHIROUBAS, CITY CLERK

PASSED: June 4, 2019

APPROVED: June 4, 2019

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

The City of Crystal Lake, Illinois,
Petitioner,

v.

Union Pacific Railroad Company
Respondent.

and

Illinois Department of Transportation,
Intervenor

T18-0025

Petition for an order authorizing the alteration of crossings AAR/DOT #176970T, 178801M, 178799N with the Union Pacific Railroad Company railroad tracks at the tracks' intersection with south side of Crystal Lake Avenue and east and west side of Main Street in City of Crystal Lake, within McHenry County, Illinois.

SUPERSEDING PROPOSED STIPULATION

By the Commission:

PROCEDURAL HISTORY

On March 13, 2018, the City of Crystal Lake ("City") filed the above-captioned verified Petition with the Illinois Commerce Commission ("Commission") naming as Respondent the Union Pacific Railroad Company ("UP" or "Company"), seeking an order allowing modifications to two separate Crystal Lake Avenue highway-rail grade crossings and the Main Street highway-rail grade crossing in the City of Crystal Lake, McHenry County.

On April 20, 2018, the Illinois Department of Transportation ("IDOT" or "Department") filed its Petition to Intervene as the Administrator of the Grade Crossing Protection Fund ("GCPF"). The Petition was granted at hearing without objection.

Pursuant to notice given in accordance with the Law and the rules and regulations of the Commission, a hearing on the Petition was held on May 7, 2019, at the Commission's offices in Springfield and Chicago, Illinois, before a duly authorized Administrative Law Judge ("ALJ"). The parties each appeared by counsel. An appearance was also entered by a Railroad Safety Specialist with the Transportation Bureau (Staff). The record was marked "Heard and Taken that day. The record was later reopened to allow further evidence by stipulation, and again marked "Heard and Taken." A Proposed Order was waived by all parties and Staff.

PETITIONER'S EVIDENCE

The City proposes to improve Crystal Lake Avenue and Main Street roadways in the City of Crystal Lake, McHenry County, at and near the intersection of the two roads. Main Street is a north-south road and Crystal Lake Avenue is an east-west road. All road work is to be performed in accordance with design plans admitted into evidence.

Three at-grade crossing are affected by the project. Starting from the intersection of east-west Crystal Lake Avenue and north-south Main Street, one at-grade crossing is 60 feet east on Crystal Lake Avenue (DOT#178801M) and, continuing east, another crossing with Crystal Lake Avenue is located 1150 from the intersection (DOT#176970T). There is also an at-grade crossing with Main Street, 270 feet south of the intersection (DOT#178799N).

The crossing 60 feet east of the vehicle intersection and the crossing 270 feet south of the intersection involved the same two UP tracks. The tracks cross Crystal Lake Avenue at a point 60 feet east of the intersection then continue southwest to cross Main Street at point 270 feet south of the intersection. These tracks are spur tracks, one of which serves an industry and the other of which terminates just north of Crystal Lake Avenue and is used primarily for storage of railroad cars. As such there are only one to two freight trains every other day operating at a maximum speed of 10 miles per hour.

At the location 1150 feet east of the vehicle intersection, three UP tracks cross Crystal Lake Avenue in a northwest-southeast angle. Fifty-four METRA passenger trains run daily on the two western most tracks at a maximum speed of 70 mile per hour. The third track is a spur track for UP which may run two trains daily.

Costs

All costs associated with the project will be the responsibility of the City other than amounts authorized as contribution from the Grade Crossing Protection Fund herein. Costs of the project also includes license fees to UP for roadway right of ways within UP's right of way.

Construction & Maintenance Agreement

No work should commence on a railroad right of way until arrangements for flagging and other force account work are made and agreed, and the railroad has approved railroad protective liability insurance obtained to cover actions of any entity performing work on its right of way, leased or owned. Repayment in full for the railroad costs for these items should be the responsibility of the City.

Form 3 Detailed Plan Approval

No work shall begin to move or modify any warning device until a Form 3 Petition with detailed plans for the such work is submitted to and approved by the Commission.

Crystal Lake Avenue Crossing 60 Feet east of the Vehicle Intersection - Interconnection

Crystal Lake Avenue has two eastbound lanes that pass through the at-grade crossing 60 feet east of the vehicle intersection. The project includes narrowing the roadway by eliminating the outermost eastbound lane between the vehicle intersection to and through the at-grade crossing and to a point on Crystal Lake Avenue where the roadway is already presently narrowed to only one eastbound lane.

The at-grade crossing is presently protected by cantilevered flashing lights without gates. They are outdated and the eastbound flashing lights would have to be relocated. However, once the lane is clearly a single lane it no longer needs a cantilevered light. Accordingly, upgraded warning devices will be installed consisting of a cantilevered flashing light with gate for the westbound traffic and a non-cantilevered flashing light with gate for the eastbound traffic. To control the gates and flashers, a new railroad bungalow, circuitry and crossing control will be installed.

Interconnection

Due to the proximity of the crossing with the intersection, the Commission recommends that the at-grade crossing warning devices be interconnected with the traffic signals at the vehicle intersection so they will operate in a coordinated sequence.

Based on a "Traffic Signal/Railroad Report" prepared for this crossing and intersection, a recommendation was made for a required minimum simultaneous preemption time for the railroad warning devices of 27 seconds.

To provide for the physical interconnect, the City will install and maintain a conduit with cable from its proposed traffic signal cabinet to the proposed railroad bungalow. The City coordinated the proposed timing with the UP for the design and timing of the railroad warning devices. No changes to the traffic signal or railroad warning device preemption timing or operation will be made without prior approval of the Commission.

Costs

UP estimated the cost to be \$378,909 for the installation of the new flashing lights and gates, and interconnection. The City requested contribution of 90% of this estimated amount from the GCPF, and the City has agreed to be responsible for the actual cost above the GCPF contribution.

Crystal Lake Avenue Crossing 1150 Feet East of the Intersection – Pedestrian Gates

Widen Eastbound Lane to Accommodate Median

The other at-grade crossing on Crystal Lake Avenue is 1150 east of the intersection where 54 METRA trains run a day on two tracks at 70 miles per hour and the

third track is a UP spur. There are presently two lanes, one for eastbound through traffic and one for westbound through traffic. The City proposes to widen the single eastbound roadway lane to accommodate a median at the crossing to deter motorists from going around the eastbound crossing gate. A similar median already exists on the other side of the crossing and the crossing has already been widened to accommodate the additional roadway width.

Relocate Road Gate & Light Assembly

The existing eastbound flashing light signal and gate assembly will be relocated to accommodate the widened eastbound roadway. UP estimates the cost of the signal assembly relocation will be \$5,000. The City has agreed to be responsible for the actual costs of the relocation.

Pedestrian Gates at Eastern Crossing with Crystal Lake Avenue

There is an existing sidewalk on the north side of Crystal Lake Avenue which passes through the north side of the crossing. The project includes a proposal for UP to install pedestrian gates on each side of the crossing at the sidewalk. The gates will operate in conjunction with the vehicle crossing flashing lights and gates. Pedestrian gates are not planned for the crossing nearest the intersection due to the low train volume and speed at that crossing.

UP estimates the cost associated with the pedestrian gate installation will be \$164,605. The City has requested contribution from the GCPF of 90% of this estimated amount and the City has agreed to be responsible of the actual costs of the amount above the GCPF contribution.

Such pedestrian gates shall not be installed until a Form 3 Petition with detailed plans for the gates are submitted to and approved by the Commission.

Main Street At-Grade Crossing

The two UP tracks that cross Crystal Lake Avenue 60 feet east of the vehicle intersection continue from that crossing in a southwest direction such that the tracks then cross Main Street at a point 270 feet south of the vehicle intersection. Volume and speed remains an average of 1 to 2 trains on the tracks every other day operating at a maximum speed of 10 mile per hour.

The City proposes to widen the roadway as it approaches the crossing from the north and the south. This will require a license agreement from UP for the roadway and will require widening of the crossing surface. The present warning devices at the crossing are cantilevered flashing lights without gates. These will be replaced with new cantilevered flashing lights and gates will also be installed.

The cost associated with widening the crossing surface and replacement of warning devices is \$52,325 and \$214,257 respectively. The City has requested contribution from the GCPF of 90% of the estimated warning device amount and the City has agreed to be responsible of the actual costs of the crossing surface replacement and the warning device amount above the GCPF contribution. The roadway right of way license is expected to be granted by UP at market value, and the City has agreed to be responsible for that cost also.

UNION PACIFIC'S POSITION

The UP does not object to the petition or project, and will continue to coordinate with the City, IDOT, and Staff.

The UP has agreed to widen the Main Street crossing surface in accordance with design plans admitted into evidence and install new or relocated warning devices consistent with the detailed plans in a Form 3 Petition approved by the Commission.

Maintenance of Crossing Surfaces and Warning Devices

The UP will continue to be responsible for the maintenance of the crossing surfaces. The UP would also continue to be responsible for the maintenance of all warning devices at the vehicular crossing and the sidewalk, and the costs thereof, except that, for the pedestrian gates, the City shall be responsible to reimburse UP for repair of damage to the pedestrian gates, and the bells, mounting structures and wiring, when such damage is other than normal or weather-related wear and tear and is caused by an entity or person other than UP.

Because the City is widening the roadway approaches to the Main Street at-grade crossing by approximately 1845 square feet, the City will need to be responsible to pay a fee to UP in the amount of \$14,800 for permanent license rights upon the railroad right of way requested in support of the widening of the roadway approaches. The City shall also pay a one-time license fee of \$1,000 to UP for rights associated with the AARDOT crossing 178801M and a one-time license fee of \$1,000 to UP for rights associated with the AAR/DOT crossing 176970T.

STAFF'S POSITION

Staff has no objection to the City's project, and concurs to the modifications to the warning devices and the traffic signal interconnect as outlined above. The UP will need to file Form 3 Petitions with the detailed warning device plans for the proposed work at each of the crossings.

GCPF Recommendation

Staff also recommends assistance from the GCPF be authorized to reimburse the UP for 90% of the identified warning device upgrade costs not to exceed \$681,993.90.

This amount includes \$341,018.10 which is 90% of the estimated the cost of \$378,909 for the installation of the new flashing lights and gates along with the interconnection at Crystal Lake Avenue crossing near the intersection (DOT#178801M), \$148,144.50 which is 90% of the \$164,605 estimate for installation of two pedestrian gates at the eastern Crystal Lake Avenue crossing (DOT#176970T), and \$192,831.30 which is 90% of the estimated cost of \$214,257 for installation of warning devices at the Main Street crossing (DOT#178799N).

FINDINGS AND ORDERING PARAGRAPHS

The Commission, having given due consideration to the entire record herein, finds that:

- (1) The City of Crystal Lake and Illinois Department of Transportation exist by virtue of the laws of the State of Illinois;
- (2) The Union Pacific Railroad Company is engaged in the transportation for-hire of persons and/or property by rail in the State of Illinois and is a rail carrier as defined by the Illinois Commercial Transportation Law ("Law");
- (3) The Commission has jurisdiction of the Parties hereto and the subject matter hereof;
- (4) The recitals of fact in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- (5) The Petition filed by the City of Crystal Lake seeking authorization to modify the grade crossings at the Main Street crossing and the two grade crossings on Crystal Lake Avenue, are required by public convenience and necessity, and should be completed in accordance with design plans admitted into evidences and modifications to warning devices at each crossing should be as detailed in Form 3 Petitions submitted to and approved by the Commission;

The plans include the minimum simultaneous preemption at the Crystal Lake Avenue / UP crossing DOT 178801M should be 27 seconds, and the warning devices and traffic signal interconnect should be completed by the City of Crystal Lake and the Union Pacific in accordance with the Traffic/Railroad Signal Report entered into evidence. No changes to the traffic signal or railroad warning device preemption timing or operation should be made without prior approval of the Commission;

- (6) The City shall be responsible for all costs of and associated with the project, except for the contributions authorized herein from the Grade Crossing Protection Fund (GCPF); the City's responsibility includes responsibility to reimburse UP for its costs other than that covered by GCPF contributions;

- (7) Assistance from the GCPF in an amount not to exceed \$681,993.90 should be authorized to reimburse the UP for 90% of the costs associated with installing the new railroad warning devices. The City of Crystal Lake should be responsible for the remaining 10% of the warning device installation costs, and the remaining project costs;

- COST DIVISION TABLE -

IMPROVEMENT	EST. COST	GCPF	COMPANY	CITY	IDOT
Main Street crossing (DOT#178799N, mp 58.16): relocation and installation of new warning devices which includes cantilevers and gates	\$214,257	(90%) \$192,831.30	(0%) \$0.00	(10%) \$21,425.70	(0%) \$0
				[*Note: City is also responsible for actual cost of crossing widening between two feet out of outermost rails, to be compatible with present crossing and widened roadway (Estimate \$52,325)]	
Crystal Lake Ave. crossing (DOT#178801M, mp 58.237): installation of two gates and one cantilever, and interconnection	\$378,909	(90%) \$341,018.10	(0%) \$0	(10%) \$37,890.90	(0%) \$0
Crystal Lake Ave. crossing (DOT# 176970T, mp 42.53): Installation of two pedestrian gates and relocating one road gate and light assembly	\$169,605 Less \$5,000 not GCPF eligible [relocation of road gate & light assembly] \$164,605 GCPF eligible for pedestrian gates	(90% of GCPF eligible \$164,605) \$148,144.50	(0%) \$0	(\$5,000 +10%) \$21,460.50	(0%) \$0
TOTALS	\$762,771.00	\$ 681,993.90	\$0	\$ 85,777.10	\$0

- (8) The Union Pacific Railroad Company should widen the Main Street crossing surface in accordance with the design plans admitted into evidence and install new or relocated warning devices at all the crossings, in accordance with detailed plans submitted in a Form 3 Petition to and approved by the Commission. The City should be responsible to pay a fee to UP in the amount of \$14,800 for permanent license rights upon the railroad right of way for widening of the roadway approaches, as well as a one-time license fee of \$1,000 to UP for rights associated with the AARDOT crossing 178801M and a one-time license fee of \$1,000 to UP for rights associated with the AAR/DOT crossing 176970T.
- (9) UP should continue to be responsible for the maintenance of the crossing surfaces and to a point two feet out from each rail of each crossing and, as each crossing is a multi-track crossing, UP should maintain the roadway surface between the tracks, and be responsible for the costs of all such maintenance;
- UP should also be responsible for maintenance of the pedestrian path through the DOT#176970T crossing between the tracks and to a point two feet out from the outermost rail of the outermost tracks, and be responsible for the costs of all such maintenance;
- The City should be responsible for the maintenance of the pedestrian path and the costs thereof, to the extent such maintenance and costs are not allocated as the responsibility of UP;
- UP should also continue to be responsible for the maintenance of all warning devices at the vehicular crossing and should also be responsible for maintenance of the pedestrian path gates, except that the City of Crystal Lake shall be responsible to reimburse UP for repair of damage to the pedestrian gates, and the bells, mounting structures and wiring for the pedestrian gates, when such damage is other than normal or weather related wear and tear and is caused by an entity or person other than UP;
- (10) The traffic signals at the intersection of Main Street and Crystal Lake Avenue will remain under the jurisdiction of City of Crystal Lake; To provide for the physical interconnect, the City should install and, at the city's costs maintain the conduit with cable from an existing or proposed traffic signal cabinet to the proposed railroad bungalow; The railroad should install the conduit with cable in its signal bungalow, connect the cable to its circuit, and be responsible for the maintenance of the connection, and the costs thereof;
- (11) The parties should proceed immediately to take the actions they are directed to perform by this Order. However, no work should commence on a railroad right of way until arrangements for flagging and other force account

work are made and agreed, and each railroad has approved railroad protective liability insurance obtained to cover actions of any entity performing work on its right of way, leased or owned. Repayment in full for the railroad costs for these items should be the responsibility of the City.

- (12) All work required of the parties under this Order should be completed by October 31, 2020;
- (13) Any person making a Request for an Extension of Time up to 30 days to complete a project ordered by the Commission must file a request with the Director of Processing and Information no later than 14 days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request;
- (14) Any person making a Request for an Extension of Time that exceeds 30 days must file a Petition for Supplemental Order with the Director of Processing and Information no later than 21 days in advance of the scheduled deadline. The Commission will decide Petitions for Supplemental Orders;
- (15) Requests for Extension of Time and Petitions for Supplemental Orders must include the reason the additional time is needed to complete the work and the time within which the Project will be completed. Prior to submitting a Request for Extension of Time or a Petition for Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the Project within the ordered timeframe;
- (16) The Commission or its Administrative Law Judge reserves the right to deny Petitions for Supplemental Orders and Requests for Extension of Time, if the reason supporting the request is insufficient or where it appears the person has not made a good faith effort to complete the Project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.
- (17) Any invoices/bills from the UP/Company for the GCPF should be sent to Fiscal Control Unit, Bureau of Local Roads and Streets, Illinois Department of Transportation, 2300 S. Dirksen Parkway, Springfield, IL 62764.

The Department shall send a copy of all invoices to the Director of Processing and Information, Transportation Bureau of the Commission. All bills shall be submitted no later than twelve (12) months from the completion date specified in the Commission Order approving this Agreement or any Supplemental Order(s) issued for the project. The final invoice for expenditures from each party shall be clearly marked "Final Invoice". The Department shall not obligate any assistance from the GCPF for the cost of proposed improvements described in this Agreement without prior approval by the Commission. The Commission shall, at the end of the 12th month

from the completion date specified in the Commission Order approving this Agreement, or any Supplemental Order(s) issued for this project, conduct a review to determine if any unused assistance from the GCPF should be de-obligated. Upon completion of the review, the Commission shall notify the Department to de-obligate all residual funds accountable for installation costs for this project. Notification may be by regular mail, electronic mail, fax, or phone.

For all work specified and authorized by this Order the City and Company shall assure that sufficient documentation for all bills is made available to the Department or the Department's representative. The minimum documentation that must be made available is outlined below:

- a) Labor Charges (including additives) - Copies of employee work hours charged to the railroad and/or highway account code for the project.
- b) Equipment Rental - Copies of rental agreements for the equipment used, including the rental rate; number of hours the equipment was used and the railroad and/or highway account code for the project.
- c) Material - An itemized list of all materials purchased and installed at the crossing location. If materials purchased are installed at multiple crossing locations, a notation must be made to identify the crossing location.
- d) Engineering - Copies of employee work hours charged to the railroad and/or highway account code for the project.
- e) Supervision - Copies of employee work hours charged to the railroad and/or highway account code for the project.
- f) Incidental Charges - An itemized list of all incidental charges along with a written explanation of those charges.
- g) Service Dates - Invoice shall include the beginning and ending date of the work accomplished for the invoice.
- h) Final or Progressive - Each invoice shall be marked as a Progressive or a Final Invoice, as applicable.
- i) Reference Numbers - Each invoice shall include the AAR/DOT number, the ICC Order number and the state job number when federal funds are involved.
- j) Locations - Each invoice shall show the location, with the street name and AAR/DOT crossing inventory number.
- k) Travel - Each invoice shall include copies of all costs incurred, such as lodging, meals, per diem, rates and totals. Rail carriers shall provide an electronic copy of its current Rail Carrier Travel Policy. Reimbursement of travel costs shall be in accordance with the State of Illinois travel regulations under 9 Illinois Administrative Code part 3000 and appendices. Any proposal or attempt to use an

alternative travel reimbursement method must be reviewed and approved by the Department prior to travel.

Reimbursement of labor additives will be for the most current audited and Federal Highway Administration approved company rates that have been entered into the Company billing system, as of the date of an invoice, for application to invoices for this project covered by this Agreement. Reimbursement of labor additives will be limited to only the most current direct labor additives, small tools additives, equipment additive rate, if so developed, and public liability/property damage liability insurance rates as audited and approved by a cognizant State agency and the Federal Highway Administration. Indirect overhead or general and administrative expenses, or those expenses which may be classified as such under generally accepted accounting principles, are not eligible for reimbursement on this project. Surcharges will be subject to review and approval by the Department.

IT IS HEREBY ORDERED by the Illinois Commerce Commission that the City of Crystal Lake is authorized to modify Main Street and Crystal Lake Avenue in their approaches to the highway-rail grade crossings of the Union Pacific Railroad Company's tracks designated as DOT#178801M, DOT#176970T, and DOT#178799N, located in the City of Crystal Lake, McHenry County, Illinois, in accordance with the plans admitted into evidence and in accordance with the Findings.

IT IS FURTHER ORDERED, that warning devices at the crossings and the crossing surface at Main Street shall be modified by the Union Pacific Railroad Company in accordance with the plans admitted into evidence and the Findings.

IT IS FURTHER ORDERED that prior to construction, the Union Pacific Railroad Company shall file a Form 3 of Section 1535 of Title 92 of the Illinois Administrative Code for each crossing showing details of the automatic warning devices required under this order, and shall receive approval by resolution of the Illinois Commerce Commission's Transportation Bureau Rail Safety Program Administrator before installing the devices.

IT IS FURTHER ORDERED that no work should commence on a railroad right of way until arrangements for flagging and other force account work are made and agreed, and each railroad has approved railroad protective liability insurance obtained to cover actions of any entity performing work on its right of way, leased or owned. Repayment in full for the railroad costs for these items should be the responsibility of the City.

IT IS FURTHER ORDERED that all improvements encompassed by this Order shall be made in accordance with all applicable State and Federal laws, rules, standards, regulations and orders and procedures in general.

IT IS FURTHER ORDERED that all cost, installation and maintenance obligations

shall be as set out in the Findings of this Order; such obligations include all surfaces, warning devices and the pedestrian path through and between the crossing surfaces all designated as DOT#176970T.

IT IS FURTHER ORDERED that all work required of the parties under this Order should be completed by October 31, 2020.

IT IS FURTHER ORDERED that assistance from the Grade Crossing Protection Fund is authorized in the amounts and for the purposes set out in the Findings, not to exceed a total of \$681,993.90.

IT IS FURTHER ORDERED that all bills for work specified in the Findings of this Order authorized for reimbursement from the Grade Crossing Protection Fund shall be submitted to the Fiscal Control Unit, Bureau of Local Roads and Streets, Illinois Department of Transportation, 2300 S. Dirksen Parkway, Springfield, IL 62764, for review by the Department. The Department shall send a copy of all invoices to the Director of Processing and Information, Transportation Bureau of the Commission. All bills shall be submitted to the Department no later than twelve (12) months from the completion date specified in this Commission Order. The final bill for expenditures shall be clearly marked "Final Bill". The Commission shall, at the end of the 12th month from the completion date specified in this or any Supplemental Order, conduct a review to determine if any unused assistance from the Grade Crossing Protection Fund should be de-obligated. Upon completion of the review, the Commission shall notify the Department to de-obligate all residual funds accountable for installation costs for this project. Notification may be by regular mail, electronic mail, fax, or phone.

IT IS FURTHER ORDERED that the City of Crystal Lake shall at six (6) month intervals from the date of this Order until the Project has been completed, submit to the Director of Processing, Transportation Division of the Commission, a Project Status Report stating the progress it has made toward completion of the work herein required. Each progress report shall include the Commission Order number, the Order date, the Project completion date as noted in the Order, crossing information (inventory number and railroad milepost), type of improvement, and project manager information (name, title, mailing address, telephone number, facsimile number and electronic mailing address) of the employee responsible for management of the Project.

IT IS FURTHER ORDERED that the City of Crystal Lake and Union Pacific Railroad Company shall, within three (3) months of the completion of the work herein required, collaborate to establish a single United States Department of Transportation Inventory Form (#6180.71) to be submitted to the Federal Railroad Administration, the Chief of Data Services at the Illinois Department of Transportation, and the Director of Processing and Information, Transportation Bureau of the Commission.

IT IS FURTHER ORDERED that the City of Crystal Lake shall, and it is hereby required and directed to, submit a Project Completion Report, to the Director of Processing and Information, Transportation Bureau of the Commission, stating that the work herein

required of it has been completed. The Project Completion Report shall be submitted within five (5) days after the Project completion date.

IT IS FURTHER ORDERED that any person making a Request for an Extension of Time up to 30 days to complete a project ordered by the Commission must file a request with the Director of Processing and Information no later than 14 days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.

IT IS FURTHER ORDERED that any person making a Request for an Extension of Time that exceeds 30 days must file a Petition for Supplemental Order with the Director of Processing and Information no later than 21 days in advance of the scheduled deadline. The Commission will decide Petitions for Supplemental Orders.

IT IS FURTHER ORDERED that Requests for Extension of Time and Petitions for Supplemental Orders must include the reason the additional time is needed to complete the work and the time within which the Project will be completed. Prior to submitting a request for extension of time or a Petition for Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the Project within the ordered timeframe.

IT IS FURTHER ORDERED that the Commission or its Administrative Law Judge reserves the right to deny Petitions for Supplemental Orders and Requests for Extension of Time, if the reason supporting the request is insufficient or where it appears the person has not made a good faith effort to complete the Project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS FURTHER ORDERED that this is a final Order subject to 83 Ill. Adm. Code 200.880(d) which provides that no appeal shall be allowed unless an application for rehearing shall first have been filed and disposed of by the Commission; Administrative Review is governed by Sections 2201 through 2206 of the Illinois Commercial Transportation Law (625 ILCS 5/18c) and is subject to the Administrative Review Law to the extent made applicable in those sections.

By Order of the Commission this 30th day of May 2019.

(SIGNED) CARRIE ZALEWSKI
CHAIRMAN



Agenda Item No: 21

City Council Agenda Supplement

Meeting Date: June 4, 2019

Item: Appropriation of MFT funds for the railroad crossing improvements for the Main Street and Crystal Lake Avenue Intersection Improvements.

Staff Recommendation: Motion to adopt a resolution appropriating \$133,105 in MFT funds for the railroad crossing improvements for the Main Street and Crystal Lake Avenue Intersection Improvements.

Staff Contact: Abigail Wilgreen, City Engineer

Background:

It is recommended that the City Council appropriate \$133,105 in Motor Fuel Tax (MFT) funds for the railroad crossing improvements for the Main Street and Crystal Lake Avenue Intersection Improvement. This appropriation is for the City's share of the railroad crossing improvements performed by the Union Pacific Railroad Company.

Any funds that are obligated and not spent will be returned to the City's unobligated balance once the project is complete. The City has sufficient reserves in its MFT fund for this expenditure. The improvement is budgeted in the FY 2019/2020 budget using MFT funds.

Votes Required to Pass:

A simple majority vote.



Resolution for Improvement Under the Illinois Highway Code



Resolution Number	Resolution Type	Section Number
	Supplemental	12-00118-00-CH

BE IT RESOLVED, by the Council of the City of Crystal Lake Illinois that the following described street(s)/road(s)/structure be improved under the Illinois Highway Code. Work shall be done by Contract

For Roadway/Street improvements:

Name of Street(s)/Road(s)	Length (miles)	Route	From	To
+ Main Street		FAU 124	At Crystal Lake Avenue	

For Structures:

Name of Street(s)/Road(s)	Existing Structure No.	Route	Location	Feature Crossed
+				

BE IT FURTHER RESOLVED,

1. That the proposed improvement shall consist of

Railroad work at the three crossings that are impacted by the widening and resurfacing of the intersection.

2. That there is hereby appropriated the sum of one-hundred and thirty-three thousand, one hundred and five

Dollars (\$133,105.00) for the improvement of said section from the Local Public Agency's allotment of Motor Fuel Tax funds.

BE IT FURTHER RESOLVED, that the Clerk is hereby directed to transmit four (4) certified originals of this resolution to the district office of the Department of Transportation.

I, Nick Kachiroubas City Clerk in and for said City of Crystal Lake in the State aforesaid, and keeper of the records and files thereof, as provided by statute, do hereby certify the foregoing to be a true, perfect and complete original of a resolution adopted by Council of Crystal Lake at a meeting held on June 04, 2019

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal this 4th day of June, 2019

(SEAL)

Clerk Signature

Approved

Regional Engineer
Department of Transportation

Date



The City of Crystal Lake Illinois

RESOLUTION

BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF CRYSTAL LAKE that the City Manager be authorized to execute the contract with Geske and Sons, Inc., for the 2019 Street Resurfacing Program in the amount of \$1,551,018.43. The City Manager is additionally authorized to approve up to 10 percent in justifiable contract amendments from a contingency allowance.

DATED this 4th day of June, 2019.

CITY OF CRYSTAL LAKE, an Illinois
Municipal Corporation

BY: _____
Mayor

SEAL

ATTEST:

City Clerk

PASSED: June 4, 2019

APPROVED: June 4, 2019