

CITY OF LEROY
COUNTY OF MC LEAN
STATE OF ILLINOIS

ORDINANCE NO. 655

AN ORDINANCE APPROVING AN AGREEMENT TO BE
ENTERED INTO WITH CONSOLIDATED RAIL CORPORATION
PROVIDING FOR PIPELINE OCCUPATION

ADOPTED BY THE CITY COUNCIL OF THE CITY OF LE ROY
THIS 18th DAY OF March, 1996

PRESENTED: March 18, 1996

PASSED: March 18, 1996

APPROVED: March 18, 1996

RECORDED: March 18, 1996

PUBLISHED: March 18, 1996

In Pamphlet Form

Voting "Aye" 6

Voting "Nay" 0

The undersigned being the duly qualified and acting City Clerk of the City of LeRoy does hereby certify that this document constitutes the publication in pamphlet form, in connection with and pursuant to Section 1-2-4 of the Illinois Municipal Code, of the above-captioned ordinance and that such ordinance was presented, passed, approved, recorded and published as above stated.

(SEAL)

X *Juanita Bagley*
City Clerk of the City of LeRoy,
McLean County, Illinois

Dated: March 18, 1996.

AN ORDINANCE APPROVING AN AGREEMENT TO BE
ENTERED INTO WITH CONSOLIDATED RAIL CORPORATION
PROVIDING FOR PIPELINE OCCUPATION

WHEREAS, the Mayor and City Council of the City of LeRoy, McLean County, Illinois, an Illinois municipal corporation, have reviewed a proposed agreement titled "Consolidated Rail Corporation Agreement For Pipeline Occupation," and have determined that approval of the same by the City of LeRoy is in the best interests of the city and its residents; and

WHEREAS, the Mayor and City Council of the City of LeRoy, have determined that the work to be accomplished in connection with the aforesaid agreement is necessary in order to improve the removal of surface waters and the drainage thereof from the City of LeRoy,

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of LeRoy, Illinois, in lawful meeting assembled as follows:

Section 1. That agreement titled "Consolidated Rail Corporation Agreement For Pipeline Occupation," a copy of which is attached hereto as Exhibit A and is incorporated herein by reference, is hereby approved.

Section 2. The Mayor and City Clerk are hereby directed and authorized to sign the original and as many copies as appropriate of that agreement as set forth in Exhibit "A" attached hereto, being certain to obtain one or more fully signed copies for the records of the City.

Section 3. This ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as required by law.

PASSED by the City Council of the City of LeRoy, Illinois, upon the motion by
.....Ronnie Litherland....., seconded byDawn Thompson....., by
roll call vote on the 18th day of March, 1996, as follows:

Aldermen elected 6

Aldermen present 6

VOTING AYE:

David McClelland, Lois Parkin, Ronnie Litherland, Dawn Thompson, William Swindle
(full names) Fred Dodson

VOTING NAY:

None
(full names)

ABSENT, ABSTAIN, OTHER:

None
(full names)

and deposited and filed in the office of the City Clerk in said municipality on the 18th day of
March, 1996.

X Juanita Dagley
Juanita Dagley, City Clerk of the City of
LeRoy, McLean County, Illinois

APPROVED BY the Mayor of the City of LeRoy, Illinois, this 18th day of
March, 1996.

X Jerry C. Davis
Jerry C. Davis, Mayor of the City of LeRoy,
McLean County, Illinois

ATTEST: (SEAL)

X Juanita Dagley
Juanita Dagley, City Clerk of the City
of LeRoy, McLean County, Illinois

**CONSOLIDATED RAIL CORPORATION
AGREEMENT FOR PIPELINE OCCUPATION**

THIS AGREEMENT, made this 16th day of January, 1996 between **CONSOLIDATED RAIL CORPORATION**, a Pennsylvania Corporation, ("Conrail") and **CITY OF LEROY**, a political subdivision of the State of Illinois ("Licensee").

WITNESSETH:

WHEREAS, Licensee has requested occupation of Conrail's property as set forth in this Agreement; and

WHEREAS, the parties have reached accord concerning the terms and conditions for Licensee's occupation of Conrail's property and desire to reduce them to writing.

NOW, THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

1. FACILITIES

(a) Conrail insofar as it has the legal right and its present title permits, and in consideration of the covenants and conditions hereinafter stated on the part of Licensee to be kept and performed, hereby permits Licensee to construct, maintain, repair, alter, renew, relocate and ultimately remove a concrete spillway along the roadway and track of the Pekin Secondary Track of Conrail, Line Code 60-8561, Mile Post 63.99±, located at a point in the City of LeRoy, County of McLean, State of Illinois, in accordance with construction plan Sheet 1, 2 and 3 of 7, submitted by Licensee to and approved by the Chief Engineer - Construction of Conrail ("Construction Plan"), attached hereto and made a part of this Agreement; also in accordance with current issues of Conrail's Specifications CE-4 and/or CE 8 (all and any part thereof being hereafter referred to as the "Facilities").

(b) This Agreement shall not be deemed or construed as transferring to Licensee any interest in the land of Conrail or any right in the nature of an interest in land, irrespective of any expenditure by Licensee for the Facilities.

2. PAYMENT

Licensee shall pay to Conrail upon the execution hereof, the sum of Five Hundred Sixty Dollars (\$560.00) as reimbursement for the rights granted in this Agreement.

3. CONSTRUCTION

(a) Licensee may not enter upon Conrail's property until the method of installation and all related matters have been approved by the Chief Engineer - Construction of Conrail or his duly designated representative.

(b) The Facilities shall be located, constructed and maintained in exact accordance with said Construction Plans and for the purpose as outlined in Section 1(a) hereof. No departure shall be made at any time therefrom except upon permission in writing granted by the Chief Engineer - Construction of Conrail, or his designee, provided, however, that if any commission or other regulatory body duly constituted and appointed in compliance with the laws of the State in which the crossing or occupancy herein provided is situate, and having jurisdiction in the premises, has by ruling or other general order determined and fixed the manner and means of construction, maintenance, repair, alteration, renewal, relocation or removal thereof, then said ruling or general order shall prevail for the crossing or occupancy herein mentioned.

(c) The work of constructing, maintaining, repairing, altering, renewing, relocating or removing the said Facilities shall be done under such general conditions as will be satisfactory to and approved by the Chief Engineer - Construction of Conrail, or his designee, and as will not interfere with the proper and safe use, operation and enjoyment of the property of Conrail. Licensee, at its own cost and expense, shall, when performing any work in connection with the Facilities, furnish any necessary inspectors, flagmen or watchmen to see that men, equipment and materials are kept a safe distance away from the tracks of Conrail.

(d) The supervision over the location of the construction work and inspection of the Facilities and the approval of the material used in construction, maintenance, repair, alteration, renewal, relocation and removal of the Facilities covered by this Agreement shall be within the jurisdictional rights of Conrail.

(e) The right of supervision over the location of the construction work and inspection of the Facilities from time to time thereafter by Conrail, shall extend for an appropriate distance on each side of the property of Conrail as the method of construction and materials used may have an important bearing upon the strength and stability of the Facilities over, under, upon or in the property of Conrail.

(f) In addition to, but not in limitation of any of the foregoing provisions, if at any time Conrail should deem inspectors, flagmen or watchmen desirable or necessary to protect its operations or property, or its employees, patrons or licensees during the work of construction, maintenance, repair, alteration, renewal, relocation or removal of the Facilities, Conrail shall have the right to place such inspectors, flagmen or watchmen at the sole risk, cost and expense of Licensee, which covenants and agrees to bear the full cost and expense thereof and to promptly reimburse Conrail upon demand. The furnishing or failure to furnish inspectors, flagmen or watchmen by Conrail, however, shall not release Licensee from any and all other liabilities assumed by Licensee under the terms of this Agreement.

(g) In the event the Facilities consist of an underground occupation, Licensee will be responsible for any settlement caused to the roadbed, right of way and/or tracks, Facilities and appurtenances of Conrail arising from or as a result of the installation of the said FACILITIES for a period of one (1) year subsequent to the date of completion of the installation, and Licensee agrees to pay to Conrail on demand the full cost and expense therefor.

(h) In the event the Facilities consist of electrical power or communication wires and/or appurtenances, Licensee shall at all times be obligated promptly to remedy any inductive interference growing out of or resulting from the presence of its Facilities; and if Licensee should fail so to do, then Conrail may do so, and Licensee agrees to pay to Conrail on demand the full cost and expense therefor.

4. MAINTENANCE

(a) Licensee shall at all times be obligated to promptly maintain, repair and renew said Facilities; and shall, upon notice in writing from Conrail and requiring it so to do, promptly make such repairs and renewals thereto as may be required by Conrail; or Conrail, for the purpose of protecting and safeguarding its property, traffic, patrons or employees from damage or injury, may with or without notice to Licensee at any time make such repairs and renewals thereto and furnish such material therefor as it deems adequate and necessary, all at the sole cost and expense of Licensee, and thereafter, bill Licensee in accordance with the terms of Section 6 hereof.

(b) If Licensee desires or is required, as herein provided, to revise, renew, add to or alter in any manner whatsoever the Facilities, Licensee shall submit plans to Conrail and obtain the written approval of the Chief Engineer - Construction of Conrail thereto before any work or alteration of the Facilities is performed and the terms and conditions of this Agreement with respect to the original construction shall apply thereto. In that event, Conrail reserves the right to assess additional charges.

(c) In the event of an emergency, Licensee will take immediate steps to perform any necessary repairs to the Facilities, and in the event Licensee fails so to do, Conrail will perform said necessary repairs at the sole cost and expense of Licensee, and thereafter, bill Licensee in accordance with the terms of Section 6 hereof.

5. MAINTENANCE OF CONRAIL RIGHT-OF-WAY

Licensee shall, at its sole cost and expense, upon request in writing of Conrail, promptly change the location of the Facilities covered by this Agreement, where located over, upon or in the property of Conrail, to another location, to permit and accommodate changes of grade or alignment and improvement in or additions to land now or hereafter owned or used by Conrail to the extent that said construction shall at all times comply with the terms and conditions of this Agreement with respect to the original construction; or in the event of the lease, sale or disposal of the premises or any part thereof encumbered by this Agreement, then Licensee shall make such adjustments or relocations in its Facilities as are over, upon or in the property of Conrail as may be required by said Conrail or its grantee; and if Licensee shall fail or refuse to comply therewith, then the duly authorized agents of Conrail may make such repairs or adjustments or changes in location and provide necessary material therefor at the sole cost and expense of Licensee, and thereafter, bill Licensee in accordance with the terms of Section 6 hereof.

6. BILLING

(a) All cost and expenses in connection with the construction, maintenance, repair, alteration, renewal, relocation and removal of the Facilities shall be borne by Licensee, and in the event of work being performed or material furnished by Conrail under the stipulated right to perform such work of construction, maintenance, repair, alteration, renewal, relocation or removal under any section hereof, Licensee agrees to pay to Conrail the actual cost of material plus the current applicable overhead percentages for storage, handling, transportation, purchasing and other related material management expenses and the actual cost of labor plus the current applicable overhead percentages as developed and published by the accounting department of Conrail for fringe benefits, payroll taxes, administration, supervision, use of tools, machinery and other equipment, supplies, employers liability insurance, public liability insurance, and other insurance, taxes and all other indirect expenses. It is to be understood that the aforementioned material and labor overhead charges are to be applied at the rates which are effective at the time of the performance of any work by employees of Conrail on the said Facilities. Licensee agrees to pay such bills within thirty (30) days of the presentation thereof by Conrail.

(b) Automobile mileage charges incurred by aforementioned Conrail inspectors, flagmen or watchmen in connection with the installation, maintenance, etc., of the Facilities will be based on allowances approved by the United States Government in effect at the time the expenses are incurred.

7. TAXES

As part of the consideration of this Agreement, Licensee covenants and agrees that no assessments, taxes or charges of any kind shall be made against Conrail or its property by reason of the construction of the Facilities, and Licensee further covenants and agrees to pay to Conrail promptly upon bills rendered therefor the full amount of any assessments, taxes or charges of any kind which may be levied, charged, assessed or imposed against Conrail or its property by reason of the construction and maintenance of the Facilities.

8. LIABILITY

(a) It is understood between the parties hereto that the operations of Conrail at or near the Facilities involve some risk, and Licensee as part of the consideration for this Agreement hereby releases and waives any right to ask for or demand damages for or on account of loss of or injury to the Facilities (and contents thereof) of Licensee that are over, under, upon or in the property of Conrail including the loss of or interference with service or use thereof and whether attributable to the fault, failure or negligence of Conrail or otherwise.

(b) Licensee also covenants and agrees to and shall at all times indemnify, protect and save harmless Conrail from and against all cost or expense resulting from any and all losses, damages, detriments, suits, claims, demands, costs and charges which Conrail may directly or indirectly suffer, sustain or be subjected to by reason or on account of the construction, placement, attachment, presence, use, maintenance, repair, alteration, renewal, relocation or removal of the Facilities in, on, about or from the premises of Conrail whether such losses and damages be suffered or sustained by Conrail directly or by its employees, patrons or licensees, or be suffered or sustained by other persons or

corporations, including Licensee, its employees and agents who may seek to hold Conrail liable therefor, and whether attributable to the fault, failure or negligence of Conrail or otherwise, except when proved by Licensee to be due directly to the sole negligence of Conrail.

(c) If a claim or action is brought against either party and for which the other party may be responsible hereunder in whole or in part, such other party shall be notified and permitted to participate in the handling or defense of such matter.

9. INSURANCE

(a) In addition to any other forms of insurance or bonds required under the terms of the contract and specifications, Contractor will be required to carry insurance of the following kinds and amounts:

(i) Public Liability Insurance Contractor shall furnish evidence that, with respect to the operations it performs, it carries Public Liability Insurance, including contractual liability insurance with a limit of not less than \$5,000,000 single limit, bodily injury and/or property damage combined, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence.

(ii) Automobile Public Liability Insurance When any motor vehicles are used in connection with the work to be performed, Contractor shall furnish evidence that it carries Automobile Public Liability Insurance and Property Damage Liability Insurance with a limit of not less than \$5,000,000 covering bodily injury and/or property damage for each occurrence.

(iii) Workers' Compensation in Statutory Amounts Contractor shall furnish evidence that it carries Employers' Liability and Occupational Disease Insurance with limits of \$1,000,000 each accident, \$1,000,000 policy limit and \$1,000,000 each employee.

(iv) Railroad's Protective Public Liability Insurance In addition to Items (i) and (ii) shown above, Contractor shall furnish evidence that, with respect to the operations it or any of its subcontractors perform, it has provided Railroad Protective Public Liability Insurance (ISO-RIMA form) in the name of Consolidated Rail Corporation providing for a limit of not less than \$2,000,000 single limit, bodily injury and/or property damage combined, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence. Such insurance shall be furnished with an aggregate of not less than \$6,000,000 for all damages as a result of more than one occurrence.

(b) The insurance hereinbefore specified shall be carried until all work required to be performed under the terms of the contract is satisfactorily completed and formally accepted. Failure to carry or keep such insurance in force until all work is satisfactorily completed shall constitute a breach of contract. The aforesaid insurance protection shall be enforceable by any legitimate claimant after the termination or cancellation of the project whether by expiration of time, by operation of law or otherwise, so long as the basis of the claim against the insurance company occurred during the periods

of time for which such insurance was obtained. Contractor shall furnish to Conrail at the address listed below, certificates evidencing the insurance outlined in sections (i), (ii) & (iii) above, and shall furnish the original ISO-RIMA policy for the Railroad Protective Public Liability Insurance referred to in section iv. Conrail must be named as additional insured under insurances outlined in sections (i) & (ii) above. Each insurance policy shall be endorsed to provide that the insurance company shall notify the following via registered or certified mail at least thirty (30) days in advance of termination of or any change in the policy:

Consolidated Rail Corporation
Insurance Department
2001 Market Street - 25A
PO Box 41425
Philadelphia, PA 19101-1425
Tel.: (215) 209-5377

10. EFFECTIVE DATE AND TERMINATION

(a) This Agreement shall become as of the day and year first above written, and shall be terminable upon mutual consent of the parties hereto, provided that this Agreement may be terminated by Conrail upon the violation of any of the terms, covenants and conditions of this Agreement on the part of Licensee.

(b) Upon termination of this Agreement or upon the removal or abandonment of the Facilities covered hereby, all the rights, title and interest of Licensee hereunder shall cease and determine, and this instrument shall thereupon become and be null and void, without any liability on the part of either party to the other party except only as to any liability accrued prior thereto, and Licensee shall remove its Facilities and appurtenances from Conrail property, and right of way and all property of Conrail shall be restored in good condition and to the satisfaction of Conrail. If Licensee fails or refuses to remove its Facilities and appurtenances under the foregoing conditions, Conrail shall be privileged to do so at the cost and expense of Licensee, and thereafter, bill Licensee in accordance with the terms of Section 6 hereof, and Conrail shall not be liable in any manner to Licensee for said removal.

(c) Anything herein contained to the contrary notwithstanding, there shall be no obligation on the part of Conrail to continue operation of the line of Conrail in the vicinity of the Facilities to prevent the termination of Licensee's occupation rights at any crossing or occupation covered hereunder on account of an abandonment of line or service by Conrail; nor shall there be any obligation upon Conrail to perfect its title in order to continue in existence the said occupation rights after such abandonment of line or service.

11. PERMITS AND APPROVALS

(a) Licensee, at its sole risk, cost and expense, shall obtain all permits and approvals which may be necessary or appropriate and Licensee shall comply with all federal, state and local laws, and assume all cost and expense and responsibility in connection therewith, without any liability whatsoever on the part of Conrail. Licensee hereby agrees to indemnify, defend and hold harmless Conrail therefrom.

(b) This Agreement is authorized by Licensee to be entered into by Resolution / Ordinance Number _____, adopted by _____, a certified copy of which is attached hereto and made a part hereof.

12. SUCCESSORS

(a) This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, successors and assigns, subject, however, to the terms of Section 12(b) hereof.

(b) The rights hereby afforded shall be the personal privilege of Licensee, and no assignment or transfer thereof by operation of law or voluntary act of Licensee shall be made, or other use of the Facilities be permitted than as herein provided, without the prior consent and agreement in writing of Conrail being first had and obtained.

13. WAIVER

The waiver by Conrail of any breach of any term, covenant, obligation or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or a waiver of any other term, covenant, obligation or condition herein contained.

14. NOTICES

(a) Every notice, approval, consent, or other communication desired or required under this Agreement shall be effective only if the same shall be in writing and sent postage prepaid by overnight mail or United States registered or certified mail (or a similar mail service available at the time), directed to the other party at its address as follows (or such other address as either party may designate by notice given from time to time in accordance with this Section):

If to Conrail:

Consolidated Rail Corporation
P.O. Box 41412
Two Commerce Square 12B
Philadelphia, PA 19101-1412
Attn: Chief Engineer - Construction

If to Licensee:

City of LeRoy
111 East Center Street
LeRoy, IL 61752

Attn: Mr. Jerry Davis, Mayor

15. ENTIRE AGREEMENT

The entire agreement between Conrail and Licensee is set forth in this Agreement and there are no understandings, agreements, or representations of any kind between the parties, verbal or otherwise, other than as set forth in this Agreement. No change or modification of any of the terms, obligations or provisions hereof shall be valid unless in writing and signed by the parties hereto.

16. PARTIAL INVALIDITY

If any term, obligation or condition of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable to any extent by a final judgment or award which shall not be subject to change by appeal, then the remainder of this Agreement or the application of such term or condition to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term, covenant and condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law. Furthermore, each agreement, obligation and other provision of this Agreement is and shall be deemed and construed as a separate and independent obligation of the party bound by, undertaking or making the same, and not dependent on any other provision of this Agreement unless expressly so provided.

17. THIRD PARTY BENEFICIARY

Nothing contained in this Agreement shall be construed as to confer upon any other party the rights of a third party beneficiary.

18. GOVERNING LAW

This Agreement and the rights and obligations of the parties hereunder shall be construed in accordance with the laws of the state wherein the Facilities are located.

19. EXHIBITS AND ADDENDA

Any exhibit or addendum to this Agreement shall be deemed a part hereof.

20. HEADINGS

Section headings are inserted for convenience only and shall not affect the construction or interpretation of this Agreement.

21. TERMINOLOGY

As used in this Agreement, the terms "Conrail," "Licensee" and "party" shall include the respective subsidiaries and affiliates of Conrail and Licensee and the directors, officers, agents and employees of Conrail and Licensee and such subsidiaries and affiliates.

IN WITNESS WHEREOF, the said parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

WITNESS:

CONSOLIDATED RAIL CORPORATION

BY: _____

J. D. Cossel
Chief Engineer - Construction

Date: _____

WITNESS:

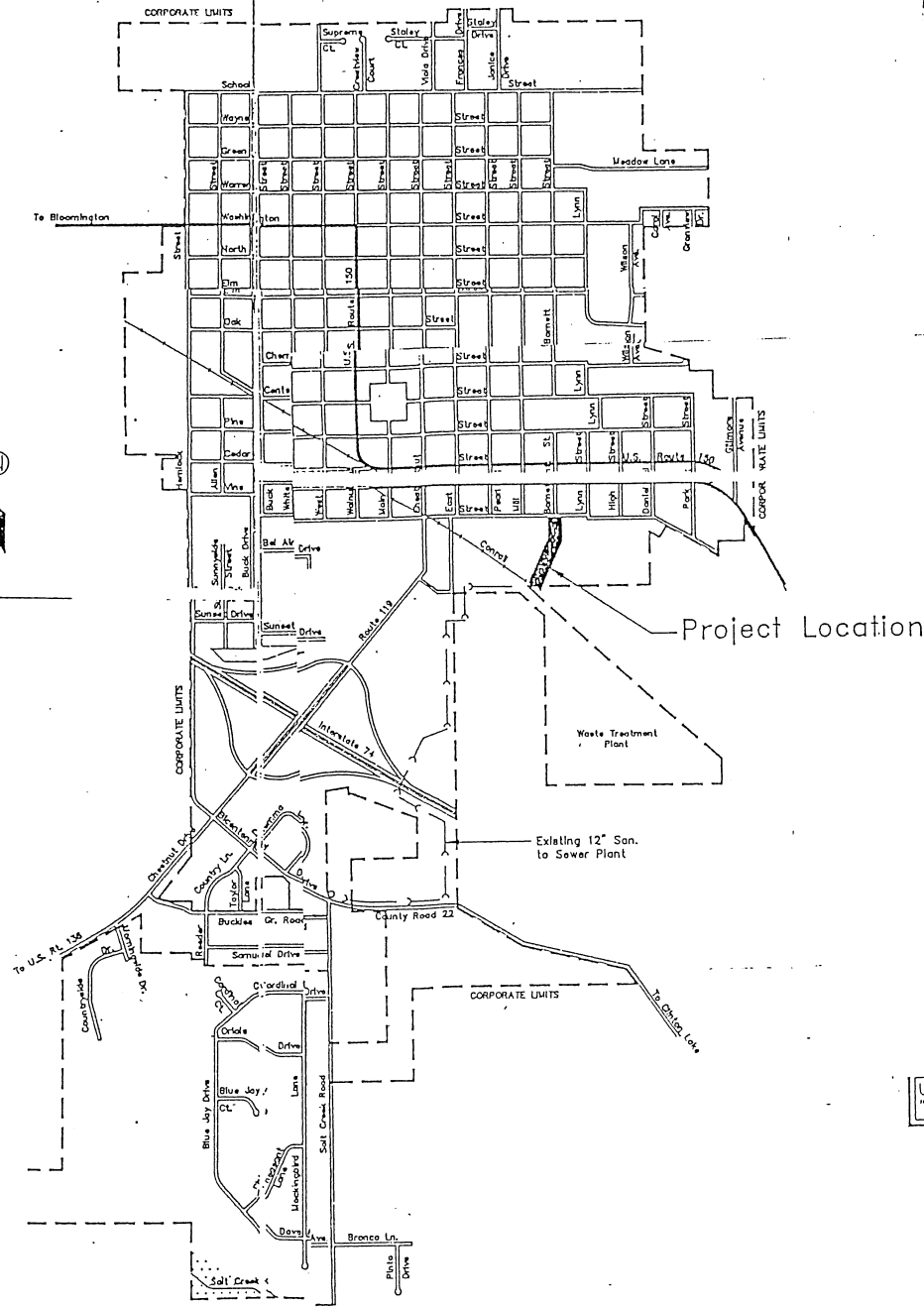
CITY OF LEROY

BY: _____

Title:

Date: _____

CITY OF LEROY JENSEN WATERWAY IMPROVEMENTS



INDEX OF SHEETS

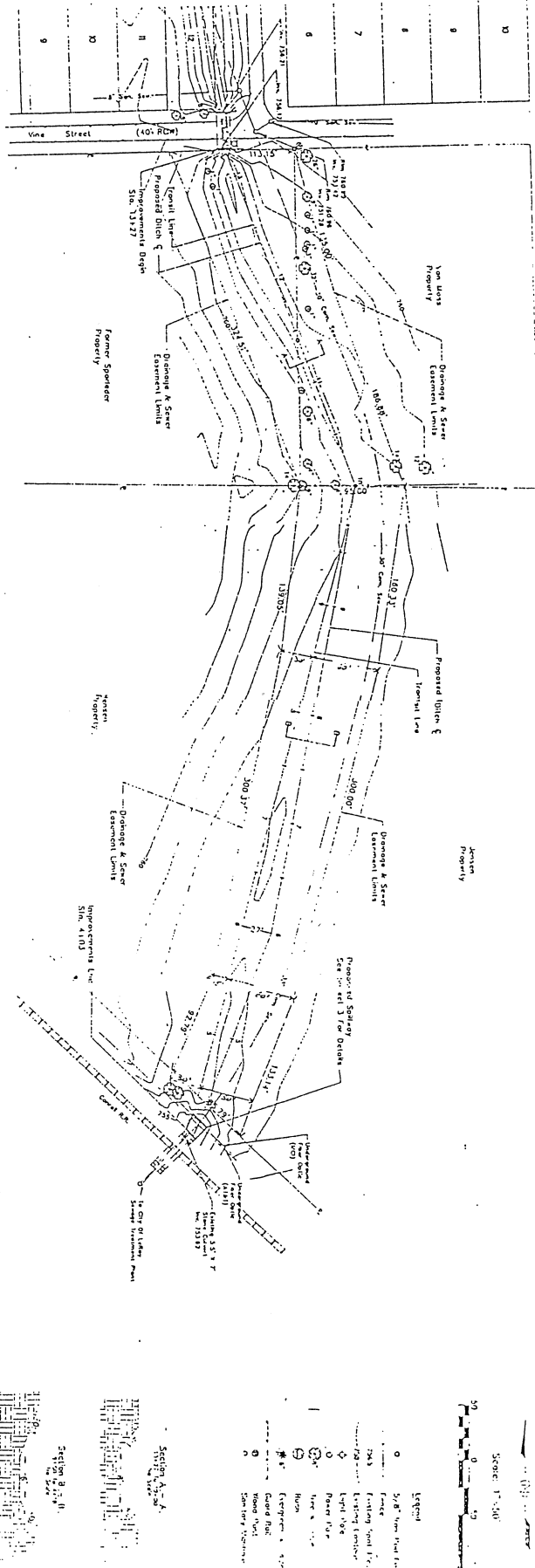
SHT. NO.	SUBJECT
1	Cover Sheet
2	Plan & Profile Sheet
3	Misc. Details
4-7	Cross Section Sheets

Utility locations shown are approximate only. Before digging "JULIE" for utility locations. Phone 1-800-892-0123

Date: _____ Parry L. I.

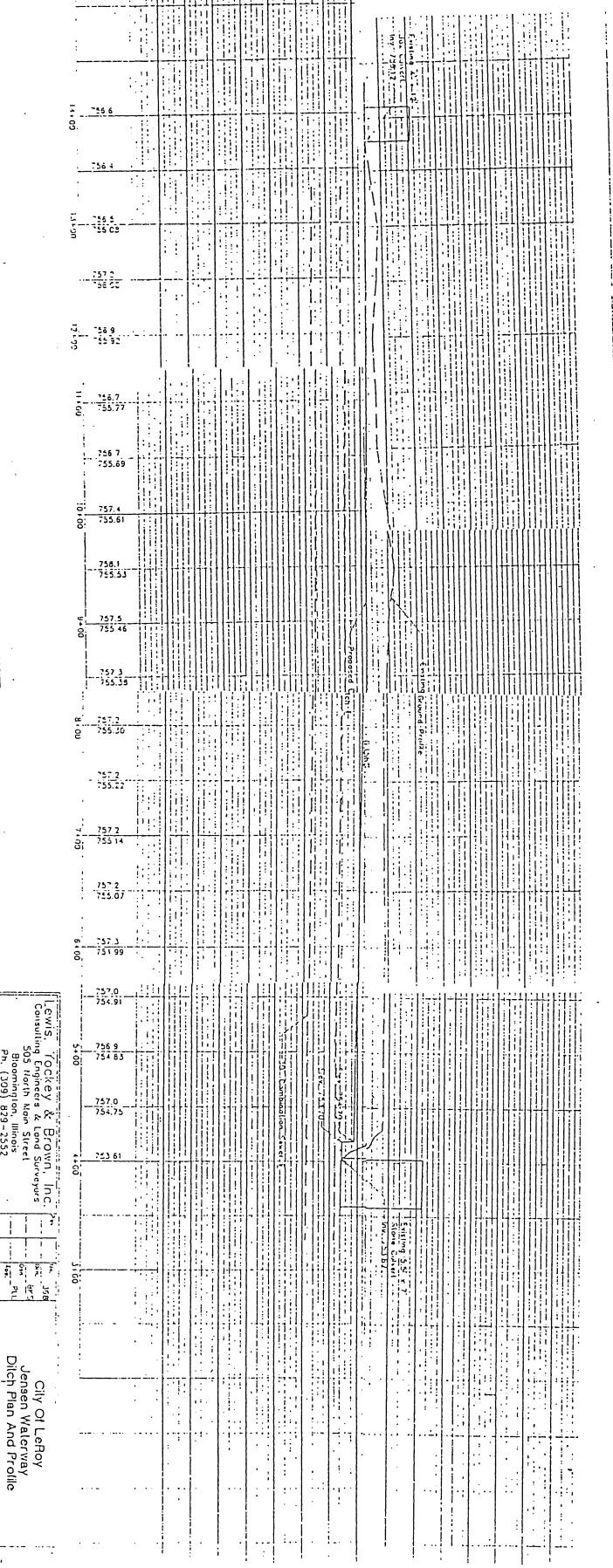
Lewis, Yockey & Brown, Inc. Consulting Engineers & Land Surveyors 5 505 North Main Street Bloomington, Illinois Ph. (309) 829-2552	Rev.	BC	368
		Dm.	BKS
		Dwn.	PLL
		App.	

Scale 1"=50'



Section A-A'

Section B-B'

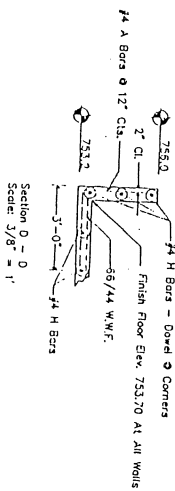
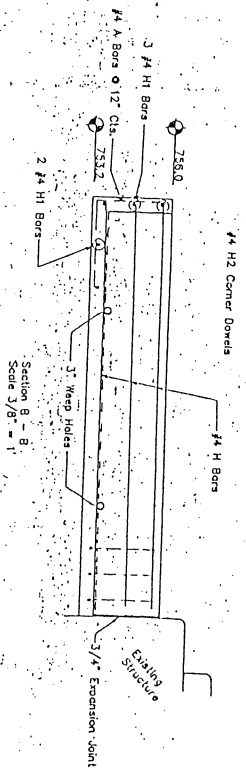
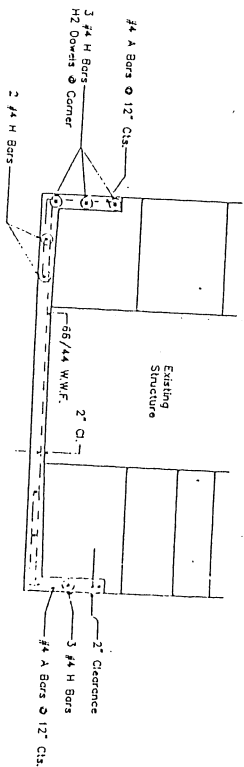
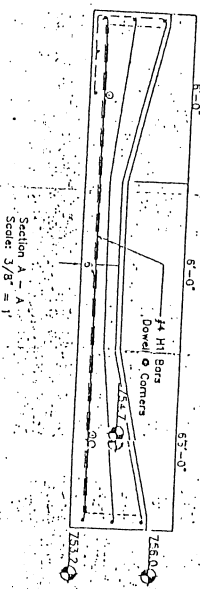
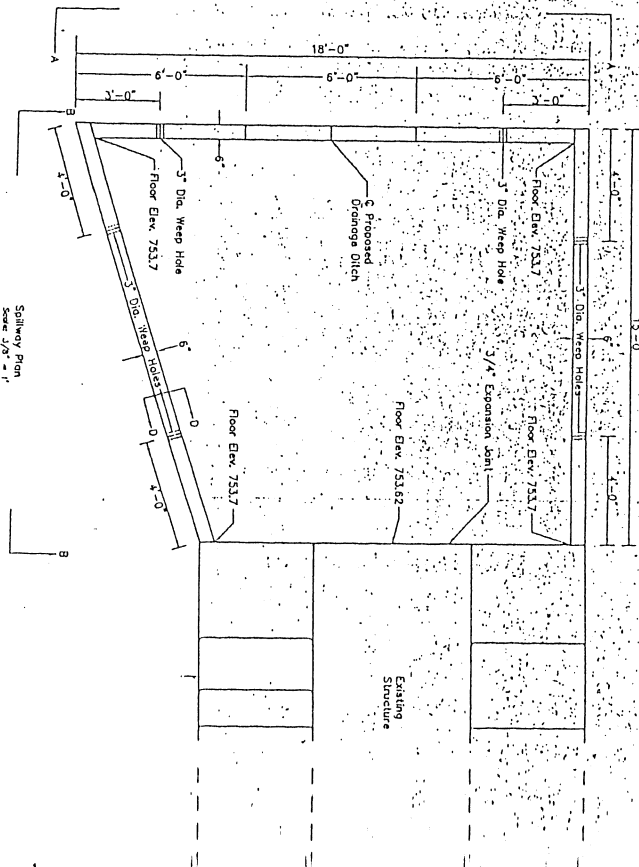


Lewis, Gockley & Brown, Inc.
 Consulting Engineers & Civil Surveyors
 505
 Bloomington, Illinois
 Ph. (309) 839-2552

City of LeRoy
 Jensen Valerius
 Ditch Plan And Profile

Bar	No.	Size	Length
H	50	#4	3'-0"
H	10	#4	17'-6"
H1	5	#4	17'-6"
H2	5	#4	4'-0"
Reinforcement Bars: Lbs. 350			

Bill Of Material



CERTIFICATE

I, Juanita Dagley, certify that I am the duly elected and acting municipal clerk of the City of LeRoy, of McLean County, Illinois.

I further certify that on March 18, 1996, the Corporate Authorities of such municipality passed and approved Ordinance No. 655, entitled:

AN ORDINANCE APPROVING AN AGREEMENT TO BE
ENTERED INTO WITH CONSOLIDATED RAIL CORPORATION
PROVIDING FOR PIPELINE OCCUPATION,

which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. 655, including the Ordinance and a cover sheet thereof, was prepared, and a copy of such Ordinance was posted at the municipal building, commencing on March 18, 1996, and continuing for at least ten days thereafter. Copies of such Ordinance were also available for public inspection upon request in the office of the municipal clerk.

Dated at LeRoy, Illinois, this 18th day of March, 1996.

(SEAL)

Juanita Dagley
Municipal Clerk

STATE OF ILLINOIS)
) SS:
COUNTY OF McLEAN)

I, Juanita Dagley, do hereby certify that I am the duly qualified and acting City Clerk of the City of LeRoy , McLean County, Illinois, and as such City Clerk that I am the keeper of the records and files of the Mayor and the City Council of said City.

I do further certify that the foregoing is a true, correct and complete copy of an ordinance entitled:

AN ORDINANCE APPROVING AN AGREEMENT TO BE
ENTERED INTO WITH CONSOLIDATED RAIL CORPORATION
PROVIDING FOR PIPELINE OCCUPATION .

I do further certify said ordinance was adopted by the City Council of the City of LeRoy at a regular meeting on the 18th day of March , 1996, and prior to the making of this certificate the said ordinance was spread at length upon the permanent records of said City where it now appears and remains as a faithful record of said ordinance in the record books.

Dated this 18th day of March , 1996.

X Juanita Dagley
City Clerk

(SEAL)

**CONSOLIDATED RAIL CORPORATION
AGREEMENT FOR PIPELINE OCCUPATION**

THIS AGREEMENT, made this 16th day of January, 1996 between **CONSOLIDATED RAIL CORPORATION**, a Pennsylvania Corporation, ("Conrail") and **CITY OF LEROY**, a political subdivision of the State of Illinois ("Licensee").

WITNESSETH:

WHEREAS, Licensee has requested occupation of Conrail's property as set forth in this Agreement; and

WHEREAS, the parties have reached accord concerning the terms and conditions for Licensee's occupation of Conrail's property and desire to reduce them to writing.

NOW, THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

1. FACILITIES

(a) Conrail insofar as it has the legal right and its present title permits, and in consideration of the covenants and conditions hereinafter stated on the part of Licensee to be kept and performed, hereby permits Licensee to construct, maintain, repair, alter, renew, relocate and ultimately remove a concrete spillway along the roadway and track of the Pekin Secondary Track of Conrail, Line Code 60-8561, Mile Post 63.99±, located at a point in the City of LeRoy, County of McLean, State of Illinois, in accordance with construction plan Sheet 1, 2 and 3 of 7, submitted by Licensee to and approved by the Chief Engineer - Construction of Conrail ("Construction Plan"), attached hereto and made a part of this Agreement; also in accordance with current issues of Conrail's Specifications CE-4 and/or CE 8 (all and any part thereof being hereafter referred to as the "Facilities").

(b) This Agreement shall not be deemed or construed as transferring to Licensee any interest in the land of Conrail or any right in the nature of an interest in land, irrespective of any expenditure by Licensee for the Facilities.

2. PAYMENT

Licensee shall pay to Conrail upon the execution hereof, the sum of Three Thousand Five Hundred Sixty Dollars (\$3,560.00) as reimbursement for the rights granted in this Agreement.

3. CONSTRUCTION

(a) Licensee may not enter upon Conrail's property until the method of installation and all related matters have been approved by the Chief Engineer - Construction of Conrail or his duly designated representative.

(b) The Facilities shall be located, constructed and maintained in exact accordance with said Construction Plans and for the purpose as outlined in Section 1(a) hereof. No departure shall be made at any time therefrom except upon permission in writing granted by the Chief Engineer - Construction of Conrail, or his designee, provided, however, that if any commission or other regulatory body duly constituted and appointed in compliance with the laws of the State in which the crossing or occupancy herein provided is situate, and having jurisdiction in the premises, has by ruling or other general order determined and fixed the manner and means of construction, maintenance, repair, alteration, renewal, relocation or removal thereof, then said ruling or general order shall prevail for the crossing or occupancy herein mentioned.

(c) The work of constructing, maintaining, repairing, altering, renewing, relocating or removing the said Facilities shall be done under such general conditions as will be satisfactory to and approved by the Chief Engineer - Construction of Conrail, or his designee, and as will not interfere with the proper and safe use, operation and enjoyment of the property of Conrail. Licensee, at its own cost and expense, shall, when performing any work in connection with the Facilities, furnish any necessary inspectors, flagmen or watchmen to see that men, equipment and materials are kept a safe distance away from the tracks of Conrail.

(d) The supervision over the location of the construction work and inspection of the Facilities and the approval of the material used in construction, maintenance, repair, alteration, renewal, relocation and removal of the Facilities covered by this Agreement shall be within the jurisdictional rights of Conrail.

(e) The right of supervision over the location of the construction work and inspection of the Facilities from time to time thereafter by Conrail, shall extend for an appropriate distance on each side of the property of Conrail as the method of construction and materials used may have an important bearing upon the strength and stability of the Facilities over, under, upon or in the property of Conrail.

(f) In addition to, but not in limitation of any of the foregoing provisions, if at any time Conrail should deem inspectors, flagmen or watchmen desirable or necessary to protect its operations or property, or its employees, patrons or licensees during the work of construction, maintenance, repair, alteration, renewal, relocation or removal of the Facilities, Conrail shall have the right to place such inspectors, flagmen or watchmen at the sole risk, cost and expense of Licensee, which covenants and agrees to bear the full cost and expense thereof and to promptly reimburse Conrail upon demand. The furnishing or failure to furnish inspectors, flagmen or watchmen by Conrail, however, shall not release Licensee from any and all other liabilities assumed by Licensee under the terms of this Agreement.

(g) In the event the Facilities consist of an underground occupation, Licensee will be responsible for any settlement caused to the roadbed, right of way and/or tracks, Facilities and appurtenances of Conrail arising from or as a result of the installation of the said FACILITIES for a period of one (1) year subsequent to the date of completion of the installation, and Licensee agrees to pay to Conrail on demand the full cost and expense therefor.

(h) In the event the Facilities consist of electrical power or communication wires and/or appurtenances, Licensee shall at all times be obligated promptly to remedy any inductive interference growing out of or resulting from the presence of its Facilities; and if Licensee should fail so to do, then Conrail may do so, and Licensee agrees to pay to Conrail on demand the full cost and expense therefor.

4. MAINTENANCE

(a) Licensee shall at all times be obligated to promptly maintain, repair and renew said Facilities; and shall, upon notice in writing from Conrail and requiring it so to do, promptly make such repairs and renewals thereto as may be required by Conrail; or Conrail, for the purpose of protecting and safeguarding its property, traffic, patrons or employees from damage or injury, may with or without notice to Licensee at any time make such repairs and renewals thereto and furnish such material therefor as it deems adequate and necessary, all at the sole cost and expense of Licensee, and thereafter, bill Licensee in accordance with the terms of Section 6 hereof.

(b) If Licensee desires or is required, as herein provided, to revise, renew, add to or alter in any manner whatsoever the Facilities, Licensee shall submit plans to Conrail and obtain the written approval of the Chief Engineer - Construction of Conrail thereto before any work or alteration of the Facilities is performed and the terms and conditions of this Agreement with respect to the original construction shall apply thereto. In that event, Conrail reserves the right to assess additional charges.

(c) In the event of an emergency, Licensee will take immediate steps to perform any necessary repairs to the Facilities, and in the event Licensee fails so to do, Conrail will perform said necessary repairs at the sole cost and expense of Licensee, and thereafter, bill Licensee in accordance with the terms of Section 6 hereof.

5. MAINTENANCE OF CONRAIL RIGHT-OF-WAY

Licensee shall, at its sole cost and expense, upon request in writing of Conrail, promptly change the location of the Facilities covered by this Agreement, where located over, upon or in the property of Conrail, to another location, to permit and accommodate changes of grade or alignment and improvement in or additions to land now or hereafter owned or used by Conrail to the extent that said construction shall at all times comply with the terms and conditions of this Agreement with respect to the original construction; or in the event of the lease, sale or disposal of the premises or any part thereof encumbered by this Agreement, then Licensee shall make such adjustments or relocations in its Facilities as are over, upon or in the property of Conrail as may be required by said Conrail or its grantee; and if Licensee shall fail or refuse to comply therewith, then the duly authorized agents of Conrail may make such repairs or adjustments or changes in location and provide necessary material therefor at the sole cost and expense of Licensee, and thereafter, bill Licensee in accordance with the terms of Section 6 hereof.

6. BILLING

(a) All cost and expenses in connection with the construction, maintenance, repair, alteration, renewal, relocation and removal of the Facilities shall be borne by Licensee, and in the event of work being performed or material furnished by Conrail under the stipulated right to perform such work of construction, maintenance, repair, alteration, renewal, relocation or removal under any section hereof, Licensee agrees to pay to Conrail the actual cost of material plus the current applicable overhead percentages for storage, handling, transportation, purchasing and other related material management expenses and the actual cost of labor plus the current applicable overhead percentages as developed and published by the accounting department of Conrail for fringe benefits, payroll taxes, administration, supervision, use of tools, machinery and other equipment, supplies, employers liability insurance, public liability insurance, and other insurance, taxes and all other indirect expenses. It is to be understood that the aforementioned material and labor overhead charges are to be applied at the rates which are effective at the time of the performance of any work by employees of Conrail on the said Facilities. Licensee agrees to pay such bills within thirty (30) days of the presentation thereof by Conrail.

(b) Automobile mileage charges incurred by aforementioned Conrail inspectors, flagmen or watchmen in connection with the installation, maintenance, etc., of the Facilities will be based on allowances approved by the United States Government in effect at the time the expenses are incurred.

7. TAXES

As part of the consideration of this Agreement, Licensee covenants and agrees that no assessments, taxes or charges of any kind shall be made against Conrail or its property by reason of the construction of the Facilities, and Licensee further covenants and agrees to pay to Conrail promptly upon bills rendered therefor the full amount of any assessments, taxes or charges of any kind which may be levied, charged, assessed or imposed against Conrail or its property by reason of the construction and maintenance of the Facilities.

8. LIABILITY

(a) It is understood between the parties hereto that the operations of Conrail at or near the Facilities involve some risk, and Licensee as part of the consideration for this Agreement hereby releases and waives any right to ask for or demand damages for or on account of loss of or injury to the Facilities (and contents thereof) of Licensee that are over, under, upon or in the property of Conrail including the loss of or interference with service or use thereof and whether attributable to the fault, failure or negligence of Conrail or otherwise.

(b) Licensee also covenants and agrees to and shall at all times indemnify, protect and save harmless Conrail from and against all cost or expense resulting from any and all losses, damages, detriments, suits, claims, demands, costs and charges which Conrail may directly or indirectly suffer, sustain or be subjected to by reason or on account of the construction, placement, attachment, presence, use, maintenance, repair, alteration, renewal, relocation or removal of the Facilities in, on, about or from the premises of Conrail whether such losses and damages be suffered or sustained by Conrail directly or by its employees, patrons or licensees, or be suffered or sustained by other persons or

corporations, including Licensee, its employees and agents who may seek to hold Conrail liable therefor, and whether attributable to the fault, failure or negligence of Conrail or otherwise, except when proved by Licensee to be due directly to the sole negligence of Conrail.

(c) If a claim or action is brought against either party and for which the other party may be responsible hereunder in whole or in part, such other party shall be notified and permitted to participate in the handling or defense of such matter.

9. INSURANCE

(a) In addition to any other forms of insurance or bonds required under the terms of the contract and specifications, Contractor will be required to carry insurance of the following kinds and amounts:

(i) Public Liability Insurance Contractor shall furnish evidence that, with respect to the operations it performs, it carries Public Liability Insurance, including contractual liability insurance with a limit of not less than \$5,000,000 single limit, bodily injury and/or property damage combined, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence.

(ii) Automobile Public Liability Insurance When any motor vehicles are used in connection with the work to be performed, Contractor shall furnish evidence that it carries Automobile Public Liability Insurance and Property Damage Liability Insurance with a limit of not less than \$5,000,000 covering bodily injury and/or property damage for each occurrence.

(iii) Workers' Compensation in Statutory Amounts Contractor shall furnish evidence that it carries Employers' Liability and Occupational Disease Insurance with limits of \$1,000,000 each accident, \$1,000,000 policy limit and \$1,000,000 each employee.

(iv) Railroad's Protective Public Liability Insurance In addition to Items (i) and (ii) shown above, Contractor shall furnish evidence that, with respect to the operations it or any of its subcontractors perform, it has provided Railroad Protective Public Liability Insurance (ISO-RIMA form) in the name of Consolidated Rail Corporation providing for a limit of not less than \$2,000,000 single limit, bodily injury and/or property damage combined, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence. Such insurance shall be furnished with an aggregate of not less than \$6,000,000 for all damages as a result of more than one occurrence.

(b) The insurance hereinbefore specified shall be carried until all work required to be performed under the terms of the contract is satisfactorily completed and formally accepted. Failure to carry or keep such insurance in force until all work is satisfactorily completed shall constitute a breach of contract. The aforesaid insurance protection shall be enforceable by any legitimate claimant after the termination or cancellation of the project whether by expiration of time, by operation of law or otherwise, so long as the basis of the claim against the insurance company occurred during the periods

of time for which such insurance was obtained. Contractor shall furnish to Conrail at the address listed below, certificates evidencing the insurance outlined in sections (i), (ii) & (iii) above, and shall furnish the original ISO-RIMA policy for the Railroad Protective Public Liability Insurance referred to in section iv. Conrail must be named as additional insured under insurances outlined in sections (i) & (ii) above. Each insurance policy shall be endorsed to provide that the insurance company shall notify the following via registered or certified mail at least thirty (30) days in advance of termination of or any change in the policy:

Consolidated Rail Corporation
Insurance Department
2001 Market Street - 25A
PO Box 41425
Philadelphia, PA 19101-1425
Tel.: (215) 209-5377

10. EFFECTIVE DATE AND TERMINATION

(a) This Agreement shall become as of the day and year first above written, and shall be terminable upon mutual consent of the parties hereto, provided that this Agreement may be terminated by Conrail upon the violation of any of the terms, covenants and conditions of this Agreement on the part of Licensee.

(b) Upon termination of this Agreement or upon the removal or abandonment of the Facilities covered hereby, all the rights, title and interest of Licensee hereunder shall cease and determine, and this instrument shall thereupon become and be null and void, without any liability on the part of either party to the other party except only as to any liability accrued prior thereto, and Licensee shall remove its Facilities and appurtenances from Conrail property, and right of way and all property of Conrail shall be restored in good condition and to the satisfaction of Conrail. If Licensee fails or refuses to remove its Facilities and appurtenances under the foregoing conditions, Conrail shall be privileged to do so at the cost and expense of Licensee, and thereafter, bill Licensee in accordance with the terms of Section 6 hereof, and Conrail shall not be liable in any manner to Licensee for said removal.

(c) Anything herein contained to the contrary notwithstanding, there shall be no obligation on the part of Conrail to continue operation of the line of Conrail in the vicinity of the Facilities to prevent the termination of Licensee's occupation rights at any crossing or occupation covered hereunder on account of an abandonment of line or service by Conrail; nor shall there be any obligation upon Conrail to perfect its title in order to continue in existence the said occupation rights after such abandonment of line or service.

11. PERMITS AND APPROVALS

(a) Licensee, at its sole risk, cost and expense, shall obtain all permits and approvals which may be necessary or appropriate and Licensee shall comply with all federal, state and local laws, and assume all cost and expense and responsibility in connection therewith, without any liability whatsoever on the part of Conrail. Licensee hereby agrees to indemnify, defend and hold harmless Conrail therefrom.

(b) This Agreement is authorized by Licensee to be entered into by Resolution / Ordinance Number _____, adopted February 5, 1996 by _____ the City Council of the City of LeRoy _____, a certified copy of which is attached hereto and made a part hereof.

12. SUCCESSORS

(a) This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, successors and assigns, subject, however, to the terms of Section 12(b) hereof.

(b) The rights hereby afforded shall be the personal privilege of Licensee, and no assignment or transfer thereof by operation of law or voluntary act of Licensee shall be made, or other use of the Facilities be permitted than as herein provided, without the prior consent and agreement in writing of Conrail being first had and obtained.

13. WAIVER

The waiver by Conrail of any breach of any term, covenant, obligation or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or a waiver of any other term, covenant, obligation or condition herein contained.

14. NOTICES

(a) Every notice, approval, consent, or other communication desired or required under this Agreement shall be effective only if the same shall be in writing and sent postage prepaid by overnight mail or United States registered or certified mail (or a similar mail service available at the time), directed to the other party at its address as follows (or such other address as either party may designate by notice given from time to time in accordance with this Section):

If to Conrail:

Consolidated Rail Corporation
P.O. Box 41412
Two Commerce Square 12B
Philadelphia, PA 19101-1412
Attn: Chief Engineer - Construction

If to Licensee:

City of LeRoy
111 East Center Street
LeRoy, IL 61752

Attn: Mr. Jerry Davis, Mayor

15. ENTIRE AGREEMENT

The entire agreement between Conrail and Licensee is set forth in this Agreement and there are no understandings, agreements, or representations of any kind between the parties, verbal or otherwise, other than as set forth in this Agreement. No change or modification of any of the terms, obligations or provisions hereof shall be valid unless in writing and signed by the parties hereto.

16. PARTIAL INVALIDITY

If any term, obligation or condition of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable to any extent by a final judgment or award which shall not be subject to change by appeal, then the remainder of this Agreement or the application of such term or condition to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term, covenant and condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law. Furthermore, each agreement, obligation and other provision of this Agreement is and shall be deemed and construed as a separate and independent obligation of the party bound by, undertaking or making the same, and not dependent on any other provision of this Agreement unless expressly so provided.

17. THIRD PARTY BENEFICIARY

Nothing contained in this Agreement shall be construed as to confer upon any other party the rights of a third party beneficiary.

18. GOVERNING LAW

This Agreement and the rights and obligations of the parties hereunder shall be construed in accordance with the laws of the state wherein the Facilities are located.

19. EXHIBITS AND ADDENDA

Any exhibit or addendum to this Agreement shall be deemed a part hereof.

20. HEADINGS

Section headings are inserted for convenience only and shall not affect the construction or interpretation of this Agreement.

21. TERMINOLOGY

As used in this Agreement, the terms "Conrail," "Licensee" and "party" shall include the respective subsidiaries and affiliates of Conrail and Licensee and the directors, officers, agents and employees of Conrail and Licensee and such subsidiaries and affiliates.

IN WITNESS WHEREOF, the said parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

WITNESS:

CONSOLIDATED RAIL CORPORATION

BY: _____

J. D. Cossel
Chief Engineer - Construction

Date: _____

WITNESS:

CITY OF LEROY

Jerry C. Davis

BY: _____

Title: Mayor of the City of LeRoy

Date: _____

ATTEST:

(SEAL)

Juanita Dagley, Clerk of
the City of LeRoy, Illinois