

CITY OF LE ROY  
COUNTY OF MC LEAN  
STATE OF ILLINOIS

ORDINANCE NO. 850

AN ORDINANCE APPROVING A CONTRACT WITH NORFOLK SOUTHERN RAILWAY  
TO PERMIT INSTALLATION OF A STORM SEWER BENEATH THE NORFOLK  
SOUTHERN RAILROAD TRACKS AT THE INTERSECTION OF BUCK STREET AND  
CENTER STREET IN THE CITY OF LE ROY,  
MC LEAN COUNTY, ILLINOIS

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ADOPTED BY THE CITY COUNCIL OF THE CITY OF LE ROY  
THIS 19th DAY OF July, 1999

PRESENTED: July 19, 1999

PASSED: July 19, 1999

APPROVED: July 19, 1999

RECORDED: July 19, 1999

PUBLISHED: July 19, 1999

In Pamphlet Form


Voting "Aye" 4

Voting "Nay" 0

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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)

  
City Clerk of the City of LeRoy,  
McLean County, Illinois

Dated: July 19, 1999.

ORDINANCE NO. 850

AN ORDINANCE APPROVING A CONTRACT WITH NORFOLK SOUTHERN RAILWAY TO PERMIT INSTALLATION OF A STORM SEWER BENEATH THE NORFOLK SOUTHERN RAILROAD TRACKS AT THE INTERSECTION OF BUCK STREET AND CENTER STREET IN THE CITY OF LE ROY, MC LEAN COUNTY, ILLINOIS

WHEREAS, the Mayor and City Council of the City of LeRoy, McLean County, Illinois, an Illinois municipal corporation, had previously determined that it would be in the best interests of the City of LeRoy and its residents that a contract required by Norfolk Southern Railway be entered into in order to permit installation of a sewer under said company's railroad tracks in the City of LeRoy; and

WHEREAS, the Mayor and City Council of the City of LeRoy have determined based on a competitive bidding procedure that Colclasure, Inc., is the lowest responsible bidder and capable of doing the work as set forth in the specifications for the bid letting,

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

Section 1. The agreement, a copy of which is attached hereto as Exhibit "A" and 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 Dave McClelland, seconded by Steve Dean, by roll call vote on the 19th day of July, 1999, as follows:

Aldermen elected 6

Aldermen present 4

VOTING YAYE

Dick Oliver, Steve Dean, Dave McClelland, Dawn Thompson.  
(full names)

VOTING NAY:

None

(full names)

ABSENT:

Ryan Miles-absent, Ron Litherland-absent.

(full names)

ABSTAIN:

None

(full names)

OTHER:

(full names)

and deposited and filed in the office of the City Clerk in said municipality on the 19th day of July, 1999.

X 

Sue Marcum, City Clerk of the City of LeRoy, McLean County, Illinois

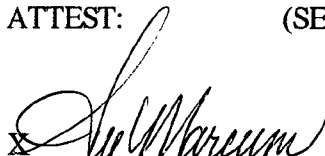
APPROVED BY the Mayor of the City of LeRoy, Illinois, this 19th day of

July, 1999.

X 

Robert Rice, Mayor of the City of LeRoy, McLean County, Illinois

ATTEST: (SEAL)

X 

Sue Marcum, City Clerk of the City of LeRoy, McLean County, Illinois

THIS AGREEMENT, made and entered into by and between

**NORFOLK SOUTHERN RAILWAY COMPANY**, a Virginia corporation, hereinafter styled "Railway"; and

**CITY OF LEROY**, an Illinois government entity, hereinafter styled "Licensee":

WITNESSETH

WHEREAS, Licensee proposes to install, maintain, operate and remove a 24-inch storm sewer pipeline in a 30-inch casing pipe, under and across the right of way or property and any tracks of Railway, at Milepost UM-65 plus 1,580 feet, more or less, located wholly within the confines of the intersection of Center Street and Buck Street, at or near **LEROY, McLean County, Illinois**, to be located with any ancillary appurtenances as shown on print of Drawing marked Exhibit A, dated June 16, 1999, attached hereto and made a part hereof (hereinafter called "Facilities");

NOW, THEREFORE, for and in consideration of the premises, payment of a processing fee of FIVE HUNDRED AND NO/100 DOLLARS (\$500.00), payable in advance, and of the covenants hereinafter made, Railway hereby permits and grants Licensee, insofar as Railway has the right to do, without warranty and subject to all encumbrances, covenants and easements to which Railway's title may be subject, the right to use and to occupy so much of Railway's property as may be necessary for the Facilities, upon the following terms and conditions:

1. Licensee will construct and maintain the Facilities, at its expense, in such a manner as will not interfere with Railway's use of its right of way or endanger persons or property of Railway, and in accordance with (a) plans and specifications (if any) shown on said print(s) and any other specifications prescribed by Railway, (b) applicable governmental regulations or laws, and (c) applicable specifications adopted by the American Railway Engineering Association when not in conflict with plans, specifications or regulations mentioned in (a) and (b) above.

2. Licensee hereby agrees to indemnify and save harmless Railway, its officers, agents and employees, from and against any and all liability, claims, losses, damages, expenses (including attorneys' fees) or costs for personal injuries (including death) and/or property damage to whomsoever or whatsoever occurring which arises in any manner from the installation, maintenance, operation, presence or removal or the failure to properly install, maintain, operate or remove the Facilities, unless such losses, damages or injuries shall be caused solely by the negligence of Railway.

3. Licensee assumes all responsibility for any environmental obligations imposed under applicable laws, regulations or ordinances relating to the installation of the Facilities and/or to any contamination of any property, water, air or groundwater arising or resulting from Licensee's permitted operations or uses of Railway's property pursuant to this Agreement. In addition, Licensee shall obtain any necessary permits to install the Facilities. Licensee agrees to indemnify and hold harmless Railway from and against any and all liability, fines, penalties, claims, demands, costs (including attorneys' fees), losses or lawsuits brought by any person, company or governmental entity relating to contamination of any property, water, air or groundwater due to the use or presence of the Facilities. It is agreed that this indemnity provision

extends to any cleanup costs related to Licensee's activities upon Railway's property and to any costs related to cleanup of the Facilities or to other property caused by the use of the Facilities.

4. (a) Prior to commencement of installation or maintenance of the Facilities or entry on Railway's property, Licensee or its contractor shall procure and maintain during the course of said installation or maintenance, a policy of general liability insurance, containing products and completed operations and contractual liability coverage, with a combined single limit of not less than \$1,000,000 for each occurrence. Licensee or its contractor also shall procure and maintain during the course of said installation, maintenance or entry on Railway's property a Railroad Protective Liability Insurance Policy with Railway as the named insured and having a combined single limit of \$2,000,000, each occurrence, and \$6,000,000 in the aggregate. The insurance required herein shall be of such form and content as may be acceptable to Railway. Evidence of such insurance (a certificate of insurance for the general liability insurance policy and the original policy of Railroad Protective Liability Insurance) must be furnished to and approved by Railway's Risk Manager, Norfolk Southern Corporation, Three Commercial Place, Norfolk, Virginia 23510-2191, prior to commencement of installation or maintenance of the Facilities or entry on Railway's property.

(b) The insurance required herein shall not limit the liability assumed by the Licensee under this Agreement.

(c) In lieu of the insurance requirements above, Licensee may provide to Railway a certificate of self-insurance in such amounts and in such form as are satisfactory to Railway.

5. The details of the Facilities to be installed and maintained shall be at the option of Licensee, and subject to the approval of the chief engineering officer of Railway. In case of failure of Licensee to do the work as herein specified, Railway reserves the right to remove the Facilities from Railway's premises at the expense of Licensee, and to terminate this Agreement upon ten (10) days' written notice.

6. If Railway resumes use of its right of way for rail operations or makes any changes, alterations in or additions to the line, grade, structures, roadbed, installations or works of Railway at or near the Facilities, Licensee shall, at its own cost and expense, upon thirty (30) days' notice in writing from Railway, make such changes in the location and character of the Facilities as, in the opinion of the chief engineering officer of Railway, shall be necessary or appropriate to accommodate any construction, improvements, alterations, changes or additions of Railway.

7. If Railway resumes use of its right of way for rail operations at or near the Facilities, Licensee will notify Railway prior to the installation and placing in service of cathodic protection in order that tests may be conducted on Railway's signal, communications and other electronic systems for possible interference. If the Facilities cause degradation of the signal, communications or other electronic facilities of Railway, Licensee, at its expense, will relocate the cathodic protection and/or modify the Facilities to the satisfaction of Railway so as to eliminate such degradation. Such modifications may include, without limiting the generality of the foregoing, providing additional shielding, reactances or other corrective measures deemed necessary by Railway. This provision applies to the existing signal, communications and electronic equipment of Railway and to any signal, communications or electronic equipment which Railway may install in the future.

8. If Licensee fails to take any corrective measures requested by Railway in a timely manner or if an emergency situation is presented which, in the Railway's judgment, requires immediate repairs to the facilities, Railway, at Licensee's expense, may undertake such corrective measures or repairs as it deems necessary or desirable.

9. Notwithstanding any other provision of this Agreement, it is understood, agreed and covenanted that Licensee accepts this Agreement as a mere license and assumes all risk of damage to its property by reason of its occupation of the premises herein described caused by any defects therein or business conducted thereon, whether caused by the negligence of Railway, its officers, agents or employees, or otherwise, and Licensee hereby indemnifies Railway, its officers, agents, and employees, from and against any such liability for said damage.

10. Railway shall furnish, at the cost of Licensee, labor and materials to support its tracks and to protect its traffic, if applicable, during the installation, maintenance, repair, renewal or removal of the Facilities.

11. It is further agreed between the parties that the premises shall be used by Licensee only for the Facilities and for no other purpose without the written permission of the chief engineering officer of Railway.

12. It is understood that the Facilities are to be installed entirely within the right of way of a public road located within the limits of the right of way of Railway, and that as a result of such location, Railway hereby waives, except as hereinafter provided, any obligation on the part of Licensee to pay to Railway the standard rental levied by Railway for such installations; provided, however, that in the event said public road is hereafter abandoned and the Facilities remain within the limits of the right of way of Railway after such abandonment, Licensee will pay to Railway the then current rental for such installations from and after the date of such abandonment.

13. Licensee shall give Railway seventy-two (72) hours' advance notice (or less in case of emergencies) of any work to be performed on the premises of Railway. Licensee agrees to pay any costs incurred by Railway for the purpose of protection and inspection considered necessary by Railway during installation, maintenance, operation, modification, replacement and/or removal of the Facilities.

14. Licensee shall not assign this Agreement without the written consent of Railway.

15. The word "Railway" as used herein shall include any other company whose property at the aforesaid location may be leased or operated by Railway. Said term also shall include Railway's officers, agents and employees, and any parent company, subsidiary or affiliate of Railway and their officers, agents and employees.

16. This Agreement may be terminated by either party upon sixty (60) days' written notice to the other party. During said sixty day period, Licensee shall remove the Facilities from Railway's premises and restore said premises to a condition satisfactory to Railway's chief engineering officer. If Licensee fails to remove the Facilities within the aforesaid sixty day period, Railway may elect: (a) to become the owner of

the Facilities without any claim or consideration whatsoever therefor by or to Licensee, its successors or assigns, or (b) to remove the Facilities and all property of Licensee from the premises of Railway at the expense of Licensee. Licensee agrees to reimburse Railway for any and all costs of such removal. No termination of this Agreement shall affect any liability incurred by either party hereto prior to the effective date of such termination.

17. This Agreement shall take effect as of the 2<sup>nd</sup> day of July, 1999.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate, each part being an original, as of the 2<sup>nd</sup> day of July, 1999.

Witness:

NORFOLK SOUTHERN RAILWAY  
COMPANY

*taj*

Tracy A. Johnson  
As to Railway

By: Richard Brooks  
Title: Real Estate Manager

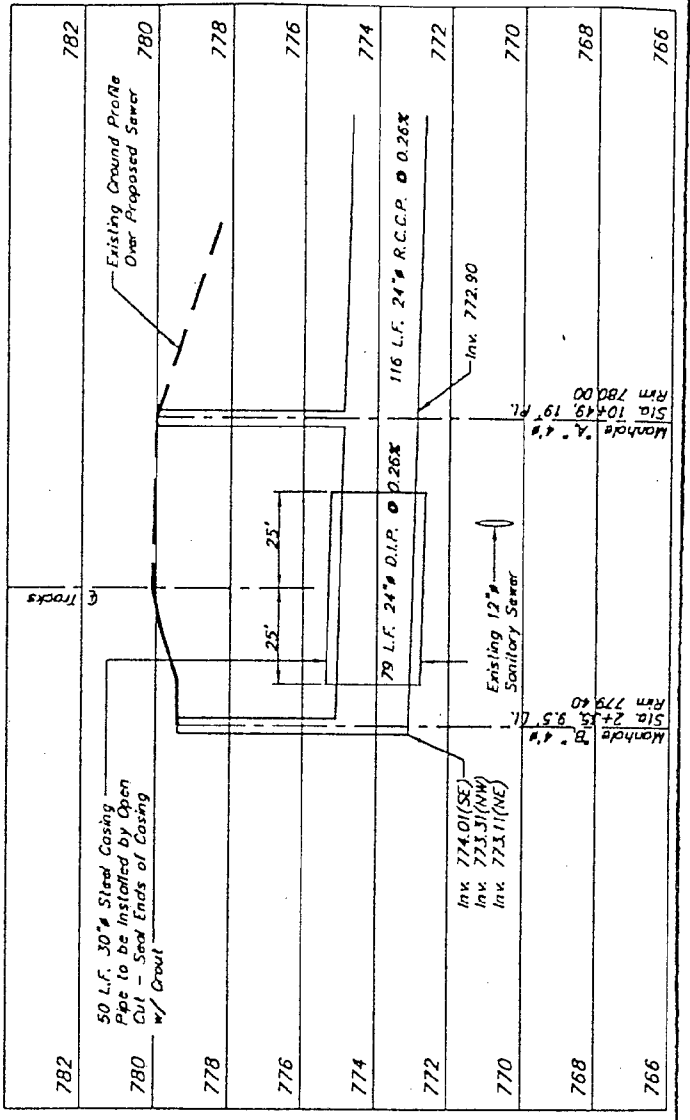
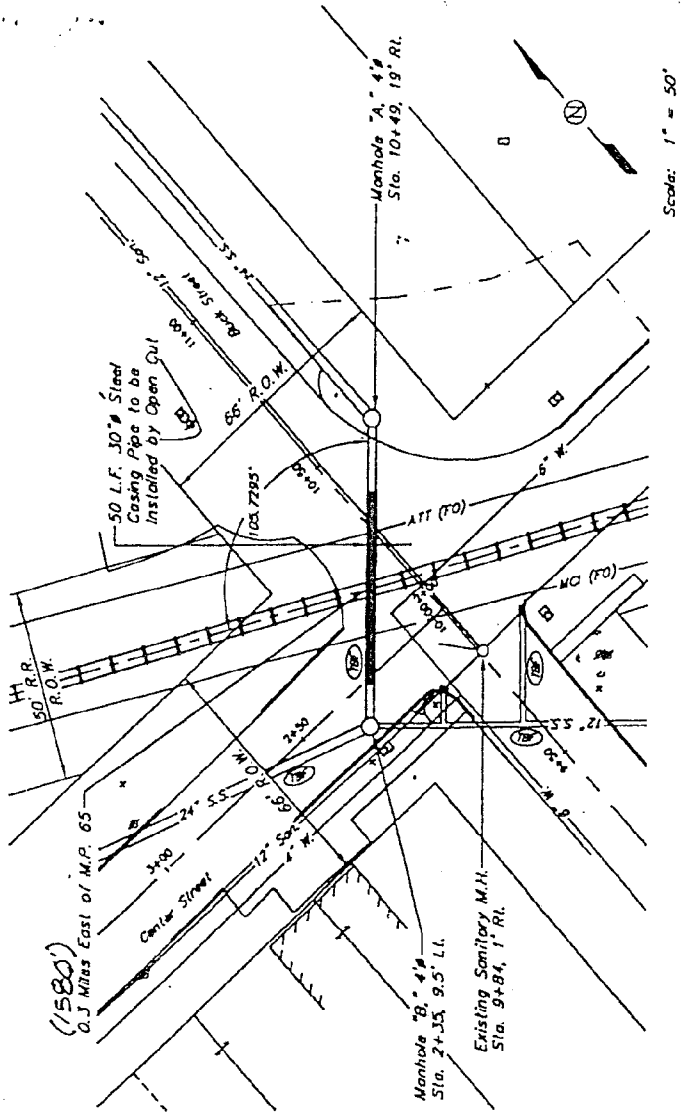
Witness:

CITY OF LEROY

Paul Marum, City Clerk  
As to Licensee

By: Robert Rice  
Title: Mayor

TAJ 06/17/99 1026795.wpd 20060v1 plxls.wpd



Contents to be handled  
 Outside diameter  
 Pipe material  
 Specifications and grade  
 Wall thickness  
 Actual working pressure  
 Type of joint  
 Coating  
 Method of installation  
 Vents: Number \_\_\_\_\_ Size \_\_\_\_\_ Hgt. above ground \_\_\_\_\_  
 Seal: Both ends \_\_\_\_\_ GROUT \_\_\_\_\_ One end \_\_\_\_\_  
 Bury: Base of rail to top of casing \_\_\_\_\_ 4 ft. 4 in.  
 Bury: (Not beneath tracks) \_\_\_\_\_ 3 ft. 11 in.  
 Bury: (Roadway ditches) \_\_\_\_\_ ft. \_\_\_\_\_ in.  
 Cathodic protection:  
 Type, size and spacing of insulators or supports.

Carrier Pipe	Casing Pipe
Storm	Storm
Water	Sewer
25.8"	31"
Duc. Iron	Steel
0.26%	0.26%
0.38"	0.5"
Push-On	Welded
Open Cut	Open Cut

Pipe Line and Crossing to be installed and maintained in accordance with latest approved AMERICAN RAILWAY ENGINEERING ASSOCIATION'S "Specifications for Pipelines for Conveying Flammable and Non-flammable Substances."

<b>NORFOLK SOUTHERN</b>	
NEW(CR) RHY. U-IL-20/L-36 OPERATING COMPANY 120-3-12647 OFFICE OF CHIEF ENGINEER DESIGN & CONSTRUCTION ATLANTA, GA.	
City of LeRoy, IL (1580) 0.3 miles East of milepost 65 June 16, 1999	
PX	EXHIBIT A



CERTIFICATE

I, Sue Marcum, 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 July 19, 1999, the Corporate Authorities of such municipality passed and approved Ordinance No. 850, entitled:

AN ORDINANCE APPROVING A CONTRACT WITH NORFOLK SOUTHERN RAILWAY TO PERMIT INSTALLATION OF A STORM SEWER BENEATH THE NORFOLK SOUTHERN RAILROAD TRACKS AT THE INTERSECTION OF BUCK STREET AND CENTER STREET IN THE CITY OF LE ROY, MC LEAN COUNTY, ILLINOIS,

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

The pamphlet form of Ordinance No. 850, including the Ordinance and a cover sheet thereof, was prepared, and a copy of such Ordinance was posted at the municipal building, commencing on July 19, 1999, 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 19th day of July, 1999.

(SEAL)

  
Municipal Clerk

STATE OF ILLINOIS        )  
                                  ) SS:  
COUNTY OF McLEAN        )

I, Sue Marcum, 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 A CONTRACT WITH NORFOLK SOUTHERN RAILWAY TO PERMIT INSTALLATION OF A STORM SEWER BENEATH THE NORFOLK SOUTHERN RAILROAD TRACKS AT THE INTERSECTION OF BUCK STREET AND CENTER STREET IN THE CITY OF LE ROY, MC LEAN COUNTY, ILLINOIS.

I do further certify said ordinance was adopted by the City Council of the City of LeRoy at a regular meeting on the 19th day of July , 1999, 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 19th day of July , 1999.

x Sue Marcum  
City Clerk

(SEAL)