



City of Chicago



O2014-2488

Office of the City Clerk
Document Tracking Sheet

Meeting Date:	4/2/2014
Sponsor(s):	Emanuel (Mayor)
Type:	Ordinance
Title:	Easement agreement with Belt Railway for new sewer main
Committee(s) Assignment:	Committee on Housing and Real Estate

HSG.



OFFICE OF THE MAYOR
CITY OF CHICAGO

RAHM EMANUEL
MAYOR

April 2, 2014

TO THE HONORABLE, THE CITY COUNCIL
OF THE CITY OF CHICAGO

Ladies and Gentlemen:

At the request of the Commissioner of Water Management, I transmit herewith an ordinance authorizing the execution of an easement agreement with Belt Railway.

Your favorable consideration of this ordinance will be appreciated.

Very truly yours,

A handwritten signature in cursive script that reads "Rahm Emanuel".

Mayor

ORDINANCE

WHEREAS, the City of Chicago ("City") is a home rule unit of government by virtue of the provisions of the Constitution of the State of Illinois of 1970 and, as such, may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, The Belt Railway Company of Chicago ("Railway") is an Illinois corporation, with a principal place of business located at 6900 S. Central Avenue, Bedford Park, Illinois 60636; and

WHEREAS, the City's Department of Water Management ("DWM") has proposed to install a new 60" sewer main (the "Sewer Main") offset two (2) feet east from the centerline of South Austin Avenue, from West 59th Street to West 63rd Street, which will convey storm water drainage to outlet to an existing 96" sewer at West 59th Street (the "Project"); and

WHEREAS, the Project also involves replacing the existing, outdated and undersized brick sewers in South Austin Avenue with a more hydraulically efficient reinforced concrete pipe; and

WHEREAS, the Railway operates two (2) rail crossing on South Austin Avenue between West 59th Street and West 60th Street, and there is currently no City right of way in the location of such crossings; and

WHEREAS, the City and the Railway have agreed to the City's installation of the Sewer Main under that portion of the Railway's right of way legally described on Exhibit A attached hereto ("Legal Description of Easement Parcel") and depicted on Exhibit B attached hereto ("Depiction of Easement Parcel"); and

WHEREAS, the City, through DWM, will own, operate, use, maintain, repair and replace the Sewer Main; and

WHEREAS, DWM, after due investigation and consideration, has determined that it is in the best interest of the City for the Railway to grant, and for the City to accept, an easement in the Easement Parcel for the purpose of constructing, owning, operating, using, maintaining, repairing and replacing the Sewer Main to be installed therein; now, therefore,

Be It Ordained by the City Council of the City of Chicago:

SECTION 1. The forgoing recitals are hereby incorporated herein and adopted as the findings of the City Council.

SECTION 2. The Commissioner of DWM (the "Commissioner") or a designee of the Commissioner is each hereby authorized to execute, subject to the approval of the Corporation Counsel as to form and legality, a non-exclusive sewer pipe line easement agreement substantially in the form attached hereto as Exhibit C and any other such documentation as may be necessary to effectuate the transaction described herein.

SECTION 3. If any provision of this ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such provision shall not affect any of the other provisions of this ordinance.

SECTION 4. All ordinances, resolutions, motions or orders in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION 5. This ordinance shall take effect immediately upon its passage and approval.

Exhibit A

Legal Description of Easement Parcel

(subject to final title commitment and survey)

THAT PART OF THE SOUTH 1/2 OF SECTION 17, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 1 IN MCCARRON'S SUBDIVISION IN SAID SECTION, SAID CORNER HAVING A LATITUDE OF 41 DEGREES 47 MINUTES 01 SECONDS NORTH, MORE OR LESS, AND A LONGITUDE OF 87 DEGREES 46 MINUTES 19 SECONDS WEST, MORE OR LESS, AND BEING ON THE WEST LINE OF SOUTH AUSTIN AVENUE AND THE SOUTH RIGHT OF WAY LINE OF THE BELT RAILWAY OF CHICAGO; THENCE NORTH 125 FEET, MORE OR LESS, TO A POINT ON THE NORTH RIGHT OF WAY OF SAID RAILWAY AND ON THE WEST LINE OF SAID AUSTIN AVENUE; THENCE EAST ALONG SAID NORTH RIGHT OF WAY LINE 66 FEET, MORE OR LESS, TO A POINT ON THE EAST LINE OF SAID AUSTIN AVENUE; THENCE SOUTH, ALONG SAID EAST LINE, 125 FEET, MORE OR LESS, TO SAID SOUTH RIGHT OF WAY LINE; THENCE WEST ALONG SAID SOUTH RIGHT OF WAY LINE, 66 FEET, MORE OR LESS, TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

CONTAINING 0.189 ACRES (8250 SQUARE FEET)

PROPERTY INDEX NUMBERS: [TO COME]

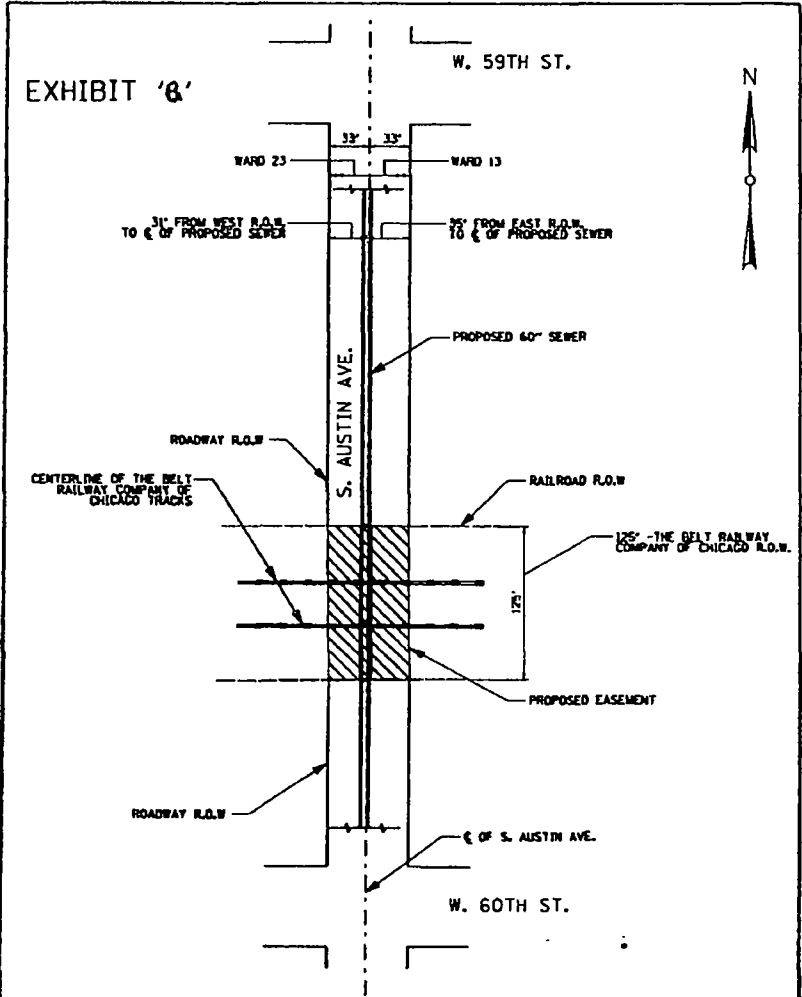
COMMON ADDRESS: [TO COME]

Exhibit B

Depiction of Easement Parcel

(attached)

EXHIBIT 'B'



DESIGN BY:	--	HNTB <small>CH2M HILL ONE S. WACKER DRIVE, SUITE 800 CHICAGO, IL 60606</small>	EASEMENT PM 6777 CHICAGO, IL		
DRAWN BY:	--		EXHIBIT 'A'		
CHECKED BY:	--		PROJECT NO: 6777	DATE: 10/18/13	SCALE: NTS
APPROVED BY:	--				
APPROVED BY:	--				

Exhibit C
Form of Easement Agreement
(attached)

SEWER PIPE LINE EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (the "Agreement") made and entered into this ___ day of _____, 2014, by and between **THE BELT RAILWAY COMPANY OF CHICAGO**, an Illinois corporation, hereinafter referred to as the ("Railway Company"); and the **CITY OF CHICAGO**, an Illinois municipality and home rule unit of local government, hereinafter referred to as the ("City"):

WITNESSETH:

THAT, WHEREAS, the City desires to construct, install, maintain, operate, and use a 60-inch, reinforced-concrete sewer pipe under the property and railroad tracks of the Railway Company at and along Austin Avenue in the City of Chicago.

WHEREAS, the Railway Company agrees to grant City such rights pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the sum of One Thousand Five Hundred Dollars (\$1,500.00) in hand paid by the City to the Railway Company, and of the Administrative Fees and Expenses, as set forth in Paragraph 16 herein and of the covenants and agreements hereinafter contained, the Railway Company hereby gives and grants the City, a perpetual non-exclusive easement, hereinafter called ("Easement") subject to the terms and conditions hereinafter set forth, to construct, install, reconstruct, operate, use, maintain, repair, renew and remove, a 60-inch, reinforced-concrete sewer pipeline, at the location described in **Exhibit A**, attached hereto and made a part hereof, hereinafter called ("Easement Property") for the sole purpose of a sewer pipeline under the property of the Railway Company pursuant to the specifications as set forth on

Exhibit B, attached hereto and made a part hereof, said sewer pipeline and appurtenances hereinafter referred to as (“Facilities”).

1. **SUBORDINATION.** This grant is subject and subordinate to the right of Railway Company, its successors and assigns, its grantees, lessees, and licensees, to construct, install, reconstruct, operate, use, maintain, repair, renew and remove on, beneath or above the Easement Property covered hereby, any structures, improvements or facilities of similar or different character as are now or in the future may be located on, beneath or above said Easement Property.

2. **APPROVAL.** The City has procured all necessary approvals and authority for the construction, installation, operation, use, maintenance, repair or removal of Facilities and in addition to the requirements of this Agreement, will construct, install, reconstruct, operate, use, maintain, repair, renew and remove Facilities in conformity with all requirements of public authority having jurisdiction.

3. **CONSTRUCTION.**

(a) Facilities shall be constructed, installed, reconstructed, operated, used, maintained, repaired, renewed, or removed by and at the expense of the City, in a manner satisfactory to the Railway Company and in compliance with guidelines of the American Railway Engineering and Maintenance Association.

(b) All material and workmanship pertaining to the construction, installation, reconstruction, operation, use, maintenance, repair, renewal and removal of Facilities

shall be subject to the inspection and approval of the Railway Company, which will not be unreasonably withheld.

(c) If, in the reasonable judgment of the Railway Company, it shall be necessary to provide protection or support (or both) for its railway operation, tracks, and property during the work or construction, installation, reconstruction, operation, use, maintenance, repair, renewal and removal of Facilities, the Railway Company shall have the right to furnish such protection or support (or both) and on being billed the City will pay the cost thereof as set forth in Paragraph 16 herein.

(d) The City shall at its expense take such measures as may be necessary and adequate in connection with Easement Property or the property of the Railway Company to protect railway operations, and facilities of the Railway Company and those of others using the Railway Company's property from interference by subsidence, vibration, physical contact or otherwise attributable to the exercise by the City of the easement grant to it. In the event the Railway Company advises the City to take any action to protect the Railway Company's railway operations, its facilities or facilities of the Railway Company's property, the City shall promptly take the indicated action, including, but not limited to, stopping the operation of the sewer line. If the City fails to do so, the Railway Company shall have the right, but not the duty, to perform on behalf of the City at the sole risk and expense of the City.

(e) In the event, Railway Company determines that repairs to Facilities are necessary for the safety of railway operations or the property, Railway Company shall notify the City and the City shall diligently proceed to make such repairs as Railway Company deems necessary in its reasonable opinion. In the event the City shall fail

within thirty (30) days after receipt of written notice to commence such repairs as the Railway Company deems necessary and to complete said repairs within an additional thirty-day period, then the Railway Company may at its election terminate this Agreement as set forth in Paragraph 11, hereto. In addition, Railway Company shall have the right to make emergency repairs to Facilities in the event the Railway Company deems such repairs are necessary for the safety of its railway operations, tracks or property. The City will reimburse the Railway Company for the reasonable cost and expense of all repairs to Facilities made by the Railway Company, as set forth in Paragraph 16 herein.

4. **RAILROAD USE.** The Railway Company shall have the right to operate its railroad over the Easement Property and to use, occupy and enjoy the Easement Property, or permit the use or occupancy thereof by others, for such purposes, in such manner and at such times as the Railway Company shall determine; provided, however, that such grant of use to third parties shall not restrict, limit or interfere with the Easement Rights granted herein.

5. **INDEMNITY.** It is understood and agreed by the City that Facilities are subject to and may increase dangers and hazards and that this Agreement is subject to all risks thereof. Therefore, the City assumes and agrees to protect, indemnify and save harmless the Railway Company, its owners, officers, agents, employees, invitees and other licensees, from and against any and all claims, demands, suits, liability and expense by reason of loss or damage to any property whatsoever or injury to or death of any person whomsoever, from any cause whatsoever, arising or growing, directly or indirectly (1) out of the City's use and occupation of Easement Property and the construction,

installation, reconstruction, operation, maintenance, repair, renewal, existence, use, or removal of Facilities, (2) any defect in Facilities or any failure thereof, (3) out of any act or omission of the City, its officials, agents, or employees while on or about the Easement Property, or while working on or using Facilities, or (4) out of the failure of the City, its officials, agents or employees to abide by or comply with any of the terms or conditions of this Agreement, except to the extent that such loss, damage, injury, or death as set forth in Section 5(1) through 5(4) shall have been caused by the negligence of the Railway Company

6. **DEBRIS.** The City shall cause the City Contractors (as defined herein) to remove all debris, material, false work and the like, caused by or used during the construction, installation, reconstruction, operation, maintenance, repair, renewal or removal of Facilities, from the Easement Property in a manner satisfactory to the Railway Company and restore the Property to a condition approved by Railway Company, which approval shall not be unreasonably withheld.

7. **INSURANCE.** The City shall deliver with this executed Agreement, a Letter of Self Insurance. The City shall cause its contractors and agents (the "City Contractors") to maintain the following insurance coverages:

- (I.) Statutory Workmen's Compensation and Occupation Disease Insurance and/or FELA coverage, if applicable, to the extent permitted by law, all Workers' Compensation policies shall be endorsed to provide Waiver of Subrogation in favor of owner.
- (II.) Commercial General Liability Insurance which shall be no less comprehensive and no more restrictive than the coverage provided by a

standard form Commercial General Liability Policy with a minimum combined single limit of \$1,000,000.00 per occurrence for Bodily Injury and Property Damage and \$2,000,000.00 each for the General Aggregate and the Products/Completed Aggregate. This insurance must include the follow features:

- a. Railroad Protective Liability Insurance naming the Railway Company as Named Insured with a limit for bodily injury and property damage liability of \$5,000,000.00 per occurrence, \$10,000,000.00 aggregate, the original of said policy shall be furnished to Railway Company prior to entry upon Easement Property.
- b. The City of Chicago and Railway Company shall be named as additional insureds on a primary and noncontributory basis to any additional insureds.

(III.) Umbrella Liability over primary insurance \$5,000,000.00 per occurrence, \$10,000,000.00 aggregate.

(IV.) Automobile Liability Insurance, covering all owned, non-owned and hired vehicles with a minimum combined single limit for Bodily Injury and Property Damage of \$1,000,000.00 per accident.

8. **INTERFERENCE.** In order to protect railway operations, tracks, pole lines, wires, cables, and service of Railway Company, its permittees and licensees from interference, the City at all times and at its own expense will require its contractors to construct the Facilities in accordance with the specifications [to be] attached hereto as **Exhibit B**, and to locate the Facilities in accordance with **Exhibit A**. The City shall be responsible for the maintenance, repair, use and operation of the Facilities. In order to prevent such interference, if it is deemed necessary by the Railway Company to make

changes in the construction or location of its tracks, pole lines, wires, and/or cables of the Railway Company or in the operation of their service, the cost of such changes shall be borne by the City.

9. **TITLE.** It is expressly understood Railway Company does not warrant title to the premises and the City accepts the grant of privileges contained herein subject to all lawful outstanding existing liens and superior rights. The City agrees it shall not have or make any claim against the Railway Company for damages on account of any deficiency in title and agrees that in the event of failure or insufficiency of such title the sole remedy of the City shall be the right to return of the consideration paid in advance, provided for herein, or a proportionate part thereof in the event of a partial deficiency or insufficiency of title.

10. **NOTICE.** Any notice to be given under this Agreement shall be in writing and may be served by delivering it, or a true copy thereof, to the other party, or by depositing same in a United States Post Office, first-class, certified mail, return receipt requested, in an envelope addressed to such party:

**Timothy E. Coffey
General Counsel, Secretary and Director of Human Resources
The Belt Railway Company of Chicago
6900 S. Central Avenue
Bedford Park, Illinois 60638**

**City of Chicago
Department of Water Management
Attention of: Commissioner
1000 E. Ohio Street
Chicago, Illinois 60611**

\With a copy to:

**City of Chicago
Department of Law
Attention: Deputy Corporation Counsel,
Real Estate and Land Use Division
121 N. LaSalle Street, Room 600
Chicago, Illinois 60602**

11. **TERMINATION.**

i) This Agreement may be terminated by the City at any time by giving thirty (30) days written notice thereof to Railway Company.

ii) Railway Company may terminate this Agreement in the event of a default by City by giving thirty (30) days written notice thereof to the City, provided, however, if the City cures said default within said 30-day period, or any extension thereof, or has commenced to cures said default within said 30-day period, or any extension thereof, and has cured said default within an additional 30-day period to the satisfaction of and approval by, not to be unreasonably withheld, the Railway Company, this Agreement shall continue in force and effect.

iii) At the expiration of the time limited by a termination notice, or upon termination of this Agreement in its entirety or as to any location in any other manner, the City will, at its own expense, promptly remove its Facilities from the Easement Property and will restore the Railway Company's property to a condition approved by the Railway Company, which approval shall not be unreasonably withheld. In the event, the City fails to promptly do so, Railway Company shall have the right to remove Facilities and to restore its property and the City will reimburse the Railway Company for the cost and expense of so doing as set forth in Paragraph 16 herein.

12. **WAIVER.** The waiver of a breach of any of the terms or conditions hereof shall be limited to the act or acts constituting such breach and shall never be construed as being a continuing or permanent waiver of any such terms or conditions, all of which shall be and remain in full force and effect as to future acts of happenings, notwithstanding any such waiver.

13. **ASSIGNMENT.** This Agreement is personal to the City and is not assignable or transferable without the written consent of the Railway Company first obtained, provided, however, that in case of any assignment, passing or transfer of ownership of said Facilities without the Railway Company's written consent to said assignment, the City and the new user or owner shall both be jointly and severally liable to the Railway Company under all of the terms and conditions hereof and the Agreement shall be deemed a joint agreement to said parties, revocable forthwith by written notice which the Railway Company at its option may serve upon City at any time.

14. **SUCCESSORS AND ASSIGNS.** The benefits of this Agreement shall accrue to the Railway Company, its successors and assigns. In accepting this Agreement the City covenants and agrees to perform and to be bound by all of the terms and conditions hereof to be performed by the City, even though the performance thereof may not be required by the Railway Company until after the termination of this Agreement.

15. **RAILWAY COMPANY'S PROPERTY.** All property of whatsoever kind and nature in which the Railway Company has an interest in or which is used by the Railway

Company wholly or in part regardless of ownership thereof, shall for the purpose of this Agreement be deemed property of the Railway Company and be owned by the Railway Company.

16. **ADMINISTRATIVE FEES AND EXPENSES.** In addition to the consideration to be paid by the City to the Railway Company for the grant of a perpetual non-exclusive easement: (i) the City agrees to reimburse Railway Company, within 60 days following receipt of invoice(s) from Railway Company, for all of Railway Company's costs and expenses incurred by Railway Company pursuant to the terms herein and in relation to the Easement, including, but not limited to, Railway Company's engineering review of City's plans, inspections and flagging. Railway Company agrees to provide verification of costs and expenses set forth in invoice(s) submitted by Railway Company if requested by City; and (ii) the City agrees to pay upon the execution of this Agreement an Administration Fee of \$2,500.00, payable to Railway Company's agent, Rail Property Management, located at 640 S. Spring Avenue, LaGrange, Illinois 65025.

17. **EASEMENT MEMORANDUM.** The parties shall execute an Easement Memorandum for recording purposes.

IN WITNESS WHEREOF, this instrument is executed by the duly authorized officers of the Parties on this _____ day of _____, 2014.

**THE BELT RAILWAY COMPANY
OF CHICAGO**

THE CITY OF CHICAGO

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

(sub) Exhibit A (1 of 2) and (2 of 2) to Easement Agreement

Easement Property

[Attached]

(1 of 2) is Print showing Easement Area

(2 of 2) is Legal Description of Easement Area

(sub) Exhibit B to Easement Agreement

Specifications

[Attached]