



Office of the Chicago City
Clerk



F2012-6

Office of the City Clerk

City Council Document Tracking Sheet

Meeting Date: 1/18/2012

Sponsor(s): Mendoza, Susana A. (Clerk)

Type: Communication

Title: Second Amendment and Supplement to Project Agreement
for O'Hare Modernization Program Chicago, Franklin Park
and Bensenville, Illinois

Committee(s) Assignment:



CHICAGO DEPARTMENT OF AVIATION
CITY OF CHICAGO

December 19, 2011

The Honorable Susana Mendoza
Office of the City Clerk
121 North LaSalle Street, Room 107
Chicago, Illinois 60602

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CITY CLERK
2011 DEC 31 AM 8:51

Subject: Second Amendment and Supplement to Project Agreement for the O'Hare
Modernization Program Chicago, Franklin Park and Bensenville

Dear Ms. Mendoza:

Transmitted herewith is a copy of the following document:

- Second Amendment and Supplement to Project Agreement for the O'Hare
Modernization Program Chicago, Franklin Park and Bensenville, Illinois

This agreement was executed by the First Deputy Commissioner of the Chicago
Department of Aviation and is being forwarded to you pursuant to all applicable
ordinances. Please put this document on file in your office and make it available to
members of the public who wish to review it in accordance with your customary
practices.

Sincerely,

Jonathan D. Leach
General Counsel

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Enclosures:

1. Second Amendment and Supplement to Project Agreement for the O'Hare
Modernization Program Chicago, Franklin Park and Bensenville, Illinois

cc: Document Control
Eve Rodriguez

**SECOND AMENDMENT AND SUPPLEMENT TO
PROJECT AGREEMENT FOR
THE O'HARE MODERNIZATION PROGRAM
CHICAGO, FRANKLIN PARK AND BENSENVILLE, ILLINOIS**

THIS AGREEMENT ("Agreement") is made and entered into this 22nd day of November, 2011, by and among the CITY OF CHICAGO, an Illinois home rule municipality (the "City") and UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (the "UP").

WHEREAS, on July 17, 2007, the City and UP entered into the Project Agreement for the O'Hare Modernization Program Chicago, Franklin Park and Bensenville, Illinois (the "Project Agreement"); and

WHEREAS, on May 11, 2011, UP approved the Final Alignment Plans in accordance with Section 3.C. of the Project Agreement; and

WHEREAS, in accordance with Section 12.B. of the Project Agreement, UP and City have agreed that UP will provide the rail, ties and other track material for the Final Alignment (the "Trackage Components") as provided in the attached "Material and Force Account Estimate" marked **EXHIBIT A** and hereby made a part hereof ("Estimate"); and

WHEREAS, UP and City desire to acknowledge their agreement as to price, delivery date and other matters required by Section 12.B. in order to have the Trackage Components supplied by UP in accordance with Section 12.B. of the Project Agreement; and

WHEREAS, UP and City desire to acknowledge their agreement that the Estimate shall be the UP Material and Force Account Estimate for the Final Alignment in accordance with Section 13.C. of the Project Agreement; and

WHEREAS, UP and City wish to memorialize their understandings regarding proposed reservations of easements in the Final Alignment Property for City facilities known as Runways 10L, 10C and 10R ALSF Facilities and the Emergency Access Tunnel which will be constructed on the Final Alignment Property at the time of or following the Second Closing ,

AGREEMENT

NOW, THEREFORE, in consideration of the covenants and conditions to be fulfilled by City and UP as hereinafter set forth, the City and UP mutually agree as follows:

1. Except to the extent specifically modified by this Agreement, the terms and conditions of the Project Agreement for the O'Hare Modernization Program Chicago, Franklin Park and Bensenville, Illinois executed July 17, 2007 as amended by the First Amendment and Supplement to Project Agreement for the O'Hare Modernization Program Chicago, Franklin Park and Bensenville, Illinois executed November 1, 2010 (the "Project Agreement") shall remain in full force and effect. Except to the extent otherwise specifically defined in this Agreement, all capitalized terms used in this Agreement shall have the definition as provided in

the Project Agreement or any exhibit to the Project Agreement, including but not limited to the General Project Background and Agreement Summary.

2. Pursuant to Section 12.B. of the Project Agreement and the Estimate, UP shall provide the Trackage Components to the City in accordance with the Final Alignment Plans and the Construction Phasing, at final prices as determined in accordance with final invoices from vendors as accepted by UP and City. UP and City shall cause the delivery, unloading, inspection, and acceptance of, and the transfer of risk of loss for, the Trackage Components as provided in the attached "Delivery Instructions" marked **EXHIBIT B** and hereby made a part hereof.

3. The City shall not be responsible for any deficiency in or failures of the Trackage Components, regardless of whether such is discovered or occurs prior to or during construction or during the Seasoning Period for the Final Alignment, or at any time thereafter except and to the extent of any deficiency in or failure of such materials directly attributable to the acts or omissions of the City Parties.

4. In accordance with Section 13.C. of the Project Agreement, City and UP agree that the Estimate shall constitute the UP Material and Force Account Estimate for the Final Alignment.

5. Reimbursement to UP by the City for said Trackage Components shall be made in accordance with the Project Agreement including Section 14.

6. UP and City agree that , before and after the Second Closing, portions of the landing lights, security fencing and related facilities for Runways 10L, 10C and 10R ("ALSF Facilities") shall be installed in the Final Alignment Property in substantial accordance with the drawings that are attached hereto as **EXHIBIT C** and hereby made a part hereof. City and UP agree that the Final Alignment Quitclaim Deed shall provide a reservation of permanent easements for the ALSF Facilities (the "ALSF Easement"), assignable by City to FAA, for use and maintenance of such ALSF Facilities. Subject to FAA approval, the ALSF Easement shall provide no ALSF Facilities shall be located within the Final Alignment Property except such ALSF Facilities are either below ground or they are installed as depicted on Exhibit C. In the event that FAA does not approve Exhibit C or a portion thereof, the installation shall be located according to an alternative plan approved by UP, City and FAA ("Alternative Approved Plan"). The ALSF Easement shall at no time prevent or interfere with the development, use or maintenance of a third track by UP within the Final Alignment Property in accordance with Exhibit C or such Alternative Approved Plan. The ALSF Easement shall specifically provide for reversion of the ALSF Easement to UP, upon the FAA's provision of notice of its intent to abandon the use of said ALSF Facilities; provided however, that such abandonment shall not become effective unless and until the FAA shall remove such ALSF Facilities and restore the area to the reasonable satisfaction of the Chief Engineer of UP. The ALSF Easement shall provide that all maintenance, rehabilitation and reconstruction of the ALSF Facilities shall be the sole responsibility of the FAA.

7. UP and City agree that the City shall reserve in the Final Alignment Quitclaim Deed a permanent easement for an Emergency Access Tunnel which Emergency Access Tunnel

shall be constructed in accordance with the Final Alignment Plans in substantially the location shown on the drawing attached hereto as **EXHIBIT D** and hereby made a part hereof (the "Tunnel Easement"). The Tunnel Easement shall specifically provide for reversion of the Tunnel Easement to UP, upon the City's provision of notice of its intent to abandon the use of said Emergency Access Tunnel; provided however, that such abandonment shall not become effective unless and until the City shall remove such Emergency Access Tunnel and replace it with compacted fill to the reasonable satisfaction of the Chief Engineer of UP. The Tunnel Easement shall provide that all maintenance, rehabilitation and reconstruction of the Emergency Access Tunnel shall be the sole responsibility of the City.

8. Prior to execution of the Agreement for Second Property Exchange, the City and UP shall make appropriate revisions to such Agreement for Second Property Exchange to reflect the provisions of this Agreement, including Sections 6 and 7, the Exhibits and the Alternative Approved Plan, if any.

9. The City represents and warrants to UP that the funding for the Final Alignment includes no Federal Stimulus/ARRA Funding.

10. UP and City agree that UP shall have no obligation to relocate its railroad operations from the Interim Alignment to the Final Alignment until all UP invoices to the City for UP Work related to the Final Alignment, including but not limited to the Trackage Components, that are due and owing at such time in accordance with the Project Agreement have been paid in full. UP and City shall each negotiate with the other in good faith concerning disputes related to any invoices for the UP Work related to the Final Alignment both before and after receipt of payment.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement, in triplicate the day and year first above written.

Approved as to form and legality:

CITY OF CHICAGO, ILLINOIS,

By: John P. McDonough
Special Assistant Corporation Counsel

By: Roanne S. [Signature]
Executive Director,
O'Hare Modernization Program NRB

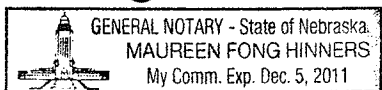
ATTEST:

UNION PACIFIC RAILROAD COMPANY,
a Delaware Corporation

Maureen Fong Hinners
Assistant Secretary

By: John J. [Signature]
Title: AVP Engineering

(SEAL)



APPROVED AS TO FORM
[Signature]
GENERAL ATTORNEY

- Exhibit A - UP Material and Force Account Estimate
- Exhibit B- Delivery Instructions
- Exhibit C- ALSF Facilities
- Exhibit D - Emergency Access Tunnel

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Material And Force Account Estimate

Chicago

Estimate Number: 45963 Version: 3

Standard Rates: Labor Additive = 205% WT Labor Additive = 168.94%

Estimate Good for 6 Months Until 01/01/12

Location: MILWAUKEE SUB, CONN, 2.6-7.33

Description of Work: CHICAGO, IL MP 3.9 to 6.1 MILWAUKEE SUB. Track Construction and Shift for Final Alignment (O'Hare Modernization Program)

COMMENTS	FACILITY	Description	QTY	UOM	UCST	LABOR	MATERIAL	TOTAL
ENGINEERING								
		ENGINEERING	1	LS	600,000.00	600,000	0	600,000
		FLAGGING	360	MD	750.00	270,000	0	270,000
Sub-Total =						870,000	0	870,000
TRACK CONSTRUCTION - COMPANY								
Shoofly Material only Contr Labor n	TRACK	136# CWRHH0 24-9'PPHWD 16"N TP	1879	TF	116.87	4,647	214,943	219,590
Shoofly	PPTO	PPTO 136# #11 HT XLSR	1	EA	151,248.53	67,969	83,280	151,249
Shoofly	TRACK	SHIFT TRACK: M.L. 30% TIES	1169	TF	42.62	30,506	19,321	49,828
Material only Contr Labor no ballast	TRACK	136#CWRHH0 CTIE SAFLOK3	21882	TF	106.40	67,849	2,260,321	2,328,171
	TRACK	136#CWRHH0 CTIE SAFLOK3	4452	TF	210.73	478,167	459,993	938,160
	PPTO	PPTO 136# #11 HT XLSR	1	EA	151,248.53	67,969	83,280	151,249
	TRACK	136# CWRHH0 CWR 24-9', 16"N TP	224	TF	259.90	34,258	23,960	58,218
	TRACK	SHIFT TRACK: M.L. 30% TIES	1638	TF	40.87	40,714	26,225	66,938
	XTIES	TRANSITION TIE SET >50MPH CONCWOOD	2	EA	4,892.92	2,672	7,114	9,786
Industry Track	TRACK	SHIFT TRACK: YD 75% TIES	304	TF	77.93	17,177	6,513	23,690
		GANG DAY LABOR (25 MAN)	28	DA	15,000.00	420,000	0	420,000
IGR Shoofly BR over Franklin 215'	INGR	136# CWR GRAIL	630	TF	25.84	0	16,280	16,280
IGR BR over Franklin 215'	INGR	136# CWR GRAIL	630	TF	74.89	30,901	16,280	47,181
IGR BR over Metra/CP 112'	INGR	136# CWR GRAIL	424	TF	27.56	0	11,687	11,687
IGR BR over Irving 142'	INGR	136# CWR GRAIL	484	TF	26.91	0	13,025	13,025
Sub-Total =						1,262,830	3,242,220	4,505,050
TRACK REMOVAL - COMPANY								
Shoofly	TRACK	REMOVE TRACK	1902	TF	9.87	18,766	0	18,766
Shoofly	TO	RETIRE # 9 TURNOUT	1	EA	3,841.82	3,842	0	3,842
	TRACK	REMOVE TRACK	3019	TF	9.87	29,788	0	29,788
	TO	REMOVE TO: #11	1	EA	4,541.96	4,542	0	4,542
Sub-Total =						56,938	0	56,938
SITE WORK - CONTRACT								
Place holder		RETAINING WALL - T-WALL	1	LS	4,455,000.00	0	4,455,000	4,455,000
Sub-Total =						0	4,455,000	4,455,000
SIGNAL - COMPANY								
		SIGNAL: INSTALL	1	LS	346,149.00	216,017	130,132	346,149
Sub-Total =						216,017	130,132	346,149
EQUIPMENT RENTAL								
		EQUIPMENT RENTAL	1	LS	233,000.00	0	233,000	233,000
Sub-Total =						0	233,000	233,000
HOMELINE FREIGHT								
		HOMELINE FREIGHT	71026	Per Ton	8.75	0	621,475	621,475
Sub-Total =						0	621,475	621,475
PROJECT LEVEL COST								
	CONTINGENCIES	CONTINGENCY	10	%	110,876.12	240,578	868,183	1,108,761
Sub-Total =						240,578	868,183	1,108,761
Total Wgt. in Tons = 71,026						Totals = 2,646,363 9,550,010 12,196,373		
Grand Total =						\$12,196,373		

Scope

Exhibit B

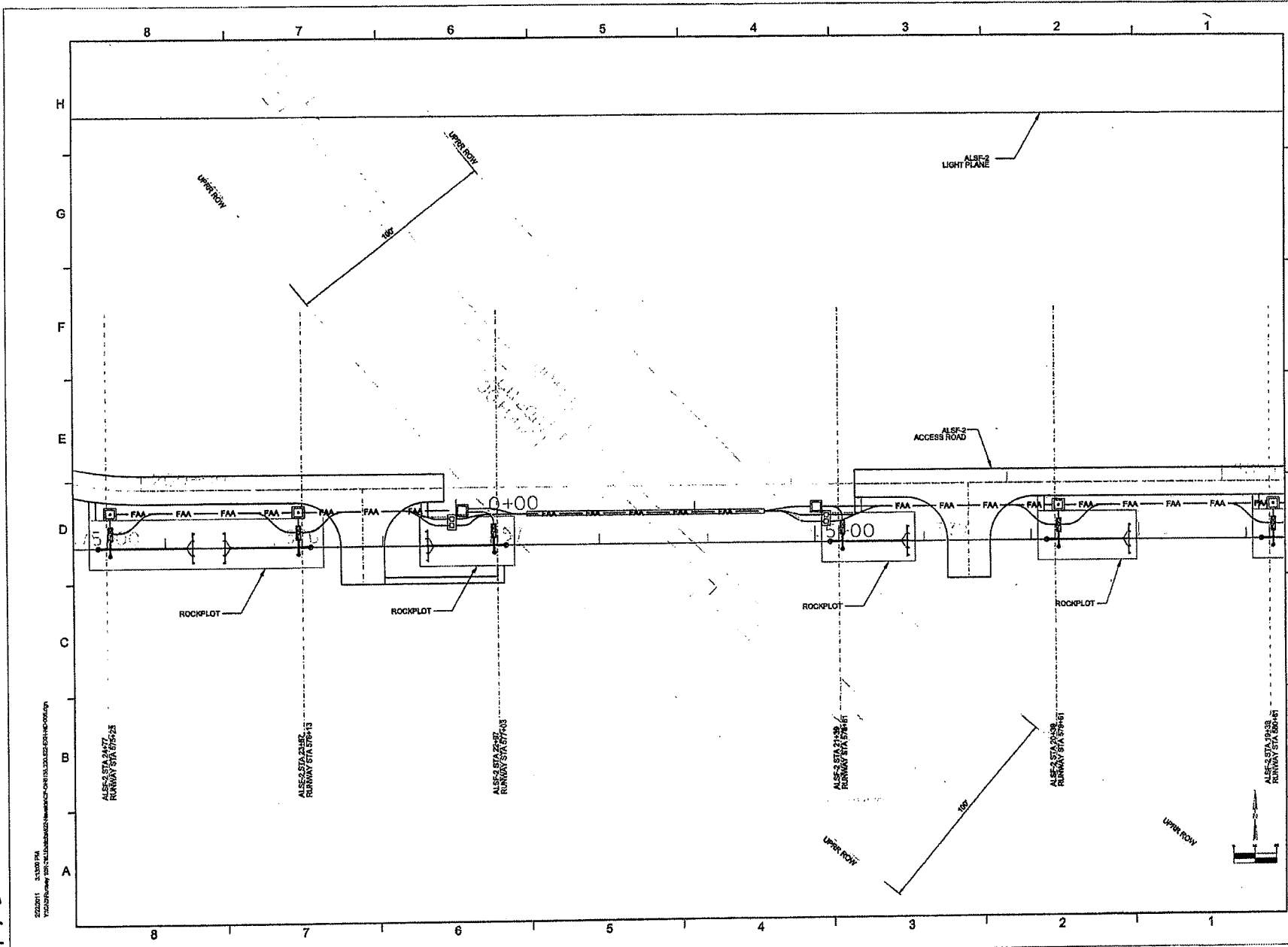
Delivery Instructions

a. **Rail** has already been delivered by UP and accepted by City on June 6 – 7, 2011 at designated locations on the project site as previously agreed by City and UP. Risk of loss has been transferred to City as of such date.

b. **Ties** will be delivered between October 1, 2011, and December 1, 2011, by rail car to Proviso Yard, where the City or its contractor will perform inspection, unloading from rail car, and acceptance of the ties before delivering them to the project site. City will be responsible for damage caused by unloading. Risk of loss shall remain with UP until transferred to City upon such unloading and acceptance by the City or its contractor.

c. Certain portions of the **Other Track Materials** have already been delivered by UP and accepted by City at West Chicago Yard on various dates as previously agreed by City and UP. Risk of loss has been transferred to City with such delivery and acceptance. Further deliveries of additional Other Track Materials may be requested by the City ("Additional OTM") and such Additional OTM shall be delivered to West Chicago Yard on dates hereafter agreed to by City and UP. The City or its contractor to perform inspection, unloading, and acceptance of Additional OTM before delivering it to the project site. City will be responsible for damage caused by unloading of Additional OTM. Risk of loss of the Additional OTM shall remain with UP until transferred to City upon such unloading and acceptance by the City or its contractor.

d. **Additional materials to be utilized by UP for UP Work**, including Final Connection Work, will be provided by UP at times and locations necessary for UP to perform such UP Work in accordance with agreed Construction Phasing.



O'HARE INTERNATIONAL AIRPORT
CITY OF CHICAGO
O'HARE MODERNIZATION PROGRAM

RICHARD M. DALEY
MAYOR
ROSEMARIE E. ANDOLINO
COMMISSIONER



O'HARE RUNWAY DESIGNERS, LLC
300 WEST FULLER STREET
CHICAGO, ILLINOIS 60601-1209
TEL: 312-424-4100
FAX: 312-424-1177

Lead Engineer - Runway 10R-28L

APPROVED AS WORKING PLAN
BY:

REV.	DATE	DESCRIPTION

PROJECT NAME:

O'HARE MODERNIZATION PROGRAM
SOUTH AIRFIELD
RUNWAY 10R-28L
NAVAIDS AND FOTS

SHEET TITLE:
**RUNWAY
10R ALSF-2
ENLARGED PLAN**

DESIGNED: FD DRAWN: CP CHECKED: A. OSHAWA

PROJECT NO.: OH135-200-522

DATE: 02/22/2011

SHEET NO. REVISED

EXH-NC-006

Exhibit C

