



City of Chicago



F2010-273

Office of the City Clerk

City Council Document Tracking Sheet

Meeting Date:	12/8/2010
Status:	Introduced
Sponsor(s):	City Clerk
Type:	Filed Matter
Title:	First Amendment and Supplement to Project Agreement for O'Hare Modernization Program--Chicago, Franklin Park and Bensenville Illinois Agreement concerning Union Pacific Railroad.
Committee(s) Assignment:	N/A



City of Chicago
Richard M. Daley, Mayor

Chicago Department of Aviation

Rosemarie S. Andolino
Commissioner

Chicago O'Hare International Airport
P.O. Box 66142
Chicago, Illinois 60666
(773) 686-2200
(773) 686-8333 (TTY)

O'Hare Modernization Program
P.O. Box 66142
10510 W. Zemke Road
Chicago, IL 60666
(773) 462-7300
(773) 462-8552 (Fax)

Chicago Midway International Airport
5700 South Cicero Avenue
Chicago, Illinois 60638
(773) 838-0600
(773) 838-0795 (TTY)

www.flychicago.com
www.OhareModernization.org



November 24, 2010

The Honorable Miguel del Valle
Office of the City Clerk
121 North LaSalle Street, Room 107
Chicago, Illinois 60602

Subject: O'Hare Modernization Program
First Amendment and Supplement to Project Agreement for
the O'Hare Modernization Program – Chicago, Franklin
Park, and Bensenville Illinois; Agreement among the City of
Chicago and Union Pacific Railroad
Ref: WBS No. OH 0066.012.30.B.1.gg.
OMP-CL-OTH-0050

Dear Mr. del Valle:

Transmitted herewith is a copy of the following document:

- First Amendment and Supplement to Project Agreement for the O'Hare Modernization Program – Chicago, Franklin Park, and Bensenville Illinois; Agreement among the City of Chicago and Union Pacific Railroad

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

Sincerely,

Jonathan D. Leach
General Counsel

Originated by: John Ellis

Enclosures:

1. First Amendment and Supplement to Project Agreement for the O'Hare Modernization Program – Chicago, Franklin Park, and Bensenville Illinois; Agreement among the City of Chicago and Union Pacific Railroad, dated 11/1/2010, 7 pages

cc: Document Control
John McDonough
Peter Josefchak
Eve Rodriguez



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

THIS AGREEMENT is made and entered into this 15th day of November, 2010, by and among the CITY OF CHICAGO, an Illinois home rule municipality (the "City") and UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (the "UP").

RECITALS:

In accordance with Section 12(B) of the Project Agreement for the O'Hare Modernization Program Chicago, Franklin Park and Bensenville, Illinois (the "Project Agreement"), UP and City may agree in writing to have certain materials supplied by UP for the final alignment, subject to an agreement between UP and City regarding price, delivery date and other matters, and UP shall be reimbursed by the City for UP's Costs incurred in accordance with the Project Agreement. Such agreement shall provide that UP shall provide such materials to the City in accordance with the Final Alignment Plans and the construction phasing. Such agreement shall relieve the City of responsibility for any deficiency in or failures of such materials, regardless of whether such is discovered or occurs prior to or during construction or during the seasoning period for the Final Alignment, as defined in the Project Agreement or at anytime thereafter except to the extent of any deficiency in or failure of such materials directly attributable to the acts or omissions of the City Parties.

The Parties desire to provide in this Agreement a procedure which will assure prompt payment in accordance with the terms of the Project Agreement for UP Work and UP Costs on the Final Alignment.

For the Final Alignment as permitted under the Project Agreement, UP and City have agreed that UP will provide the rail, ties and other track material for construction of the Final Alignment and will provide the material for a T-WALL Retaining Wall System required under the Final Alignment Plans (the "T-Wall Retaining Wall System").

The Parties desire to enter into this Agreement as specifically provided for under Section 12(B) of the Project Agreement to include the matters referenced above and related matters required for the construction of the Final Alignment.

In accordance with Section 2 of the Project Agreement, it is provided in part that all Project Costs described in the Project Agreement, including without limitation all UP Costs for all UP Work or materials supplied by UP, including but not limited to, materials supplied by UP in accordance with Section 12(B) of the Project Agreement, shall be borne solely by City. Section 14 of the Project Agreement provides the method and procedure for reimbursing UP for UP Costs incurred during the construction of the Final Alignment including the requirement that within sixty (60) days of City's receipt of the monthly progressive or final billing from UP submitted in accordance with the Project Agreement, City shall pay UP the amount set forth in such billing.

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 as otherwise specifically defined in this Agreement, all capitalized terms used in this Agreement shall have the same meaning as in the Project Agreement.

2. Except to the extent amended by this Agreement, the terms and conditions of the Project Agreement shall remain in full force and effect.

3. The Final Alignment Plans are hereby incorporated herein by this reference and hereby made a part hereof.

4. The Final Alignment Plans specify and provide for the installation of the T-WALL Retaining Wall System. UP will purchase and have delivered the T-WALL Retaining Wall System material required for the Project in accordance with a purchase order between UP and the Neel Company ("Neel") based on the revised quote from the Neel Company dated ~~September 13, 2010~~ ^{October 19}, 2010, a copy of which is attached hereto as Exhibit A and hereby made a part hereof. The unloading, storage and installation of the T-WALL Retaining Wall System will be the responsibility of the City.

5. UP shall bill the City for such T-WALL material and delivery costs in accordance with and subject to the terms of Section 14 of the Project Agreement. The City agrees to reimburse UP for the T-WALL material and delivery costs in accordance with the terms and conditions of Section 14(B) of the Project Agreement.

6. The City and the UP hereby agree that: (a) UP shall supply 89,501.25 sq. ft. of a T-WALL Retaining Wall System as provided in Exhibit A for the Project produced by and delivered on behalf of Neel to a location or locations to be determined by the City through its construction manager at a price of \$3,611,375.44 before applicable sales, use and/or value added taxes; and (b) such T-WALL Retaining Wall System is required for completion of the Final Alignment.

7. Upon receipt of each monthly progressive invoice from Neel, UP shall submit a UP monthly progressive invoice to the City for such monthly progressive invoice UP received from Neel for the T-WALL Retaining Wall System. Each such monthly progressive invoice from UP to the City for the T-WALL Retaining Wall System shall include a copy of the monthly progressive invoice UP received from Neel for the T-WALL Retaining Wall System. The City shall reimburse UP for the amount of such monthly progressive invoice within sixty (60) days of receipt in accordance with the Project Agreement.

8. The City shall make a one-time payment to UP to compensate UP for maintenance costs expenses related to the T-WALL Retaining Wall System during its useful life. This one-time payment of ONE HUNDRED SIXTY SEVEN THOUSAND ONE HUNDRED FIFTY EIGHT AND NO/100 DOLLARS (\$167,158.00) shall be made at the Second Closing. UP shall have no responsibility or obligation to City for the removal and cleanup of any graffiti.

or other material resulting from acts of vandalism to, on or about the T-WALL Retaining Wall System.

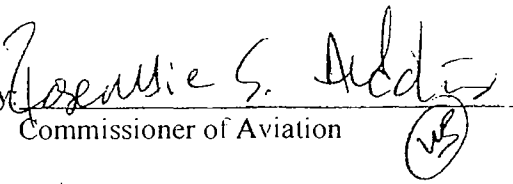

9. The City reaffirms that the funding for the Final Alignment includes no Federal Stimulus/ARRA Funding.

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,

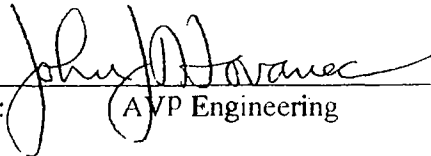
By: 
Special Assistant Corporation Counsel

By: 
Commissioner of Aviation 

ATTEST:

UNION PACIFIC RAILROAD COMPANY,
a Delaware Corporation


Assistant Secretary

By: 
Title: AVP Engineering

(SEAL)



THE NEEL COMPANY

8328-D Tratord Lane
Springfield, VA 22152

(703) 913-7858
(703) 913-7859 (fax)

Quote No 72910-1
TNC Project TW3197

Union Pacific Railroad
1400 Douglas St, STOP 0780
Omaha, NE 68179
Attn: Mark Sudeta, Sr. Mgr. Strategic Sourcing

Project : OMP UPRR Relocation
Location: O'Hare Airport
Chicago, IL
Quote Date: 7/30/10
Revised Quote: 10/19/10

The NEEL COMPANY proposes to furnish material for the above referenced project as follows:

QTY	ITEM	DESCRIPTION	PRICE
12,191.25 SF	Wall B	T-WALL® Retaining Wall System	
43,278.75 SF	Wall C	T-WALL® Retaining Wall System	
33,911.25 SF	Wall D	T-WALL® Retaining Wall System	
120.00 SF	Mockup	Three T-WALL units (if required)	
89,501.25 SF	@ \$ 40.35/SF		Total \$3,611,375.44

The price quoted is based on receipt of a purchase order for all three walls and information provided to The Neel Company by TranSystems as of 7/29/10. Price is FOB the jobsite based on delivery directly to the contractor(s) and acceptance of the material upon delivery and inspection by the City, their agent or the Contractor.

SCOPE OF WORK:

- ENGINEERING:** Provide T-WALL Retaining Wall System design calculations, design drawings and shop fabrication drawings for submission to UPRR and OMP for review and approval.
 - Design will be based on the following Information:
 - OMP Contract Plans and Specifications and all addendums provided by TranSystems
 - Retaining Wall B Bearing Capacity and Global Stability report by Wang Engineering, Inc. dated July 14, 2010
 - Retaining Walls C and D Bearing Capacity and Global Stability summary e-mail of July 30, 2010 provided by Wang Engineering, Inc
 - Design will include calculations for internal stability, overturning, sliding, and bearing pressure
 - Electronic copies of submittal package, if requested, will be provided in PDF format
 - Drawings and calculations will be signed and sealed by a professional structural engineer licensed in Illinois
- MATERIAL SUPPLY AND INSPECTION:** Provide T-WALL units with specified architectural form liner finish, shear keys and joint materials delivered to jobsite.
 - T-WALL units shall be manufactured by Dukane Precast (precaster), 1805 High Grove Lane, Suite 137, Naperville, IL 60540 at their Aurora Plant on 2000 Plain Ave, Aurora
 - Material will be provided in accordance with UPRR/OMP approved T-WALL shop drawings and specifications
 - The Neel Company shall provide precaster with forming, training and technical support
 - Precaster provides storage for the materials at the precaster's plant for up to 6 months after completion of production

Exhibit A

- Delivery of the T-WALL units and related components to jobsite is included in the price. Delivery to be in full truckload quantities FOB the jobsite (Contractor will be responsible for unloading of material, proper handling and protection of the material thereafter). Contractor will be responsible for inspection, acceptance and unloading of material.
- Provide contractor with (3) plain gray concrete units for mockup as specified
- Precaster is an IDOT and PCI certified plant
- Our understanding is that the OMP will inspect material at the precast facility
- Precaster will provide access to UPRR/OMP for inspection during casting
- Precaster will also be responsible for 100% self inspection and material certification
- Notwithstanding anything else provided in this quotation, The Neel Company shall be responsible for corrective action relating to any rejected material.

3. CONSTRUCTION TECHNICAL SUPPORT: Provide technical support to the contractor(s) for T-WALL construction.

- Provide T-WALL preliminary design drawings, quantities and *T-WALL Construction Manual* to bidders for use in their preparation of bids for construction
- Conduct a pre-construction meeting at the jobsite upon start of construction to provide a T-WALL training certificate for at least 80% of the contractor(s) employees who will be constructing the walls as required in the contract specification
- Provide a qualified representative for on-site technical support upon the start of construction to see that the installation contractor is following proper installation procedures
- Visit project site once per month until completion of construction to observe construction of walls
- Be available to assist with any questions or concerns that may be identified during construction

4. PROGRESS PAYMENTS:

Pay area will be based on the quantities shown on the approved T-WALL shop drawings.

Engineering/Mobilization	\$7.00/sq. ft.
Deposit due with UPRR Purchase Order	\$3.50/sq. ft.
Balance due within 30 days after approval of shop drawings	\$3.50/sq. ft.

Production Progress Payments	\$29.35/sq. ft.
Billed monthly, Due 60 days after invoice	
Invoiced based upon monthly production reports and material certifications supplied by precaster	

Freight amount	\$4.00/sq. ft.
Billed separately upon delivery, due 60 days after invoice	
Area to be invoiced based upon actual face area of units delivered and accepted at the job site during invoice period	

Total Unit Price	\$40.35/sq. ft.
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Additional Services:

Engineering: Services not included in the Scope of Work, but which may become necessary in the course of the project, will be billed as Additional Services and include such items as additional meetings or processing plan changes beyond normal minor revisions. Additional services will be performed on a Time and Materials basis, as approved by the owner or their designated agent, in accordance with the attached rate sheet.

Construction: \$1600/Day with a 2 day minimum includes travel and expenses for field engineering for any special non-scheduled trips or meetings that may be required

5. WARRANTY:

Material is guaranteed against defective materials and workmanship for a period of one year after completion or substantial completion of the T-WALL construction

6. QUOTE EXCLUDES:

- Soil exploration and geotechnical engineering including but not limited to analysis of settlement, bearing capacity, global stability and slope stability
- Inspection and testing of backfill materials
- Site drainage design, temporary and final within and behind the wall
- Drainage structure design or materials
- PVC drain behind the wall
- Site work of any kind.
- Foundation improvements or design of same
- Verification of field dimensions or utilities
- Design or detailing of temporary earth retention (shoring)
- Leveling pads
- Handrail design, materials and connection hardware
- Guardrail, fencing, coping or barriers if required
- Cleaning of units, surface sealing, or ant-graffiti coating are excluded and are to be provided by the contractor as required in the contract specifications
- Ring-clutches (lifting devices) or rigging for offloading, handling and setting
- Night or weekend delivery: If available and required will be charged as overtime.
- Waiting time for delivery trucks on site over 1 hour from scheduled arrival time. A demurrage charge of \$125/hour (with a minimum charge of 1 hour) will be assessed for waiting time.
- Truckloads less than full quantities
- Sales tax is excluded from our quote (Our understanding is that UPRR is reselling the T-WALL to the City of Chicago. Materials purchased by The City of Chicago are tax exempt from State of Illinois sales tax by virtue of Exemption Certificate No. E9998-1874-04. The Neel Company will require a Certificate of Re-sale from UPRR otherwise 10% sales tax will have to be added to the invoices)

7. PRELIMINARY SCHEDULE:

Work to be completed within approximately 335 calendar days from issuance of a signed purchase order agreement with projected timeline as follows:

- Design and shop drawings submitted within (30) days after receipt of purchase order
- Allowance of 21 days for drawing review (our preliminary schedule does not include any additional time for revisions and resubmital if required)
- Form and form liner mobilization for T-WALL production to commence immediately upon receipt of a purchase order from UPRR
- Start of production- approximately 90 calendar days after receipt of purchase order to allow for mobilization
- Production is to be completed within approximately 160 casting days
- Delivery can start approximately 120 days after commencement of production
- Production of Walls C and D to commence prior to Wall B
- Production of Walls C and D to be completed within approximately 140 casting days
- A more specific weekly production schedule can be provided once forms and new form liners for the specified finish are mobilized and production is scheduled to start

By: John G. Dallain Date: 10/19/10 Accepted: _____ Date: _____
John G. Dallain, Regional Manager Name/Title: _____
THE NEEL COMPANY UNION PACIFIC RAILROAD