



Office of the Chicago City
Clerk



O2011-6387

Office of the City Clerk

City Council Document Tracking Sheet

Meeting Date:	7/28/2011
Sponsor(s):	Mayor Emanuel
Type:	Ordinance
Title:	Execution of agreements with Metra and Illinois Central Railroad regarding construction and easement rights at Lakefront Busway and 35th Street pedestrian bridge
Committee(s) Assignment:	Committee on Transportation and Public Way



OFFICE OF THE MAYOR
CITY OF CHICAGO

RAHM EMANUEL
MAYOR

July 28, 2011

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

Ladies and Gentlemen:

At the request of the Commissioner of Transportation, I transmit herewith an ordinance authorizing the execution of agreements with Metra and the Illinois Central Railroad regarding construction and easement rights at the Lakefront Busway and 35th Street pedestrian bridge.

Your favorable consideration of this ordinance will be appreciated.

Very truly yours,

Mayor

ORDINANCE

WHEREAS, the City of Chicago is an Illinois home rule municipality pursuant to Section 6(a) Article VII of the Illinois Constitution of 1970 and as such may exercise any power and perform any function related to its government and affairs; and

WHEREAS, on December 31, 1998, the City of Chicago ("City") entered into the Intergovernmental Agreement – Busway Project ("MPEA IGA") with the Metropolitan Pier and Exposition Authority ("MPEA") for the development of the Lakefront Busway extending from Randolph Street to McCormick Place ("Busway"); and

WHEREAS, the MPEA IGA provides for MPEA's reimbursement to the City for costs incurred by the City in the construction and development of the Busway; and

WHEREAS, the first phase of the Busway was completed in 2001; and

WHEREAS, in 2003, the City undertook, pursuant to the MPEA IGA, further enhancements to the Busway, including the development of a pedestrian bridge and tunnel beneath the Busway and the tracks and right of way of the Illinois Central Railroad ("Railroad") at approximately 18th Street ("18th Street Pedestrian Project"); and

WHEREAS, the City's costs in constructing the 18th Street Pedestrian Project were subject to reimbursement by MPEA pursuant to the MPEA IGA; and

WHEREAS, the 18th Street Pedestrian Project required that the Railroad grant the City an easement for the Pedestrian Project to exist on the Railroad's right of way; and

WHEREAS, the City desires that the Railroad acknowledge and confirm that certain easements in the Railroad's property acquired by the City from the Railroad in 2000 for the Busway have not terminated by their own terms; and

WHEREAS, the Railroad has agreed to enter into an Agreement for Grant, Release and Confirmation of Easements – Busway and Pedestrian Improvements at 18th Street ("Grant, Release and Confirmation of Easements Agreement") with the City thereby granting an easement for the 18th Street Pedestrian Project, and confirming such other Busway easements on the conditions that the City release the Railroad from its obligations regarding the construction of the 18th Street subway ("Eighteenth Street Subway") and release the easement for the Eighteenth Street Subway granted by the Railroad to the City, which obligations and easement were established pursuant to an ordinance known as the "1919 Lakefront Ordinance" adopted by the City Council of the City of Chicago on July 21, 1919 and published in the Journal of Proceedings of the City Council for such date at pages 969 through 1001; and

WHEREAS, the City has another project involving the construction of a replacement of a pedestrian bridge over the Railroad's right of way and the right of way of the Commuter Rail Division of the Regional Transportation Authority ("Metra") at 35th Street ("35th Street Bridge Project") and the City, the Railroad and Metra have each agreed upon terms for construction reimbursement and amendments to existing City easements which will allow the City to construct the 35th Street Bridge Project (35th Street Bridge Agreement"); and

WHEREAS, in connection with the execution of the 35th Street Agreement, the Railroad has requested that the City and the Railroad resolve all issues related to easements on the Railroad's right of way for Busway and the 18th Street Pedestrian Project, including the City's reimbursement of the Railroad for construction costs for the

18th Street Pedestrian Project, which costs are, in turn, to be reimbursed to the City by MPEA under the MPEA IGA; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. The Commissioner of the Department of Transportation ("Commissioner"), or his designee, is hereby authorized to execute an Agreement for Grant, Release and Confirmation of Easements – Busway and Pedestrian Improvements at 18th Street, in substantially the form which is attached hereto and incorporated in this ordinance as Exhibit 1, subject to the approval of the Corporation Counsel as to form and legality.

SECTION 2. The Commissioner, or his designee, is authorized to execute such additional agreements and documents as are reasonably necessary or appropriate to implement this ordinance and the Grant, Release and Confirmation of Easements Agreement authorized by Section 1 of this ordinance, subject to the approval of the Corporation Counsel. Such agreements shall include, without limitation, a 35th Street Bridge Replacement Agreement with Railroad in substantially the form which is attached hereto and incorporated in this ordinance as Exhibit 2, a 35th Street Bridge Replacement with Metra Agreement with Metra in substantially the form which is attached hereto and incorporated in this ordinance as Exhibit 3, and, subject to reimbursement by MPEA under the MPEA IGA, an agreement to reimburse the Railroad for construction costs reasonably incurred for the 18th Street Pedestrian Project, in substantially the form which is attached hereto and incorporated in this ordinance as Exhibit 4.

SECTION 3. All ordinances, resolutions, motions or orders inconsistent with this ordinance are hereby superseded to the extent of such conflict.

SECTION 4. 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 5. This ordinance shall take effect immediately upon its passage and approval.

EXHIBIT 1

**THIS DOCUMENT PREPARED
BY AND UPON RECORDING TO
BE RETURNED TO:**

John McDonough
Spec. Asst. Corp. Counsel
Room 600 City Hall
1210 North LaSalle Street
Chicago, Illinois 60602

Above space for Recorder's Use only

**AGREEMENT FOR GRANT, RELEASE AND CONFIRMATION OF EASEMENTS –
BUSWAY AND PEDESTRIAN IMPROVEMENTS AT 18TH STREET**

THIS AGREEMENT (the "Agreement") is made as of this ____ day of January, 2011,
by and between **ILLINOIS CENTRAL RAILROAD COMPANY**, an Illinois corporation
("Illinois Central") and **THE CITY OF CHICAGO**, an Illinois home rule municipal corporation
("City").

RECITALS:

Illinois Central is owner or operator of certain real property improved as a railroad right of way as more particularly described on Exhibit "A" which is attached hereto and made a part hereof (the "Railroad Land"). The City has constructed, used and maintained within the portion of the Railroad Land depicted on Exhibit "B" which is attached hereto and made a part hereof ("Easement Area"), a pedestrian bridge and tunnel, and certain related facilities which are described in Exhibit "C" which is attached and made a part hereof (the "Project Facilities"). Illinois Central and the City desire that Illinois Central grant to the City a permanent easement for the Project Facilities in the Easement Area.

In addition, in connection with such grant of easement, the Illinois Central and City desire that the City hereby release certain easements previously granted by Illinois Central to the City, and that Illinois Central hereby confirm and acknowledge that certain other easements granted by Illinois Central to the City have not terminated pursuant to their terms and condition.

AGREEMENT

NOW, THEREFORE, in consideration of the sum of Ten and no/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Illinois Central and the City covenant and agree as follows:

1. **Grant of Permanent Easement.**

A. **Grant.** To the fullest extent that it lawfully may, without warranty of either title or suitability for the City's purposes, Illinois Central hereby grants and conveys to the City a perpetual easement ("Permanent Easement") in, on, over, under, through, and across the Easement Area for the installation, construction, use, inspection, maintenance, repair, rehabilitation, replacement and removal of the Project Facilities ("Permitted Activities"), subject to the terms and conditions in this Agreement.

B. **Use of Permanent Easement.** The Permanent Easement shall authorize the use of the Easement Area for the Permitted Activities within the Easement Area, including the existing grade separated pedestrian crossing under the railroad tracks provided by the existing rail bridge over such pedestrian tunnel (the "Rail Bridge"), approaches to the pedestrian tunnel from the bridge over the Metra tracks, and related utility facilities as shown on Exhibit C. The Project Facilities and any repair, rehabilitation, replacement or removal to them shall comply with Exhibit C, and any repair, rehabilitation, replacement or removal which varies from Exhibit C shall be subject to Illinois Central's reasonable approval for purposes of determining whether the installation, construction, use, inspection, maintenance, repair, rehabilitation, replacement and removal of the Project Facilities or any work incidental thereto will unreasonably interfere with the facilities and operations of the Illinois Central. Illinois Central agrees that it will not unreasonably withhold or deny such approval. All Project Facilities shall be constructed at no cost to the Illinois Central.

C. **Maintenance.** The City shall, at its sole cost risk and expense, own, maintain and, from time to time, repair, rehabilitate and/or renew the Rail Bridge (not including the ballast, ties, rail and other track components which are not part of the Rail Bridge and which shall be owned and maintained by Illinois Central at Illinois Central's sole cost,

risk and expense), and all the Project Facilities, including pedestrian way and/or drainage improvements constructed on the Illinois Central's premises pursuant to this grant. The City will obtain permission from Illinois Central before undertaking any work which shall occur on the Railroad Land at track level within 25 feet of the nearest rail ("Potential Hazard Zone"), which permission will not be unreasonably withheld or denied by Illinois Central. With respect to such maintenance, repair, replacement or renewal work that may occur within the Potential Hazard Zone, the City will avoid any interference with or real or potential hazard to the passage of trains or other rail operations, and shall bear all expense for any protective measures which in the reasonable opinion of Illinois Central are deemed necessary, including, but not limited to, watchman and flagging services. The City's contractor, or contractors, in the event that any such maintenance, repair, replacement or renewal work is let by contract, shall also procure and maintain insurance coverages in the amounts and types as indicated by Illinois Central's standard right of entry for such work.

D. **Failure to Maintain.** Should any condition exist as a direct result of City's failure to properly maintain the Rail Bridge as required in this Agreement, or directly resulting from damage to the Rail Bridge caused by any means other than the sole negligence of Illinois Central, and which, in either event, in Illinois Central's sole opinion, threatens the immediate safety or the continuity of rail operations over the Rail Bridge, Illinois Central shall have the right, but not the obligation, to undertake whatever emergency remedial action it reasonably deems necessary and the City shall promptly reimburse Illinois Central the actual costs and standard overhead expenses reasonably incurred therefor upon receipt of bills reasonably itemizing such costs. Prior to taking such action, Illinois Central shall provide City with 30 days written notice thereof; provided, however, that to the extent that the nature and urgency of any such required emergency action does not permit such prior written notice, Illinois Central shall provide, at the first reasonably available opportunity prior to, during or, immediately following such emergency action such notice as is appropriate under the circumstances. The timely movement of rail traffic shall be deemed paramount, as any failure by Illinois Central to furnish notice required

herein shall in no way be construed as restricting Illinois Central's right to undertake such emergency action, only its right to reimbursement hereunder. Except in an emergency, the City shall not be required to reimburse Illinois Central for the cost of such remedial action unless the City receives notice of such action as required by this paragraph.

2. **Release of Easements.** City hereby releases and quitclaims to Illinois Central all of its right title and interest in and to :

- A. The Permanent Easement in Parcel 9 as granted by Illinois Central to the City pursuant to that certain Easement Agreement between Illinois Central and City recorded on December 29, 2000 as Doc. No. 0001021032 ("Busway Easement"); and
- B. The easement for use of the Eighteenth Street Subway as provided in the ordinance approved by the Chicago City Council on July 21, 1919 (which is published in the Council Journal of Proceedings for such date at pp. 969 – 1001) ("1919 Lakefront Ordinance"), as amended, including Sections 2.b.(1) and 5.a. thereof, and also hereby releases Illinois Central from any obligation it may have to the City to construct and maintain the Eighteenth Street Subway pursuant to such ordinance including Section 2.b(1) and/or 5.c. thereof

3. **Confirmation of Non-termination of Permanent Easements.** Illinois Central hereby acknowledges and confirms that the permanent easement in Parcel 8 granted by Illinois Central to the City pursuant to the Busway Easement has not been terminated pursuant to the terms of such Busway Agreement, including Section 2 thereof Illinois Central agrees to execute and deliver a restated grant of easement or an appropriate estoppel letter which is reasonably requested by the City to confirm the existence of the easement to units of government, funding agencies title companies, and similar entities:

4. **Mineral rights.** The granting of the Permanent Easement does not grant any interest in any timber, oil, gas or other minerals in, on or under the Easement Area and the Permanent Easement is subject to all such previously granted rights of such nature which affect the Easement Area.

5. No warranty. The grant of the Permanent Easement is made without warranty of either title or suitability for the City's purposes, either express or implied, and is expressly subject to and subordinate to all prior encumbrances and rights of third persons that are of record and to all previously granted rights listed on Exhibit D attached hereto. At its sole cost and expense, the City shall secure any approval, authorization, license, right, permission or permit required from other parties for construction, maintenance or operation of the Project Facilities. The City shall have no claim against Illinois Central because of a defect or deficiency of title.

6. Compliance with Law. The City shall comply with all applicable Federal, State and local laws, rules, regulations and ordinances, including all applicable permitting requirements of the Illinois Commerce Commission, applicable to the construction of the Project Facilities and the Permitted Activities, at the City's sole cost and expense.

7. Work by contractors. The City agrees to require its contractors performing work in the Potential Hazard Zone, or in any adjacent portions of the Railroad Land, to secure from Illinois Central a right of entry agreement in Illinois Central's then-current form, covering such items as insurance coverages in form and amount customarily required Illinois Central, naming Illinois Central and its parent corporations as additional insureds on applicable policies, and indemnifying Illinois Central and its parent corporations, in accordance with Illinois Central's customary right of entry agreements.

8. Indemnity. The City agrees to indemnify, defend and hold the Illinois Central harmless from all claims, causes of action, suits, damages, or demands for any injuries to persons or property proximately caused by the City's use of the Easement Area including, but not limited to, the maintenance of the Project Facilities, except to the extent that such is proximately caused by the negligent, willful and wanton, or intentionally tortious conduct or omissions of the Illinois Central, its agents employees, successors or assigns. Upon receipt of notice of a claim for which Illinois Central requires indemnity pursuant to this Section, Illinois Central shall promptly notify the City in writing and provide copies of all letters, demands, summons, pleadings, and other materials received in connection with such claim. Thereafter, City shall appear on behalf of

Illinois Central and respond in a timely action and submit all offers for settlement to Illinois Central for approval, which approval shall not be unreasonably withheld or denied.

9. Notice. Each notice, demand, approval or other communication which may be or is required to be given under this Agreement shall be in writing and shall be deemed to have been properly received when delivered personally during normal business hours. In each case, notice shall be addressed as follows:

If to the City:

Commissioner of Transportation
30 North La Salle Street, Suite 1100
Chicago, Illinois 60602

with a copy to:

Corporation Counsel
Room 600 City Hall
121 North La Salle Street
Chicago, Illinois 60602

If to Illinois Central:

Illinois Central Railroad Company
17641 S. Ashland Avenue Homewood, IL 60430
Attn: Regional General Counsel

Either party may change an addressee or address, or both, by providing written notice as provided in this Section; provided, that any change of address or addressee shall not be effective until the third day after notice has been given.

10. Runs with the land. The rights conferred and obligations incurred pursuant to this Easement Agreement shall run with the Railroad Land and shall be binding on, inure to the benefit of and be enforceable by Illinois Central, the City and their respective successors and assigns.

[Signatures appear on next page]

IN WITNESS WHEREOF, Illinois Central and the City have caused this Agreement to be
duly executed and attested as of the dates shown below.

ILLINOIS CENTRAL RAILROAD COMPANY,
an Illinois Corporation

By: _____

Its: _____

Date: _____

CITY OF CHICAGO ,
an Illinois Corporation

By: _____

Commissioner or Transportation

Date: _____

Approved as to form and legality

By: _____

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, do hereby certify that Bobby L. Ware, personally known to me to be the Commissioner of Transportation of the **CITY OF CHICAGO**, an Illinois municipal corporation and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged under oath that as such Commissioner, he signed and delivered the instrument, as the free and voluntary act and deed of such municipal corporation, for the uses and purposes therein set forth.

Given under my hand and seal this ____th day of _____, 2011.

Notary public

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, do hereby certify that _____, personally known to me to be the _____ of the **ILLINOIS CENTRAL RAILROAD COMPANY**, an Illinois Corporation and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged under oath that as such officer, he/she signed and delivered the instrument, as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

Given under my hand and seal this ____th day of _____, 2011.

Notary public

EXHIBIT A - RAILROAD LANDS
[Attach railroad strip map prior to execution]

EXHIBIT B - EASEMENT AREA

[Insert legal description, or if it is not available, a site plan with dimensions of a defined easement area]

EXHIBIT C – PROJECT FACILITIES

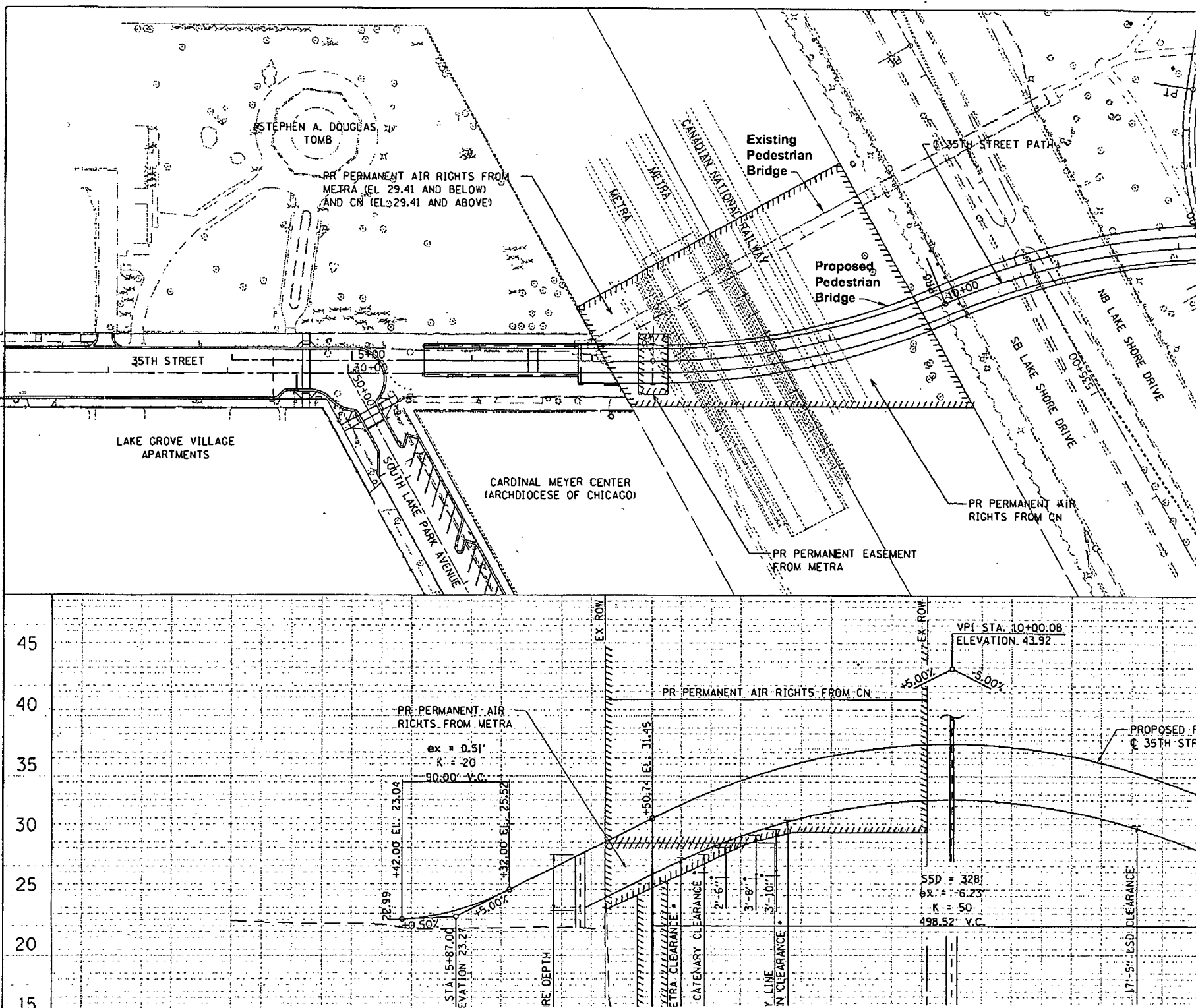
[Insert site plan for and general description of rail bridge and all pedestrian tunnel facilities]

The City of Chicago will construct the following items and perform the following activities within the Easement Area: pedestrian tunnel, light poles, fixtures and electrical conduit, site clearing, excavation, and grading.

EXHIBIT D – PRIOR GRANTS OF RIGHTS IN EASEMENT AREA

[Attach documents prior to execution]

PROFILE	SURVEYED	BY	DATE
NOTE BOOK	PLOTTED		
NO.	GRADES CHECKED		
	S.W. NOTED		
	STRUCTURE NOTATIONS CHK'D		



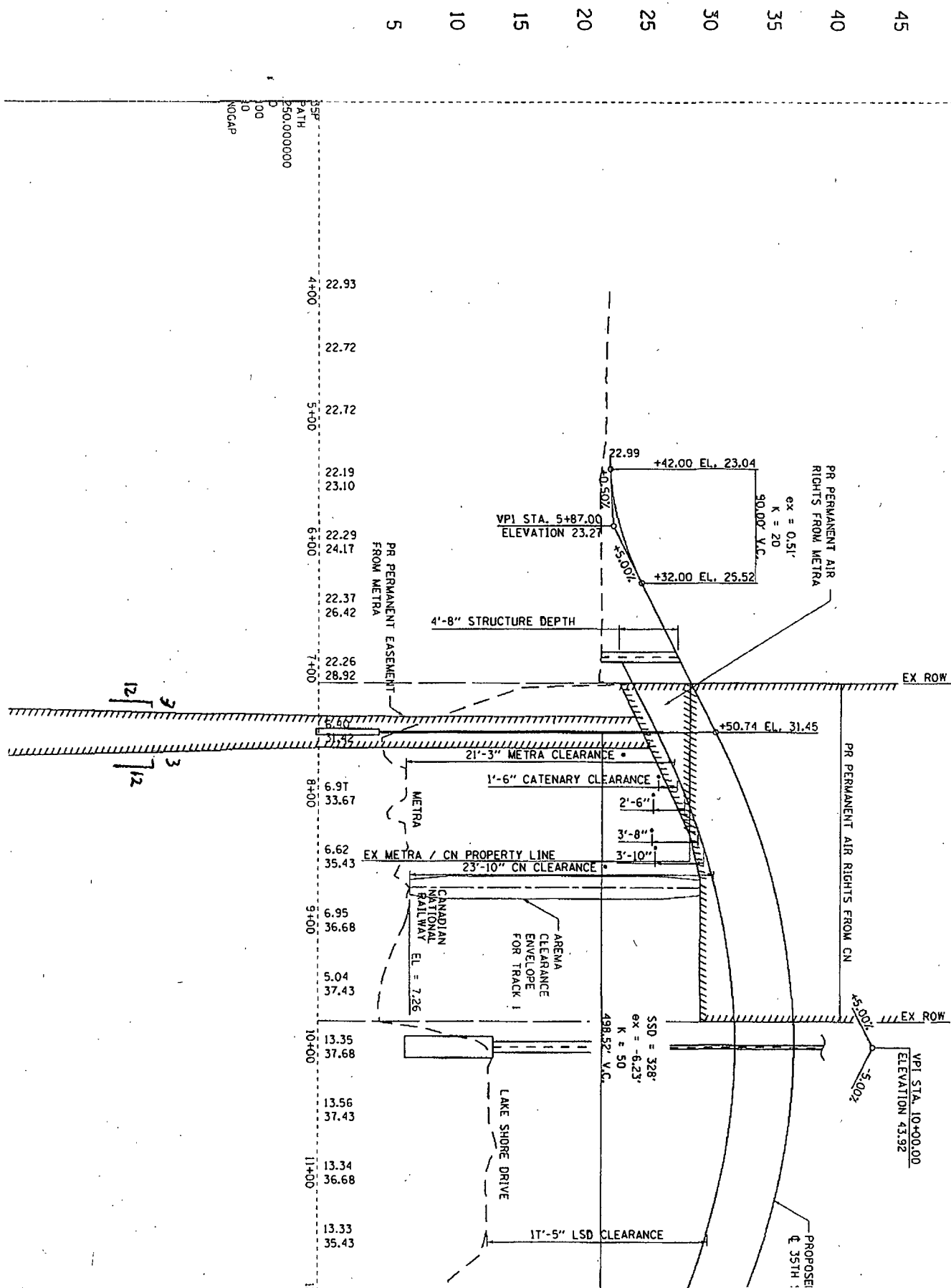


EXHIBIT 2

THIRTY-FIFTH STREET BRIDGE REPLACEMENT AGREEMENT

ILLINOIS CENTRAL RAILROAD (CANADIAN NATIONAL RAILWAY)

THIS AGREEMENT is entered into as of the ____ day of _____, 201_, by and between the Illinois Central Railroad Company, an Illinois corporation ("CN"), and the City of Chicago, an Illinois home rule municipality, acting by and through its Department of Transportation ("City"). CN and the City are hereinafter sometimes individually referred to as a "Party" and jointly referred to as the "Parties".

RECITALS

A. A public pedestrian bridge at Thirty-Fifth Street in Chicago, Illinois extends over that portion of the CN railroad right-of-way and tracks delineated on Exhibit A attached to and made a part of this Agreement ("CN Property") by means of a pedestrian bridge structure known as the Thirty-Fifth Street Bridge ("Existing Bridge").

B. The Existing Bridge is owned and is presently maintained by the Chicago Park District ("CPD").

C. In the interest of public safety and convenience, the City desires to replace the Existing Bridge with a replacement pedestrian bridge to be located as shown on Exhibit A ("New Bridge") and desires to reimburse CN for related work performed and provided by CN to accommodate the City's Bridge replacement.

D. CPD has authorized the City to perform such work on its behalf.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth below, the aforementioned Recitals which are hereby incorporated into this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the City and CN agree as follows:

1. Construction.

(A) **Plan Review and Approval.** The City shall submit to CN for its review and comments and shall also obtain CN's prior written consent to the plans and specifications for the removal of the Existing Bridge and the design, engineering, and construction of the New Bridge (the "City Bridge Work") and a site plan delineating the location and identifying the dimensions of the CN Property affected by the City Bridge Work (collectively "City Plans"). The City Plans shall also describe and depict the following (collectively "Related Work"):

(i) City Bridge Work to or affecting CN's existing facilities, improvements, and equipment; and

(ii) To the extent reasonably necessary and appropriate for the continued operation and maintenance of CN's existing facilities following the completion of the City Bridge Work, the work necessary to install and construct additional CN facilities, improvements and equipment required as a result of the City Bridge Work.

(The City Bridge Work, together with Related Work, is hereinafter referred to collectively as the "35th Street Bridge Project".)

The proposed City Plans shall specifically state which portions of the Related Work, if any, are to be performed by CN ("CN's Related Work"), and which portions are to be performed by the City ("City's Related Work"). Subject to the terms of this Agreement, the cost of the City Bridge Work, and the cost of all Related Work, including CN's Related Work, shall be entirely borne by the City and no cost or expense with respect thereto shall be borne by CN. Upon receipt of proposed City Plans, including without limitation, engineering and design plans for the Related Work, CN shall promptly provide detailed estimates of the total cost of CN's Related Work shown on said City Plans. CN also agrees to act reasonably in its determination to deny or withhold its consent to the City Plans and in its preparation of the detailed estimates of total cost. CN agrees that it will not deny or withhold its consent for reasons that are contrary to the Exhibits to this Agreement. Attached hereto as Exhibit B is CN's Force Account Estimate setting forth certain CN's currently projected costs and expenses of CN's Related Work.

(B) Coordination of Activities.

(i) The Parties agree to act reasonably to coordinate their respective work. In addition, CN shall have the right to reinstall or reaffix on the New Bridge those facilities, utilities and related appurtenances removed from the Existing Bridge as a result of the City Bridge Work. The City Bridge Work shall at all times be staged and performed so that CN has uninterrupted use of the CN Property for the provision of freight and passenger rail service and maintenance of CN's railroad facilities. The City agrees and the contract between the City and the City's contractor(s) shall provide that under no circumstances shall there be any train delays or interference with CN operations in the performance of the City Bridge Work or the City's Related Work, and the City's contractor(s) shall not unduly delay or interfere with CN in performing CN's Related Work and shall take all steps reasonably necessary or requested by CN to facilitate CN's Related Work.

(ii) CN agrees to cooperate with the City, the City's contractor(s) and its subcontractors in the performance of the City Bridge Work and the City's Related Work. CN shall not unduly delay or interfere with the City, the City's contractor(s), or its subcontractors in performing the City's Related Work and shall take all steps reasonably necessary or requested by the City or the City's contractor(s) to facilitate the City's Related Work.

(iii) The City agrees and the contract between the City and the City's Contractor shall require the City's contractor(s) to remove all machinery, surplus materials, falsework, rubbish and temporary buildings from CN's property and any rights-of-way upon completion of the City Bridge Work and the City's Related Work and to leave CN's property and rights-of-way in a neat and clean condition satisfactory to the authorized representative of CN.

(C) Construction. Upon CN's approval of the City Plans and the City's approval of the estimate of costs for CN's Related Work, the City Plans shall be deemed to be incorporated into this Agreement. Upon such approvals, CN shall be deemed to have agreed to complete CN's Related Work in a good and workmanlike manner, in accordance with all applicable law, and in accordance with the approved City Plans, all subject to Force Majeure as set forth in Section 9 of this Agreement, and the City shall be deemed to have agreed to complete the City Bridge Work and the City's Related Work in a good and workmanlike manner, in accordance with all applicable law, and in accordance with the approved City Plans, all subject to Force Majeure as set forth in Section 9 of this Agreement.

(D) The City shall be solely responsible for obtaining all permits and approvals legally required for the City Bridge Work, the City's Related Work and all utility relocations required for the City Bridge Work, provided, however, that CN shall cooperate with the City in its efforts to obtain such permits or utility relocations and the City shall reimburse or pay CN for any such costs incurred by CN. Such cooperation shall include ordering utilities and other non-railroad entities using or occupying the CN Property to relocate their facilities from the CN Property at their sole cost to the extent that CN is permitted to require relocation under the applicable agreement authorizing such use or occupation; provided, however, that such facilities do not unreasonably interfere with the City Bridge Work or the Related Work and such relocations do not damage or otherwise adversely affect CN.

(E) Reimbursement.

(i) Of CN. The City shall reimburse CN for costs incurred by CN for work, materials, or services directly related to performing and completing CN's Related Work, including without limitation CN overhead costs and expenses ("**Direct Costs**") upon presentation of a duly executed Draw Request Form in the form attached to and incorporated in this Agreement as Exhibit C, together with paid invoices, bills, or vouchers for CN's Related Work, including but not limited to force account work (collectively "**Documents**"), which Documents shall set forth in detail the Direct Costs. Each payment to CN shall be made within thirty (30) days of presentation of the complete Documents for such payment. Direct Costs shall include any costs related to review and approval of any additional plans, specifications, or work plans. Direct Costs shall also include the cost of any flagmen as deemed necessary by CN in accordance with its regulations and policies, necessitated by the City Bridge Work and the Related Work. The City's obligation to reimburse CN for Direct Costs shall survive the termination of this Agreement, but only as to those Direct Costs incurred prior to CN's delivery of a notice of termination to the City.

(ii) Audit. At any time upon reasonable notice, the City may audit the Direct Costs in accordance with Generally Accepted Accounting Principles (GAAP) applied on a consistent basis, and CN must provide all documentation, including the Documents, which are necessary or appropriate to complete such audit. Upon completion of the audit, in the event of an underpayment, the City will provide CN with a copy of the audit report along with a payment of any additional amounts that should have been reimbursed to CN. In the event of an overpayment, CN must promptly pay any amounts that should not have been paid to it promptly upon receipt of a copy of the audit report and a written request for reimbursement by the City. CN shall not be bound by the result of the audit, and CN reserves its right to contest the results of any audit. CN agrees to maintain copies of all required documentation concerning Direct Costs

for a period of three (3) years following completion of CN's Related Work or the termination of this Agreement. CN's covenant in the preceding sentence shall survive the expiration or termination of this Agreement.

(iii) As-Built Plans. Within six (6) months of the final completion of the City Bridge Work and the Related Work, the City shall provide CN, at the City's sole cost and expense, a set of "as-built" drawings of the City Bridge Work and the Related Work.

2. Work to be Performed by or on Behalf of the City.

(A) As part of the City Bridge Work and City's Related Work, the City shall provide or cause to be provided, in accordance with the plans and specifications approved by CN, all engineering, inspection, work, supplies, materials, labor and equipment required to perform and complete the following:

(i) Preparation of the plans and specifications relating to the City Bridge Work; and

(ii) The City Bridge Work;

provided, however, that the City shall have no obligation to perform or construct, or cause to be performed or constructed, the CN Related Work.

(B) The City shall give CN twenty-one (21) days prior written notice of the commencement date of the City Bridge Work and of the City's Related Work, or any phase thereof.

(C) The City Bridge Work and the City's Related Work shall be performed in accordance with all applicable federal, state, and local laws, rules, regulations, orders, ordinances, code provisions, and approvals pertaining to all agreements, plans, estimates, specifications, awards of contracts, acceptance of work, and procedure in general.

(D) The City agrees and the contract between the City and the City's contractor(s) shall require that the temporary or permanent minimum clearances, with reference to CN's tracks, or necessary falsework, bracing or forms, as required for the City Bridge Work, shall be not less than the existing vertical and lateral clearances unless otherwise agreed to in writing by CN.

3. Work to be Performed by or on Behalf of CN.

(A) As part of CN's Related Work, CN shall supply or cause to be supplied, in accordance with approved plans and specifications, all engineering, inspection, work, supplies, materials, labor, and equipment, as set forth on the detailed estimate for CN's Related Work to be provided by CN in accordance with the terms and provisions of this Agreement.

(B) CN's Related Work shall not extend beyond that necessary for the City Bridge Work and the restoration of those CN facilities affected by the City Bridge Work and shall be performed in accordance with standard railroad practices.

(C) CN's Special Conditions Governing Contractors attached to and made a part of this Agreement as **Exhibit D** must be adhered to any time representatives of the City and City engaged contractors and agents are on any CN Property for the purposes set forth in this Agreement.

(D) CN shall, at the expense of the City or the City's contractor(s), provide flagmen and other suitable personnel to the City's contractor(s) as CN deems necessary to accommodate the City Bridge Work and the City Related Work. CN's authorized representative(s) shall have full authority concerning the operations of the railroad and the City's contractor(s) must comply with CN's representatives' directions. The City's contractor(s) shall not perform any work on the CN Property without authorization to do so from the railroad flagman.

4. Plans and Specifications.

(A) If deemed necessary by CN, CN shall prepare, or cause to be prepared, plans and specifications for CN's Related Work ("CN Plans"). On or before the commencement of CN's Related Work, CN shall submit such plans and specifications, if any, to the City for review. The City's approval of such plans and specifications shall not be unreasonably withheld or delayed and the City shall approve or submit its comments to CN within four (4) weeks of receipt of the CN Plans. Failure of the City to approve or submit written comments to CN within four (4) weeks of the City's receipt of the CN Plans shall constitute approval of the CN Plans.

(B) Once approved and agreed upon, the City Plans and the CN Plans shall be incorporated into this Agreement and no changes shall be made to the City Plans or the CN Plans without the prior written consent of the other Party.

5. Pre-Construction Meeting and Agreed-Upon Schedule.

Prior to commencement of any City Bridge Work, a pre-construction meeting shall be held among the representatives of the City, CN and the City's contractor(s) for the purpose of coordinating the City Bridge Work to be performed by the respective Parties and at which time a schedule for the performance of the City Bridge Work shall be agreed upon and adopted by the City and CN.

6. Right of Entry. Except in cases of emergency, not less than seven (7) days prior to entering upon the CN Property or any other CN property for the purposes set forth in this Agreement, City contractors and subcontractors performing work on or providing maintenance for the Bridge shall execute and deliver to CN's Chief Engineer, or his or her designee, a Right of Entry Agreement in the form attached and incorporated in this Agreement as **Exhibit E**, along with evidence of all of the insurance required by such form.

7. Insurance. Prior to its entry upon the CN Property or any other CN property for the City's Related Work, the City shall obtain or cause its contractors to obtain insurance in accordance with the requirements set forth in **Exhibit F**. CN, the Northeast Illinois Regional Commuter Railroad Corporation ("NIRCR") and the Regional Transportation Authority ("RTA") shall be named as an additional insured on all policies described in **Exhibit F** except Worker's Compensation and Automobile Liability policies. CN, the NIRCR and the RTA shall be a named insured on the Railroad Protective Liability Policy.

8. Indemnity.

(A) City. The City agrees to defend, indemnify and hold harmless CN, its agents and employees, from and against any and all claims, damages, liabilities, suits, judgments, expenses, costs and attorneys' fees resulting from personal injury, including death, and all property damage proximately caused by the use of or construction or presence upon any CN property or right-of-way for the purposes set forth in this Agreement by the City or its employees, officers, agents, contractors, or such other persons, firms, or corporations acting at the direction of or with the authority of the City, except to the extent proximately caused by CN's or CN's agent's or employee's negligent, willful and wanton, or intentionally tortious conduct, and except claims of environmental contamination raised by any third party or by a regulatory agency duly authorized by any State or Federal law to cause or enforce the removal of any hazardous waste or the remediation of any adverse environmental condition upon the CN Property which arose or resulted from CN's, or CN's predecessor's use or possession of the CN Property. The indemnities contained in this Section shall survive expiration or termination of this Agreement.

(B) CN. CN agrees to defend, indemnify and hold harmless the City, its agents and employees, from and against any and all claims, damages, liabilities, suits, judgments, expenses, costs and attorneys' fees resulting from personal injury, including death, and all property damage proximately caused by the use of or construction or presence upon the City's property for the purposes set forth in this Agreement by CN or its employees, officers, agents, contractors, or such other persons, firms, or corporations acting at the direction of or with the authority of CN, except to the extent proximately caused by the City or its agent's or employee's negligent, willful and wanton, or intentionally tortious conduct, and except claims of environmental contamination raised by any third party or by a regulatory agency duly authorized by any State or Federal law to cause or enforce the removal of any hazardous waste or the remediation of any adverse environmental condition upon the City's property which arose or resulted from the City's or its predecessor's use of or possession of the City's property. The indemnities contained in this Section shall survive the expiration or termination of this Agreement.

9. Amendment of Existing Bridge rights; Maintenance of New Bridge. Upon or prior to the completion of the City Bridge Work and the Related Work, CN and City shall amend the existing rights of the Parties and the CPD with respect to the Existing Bridge to provide for the use and maintenance of the New Bridge in the location as provided in the Plans and Specification. Such amendment shall provide that upon or prior to the completion of the City Bridge Work and the Related Work, the City shall maintain, repair or replace, if necessary, the New Bridge at its sole cost and expense and at no cost or expense to CN. Such amendment shall also provide that in the event the City deems it necessary to inspect the New Bridge and/or to perform any such maintenance, repairs or replacement of any materials, as the case may be, the City shall give CN prior written notice outlining the work that the City intends to perform and CN agrees to grant the City the right to enter CN's Property to conduct such maintenance, repair and replacement activity; provided, however, that all such activities must be governed by a railroad flagman and the City must give CN not less than seventy-two (72) hours prior written notice to enable CN to arrange for such proposed work and for the flagman. The amendment shall also provide that all maintenance, repairs, and replacements, as the case may be, shall be performed in accordance with all applicable laws.

10. Force Majeure. With respect to the City Bridge Work and the Related Work, no Party shall be considered in breach of its obligations with respect to the commencement or completion of any obligation to install, construct, operate, inspect, maintain, repair, replace, reconstruct, rehabilitate or remove to the extent of a delay in the performance of such obligations due to unforeseeable causes beyond such Party's control and without such Party's fault or negligence, including but not limited to, delays or halts in construction which are compelled by court order, or caused by acts of God, acts of the public enemy, acts of the United States government, acts of the other Party, fires, floods, epidemics, quarantine restrictions, strikes, embargoes and unusually severe weather or delays of contractors or subcontractors due to any such cause. The time for the performance of the obligations shall be extended only for the period of the delay if the obligated Party notifies the other Party in writing within five (5) days after the beginning or its discovery of any such delay, whichever comes later. This provision shall not apply to the obligations of any Party to defend, indemnify and hold harmless set forth in this Agreement, or for the payment of money hereunder.

11. No Personal Liability. No officer, director, employee, representative, or agent of either of the Parties shall have any personal obligation or liability arising hereunder or relating hereto, including but not limited to any liability for breach of the terms of this Agreement.

12. Binding Effect. The terms of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the Parties and their respective successors and assigns.

13. Amendments and Assignments. No term of this Agreement may be altered, amended, changed, terminated, waived, or modified in any respect, and no right or obligations under this Agreement may be assigned or transferred, without the express written consent of the Parties and all necessary or required approvals from the State of Illinois, Department of Transportation, the Federal Government, the Chicago City Council or CN's Board of Directors.

14. Severability. If any provision of this Agreement, or any paragraph, sentence, clause, phrase or word or the application thereof is held invalid, (a) the remainder of this Agreement shall be construed as if such invalid part were never included and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law provided that this Agreement, in its entirety as so reconstituted, does not represent a material change to the rights or obligations of the Parties.

15. Governing Law. This Agreement shall be construed in accordance with and its validity and effect (including any claims of breach of any of the terms hereof) shall be governed by the laws of the State of Illinois and the City of Chicago (without regard to Illinois conflicts of interest laws).

16. Construction and Interpretation.

(A) This Agreement modifies any current contract(s) between the Parties only to the extent of the matters expressly stated herein. No other modifications are intended and none shall be implied; and the Parties do not intend to, and shall not be construed to have, modified or waived any other rights or obligations they may have under any current contract(s) between the Parties.

(B) This Agreement is the complete agreement of the Parties with respect to the matters set forth herein and all matters relating in any way to the City Bridge Work. With respect to the matters set forth herein and all matters relating in any way to the City Bridge Work, the Parties do not rely upon any previous oral, written or implied representation, endorsement agreement, or understanding of any kind, which may have been communicated by any person.

(C) This Agreement is not intended to, and shall not be construed to, create or give rise to, (a) any rights or obligations except as expressly stated herein, (b) any joint venture, partnership, corporate, employment, agency, construction manager, general contractor, subcontractor, or other relationship of any sort between the City and CN or any other person(s), or any third-party beneficiary rights of any nature whatsoever.

17. **Waiver.** No waiver of any obligation or default of a Party shall be implied from the omission by a Party to take any action on account of such obligation or default and no express waiver shall affect any obligation or default other than the obligation or default specified in any express waiver and then only for the time and to the extent therein stated.

18. **Breach.** If a party breaches or otherwise violates the terms and conditions of this Agreement, then the other Party shall have the right to pursue all remedies available at law or in equity, including without limitation, specific performance of this Agreement.

19. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall, together, constitute one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on or as of the day and year first above written.

CITY OF CHICAGO

By: _____
Commissioner of Transportation

Approved:

**APPROVED AS TO FORM AND
LEGALITY:**

Special Assistant Corporation Counsel

Budget Director

Commissioner of Environment

**ILLINOIS CENTRAL RAILROAD
COMPANY:**

By: _____
_____, Acting Executive
Director

ATTEST:

Assistant Secretary

EXHIBIT A

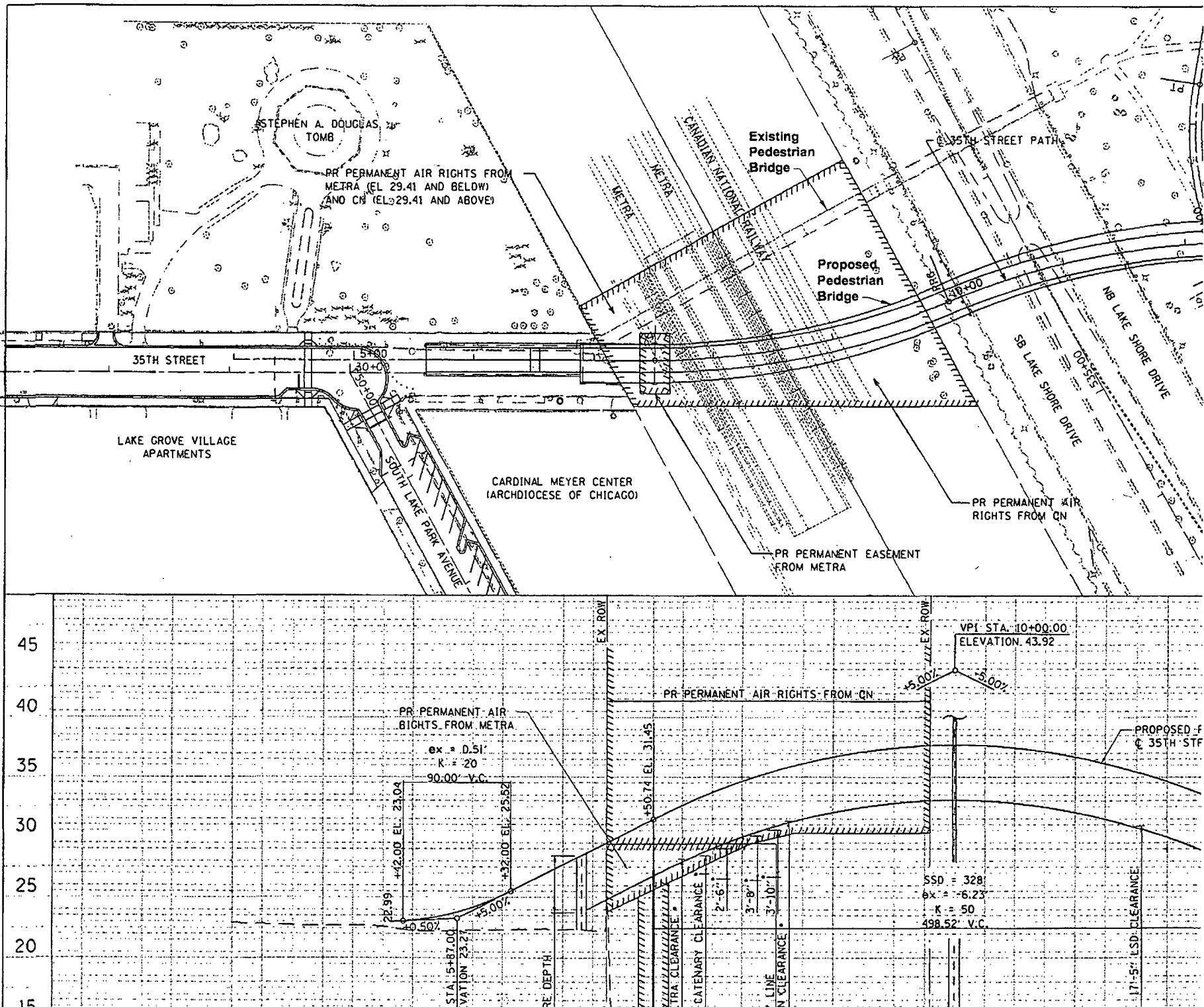
CN PROPERTY

WITH EXISTING BRIDGE AND NEW BRIDGE LOCATIONS

PLAN	DATE	BY
DESIGNED		
PLOTTED		
ALIGNED		
CHECKED		
NO.		

PROFILE	DATE	BY
DESIGNED		
PLOTTED		
CHECKED		
NO.		

INCH/FOOT DESIGN/TEMPERATURE/PROBABILITY



45
40
35
30
25
20
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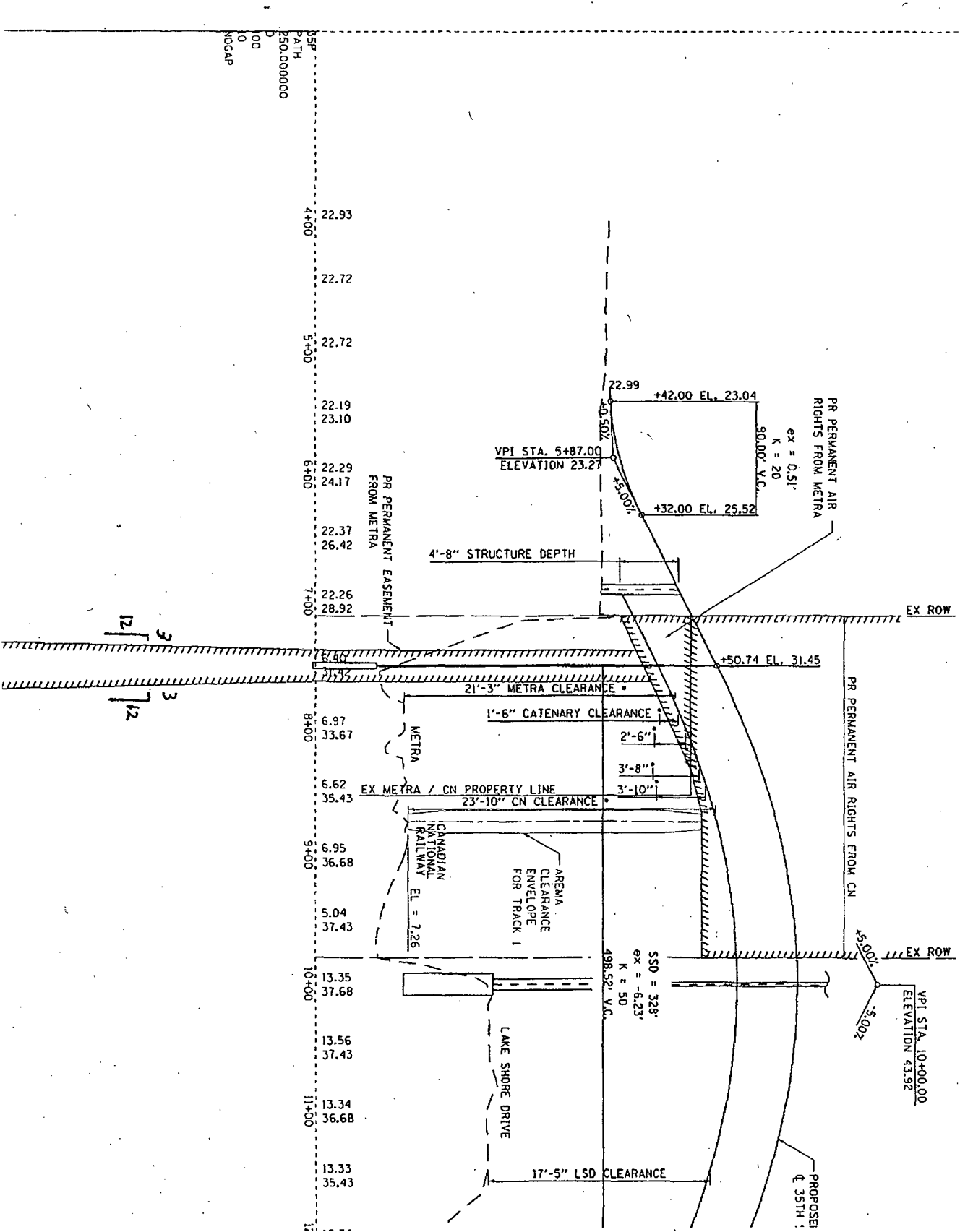


EXHIBIT B

CN'S FORCE ACCOUNT ESTIMATE

[Attach documents prior to execution]

EXHIBIT C

DRAW REQUEST FORM

Thirty-Fifth Street Bridge Rehabilitation Project Draw Request

Draw Request No. CN-_____

Amount of Draw Request: \$ _____

Payee of Draw Request: _____

This Draw Request includes: _____ Force Account
_____ Work and Materials by Contractors/Subcontractors

I, the duly authorized representative of the Illinois Central Railroad Company ("CN"), hereby certify to the City of Chicago in connection with the Thirty Fifth Street Bridge Replacement Agreement between CN and the City, as follows:

1. The following is a description of the articles or services rendered that are the subjects of this Draw Request:
2. The articles described above are in place as indicated and the services described have been completed to the extent indicated.
3. Attached hereto is: [Insert description of attached Documents evidencing payment]
4. The amount set forth in this Draw Request has not been the subject of any other Draw Request.
5. Except as provided in the Bridge Replacement Agreement, no portion of the amount that is the subject of this Draw Request, or the assets acquired or constructed therewith, will be used in a trade or business carried on by any person, other than a governmental unit, other than as a member of the general public.
6. The amount that is the subject of this Draw Request will be applied to pay or reimburse CN or its contractors or subcontractors for payment of Direct Costs as such term is defined in the Bridge Replacement Agreement.

Date: _____

Name: _____

Title: _____

EXHIBIT D

CN'S SPECIAL CONDITIONS GOVERNING CONTRACTORS

[Attach documents prior to execution]

EXHIBIT E

RIGHT OF ENTRY AGREEMENT

[Attach documents prior to execution]

EXHIBIT F
INSURANCE

[Attach documents prior to execution]

EXHIBIT 3

THIRTY-FIFTH STREET BRIDGE REPLACEMENT AGREEMENT

THIS AGREEMENT is entered into as of the ____ day of _____, 201_, by and between the Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation ("Metra"), and the City of Chicago, a municipal corporation and home rule unit of local government existing under the Constitution of the State of Illinois, acting by and through its Department of Transportation ("City"). Metra and the City are hereinafter sometimes individually referred to as a "Party" and jointly referred to as the "Parties".

RECITALS

A. A public pedestrian bridge at Thirty-Fifth Street in Chicago, Illinois extends over that portion of the Metra's Electric District railroad right-of-way and tracks delineated on Exhibit A attached to and made a part of this Agreement ("Metra Property") by means of a pedestrian bridge structure known as the Thirty-Fifth Street Bridge ("Existing Bridge").

B. The Existing Bridge is owned and is presently maintained by the Chicago Park District ("CPD").

C. In the interest of public safety and convenience, the City desires to replace the Existing Bridge with a replacement pedestrian bridge to be located as shown on Exhibit A ("New Bridge") and desires to reimburse Metra for related work performed and provided by Metra to accommodate the City's Bridge replacement.

D. CPD has authorized the City to perform such work on its behalf

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth below, the aforementioned Recitals which are hereby incorporated into this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the City and Metra agree as follows:

1. Construction.

(A) Plan Review and Approval. The City shall submit to Metra for its review and comments and shall also obtain Metra's prior written consent to the plans and specifications for the removal of the Existing Bridge and the design, engineering, and construction of the New Bridge (the "City Bridge Work") and a site plan delineating the location and identifying the dimensions of the Metra Property affected by the City Bridge Work (collectively "City Plans"). The City Plans shall also describe and depict the following (collectively "Related Work"):

(i) City Bridge Work to or affecting Metra's existing facilities, improvements, and equipment; and

(ii) To the extent reasonably necessary and appropriate for the continued operation and maintenance of Metra's existing facilities following the completion of

the City Bridge Work, the work necessary to install and construct additional Metra facilities, improvements and equipment required as a result of the City Bridge Work.

(The City Bridge Work, together with Related Work, is hereinafter referred to collectively as the "Thirty-Fifth Street Bridge Project".)

The proposed City Plans shall specifically state which portions of the Related Work, if any, are to be performed by Metra ("Metra's Related Work"), and which portions are to be performed by the City ("City's Related Work"). Subject to the terms of this Agreement, the cost of the City Bridge Work, and the cost of all Related Work, including Metra's Related Work, shall be entirely borne by the City and no cost or expense with respect thereto shall be borne by Metra. Upon receipt of proposed City Plans, including without limitation, engineering and design plans for the Related Work, Metra shall promptly provide detailed estimates of the total cost of Metra's Related Work shown on said City Plans. Metra also agrees to act reasonably in its determination to deny or withhold its consent to the City Plans and in its preparation of the detailed estimates of total cost. Metra agrees that it will not deny or withhold its consent for reasons that are contrary to the Exhibits to this Agreement. Attached hereto as Exhibit B is Metra's Force Account Estimate setting forth certain Metra's currently projected costs and expenses of Metra's Related Work.

(B) Coordination of Activities.

(i) The Parties agree to act reasonably to coordinate their respective work. In addition, Metra shall have the right to reinstall or reaffix on the New Bridge those facilities, utilities and related appurtenances removed from the Existing Bridge as a result of the City Bridge Work. The City Bridge Work shall at all times be staged and performed so that Metra has uninterrupted use of the Metra Property for the provision of commuter rail service and maintenance of Metra's railroad facilities. The City agrees and the contract between the City and the City's contractor(s) shall provide that under no circumstances shall there be any train delays or interference with Metra operations in the performance of the City Bridge Work or the City's Related Work, and the City's contractor(s) shall not unduly delay or interfere with Metra in performing Metra's Related Work and shall take all steps reasonably necessary or requested by Metra to facilitate Metra's Related Work.

(ii) Metra agrees to cooperate with the City, the City's contractor(s) and its subcontractors in the performance of the City Bridge Work and the City's Related Work. Metra shall not unduly delay or interfere with the City, the City's contractor(s), or its subcontractors in performing the City's Related Work and shall take all steps reasonably necessary or requested by the City or the City's contractor(s) to facilitate the City's Related Work.

(iii) The City agrees and the contract between the City and the City's Contractor shall require the City's contractor(s) to remove all machinery, surplus materials, falsework, masonry and temporary buildings from Metra's property and any rights-of-way upon completion of the City Bridge Work and the City's Related Work and to leave Metra's property and rights-of-way in a neat and clean condition satisfactory to the authorized representative of Metra.

(C) Construction. Upon Metra's approval of the City Plans and the City's approval of the estimate of costs for Metra's Related Work, the City Plans shall be deemed to be incorporated into this Agreement. Upon such approvals, Metra shall be deemed to have agreed to complete Metra's Related Work in a good and workmanlike manner, in accordance with all applicable law, and in accordance with the approved City Plans, all subject to Force Majeure as set forth in Section 9 of this Agreement, and the City shall be deemed to have agreed to complete the City Bridge Work and the City's Related Work in a good and workmanlike manner, in accordance with all applicable law, and in accordance with the approved City Plans, all subject to Force Majeure as set forth in Section 9 of this Agreement; provided, however, that Metra's obligations to commence or continue any portion or phase of Metra's Related Work shall not arise or continue unless and until the City has made a deposit or deposits pursuant to the terms of the escrow agreement as described below in Section 1(D)(ii), such that there is on deposit at all times an amount equal to Metra's reasonable estimate of the total of all Direct Costs (as defined in Section 1[D][i] below) that Metra reasonably anticipates it will incur during the next sixty (60) days. If at any time there is on deposit in the escrow an amount that is less than the amount of Direct Costs that Metra has reasonably estimated it will incur in the next sixty (60) days, then Metra agrees to notify the City of the deficiency before suspending any phase or portion of Metra's Related Work. The City shall be solely responsible for obtaining all permits and approvals legally required for the City Bridge Work, the City's Related Work and all utility relocations required for the City Bridge Work, provided, however, that Metra shall cooperate with the City in its efforts to obtain such permits or utility relocations and the City shall reimburse or pay Metra for any such costs incurred by Metra. Such cooperation shall include ordering utilities and other non-railroad entities using or occupying the Metra Property to relocate their facilities from the Metra Property at their sole cost to the extent that Metra is permitted to require relocation under the applicable agreement authorizing such use or occupation; provided, however, that such facilities do not unreasonably interfere with the City Bridge Work or the Related Work and such relocations do not damage or otherwise adversely affect Metra.

(D) Reimbursement.

(i) Of Metra. The City shall reimburse Metra for costs incurred by Metra for work, materials, or services directly related to performing and completing Metra's Related Work, including without limitation Metra overhead costs and expenses ("Direct Costs") upon presentation of a duly executed Draw Request Form in the form attached to and incorporated in this Agreement as Exhibit C, together with paid invoices, bills, or vouchers for Metra's Related Work, including but not limited to force account work (collectively "Documents"), which Documents shall set forth in detail the Direct Costs. Each payment to Metra shall be made within thirty (30) days of presentation of the complete Documents for such payment. Direct Costs shall include any costs related to review and approval of any additional plans, specifications, or work plans. Direct Costs shall also include the cost of any flagmen as deemed necessary by Metra in accordance with its regulations, necessitated by the City Bridge Work and the Related Work. The City's obligation to reimburse Metra for Direct Costs shall survive the termination of this Agreement, but only as to those Direct Costs incurred prior to Metra's delivery of a notice of termination to the City.

(ii) Escrow. Payments of Direct Costs shall be made through a construction escrow agreement ("Escrow") in the form approved by the City and Metra and attached hereto as Exhibit G.

(iii) Audit. At any time upon reasonable notice, the City may audit the Direct Costs in accordance with Generally Accepted Accounting Principles (GAAP) applied on a consistent basis, and Metra must provide all documentation, including the Documents, which are necessary or appropriate to complete such audit. Upon completion of the audit, in the event of an underpayment, the City will provide Metra with a copy of the audit report along with a payment of any additional amounts that should have been reimbursed to Metra. In the event of an overpayment, Metra must promptly pay any amounts that should not have been paid to it promptly upon receipt of a copy of the audit report and a written request for reimbursement by the City. Metra shall not be bound by the result of the audit, and Metra reserves its right to contest the results of any audit. Metra agrees to maintain copies of all required documentation concerning Direct Costs for a period of three (3) years following completion of Metra's Related Work or the termination of this Agreement. Metra's covenant in the preceding sentence shall survive the expiration or termination of this Agreement.

(iv) As-Built Plans. Within six (6) months of the final completion of the City Bridge Work and the Related Work, the City shall provide Metra, at the City's sole cost and expense, a set of "as-built" drawings of the City Bridge Work and the Related Work.

2. Work to be Performed by or on Behalf of the City.

(A) As part of the City Bridge Work and City's Related Work, the City shall provide or cause to be provided, in accordance with the plans and specifications approved by Metra, all engineering, inspection, work, supplies, materials, labor and equipment required to perform and complete the following:

- (i) Preparation of the plans and specifications relating to the City Bridge Work; and
- (ii) The City Bridge Work;

provided, however, that the City shall have no obligation to perform or construct, or cause to be performed or constructed, the Metra Related Work.

(B) The City shall give Metra twenty-one (21) days prior written notice of the commencement date of the City Bridge Work and of the City's Related Work, or any phase thereof.

(C) The City Bridge Work and the City's Related Work shall be performed in accordance with all applicable federal, state, and local laws, rules, regulations, orders, ordinances, code provisions, and approvals pertaining to all agreements, plans, estimates, specifications, awards of contracts, acceptance of work, and procedure in general.

(D) The City agrees and the contract between the City and the City's contractor(s) shall require that the temporary or permanent minimum clearances, with reference to Metra's tracks, or necessary falsework, bracing or forms, as required for the City Bridge Work,

shall be not less than the existing vertical and lateral clearances unless otherwise agreed to by Metra.

3. Work to be Performed by or on Behalf of Metra.

(A) As part of Metra's Related Work, Metra shall supply or cause to be supplied, in accordance with approved plans and specifications, all engineering, inspection, work, supplies, materials, labor, and equipment, as set forth on the detailed estimate for Metra's Related Work to be provided by Metra in accordance with the terms and provisions of this Agreement.

(B) Metra's Related Work shall not extend beyond that necessary for the City Bridge Work and the restoration of those Metra facilities affected by the City Bridge Work and shall be performed in accordance with standard railroad practices.

(C) Metra's Special Conditions Governing Contractors attached to and made a part of this Agreement as **Exhibit D** must be adhered to anytime representatives of the City and City engaged contractors and agents are on any Metra Property for the purposes set forth in this Agreement.

(D) Metra shall, at the expense of the City or the City's contractor(s), provide flagmen and other suitable personnel to the City's contractor(s) as Metra deems necessary to accommodate the City Bridge Work and the Related Work. Metra's authorized representative(s) shall have full authority concerning the operations of the railroad and the City's contractor(s) must comply with Metra's representatives' directions. The City's contractor(s) shall not perform any work on the Metra Property without authorization to do so from the railroad flagman.

4. Plans and Specifications.

(A) If deemed necessary by Metra, Metra shall prepare, or cause to be prepared, plans and specifications for Metra's Related Work ("Metra Plans"). On or before the commencement of Metra's Related Work, Metra shall submit such plans and specifications, if any, to the City for review. The City's approval of such plans and specifications shall not be unreasonably withheld or delayed and the City shall approve or submit its comments to Metra within four (4) weeks of receipt of the Metra Plans. Failure of the City to approve or submit written comments to Metra within four (4) weeks of the City's receipt of the Metra Plans shall constitute approval of the Metra Plans.

(B) Once approved and agreed upon, the City Plans and the Metra Plans shall be incorporated into this Agreement and no changes shall be made to the City Plans or the Metra Plans without the prior written consent of the other Party.

5. Pre-Construction Meeting and Agreed-Upon Schedule.

Prior to commencement of any City Bridge Work, a pre-construction meeting shall be held between the representatives of the City, Metra and the City's contractor(s) for the purpose of coordinating the City Bridge Work to be performed by the respective Parties and at which time a

schedule for the performance of the City Bridge Work shall be agreed upon and adopted by the City and Metra.

6. Right of Entry. Except in cases of emergency, not less than seven (7) days prior to entering upon the Metra Property or any other Metra property for the purposes set forth in this Agreement, City contractors and subcontractors performing work on or providing maintenance for the Bridge shall execute and deliver to Metra's Right of Way Administrator, or successor thereof, a Right of Entry Agreement in the form attached and incorporated in this Agreement as Exhibit E, along with evidence of all of the insurance required by such form.

7. Insurance. Prior to its entry upon the Metra Property or any other Metra property for the City's Related Work, the City shall obtain or cause its contractors to obtain insurance in accordance with the requirements set forth in Exhibit F. Metra, the Northeast Illinois Regional Commuter Railroad Corporation ("NIRCR") and the Regional Transportation Authority ("RTA") shall be named as an additional insured on all policies described in Exhibit F except Worker's Compensation and Automobile Liability policies. Metra, the NIRCR and the RTA shall be a named insured on the Railroad Protective Liability Policy.

8. Indemnity.

(A) City. The City agrees to defend, indemnify and hold harmless Metra, its agents and employees, from and against any and all claims, damages, liabilities, suits, judgments, expenses, costs and attorneys' fees resulting from personal injury, including death, and all property damage arising or resulting from the use of or construction or presence upon any Metra property or right-of-way for the purposes of performance of the activities permitted under this Agreement by the City or its employees, officers, agents, contractors, or such other persons, firms, or corporations acting at the direction of or with the authority of the City, except to the extent that such is the result of Metra's or Metra's agent's or employee's negligent, willful and wanton, or intentionally tortious conduct, and except claims of environmental contamination raised by any third party or by a regulatory agency duly authorized by any State or Federal law to cause or enforce the removal of any hazardous waste or the remediation of any adverse environmental condition upon the Metra Property which arose or resulted from Metra's, or Metra's predecessor's use or possession of the Metra Property. The indemnities contained in this Section shall survive expiration or termination of this Agreement.

(B) Metra. Metra agrees to defend, indemnify and hold harmless the City, its agents and employees, from and against any and all claims, damages, liabilities, suits, judgments, expenses, costs and attorneys' fees resulting from personal injury, including death, and all property damage arising or resulting from the use of or construction or presence upon the City's property for the purposes of performance of the activities permitted under this Agreement by Metra or its employees, officers, agents, contractors, or such other persons, firms, or corporations acting at the direction of or with the authority of Metra, except to the extent that such is the result of the City or its agent's or employee's negligent, willful and wanton, or intentionally tortious conduct, and except claims of environmental contamination raised by any third party or by a regulatory agency duly authorized by any State or Federal law to cause or enforce the removal of any hazardous waste or the remediation of any adverse environmental condition upon the City's property which arose or resulted from the City's or its predecessor's use of or possession of the

City's property. The indemnities contained in this Section shall survive the expiration or termination of this Agreement.

9. Amendment of Existing Bridge rights; Maintenance of New Bridge. Upon or prior to the completion of the City Bridge Work and the Related Work, Metra and City shall amend the existing rights of the Parties and the CPD with respect to the Existing Bridge to provide for the use and maintenance of the New Bridge in the location as provided in the Plans and Specification. Such amendment shall provide that upon or prior to the completion of the City Bridge Work and the Related Work, the City shall maintain, repair or replace, if necessary, the New Bridge at its sole cost and expense and at no cost or expense to Metra. Such amendment shall also provide that in the event the City deems it necessary to inspect the New Bridge and/or to perform any such maintenance, repairs or replacement of any materials, as the case may be, the City shall give Metra prior written notice outlining the work that the City intends to perform and Metra agrees to grant the City the right to enter Metra's Property to conduct such maintenance, repair and replacement activity; provided, however, that all such activities must be governed by a railroad flagman and the City must give Metra not less than seventy-two (72) hours prior written notice to enable Metra to arrange for such proposed work and for the flagman. The amendment shall also provide that all maintenance, repairs, and replacements, as the case may be, shall be performed in accordance with all applicable laws.

10. Force Majeure. With respect to the City Bridge Work and the Related Work, no Party shall be considered in breach of its obligations with respect to the commencement or completion of any obligation to install, construct, operate, inspect, maintain, repair, replace, reconstruct, rehabilitate or remove to the extent of a delay in the performance of such obligations due to unforeseeable causes beyond such Party's control and without such Party's fault or negligence, including but not limited to, delays or halts in construction which are compelled by court order, or caused by acts of God, acts of the public enemy, acts of the United States government, acts of the other Party, fires, floods, epidemics, quarantine restrictions, strikes, embargoes and unusually severe weather or delays of contractors or subcontractors due to any such cause. The time for the performance of the obligations shall be extended only for the period of the delay if the obligated Party notifies the other Party in writing within five (5) days after the beginning or its discovery of any such delay, whichever comes later. This provision shall not apply to the obligations of any Party to defend, indemnify and hold harmless set forth in this Agreement, or for the payment of money hereunder.

11. No Personal Liability. No officer, director, employee, representative, or agent of either of the Parties shall have any personal obligation or liability arising hereunder or relating hereto, including but not limited to any liability for breach of the terms of this Agreement.

12. Binding Effect. The terms of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the Parties and their respective successors and assigns.

13. Amendments and Assignments. No term of this Agreement may be altered, amended, changed, terminated, waived, or modified in any respect, and no right or obligations under this Agreement may be assigned or transferred, without the express written consent of the Parties and all necessary or required approvals from the State of Illinois Department of Transportation, the Federal Government, the Chicago City Council or Metra's Board of Directors.

14. **Severability.** If any provision of this Agreement, or any paragraph, sentence, clause, phrase or word or the application thereof is held invalid, (a) the remainder of this Agreement shall be construed as if such invalid part were never included and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law provided that this Agreement, in its entirety as so reconstituted, does not represent a material change to the rights or obligations of the Parties.

15. **Governing Law.** This Agreement shall be construed in accordance with and its validity and effect (including any claims of breach of any of the terms hereof) shall be governed by the laws of the State of Illinois and the City of Chicago (without regard to Illinois conflicts of interest laws).

16. **Construction and Interpretation.**

(A) This Agreement modifies any current contract(s) between the Parties only to the extent of the matters expressly stated herein. No other modifications are intended and none shall be implied; and the Parties do not intend to, and shall not be construed to have, modified or waived any other rights or obligations they may have under any current contract(s) between the Parties.

(B) This Agreement is the complete agreement of the Parties with respect to the matters set forth herein and all matters relating in any way to the City Bridge Work. With respect to the matters set forth herein and all matters relating in any way to the City Bridge Work, the Parties do not rely upon any previous oral, written or implied representation, endorsement agreement, or understanding of any kind, which may have been communicated by any person.

(C) This Agreement is not intended to, and shall not be construed to, create or give rise to, (a) any rights or obligations except as expressly stated herein, (b) any joint venture, partnership, corporate, employment, agency, construction manager, general contractor, subcontractor, or other relationship of any sort between the City and Metra or any other person(s), or any third-party beneficiary rights of any nature whatsoever.

17. **Waiver.** No waiver of any obligation or default of a Party shall be implied from the omission by a Party to take any action on account of such obligation or default and no express waiver shall affect any obligation or default other than the obligation or default specified in any express waiver and then only for the time and to the extent therein stated.

18. **Breach.** If a party breaches or otherwise violates the terms and conditions of this Agreement, then the other Party shall have the right to pursue all remedies available at law or in equity, including without limitation, specific performance of this Agreement.

19. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall, together, constitute one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on or as of the day and year first above written.

CITY OF CHICAGO

By: _____
Commissioner, Department of
Transportation

Approved: _____

**APPROVED AS TO FORM AND
LEGALITY:**

Budget Director

Commissioner of Environment

Special Assistant Corporation Counsel

**COMMUTER RAIL DIVISION OF THE
REGIONAL TRANSPORTATION
AUTHORITY:**

By: _____
William K Tupper, Acting Executive
Director

ATTEST:

Assistant Secretary

EXHIBIT A
METRA PROPERTY

EXHIBIT B

METRA'S FORCE ACCOUNT ESTIMATE

[Attach documents prior to execution]

EXHIBIT C

DRAW REQUEST FORM

Thirty-Fifth Street Bridge Rehabilitation Project Draw Request

Draw Request No. M-_____

Amount of Draw Request: \$ _____

Payee of Draw Request: _____

This Draw Request includes: _____ Force Account
_____ Work and Materials by Contractors/Subcontractors

I, the duly authorized representative of the Commuter Rail Division of the Regional Transportation Authority ("Metra"), hereby certify to the City of Chicago in connection with the Jackson Street Bridge Rehabilitation Agreement between Metra and the City, as follows:

1. The following is a description of the articles or services rendered that are the subjects of this Draw Request:
2. The articles described above are in place as indicated and the services described have been completed to the extent indicated.
3. Attached hereto is: [Insert description of attached Documents evidencing payment]
4. The amount set forth in this Draw Request has not been the subject of any other Draw Request.
5. Except as provided in the Bridge Replacement Agreement, no portion of the amount that is the subject of this Draw Request, or the assets acquired or constructed therewith, will be used in a trade or business carried on by any person, other than a governmental unit, other than as a member of the general public.
6. The amount that is the subject of this Draw Request will be applied to pay or reimburse Metra or its contractors or subcontractors for payment of Direct Costs as such term is defined in the Bridge Replacement Agreement.

Date: _____

Name: _____

Title: _____

EXHIBIT D

METRA'S SPECIAL CONDITIONS GOVERNING CONTRACTORS

Following are rules and procedures intended to facilitate reconstruction work in the presence of commuters, high voltage wires and high-speed trains:

1. Metra will, at all times, have jurisdiction over the safety of railroad operations, and the decisions of the Chief Operating Officer or his authorized representative as to procedures which may affect the safety of railroad operation shall be final, and the contractor must be governed by such decision.

2. The Power Supervisor's Office (Phone 312-322-2473) must be informed of the Metra project number, location, actual starting and quitting time of any personnel working, the name of individual in charge, the nature of the work, and the need, if any, for protective services. Any subsequent changes must be reported promptly to the Power Supervisor's Office.

Requests for a flagman must be made before 12:30 P.M. on the day prior to when services are desired except for Sunday and Holidays when request must be made prior to 12:30 P.M. on Friday.

It is understood that no employee or Contractor will work on railroad right-of-way except during hours authorized by the Power Supervisor's Office. The Power Supervisor's Office will regulate train/track line-ups, schedules and train speed, and arrange for the services of railroad flagmen and D.C. and A.C. electricians as requested by Contractor or required by Metra.

3. Flagging and D.C. and A.C. electrical services required by Metra for the safety of railroad operations because of work being performed by the Contractor or in connection therewith, will be provided by Metra and the cost thereof shall be borne by the City of Chicago.

Protective services are required during the excavation, placing and removal of cofferdams or sheeting, driving of foundation piling and placing of the concrete footing for piers adjacent to the track, construction and removal of any falsework, bracing or forms adjacent to the track, removal or construction of permanent structures under or adjacent to the track, transporting of material or equipment across the track, any construction operations involving direct interference with the railroad's tracks or wires, fouling of railroad operating clearances, or reasonable probability of accidental hazard to railroad traffic. These services will also be provided whenever in the opinion of the Chief Operating Officer or his authorized representative, such protection is needed.

4. Contractor shall confer with Metra and familiarize himself and his subcontractors relative to railroad operations, clearances and general safety regulations. Contractor is responsible for supervision of his Subcontractors at the sites.

5. The following temporary clearances from operating tracks are the minimum which must be maintained at all times during the construction operations:

- (a) 21'-6" above top of highest rail; 8'-6" from centerline of the nearest track, measured horizontally at right angles thereto, and 4'-0" from any non-electrical aerial wire, measured radially at right angles thereto. A 15'-0" clearance, measured radially at right angles, must be maintained from all energized A.C. and D.C. power lines.

If lesser clearances than the above are required for storage of material or equipment, or for any part of the work, the Contractor shall secure authorization in writing from Metra for such lesser clearances in advance of the start of work of that portion of the project along, on, over or across the property or tracks of the railroad.

6. Contractor is restricted to working only at times which will not interfere with rush hour commuters or scheduled train operations. See Item 15 of these Special Conditions for normal allowable working hours, subject to modification as railroad operation requires.

7. With special prior approval of the Chief Operating Officer, during the allowable working hours, one or more of the tracks in the vicinity of this project may be taken out of service and overhead catenary wire de-energized; however, Contractor must be able to clear this track(s) on notice from Metra for immediate use in operating emergencies.

If any situation develops that the track(s) cannot be returned to service at the agreed time, it is imperative that the Power Supervisor's Office be informed as soon as this situation is realized, not when the track is supposed to be clear.

If any conditions arise where work performed on or about any track damages any railroad property such as signals, buried cable, piping or overhead wire, or causes a track to be out of alignment, either horizontally or vertically, it must be immediately reported to the Power Supervisor's Office via the flagman or other Metra personnel on site.

8. Contractor shall, at all time, conduct his work in a manner satisfactory to the Chief Operating Officer, or his authorized representative, and shall exercise care so as to not damage the property of the railroad company or to interfere with the operations of the railroad.

9. Contractor shall, at no time, cross the railroad's property or tracks with vehicles or equipment of any kind of character, except at such temporary grade crossings as requested by the contractor and approved by Metra, and then only with flagman protection.

10. Before commencing work on any structure under or adjacent to any track, the Contractor shall submit four (4) properly sealed prints of the proposed construction details to Metra for approval. If requested by Metra, this submittal shall include the proposed method of installation, design computations, logs of soil borings and other pertinent information. Work shall not begin until Contractor has received approval in writing from Metra.

11. During the construction of the footings or piers or other supports or structures under or adjacent to any track of the railroad, the Contractor shall make adequate provisions against sliding, shifting, sinking, or in any way disturbing the railroad embankment, track or

structures due to his construction operations. Contractor must not foul track ballast section or hinder track drainage during construction operations.

12. Should any damage occur to railroad property as a result of the Contractor's unauthorized or negligent operations, or unforeseen circumstances as a result of those operations, the Power Supervisor's Office must be immediately notified via the flagman on the site, and if the railroad deems work for the protection of its property is necessary, the Contractor shall reimburse Metra for cost incurred.

13. Contractor will be required, upon completion of the work, to remove from within the limits of the property of the railroad, all machinery, equipment, surplus materials, including excavated soils, falsework, rubbish or temporary structures of said Contractor, and to leave said property in a neat condition satisfactory to the Director of Engineering of Metra.

14. For railroad flagging, D.C. and A.C. electrical protection and emergencies, the Power Supervisor's Office must be notified at (312) 322-2473

15. Allowable working days and hours to be determined by Metra's Operating Department prior to pre-construction meeting.

The Contractor will NOT be allowed to work between 4:30 A.M. to 9:00 A.M. and 3:00 P.M. to 8:00 P.M., Monday thru Friday.

The Contractor must request and Metra will consider allowing the Contractor to work at any other times only with the written approval of the Chief Operating Officer.

EXHIBIT E

RIGHT OF ENTRY AGREEMENT ELECTRIC DISTRICT

THIS AGREEMENT, made this ____ day of _____, 20__, by and between the Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation ("Metra") and _____ ("Indemnitor"). Metra and Indemnitor are hereinafter sometimes individually referred to as a "Party" and jointly referred to as the "Parties".

PRELIMINARY STATEMENT

Indemnitor desires to enter upon that portion of Metra's property located _____ delineated on Exhibit "A" attached to and made a part of this Agreement ("Premises") for the purpose of _____ ("Permitted Activities").

NOW, THEREFORE, for and in consideration of the above stated recitals which are by this reference hereby incorporated into this Agreement and the mutual promises and agreements set forth below, the sufficiency of which are hereby acknowledged by the Parties, Metra and Indemnitor agree as follows:

1. Metra hereby agrees to permit Indemnitor to enter upon the Premises for a period of _____ () months, commencing on the effective date of this agreement, to conduct the Permitted Activities and for no other purpose whatsoever subject to the terms and conditions set forth in this Agreement. The term of this agreement may be extended by mutual agreement of the Parties as evidenced in writing.
2. As one of the considerations for this Right of Entry, Indemnitor agrees to pay to Metra the sum of \$ _____ for the cost of preparing this Agreement, payable in advance.
3. Indemnitor agrees to reimburse Metra for all costs and expenses incurred in connection with the use of Metra's personnel and equipment as a direct result of the Permitted Activities.
4. To the fullest extent permitted by law, Indemnitor hereby assumes and agrees to release, acquit, waive any rights against and forever discharge Metra, the Regional Transportation Authority ("RTA"), and the Northeast Illinois Regional Commuter Railroad Corporation ("NIRCRC"), their respective directors, administrators, officers, employees, agents, successors, assigns and all other persons, firms and corporations acting on behalf of or with the authority of Metra, from and against any and all claims, demands or liabilities, including but not limited to court costs and attorneys' fees, imposed upon them by law or otherwise of every kind, nature and character on account of personal injuries, including death at any time resulting therefrom, and on account of damage to or destruction of property arising from any accident or incident which may occur to or be incurred by Indemnitor, its employees, officers, agents and all other persons acting on their behalf while on the Premises or any other Metra property for

the purposes set forth in this Agreement whether or not such injuries or damages are caused by the actions, omissions or negligence of Metra, RTA or NIRCRC or their respective directors, officers, agents or employees or any other cause or causes. Notwithstanding anything in this Agreement to the contrary, the waivers and releases contained in this paragraph shall survive termination of this Agreement.

5. To the fullest extent permitted by law, Indemnitor agrees to indemnify, defend and hold harmless Metra, the RTA, the NIRCRC, their respective directors, officers, agents, employees, successors, assigns and all other persons, firms and corporations acting on behalf of or with the authority of Metra, from and against any and all liabilities, losses, damages, costs, payments and expenses of every kind and nature, including but not limited to court costs, attorneys' fees and disbursements as a result of claims, demands, actions, suits, proceedings, judgments or settlements, arising out of or in any way relating to or occurring in connection with the Permitted Activities or the use or condition of the Premises used pursuant to the terms of this Agreement whether or not such injuries or damages are caused by the actions, omissions or negligence of Metra, the RTA or the NIRCRC or their respective directors, officers, agents or employees or any other cause or causes. Indemnitor agrees to notify Metra in writing within thirty (30) days of the date Indemnitor becomes aware of any claim which may fall within this indemnity provision. Indemnitor further agrees to defend Metra, the RTA, and the NIRCRC, their respective directors, officers, agents and employees against any claims, suits, actions or proceedings filed against any of them with respect to the subject matter of this indemnity provision, whether such claims, suits, actions or proceedings are rightfully or wrongfully made or filed; provided, however, that Metra may elect to participate in the defense thereof at its own expense or may, at its own expense, employ attorneys of its own selection to appear and defend the same on behalf of Metra, the RTA, the NIRCRC, and their respective directors, officers, agents or employees. Indemnitor shall not enter into any compromise or settlement of any such claims, suits, actions or proceedings without the consent of Metra, which consent shall not be unreasonably withheld. Notwithstanding anything in this Agreement to the contrary, the indemnities contained in this paragraph shall survive termination of this Agreement and the indemnification and hold harmless provisions set forth in this Agreement shall not be construed as an indemnification or hold harmless against and from the negligence of Metra, the RTA or the NIRCRC with respect to any construction work performed by Indemnitor or those performing on behalf of or with the authority of Indemnitor to the extent that such is in violation of the Illinois Construction Contract Indemnification for Negligence Act, 740 ILCS 35/0.01 et seq.

6. Prior to entering upon the Premises, Indemnitor agrees to furnish insurance in form and in such amounts as required by Metra's Risk Management Department (312-322-6991) and shall deliver to Metra's Risk Management Department certificates of insurance or such other documentation acceptable to Metra's Risk Management Department evidencing the acquisition of the required insurance.

7. Upon completion of the Permitted Activities or upon termination as provided in this Agreement, Indemnitor shall, at its sole cost and expense, restore the Premises to the same or to a better condition than that which existed prior to commencement of Indemnitor's activities on the Premises.

8. Indemnitor further agrees to notify Metra's Load Supervisor's Office at (312) 322-2465, Metra's Engineering Department at (312) 322-2745 and Metra's Police Communication Center when performing activities for the purposes set forth in this Agreement at least seventy-

two (72) hours in advance of Indemnitor's entrance upon the Premises or any other Metra property in said District.

9. Indemnitor agrees that any authorized representative of Metra has full authority concerning the operation of the railroad and Indemnitor agrees to comply with the recommendations of the authorized representatives of Metra having jurisdiction over the Premises relative to railroad operations and safety regulations.

10. Indemnitor agrees that a Railroad flagman may be required whenever Indemnitor is on the Premises or any other Metra property for the purposes set forth herein, the cost of which will be borne by Indemnitor.

11. Metra may terminate this Agreement at any time by giving Indemnitor ten (10) days prior written notice of its intention to so terminate.

12. The Permitted Activities shall be performed at Indemnitor's sole cost and expense and shall at all times be conducted in a good workmanlike, safe and sanitary manner and in accordance with all applicable federal, state and local laws, ordinances and regulations. Indemnitor shall take all reasonable safety precautions (such as covering of borings, installation of barricades and warning signs) to adequately secure the site. Indemnitor shall not place, keep, store or otherwise permit to be placed, kept or stored on the Premises any equipment or materials except during such time as Indemnitor's employees, agents, contractor's or subcontractors are physically present and conducting activities permitted under this Agreement.

13. Indemnitor's activities on the Premises shall be conducted in a manner so as not to prevent or unreasonably interfere with use and enjoyment of the Premises by Metra, its employees, agents or permittees, for the purpose(s) to which the Premises is now, or may hereinafter be, committed by Metra.

14. Any rights to the Premises not specifically granted to Indemnitor herein, are reserved to Metra, its successors and assigns.

15. All payments required to be made by Indemnitor to Metra under the terms; conditions or provisions of this Agreement shall be made within sixty (60) days of Indemnitor's receipt of any demand or invoice from Metra evidencing the amount of the indebtedness due. Payments not made within said sixty (60) day period shall accrue interest at a rate of one and one half percent (1 1/2%) per month or the highest amount permitted by Illinois law, whichever is less, from the date payment is due until paid.

16. No waiver of any obligation or default of Indemnitor shall be implied from omission by Metra to take any action on account of such obligation or default and no express waiver shall affect any obligation or default other than the obligation or default specified in the express waiver and then only for the time and to the extent therein stated. Section captions used in this Agreement are for convenience only and shall not affect the construction of this Agreement. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable. This Agreement and the rights and obligations accruing hereunder are binding upon the successors and assigns of Metra and Indemnitor. This Agreement shall be governed by the internal laws of the State of Illinois. This Agreement, together with the Exhibits attached hereto, constitutes the entire Agreement between the Parties with respect to the subject matter hereof. If any provision of this Agreement, or any paragraph, sentence, clause, phrase or word or the application thereof is held invalid, the remainder of this Agreement shall be construed as if such invalid part were never included and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law provided that such exclusion does not unfairly prejudice the rights of either Party to this Agreement. In the event of any conflict or inconsistency between the terms set forth in the body of this Agreement and the terms set forth in any Exhibit hereto, the terms set forth in such Exhibit shall govern and control.

17. All notices, demands, elections, and other instruments required or permitted to be given or made by either Party upon the other under the terms of this Agreement or any statute shall be in writing. Such communications shall be deemed to have been sufficiently served if sent by commercial courier, certified or registered mail, return receipt requested, with proper postage prepaid or sent by facsimile transmission by Metra or Municipality at the respective addresses shown below or to such other party or address as either Party may from time to time furnish to the other in writing. Such notices, demands, elections and other instruments shall be considered as delivered to recipient on the day of delivery if sent by commercial courier, on the second business day after deposit in the U.S. Mail if sent by certified or registered mail or on the first business day after successful transmission if sent by facsimile transmission.

(a) Notices to Metra shall be sent to:

Commuter Rail Division
547 W. Jackson Boulevard
Chicago, Illinois 60661
Attn: General Counsel

Phone: (312) 322-6699
Fax: (312) 322-6698

(b) Notices to Indemnitor shall be sent to:

Phone: _____
Fax: _____

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their duly authorized officers on the day and year first written above.

INDEMNITOR:

THE COMMUTER RAIL DIVISION OF THE
REGIONAL TRANSPORTATION
AUTHORITY:

By: _____

By: _____, Acting Executive
Director

Its: _____

EXHIBIT F

INSURANCE

[Attach documents prior to execution]

EXHIBIT G

**OWNERS CONSTRUCTION ESCROW
TRUST AND DISBURSING INSTRUCTIONS**

Escrow Tmst No.: _____

ARTICLE 1: General Information

A. Parties to this Escrow - The following shall be deemed parties to these Instructions:

L Metra: Commuter Rail Division of the
Regional Transportation Authority
547 West Jackson Blvd.
Chicago, Illinois 60661
Phone No.: (312) _____
Fax No.: (312) _____
Attorney: _____
547 West Jackson Blvd., 15th floor
Chicago, Illinois 60661

2. City City of Chicago

3. Escrow
Tmstee: Chicago Title and Tmst Company ("CT&T")
171 North Clark Street
Chicago, Illinois 60601
Attention: _____
Phone No.: (312) _____
Fax No.: (312) _____

B. Billing Instructions: Constmction Escrow charges to be billed to Metra and the City.

ARTICLE 2: Purpose:

Metra and the City have entered into that certain Thirty-Fifth Street Bridge Replacement Agreement (the "Bridge Replacement Agreement"), dated _____, 201__, pursuant to which the City plans to replace an existing pedestrian bridge stmcture with a new pedestrian bridge stmcture (the "Bridge") known as the Thirty-Fifth Street Bridge (all work to be performed in connection with such Replacement of the Bridge being hereinafter referred to as the "Project"). Under the terms of the Bridge Replacement Agreement, Metra has agreed to perform certain construction work for the Project referred to as "Metra's Related Work." Metra may enter into one

or more contracts with a contractor, who may, in turn, subcontract with subcontractors and them with other subcontractors or materialmen necessary to provide labor and materials for the performance of Metra's Related Work (entities other than Metra employees performing work at all tiers of contractual and subcontractual relationships are collectively referred to as "Subcontractors"). Metra and the City are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties."

Metra and the City have requested CT&T to act as Escrow Trustee and to provide a disbursing service for the payment of Project construction costs and other related costs.

ARTICLE 3: Deposits:

A. Deposits: Metra, the City and Escrow Trustee agree as follows:

1. Concurrent with the execution of these Instructions, the City shall make an initial deposit of \$ _____ and thereafter deposit additional amounts ("Funds") with the Escrow Trustee sufficient to pay for Metra's Related Work as required by the terms and provisions of the Bridge Replacement Agreement.
2. Escrow Trustee will disburse the Funds to Metra to pay for Metra's Related Work pursuant to the provisions of these Instructions.

Escrow Trustee shall disburse the Funds solely to Metra or its Subcontractor. It is the intention of the Parties that no person not a Party to these Instructions shall have the right to look to the Escrow Trustee for any disbursement of Funds under this Escrow under a third party beneficiary theory or otherwise, and that the Escrow Trustee owes no duty to any such third party to make any disbursement.

B. REQUIREMENTS PRIOR TO DISBURSEMENTS. Prior to any disbursement of Funds by the Escrow Trustee, the following documents, as applicable, shall have been received by Escrow Trustee for each disbursement, to-wit:

- (1) With respect to work performed or materials provided either by Subcontractors or by Metra employees, Metra's and the City's signed written approval for the disbursement in question in the form attached hereto as Exhibit A;
- (2) With respect to work performed or materials provided either by Subcontractors or by Metra employees, a certification by Metra using the Draw Request Form attached hereto as Exhibit A ("Draw Request Form") which, among other things, includes a certification that the work has been completed and materials are in place as indicated by the current construction draw request of Metra or the Subcontractor; and
- (3) With respect to work performed or materials provided by Subcontractors and not work performed by Metra employees, the following additional documents:
 - (a) A sworn statement by Metra ("Contractor's Statement") disclosing the various contracts entered into by Metra with Subcontractors relating to Metra's Related Work and setting forth the names of the parties to such

contracts, their addresses, the kind of service, work or materials to be furnished, the amounts of such contracts, the amounts paid to date, if any, the amounts of current payments, if any, and the balance to become due, if any;

- (b) A sworn statement ("Affidavit") setting forth the various contracts entered into by the applicable Subcontractor and setting forth the names of the parties to such contracts, their addresses, the kind of service, work or material to be furnished, the amounts of such contracts and covering the immediately preceding disbursement, if any, (i) all amounts previously paid, if any, (ii) the amounts of the immediately preceding payment, if any, and (iii) the balance to become due, if any; and
- (c) Waivers of lien from the Subcontractors, as applicable, in support of the Affidavits for the immediately preceding disbursement to such Subcontractor, if any;

provided, however, that Metra shall cause to be deposited with the Escrow Trustee the Affidavit and waivers of lien for a disbursement for or on behalf of a Subcontractor prior to any subsequent disbursement to such Subcontractor.

C. Final Disbursement. Prior to the final disbursement of Funds by the Escrow Trustee, the following documents shall have been delivered to the Escrow Trustee:

- (1) A Final Contractor's Statement in the form provided in B(3) above;
- (2) Final Affidavits, as provided in B(3) above, but covering the final payment request;
- (3) Final waivers of lien from each Subcontractor who provided work or materials to the Project; and
- (4) Such other documentation as may be reasonably required by the Escrow Trustee in order to comply with its obligations under these Instructions.

Upon payment of the final disbursement, all remaining funds, if any, shall be delivered to the City.

D. Escrow ledger. For each month prior to the final disbursement of Funds and for the month of the final disbursement of Funds, the Escrow Trustee shall deliver to the City and Metra a copy of the Escrow Ledger setting forth all activity including any deposit or disbursement of Funds occurring during such month.

ARTICLE 4: Restrictions on Disbursements

Subject to the provisions of Section 5(A) and (B) of Article 5 below and provided all the requirements of Article 3 are met, the Escrow Trustee shall disburse to Metra or to the Subcontractor the amount set forth in the Contractor's Statement for the disbursement in question.

NOTE: Escrow Trustee shall use the same care and diligence in the collection and examination of sworn statements, waivers, affidavits, supporting waivers and releases of liens, for the above purpose, as it would use were Escrow Trustee required by these Instructions to furnish mechanics lien title insurance coverage to a construction lender.

Any interest earned on investment of the Funds as provided in Article 5 hereof shall be reinvested for the benefit of the City pursuant to the provisions of Article 5 hereof

ARTICLE 5: General Conditions

- A. Metra and the City understand and agree that Escrow Trustee's duties are to disburse deposits pursuant to the provisions of these Instructions and Escrow Trustee's liability arising from the performance of those duties regarding the release of mechanics' lien rights, shall extend only to those persons to whom Escrow Trustee is making payments, and only for those amounts being paid. Escrow Trustee shall have no liability for any lien rights associated with work previously completed, or completed by persons not receiving direct payments from Escrow Trustee.
- B. Owner understands that Escrow Trustee makes no representation that a title insurance policy insuring over mechanics' lien claims will necessarily issue without additional title insurance underwriting requirements being met.
- C. Escrow Trustee assumes no responsibility concerning the sufficiency of funds deposited herein to complete the contemplated construction satisfactorily.
- D. If the Escrow Trustee discovers a misstatement in an Affidavit or any supporting waiver of lien furnished by a Subcontractor, it may stop disbursement until the misstatement has been corrected. Escrow Trustee may, at its option, verify information submitted by the City and Metra or may require them to furnish verification by Subcontractors.
- E. All sworn statements, affidavits, waivers of lien and other documents to be deposited hereunder shall be properly executed and otherwise in form and substance acceptable to the Escrow Trustee.
- F. The function and duties assumed by Escrow Trustee include only those described in these Instructions and Escrow Trustee is not obligated to act except in accordance with the terms and conditions of these Instructions. Escrow Trustee does not insure that the Project will be completed, nor does it insure that the Project, when completed, will be in accordance with plans and specifications, nor that sufficient Funds will be available for completion, nor does it make the certifications of any architect, engineer or construction manager, nor does it assume any liability for same other than procurement thereof as one of the conditions precedent (subject to Metra's and the City's Approval) to each disbursement.

Escrow Trustee has no liability for loss caused by any error in any architect's, engineer's or construction manager's statements furnished to the City as to work in place.

Escrow Trustee shall not be responsible for any loss of documents while such documents are not in its custody. Documents deposited in the United States mail shall not be construed as being in the custody of Escrow Trustee.

Escrow charges are payable by Metra and the City thirty (30) days after billing. In the event escrow charges are not paid as agreed, Escrow Trustee may terminate these Instructions upon thirty (30) days written notice to Metra and the City.

- G. Deposit of Funds pursuant to these Instructions shall be invested on behalf and at the directions of the City and Metra, provided, however, that such directions shall be in writing and be accompanied by the taxpayer's identification number for the City and such investment forms as may be required. Escrow Trustee will, upon request, furnish information concerning procedures and fee schedules for investment.

Except as to the deposit of Funds for which Escrow Trustee has received express written direction from Metra and the City concerning investment or other handling, the parties hereto agree that the Escrow Trustee shall be under no duty to invest or reinvest any Funds at any time held by it hereunder; and, further, that Escrow Trustee may commingle such Funds with other deposits or with its own funds in the manner provided for the administration of funds under Section 2-8 of the Illinois Corporation Fiduciary Act (205 ILCS 620/2-8). Provided, however, nothing herein shall diminish Escrow Trustee's obligation to apply the full amount of the Funds in accordance with the terms of these Instructions. In the event the Escrow Trustee is requested to invest Funds hereunder, Escrow Trustee, so long as it follows the City's and Metra's directions, is not to be held responsible for any loss of principal or interest which maybe incurred as a result of making the investments or redeeming said investments for the purposes of these Instructions.

- H. As between Metra and the City, in the event of a conflict between a provision or provisions of these Instructions and a provision or provisions of the Bridge Replacement Agreement, the provision or provisions of the Bridge Replacement Agreement shall take precedence and control.

These Instructions shall not inure to the benefit of any person or entity not a Party hereto under a third party beneficial theory or otherwise, and any liability to such parties is expressly disclaimed.

IN WITNESS WHEREOF, the undersigned have executed these Instructions this ____ day of _____, 201_.

METRA:

**Commuter Rail Division of the Regional
Transportation Authority:**

City of Chicago

By: _____

By: _____
**Commissioner, Department of
Transportation**

ESCROW TRUSTEE:

Chicago Title and Trust Company

By: _____

EXHIBIT A
DRAW REQUEST FORM

Thirty-Fifth Street Bridge Replacement Project Draw Request

Draw Request No. M - _____
Amount of Draw Request: \$ _____
Payee of Draw Request: _____

This Draw Request includes: _____ Force Account
_____ Work and Materials by Contractors/Subcontractors

I, the duly authorized representative of the Commuter Rail Division of the Regional Transportation Authority ("Metra"), hereby certify to the City of Chicago (the "City") in connection with the Bridge Replacement Agreement dated January __, 2007, between Metra and the City, as follows:

1. The following is a description of the articles or services rendered that are the subject of this Draw Request:
2. The articles described above are in place as indicated and the services described have been completed to the extent indicated.
3. Attached hereto is: [insert description of attached Documents evidencing payment]
4. The amount set forth in this Draw Request has not been the subject of any other Draw Request.
5. Except as provided in the Bridge Replacement Agreement, no portion of the amount that is the subject of this Draw Request, or the assets acquired or constructed therewith, will be used in a trade or business carried on by any person, other than a governmental unit, other than as a member of the general public.
6. The amount that is the subject of this Draw Request will be applied to pay or reimburse Metra or its contractors or subcontractors for payment of Direct Costs as such term is defined in the Bridge Replacement Agreement.

Date: _____

Name _____
Title _____

JOINT ORDER APPROVAL

The attached construction draw request is hereby approved for disbursement.

METRA:

**Commuter Rail Division of the
Regional Transportation Authority**

City of Chicago

By: _____
Name _____
Title _____

By: _____
Name _____
Title _____

EXHIBIT 4

18TH STREET PEDESTRIAN PROJECT REIMBURSEMENT AGREEMENT

THIS AGREEMENT ("Agreement") is made as of the _____ day of _____, 2011, by and between the City of Chicago, an Illinois home rule municipal corporation, by and through its Department of Transportation ("City") and Illinois Central Railroad Company, an Illinois corporation ("Railroad") (City and Railroad are collectively referred to herein at "Parties").

WITNESSETH:

A. In 2003, as an element of the finalization of the construction and rearrangement of pedestrian, rail and bus facilities in the area of 18th Street and Calumet Avenue in the City of Chicago, City's contractors, working in coordination with Railroad's employees and contractors and pursuant to plans agreed upon by the Parties, constructed a pedestrian subway ("Pedestrian Project") beneath Railroad's existing train tracks, on property owned or operated by Railroad.

B. Although the construction of the Pedestrian Project was completed in 2003, no written agreement for operation of the Pedestrian Project on Railroad property, or for reimbursement of Railroad for expenses incurred by Railroad during construction of the Pedestrian Project, was ever finalized.

NOW, THEREFORE, in consideration of the foregoing recitals, City and Railroad, desiring to conclude, resolve, and settle all outstanding matters between the Parties relating to the Pedestrian Project, and intending to be lawfully bound by the terms herein, do agree as follows:

1. Plans and Specifications. The plans and specifications listed on Exhibit A attached hereto and incorporated herein by reference ("Plans and Specifications") were prepared for City by Bowman, Barrett & Assoc. Inc. (Railroad Bridge) and Knight Infrastructure (Pedestrian Tunnel) and approved by Railroad. The Parties represent and warrant that the Plans and Specifications reasonably describe the construction of the Pedestrian Project.

2. Grant of Permanent Easement and Related Property Matters. For governance of construction, maintenance and operation of the Pedestrian Project, concurrently with the execution of this Agreement, Railroad shall grant to City, to the fullest extent that it lawfully may, without warranty of title or suitability for City's purposes, or any other matter, a permanent easement in the Pedestrian Project, and the Parties shall release and confirm other related easements, in the form of Exhibit B, attached hereto and incorporated herein by reference ("Grant, Release and Confirmation of Easements Agreement").

3. Reimbursement of Railroad Costs. The costs and expenses incurred by Railroad during the 2003 construction of the Pedestrian Project are reflected on Exhibit C, attached hereto and incorporated herein by reference ("Reimbursable Expenses"), in the amount of One Million Five Hundred Forty Thousand Two Hundred and 06/100 Dollars (\$1,540,200.06). Within thirty (30) days of the complete execution of this Agreement, City will reimburse Railroad in the amount of \$1,540,200.06 in full and complete satisfaction of all costs and expenses incurred by Railroad during the course of construction of the Pedestrian Project. As an additional element of consideration for

this Agreement, Railroad hereby releases and waives any claim it may have to interest on the \$1,540,200.06 accruing between when such costs were incurred and the date thirty (30) days after the complete execution of this Agreement, provided, however, such waiver may be rescinded by Railroad if the entire amount of \$1,540,200.06 is not paid to Railroad within the time prescribed above.

4. Miscellaneous

a) Any and all notices provided for herein, or communications bearing upon the obligations of the parties shall be in writing and shall be delivered in accordance with the notice provisions set forth in the Easement.

b) This Agreement shall be governed by, and construed and enforced in accordance with, the substantive laws of the State of Illinois. The parties agree that neither Illinois' nor any other state's conflict of laws provisions shall apply to any issues or other matters arising under this Agreement, the substantive law of the State of Illinois governing all such issues.

c) All article headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

d) No approval given, payment made, possession taken, action taken, or failure to act by Railroad under this Agreement shall operate to relieve the City from any of their respective responsibilities under this Agreement or be deemed as an approval by Railroad of any deviation contained in any items or documents subject to such approval from, or of any failure by the City to comply with, any requirement of this Agreement, unless such deviation or failure has been specifically approved by a written modification. A waiver by Railroad of any breach of this Agreement shall not be held to be a waiver of any other breach whether prior to or subsequent thereto. The duties and obligations and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

**ILLINOIS CENTRAL RAILROAD
COMPANY**

By: _____

Its: _____

CITY OF CHICAGO, a home rule
municipal corporation, by and through its
Department of Transportation

By: _____

Gabe Klein

Its: Commissioner

Department of Transportation

EXHIBIT A

PLANS AND SPECIFICATIONS

[Attach documents prior to execution]

EXHIBIT B

**AGREEMENT FOR GRANT, RELEASE AND CONFIRMATION OF EASEMENTS – BUSWAY
AND PEDESTRIAN IMPROVEMENTS AT 18TH STREET**

[Attach documents prior to execution]

EXHIBIT C

REIMBURSABLE EXPENSES

[Attach documents prior to execution]

McDonough, John

Sent: Thursday, July 21, 2011 10:11 AM

To: Foreman, Sandra

Attachments: Exh3-Thirty-Fifth_Street_B~1.doc (129 KB) ; Exh4-18th Street Pedway Ag~1.doc (69 KB) ; ROW_TENG_JRH_Preliminary_P~1.pdf (256 KB)

Sandra,

Here are Exhibits 3 and 4 and a drawing

The two page drawing should be inserted as Exhibit A to each of the agreements that are Exhibit 1 and Exhibit 2 to the ordinance.

Please call me if you have any questions about this.

Thanks again

John

John D. McDonough
Of Counsel
Law Office of Robert McDonough

For all City of Chicago matters, please contact me at:

10510 West Zemke Road
Chicago, Illinois 60666
(630) 569-0489
jmcdonough@cityofchicago.org